

PLANNING COMMISSION

RESOLUTION NO. 2023-009

RESOLUTION OF THE NOVATO PLANNING COMMISSION RECOMMENDING THE NOVATO CITY COUNCIL ADOPT A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM FOR THE VALLEY OAKS PROJECT (APNS 125-580-34 AND 125-580-37)

WHEREAS, the City of Novato (“City”) received applications submitted by Campus Properties (“Applicant”) for a general plan land use map and text amendments, master plan, precise development plan, design review, vesting tentative map and development standards exceptions, and vacation of right-of-way for Valley Oaks (collectively “Project”), a residential development proposal, at the real property located on Redwood Blvd, APNs 125-580-34 and 125-580-37 (“Project Site”) and which is owned by WCJA LP (the “Property Owner”); and

WHEREAS, the City determined the Project is subject to the environmental review requirements of the California Environmental Quality Act (CEQA) and its implementing regulations (CEQA Guidelines); and

WHEREAS, an Initial Study was prepared in compliance with the provisions of CEQA and the CEQA Guidelines, and the procedures for review set forth in the City of Novato Environmental Review Guidelines. The Initial Study considered the Project Site and its setting and the potential effects of the construction and operation of the Project on the basis of the technical subjects included in the environmental checklist provided in Appendix G of the CEQA Guidelines; and

WHEREAS, the Initial Study determined the Project could result in potentially significant impacts to the environment in the CEQA topical areas of Biological Resources, Cultural Resources, Geology and Soils, Noise, Tribal Cultural Resources, and Wildfire. However, feasible mitigation measures were identified that will reduce all potentially significant impacts to a less-than-significant level; and

WHEREAS, on the basis of the findings of the Initial Study, the City has prepared a Mitigated Negative Declaration in compliance with CEQA, the CEQA Guidelines as promulgated by the State Secretary of the Natural Resources Agency, and the procedures for review set forth in the City of Novato Environmental Review Guidelines, finding that although the Project could have a significant effect on the environment, there will not be a significant effect in this case due to the implementation of the mitigation measures identified in the Initial Study/Mitigated Negative Declaration (IS/MND); and

WHEREAS, the Design Review Commission held duly noticed public hearings on September 21, 2022, and April 19, 2023, where the Design Review Commission recommended the Planning Commission and City Council approve the design aspects of the Project; and

WHEREAS, the Project design recommended by the Design Review Commission served as the subject of the impact analyses of the Initial Study; and

WHEREAS, a notice of intent to adopt a mitigated negative declaration describing the City's intent to adopt a Mitigated Negative Declaration for the Project and announcing a 30-day public review period beginning on August 30, 2023, and ending on October 2, 2023, was sent to all affected property owners within 600 feet of the boundaries of the Project Site, all responsible and trustee agencies, the Marin County Clerk, the Federated Indians of Graton Rancheria, and all persons requesting notice pursuant to Novato Municipal Code Section 19.58.020, CEQA, and the CEQA Guidelines; and

WHEREAS, public notices describing the Planning Commission's public hearing on the proposed IS/MND prepared for the Project were sent to all affected property owners within 600 feet of the boundaries of the Project Site, all public agencies potentially serving the Project or having some oversight of the Project's construction, the Federated Indians of Graton Rancheria, and all persons requesting notice pursuant to Section 19.58.020 of the Novato Municipal Code, on November 3, 2023, and published in the Marin Independent Journal, a newspaper of local circulation, on November 3, 2023; and

WHEREAS, the Planning Commission held a public hearing on November 13, 2023, and considered all oral and written comments on the Mitigated Negative Declaration, its accompanying Initial Study, and the Project.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby find and recommend as follows:

Section 1. Record

The Record of Proceedings ("Record") upon which the Planning Commission bases its recommendation includes, but is not limited to: (1) the Initial Study, Mitigated Negative Declaration, and the appendices and technical reports cited in and/or relied upon in preparing the IS/MND, (2) the staff reports, City files and records and other documents, prepared for and/or submitted to the City relating to the IS/MND, the Project, and the Project's associated development entitlement requests (3) the evidence, facts, findings and other determinations set forth in this resolution, (4) the City of Novato 2035 General Plan and its certified EIR and the Novato Municipal Code, (5) all designs, plans, studies, data and correspondence submitted by the City in connection with the IS/MND, the Project, and the Project's associated development entitlement requests (6) all documentary and oral evidence received at public workshops, meetings, and hearings or submitted to the City during the comment period relating to the IS/MND, the Project, and the Project's associated development entitlement requests (7) all other matters of common knowledge to the Planning Commission including, but not limited to, City, state, and federal laws, policies, rules, regulations, reports, records and projections related to development within the City and its surrounding areas.

The location and custodian of the records is the Novato Community Development Department, 922 Machin Avenue, Novato, California, 94945.

