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By: Lori Walker, Deputy

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ALTA HEIGHTS NEIGHBORHOOD COALITION

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

ALTA HEIGHTS NEIGHBORHOOD COALITION, Petitioner and Plaintiff, v. CITY OF NAPA, CITY COUNCIL OF NAPA; and DOES 1 through 20, inclusive, Respondents and Defendants. MILLI PINTACSI; and ROES 1 through 20, inclusive, Real Parties in Interest and Defendants.	CASE NO. 24CV001047 **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

I. INTRODUCTION

1. Petitioner and Plaintiff Alta Heights Neighborhood Coalition ("Petitioner" or "Coalition") brings this Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition") against Respondents and Defendants City of Napa ("City") and City Council of Napa ("Council,"), and Does 1-20, inclusive, (collectively, "Respondents") to compel Respondents to rescind their approval of the Le Petit Elephant Use Permit and related Notice of

Exemption ("NOE," altogether, "Project Approvals") for failure to follow the mandates of the California Environmental Quality Act, Public Resources Code sections 21000 et seq. ("CEQA") and the CEQA Guidelines, California Code of Regulations, Title 14, sections 15000 et seq. ("CEQA Guidelines") as well as the City's Zoning Ordinance.

2. This Petition relates to the Council's May 21, 2024, approval of the Le Petit Elephant Use Permit authorizing a daycare for up to 250 children, undefined youth services, and reduced parking ("Project") within the neighborhood commonly known as Alta Heights, which is designated Low Density Residential. The City completed no environmental review to understand the impacts of this Project, and instead, issued an improper NOE. The Project is inconsistent with the City's zoning regulations, and is not categorically exempt from CEQA. In fact, in approving the Project, the City required various mitigation measures to ameliorate the unstudied and unknown environmental impacts of the Project, such as traffic impacts. Accordingly, the Coalition respectfully requests this Court issue a peremptory writ of mandate ordering Respondents to rescind, set aside, and void any and all resolutions or document to the approval of the Project and issuance of the NOE, as well as any other legislative, quasi-adjudicatory, or other discretionary or ministerial approvals of the Project or any portion thereof, and grant the Coalition injunctive relief unless and until Respondents comply with the mandates of CEQA.

II. THE PARTIES

3. Petitioner Alta Heights Neighborhood Coalition is, and all times relevant herein was, an unincorporated association pursuant to California Corporations Code section 18035. The Coalition's members include residents of the Alta Heights Neighborhood in the City of Napa who have a beneficial interest in ensuring Respondents comply with their duties under the law including CEQA. The Coalition's members will be most directly impacted if the Project is allowed to proceed absent appropriate environmental review.

4. Respondent City of Napa is, and at all times relevant herein was, a political subdivision of the State of California, and is a "local agency" as defined in section 54951 of the Government Code. The City also functions as a lead agency under CEQA. In this capacity, the

City is charged with evaluating the potential environmental impacts of the Project, and otherwise complying with the substantive and procedural requirements of CEQA. Respondent City Council of Napa is, and at all relevant times herein was, the decision-making body for Respondent City.

5. The Coalition does not know the true names or capacities, whether individual, corporate, associate, or otherwise, of Respondents Does 1 through 20, inclusive, and therefore sue said Respondents under fictitious names. The Coalition will amend this Petition to reflect their true names and capacities at such time that they become known.

6. Real Party in Interest Milli Pintacsi ("Pintacsi" or "Real Party") is listed as the applicant for the Project on the NOE filed with the Napa County Recorder-County Clerk and represented herself as the Project applicant during public hearings and through communications during the pendency of the Project.

7. The Coalition does not know the true names or capacities, whether individual, corporate, associate, or otherwise, of Real Parties in Interest Roes 1 through 20, inclusive, and therefore sue said Real Parties in Interest under fictitious names. The Coalition will amend this Petition to reflect their true names and capacities at such time that they become known.

III. JURISDICTION AND VENUE

8. This Court has jurisdiction over the matters alleged herein pursuant to Code of Civil Procedure sections 1060, 1085, and 1094.5 and Public Resources Code sections 21168 and 21168.5.

9. Venue is proper in Napa County pursuant to Code of Civil Procedure section 394(a) as Respondent City is within Napa County and pursuant to section 395 as the Project is located in Napa County and the Coalition consists of persons residing in Napa County.

IV. STANDING AND EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. The Coalition has standing in this action where it seeks enforcement of a public duty by Respondents City and City Council. Respondents City and City Council are public entities with a mandatory duty to comply with CEQA and other applicable laws when approving the Project. The Coalition alleges that Respondents City and City Council failed to satisfy this

duty by approving the Project in reliance on an NOE that is unsupported by substantial evidence in the record.

11. The Coalition has a direct and substantial public interest in enforcing Respondents City and City Council's compliance with their statutory duties under CEQA; the Coalition has a beneficial interest in the outcome of this proceeding, which is brought on behalf of itself and its members.

12. The Coalition appeared and presented its objections to the Project at the City of Napa Planning Commission meeting on the Project. The Coalition appealed the Planning Commission's approval of the Project to the City Council. The Coalition presented both written and oral comment regarding its complaints to the City Council before and at the May 21, 2024 City Council meeting at which the City Council determined to approve the Project.

13. The Coalition has no plain, speedy, and adequate remedy in the ordinary course of law. Unless this Court grants the relief requested, Respondents will continue to fail and refuse to perform their legal duties. No money damages or other legal remedy could adequately compensate the Coalition and others for the hardship caused by Respondents' failure to perform their legal duty.

14. The Coalition contends that Respondents' actions as described in this petition violate their legal duties. Respondents contend otherwise. Declaratory relief is therefore necessary and appropriate to resolve this controversy. Accordingly, the Coalition seeks a judicial declaration of the rights and duties of the respective parties.

V. NOTICE OF CEQA ACTION

15. On June 20, 2024, the Coalition sent a Notice of Commencement of Action pursuant to Public Resources Code section 21167.5 via U.S. mail and electronic mail to Respondents thereby notifying Respondents of the Coalition's intent to file this lawsuit, which seeks to set aside Respondents' approval of the Project and issuance of the NOE. A copy of the Notice of Commencement of Action is attached to this Petition as Exhibit A.

16. The Coalition will provide notice of this action to the Attorney General of the

State of California by serving a copy of this Petition along with notice of its filing, as required by Public Resources Code section 21167.7 and Code of Civil Procedure section 388.

VI. PREPARATION OF ADMINISTRATIVE RECORD

17. Pursuant to Public Resources Code section 21167.6(b)(2), the Coalition elects to prepare the record of proceedings and has filed the notice of election concurrently herewith.

18. This Petition is timely. The NOE was filed with the Napa County Recorder-County Clerk on May 22, 2024. This Petition was filed within 35 days of that date.

VII. FACTUAL AND PROCEDURAL HISTORY

19. On or about December 6, 2023, Pintacsi submitted an application for a use permit pursuant to Napa Municipal Code Chapter 17.60 to authorize a daycare facility with up to 250 children and other youth services, with reduced parking at a location in the Alta Heights neighborhood in the City of Napa. The Project Site was developed as a Church of Jesus Christ of Latter-Day Saints but is currently vacant with any operations having ceased in 2021. The City could not locate the original use permit for the Church.

20. The "youth services" component of the Project is both expansive and vague. The Use Permit Application Written Narrative ("Narrative"), which was attached to the City Council's final Resolution approving the Project (discussed more fully below) describes a summer camp program, weekly music and movement classes, Spanish immersion classrooms, an indoor playroom , a large indoor playroom for birthday party and community rentals, a gym space for weekly evening and all day weekend rentals including practices, tournaments[1], plays and performances as well as private parties and performances, and monthly date nights. These activities and uses are all in *addition* to daycare services for up to 250 children with 55 employees. In fact, the Narrative describes the indoor playroom as being available in tandem with the 250-child daycare and is without explicit limit in number.

21. In support of the application, Pintacsi submitted a Transportation Impact Study ("TIS"), which purported to study the potential traffic impacts of the Project but notably omitted a

[1] While the City Council later prohibited tournaments, it still attached the unrevised Narrative to the final resolution approving the Project (discussed below), leaving the Project description vague and unclear.

full review of the project, including any review of the impact of the "youth services" element of the Project. The TIS explicitly excluded any analysis or discussion of the "youth services" component of the Project reasoning that such activities did not overlap with the daycare. However, we know from the Project description that "youth services" occurring at the indoor playroom, directly overlap, as does the start time of the gym hours and the end time of the daycare hours. Moreover, any lack of overlap does not negate an impact and actually suggests significant additional impact as the "youth services" will be drawing separate and significant traffic to the neighborhood from the greater Napa region. The TIS contains only a single page discussing the purported Vehicle-Miles Traveled (VMT) impacts from the Project. Again, this cursory review discusses only the daycare component of the Project, not the other "youth services." The TIS continues to analogize the daycare center to a retail project, but does not make clear how a daycare similarly adds "new, more convenient shopping options, which enable many customers to reduce their trip lengths." The TIS then reasons that "there are numerous existing daycare facilities" and that "many of the project trips would not be newly generated trips but would be the result of people changing daycare service providers." The TIS does acknowledge that the daycare portion of the Project will generate approximately 1,038 new daily trips to the Project site, and also provides recommendations to address safety concerns. Despite this, the TIS inexplicably concludes the Project will have no significant impacts to traffic. The TIS contains no discussion of greenhouse gas emissions generated from these additional trips or resulting impacts to air quality.

22. On April 4, 2024, the City of Napa Planning Commission held a public hearing to consider the use permit application. Members of the Coalition filed written comments objecting to approval of the application as written prior to the meeting. Members of the Coalition also appeared at the Planning Commission meeting and presented oral comments objecting to approval of the application without appropriate environmental appeal.

23. At the April 4, 2024, meeting, the Planning Commission determined the Project was exempt from CEQA pursuant to CEQA Guidelines sections 15301 for minor alterations to

private structures, and section 15300.2 for infill development. The Planning Commission lacked substantial evidence to support this determination. Additionally, despite this determination, the Planning Commission determined to further "condition" the project to address potential environmental impacts. More specifically, the Planning Commission ordered that the Project include "pedestrian improvements and traffic calming," as well as contribute a fair-share fee "to mitigate the addition of project trips." With these conditions of approval, which were clearly aimed at mitigating potential traffic impacts, the Planning Commission approved the Project, adopting Resolution No. PC2024-02. A true and correct copy of Resolution PC2024-02 is attached to this Petition as Exhibit B.

24. On April 15, 2024, the Coalition filed a timely appeal of the Planning Commission's determination that the Project was exempt from CEQA and approval of the use permit for the Project to the City Council.

25. On May 15, 2024, the Coalition sent a letter to Respondents in support of the Coalition's appeal. In its letter, the Coalition reiterated that the Project is inconsistent with the City of Napa's zoning regulations, and that the Planning Commission abused its discretion in determining that the Project was exempt from CEQA and that the Project satisfied emergency access guidelines. A true and correct copy of the Coalition's May 15, 2024, letter is attached to this Petition as Exhibit C.

26. On May 16, 2024, Respondents circulated a staff report purporting to address the Coalition's appeal. Despite the clear flaws in the Planning Commission's approval of the Project, including but not limited to the failure to conduct appropriate environmental review despite an acknowledgment of environmental impacts, staff continued to recommend the City Council deny the appeal and approved the Project as conditioned by the Planning Commission.

27. On May 20, 2024, the Coalition sent a second letter to Respondents responding to the unsupported and incorrect conclusions of the May 16, 2024, staff report. The Coalition noted that the "youth services" portion of the Project was not an ancillary or accessory use as set forth in the Napa Municipal Code, that the Project was not a "negligible" expansion of prior uses, and

again, that the Project was inconsistent with the City's General Planning and zoning regulations. The Coalition reiterated that the Project is not exempt from CEQA. A true and correct copy of the Coalition's May 20, 2024, letter is attached to this Petition as Exhibit D.

28. On May 21, 2024, the City Council held a meeting to consider the Coalition's appeal. The Coalition and several members of the public presented further oral comment objecting to approval of the Project on various grounds, including a lack of environmental review under CEQA. Following public comment, staff commented on the Project including the process for its approval. Staff acknowledged that the Project was going to have an environmental impact, but argued that such impact was addressed by the conditions of approval imposed by the Planning Commission. Members of the City Council then discussed the Project and its environmental and other impacts, as well as additional measures to address such impacts. The City Council determined to deny the appeal, and approve the Project with additional conditions of approval formulated at the meeting and without any additional environmental review.

29. The City filed an NOE on May 22, 2024, indicating that the Project was "exempt from the requirements of CEQA, pursuant to CEQA Guidelines section 15301 (Categorical Exemptions; Class 1), which exempts minor alterations to existing private structures, and section 15332 (Categorical Exemptions; Class 32) which exempts in-fill development." A copy of the May 22, 2024, NOE is attached to this Petition as Exhibit E.

30. Following repeated requests from the Coalition, on June 12, 2024, the City finally provided a copy of the Resolution in which it denied the Coalition's appeal, approved the Project with further conditions, and determined that it was exempt from CEQA ("Resolution R2024-050"). As provided below, the Resolution further makes clear that the Project is indefinite and there is no evidence in the record to support the City's determination that the Project is exempt from CEQA. The City's final Resolution is attached to this Petition as Exhibit F.

31. In Resolution R2024-050, the City Council purported to deny the appeal and uphold the Planning Commission's approval of a "use permit to authorize a daycare with up to 250 children and other youth services, with reduced parking" at the Project site. The Resolution

attached the Planning Commission's Resolution PC2024-02 with redlines as well as the Use Permit Application Narrative submitted by Pintacsi.

32. The City Council also found the Project exempt from CEQA pursuant to Guidelines sections 15332 and 15300.2, stating "there has been no successive effort to intensify land use in this area [and] no unusual circumstances exist that would pose a reasonable possibility of having a significant effect on the environment." Despite this finding, the City Council further conditioned the project to address environmental impacts, and required Pintacsi report back to the City Council after one year to demonstrate compliance.

VIII. CLAIMS FOR RELIEF

A. FIRST CAUSE OF ACTION- Violation of CEQA

33. The Coalition realleges paragraphs 1 through 32 as if set forth fully herein.

34. The purpose of CEQA is to ensure the long-term protection of the environment and informed decision-making and informed participation in decisions that could have environmental impacts.

35. Categorical exemptions are applied to classes of projects that typically do not have significant effects on the environment because they do not involve adverse changes in the existing environmental conditions. (*N. Coast Rivers All. v. Westlands Water Dist.* (2014) 227 Cal. App. 4th 832, 851 [referencing Pub. Res. Code, § 21084, subd. (a).))

