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November 15, 2021

Ms. Elisa Sarlatte
City of Novato
922 Machin Avenue
Novato, CA 94945
esarlatte@novato.org

Subject: Novato Boulevard Improvements Project, Draft Environmental Impact Report, SCH No. 2018082048, Marin County

Dear Ms. Sarlatte:

The California Department of Fish and Wildlife (CDFW) reviewed the draft Environmental Impact Report (Draft EIR) for the Novato Boulevard Improvements Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

CDFW is submitting comments on the Draft EIR to inform the City of Novato (City), as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Novato

Objective: The Project would repair and improve a 0.66-mile segment of Novato Boulevard by widening the street, creating new vehicular and bicycle lanes, reconstructing the sidewalk, and upgrading City utilities including sanitary sewer lines, water lines, storm drainage, signals, and street lighting. The Project would include new

[1] CEQA is codified in the California Public Resources Code in Section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

acquisition of City right-of-way for locations outside of the existing right-of-way. Primary Project activities would include demolishing existing roadway, grading, excavating, trenching, concrete pouring, drilling, hauling, tree-removal, landscaping, and replacing an existing storm drain outfall to Novato Creek.

Location: The Project is located on Novato Boulevard beginning at the Grant Avenue intersection and continuing east to the Diablo Avenue intersection, in the City of Novato, County of Marin. The approximate geographic coordinates for the western end of the Project are Latitude 38.10822°N, Longitude 122.58338°W and for the eastern end are Latitude 38.10312°N, Longitude 122.57314°W.

Timeframe: The Project is anticipated to begin in fall 2022 and be completed in 2023.

ENVIRONMENTAL SETTING

The Project covers approximately 5 acres of primarily developed roadway and non-native and ornamental vegetation. Approximately 0.99 acres of the Project will occur within riparian woodland associated with Novato Creek. The surrounding area includes densely developed residential and commercial structures with patches of open space and riparian corridors along Novato Creek and Warner Creek. Ornamental trees and riparian habitat within the Project area may act as nesting habitat for birds and roosting habitat for bats. Special-status species with the potential to occur in or near the Project area include, but are not limited to, Central California Coast steelhead (*Oncorhynchus mykiss irideus* pop. 8), Federally listed as threatened; California red-legged frog (*Rana draytonii*), Federally listed as threatened and a California Species of Special Concern (SSC); Northwest/North Coast clade foothill yellow-legged frog (*Rana boylii*), SSC; western pond turtle (*Emys marmorata*), SSC; pallid bat (*Antrozous pallidus*), SSC; Townsend's big-eared bat (*Corynorhinus townsendii*), SSC; western red bat (*Lasiurus blossevillii*), SSC; and white-tailed kite (*Elanus leucurus*), a Fully Protected species.

REGULATORY REQUIREMENTS

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. The Draft EIR identifies that the Project will impact riparian vegetation and conduct activities on the bank of Novato Creek (Draft EIR pages 4.2-24 and 4.2-25). **Project activities that would substantially alter the bank or the riparian habitat of Novato Creek would**

require LSA Notification, see further recommendations below. In this case, CDFW would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

Raptors and Other Nesting Birds

CDFW also has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully Protected species, such as white-tailed kite, may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Lake or Streambed Alteration Notification

As noted above, the Project would impact riparian habitat along Novato Creek (Draft EIR page 4.2-24) and approximately 3 square feet and 1 linear foot of the bank through replacing the existing outfall to Novato Creek (Draft EIR page 4.2-25). To comply with California Fish and Game Code section 1600 et seq. and reduce impacts to less-than-significant, CDFW recommends the following mitigation measure:

> *Mitigation Measure BIO-6: Notification of Lake or Streambed Alteration*
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> For Project activities that may substantially alter the bed, bank, or channel of Novato Creek, an LSA Notification shall be submitted to CDFW pursuant to Fish and Game Code section 1602 prior to Project construction. If CDFW determines that an LSA Agreement is warranted, the City shall comply with all required measures in the LSA Agreement, including but not limited to requirements to offset impacts to Novato Creek and riparian habitat.

Mitigation Measures and Related Impact Shortcoming

Riparian Habitat and Tree Replacement

The Project would remove up to 30 trees, some occurring in the riparian woodland (Draft EIR page 3-20). Removal of riparian trees reduces shade, removes primary production input to the channel, and removes habitat for a variety of tree nesting birds and tree roosting bats. The Draft EIR identifies in Mitigation Measure BIO-3 that riparian trees will be replaced at a 3:1 ratio. CDFW typically recommends replacement planting commensurate with the diameter at breast height (DBH) of the tree removed. Large DBH trees can take decades or longer to grow; therefore, removing large trees causes a temporal loss than cannot be immediately offset. Planting a greater number of trees recovers lost canopy cover more quickly and increases the probability that one of the trees planted will reach the diameter of the removed tree. Additionally, permanent impacts to riparian habitat should be mitigated by restoring habitat at a 3:1 mitigation to impact ratio to offset the loss of habitat, and temporary impacts should be restored onsite (1:1 ratio). To reduce impacts to less-than-significant, CDFW recommends including the following mitigation measure:

> *Mitigation Measure BIO-7: Riparian Habitat Replacement and Monitoring*
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> Permanent impacts to riparian habitat shall be mitigated by restoring riparian habitat at a 3:1 mitigation to impact ratio for the acreage and linear distance impacted, as close to the Project as possible and within the same watershed, and temporary impacts shall be restored on-site (1:1 ratio), within the same year of the impact. A restoration plan shall be prepared and implemented. Riparian trees removed or impacted as a result of the Project shall be replaced pursuant to the below ratios. To ensure a successful planting effort, all plantings shall be monitored and maintained as necessary for a minimum of five years. All plantings shall have a minimum of 80% survival at the end of the minimum monitoring. Planted oak trees (*Quercus* sp.) and other trees shall each have a minimum 80% survival. If the planting survival is not meeting this goal, then the City shall implement replacement planting, additional watering, invasive exotic eradication, or any other practice, to achieve these requirements. Replacement plants shall be monitored with the same survival requirements for five years after planting.
>
> Native oak tree replacement ratios (mitigation to impacts):
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> - 3:1 replacement for trees 5 to 8 inches DBH
> - 5:1 replacement for trees greater than 8 inches to 16 inches DBH
> - 10:1 replacement for trees greater than 16 inches DBH, which are considered old-growth oaks

Replacement oaks shall come from nursery stock grown from locally sourced acorns, or from acorns gathered locally, preferably from the same watershed in which they are planted. The trees should be able to survive the last two years of a minimum five-year monitoring period without irrigation.

Other riparian tree species replacement ratios:

- 1:1 replacement for non-native trees
- 3:1 replacement for trees 4 to 6 inches DBH
- 6:1 replacement for trees greater than 6 inches DBH

Roosting Bats

The Draft EIR identifies that the trees in the Project area, some of which are proposed for removal, may provide roosting habitat for sensitive bats such as pallid bat, Townsend's big-eared bat, and western red bat (Draft EIR pages 4.2-7 and 4.2-8). The Draft EIR includes Mitigation Measure BIO-2b to avoid potentially significant impacts to roosting bats during tree removal (Draft EIR page 2-13 and 4.2-24). The measure requires a qualified bat biologist to conduct preconstruction roosting bat surveys within 14 days prior to beginning work and to limit roost tree removal to seasons when bats are active. The measure does not specify the seasons that bats are typically active, nor does it require a two-step tree removal process for potential bat roost trees. Even during the bat active season, bats may use trees for diurnal roosts. Tree removal associated with the Project could lead to injury or death of bats, including pallid bat, Townsend's big-eared bat, and western red bat, a potentially significant impact. To reduce impacts to less-than-significant, CDFW recommends incorporating the follow mitigation measure:

Mitigation Measure BIO-8: Bat Tree Habitat Assessment and Surveys

Prior to any tree removal, a qualified biologist shall conduct a habitat assessment for bats. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree removal and shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked and tree trimming or removal shall not proceed unless the following occur: a) in trees with suitable habitat, presence of bats is presumed, or documented during the surveys described below and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats.

Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only; limbs with cavities, crevices or deep bark fissures shall be avoided; and 2) the second day the entire tree shall be removed.

Nesting Birds

The Draft EIR includes Mitigation Measure BIO-2a to avoid potentially significant impacts to nesting birds (Draft EIR pages 2-12 and 4.2-23). The existing mitigation measure identifies a timeline of 14 days prior to ground-disturbing activities within the nesting season for pre-construction nesting bird surveys. CDFW recommends using a timeline of 7 days to increase the likelihood that newly constructed nests are identified prior to beginning ground-disturbing activities. If a period of more than 7 days elapses between the survey date and start of Project activities, then an additional survey shall be conducted.

Please be advised that an LSA Agreement obtained for this Project would likely require the above recommended measures, as applicable.

GENERAL COMMENTS AND EDITORIAL SUGGESTIONS

In addition to the above recommendations, CDFW encourages landscaping using native trees and shrubs to benefit native nesting birds and other wildlife. The removal of habitat for birds from human activities has contributed to the loss of a significant proportion of birds in the United States and Canada since the 1970s (Rosenburg et al. 2019). Planting native trees and shrubs is an opportunity to improve conditions for birds[2].

CDFW notes that the Draft EIR refers to the foothill yellow-legged frog as an endangered species under CESA (Draft EIR page 4.2-11). While this is true for most foothill-yellow-legged frog clades, the clade that occurs in Marin County, the Northwest/North Coast clade, is not listed pursuant to CESA. It is still considered an SSC, which is also noted in the Draft EIR.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, §

[2] For native species recommendations and planting tips, review the Sonoma County Master Gardener document *Gardening Success with California Native Plants*: http://www.marinrcd.org/wp/wp-content/uploads/2015/02/Gardening-Success-with-CA-Natives_UCCE_Sonoma.pdf

21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form, online field survey form, and contact information for CNDDB staff can be found at the following link: https://wildlife.ca.gov/data/CNDDB/submitting-data.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the Draft EIR to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Amanda Culpepper, Environmental Scientist, at (707) 428-2075 or amanda.culpepper@wildlife.ca.gov, or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at melanie.day@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Stephanie Fong
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Stephanie Fong
Acting Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2018082048)
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REFERENCES

Rosenburg, Kenneth V.; Dokter, Adriaan M.; Blancher, Peter J.; Sauer, John R.; Smith, Adam C.; Smith, Paul A.; Stanton, Jessica C.; Panjabi, Avrind; Helft, Laura; Parr, Michael; and Marra, Peter P. 2019. Decline of the North American Avifauna. *Science*: 120-124.