Section 2. Initial Study/Mitigated Negative Declaration Considered and Recommended

Based upon information in the IS/MND for the Project, dated August 2023, the Record as described above, and all other matters deemed material and relevant prior to adopting this resolution, the Planning Commission hereby recommends the adoption of a Mitigated Negative Declaration for the Project based on the following:

- a. The IS/MND has been completed in compliance with the California Environmental Quality Act (California Public Resources Code § 21000 - 21178), the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3), and the City of Novato Environmental Review Guidelines; and
- b. The IS/MND was presented to the Planning Commission, which, at a properly noticed hearing before the public, reviewed and considered the information contained in the Initial Study/Mitigated Negative Declaration prior to making a recommendation to the City Council regarding the Project; and
- c. The IS/MND reflects the City's independent judgment and analysis as Lead Agency.

Section 3. CEQA Findings

The Planning Commission hereby adopts and recommends the City Council adopt the IS/MND, dated August 2023, and based thereon and on the Record as a whole, the Planning Commission hereby finds and recommends the City Council find that all significant environmental effects of the Project have been reduced to a less-than-significant level in that all significant environmental effects have been eliminated or substantially lessened by the mitigation measures set forth in the IS/MND. Based upon the foregoing, and as detailed in *Exhibit A*, attached hereto and incorporated herein by reference, the Planning Commission finds, determines, and recommends the City Council find and determine the Project will not have a significant effect upon the environment.

The IS/MND was revised after the public review period. The revisions include minor corrections, clarifications, and supplemental mitigation language based on comments received during the public review period. None of the revisions are substantive. Accordingly, the IS/MND need not be recirculated for further public review.

Section 4. Mitigation, Monitoring, and Reporting Program

The Planning Commission hereby recommends the City Council adopt the Mitigation, Monitoring, and Reporting Program (MMRP), as detailed in *Exhibit B*, attached hereto and incorporated herein by reference, pursuant to California Public Resources Code Section 21081.6, which is a program designed to ensure compliance with the project changes and mitigation measures imposed to avoid or substantially lessen the significant effects identified in the IS/MND and said mitigation measures are described in the MMRP included therein and incorporated herein by reference.

Section 5. Indemnity and Time Limitations

- a. The Applicant and the Property Owner, and any successor in interest, whether in whole or in part, to either of them, shall defend, indemnify, and hold harmless the City and its agents, officers, attorneys, and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys, or employees to attack, set aside, void, or annul the Planning Commission's recommendation to the City Council at issue herein. This indemnification shall include damages or fees awarded against the City and/or its agents, officers, attorneys, or employees, if any, costs of suit, attorney's fees, and any other costs and expenses incurred in connection with such action whether incurred by the developer, the City, and/or parties initiating or bringing such claim, action, or proceeding.
- b. The Applicant and the Property Owner, and any successor in interest, whether in whole or in part, to either of them, shall defend, indemnify, and hold harmless the City and its agents, officers, attorneys, and employees for all costs incurred in additional investigation of or study of, or for supplementing, preparing, redrafting, revising, or amending any document, if made necessary or advisable by said claim, action, or proceeding and the Applicant and/or the Property Owner desires to pursue securing such approvals, after initiation of such, which are conditioned on the approval of such documents in a form and under conditions approved by the City Attorney.
- c. In the event that a claim, action, or proceeding described in subparagraphs a. or b. above is brought, the City shall promptly notify the Applicant and the Property Owner of the existence of the claim, action, or proceeding, and the City will cooperate fully in the defense of such claim, action, or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action, or proceeding; the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably withheld. The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with the Applicant and/or the Property Owner in the defense of said claim, action, or proceeding. If the City chooses to have counsel of its own defend any claim, action, or proceeding where the Applicant and/or the Property Owner has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the Applicant or the Property Owner as appropriate.
- d. The Applicant and the Property Owner, and any successor in interest, whether in whole or in part, to either of them, indemnifies the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.
- e. Unless a shorter limitation period applies, the time within which judicial review of this decision must be sought is governed by California Code of Civil Procedure, Section 1094.6.
- f. The conditions of project approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to California

Government Code Section 66020(d)(1), the conditions constitute written notice of a statement of the amount of such fees and a description of dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions pursuant to California Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of California Government Code Section 66020, you will be legally barred from later challenging such exactions.

Passed and adopted at a regular meeting of the Planning Commission of the City of Novato held on the 13th day of November 2023, by the following vote:

AYES: Commissioners Crockett, Dawson, Derby, Havel, Engdahl, Heath, and Tiernan

NOES: None

ABSTAIN: None

ABSENT: None

I HEREBY CERTIFY that the foregoing is a full, true and correct copy of the resolution which was adopted by the Planning Commission, City of Novato, County of Marin, State of California, on the 13th day of November 2023.