36. Categorical exemptions, however, are subject to important exceptions based on factors such as location, cumulative impact, or unusual circumstances. (Cal. Code Regs., tit. 14, § 15300.2.) A categorically exempt project, like a single-family residence, loses its exempt status "where the project may impact on an environmental resource of … critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies." (Cal. Code Regs., tit. 14, § 15300.2, subd. (a).) A CEQA exemption is also inapplicable "when the cumulative impact of successive projects of the same type in the same place, over time is significant." (Cal. Code Regs., tit. 14, § 15300.2, subd. (b).) Nor may a categorical exemption "be used for an activity where there is a reasonable possibility that the

activity will have a significant effect on the environment due to unusual circumstances." (Cal. Code Regs., tit. 14, § 15300.2, subd. (c).)

37. A lead agency should decide whether a project is eligible for a categorical exemption as part of its preliminary review of the project without reference to or reliance upon any proposed mitigation measures. (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1199–1200.) "Thus the project was specifically conditioned on measures meant to mitigate impact on a habitat for a threatened species, meaning the activity might have a significant effect on the environment, thus precluding application of a categorical exemption." (*Berkeley Hillside Pres. v. City of Berkeley* (2015) 241 Cal. App. 4th 943, 960.)

38. In order for a project to qualify for the infill exemption, five criteria must be met: "(a) [t]he project [must be] consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations[;] (b) [t]he proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses[;] (c) [t]he project site has no value, as habitat for endangered, rare or threatened species[;] (d) [a]pproval of the project [must] not result in any significant effects relating to traffic, noise, air quality, or water quality[; and] [¶] [t]he site [must be able to] be adequately served by all required utilities and public services." (CEQA Guidelines, § 15332.)

39. The court "appl[ies] the substantial evidence test to an agency's factual determination that a project comes within the scope of a categorical exemption." (*Id.* at 852.)

40. Under CEQA, agencies must analyze "any significant environmental effects the Project might cause or risk exacerbating by bringing development and people into the area affected." (CEQA Guidelines § 15126.2(a); *California Bldg. Indus. Assn. v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 385.) This includes "any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions (e.g. wildfire risk areas)." (CEQA Guidelines § 15126.2(a); *see also Clews*

Land & Livestock, LLC v. City of San Diego (2017) 19 Cal.App.5th 161, 193 [recognizing potential for significant environmental effects when project brings new development to a wildfire-prone area]; CEQA Guidelines Appendix G, §§ IX(g), XX.)

41. Approval of use permits like the one approved here are discretionary actions and constitutes a project under CEQA.

42. Respondent City Council is the "lead agency" as the term is defined by CEQA, and is therefore responsible for evaluating the environmental impacts of the project.

43. The City's approval of the Project has potential to cause significant impacts to the environment.

44. In deciding to proceed with approval of the Project without conducting appropriate environmental review, and instead, relying on exemptions, Respondents abused their discretion and violated CEQA.

45. There is no substantial evidence in the record to support application of any exemption to the Project. More specifically, application of CEQA Guidelines section 15332 is not supported by substantial evidence in the record.

46. Instead, the record demonstrates that the Project will, at minimum, have significant traffic, air quality, and safety impacts. Specifically, the Project will result in an exorbitant amount of *new activity* that will most certainly result in significant environmental impacts. The TIS provided by the applicant recognizes at least 1000 new vehicle trips to the site each day for the daycare and provides no information related to the *other* uses. Even if the TIS's conclusion that this additional traffic is *de minimus* was reasonable and supported, which it is not, the TIS lacks similar analysis of the impacts of the additional, significant uses. Simply, there is no evidence to support a finding that the Project, when viewed with consideration of all proposed activities, will not have a significant impact on the environment. Instead, there is evidence that this extensive commercial activity will result in significant impacts to traffic, air quality, safety and more.

47. Acknowledging such impacts, both the City Council and the Planning Commission required certain conditions of approval to mitigate the impacts. These mitigation measures, which

were also unstudied and hence will be of unknown effectiveness, only further demonstrate that the Project is not exempt from CEQA.

48. Additionally, the Community Playroom and Gymnasium components of the Project are commercial uses that are not consistent with the zoning for the Project area, and so the Project does not comply with section 15332(a).

49. Application of the existing facilities exemption under section 15301 or the replacement and reconstruction exemption under section 15302 do not save the approval as the Project includes numerous new uses in addition to the building alterations. For section 15301 to apply, the Project would have to involve "negligible or no expansion of the use existing at the time the exemption is granted." The expanded uses squarely pull this Project away from such an exemption.

50. Respondents also improperly analyzed the cumulative impacts of the Project. Again, the TIS failed to evaluate the whole of the Project, and thus its impacts, and wholly failed to discuss greenhouse gas emissions from the 1000+ additional trips identified.

51. The City has never complied with Guidelines section 15300.4, which requires each pubic agency "shall, in the course of establishing its own procedures, [to] list those specific activities which fall within each of the exempt classes, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes."

52. Finally, the daycare portion of the Project, by its own description, is adding numerous people into the neighborhood, including upwards of 1000 vehicle trips per day. Again, this is exclusive of the "youth services" component, which went completely unstudied. Despite this significant increase, Respondents' review of the Project includes no review of emergency access or evacuation routes.

53. The Coalition and others will suffer significant prejudice if the Project is permitted to go forward despite a complete lack of compliance with CEQA.

54. Pursuant to Code of Civil Procedure section 1085 (alternatively section 1094.5), a writ of mandate should be issued directing Respondents to rescind their approval of the Le Petit

Elephant Use Permit and related Notice of Exemption for failure to follow the mandates of CEQA, and not proceed with the Project unless and until such mandates are met.

B. SECOND CAUSE OF ACTION- Violation of Napa Municipal Code and City of Napa General Plan

55. The Coalition realleges paragraphs 1 through 54 as if set forth fully herein.

56. "A project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782.) Conversely, "A project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear." (*Id.*) A special use district is an overlay of an existing zoning classification, which generally provides land use controls and restrictions that are ***in addition*** to the underlying zoning.

57. Pursuant to section Napa Municipal Code section 17.08.010, uses allowed in residential zoning districts must be "compatible and desirable land uses within residential neighborhoods."

58. The proposed Project is located in an area designated Low-Density Residential General Plan Designation of the Napa 2040 General Plan and the Single-Family Residential (RS-10) Zoning District and Hillside Overlay District (HS). This designation primarily provides for the development of attached and detached single family dwellings. Permitted daycare facilities include family daycare with up to 14 children. Conditionally permitted facilities are described as those with 15+ children and 9 or more adults. (N.M.C. § 17.08.020.)

59. While the definition of conditionally permitted facilities does not provide an explicit upper limit, a project allowing for care of upwards of 250 children, *in addition to significant other uses*, clearly exceeds the bounds of facilities anticipated in the zoning regulations.

60. There is no evidence to support the position that the "youth services" component of the Project is incidental to the primary use. In fact, the Staff Report acknowledges the use is

not ancillary: "Although these ancillary uses are proposed as part of the Project, they would have minimal overlap with the day-to-day primary use of a daycare. The community playroom would be the only ancillary use with some overlap in hours with the daycare operations, while the gymnasium/multi-use space would not have any overlap with the daycare use."

61. As the Staff Report acknowledges, the proposed space was previously used as a church. As the historical data sets forth, the church uses were predictable and consistent. Not so here. In the Staff Report, section 30(c) expresses a prohibition on "Any use determined by the Community Development Director that is not subordinate, similar, or otherwise ancillary to the primary use." Yet this term is not defined. Instead, it is left to the Director to determine through some ongoing, but unclear, process as to what activities are allowable. The Staff Report discusses that the church hall was used for other gatherings – but expressly acknowledges they were gatherings for the congregation. This is the distinction – these additional "youth services" are not uses limited to the daycare families—this is a separate revenue stream beyond the daycare families.

62. Staff further indicated that it included "specific activities" as part of the ancillary uses, but a reading of the Staff Report shows the uses are not defined or limited in terms of scope or hours ("Staff would like to note that although Pintacsi is requesting certain evening and weekend hours for the gymnasium/multi-use space and certain weekend hours for the community playroom, the actual hours of operation may be less than the projected hours, depending on whether the space has been reserved.") In fact, there is every indication that hours and attendees may be *more*. Pintacsi indicated the space will be available for parents to work, alcohol will be served at certain functions (with some limitation imposed by the City Council in its final resolution), and tickets will be sold for certain events. The space will also be available for rental. None of these uses support the daycare. These uses are a separate revenue stream that were not studied and are unlimited.

63. Because the Project clearly conflicts with the City's General Plan and the Municipal Code, Respondents' approval of the Project must be set aside.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Alta Heights Neighborhood Coalition respectfully requests the following relief and entry of judgment as follows:

1. A peremptory writ of mandate directing Respondents to vacate and set aside the approval of the Project and issuance of the NOE, and to suspend any and all Project-related activities that could result in a change or alteration to the physical environment unless and until Respondents have taken any and all actions that may be necessary to bring Respondents' determinations, findings, and decisions concerning the Project into compliance with CEQA;

2. A temporary restraining order and preliminary and permanent injunction staying or enjoining Respondents and Real Party in Interest from pursuing any actions or activities in furtherance of the Project pending final adjudication on the merits;

3. An order that the Coalition be awarded the costs incurred in bringing this action, and its attorneys' fees pursuant to Code of Civil procedure section 1021.5 and/or Government Code section 800; and

4. Such other and further relief as the Court deems just and equitable.

DATED: June 21, 2024

BUCHALTER
A Professional Corporation

By: _____
KATHARINE H. FALACE
CARISSA M. BEECHAM
Attorneys for Plaintiff
ALTA HEIGHTS NEIGHBORHOOD COALITION

VERIFICATION

I, THAI PHAM, on behalf of ALTA HEIGHTS NEIGHBORHOOD COALITION am one of the Petitioners in the above-entitled action, and I make this verification for that reason. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know its contents.

The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 21, 2024, at Napa, California.

Thai Pham

THAI PHAM

EXHIBIT A

Buchalter

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June 20, 2024

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Sabrina S. Wolfson
Interim City Attorney
City of Napa
955 School Street
PO Box 660
Napa, CA 94559
Email: swolfson@cityofnapa.org

Re: Public Resources Code section 21167.5 Notice of Commencement of Action Regarding City of Napa's Notice of Exemption Filed May 22, 2024
Milli Pintacsi – Le Petit Elephant Application No. PL23-0159

Dear Ms. Wolfson:

This letter is to notify you, pursuant to Public Resources Code section 21167.5, that the Alta Heights Neighborhood Coalition (Coalition) intends to file a petition for writ of mandamus (Petition) under, in part, the provisions of the California Environmental Quality Act (CEQA), Public Resources Code sections 21000 et seq., and name the City of Napa and the Napa City Council (City) as Respondents.

The lawsuit will be based on the City's Notice of Exemption for the Le Petit Elephant Use Permit (Application No. PL23-0159) and approval of the project as set forth in Resolution R2024-050. The exact nature of the allegations and relief sought will be detailed in the petition that Coalition plans to file in Napa Superior Court.

Very truly yours,

BUCHALTER
A Professional Corporation

Carissa Beecham
Senior Counsel

BN 83032325v2

EXHIBIT B

ATTACHMENT 4

RESOLUTION NO. PC2024-02
(as modified by Planning Commission on April 4, 2024. Omissions are shown in ~~strikethrough~~ and additions are shown in **bold double-underline**)

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NAPA, STATE OF CALIFORNIA, APPROVING A USE PERMIT TO AUTHORIZE A DAYCARE WITH UP TO 250 CHILDREN AND OTHER YOUTH SERVICES, WITH REDUCED PARKING, ON THE PROPERTY LOCATED AT 15 CHAPEL HILL DRIVE, AND DETERMINING THAT THE ACTIONS AUTHORIZED BY THIS RESOLUTION ARE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

WHEREAS, on December 6, 2023, Milli Pintacsi ("Applicant"), submitted an application (File No. PL23-0159) for a Use Permit ("Use Permit") pursuant to Chapter 17.60 of Title 17 (the "Zoning Ordinance") of the Napa Municipal Code ("NMC"), to authorize a daycare facility with up to 250 children and other youth services, and to allow reduced parking (collectively, the "Project") at 15 Chapel Hill Drive (APN 006-162-001) ("Site"), and

WHEREAS, the application was subsequently deemed complete and accepted by the City as being consistent with the applicable submittal requirements on March 18, 2024; and

WHEREAS, the Planning Commission held a duly noticed public hearing on April 04, 2024, on the Use Permit, where it considered all written and oral testimony submitted to it, including a presentation by Staff; and

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Napa as follows:

Section 1. The Planning Commission hereby finds that the facts set forth in the recitals to this Resolution are true and correct and help to establish the factual basis for the Planning Commission's adoption of this Resolution.

Section 2. The Planning Commission hereby determines that the Project is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15301 (Categorical Exemptions; Class 1), which exempts minor alterations to existing private structures, and Section 15332 (Categorical Exemptions; Class 32) which exempts in-fill development. The exceptions to categorical exemptions identified in Section 15300.2 of the CEQA Guidelines are inapplicable because the Site is in an urbanized area with no environmentally sensitive habitats or species of concern on the property, there has been no successive effort to intensify land uses in the area, no unusual circumstances exist that

would pose a reasonable possibility of having a significant effect on the environment, and the Project does not involve a property that is considered a historic resource.

Based on this analysis, no significant environmental effects would result from the Project, and the use of categorical exemptions is appropriate.

Section 3. The Planning Commission hereby approves the Use Permit for the Project as defined on the plans submitted as a part of the subject application and makes the following findings in support of the approval:

A. The proposed use is in accord with the General Plan, applicable specific plans, the objectives of the zoning ordinance, and the purposes of the district and overlay district in which the Site is located.

The property is located within the Low-Density Residential General Plan Designation of the Napa 2040 General Plan, and the Single-Family Residential (RS-10) Zoning District and Hillside Overlay (HS) Zoning District. The General Plan and Zoning designations primarily provide for developments of attached and detached single-family dwellings. However, compatible uses such as daycare and residential care facilities may be considered, provided they meet the goals and objectives of the General Plan. The proposed childcare facility and youth services would be compatible with existing residences in the area, consistent with these policies, as children are a normal part of a residential neighborhood. On-site parking for employees would be accommodated, there would be no drop-off or pick-up of the children in the public right-of-way, and the hours of operation for the daycare facility and ancillary uses would generally be limited to the daytime, except for some ancillary uses such as the gymnasium, which would function completely indoors until 8 p.m. at the very latest. The Project, including the request for reduced parking, could be found to be consistent with the following goals and policies outlined in the Napa 2040 General Plan:

Policy LUCD 6-4 supports flexibility in land use designations to respond to changing and evolving economic needs and promotes a mix of uses in appropriate locations and settings. Napa County has continued to have a shortage of childcare spaces, particularly infant care spaces, which serve children aged 0-12 months. The Applicant was the recipient of funding from Napa County's funds obtained from the American Rescue Plan Act (ARPA) to assist in the creation of a daycare facility with a focus on infant care, so this Project would respond to the demonstrated economic need for childcare in the City and may also serve the greater Napa County population.

