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April 8, 2020

Governor's Office of Planning & Research

APR 09 2020

STATE CLEARINGHOUSE

Mr. Steve Marshall
City of Novato
922 Machin Avenue
Novato, CA 94945
smarshall@novato.org

Subject: Novato 2035 General Plan Update, Draft Environmental Impact Report,
SCH #2016122043, City of Novato, Marin County

Dear Mr. Marshall:

The California Department of Fish and Wildlife (CDFW) reviewed the draft Environmental Impact Report (EIR) provided for the Novato 2035 General Plan Update (Project) located within the City of Novato (citywide), Marin County.

CDFW is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) Section 15386 and has authority to comment 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), Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

PROJECT DESCRIPTION AND LOCATION

Proponent: City of Novato

Objective and Location: The Project is an update to the City of Novato 1996 General Plan through the year 2035. The Project location covers the entirety of the City of Novato as well as the border of unincorporated Marin County which could be incorporated into Novato within the life of the Project. Specific changes include land use map and zoning map revisions, modifications to General Plan Implementing Ordinances, and comprehensive reorganization and reformatting of the City of Novato General Plan

ENVIRONMENTAL SETTING

Located in the City of Novato and surrounding areas, the Project area is over 50% open space and park land. The majority of the remainder of the Project area is very-low-density and low-density residential neighborhoods. Near the Highway 101 corridor, medium to high-density residential neighborhoods, commercial and industrial business parks, and mixed-use areas are common. Small pockets of agriculture and rural residential neighborhoods still exist near open space and low-density housing.

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The Project is bordered by Mount Burdell to the north, Big Rock Ridge to the west, San Pablo Bay to east, Bel Marin Keys wetlands to the southeast, Indian Valley open space to the southwest, Pacheco Valle and Loma Verde open space to the south, and the Petaluma River to the northeast. Elevation ranges from sea level to approximately 1,550 feet above mean sea level. Hydrological features include Petaluma River, Stafford Lake, Novato Creek, Rush Creek, and San Pablo Bay. The area receives approximately 30 inches of rainfall per year and enjoys a Mediterranean climate. Habitat types include coastal salt marsh, coastal scrub, chaparral, Douglas-fir, redwood forest, grassland, mixed oak-bay woodland, riparian woodland, and open water. Numerous state-listed and federally-listed species exist or have the potential to exist in the area, as do Species of Special Concern, California Rare Plant Ranked species, and Fully Protected species.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations below to assist City of Novato in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Tiering and Subsequent Project Checklist

The draft EIR is identified as a Program EIR that "considers the largescale effects associated with implementing a program...and does not, and is not intended to, examine the specific environmental effects associated with individual actions that may be undertaken under the guise of the larger program. Once a Program EIR has been prepared, subsequent activities within the program must be evaluated to determine what, if any, additional CEQA documentation needs to be prepared" (page 1-3).

The CEQA Guidelines §15168(c)(4) states, "Where the subsequent 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 covered in the program EIR." CDFW recommends developing the checklist with the draft EIR to determine the future review level of CEQA appropriate for future projects; ideally, as an attachment to the draft EIR. A procedure or checklist will be critical to ensuring adequate analysis of Project effects on biological resources. CDFW recommends using the procedure and checklist developed for infill projects as a model; it can be found in CEQA Guidelines Section 15183.3 and Appendix N. The checklist should also outline how habitat will be analyzed per species or habitat type, how impacts will be assessed, and any mitigation necessary.

When used appropriately, the checklist should be accompanied by enough relevant information and reasonable inferences to support a "within the scope of the draft EIR" conclusion. For subsequent Project activities that may affect sensitive biological resources, a site-specific analysis should be prepared by a qualified biologist to provide the necessary supporting information. In addition, the checklist should cite the specific portions of the draft EIR, including page and section references, containing the analysis of the subsequent Project activities' significant effects and indicate whether it incorporates all applicable mitigation measures from the draft EIR.

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Special-Status Species with the Potential to Occur in the Project Area

CDFW reviewed the special-status species list provided in Appendix C and discussed on pages 4.3-5 and 4.3-6. CDFW recommends the City of Novato also include northern spotted owl (*Strix occidentalis caurina*) and western red bat (*Lasiurus blossevillii*) in the draft EIR.

Northern spotted owl (NSO), a state- and federally-listed as threatened species under the CESA and the federal Endangered Species Act, is known to occur on the periphery of City of Novato, particularly near Burdell Mountain, Little Mountain, and Big Rock Ridge. Subsequent Projects could potentially remove northern spotted owl habitat or could potentially disturb NSO during nesting season and interrupt breeding or lead to nest failure. Population levels and vital rates for NSO continue to decline¹, so any reduction in successful nesting is a potentially significant impact.

Western red bat, a California Species of Special Concern, has the potential to occur in the Project area as it roosts in forests and woodlands and feeds over various habitats including grasslands, shrublands, open woodlands, and agricultural crops. Subsequent Projects could potentially remove western red bat roost trees, leading to potentially significant impacts not currently addressed in the draft EIR.

To reduce project impacts to less-than-significant, in Measure BIO-2, CDFW recommends clarifying the term “biological assessment.” Providing a clear definition of the term allows subsequent Project applicants to ensure they are meeting the intent of the Mitigation Measure and are adequately reducing potential impacts to less-than-significant.