Lia Heath

Chair

Attachments

Exhibit A – Statement of CEQA Findings and Facts

Exhibit B – Valley Oaks CEQA Mitigation Monitoring and Reporting Program

**EXHIBIT A
VALLEY OAKS
APNS 125-580-34 AND 125-580-37**

STATEMENT OF CEQA FINDINGS AND FACTS

CEQA requires that if an Initial Study/Mitigated Negative Declaration (IS/MND) identifies one or more potentially significant environmental effects for a proposed project then the lead agency must make certain findings for each of those potentially significant effects. These findings must be accompanied by a brief explanation of the facts supporting each finding.

The Findings and Facts set forth below do not repeat the full discussion of impacts and mitigation measures contained in the document comprising the IS/MND, and the Record for the Project. Instead, the Findings provide a brief summary description of impacts, along with a reference to the location in the IS/MND describing in detail the setting and potentially significant impacts. The Facts that follow in turn reference the specific mitigation measures for such impacts. All Mitigation Measures are set forth in full in the Mitigation Monitoring and Reporting Program included in the IS/MND and are incorporated herein by reference.

(1) FINDINGS REGARDING POTENTIALLY SIGNIFICANT IMPACTS THAT WILL BE AVOIDED OR REDUCED TO LESS-THAN-SIGNIFICANT LEVELS BY THE IMPLEMENTATION OF MITIGATION MEASURES

A. Air Quality Impacts: There is the potential that the Project would adversely impact air quality during construction-related activities. Implementation of Mitigation Measure AQ-1 would ensure that construction-related air quality impacts are reduced to a less than significant level (See p. 31- IS/MND Air Quality Section).

Finding: Based on the Record, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the potentially significant environmental impact related to construction-related air quality impacts by implementation of mitigation measure AQ-1 as identified in the IS/MND.

Facts in Support of Finding: Mitigation Measure AQ-1 has been proposed in the IS/MND to reduce and/or avoid the Project's potential to adversely impact air quality during construction. The required Construction Equipment with Low Diesel Particulate Matter Exhaust Emissions mitigation measure will ensure that diesel powered construction equipment meets US EPA Tier 4 emission standards or equivalent, and is reduced to a level below the Bay Area Air Quality Management District's (BAAQMD) significance threshold.

B. Biological Resources Impact: There is the potential that the Project would adversely impact burrowing owls, nesting birds, streams and associated habitat, wetlands, and native trees at the Project site. Implementation of mitigation measures BIO-1 (Burrowing Owl Mitigation), BIO-2 (Nesting Bird Surveys and Avoidance), BIO-3 (Lake and Streambed Alteration), BIO-4 (Wetland Mitigation Plan), and BIO-5

(Native Tree Mitigation Plan) would ensure that potential impacts are reduced to a less than significant level (See p. 41 - IS/MND Biological Resources Section).

Finding: Based on the Record, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the potentially significant environmental impact related to biological resources by implementation of mitigation measures BIO-1 through BIO-5 as identified in the IS/MND.

Facts in Support of Finding: Mitigation Measure BIO-1 has been proposed in the IS/MND to reduce and/or avoid the Project's potential to disturb burrowing owls during construction of the Project. The required pre-construction survey will ensure that if burrowing owls are detected, an exclusion plan shall be prepared and implemented to reduce potential impacts to a less than significant level.

Mitigation Measure BIO-2 has been proposed in the IS/MND to reduce and/or avoid the Project's potential to disturb nesting birds, including the California endangered species act (CESA) listed tri-colored blackbird, during construction of the Project. Mitigation Measure BIO-2 requires pre-construction surveys for nesting birds within or immediately adjacent to the project site no more than seven days prior to commencement of construction or grading activities. Mitigation Measure BIO-2 provides specific steps to be followed in the event nesting birds are located, including the establishment of appropriate buffer areas within which construction work would not be permitted until young birds have fledged.

Mitigation Measure BIO-3 has been proposed in the IS/MND to ensure that Lake and Streambed Alteration permit(s) are obtained prior to any activities that affect lakes or streams, associated riparian or otherwise hydrologically connected habitat, and any connected wetlands.

Mitigation Measure BIO-4 has been proposed in the IS/MND to mitigate the loss of wetlands at the Project Site due to construction of the Project. Mitigation Measure BIO-4 requires 1:1 (replacement: loss) replacement ratio for impacts to onsite wetlands. A maintenance and monitoring program will ensure that any replacement wetlands are maintained and protected.

Mitigation Measure BIO-5 has been proposed in the IS/MND to mitigate the potential loss or impacts to native trees. Mitigation Measure BIO-5 requires a Native Tree Mitigation Plan be developed prior to the removal of any native trees or land disturbance activities that would adversely impact native trees. Mitigation Measure BIO-5 specifies the minimum requirement of the Native Tree Mitigation Plan, including a 3:1 tree replacement ratio.