Policy LUCD 10-1 seeks to preserve the character of existing residential neighborhoods while promoting 'complete neighborhoods' with safe and convenient access to the goods and services needed for daily life. The Project includes minor modifications to the existing structure, including the removal of a steeple from the primary façade and a small addition for accessibility improvements, which would not be visible from the public right-of-way. The removal of the steeple and the small addition would not significantly impact the building's mass or encroach into the existing setback, thereby maintaining

the existing lot pattern and setbacks to adjacent residential properties. The Project intends to adaptively reuse the existing structure, which has existed at the site since the mid-1950s, making this long-standing structure an appropriate location for daycare and ancillary uses due to the site's proximity to residential, educational, and quasi-public uses. Educational and childcare uses are often located in residential districts where they can conveniently serve community members. As conditioned, the Project would be sensitive to the surrounding residential uses and would not detract from the residential character of the existing neighborhood.

Policy LUCD 10-3 Allows for convenient supporting services and alternative residential types to meet special needs by permitting recreational uses, public and quasi-public uses, public assembly, daycare, and congregate living facilities when they meet the neighborhood development, design, and compatibility standards. Although the proposed daycare would be a conversion of the previous use, the Project has been conditioned with respect to noise and traffic to be compatible with the surrounding residential and educational uses. Facilities such as the proposed daycare would be supportive of a good residential quality of life by providing direct support to families seeking childcare and youth services in the community. As conditioned, the Project would be compatible with the residential neighborhood as it provides adequate parking for employees, on-site circulation, and limitations on the number of children and employees allowed at the facility.

Policy CSPR 4-7 Supports efforts for high-quality and affordable preschool and childcare facilities and programs in order to reduce the equity divide in education. The proposed daycare's holistic curriculum would emphasize the importance of outdoor play, critical thinking, and practical skill building. There is also a major focus on Spanish immersion, which would be practiced in all classrooms. Spanish Immersion is beneficial for enrolled students, parents, and their caregivers, considering that approximately 40 percent of the City of Napa's population is Hispanic, with expected growth in the future. The Applicant also indicated that a portion of the childcare spaces would serve low-income families, helping to reduce the economic divide in access to childcare.

B. The proposed use, together with the conditions applicable thereto, will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the city.

The Project application was circulated to relevant departments and agencies, and their comments and special conditions have been incorporated to ensure the Project would not pose a nuisance to the community. As conditioned, the Project would not result in impacts that would be detrimental to public health, safety, or welfare of the community and City.

C. The proposed use complies with each of the applicable provisions of the zoning ordinance.

Daycare facilities with more than 15 children, other uses "customarily incidental and clearly subordinate to conditional uses", requests for reduced parking may be established with Use Permit approval in the Single-Family Residential (RS-10) Zoning District. With Planning Commission approval of the Use Permit as conditioned, the Project would be in compliance with the provisions of Napa Municipal Code Titles 17.08, 17.54, and 17.60 of the Zoning Ordinance.

D. The proposed use complies with any other applicable findings required under other chapters of this title for the specific use.

There are no other applicable findings required under other chapters of this title for the proposed use.

Section 4. The Planning Commission's approval of the Use Permit and Design Review Permit is subject to the following conditions:

COMMUNITY DEVELOPMENT DEPARTMENT – PLANNING DIVISION

1. This Use Permit authorizes a daycare facility for up to 250 children and other youth services, and a reduction in parking. This approval is based on Project plans dated February 26, 2024, (**Attachment 2** of the April 04, 2024, Planning Commission Staff Report), as approved by the City and as modified by these conditions of approval (hereafter, the "Application Plans").

2. The site shall maintain 97 (95 usable spaces) vehicle parking spaces, which accounts for authorization under this Use Permit for the following parking deficits for the different uses approved:
   a. Weekdays (M-F, 7:30 a.m. to 5:30 p.m.): 10 spaces
   b. Weeknights (M-F, 5:30 p.m. to 8:00 p.m.): 24 spaces
   c. Weekends (Saturday & Sunday, 9:00 a.m. to 8:00 p.m.): 53 spaces

3. The Planning Manager is authorized to determine whether the Applicant is in compliance with the requirements and conditions of the Use Permit.

4. Should the Planning Manager determine that the business causes a nuisance, this application shall be reviewed for new conditions of approval, modified conditions of approval, or, if necessary, revocation of the permit consistent with Section 17.68.150 of the Zoning Ordinance.

5. The hours of the childcare operation shall be limited to 7:30 a.m. to 5:30 p.m., Monday through Friday, except for one (1) night per month, when Date Night Services are offered.

6. During Date Night services, up to thirty (30) children would be authorized to be in care from 5:30 p.m. to 8:00 p.m.
7. Date Night services shall only occur one (1) night per month.

8. The hours of the gymnasium/multi-use space operation shall be limited to 5:30 p.m. to 8:00 p.m. Monday through Friday, and 9:00 a.m. to 8:00 p.m. on weekends.

9. No sports tournaments shall be held in the gymnasium/multi-use space.

10. The hours of the community playroom operation shall be limited to 9:00 a.m. to 12:00 p.m. and 2:00 p.m. to 5:00 p.m. Monday through Friday, and 9:00 a.m. to 4:00 p.m. on the weekends.

11. The number of children in childcare under the facility's license shall not exceed 250.

12. The number of employees shall not exceed 55 persons.

13. At the time of the building permit submittal, the Applicant shall submit a fencing, landscaping, and lighting plan, which will be reviewed and approved by the Planning Manager.

14. Creeping vines or some other landscape vine material shall be planted along the fence and demonstrated in the fencing, landscaping, and lighting plan for review and approval by the Planning Manager.

15. Exterior lighting shall be directed or shielded so as to prevent glare onto public streets and abutting residential properties, pursuant to NMC Section 17.10.040(K).

16. As shown on the site plan, the eleven (11) parking spaces directly east of the site shall be used for rapid pick-up and drop-off. Outside of childcare hours and designated drop-off and pick-up times, these spaces shall be used as standard parking spaces.

17. Signage, or some other form of communication, shall be installed at the eleven (11) parking spaces directly East of the primary structure, detailing the hours in which the parking spaces are reserved for pick-up and drop-off only.

18. No commercial tenant signage is approved with this Project. The Applicant shall submit a separate Sign Plan Check application to the Planning Division for review of commercial tenant signage. Consistent with the City's Sign Ordinance, no portable (e.g., A-frame) signs are permitted.

19. No outdoor sound amplification system is approved for the Site as a part of this application.

20. Driveway access to the parking areas shall be secured during hours of non-operation.

21. All awnings, covered walkways, and shade covers shall be maintained in good repair and shall either be removed or replaced when noticeably worn.

22. Play structures shall be maintained in good repair and shall either be removed or replaced when noticeably worn.

23. Pursuant to NMC Section 17.52.370, there shall be a minimum vertical clearance of 8 feet between the grade and the lowest part of the awnings, covered walkways, and shade covers.

24. All mechanical and utility equipment, including transformers and backflow devices, shall be screened and/or integrated into a building structure. Screens shall not be used where they would disproportionately increase the mass of the building or introduce elements that are inconsistent with the high level of design quality reviewed as part of this approval. Landscaping and screening of devices must be installed prior to issuance of a Certificate of Occupancy for the Project.

25. Any work that requires plans to be submitted for building permits or improvement plans shall conform substantially to the Application Plans, and these conditions of approval.

26. All plans submitted for a building permit shall include building elevations that provide the same architectural detail found on the front elevation for all elevations.

27. All project conditions of approval shall be printed verbatim on one of the first three pages of all the working drawing sets used for the issuance of building permits (architectural, structural, electrical, mechanical, and plumbing) and shall be referenced in the sheet index. The minimum font size utilized for printed text shall be 12 point.

28. The Applicant shall ensure that all landscaping shall be maintained in a healthy, weed-free condition.

29. Construction activities shall comply with NMC 8.08.025.

30. **The Applicant shall adhere to the uses identified included in Attachment 3, Project Description, including in the accompanying Planning Commission staff report, and shall prohibit the following uses:**
    a. **Weddings, or ceremonial gatherings.**
    b. **Any use involving the sale of alcohol.**
    c. **Any use determined by the Community Development Director that is not subordinate, similar, or otherwise ancillary to the primary use.**

31. **The Applicant shall make a presentation to the Planning Commission 1-year from the date of being issued building occupancy to demonstrate compliance with the obligations of this Use Permit.**

NAPA SANITATION DISTRICT

32. Prior to the issuance of a building permit, the Applicant shall provide written clearance from the Engineering Division of the Napa Sanitation District Confirming that the Applicant has complied with all Napa Sanitation District Requirements applicable to the Project as stated in its letter dated March 5, 2024, and attached as **Exhibit A.**

FIRE DEPARTMENT – FIRE PREVENTION DIVISION

33. The Project shall comply with all applicable provisions of NMC Chapter 15.04.

PUBLIC WORKS DEPARTMENT

34. Approval of this Project shall be subject to the requirements of (and all improvements shall be constructed in accordance with) the Napa Municipal Code (NMC), the City of Napa Standard Specifications and Standard Plans (dated January 2022) (CON Standards), including any supplemental updates.

35. If there is any work in, or impacts in, the public right-of-way (ROW), the Applicant shall contact the Public Works Department and obtain an Encroachment prior to the start of work. This includes but is not limited to:
    a. The Applicant shall repair any cracked, damaged, or displaced sidewalk, curb, gutter, or driveway approach on the Project frontage.
    b. Any impacts to the pedestrian path of travel. Including detours, staging, etc.

36. The Applicant shall provide pedestrian improvements and traffic calming along Montecito Boulevard between the Project site and East Avenue. Pedestrian improvements shall include the construction of a sidewalk along the north side of Montecito Boulevard, extending along the project's frontage and continuing west of the project Site to connect to the existing sidewalk adjacent to Alta Heights Elementary School. Curb adjacent sidewalk consistent with the alternate residential sidewalk section per City of Napa Standard Drawing S-4 shall be allowed. Final alignment of pedestrian improvements and traffic calming features shall be subject to review and approval by the City of Napa Public Works Director. Any right-of-way necessary to complete these improvements shall be dedicated to the City of Napa.

37. Public street access points and street corners shall be designed to satisfy the City of Napa Visibility and Fencing Standard (CON Standards S-25). The sight distance and visibility triangle lines shall be shown on the grading and drainage plans. The visibility height limits are measured from the top of the curb of the fronting street to the top elevation of the obstruction.

38. The Applicant shall pay a proportionate fair-share fee, as determined by the City Engineer, to the City of Napa for improvements at the intersection of Silverado

Trail/Third Street/East Avenue/Coombsville Road to mitigate the addition of project trips contributing to existing pre-project Level of Service (LOS) deficiencies at the intersection.

39. The Applicant shall pay Street Improvement Fees in accordance with the Master Schedule of City Fees and Charges effective at the time of issuance of a building permit (Policy Resolution 16). The current rates for the Street Improvement Fee (effective July 2023) for this Project are as follows:

	Land Use	**Unit**	**Street Component Rate**	**Utility Underground Rate**	**Street Component Fee**	**Utility Underground Fee**
New Use	Day Care Center	250	$136/child	$9/child	$34,000	$2,250
	Recreation Center (Moderate Service)	4.427	$4,109/KSF	$273/KSF	$18,191	$1,209
Existing Use (credit)	Church	19.638	$2,388/KSF	$160/KSF	($46,896)	($3,142)
					$5,295	**$317**

UTILITIES DEPARTMENT – SOLID WASTE AND RECYCLING DIVISION

40. Prior to the issuance of a building permit, the Applicant shall:
    a. If the proposed project exceeds (a) $100,000 in building valuation; or (b) exceeds 5,000 sq. ft. of new, improved, or remodeled areas, the Applicant shall meet the requirements of City Ordinance O2010 18 and file a Waste Reduction and Recycling Plan (WRRP) for review and approval by the Solid Waste & Recycling Division with the building permit application. No building permit shall be issued for any project until the Compliance Official has approved the WRRP. The plan shall document that recyclable materials shall be separated for recycling in order to meet the requirement of the City's construction and demolition debris ordinance - recycling mandatory recyclables and exceeding overall 50% diversion.
    b. Submit a civil/site plan for review and approval by the Solid Waste & Recycling Division identifying the solid waste, recyclable materials, and compostable materials collection plan in accordance with NMC Section 17.52.390 and the City's "Solid Waste, Recyclable Materials & Compostables Enclosure Standards". If cart-only service is being requested, indicate on the site plan the quantity of carts for each waste stream (solid waste, recycle, and compost/yard trimmings), identify the location where the carts will be stored on-site as well as where they will be placed for pick-up by the City's authorized collection vehicle.

41. Prior to the issuance of a Certificate of Occupancy, the Applicant shall:
    a. Submit official weight receipts/tags for each load generated by the Project for review and approval by the Compliance Official.

UTILITIES DEPARTMENT – WATER DIVISION

42. Prior to issuance of a building permit submittal, the Applicant shall:
    a. Submit a utility plan for review and approval by the Utilities Department identifying the following information:
        i. Size of existing water service(s) to property;
        ii. Existing water main(s) and applicable tie-in locations, details, etc.;
        iii. Abandonment of any existing unused water service(s);
        iv. Installation an appropriately sized water service(s) with approved backflow prevention device(s). If there is no existing backflow prevention device, one must be installed. The type of backflow device(s) required to be installed shall be determined by the Utilities Department Cross-Connection Specialist.
        v. Installation of a sufficient number of fire hydrants on all public water facilities as directed by the Fire Marshal at City approved locations;
        vi. Installation of a sufficient number of water main valves at City-approved locations;
        vii. Relocation of any affected water facilities and/or appurtenances.
        viii. Size and location of all proposed water services (residential, fire, irrigation, etc.);
        ix. Meter boxes and water services shall be located a minimum of 3-ft outside any vehicular travel ways;
        x. Water services and meters shall be installed per City Standards within the public right-of-way or dedicated public utility easement;
        xi. Construction of improvements (permanent structures, other utilities, etc.) shall meet the minimum required clearances from all public water infrastructure per City Std W-18, W-22A, and W-22B;

43. Submit a fixture count worksheet for all existing and proposed connections to the domestic water service for review and approval by the Utilities Department to ensure water service size(s) meets proposed demands. Undersized services are not allowed.

44. Submit fire sprinkler plans (if applicable) to the Fire Prevention Division for review and approval. The water service size required to meet fire sprinkler demands shall be consistent with the water service size on the Civil plan set.

