



Governor's Office of Planning & Research

July 1, 2022

Jul 5 2022

STATE CLEARINGHOUSE

Vicki Parker

City of Novato

922 Machin Avenue

Novato, CA 94945

HousingElement@novato.org

Subject: Novato 6th Cycle Housing Element Update, Notice of Preparation of a Program Environmental Impact Report, SCH No. 2022060044, City of Novato, Marin County

Dear Ms. Parker:

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a Program Environmental Impact Report (EIR) for the Novato 6th Cycle Housing Element Update (Project).

CDFW ROLE

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA) for commenting on projects that could impact fish, plant, and wildlife resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a permit pursuant to the California Endangered Species Act (CESA) or Native Plant Protection Act (NPPA), Lake and Streambed Alteration (LSA) Agreement, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our authority, CDFW has the following concerns, comments, and recommendations regarding the Project.

PROJECT DESCRIPTION AND LOCATION

The Housing Element Update will encompass the entirety of the City of Novato and presents a comprehensive set of housing policies and actions for the years 2023-2031. The Housing Element Update will be based on the City's latest estimates, which determined that the City needs to plan for 2,090 residential units, plus a buffer of units to ensure ongoing compliance with the No Net Loss provisions of State housing law. As a built-out city, the City of Novato may be required to find additional sites – some in areas not previously targeted as opportunity sites – as well as upzone other areas. Upzoning refers to rezoning parcels to allow higher-density housing. For purposes of the EIR, the City of Novato will evaluate sites that could accommodate the entire estimate plus a 20 percent buffer, as recommended by California Department of Housing and Community Development, totaling approximately 2,508 residential units.

Vicki Parker
City of Novato
July 1, 2022
Page 2 of 9

The CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) require that the EIR incorporate a full project description, including reasonably foreseeable future phases of the Project, that contains sufficient information to evaluate and review the Project's environmental impact (CEQA Guidelines, §§ 15124 & 15378). Please include a complete description of the following Project components in the Project description:

- Land use changes resulting from, for example, rezoning certain areas.
- Footprints of permanent Project features and temporarily impacted areas, such as staging areas and access routes.
- Area and plans for any proposed buildings/structures, ground disturbing activities, fencing, paving, stationary machinery, landscaping, and stormwater systems.
- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features.
- Construction schedule, activities, equipment, and crew sizes.

The NOP identifies that the EIR will be a program EIR. While Program EIRs have a necessarily broad scope, CDFW recommends providing as much information related to anticipated future activities as possible. CDFW recognizes that, pursuant to CEQA Guidelines section 15152, subdivision (c), if a Lead Agency is using the tiering process in connection with an EIR or large-scale planning approval, the development of detailed, site-specific information may not be feasible and can be deferred, in many instances, until such time as the Lead Agency prepares a future environmental document. This future environmental document would cover a project of a more limited geographical scale and is appropriate if the deferred information does not prevent adequate identification of significant effects of the planning approval at hand. The CEQA Guidelines section 15168, subdivision (c)(4) states, "Where the later activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were within the scope of the program EIR." Based on CEQA Guidelines section 15183.3 and associated *Appendix N Checklist*, and consistent with other program EIRs, CDFW recommends creating a procedure or checklist for evaluating subsequent project impacts on biological resources to determine if they are within the scope of the program EIR or if an additional environmental document is warranted. This checklist should be included as an attachment to the EIR. Future analysis should include all special-status species and sensitive habitat including but not limited to species considered rare, threatened, or endangered species pursuant to CEQA Guidelines, section 15380.

Vicki Parker
City of Novato
July 1, 2022
Page 3 of 9

ENVIRONMENTAL SETTING

The EIR should provide sufficient information regarding the environmental setting (“baseline”) to understand the Project’s, and its alternative’s (if applicable), potentially significant impacts on the environment (CEQA Guidelines, §§ 15125 & 15360).