C. Cultural Resources Impacts: There is the potential for unanticipated discovery of archeological resources and/or cultural resources during construction of the Project. Implementation of Mitigation Measure CUL-1 and CUL-2 would reduce these potentially significant impacts to less-than-significant levels. (IS/MND Cultural Resources Section).

Finding: Based on the Record, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the

potentially significant environmental impact related to adversely impacting archaeological resources and/or human remains by implementation of Mitigation Measures CUL-1 and CUL-2 as identified in the IS/MND (See p. 52 - IS/MND Cultural Resources Section).

Facts in Support of Finding: Mitigation Measures CUL-1 and CUL-2 have been proposed in the IS/MND to ensure the protection of unknown cultural resources and/or archaeological resources which could be impacted due to construction of the Project. Mitigation Measure CUL-1 requires a qualified archaeological monitor be present during ground disturbing activities and Mitigation Measure CUL-2 requires that in the event that archaeological resources (sites, features, or artifacts) are exposed during construction activities, all earth-disturbing work within 60-feet of the find shall immediately stop and a qualified archaeologist meeting the Secretary of the Interior's Professional Qualification Standards shall be retained to evaluate the significance of the find. If necessary, a treatment plan may be required prior to the continuation of construction activities. If the find is of Native American origin, appropriate treatment shall be determined in consultation with local Native Americans.

D. Geology and Soils Impact: There is the potential for impacts due to landslides, unstable soil, and expansive soil at the site. Mitigation Measure GEO-1 would reduce the potential impacts to a less than significant level by requiring that project be constructed per the recommendations of the Geotechnical Investigation produced by ENGEO, dated January 20, 2023). Implementation of GEO-1 would adequately reduce impacts to a less than significant level. Additionally, there is the potential for an impact to unknown paleontological resources, such as fossils, to be discovered during excavation activities. Implementation of Mitigation Measure GEO-2 would reduce this potentially significant impact to a less-than-significant level. (IS/MND Geology and Soils Section).

Finding: Based on the Record, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the potentially significant environmental impact related to landslides, unstable soil, and expansive soil by implementation of Mitigation Measure GEO-1, and to unknown paleontological resources by implementation of Mitigation Measure GEO-2 as identified in the IS/MND (See p. 62 – IS/MND Geology and Soils Section).

Facts in Support of Finding: Mitigation Measure GEO-1 is required to ensure the Project does not result in landslides, unstable soil, and expansive soil by requiring implementation of specific measures described in Sections 4 through 7 of the Geotechnical Exploration prepared by ENGEO (January 20, 2023). Mitigation Measure GEO-2 is required to ensure the Project does not impact previously unknown paleontological resources during construction. If said resources are discovered, all work would cease until a certified paleontologist investigates the find, make recommendations regarding the find, and remove the find if warranted.

E. Noise Impacts: There is the potential that short-term construction noise and long-term mechanical equipment noise could adversely impact future residents at the Project site. Mitigation Measure N-1 would require construction-related noise controls, such as limiting work hours to 7 AM and 6 PM weekdays and installing

mufflers on construction equipment. Mitigation Measure N-2 would reduce the potential impacts from mechanical equipment noise to a less than significant level by requiring baffles and barriers as necessary. These mitigation measures would reduce potential impacts to a less than significant level. (See p. 83 - IS/MND Noise Section).

Finding: Based on the Record, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the potentially significant environmental impact associated with temporary construction noise and permanent mechanical equipment noise by implementation of Mitigation Measure N-1 and N-2.

Facts in Support of Finding: Mitigation Measure N-1 is required to ensure that construction noise does not adversely impact adjacent residential uses and Mitigation Measure N-2 is required to ensure mechanical equipment associated with the Project does not exceed acceptable noise levels and adversely impact future residents.

F. Tribal Cultural Resources Impacts: There is the potential for unknown tribal cultural resources to be discovered during excavation and construction activities. Implementation of Mitigation Measure TCR-1 would reduce these potentially significant impacts to a less than significant level (See p. 106 - IS/MND Tribal Cultural Resources Section).

Finding: Based on the Record, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the potentially significant environmental impact related to tribal cultural resources, by implementation of Mitigation Measure TCR-1 as identified in the IS/MND.

Facts in Support of Finding: Mitigation Measure TCR-1 has been proposed in the IS/MND to ensure the Project does not significantly impact tribal cultural resources. Mitigation Measure TCR-1 states that if unanticipated tribal cultural resources are discovered, all work shall be suspended or relocated until the nature of the resource is determined. If a resource(s) is determined to be a significant find, a mitigation plan in consultation with Native American groups would be required. The plan would outline the appropriate treatment of the resources in coordination with the archaeologist and the appropriate Native American group. This mitigation measure will adequately reduce potentially significant impacts to tribal cultural resources to a less than significant level.