45. Show compliance with Napa High Performance Building Standards on the building permit plan set. This requirement can be met by listing the make and model of each plumbing fixture, or by labeling each fixture with the maximum flow rate. (see table for fixture requirements)

Plumbing Fixture	High Performance Building Standard
Toilet	**Shall not exceed 1.28 gallons per flush(gpf). Must be certified U.S. EPA WaterSense**
Showerhead	**Shall not exceed 1.8 gallons per minute (gpm) at 80 psi. Must be certified U.S. EPA WaterSense**
Bathroom Faucet	**Shall not exceed 1.2 gpm at 60 psi**
Kitchen Faucet	**Shall not exceed 1.5 gpm at 60 psi**
Dishwasher	**Shall be "Energy Star"**
Clothes washer	**Shall be "Energy Star"**

46. Submit all required water service capacity/connection fees to the City's Development Engineering Division at 1600 First Street, Napa, 94559.

47. Prior to Occupancy, the Applicant shall:
    a. Submit remaining fees (hot-taps, meter sets, etc.) to the Water Division at 1700 Second Street, Suite 100, Napa, CA;
    b. Construct all water improvements as shown on the approved plans, the City of Napa Public Works Department Standard Specifications, and the special conditions listed above;
    c. Designate applicable on-site private fire hydrants as private per City Std W-8;
    d. Request backflow device inspection from the City of Napa Water Division. Call (707) 257-9544 at least 48 Hours in advance of the requested inspection time;
    e. Submit certification that all backflow devices have been installed and tested by an AWWA-certified tester (a list of testers is provided by the City of Napa) to the City of Napa Water Division;

48. Prior to the Building Permit Final Inspection, the Applicant shall:
    a. Submit a record drawing outlining as-built conditions of the completed water system improvements in both electronic and print copy formats.

CITY GENERAL CONDITIONS

49. The plans submitted for improvement plan review and building permit review shall include a written analysis specifying how each of the conditions of approval have been addressed or incorporated into either the improvement plan set or building plan set.

50. Unless otherwise specifically provided in this resolution, each condition of this approval shall be satisfied prior to the first to occur of: (a) approval of a final map (if this resolution includes the approval of a tentative subdivision map or tentative parcel map), (b) issuance of a building permit, or (c) commencement of any use of land that is authorized by this resolution. An improvement agreement between the City and the Applicant (and landowner, if different) that obligates the Applicant to complete specified conditions of approval will be deemed to be a satisfaction of those specified conditions if: (i) the agreement is accompanied by required security for faithful performance and labor and materials, and (ii) the agreement is approved as to substance by the City Engineer, and approved as to form by the City Attorney.

51. Applicant shall pay all applicable fees and charges at the required time and at the rate in effect at the time of payment (in accordance with the City's Master Fee Schedule; see individual departments regarding the timing of fee payment requirements).

52. No use authorized by this permit may commence until after the Applicant executes any required permit agreement required by previously stated conditions of approval.

53. Applicant shall design and construct all improvements and facilities shown on any approved tentative map, site plan, plans, specifications, or other approved documents to comply with the General Plan, any applicable Specific Plan, the NMC, City ordinances, and resolutions, the "Standard Specifications" of the Public Works and Fire Departments, and the approved tentative map, site plan, plans, and specifications, and other approved documents.

54. The time limit within which to commence any lawsuit or legal challenge to any decision made by the City in connection with the application (File No. PL23-0159) is governed by Section 1094.6 of the Code of Civil Procedure unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

55. To the full extent permitted by law, the Applicant shall indemnify, defend, release, and hold City, its agents, officers, and employees harmless from and against any claims, suits, liabilities, actions, damages, penalties, or causes of action by any person, including Applicant, for any injury (including death) or damage to person or property or to set aside, attack, void or annul any actions of City, its agents, officers, and employees, from any cause whatsoever in whole or in part arising out of or in connection with (1) the processing, conditioning or approval of the applications relating to the subject property; (2) any failure to comply with all applicable laws and regulations; or (3) the design, installation or operation of improvements and regardless whether the actions or omissions are alleged to be caused by City or Applicant so long as City promptly notifies Applicant of any such claim, etc., and the City cooperates in the defense of same.

56. If the Applicant is not the owner of the subject property, all agreements required to be executed by the City must be executed by the Owner(s) as well as the Applicant.

57. The conditions of Project approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these conditions (and mitigations) constitute written notice of the statement of the amount of such fees and a description of the dedications, reservations, and other exactions. You are hereby notified that the 90-day period in which you may protest those fees, the amount of which has been identified herein, dedications, reservations, and other exactions required in connection with the instant approvals has begun. If you fail to file a protest complying with all the requirements of Section 66020, you will be legally barred from later challenging such an exaction.

58. Violation of any term, condition, mitigation measure, or Project description relating to this approval is unlawful, prohibited, and a violation of the Napa Municipal Code and can result in revocation or modification of this approval and/or the institution of civil and/or criminal enforcement and/or abatement proceedings.

59. The Use Permit shall become effective on the day following Planning Commission's approval of this Resolution, is subject to expiration and revocation, and may be extended, all in accordance with the provisions in NMC Chapter 17.68, as applicable.

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the Planning Commission of the City of Napa at a regular meeting of said Planning Commission held on the 4th day of April 2024, by the following vote:

AYES: HUETHER, KELLEY, MASSARO, SHOTWELL
NOES:
ABSENT:
ABSTAIN:
RECUSED: MYERS

ATTEST: _____
RICKY CAPERTON
SECRETARY OF THE PLANNING COMMISSION

EXHIBIT C

Buchalter

1230 Pine Street
St. Helena, CA 94574
707.967.9656 Phone
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May 15, 2024

Mayor Scott Sedgley
Email: ssedgley@cityofnapa.org
Members of the Napa City Council
Liz Alessio
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Re: ***Letter in Support of Appeal of Approval for Le Petit Elephant Application No. PL23-0159***

Dear Mayor Sedgley and Members of the Napa City Council:

This letter supports the appeal of the above-referenced action of the Napa Planning Commission (the "Planning Commission"), pursuant to section 17.60.090 of the Napa Municipal Code ("N.M.C."). We are Katharine Falace and Carissa Beecham, attorneys with Buchalter. Buchalter represents the Alta Heights Neighborhood Coalition (the "Coalition"), a group of neighbors that own property in Alta Heights. For the reasons provided herein, we request that the City Council of the City of Napa (the "City Council") grant this appeal, and overturn the Planning Commission's approval of the Use Permit for Application File No. PL23-0159 (herein, "Use Permit"). The entire administrative record for this matter is incorporated herein by reference.

The Coalition's purpose in filing its appeal is to preserve the safety and integrity of the Alta Heights community. The Coalition supports the provision of daycare services, and agrees that services in a size and scope suitable to the neighborhood are entirely appropriate. The Coalition has no objection to the applicant providing such services, if studied and conditioned

appropriately, in this new location. Of note, the applicant currently provides daycare services for 128 children in a separate location (the "Project"). The Coalition objects to the proposed Project because it is out of scale for the neighborhood, and includes ***improper "accessory uses."*** As set forth herein, the "youth services" are clearly *not* subordinate to the proposed daycare use and are more properly characterized as unrelated commercial activity; in any event, these additional uses were not properly studied, and should not be included in the Project.

The Planning Commission violated the City's zoning ordinances and improperly ignored relevant mandates under the California Environmental Quality Act ("CEQA") in approving the Use Permit for the proposed Project. Accordingly, the Council must grant this appeal and rescind the approval.

A. Factual Background

Applicant, Milli Pintacsi, requested a Use Permit to authorize a state-licensed daycare facility with up to 250 children and other "youth services" to be located within Alta Heights residential neighborhood at a building formerly used as a church. The approximately 2.6-acre site has been vacant and unused for several years.

The "youth services" proposed as part of the Project include a community playroom and a gymnasium/multi-use space, which would be available on both weekdays and weekends for various commercial activities, including but not limited to party rentals. The Planning Commission Staff Report describes these "ancillary uses[1]" as having *very little overlap* with the daycare facility. The Coalition agrees. In fact, the "youth services[2]" (a use that is wholly distinct from a daycare) component is given *no* consideration at all in terms of its impact.

In support of her application for the Use Permit, the applicant submitted a Transportation Impact Study ("TIS"), which purports to evaluate the impacts of the Project. Even a cursory review of the TIS, however, reveals that it provides no such analysis. In fact, the TIS contains only a single page discussing the purported Vehicle-Miles Traveled (VMT) impacts from the Project. (*See* TIS at p. 13.) This cursory review discusses <u>only</u> the daycare component of the Project, <u>not</u> the other "youth services." The TIS continues to analogize the daycare center to a

[1] The Staff Report's reference to these uses as "ancillary" is confusing. It appears the Applicant is arguing the uses are "accessory," not "ancillary." If they are ancillary, there is no definition of same rendering the application ambiguous. If they are intended to be "accessory," they do not fit the definition of "accessory uses" in the City's own Code and cannot be approved as such.

[2] Anniversary parties, retirement parties, sports tournaments, and general public classes are all the potential uses that Staff has coined as "youth services." The Coalition is further informed that, while not described in the application, the Applicant endeavors to serve alcohol at these events. Inarguably, these uses have nothing to do with the daycare center. To be sure, these uses will involve *different* cars, *different* people, *different* days, *different* times, and wholly *different* types of commercial activity. None of these considerations were measured by Staff.

retail project, but does not make clear how a daycare similarly adds "new, more convenient shopping options, which enable many customers to reduce their trip lengths." The TIS then reasons that "there are numerous existing daycare facilities" and that "many of the project trips would not be newly generated trips but would be the result of people changing daycare service providers." The TIS does acknowledge that the Project will generate approximately 1,038 new daily trips to the Project site, and also provides recommendations to address safety concerns. Despite this, the TIS inexplicably concludes the Project will have no significant impacts to traffic. The TIS contains no discussion of greenhouse gas emissions generated from these additional trips or resulting impacts to air quality.

The Planning Commission Staff Report ("Staff Report") appears to adopt the conclusions of the TIS, but also recommends certain conditions of approval, including the installation of bicycle parking, frontage improvements, including sidewalks, and fair share contribution to future construction of a roundabout. (Staff Report at p. 12.) The Planning Commission Staff Report concludes, "*As conditioned*, the Project would not result in impacts that would be detrimental to public health, safety, or welfare of the community and City." (Staff Report at p. 16.) Such a *condition* necessarily means the Project is *not* exempt.

B. Procedural Background

On or about April 4, 2024, the Planning Commission adopted a resolution approving a Use Permit for a childcare facility for up to 250 children "and other youth services" to be located at 15 Chapel Hill Drive and determined that the actions authorized by the resolution are exempt from CEQA. The Planning Commission's resolution approving the Project, included the following, among others, conditions of approval:

> 34. The Applicant shall provide pedestrian improvements and traffic calming along Montecito Boulevard between the Project site and East Avenue. Pedestrian improvements shall include the construction of a sidewalk along the north side of Montecito Boulevard, extending along the Project's frontage and continuing west of the Project Site to connect to the existing sidewalk adjacent to Alta Heights Elementary School. Curb adjacent sidewalk consistent with the alternate residential sidewalk section per City of Napa Standard Drawing S-4 shall be allowed. Final alignment of pedestrian improvements and traffic calming features shall be subject to review and approval by the City of Napa Public Works Director. Any right-of-way necessary to complete these improvements shall be dedicated to the City of Napa.
>
> 35. Public street access points and street corners shall be designed to satisfy the City of Napa Visibility and Fencing Standard (CON Standards S-25). The sight distance and visibility triangle lines shall be shown on the grading and drainage plans. The

visibility height limits are measured from the top of the curb of the fronting street to the top elevation of the obstruction.

36. The Applicant shall pay a proportionate fair-share fee, as determined by the City Engineer, to the City of Napa for improvements at the intersection of Silverado Trail/Third Street/East Avenue/Coombsville Road to mitigate the addition of Project trips contributing to existing pre-project Level of Service (LOS) deficiencies at the intersection.

On April 15, 2024, the Coalition timely appealed the Planning Commission's approval. (N.M.C. §17.70.030.)

C. Argument

Approval of the Project here violates local zoning regulations. The City is required to interpret and administer the zoning ordinance in a reasonable fashion consistent with the public interest of the residents of the city. This requirement was not met, for all of the reasons set forth herein.

The Planning Commission also violated CEQA in approving the Project absent the necessary environmental review. The foremost principle in interpreting CEQA is that the Legislature intended the act to be read to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. (*Cmtys. for a Better Env't v. Calif. Res. Agency* (2002) 103 Cal.App.4th 98, 109.) Here, the Planning Commission did not afford this protection and instead shirked its CEQA obligations by improperly determining the Project was exempt from such review.

1. The Project is inconsistent with zoning regulations.

The proposed Project is located in an area designated Low-Density Residential General Plan Designation of the Napa 2040 General Plan and the Single-Family Residential (RS-10) Zoning District and Hillside Overlay District (HS). This designation primarily provides for the development of attached and detached single family dwellings. The Planning Commission Staff Report notes that daycare and residential care facilities are compatible uses that may be considered, however, it fails to appreciate the description of such facilities in the City's zoning ordinance. Specifically, permitted daycare facilities include family daycare with up to 14 children. *Conditionally* permitted facilities are described as those with 15+ children and 9 or more adults. (N.M.C. § 17.08.020.) While the definition of conditionally permitted facilities does not provide an explicit upper limit, a project allowing for care of upwards of 250 children, in addition to various other uses, clearly exceeds the bounds of facilities anticipated in the zoning regulations.

Pursuant to section 17.08.010, uses allowed in residential zoning districts must be "compatible and desirable land uses within residential neighborhoods." (N.M.C. §17.08.060(D).) A facility the size of the proposed Project is simply not compatible with this neighborhood.

Furthermore, the additional "youth services" included in the proposed Project take it well outside any reasonable scope for the neighborhood. The various commercial activities encompassed, misleadingly, by the term "youth services" are not anticipated in the zoning regulations for the neighborhood. Moreover, the Staff Report fails to discuss *any* of the impacts of the "youth services" under its Required Findings[3]. Accordingly, there is simply no evidence to support a finding that these accessory uses are compatible with the zoning regulations.

Section 17.08.020 sets forth the applicable land use regulations for each zoning district. Therein, accessory uses are permitted only if they are "customarily incidental and ***clearly subordinate*** to permitted and conditional uses pursuant to Chapter 17.04." (N.M.C. §17.08.020.)

Likewise, section 17.06.030 defines an accessory use as "a use, building, structure or both subordinate and incidental to the principal use, building or structure on the same lot." The Staff Report does note that such uses must be "customarily incidental and clearly subordinate to" to daycare, however, the applicant's own written narrative illustrates that community playroom/gymnasium (or other "youth services") are *not* part of, or accessory or subordinate to, the daycare program:

- An indoor playroom shall be open to the public for parents/caregivers to attend with their child for indoor imaginative play, circle/music/story time, gross and fine motor activities and developmentally appropriate curriculum for ages 0-5 years led by an instructor daily. Available to the Napa community on a per day or monthly membership basis and a separate indoor space than our childcare. It will be open to members who join the indoor playroom program, it will be open weekdays 9am-12pm and then again 2-5pm. **It is a separate use from the daycare, it will not be licensed for childcare.** The indoor playroom is offered in lieu of an additional 22 spots for daycare activities.