CDFW recommends that the CEQA document prepared for the Project provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including but not limited to all rare, threatened, or endangered species (CEQA Guidelines, § 15380). The EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for sensitive natural communities see: <https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>), and any stream or wetland set back distances the City of Novato may require. Fully protected, threatened, or endangered, candidate, and other special-status species that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to, those listed in **Attachment 1**.

Habitat descriptions and the potential for species occurrence should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, U.S. Fish and Wildlife Service’s (USFWS) Information, Planning, and Consultation System, and findings from “positive occurrence” databases such as California Natural Diversity Database (CNDDDB). Based on the data and information from the habitat assessment, the EIR should adequately assess which special-status species are likely to occur on or near the Project site, and whether they could be impacted by the Project.

CDFW recommends that prior to Project implementation, surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocol>.

Botanical surveys for special-status plant species, including those with a California Rare Plant Rank (<http://www.cnps.org/cnps/rareplants/inventory/>), must be conducted during the blooming period for within the Project area and adjacent habitats that may be indirectly impacted by, for example, changes to hydrological conditions, and require the identification of reference populations. More than one year of surveys may be necessary based on environmental conditions. Please refer to CDFW protocols for surveying and evaluating impacts to special status plants available at: <https://www.wildlife.ca.gov/Conservation/Plants>.

Vicki Parker
City of Novato
July 1, 2022
Page 4 of 9

IMPACT ANALYSIS AND MITIGATION MEASURES

The EIR should discuss all direct and indirect impacts (temporary and permanent), including reasonably foreseeable impacts, that may occur with implementation of the Project (CEQA Guidelines, §§ 15126, 15126.2, & 15358). This includes evaluating and describing impacts such as:

- Land use changes that would result in the loss or degradation of habitat for special-status species, sensitive natural communities, or essential connectivity areas;
- Encroachments into riparian habitats, wetlands or other sensitive areas;
- Potential for impacts to special-status species;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alternation of soils and hydrology, and removal of habitat structural features (e.g., snags, roosts, vegetation overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic, or human presence; and
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

The CEQA document should also identify reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to the impact (CEQA Guidelines, §15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact – e.g., reduction of available habitat for a special status species – should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines direct the lead agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the EIR, and/or mitigate significant impacts of the Project on the environment (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370). This includes a discussion of impact avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with CDFW, USFWS, and the National Marine Fisheries Service. These measures can then be incorporated as

Vicki Parker
City of Novato
July 1, 2022
Page 5 of 9

enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

REGULATORY REQUIREMENTS

California Endangered Species Act and Native Plant Protection Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA or NPPA, either during construction or over the life of the Project. Issuance of a CESA ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, such as those identified in **Attachment 1**, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with CESA.

Lake and Streambed Alteration Agreement

CDFW will require an LSA Notification, pursuant to Fish and Game Code sections 1600 et. seq. for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that will 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. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

ENVIRONMENTAL DATA

CEQA requires that information developed in EIRs and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during

Vicki Parker
City of Novato
July 1, 2022
Page 6 of 9

Project surveys to CNDDDB. The CNDDDB online field survey form and other methods for submitting data can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/>


[Submitting-Data](#). The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plantsand-Animals>.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish & G. Code, § 711.4; Pub. Resources Code, § 21089). 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.

If you have any questions, please contact James Hansen, Environmental Scientist, at (707) 576-2869 or James.Hansen@Wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Special-Status Species