G. Wildfire Impacts: There is the potential for post-fire erosion on steep slopes at the Project Site due to instability and loss of vegetation. Implementation of Mitigation Measure WF-1 would reduce the potential impacts from post-fire erosion or landslides to a less than significant level (See p. 117 - IS/MND Wildfire Section).

Finding: Based on the Record, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the potentially significant environmental impact related to post-fire erosion or landslides, by implementation of Mitigation Measure WF-1 as identified in the IS/MND.

Facts in Support of Finding: Mitigation Measure WF-1 has been proposed in the IS/MND to ensure that if a wildfire were to occur at the Project Site, adequate post-fire deployment of erosion control measures would be implemented to reduce or avoid impacts from erosion. The mitigation measure would require erosion control measures, such as installation of mulch, seeds, or other slope stability measures, be applied to burn areas. This mitigation measure will adequately reduce potentially significant impacts from erosion associated with a wildfire to a less than significant level.

EXHIBIT B



CITY OF NOVATO
CALIFORNIA



Valley Oaks
Mitigation Monitoring and Reporting Program (MMRP)
October 2023

Mitigation Monitoring and Reporting Program

This document is the Mitigation Monitoring and Reporting Program (MMRP) for the Valley Oaks Project proposed in the City of Novato. CEQA requires that a reporting or monitoring program be adopted for the conditions of project approval that are necessary to mitigate or avoid significant effects on the environment (Public Resources Code 21081.6). This MMRP is designed to ensure compliance with adopted mitigation measures during project implementation. For each mitigation measure recommended in the Initial Study-Mitigated Negative Declaration (IS-MND), specifications are made herein that identify the action required and the monitoring that must occur. In addition, a responsible agency is identified for verifying compliance with individual conditions of approval contained in this MMRP.

In addition to ensuring implementation of mitigation measures, the MMRP provides feedback to agency staff and decision-makers during project implementation and identifies the need for enforcement action before irreversible environmental damage occurs. This MMRP will be used by City staff or the City's consultant to determine compliance with permit conditions.

The following table identifies each mitigation measure included in the IS-MND, the action required for the measure to be implemented, the time at which the monitoring is to occur, the monitoring frequency, and the agency or party responsible for ensuring that the monitoring is performed. In addition, the table includes columns for compliance verification. These columns will be filled out by the monitoring agency or party and would document monitoring compliance. Where an impact was identified to be less than significant, no mitigation measures were required.

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
Air Quality							
AQ-1: Construction Equipment With Low Diesel Particulate Matter Exhaust Emissions							
<p>Implement a feasible plan to reduce DPM emissions by 65 percent such that increased cancer risk from construction would be reduced below BAAQMD significance thresholds as follows:</p> <ol style="list-style-type: none"> 1. All construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA Tier 4 emission standards for PM (PM10 and PM2.5), if feasible, otherwise, <ol style="list-style-type: none"> a) If use of Tier 4 equipment is not available, alternatively use equipment that meets U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve a 65 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; alternatively (or in combination). b) Use of electrical or non-diesel fueled equipment. 2. Alternatively, the applicant may develop another construction operations plan demonstrating that the construction equipment used on-site would achieve a 	<ul style="list-style-type: none"> ▪ Construction Operations Plan to be submitted to the City and approved by the City prior to construction. 	Prior to issuance of a demolition, grading, or construction permit	Once, and on-going as necessary	City of Novato Community Development Department – Planning Division, Developer, and On-site Construction Manager			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
<p>reduction in construction diesel particulate matter emissions by 65 percent or greater. Elements of the plan could include a combination of some of the following measures:</p> <ul style="list-style-type: none"> a) Implementation of No. 1 above to use Tier 4 or alternatively fueled equipment, b) Installation of electric power lines during early construction phases to avoid use of diesel generators and compressors, c) Use of electrically powered equipment, d) Forklifts and aerial lifts used for exterior and interior building construction shall be electric or propane/natural gas powered, e) Change in construction build-out plans to lengthen phases, and f) Implementation of different building techniques that result in less diesel equipment usage. <p>Such a construction operations plan would be subject to review by an air quality expert and approved by the City prior to construction.</p>							