[3] There are no findings as to *how many* events could be held or the *size* of the events that could be held. Without clear parameters or definitions, it defies credulity to accept that this impact was considered. As the bullet points from the Staff Report illustrate, questions regarding these metrics are left unanswered.

- A large indoor playroom for birthday parties for ages 0-5 years old year round, available for the Napa community to book and rent. The playroom would be available for rent on Weekends from 9am – 4pm.

- A gym space with a full basketball/volleyball court for youth leagues to utilize throughout the year for practices **outside of the childcare center's hours of operation. It will be available for the public to rent** outside of childcare hours. It will be available for rent on Weekdays 5:30pm-8pm and Weekends from 9am-8pm. **We plan to make it available for the needs of youth in Napa for sports practices, tournaments, plays, performances, etc.** The space is also available as rentable indoor community space for special events for Napa residents to rent for retirement/anniversary/birthday parties, Boy/Girl Scouts meetings, Napa Moms Preschool performances, plays/musical recitals/community puppet shows on the fully equipped sates. Occupancy and operations can be limited to a reasonable number.

These uses are not customarily incidental to a daycare, and the Staff Report recognizes this stating there would be "minimal overlap with the day-to-day primary use as a daycare." (Staff Report at p.3) To be sure, "recreation areas," "clubs and lodges, including for youth," and "other public/quasi-public uses of an administrative, educational, religious, cultural, communications, or public service nature, including community care facilities not otherwise listed…" are subject to a conditional use permit. (N.M.C. §17.08.020.) Accordingly, the Planning Commission should not have approved the use permit here, and this appeal should be granted.

2. The Planning Commission abused its discretion in concluding the Project was categorically exempt from CEQA.

The Planning Commission concluded that the Project is exempt from any environmental review based on CEQA Guidelines sections 15301, 15302 and 15332. This conclusion is wrong.

Certain "classes of projects are 'categorically exempt' from CEQA pursuant to administrative regulation because they do not have a significant effect on the environment." (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112–113; Pub. Resources Code, §§ 21080, subd. (b)(9), 21084, subd. (a).) Categorical exemptions, however, are subject to important exceptions based on factors such as location, cumulative impact, or unusual circumstances. (Cal. Code Regs., tit. 14, § 15300.2.) A categorically exempt project, like a single-family residence, loses its exempt status "where the project may impact on an environmental resource of … critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies." (Cal. Code Regs., tit. 14, § 15300.2, subd. (a).) A CEQA exemption is also inapplicable "when the cumulative impact of successive projects of the same type in the same place, over time is significant." (Cal. Code Regs., tit. 14, §

15300.2, subd. (b).) Nor may a categorical exemption "be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (Cal. Code Regs., tit. 14, § 15300.2, subd. (c).)

First, the City should decide whether a project is eligible for a categorical exemption as part of its preliminary review of the project *without* reference to or reliance upon any proposed mitigation measures. (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1199–1200.) Here, the Planning Commission *did* propose mitigation measures. To be sure, the Planning Commission "recommended conditions of approval such as sidewalk improvements, and 'fair share' contribution to a future roundabout at the 5-way intersection would minimize/mitigate potential traffic impacts from the project." While titled "conditions of approval," these requirements were clearly imposed to mitigate project impacts, making them, in effect, mitigation measures. This makes the Project ineligible for *any* categorical exemption.

Second, the Planning Commission abused its discretion in determining the Project was categorically exempt from CEQA under the infill exemption set forth in CEQA Guidelines section 15332. In order for a project to qualify for the infill exemption, five criteria must be met: "(a) [t]he project [must be] consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations[;] (b) [t]he proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses[;] (c) [t]he project site has no value, as habitat for endangered, rare or threatened species[;] (d) [a]pproval of the project [must] not result in any significant effects relating to traffic, noise, air quality, or water quality[; and] [¶] [t]he site [must be able to] be adequately served by all required utilities and public services." (CEQA Guidelines, § 15332.)

The application of CEQA Guidelines section 15332 is not supported by substantial evidence in the record. (*See United Neighborhoods for Los Angeles v. City of Los Angeles* (2023) 93 Cal.App.5th 1074 holding "as a general matter, the public agency bears the burden to demonstrate its exemption determination is supported by substantial evidence.") The Community Playroom and Gymnasium are commercial uses that are not consistent with the zoning for the Project area, and so the Project does not comply with section 15332(a). And, as discussed above, the Project will result in significant impacts to traffic and air quality in violation of section 15332(d). (At best, the TIS provides *no evidence* to support a finding of no impacts and hence the Planning Commission's determination is an abuse of discretion.)

Application of the existing facilities exemption under section 15301 or the replacement and reconstruction exemption under section 15302 do not save the approval as the Project includes numerous *new uses* in addition to the building alterations. For section 15301 to apply,

the Project would have to involve "negligible or no expansion of the use existing at the time the exemption is granted." The expanded uses squarely pull this Project away from such an exemption. In addressing this issue, *all* of the uses proposed under the Project must be considered. This simply was not done.

Third, the Planning Commission also improperly analyzed the cumulative impact of the Project. Pursuant to Guidelines section 15300.2:

> **(b)** Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.
>
> **(c)** Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

The TIS alone has identified significant effects from the 1000+ additional trips, a circumstance that is independently significant and cumulatively significant with the Alta Heights School. By comparison, the Oxbow Hotel project recently before the City Council, projected 983 additional trips for the 123-room proposal. In other words, this center will have a greater impact on the traffic than a 125-room hotel on a main thoroughfare.

Moreover, the TIS identifies an existing grade-F, traffic condition at the 5-way intersection on Silverado Trail. (Before and after school, it routinely takes two-three light changes to clear the intersection[4].) It projects the situation can only be meliorated by implementation of the dual-roundabout proposal that is years away, assuming CalTrans ever approves it. The applicants are expected to pay a "proportionate" share of the cost of the roundabouts, which includes acquiring the necessary rights of way from the neighboring owners.

Other assumptions made by the TIS, such as that most of the trips will be "side trips" of parents who are working in the City, have no evidentiary support.

Nothing in the TIS addresses greenhouse gas emissions. Parents picking up and dropping off children create idling emissions as well as on-road emissions. The California Emissions Estimator Model provides the state-accepted means to calculate the emissions but its application is beyond the ken of ordinary public members. BAAQMD[5] has adopted 660 MT CO2 as the threshold for a project of this type. The proponents of the Oxbow Hotel, which generates fewer

[4] To illustrate, photograph taken during the morning drop-off is enclosed herewith.
[5] Bay Area Air Quality Management District

trips and does not project the type of idling emissions, projected 827-977 MT CO2, and a condition of any approval included a requirement of a GHG[6] Reduction Plan to reduce emissions to that level. No such analysis has been prepared for this Project but a significant, cumulative environmental impact cannot be dismissed.

Finally, the City has never complied with Guidelines section 15300.4, which provides:

> Each public agency shall, in the course of establishing its own procedures, list those specific activities which fall within each of the exempt classes, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes. (Cal. Code Regs. tit. 14 § 15300.4.)

The City has no such list. The Staff Report does not point to any such list. This Project type would need to be included on the list for the exemption to apply. The purpose of section 15300.4 is to preclude the *ad hoc* determination of exempt activities by discretionary review. Clearly, such determination was not avoided here.

For all of these reasons, the Planning Commission abused its discretion in applying an exemption and failing to conduct the necessary environmental review before approving the Project. Thus, the Project approval must be rescinded.

3. The Planning Commission abused its discretion in concluding the Project satisfied emergency access guidelines.

Under CEQA, agencies must analyze "any significant environmental effects the Project might cause or risk exacerbating by bringing development and people into the area affected." (CEQA Guidelines § 15126.2(a); *California Bldg. Indus. Assn. v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 385.) This includes "any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions (e.g. wildfire risk areas)." (CEQA Guidelines § 15126.2(a); *see also Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 193 [recognizing potential for significant environmental effects when project brings new development to a wildfire-prone area]; CEQA Guidelines Appendix G, §§ IX(g), XX.) The Project, by its own description, is adding numerous people into the neighborhood, including upwards of 1000 vehicle trips per day. Despite this significant increase, the Planning Commission's review of the Project includes no review of emergency access or evacuation routes.

[6] Greenhouse Gases

Evacuation modeling and analysis should be completed prior to approval of the development. This analysis must include evaluation of the capacity of surrounding roadways and project impacts on existing evacuation plans. We are informed the Project may be seeking private easements for emergency access. This effort is not described in the use permit application or reviewing materials, and thus could not be understood by the Planning Commission or public. Further, because this Project is in the (HS) Hillside Overlay District it can be characterized as a Hazardous Fire Area. Accordingly, the Project should have included the submission of a Fire Hazard Reduction Plan. This failure only highlights the significant prejudice to the public in failing to perform any environmental review related to approval of this Project. The Project approval must be rescinded unless and until such review is completed.

Because this proposed Project conflicts with zoning regulations and is not properly exempt from environmental review under any categorical exemption, the City Council should grant this appeal and deny approval of the Project. If the City determines to still proceed with the Project, it must first prepare an adequate initial study, which will indicate the potential environmental impacts of the Project and make clear the appropriate level of environmental review. Until then, this Project may not proceed. Should the Council choose, however, to uphold the Project approval absent such review, the Coalition is prepared to pursue all available legal remedies. We request that the Coalition receive notice of any further hearings or review related to the Project.

Very truly yours,

BUCHALTER
A Professional Corporation

Katharine H. Falace
Shareholder

cc: Sabrina S. Wolfson
Napa City Attorney
swolfson@cityofnapa.org

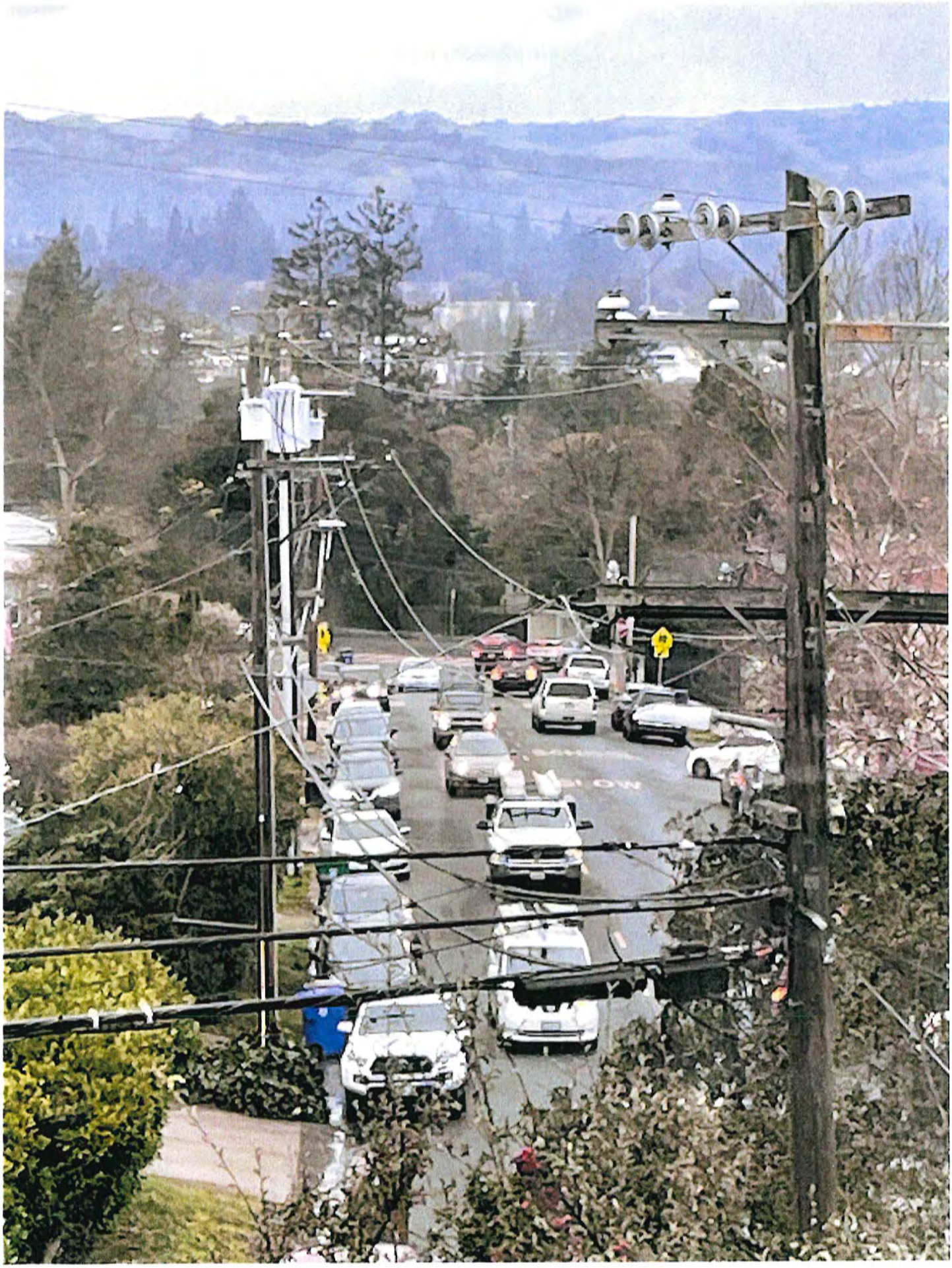

EXHIBIT D

Buchalter

1230 Pine Street
St. Helena, CA 94574
707.967.9656 Phone
707.963.0771 Fax

File Number: A5311-0002
707.200.9414 Direct
kfalace@buchalter.com

May 20, 2024

Mayor Scott Sedgley
Email ssedgley@cityofnapa.org
Members of the Napa City Council
Liz Alessio
Email: lalessio@cityofnapa.org
Beth Painter
Email: bpainter@cityofnapa.org
Mary Luros
Email: mluros@cityofnapa.org
Bernie Narvaez
Email: bnarvaez@cityofnapa.org

Re: ***Letter in Support of Appeal of Approval for Le Petit Elephant Application No. PL23-0159***

Dear Mayor Sedgley and Members of the Napa City Council:

INTRODUCTION

Thank you for individually meeting with the Coalition and for the updated Staff Report. While we appreciate the proposed changes, the Project still is not appropriate for approval. Specifically, the Project is not exempt from the California Environmental Quality Act (CEQA) and the Project violates the City's zoning guidelines. For all of the foregoing reasons, it is respectfully requested that the appeal is granted.