CDFW recommends assessing all parcels; biological assessments are still necessary in areas with development or which seem to have no natural habitat, because sensitive species may still occur at such sites. Finally, CDFW recommends additional information related to site-specific measures after a biological assessment is done to ensure subsequent projects are adequately reducing potential impacts to less-than-significant.

CDFW recommends the following changes to the Biological Mitigation Measures. Proposed deletions are in ~~strikethrough~~, additions are in **bold**.

BIO-2: Biological Studies for New Development

Project applicants shall be required to provide a biological assessment for projects on ~~parcels with indicators of sensitive biological features, such as waterways.~~ **A biological assessment will be conducted by a qualified biologist and will include a data review and habitat assessment prior to Project activities to identify whether any special-status plant or animal species’ habitat or sensitive natural communities occur on-site. The data reviewed will include the biological resources setting, Appendix C species list, and best available, current data for the area, including a current review of the California Natural Diversity Database. Habitat assessments will be completed at an appropriate time of year for identifying potential habitat**

¹ California Department of Fish and Wildlife. 2016. Report to the Fish and Game Commission: A Status Review of the Northern Spotted Owl (*Strix occidentalis caurina*) in California.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=116307&inline>

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and no more than one year prior to Project activity commencement. The purpose of these assessments is to identify appropriate measures to avoid or minimize harm to sensitive biological resources and to incorporate the recommended measures as conditions of approval of the Project. **Based on the results of the biological assessment, the qualified biologist will identify the locations of any potential biological resources on-site and will provide site-specific measures to completely avoid those areas. If avoidance is infeasible, Mitigation Measure BIO-3, biological resources inventory for new development, will be employed.** ~~Detailed assessments are not necessary in locations where past and existing development have eliminated natural habitat and the potential for the presence of sensitive biological resources.~~

Proposed changes to BIO-3 reflect the changes to BIO-2. CDFW recommends including seasonally appropriate surveys following vetted methodologies and protocols for the site-specific species in the area. If impacts cannot be avoided, the draft EIR should discuss mitigation, and potentially additional environmental review for off-site mitigation. This should be included in the checklist and procedures that the City of Novato develops to guide subsequent projects. CDFW recommends adding the following language to BIO-3:

BIO-3: Biological Resources Inventory for New Development. A detailed inventory of biological resources conducted by an independent, professionally qualified biologist, plant ecologist, arborist, or appropriately qualified specialist shall be required for projects in sensitive and vulnerable habitats, **as identified in BIO-2. A biological resources inventory will include seasonally appropriate, protocol-level surveys for all sensitive species or natural communities potentially in the area.** If sensitive resources are identified on the Project site, recommendations to protect the sensitive resources shall conform with applicable State and federal regulations regarding their protection and may include avoidance of the resource, providing setbacks, clustering development onto less sensitive areas, preparing restoration plans, off-site mitigation, and/or other similar measures as determined on a Project-specific basis. **If compensatory mitigation appears necessary, a subsequent environmental review and CEQA document may be required.**

To observe and adequately protect birds that may be nesting in the Project area, BIO-4 should include pre-construction nesting bird surveys as close to the start of the construction activities as possible. CDFW recommends adding the following language to BIO-4:

BIO-4: Nesting Bird Protection. All discretionary projects shall retain the services of a qualified biologist(s) to conduct a pre-construction nesting bird survey during the nesting season (February 1 through August 31) **at most 7 days** prior to any and all development that may remove trees or vegetation that may provide suitable nesting habitat for migratory birds or other special-status bird species. If nests are found the qualified biologist(s) shall identify and the Project sponsor shall implement appropriate avoidance measures, such as fenced buffer areas or staged tree removal periods.

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Sensitive Natural Communities

The draft EIR references special-status habitats (page 4.3-6). CDFW recommends including sensitive natural communities as part of this section header and in this discussion. Sensitive natural communities are described via vegetation mapping following the standards in the Manual of California Vegetation. CDFW maintains a list of over 1,500 vegetation associations identified as sensitive¹ that should be considered during environmental review. The special-status habitats identified currently approximately coincide with vegetation associations listed as sensitive natural communities. CDFW recommends incorporating sensitive natural communities into the draft EIR with a discussion of potential impacts and the Mitigation Measures, where appropriate.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Permit is warranted if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit 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, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (CEQA §§ 21001(c), 21083, and CEQA Guidelines §§ 15380, 15064, 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 Fish and Game Code § 2080.

Lake and Streambed Alteration Agreement

CDFW will require an LSA Agreement, pursuant to Fish and Game Code §§ 1600 et. seq. for Project-related activities within any waters within the proposed Project area that fall under LSA authority. 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 (Public Resources Code § 21000 et seq.) as the responsible agency.

Migratory Birds and Raptors

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

¹ CDFW. California Sensitive Natural Communities, November 8, 2019.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=153609&inline>

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birds, their eggs, and nests include 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). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory raptors are also protected under the federal Migratory Bird Treaty Act.

FILING FEES

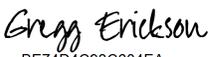
CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

CONCLUSION

CDFW appreciates the opportunity to comment on the draft EIR to assist City of Novato 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 amanda.culpepper@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at karen.weiss@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (SCH #2016122043)