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
Biological Resources							
BIO-1: Burrowing Owl Mitigation							
<p>A pre-construction survey shall be performed in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012) within 14 days of initial ground disturbance associated with the project. The pre-construction survey shall include suitable habitat within the project site and areas up to 656 feet (200 meters) from the project site. The pre-construction survey shall be conducted prior to the start of staging and construction, regardless of the time of year. If burrowing owls are detected within the project site proposed limits of grade (i.e., where ground-disturbing activities would occur) during the non-nesting season and the burrow cannot be avoided, a burrowing owl exclusion plan shall be prepared and implemented.</p> <p>The burrowing owl exclusion plan would reduce the project’s potentially significant impacts to burrowing owls to less than significant with mitigation. If a burrowing owl(s) is detected within the project site, but outside of the proposed limits of grade during the non-nesting season, vehicular traffic, construction noise and visual disturbance shall be minimized to the extent feasible to minimize the potential for flushing overwintering owls from protective burrows. Occupied burrows shall not be disturbed during the nesting season (February 1 through August 31) unless, after consultation with the CDFW, a qualified biologist verifies that either: (1) burrowing owls have not begun egg laying and incubation; or (2) that juveniles from</p>	<ul style="list-style-type: none"> ▪ Verify completion of the pre-construction survey. ▪ If burrowing owls are detected and cannot be avoided verify completion of burrowing owl exclusion plan. ▪ Verify occupied burrows are not disturbed during the nesting season (February 1 through August 31) until qualified biologist determines the owls have not begun egg laying or juveniles are foraging. 	<p>Prior to issuance of a demolition, grading, or construction permit</p> <p>Prior to issuance of a demolition, grading, or construction permit</p> <p>Ongoing throughout construction as necessary</p>	<p>Once</p> <p>Once</p>	<p>City of Novato Community Development Department – Planning Division, Developer, and On-site Construction Manager</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
the occupied burrows are foraging independently and capable of independent survival.							
BIO-2: Nesting Bird Surveys and Avoidance							
<p>To reduce potential impacts to tricolored blackbird and raptors to less-than-significant and comply with CESA, CDFW recommends revising Mitigation Measure BIO-2 as described below.</p> <p>Initiation of construction activities, including vegetation clearing, are to occur during the nesting season for birds protected under the CA Fish and Game Code and MBTA (approximately February 15 through August 31), the applicant shall retain a qualified biologist to perform pre-construction surveys for protected birds (including Tricolored Blackbirds), including nesting raptors, or the project site (including off-site improvement corridors) and in the immediate vicinity including a minimum 500 foot radius around the project site. At least two surveys shall be conducted no more than seven (7) days prior to the initiation of construction activities, another nesting bird survey shall be conducted. In the event that protected birds, including nesting raptors, are found on the Project site or within 500 feet of the Project site, the Project proponent shall:</p> <ul style="list-style-type: none"> Locate and map the location of the nest site and immediately notify CDFW if nesting tricolored blackbird or evidence of their presence is found; 	<ul style="list-style-type: none"> Verify initial ground disturbance activities, including vegetation removal, does not occur during the general avian nesting season (February 15 – August 31). If construction commences, or is to occur, during the nesting season, retain a qualified biologist to conduct preconstruction nesting bird surveys for active nests within 7 days of ground disturbance and within 500 feet of the project site and establish avoidance area buffers if necessary. Verify no ground disturbing activities occur in buffer until qualified biologist has confirmed nesting is completed and young have fledged the nest. 	<p>Prior to issuance of a demolition, grading, or construction permit</p> <p>No more than 14 days prior to vegetation clearance and site demolition work</p> <p>Ongoing throughout construction as necessary</p>	<p>Once</p> <p>Once</p> <p>As needed</p>	<p>City of Novato Community Development Department – Planning Division, Developer, and On-site Construction Manager</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
<ul style="list-style-type: none"> Establish a clearly marked minimum no-disturbance buffer of 500 feet for tricolored blackbird, and a minimum no-disturbance buffer of 250 feet for raptor species and other avian species, unless otherwise approved in writing by CDFW; Within two working days of the nesting bird surveys prepare a survey report and submit it to the City and CDFW; and Monitor any active nest daily and ensure that the no disturbance buffer is maintained, unless otherwise approved in writing by CDFW. <p>Project activities shall not occur within 500 feet of a tricolored blackbird nest without written approval from CDFW allowing the Project to proceed. The presence of nesting tricolored blackbird may require CESA consultation and an ITP before Project activities may commence.</p> <p>Construction can resume when a qualified biologist has confirmed that the birds have fledged. In the event of destruction of a nest with eggs, or if a juvenile or adult raptor should become stranded from the nest, injured or killed, the qualified biologist shall immediately notify the CDFW. The qualified biologist shall coordinate with the CDFW to have the injured raptor either transferred to a raptor recovery center or, in the case of mortality, transfer it to the CDFW within 48 hours of notification. If directed/authorized by the CDFW during the notification, the qualified biologist may transfer the injured raptors to a raptor recovery center.</p>							