DISCUSSION

1. Events/rentals/gym/community space uses are not "ancillary/accessory uses which are customarily incidental to a conditional use, which is allowed under NMC Section 17.08.020"

The Staff Report contains no support for the position that the "youth services" are *incidental* to the primary use. In fact, the Staff Report *acknowledges* the use is *not* ancillary: "Although these ancillary uses are proposed as part of the Project, they would have minimal overlap with the day-to-day primary use of a daycare. The community playroom would be the only ancillary use with some overlap in hours with the daycare operations, while the gymnasium/multi-use space would not have any overlap with the daycare use." (Staff Report, page 2.)

As the Staff Report acknowledges, the proposed space was previously used as a church. As the historical data sets forth, the church uses were predictable and consistent. Not so here. In the Staff Report, section 30(c) expresses a prohibition on "Any use determined by the Community Development Director that is not subordinate, similar, or otherwise ancillary to the primary use." Yet this term is not defined. Instead, it is left to the Director to determine through some ongoing, but unclear, process as to what activities are allowable. The Staff Report discusses that the church hall was used for other gatherings – but expressly acknowledges they were gatherings for the congregation (the Cultural Hall, was named due to its use for most, if not all, cultural activities *of the Church's congregants*)(Staff Report, page 4). This is the distinction – these are not uses for the daycare families[1]—*this is a separate revenue stream beyond the daycare families.*

2. The proposed use is not a "negligible" expansion of prior use making it exempt from CEQA.

Importantly, the use proposed is a totally separate use and revenue stream than was studied in the Transportation Impact Study (TIS) offered by the applicant or discussed in the Staff Report underlying the Planning Commission's approval. Again, the additional project uses are not uses for the daycare families—*this is a separate revenue stream that is subject to scrutiny*. The staff even admits this use is 1.5 times *more* than the childcare operation (50 hours versus 78.5) hours.

[1] As set forth in the May 15, 2024, letter, the Coalition also contends the level of daycare offered also exceeds the zoning restrictions for a low-density residential use.

As explained in *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, in order to qualify for an exemption under § 15301, "a 'minor' alteration cannot be an activity that creates a reasonable possibility of a significant environmental effect." (*Id.* at p. 1194.) Here, the Project will result in an exorbitant amount of *new activity* that will most certainly result in significant environmental impacts. The TIS provided by the applicant recognizes at least 1000 new vehicle trips to the site each day for the daycare and provides no information related to the *other* uses. Even if the TIS's conclusion that this additional traffic is *de minimus* was reasonable and supported, which it is not, the TIS lacks similar analysis of the impacts of the additional, significant uses. Simply, there is no evidence to support a finding that the Project, when viewed with consideration of all proposed activities, will not have a significant impact on the environment. Instead, there is evidence that this extensive commercial activity will result in significant impacts to traffic, air quality, safety and more. (See also, the Coalition's letter of May 15, 2024).

Once project opponents have presented substantial evidence supporting a *fair argument* of a significant impact, evidence attempting to rebut that argument cannot overcome the presumption of a significant impact. It must be evaluated and analyzed under CEQA. (*Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1071.) Accordingly, even if the applicant had presented information that the additional activities would not have a significant impact, which she did not, this evidence would not exempt the project from environmental review under CEQA.

Additionally, the continued "conditioning" of the Project through this approval process only makes clear that the Project is not exempt from review under CEQA. (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1199–1200.)

3. The proposed use does not comport with the City's zoning laws and General Plan.

"A project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782.) Conversely, "A project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear." (*Id.*) A special use district is an overlay of an existing zoning classification, which generally provides land use controls and restrictions that are ***in addition*** to the underlying zoning.

This Project is located in a low-density residential zone with a hillside overlay. Together, any project must be closely scrutinized. The Staff Report ignores this obligation and instead, simply concludes "the applicability of the term 'accessory use' and the ancillary uses being incidental to the primary use is within the discretion of the Community Development Director and was applied pursuant to past practice and within the purview of the authority allowed under the Napa Municipal Code (NMC Section 17.040.050(C))." (Staff Report, page 5.) The historic data cited by staff points *only* to congregants participating in activities outside of worship services. Here, the Project proposes entirely new uses separate and apart from the daycare services or families. Simply because both uses may involve minors (certainly serving alcohol and hosting anniversary and retirement parties are not child-centered), does not mean it is an accessory use.

Clearly, the predominantly commercial use of property within a residential zone would be prohibited. While the restrictions in a residential zone ensure "a homemaker would not be deprived of the reasonable use of his premises," the scope of this activity is circumscribed insofar as it may not assume a commercial character or constitute a health or safety hazard to the neighborhood. *City of Beverly Hills v. Brady* (1950) 34 Cal.2d 854, 857.

Here, Staff has indicated that it included "specific activities" as part of the ancillary uses, but a reading of the Staff Report shows the uses are not defined or limited in terms of scope or hours ("Staff would like to note that although the Applicant is requesting certain evening and weekend hours for the gymnasium/multi-use space and certain weekend hours for the community playroom, the actual hours of operation may be less than the projected hours, depending on whether the space has been reserved." Staff Report, page 6.) In fact, there is every indication that hours and attendees may be *more.* The applicant has indicated the space will be available for parents to work, alcohol will be served at certain functions, and tickets will be sold for certain events. The space will also be available for rental. None of these uses support the daycare. These uses are a separate revenue stream that were not studied and are unlimited. As a result, the Project is not exempt and cannot be approved.

CONCLUSION

The uses proposed by the applicant are not subordinate to the daycare. As the Staff Report illustrates, the use is actually more impactful in terms of hours and is unknown in terms of scope and scale. Without this information, the City Council is approving a use that is wholly unknown. The City cannot simply approve the undefined Project with mitigation measures disguised as conditions of approval so as to avoid CEQA review. Instead, the Project must be properly defined, and then reviewed under CEQA to understand and appropriately mitigate the environmental impacts. The Coalition requests only what the law requires.

Very truly yours,

BUCHALTER
A Professional Corporation

Katharine H. Falace

cc: Sabrina S. Wolfson
Napa City Attorney
swolfson@cityofnapa.org

EXHIBIT E

Print Form

Notice of Exemption 2024-054

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk
County of: Napa
1127 FIRST ST STE A
NAPA, CA 94559

From: (Public Agency): CITY OF NAPA
955 SCHOOL STREET
P.O. BOX 660, NAPA, CA 94559
(Address)

Project Title: LE PETIT ELEPHANT USE PERMIT

Project Applicant: MILLI PINTACSI - 606 SEMINARY ST., NAPA, CA, 94559 (707) 690-8797

Project Location - Specific:
15 CHAPEL HILL DRIVE, NAPA, CA 94559

Project Location - City: NAPA Project Location - County: NAPA

Description of Nature, Purpose and Beneficiaries of Project:
A USE PERMIT AUTHORIZING A DAYCARE FOR UP TO 250 CHILDREN, YOUTH SERVICES, AND REDUCED PARKING AT 15 CHAPEL HILL DRIVE. THE PROJECT WAS APPROVED BY THE PLANNING COMMISSION ON 4/4/24 AND A NOTICE OF EXEMPTION WAS FILED FOLLOWING THE APPROVAL. THE PROJECT WAS APPEALED AND HEARD BEFORE CITY COUNCIL ON 5/21/24, WHERE THE APPEAL WAS DENIED AND THE PRIOR APPROVAL OF THE PROJECT WAS AFFIRMED.

Name of Public Agency Approving Project: CITY OF NAPA - 955 SCHOOL ST., P.O. BOX 660, NAPA, CA 94559

Name of Person or Agency Carrying Out Project: MILLI PINTACSI - 606 SEMINARY ST., NAPA, CA 94559

Exempt Status: **(check one):**

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption. State type and section number: Class 1, Sec 15301 & Class 2, Sec. 15332
- ☐ Statutory Exemptions. State code number:

Reasons why project is exempt:
The Project is exempt from the requirements of CEQA, pursuant to CEQA Guidelines Section 15301 (Categorical Exemptions; Class 1), which exempts minor alterations to existing private structures, and Section 15332 (Categorical Exemptions; Class 32) which exempts in-fill development.

Lead Agency Contact Person: ANGELA ALVAREZ-CENDEJAS Area Code/Telephone/Extension: 707-257-9639

If filed by applicant:
1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ▪ Yes No

Signature: Angela Alvarez Date: 5/22/24 Title: ASSISTANT PLANNER

▪ Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

FILED
MAY 22 2024
JOHN TUTEUR
Napa County Recorder - County Clerk
By: Lisa Spence
DEPUTY RECORDER - CLERK

Revised 2011

EXHIBIT F

RESOLUTION R2024-050

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, DENYING AN APPEAL AND UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF A USE PERMIT TO AUTHORIZE A DAYCARE WITH UP TO 250 CHILDREN AND OTHER YOUTH SERVICES, WITH REDUCED PARKING, ON THE PROPERTY LOCATED AT 15 CHAPEL HILL DRIVE, AND AFFIRMING THE PLANNING COMMISSION'S DETERMINATION THAT THE ACTIONS AUTHORIZED BY THIS RESOLUTION ARE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

WHEREAS, on December 6, 2023, Milli Pintacsi ("Applicant"), submitted an application (File No. PL23-0159) for a Use Permit ("Use Permit") pursuant to Napa Municipal Code ("NMC") Chapter 17.60 to authorize a daycare facility with up to 250 children and other youth services, with reduced parking (collectively, the "Project") at 15 Chapel Hill Drive (APN 006-162-001) ("Site"), and

WHEREAS, the application was subsequently deemed complete and accepted by the City as being consistent with the applicable submittal requirements on March 18, 2024; and

WHEREAS, on April 4, 2024, the Planning Commission considered the Use Permit application and all written and oral testimony submitted to them at a noticed public hearing on the Use Permit, at which time the Planning Commission heard a presentation by staff recommending approval of the application, and took public testimony, and thereafter closed the public hearing; and

WHEREAS, on April 4, 2024, the Planning Commission adopted Resolution No. PC2024-02 approving the Use Permit and determining that the actions authorized by Resolution PC2024-02 are exempt from environmental review requirements under CEQA; and

WHEREAS, on April 15, 2024, the Alta Heights Neighborhood Coalition ("Appellant") appealed the Planning Commission's April 4, 2024, approval of the Use Permit, requesting that the City Council reverse the Planning Commission's approval of the Use Permit and its determination that the actions authorized by Resolution PC2024-02 are exempt from environmental review requirements under CEQA;

WHEREAS, the City Council of the City of Napa, State of California, held a noticed public hearing on May 21, 2024, on the subject appeal; and

WHEREAS, after considering evidence in the administrative record, including the record underlying the Use Permit application and the staff reports for the April 4, 2024, Planning Commission hearing and the May 21, 2024, City Council hearing, and presentations made during the public hearing on May 21, 2024, the City Council closed the public testimony portion of the public hearing, and Council deliberated on the appeal; and

WHEREAS, the City Council has considered all information related to the Use Permit application, as presented at the public meetings of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Napa as follows:

Section 1. The City Council hereby finds that the facts set forth in the recitals to this Resolution are true and correct and establish the factual basis for the City Council's adoption of this Resolution.

Section 2. The City Council hereby affirms the Planning Commission's determination that the Project is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15301 (Categorical Exemptions; Class 1), which exempts minor alterations to existing private structures, and Section 15332 (Categorical Exemptions; Class 32) which exempts in-fill development. The exceptions to categorical exemptions identified in Section 15300.2 of the CEQA Guidelines are inapplicable because the Site is in an urbanized area with no environmentally sensitive habitats or species of concern on the property, there has been no successive effort to intensify land uses in the area, no unusual circumstances exist that would pose a reasonable possibility of having a significant effect on the environment, and the Project does not involve a property that is considered a historic resource. Based on this analysis, no significant environmental effects would result from the Project, and the use of categorical exemptions is appropriate.

Section 3. The City Council hereby denies the Appellant's Appeal, thereby affirming the Planning Commission's decision on April 4, 2024, as modified by the City Council on May 21, 2024 as shown on Exhibit A hereto, to approve the Use Permit to authorize a daycare for up to 250 children and other youth services, with reduced parking at 15 Chapel Hill Drive as defined on the plans dated January 15, 2024, with revisions received February 26, 2024, and submitted as a part of the subject application, and makes the following findings in support of the denial:

The Use Permit is in accord with the General Plan.

The property is located within the Low-Density Residential General Plan Designation of the Napa 2040 General Plan, and the Single-Family Residential (RS-10) Zoning District and Hillside Overlay (HS) Zoning District. The General Plan and Zoning designations

primarily provide for developments of attached and detached single-family dwellings. However, day-care facilities are allowed in all residential designations in accordance with State law. Compatible uses such as daycare facilities may be considered, provided they meet the goals and objectives of the General Plan. The proposed childcare facility and youth services would be compatible with existing residences in the area, consistent with these policies, as children are a normal part of a residential neighborhood.

The Use Permit is in accord with provisions of Title 17 of the NMC and will not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

Daycare facilities with more than 15 children, other uses "customarily incidental and clearly subordinate to conditional uses," other similar uses consistent with the General Plan, and requests for reduced parking may be established with Use Permit approval in the Single-Family Residential (RS-10) Zoning District.

With Planning Commission approval of the Use Permit as conditioned, the Project would be in compliance with the provisions of Napa Municipal Code Title 17, Chapters 17.08, 17.54, and 17.60, of the Zoning Ordinance. The Project application was circulated to relevant departments and agencies, and their comments and special conditions have been incorporated to ensure the Project would not pose a nuisance to the community. As conditioned, the Project would not cause negative impacts to the neighborhood nor result in impacts that would be detrimental to public health, safety, or welfare of the community.

Section 4. The City Council hereby directs staff to implement the land use entitlements for the Project identified in Planning Commission Resolution PC2024-02, with the amendments to Conditions of Approval numbers 30, 31, 32 and 33 shown on Exhibit "A," attached hereto and incorporated herein by reference.

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the City Council of the City of Napa at a public meeting of said City Council held on the 21st day of May 2024, by the following vote:

AYES: Luros, Painter, Narvaez, Sedgley

NOES: None

ABSENT: Alessio

ABSTAIN: None

ATTEST: _____
Tiffany Carranza
City Clerk

Approved as to form:

_____
Sabrina S. Wolfson
Interim City Attorney

EXHIBIT A

RESOLUTION NO. PC2024-02

(as modified by Planning Commission on April 4, 2024 and City Council on May 21, 2024. Omissions are shown in ~~strikethrough~~ and additions are shown in **bold double-underline**)

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NAPA, STATE OF CALIFORNIA, APPROVING A USE PERMIT TO AUTHORIZE A DAYCARE WITH UP TO 250 CHILDREN AND OTHER YOUTH SERVICES, WITH REDUCED PARKING, ON THE PROPERTY LOCATED AT 15 CHAPEL HILL DRIVE, AND DETERMINING THAT THE ACTIONS AUTHORIZED BY THIS RESOLUTION ARE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

WHEREAS, on December 6, 2023, Milli Pintacsi ("Applicant"), submitted an application (File No. PL23-0159) for a Use Permit ("Use Permit") pursuant to Chapter 17.60 of Title 17 (the "Zoning Ordinance") of the Napa Municipal Code ("NMC"), to authorize a daycare facility with up to 250 children and other youth services, and to allow reduced parking (collectively, the "Project") at 15 Chapel Hill Drive (APN 006-162-001) ("Site"), and

WHEREAS, the application was subsequently deemed complete and accepted by the City as being consistent with the applicable submittal requirements on March 18, 2024; and

WHEREAS, the Planning Commission held a duly noticed public hearing on April 04, 2024, on the Use Permit, where it considered all written and oral testimony submitted to it, including a presentation by Staff; and

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Napa as follows:

Section 1. The Planning Commission hereby finds that the facts set forth in the recitals to this Resolution are true and correct and help to establish the factual basis for the Planning Commission's adoption of this Resolution.