cc: State Clearinghouse #2022060044

Vicki Parker
 City of Novato
 July 1, 2022
 Page 7 of 9

Attachment 1: Special-Status Species

Scientific Name	Common Name	Status
Birds		
<i>Rallus obsoletus obsoletus</i>	California Ridgeway's rail	FP, FE
<i>Laterallus jamaicensis coturniculus</i>	California black rail	FP
<i>Elanus leucurus</i>	white-tailed kite	FP
<i>Agelaius tricolor</i>	tricolored blackbird	ST
<i>Charadrius nivosus nivosus</i>	Western snowy plover	SSC, FT
<i>Geothlypis trichas sinuosa</i>	saltmarsh common yellowthroat	SSC
<i>Athene cunicularia</i>	burrowing owl	SSC
<i>Melospiza melodia samuelis</i>	San Pablo song sparrow	SSC
Fish		
<i>Spirinchus thaleichthys</i>	longfin smelt	ST, FC
<i>Eucyclogobius newberryi</i>	tidewater goby	FE
<i>Oncorhynchus mykiss irideus</i> pop. 8	steelhead – central California coast DPS	FT
<i>Acipenser medirostris</i> pop. 1	green sturgeon – southern DPS	FT
<i>Pogonichthys macrolepidotus</i>	Sacramento splittail	SSC
Amphibians		
<i>Rana draytonii</i>	California red-legged frog	SSC, FT
<i>Rana boylei</i>	foothill yellow-legged frog, northwest/north coast clade	SSC
<i>Dicamptodon ensatus</i>	California giant salamander	SSC
<i>Taricha rivularis</i>	red bellied newt	SSC

Vicki Parker
 City of Novato
 July 1, 2022
 Page 8 of 9

Scientific Name	Common Name	Status
Mammals		
<i>Reithrodontomys raviventris</i>	salt-marsh harvest mouse	FP, FE
<i>Antrozous pallidus</i>	pallid bat	SSC
<i>Corynorhinus townsendii</i>	Townsend's big-eared bat	SSC
<i>Taxidea taxus</i>	American badger	SSC
<i>Sorex ornatus sinuosus</i>	Suisun shrew	SSC
Reptiles		
<i>Emys marmorata</i>	western pond turtle	SSC
Plants		
<i>Hesperolinon congestum</i>	Marin western flax	ST, FT
<i>Chloropyron molle</i> ssp. <i>molle</i>	soft salty bird's-beak	FE, CRPR 1B.2
Birds		
<i>Plueropogon hooverianus</i>	North Coast semaphore grass	ST
<i>Navarretia leucocephala</i> ssp. <i>bakeri</i>	Baker's navarretia	CRPR 1B.1
<i>Streptanthus anomalus</i>	Mount Burdell jewelflower	CRPR 1B.1
<i>Hemizonia congesta</i> ssp. <i>congesta</i>	congested-headed hayfield tarplant	CRPR 1B.2
<i>Streptanthus glandulosus</i> ssp. <i>pulchellus</i>	Mt. Tamalpais bristly jewelflower	CRPR 1B.2
<i>Eriogonum luteolum</i> var. <i>caninum</i>	Tiburon buckwheat	CRPR 1B.2
<i>Trifolium hydrophilum</i>	saline clover	CRPR 1B.2
<i>Amsinckia lunaris</i>	bent-flowered fiddleneck	CRPR 1B.2

Vicki Parker
 City of Novato
 July 1, 2022
 Page 9 of 9

Scientific Name	Common Name	Status
<i>Chloropyron maritimum</i> ssp. <i>palustre</i>	Point Reyes salt bird's-beak	CRPR 1B.2
<i>Lessingia micradenia</i> var. <i>micradenia</i>	Tamalpais lessingia	CRPR 1B.2
<i>Amorpha californica</i> var. <i>napensis</i>	Napa false indigo	CRPR 1B.2
<i>Fritillaria liliacea</i>	fragrant fritillary	CRPR 1B.2
<i>Arctostaphylos montana</i> ssp. <i>montana</i>	Mt. Tamalpais manzanita	CRPR 1B.3
<i>Entosthodon kochii</i>	Koch's cord moss	CRPR 1B.3

FE = federally listed as endangered under the Endangered Species Act (ESA); FT = federally listed as threatened under ESA; FC = federally listed as a candidate under ESA; SE = state listed as endangered under CESA; ST = state listed as threatened under CESA; FP = state fully protected under Fish and Game Code; SSC = state Species of Special Concern; CRPR = California Rare Plant Rank