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
BIO-3: Lake and Streambed Alteration Notification							
<p>The Project shall notify CDFW pursuant to Fish and Game Code section 1600 et seq. using the Environmental Permit Information Management (see: https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS) for Project activities affecting lakes or streams, associated riparian or otherwise hydrologically connected habitat, and any connected wetlands, and shall comply with the LSA Agreement, if issued. Impacts to riparian areas subject to the permitting authority of CDFW shall be mitigated by providing compensatory mitigation at a 3:1 ratio in area for permanent impacts and 1:1 ratio for temporary impacts, unless otherwise approved in writing by CDFW.</p> <p>The Project shall also obtain and comply with applicable permits from the RWQCB and USACE. Impacts to waters, which includes wetlands, subject to the permitting authority of RWQCB and USACE shall be mitigated by providing compensatory mitigation as provided in Mitigation Measure BIO – 4. A Habitat Mitigation and Monitoring Plan shall be prepared and implemented for the proposed mitigation approach. This plan shall be subject to approval by CDFW, RWQCB, and USACE, as applicable, prior to any disturbance of waters of the state, stream, or riparian habitat.</p>	<ul style="list-style-type: none"> Verify compliance with CDFW, RWQCB, and USACE requirements. 	<p>Prior to any demolition, grading, or construction that would impact lands or habitat subject to Fish and Game Code Section 1600 et seq.</p>	<p>Once, or additionally as necessary for phased projects.</p>	<p>City of Novato Community Development Department – Planning Division</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
BIO-4: Wetland Mitigation Plan							
<p>Prior to the City of Novato issuing a grading permit that would allow grading on portions of the site that would impact wetlands and/or other jurisdictional waters, the project applicant shall prepare and submit for approval a wetland mitigation plan to the U.S. Army Corp of Engineers and the CA Regional Water Quality Control Board. Any plan submitted to these agencies and approved would also need to satisfy the City of Novato’s Zoning Code requirements for a wetland management plan per the City’s Wetland Protection Ordinance. Any such approved plans shall be implemented by the project Applicant.</p> <p>The wetland mitigation plan shall include the following minimum requirements for mitigating impacts to wetlands:</p> <ul style="list-style-type: none"> ▪ Replacement of impacted wetlands at a 1:1 ratio. For permanent wetland impacts, wetlands can be replaced at a minimum ratio for one acre created for each acre, or fraction thereof, permanently impacted. ▪ Creation of in perpetuity preservation. The Corps and other regulatory agencies generally require that wetlands not impacted by the proposed project and any new wetlands created to mitigate project impacts be set aside in perpetuity, either through deed restrictions or conservation easements. ▪ Establishment of a five-year monitoring program to monitor the progress of the 	<ul style="list-style-type: none"> ▪ Verify approval of a wetland mitigation plan by the USACE and RWQCB. ▪ Verify compliance with the City’s Wetland Protection Ordinance, as applicable to the Project Site 	<p>Prior to any demolition, grading, or construction that would impact wetlands and/or other jurisdictional waters.</p> <p>Prior to any demolition, grading, or construction that would impact USACE jurisdictional waters.</p>	<p>Once, or additionally as necessary for phased projects.</p> <p>Once, or additionally as necessary for phased projects.</p>	<p>City of Novato Community Development Department – Planning Division</p> <p>City of Novato Public Works Department</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
<p>wetland mitigation toward an established goal. At the end of each monitoring year, an annual report will be submitted to the Corps, RWQCB and other resource agencies that permitted the project. This report will document the hydrological and vegetative conditions of the mitigation wetlands and will recommend remedial measures as necessary to correct deficiencies.</p> <ul style="list-style-type: none"> In lieu of creating compensation wetlands, as approved by the Corps and RWQCB, the applicant may purchase mitigation credits from an approved mitigation bank at a 1:1 ratio or as otherwise required by the Corps and RWQCB at the time permits are issued. <p>Aside from the minimum replacement ratio and in perpetuity protection, the Corps and the RWQCB may provide additional conditions and stipulations for permits which said conditions and stipulations shall be incorporated into the project and carried out by the Applicant.</p>							
BIO-5: Native Tree Mitigation Plan							
<p>Prior to the removal of any native trees or land disturbances that would adversely impact native trees, a Native Tree Mitigation Plan shall be submitted to the City for review and approval. The plan shall include the following items:</p> <ul style="list-style-type: none"> Site plan that identifies native trees proposed for removal or that would be impacted by land disturbance activities. Identification (tree species and planting location) of replacement trees at a rate of no less than 3:1 replacement ratio. 	<ul style="list-style-type: none"> Verify approval of a Native Tree Mitigation Plan 	<p>Prior to any demolition, grading, or construction that would impact native trees.</p>	<p>Once, or additionally as necessary for phased projects.</p>	<p>City of Novato Community Development Department – Planning Division</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
<p>Replacement trees shall be from stock generated from on-site resources or local gene pools for each species planted.</p> <ul style="list-style-type: none"> Planting installation details including size of plant materials, estimated height and spread at maturity, the area and type of top dressing, tree staking, and soil mix shall be included. Replacement trees shall be a 15-gallon container size or larger. Long-term management and maintenance plan with specified funding mechanism. Tree protection plan for trees not proposed for removal but would potentially be impacted by land disturbance activities. 							
Cultural Resources							
CR-1: Archaeological Monitoring							
<p>A qualified archaeological monitor shall be retained by the project Applicant to observe all project- related ground disturbing activities. Ground disturbing activities include, but are not limited to, asphalt removal, hand excavation, clearing, grubbing, and removing and/or recompacting unconsolidated soils near the ground surface. Archaeological monitoring shall be performed under the direction of an archaeologist meeting the Secretary of the Interior’s Professional Qualification Standards for archaeology (National Park Service 1983). Monitoring shall occur within limits of the</p>	<ul style="list-style-type: none"> Retain a qualified archaeologist meeting the Secretary of Interior’s Professional Qualifications Standards for archaeology to monitor all ground disturbing activities within the project site where alluvial fan deposits may be buried. Require that all work be halted within at least 60 feet if cultural artifacts are encountered and verify that a qualified archaeologist has evaluated the find. 	<p>Prior to construction and grading permit approval</p> <p>Ongoing throughout grading and excavation as necessary</p> <p>Ongoing throughout</p>	<p>Once, or additionally as necessary for phased projects.</p> <p>As needed</p>	<p>City of Novato Community Development Department – Planning Division</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification			
					Initial	Date	Comments	
<p>grading and project footprint and only where alluvial fan deposits may be buried.</p> <p>If suspected archaeological resources are encountered at any point during project construction on either project site, work within a minimum of 60 feet of the suspected resource must halt and the find evaluated for listing in the CRHR. If a resource is determined to be a tribal cultural resource, then the provisions of Mitigation Measures TCR-1 shall control. The 60-foot radius may be reduced or expanded at the discretion of the qualified archaeologist if the potential resource is not determined to be a tribal cultural resource subject to Mitigation Measures TCR-1. Archaeological monitoring may be reduced to spot-checking or eliminated at the discretion of the monitor, in consultation with the qualified archaeologist, Native American monitor required pursuant to TCR-1, and lead agency, as warranted by conditions such as encountering bedrock, sediments being excavated are fill, or negative findings during the first 60 percent of rough grading. If monitoring is reduced to spot-checking, spot-checking shall occur when ground-disturbance moves to a new location within the project sites and when ground disturbance will extend to depths not previously reached (unless those depths are within bedrock).</p>	<ul style="list-style-type: none"> Verify Mitigation Measure TCR-1 is implemented if the resources is determined to be a tribal cultural resource. Permit monitoring to be reduced to spot-checking or eliminated in consultation with the qualified archaeologist. 	<p>grading and excavation as necessary</p> <p>Ongoing throughout grading and excavation as necessary</p>	<p>As needed</p> <p>As needed</p>					
CR-2: Unanticipated Discovery of Cultural Resources								
<p>If archaeological resources are encountered during ground-disturbing activities, work within a minimum of 60 feet shall be halted and an archaeologist meeting the Secretary of the Interior’s Professional Qualification Standards</p>	<ul style="list-style-type: none"> Require all work within at least 60 feet be suspended if cultural resources is encountered during 	<p>Ongoing throughout grading and excavation work as necessary.</p>	<p>As needed</p>	<p>City of Novato Community Development Department</p>				