Section 2. The Planning Commission hereby determines that the Project is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15301 (Categorical Exemptions; Class 1), which exempts minor alterations to existing private structures, and Section 15332 (Categorical Exemptions; Class 32) which exempts in-fill development. The exceptions to categorical exemptions identified in Section 15300.2 of the CEQA

Guidelines are inapplicable because the Site is in an urbanized area with no environmentally sensitive habitats or species of concern on the property, there has been no successive effort to intensify land uses in the area, no unusual circumstances exist that would pose a reasonable possibility of having a significant effect on the environment, and the Project does not involve a property that is considered a historic resource.

Based on this analysis, no significant environmental effects would result from the Project, and the use of categorical exemptions is appropriate.

Section 3. The Planning Commission hereby approves the Use Permit for the Project as defined on the plans submitted as a part of the subject application and makes the following findings in support of the approval:

A. The proposed use is in accord with the General Plan, applicable specific plans, the objectives of the zoning ordinance, and the purposes of the district and overlay district in which the Site is located.

The property is located within the Low-Density Residential General Plan Designation of the Napa 2040 General Plan, and the Single-Family Residential (RS-10) Zoning District and Hillside Overlay (HS) Zoning District. The General Plan and Zoning designations primarily provide for developments of attached and detached single-family dwellings. However, compatible uses such as daycare and residential care facilities may be considered, provided they meet the goals and objectives of the General Plan. The proposed childcare facility and youth services would be compatible with existing residences in the area, consistent with these policies, as children are a normal part of a residential neighborhood. On-site parking for employees would be accommodated, there would be no drop-off or pick-up of the children in the public right-of-way, and the hours of operation for the daycare facility and ancillary uses would generally be limited to the daytime, except for some ancillary uses such as the gymnasium, which would function completely indoors until 8 p.m. at the very latest. The Project, including the request for reduced parking, could be found to be consistent with the following goals and policies outlined in the Napa 2040 General Plan:

Policy LUCD 6-4 supports flexibility in land use designations to respond to changing and evolving economic needs and promotes a mix of uses in appropriate locations and settings. Napa County has continued to have a shortage of childcare spaces, particularly infant care spaces, which serve children aged 0-12 months. The Applicant was the recipient of funding from Napa County's funds obtained from the American Rescue Plan Act (ARPA) to assist in the creation of a daycare facility with a focus on infant care, so this Project would respond to the demonstrated economic need for childcare in the City and may also serve the greater Napa County population.

Policy LUCD 10-1 seeks to preserve the character of existing residential neighborhoods while promoting 'complete neighborhoods' with safe and convenient access to the goods and services needed for daily life. The Project includes minor modifications to the existing structure, including the removal of a steeple from the primary façade and a small addition for accessibility

improvements, which would not be visible from the public right-of-way. The removal of the steeple and the small addition would not significantly impact the building's mass or encroach into the existing setback, thereby maintaining the existing lot pattern and setbacks to adjacent residential properties. The Project intends to adaptively reuse the existing structure, which has existed at the site since the mid-1950s, making this long-standing structure an appropriate location for daycare and ancillary uses due to the site's proximity to residential, educational, and quasi-public uses. Educational and childcare uses are often located in residential districts where they can conveniently serve community members. As conditioned, the Project would be sensitive to the surrounding residential uses and would not detract from the residential character of the existing neighborhood.

Policy LUCD 10-3 Allows for convenient supporting services and alternative residential types to meet special needs by permitting recreational uses, public and quasi-public uses, public assembly, daycare, and congregate living facilities when they meet the neighborhood development, design, and compatibility standards. Although the proposed daycare would be a conversion of the previous use, the Project has been conditioned with respect to noise and traffic to be compatible with the surrounding residential and educational uses. Facilities such as the proposed daycare would be supportive of a good residential quality of life by providing direct support to families seeking childcare and youth services in the community. As conditioned, the Project would be compatible with the residential neighborhood as it provides adequate parking for employees, on-site circulation, and limitations on the number of children and employees allowed at the facility.

Policy CSPR 4-7 Supports efforts for high-quality and affordable preschool and childcare facilities and programs in order to reduce the equity divide in education. The proposed daycare's holistic curriculum would emphasize the importance of outdoor play, critical thinking, and practical skill building. There is also a major focus on Spanish immersion, which would be practiced in all classrooms. Spanish Immersion is beneficial for enrolled students, parents, and their caregivers, considering that approximately 40 percent of the City of Napa's population is Hispanic, with expected growth in the future. The Applicant also indicated that a portion of the childcare spaces would serve low-income families, helping to reduce the economic divide in access to childcare.

B. The proposed use, together with the conditions applicable thereto, will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the city.

The Project application was circulated to relevant departments and agencies, and their comments and special conditions have been incorporated to ensure the Project would not pose a nuisance to the community. As conditioned, the Project would not result in impacts that would be detrimental to public health, safety, or welfare of the community and City.

C. The proposed use complies with each of the applicable provisions of the zoning ordinance.

Daycare facilities with more than 15 children, other uses "customarily incidental and clearly subordinate to conditional uses", requests for reduced parking may be established with Use Permit approval in the Single-Family Residential (RS-10) Zoning District. With Planning Commission approval of the Use Permit as conditioned, the Project would be in compliance with the provisions of Napa Municipal Code Titles 17.08, 17.54, and 17.60 of the Zoning Ordinance.

D. The proposed use complies with any other applicable findings required under other chapters of this title for the specific use.

There are no other applicable findings required under other chapters of this title for the proposed use.

Section 4. The Planning Commission's approval of the Use Permit and Design Review Permit is subject to the following conditions:

COMMUNITY DEVELOPMENT DEPARTMENT – PLANNING DIVISION

1. This Use Permit authorizes a daycare facility for up to 250 children and other youth services, and a reduction in parking. This approval is based on Project plans dated February 26, 2024, (**Attachment 2** of the April 04, 2024, Planning Commission Staff Report), as approved by the City and as modified by these conditions of approval (hereafter, the "Application Plans").

2. The site shall maintain 97 (95 usable spaces) vehicle parking spaces, which accounts for authorization under this Use Permit for the following parking deficits for the different uses approved:
   a. Weekdays (M-F, 7:30 a.m. to 5:30 p.m.): 10 spaces
   b. Weeknights (M-F, 5:30 p.m. to 8:00 p.m.): 24 spaces
   c. Weekends (Saturday & Sunday, 9:00 a.m. to 8:00 p.m.): 53 spaces

3. The Planning Manager is authorized to determine whether the Applicant is in compliance with the requirements and conditions of the Use Permit.

4. Should the Planning Manager determine that the business causes a nuisance, this application shall be reviewed for new conditions of approval, modified conditions of approval, or, if necessary, revocation of the permit consistent with Section 17.68.150 of the Zoning Ordinance.

5. The hours of the childcare operation shall be limited to 7:30 a.m. to 5:30 p.m., Monday through Friday, except for one (1) night per month, when Date Night Services are offered.

6. During Date Night services, up to thirty (30) children would be authorized to be in care from 5:30 p.m. to 8:00 p.m.

7. Date Night services shall only occur one (1) night per month.

8. The hours of the gymnasium/multi-use space operation shall be limited to 5:30 p.m. to 8:00 p.m. Monday through Friday, and 9:00 a.m. to 8:00 p.m. on weekends.

9. No sports tournaments shall be held in the gymnasium/multi-use space.

10. The hours of the community playroom operation shall be limited to 9:00 a.m. to 12:00 p.m. and 2:00 p.m. to 5:00 p.m. Monday through Friday, and 9:00 a.m. to 4:00 p.m. on the weekends.

11. The number of children in childcare under the facility's license shall not exceed 250.

12. The number of employees shall not exceed 55 persons.

13. At the time of the building permit submittal, the Applicant shall submit a fencing, landscaping, and lighting plan, which will be reviewed and approved by the Planning Manager.

14. Creeping vines or some other landscape vine material shall be planted along the fence and demonstrated in the fencing, landscaping, and lighting plan for review and approval by the Planning Manager.

15. Exterior lighting shall be directed or shielded so as to prevent glare onto public streets and abutting residential properties, pursuant to NMC Section 17.10.040(K).

16. As shown on the site plan, the eleven (11) parking spaces directly east of the site shall be used for rapid pick-up and drop-off. Outside of childcare hours and designated drop-off and pick-up times, these spaces shall be used as standard parking spaces.

17. Signage, or some other form of communication, shall be installed at the eleven (11) parking spaces directly East of the primary structure, detailing the hours in which the parking spaces are reserved for pick-up and drop-off only.

18. No commercial tenant signage is approved with this Project. The Applicant shall submit a separate Sign Plan Check application to the Planning Division for review of commercial tenant signage. Consistent with the City's Sign Ordinance, no portable (e.g., A-frame) signs are permitted.

19. No outdoor sound amplification system is approved for the Site as a part of this application.

20. Driveway access to the parking areas shall be secured during hours of non-operation.

21. All awnings, covered walkways, and shade covers shall be maintained in good repair and shall either be removed or replaced when noticeably worn.

22. Play structures shall be maintained in good repair and shall either be removed or replaced when noticeably worn.

23. Pursuant to NMC Section 17.52.370, there shall be a minimum vertical clearance of 8 feet between the grade and the lowest part of the awnings, covered walkways, and shade covers.

24. All mechanical and utility equipment, including transformers and backflow devices, shall be screened and/or integrated into a building structure. Screens shall not be used where they would disproportionately increase the mass of the building or introduce elements that are inconsistent with the high level of design quality reviewed as part of this approval. Landscaping and screening of devices must be installed prior to issuance of a Certificate of Occupancy for the Project.

25. Any work that requires plans to be submitted for building permits or improvement plans shall conform substantially to the Application Plans, and these conditions of approval.

26. All plans submitted for a building permit shall include building elevations that provide the same architectural detail found on the front elevation for all elevations.

27. All project conditions of approval shall be printed verbatim on one of the first three pages of all the working drawing sets used for the issuance of building permits (architectural, structural, electrical, mechanical, and plumbing) and shall be referenced in the sheet index. The minimum font size utilized for printed text shall be 12 point.

28. The Applicant shall ensure that all landscaping shall be maintained in a healthy, weed-free condition.

29. Construction activities shall comply with NMC 8.08.025.

30. **The Applicant's use of the Site shall be limited to the uses identified in Attachment 1 to this resolution, except that the following uses are prohibited:**
    a. **Adult-only parties or events, weddings, anniversary parties, retirement parties, and/or sports tournaments;**
    b. **Rental of any outdoor spaces; and/or**
    c. **Any use determined by the Community Development Director that is not subordinate, similar, or otherwise ancillary to the primary use.**

31. **The Applicant shall make a presentation to the City Council 1-year from the date of commencement of daycare operations on the Site to demonstrate compliance with the obligations of this Use Permit.**

32. **The Site shall not be used for more than one (1) special event per year, and the maximum attendance at such event shall be 150 people.**

33. **No more than one (1) single-day license from the California Department of Alcoholic Beverage Control (ABC) may be used on the Site per calendar year.**

NAPA SANITATION DISTRICT

34. Prior to the issuance of a building permit, the Applicant shall provide written clearance from the Engineering Division of the Napa Sanitation District Confirming that the Applicant has complied with all Napa Sanitation District Requirements applicable to the Project as stated in its letter dated March 5, 2024, and attached as **Attachment 2.**

FIRE DEPARTMENT – FIRE PREVENTION DIVISION

35. The Project shall comply with all applicable provisions of NMC Chapter 15.04.

PUBLIC WORKS DEPARTMENT

36. Approval of this Project shall be subject to the requirements of (and all improvements shall be constructed in accordance with) the Napa Municipal Code (NMC), the City of Napa Standard Specifications and Standard Plans (dated January 2022) (CON Standards), including any supplemental updates.

37. If there is any work in, or impacts in, the public right-of-way (ROW), the Applicant shall contact the Public Works Department and obtain an Encroachment prior to the start of work. This includes but is not limited to:

    a. The Applicant shall repair any cracked, damaged, or displaced sidewalk, curb, gutter, or driveway approach on the Project frontage.

    b. Any impacts to the pedestrian path of travel. Including detours, staging, etc.

38. The Applicant shall provide pedestrian improvements and traffic calming along Montecito Boulevard between the Project site and East Avenue. Pedestrian improvements shall include the construction of a sidewalk along the north side of Montecito Boulevard, extending along the project's frontage and continuing west of the project Site to connect to the existing sidewalk adjacent to Alta Heights Elementary School. Curb adjacent sidewalk consistent with the alternate residential sidewalk section per City of Napa Standard Drawing S-4 shall be allowed. Final alignment of pedestrian improvements and traffic calming features shall be subject to review and approval by the City of Napa Public Works Director. Any right-of-way necessary to complete these improvements shall be dedicated to the City of Napa.

39. Public street access points and street corners shall be designed to satisfy the City of Napa Visibility and Fencing Standard (CON Standards S-25). The sight distance and visibility triangle lines shall be shown on the grading and drainage plans. The visibility height limits are measured from the top of the curb of the fronting street to the top elevation of the obstruction.

40. The Applicant shall pay a proportionate fair-share fee, as determined by the City Engineer, to the City of Napa for improvements at the intersection of Silverado Trail/Third Street/East Avenue/Coombsville Road to mitigate the addition of project trips contributing to existing pre-project Level of Service (LOS) deficiencies at the intersection.

41. The Applicant shall pay Street Improvement Fees in accordance with the Master Schedule of City Fees and Charges effective at the time of issuance of a building permit (Policy Resolution 16). The current rates for the Street Improvement Fee (effective July 2023) for this Project are as follows:

	Land Use	**Unit**	**Street Component Rate**	**Utility Underground Rate**	**Street Component Fee**	**Utility Underground Fee**
New Use	Day Care Center	250	$136/child	$9/child	$34,000	$2,250
	Recreation Center (Moderate Service)	4.427	$4,109/KSF	$273/KSF	$18,191	$1,209
Existing Use (credit)	Church	19.638	$2,388/KSF	$160/KSF	($46,896)	($3,142)
					$5,295	**$317**

UTILITIES DEPARTMENT – SOLID WASTE AND RECYCLING DIVISION

42. Prior to the issuance of a building permit, the Applicant shall:
    a. If the proposed project exceeds (a) $100,000 in building valuation; or (b) exceeds 5,000 sq. ft. of new, improved, or remodeled areas, the Applicant shall meet the requirements of City Ordinance O2010 18 and file a Waste Reduction and Recycling Plan (WRRP) for review and approval by the Solid Waste & Recycling Division with the building permit application. No building permit shall be issued for any project until the Compliance Official has approved the WRRP. The plan shall document that recyclable materials shall be separated for recycling in order to meet the requirement of the City's construction and demolition debris ordinance - recycling mandatory recyclables and exceeding overall 50% diversion.
    b. Submit a civil/site plan for review and approval by the Solid Waste & Recycling Division identifying the solid waste, recyclable materials, and compostable materials collection plan in accordance with NMC Section 17.52.390 and the City's "Solid Waste, Recyclable Materials & Compostables Enclosure Standards". If cart-only service is being requested, indicate on the site plan the quantity of carts for each waste stream (solid waste, recycle, and compost/yard trimmings), identify the

location where the carts will be stored on-site as well as where they will be placed for pick-up by the City's authorized collection vehicle.

43. Prior to the issuance of a Certificate of Occupancy, the Applicant shall:
    a. Submit official weight receipts/tags for each load generated by the Project for review and approval by the Compliance Official.

UTILITIES DEPARTMENT – WATER DIVISION

44. Prior to issuance of a building permit submittal, the Applicant shall:
    a. Submit a utility plan for review and approval by the Utilities Department identifying the following information:
        i. Size of existing water service(s) to property;
        ii. Existing water main(s) and applicable tie-in locations, details, etc.;
        iii. Abandonment of any existing unused water service(s);
        iv. Installation an appropriately sized water service(s) with approved backflow prevention device(s). If there is no existing backflow prevention device, one must be installed. The type of backflow device(s) required to be installed shall be determined by the Utilities Department Cross-Connection Specialist.
        v. Installation of a sufficient number of fire hydrants on all public water facilities as directed by the Fire Marshal at City approved locations;
        vi. Installation of a sufficient number of water main valves at City-approved locations;
        vii. Relocation of any affected water facilities and/or appurtenances.
        viii. Size and location of all proposed water services (residential, fire, irrigation, etc.);
        ix. Meter boxes and water services shall be located a minimum of 3-ft outside any vehicular travel ways;
        x. Water services and meters shall be installed per City Standards within the public right-of-way or dedicated public utility easement;
        xi. Construction of improvements (permanent structures, other utilities, etc.) shall meet the minimum required clearances from all public water infrastructure per City Std W-18, W-22A, and W-22B;

45. Submit a fixture count worksheet for all existing and proposed connections to the domestic water service for review and approval by the Utilities Department to ensure water service size(s) meets proposed demands. Undersized services are not allowed.

46. Submit fire sprinkler plans (if applicable) to the Fire Prevention Division for review and approval. The water service size required to meet fire sprinkler demands shall be consistent with the water service size on the Civil plan set.

47. Show compliance with Napa High Performance Building Standards on the building permit plan set. This requirement can be met by listing the make and model of each plumbing fixture, or by labeling each fixture with the maximum flow rate. (see table for fixture requirements)

Plumbing Fixture	High Performance Building Standard
Toilet	Shall not exceed 1.28 gallons per flush(gpf). Must be certified U.S. EPA WaterSense
Showerhead	Shall not exceed 1.8 gallons per minute (gpm) at 80 psi. Must be certified U.S. EPA WaterSense
Bathroom Faucet	Shall not exceed 1.2 gpm at 60 psi
Kitchen Faucet	Shall not exceed 1.5 gpm at 60 psi
Dishwasher	Shall be "Energy Star"
Clothes washer	Shall be "Energy Star"

48. Submit all required water service capacity/connection fees to the City's Development Engineering Division at 1600 First Street, Napa, 94559.

49. Prior to Occupancy, the Applicant shall:
    a. Submit remaining fees (hot-taps, meter sets, etc.) to the Water Division at 1700 Second Street, Suite 100, Napa, CA;
    b. Construct all water improvements as shown on the approved plans, the City of Napa Public Works Department Standard Specifications, and the special conditions listed above;
    c. Designate applicable on-site private fire hydrants as private per City Std W-8;
    d. Request backflow device inspection from the City of Napa Water Division. Call (707) 257-9544 at least 48 Hours in advance of the requested inspection time;
    e. Submit certification that all backflow devices have been installed and tested by an AWWA-certified tester (a list of testers is provided by the City of Napa) to the City of Napa Water Division;

50. Prior to the Building Permit Final Inspection, the Applicant shall:
    a. Submit a record drawing outlining as-built conditions of the completed water system improvements in both electronic and print copy formats.

CITY GENERAL CONDITIONS

51. The plans submitted for improvement plan review and building permit review shall include a written analysis specifying how each of the conditions of approval have been addressed or incorporated into either the improvement plan set or building plan set.

52. Unless otherwise specifically provided in this resolution, each condition of this approval shall be satisfied prior to the first to occur of: (a) approval of a final map (if this resolution includes the approval of a tentative subdivision map or tentative parcel map), (b) issuance of a building permit, or (c) commencement of any use of land that is authorized by this resolution. An improvement agreement between the City and the Applicant (and landowner, if different) that obligates the Applicant to complete specified conditions of approval will be deemed to be a satisfaction of those specified conditions if: (i) the agreement is accompanied by required security for faithful performance and labor and materials, and (ii) the agreement is approved as to substance by the City Engineer, and approved as to form by the City Attorney.

53. Applicant shall pay all applicable fees and charges at the required time and at the rate in effect at the time of payment (in accordance with the City's Master Fee Schedule; see individual departments regarding the timing of fee payment requirements).

54. No use authorized by this permit may commence until after the Applicant executes any required permit agreement required by previously stated conditions of approval.

55. Applicant shall design and construct all improvements and facilities shown on any approved tentative map, site plan, plans, specifications, or other approved documents to comply with the General Plan, any applicable Specific Plan, the NMC, City ordinances, and resolutions, the "Standard Specifications" of the Public Works and Fire Departments, and the approved tentative map, site plan, plans, and specifications, and other approved documents.

56. The time limit within which to commence any lawsuit or legal challenge to any decision made by the City in connection with the application (File No. PL23-0159) is governed by Section 1094.6 of the Code of Civil Procedure unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

57. To the full extent permitted by law, the Applicant shall indemnify, defend, release, and hold City, its agents, officers, and employees harmless from and against any claims, suits, liabilities, actions, damages, penalties, or causes of action by any person, including Applicant, for any injury (including death) or damage to person or property or to set aside, attack, void or annul any actions of City, its agents, officers, and employees, from any cause whatsoever in whole or in part arising out of or in connection with (1) the processing, conditioning or approval of the applications relating to the subject property; (2) any failure to comply with all applicable laws and regulations; or (3) the design, installation or operation of improvements and regardless whether the actions or omissions are alleged to be caused by City or Applicant so long as City promptly notifies Applicant of any such claim, etc., and the City cooperates in the defense of same.

58. If the Applicant is not the owner of the subject property, all agreements required to be executed by the City must be executed by the Owner(s) as well as the Applicant.

59. The conditions of Project approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these conditions (and mitigations) constitute written notice of the statement of the amount of such fees and a description of the dedications, reservations, and other exactions. You are hereby notified that the 90-day period in which you may protest those fees, the amount of which has been identified herein, dedications, reservations, and other exactions required in connection with the instant approvals has begun. If you fail to file a protest complying with all the requirements of Section 66020, you will be legally barred from later challenging such an exaction.

60. Violation of any term, condition, mitigation measure, or Project description relating to this approval is unlawful, prohibited, and a violation of the Napa Municipal Code and can result in revocation or modification of this approval and/or the institution of civil and/or criminal enforcement and/or abatement proceedings.

61. The Use Permit shall become effective on the day following Planning Commission's approval of this Resolution, is subject to expiration and revocation, and may be extended, all in accordance with the provisions in NMC Chapter 17.68, as applicable.

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the Planning Commission of the City of Napa at a regular meeting of said Planning Commission held on the 4th day of April 2024, by the following vote:

AYES:	HUETHER, KELLEY, MASSARO, SHOTWELL
NOES:	
ABSENT:	
ABSTAIN:	
RECUSED:	MYERS

ATTEST: _____

RICKY CAPERTON
SECRETARY OF THE PLANNING COMMISSION

ATTACHMENT 1

le petit elephant

LePetit Elephant Nursery and Preschool
Child Development Center
Use Permit Application Written Narrative

Le Petit Elephant Nursery and Preschool's Child Development Center will be located at 15 Chapel Hill Drive Napa CA 94559, a permanent home for child development in Napa County and a long-awaited solution to the severe shortage of high quality infant care in Napa County. Founded in 2015 by a mother for her own child, LPE is currently the largest infant and preschool childcare provider in Napa County, serving 128 children daily with a waitlist of 43 families (and growing).

LPE's Child Development Center will be open Monday through Friday, 7:30a-5:30p year around to serve the working families of Napa County. It will offer an outdoor- based program rooted in a mindful combination of the Reggio Emilia/Waldorf/Montessori/RIE pedagogies aimed at supporting the education of healthy, well-rounded children in preparation for primary school. The classrooms will be large, well-lit classrooms filled with natural materials and elements from nature. The walls will be neutral and void of loud colors, and they will mostly serve to display the children's art work and creations. This lack of "visual noise" helps to maintain a sense of calm in the classroom and lends to a beautiful space for children to grow and thrive in.

The new location for LPE at 15 Chapel Hill Drive in Napa will be a hub for child development in Napa. LPE's offerings will help to support all families with young children in Napa County. We will offer:

- 220 childcare spaces for families for children ages 0-5 years including small group TK/Kindergarten, Monday-Friday 7:30a-5:30p.

- 30 aftercare offerings for school-age children ages 5-12 years will be available Monday through Friday from mid-August until mid-June after school (generally from 3PM) until 5:30pm. Transportation will be provided to pick up children from local elementary schools in two vans.

- Note that the combination of daycare aged children (0-5) and school aged children (5-12) shall not exceed 250 total children.

- The after-school program will transition into a summer camp program offered during summer from 7:30-5:30PM for up to 30 school aged children. The total number of children including summer camp and school aged children is 250. Summer camp and school aged children's programs will be hosted in a separate indoor area from daycare programs.

ATTACHMENT 1

- Meals may be prepared and offered onsite only to children attending the school but are not currently a part of the school's planned program.

- 55 Employees consisting of teachers, aids, and administrative staff.

- 30 affordable Summer/Winter/Spring Break camp spaces for school-age children ages 5-12 will be available from mid-June to mid-August from 7:30a-5:30p, Monday through Friday based in our gymnasium space on campus in order to keep children engaged all summer and allow their parents to work. Summer camp will take place in a separate space on the campus (not integrated with the childcare space) and will include cooking, music, sports, theatre, art, creative play and field trips into the community.

- Including school-age children, there would be up to 250 children on site at any given time Monday-Friday maximum if we are licensed for 220 children 0-5 years old and 30 school-age children 5-12 years old. The licensed childcare capacity would indicate the number of children that we can accommodate at a time on any given day. 220 children ages 0-5 years old Monday-Friday 7:30a-5:30pm and 30 school-children ages 5-12 3p-5:30p Monday-Friday during the school year and 7:30a-5:30p Monday-Friday during school holiday breaks.

- An on-site kitchen and there may be meals provided.

- Weekly music and movement classes

- Spanish immersion classrooms

- An indoor playroom shall be open to the public for parents/caregivers to attend with their child for indoor imaginative play, circle/music/story time, gross and fine motor activities and developmentally appropriate curriculum for ages 0-5 years led by an instructor daily. Available to the Napa community on a per day or monthly membership basis and a separate indoor space than our childcare. It will be open to members who join the indoor playroom program, it will be open weekdays 9am-12pm and then again 2-5pm. It is a separate use from the daycare, it will not be licensed for childcare. The indoor playroom is offered in lieu of an additional 22 spots for daycare activities.

- A large indoor playroom for birthday parties for ages 0-5 years old year-round, available for the Napa community to book and rent. The playroom would be available for rent on Weekends from 9am-4pm.

- A gym space with a full basketball/volleyball court for youth leagues to utilize throughout the year for practices outside of the childcare center's hours of operation. It will be available for the public to rent outside of childcare hours. It will be available for rent on Weekdays 5:30pm-8pm and Weekends from 9am-8pm. We plan to make it available for the needs of youth in Napa for sports practices.

tournaments, plays, performances, etc. The space is also available as rentable indoor community space for special events for Napa residents to rent for retirement/anniversary/birthday parties, Boys/Girl Scouts meetings, Napa Moms Preschool performances, plays/musical recitals/community puppet shows on the fully equipped stage. Occupancy and operations can be limited to a reasonable number.

- A large Childrens Garden is being built for the children enrolled with us to tend to and learn about gardening and healthy eating.

- Spacious playground spaces with shady trees and play structures for children to learn healthy risk-taking skills and gain strength, balance, and confidence in their physical abilities.

- Monthly date nights which allow parents to enjoy an evening out while their children remain with their teachers and friends at school until 8pm. Date nights are offered once a month. There will be a maximum of 30 children attending Date Night.

Traffic Circulation

Traffic can both enter and exit off of Chapel Hill Drive and Montecito Blvd. All children must be accompanied by a parent and sign in and out during pickup and drop-off. Consequently, there will be no pickup or drop-offs allowed on Chapel Hill Drive or Montecito Blvd. Parking spots fronting the church shall be reserved for pickup and drop-off to facilitate quicker ingress and egress from the property. LPE is open to feedback from the community on traffic circulation. The parking lot configuration allows for options favorable to the local community.

LPE is very mindful of the impact it will have on the neighborhood and based on conversations with immediate neighbors on Chapel Hill, there appears to be an overall excitement about the prospect of a childcare center coming to the site. To help ease the flow of traffic, drop off times at LPE will be staggered between 7:30am to 9am with occasional drop offs between 9am to 11am at the latest. Pick up times will be staggered at 12:30pm, and then again between 3:30p-5:30p. Once a month on a Friday, pick up will be at 8pm for Date Nights for those who have signed their children up and it's often an average of 20 children per date night, with a maximum of 30 children.

Le Petit Elephant's Child Development Center will be a foundational cornerstone for families in Napa to have a space for their children to play, grow, learn and thrive. We pride ourselves in having provided high quality childcare in Napa since 2015 and we look forward to being able to take it to the next level with a Child Development Center aimed at supporting children ages 0-12 in Napa.

Thank you for your consideration and thank you for being a part of this landmark opportunity to secure a permanent home for child development at Le Petit Elephant Nursery and Preschool in Napa Valley.

Sincerely yours,

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