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
for archaeology (National Park Service 1983) shall be contacted immediately to evaluate the find. If necessary, the evaluation may require preparation of a treatment plan and archaeological testing for CRHR eligibility. If the discovery proves to be eligible for the CRHR and cannot be avoided by the project, additional work, such as data and/or heritage recovery excavation, may be required. Treatment of the resource(s) shall be determined on a case-by-case basis based on the nature of the find between the qualified archaeologist, and lead agency. If a resource is determined to be a tribal cultural resource, then the provisions of Mitigation Measures TCR-1 shall control.	<p>construction and verify findings with a qualified archaeologist.</p> <ul style="list-style-type: none"> Verify the resource has been evaluated. Implement avoidance or mitigation strategies if artifacts are found to be significant. Verify Mitigation Measure TCR-1 is implemented if the resources is determined to be a tribal cultural resource 	<p>Ongoing throughout grading and excavation work as necessary.</p> <p>Ongoing throughout grading and excavation work</p> <p>Ongoing throughout grading and excavation work</p>	<p>As needed</p> <p>As needed</p> <p>As needed</p>	– Planning Division			
Geology and Soils							
GEO-1: Geotechnical Recommendation							
The Geotechnical Exploration prepared by ENGEO (January 20, 2023, and August 22, 2023) provides recommendations that would ensure the project is suitable from a geotechnical standpoint and would increase the safety and integrity of the project. All recommendations in the Geotechnical Exploration, as described in Sections 4 through 7, shall be included as conditions of approval and shall be implemented during construction and prior to occupancy of the project. These recommendations address engineering design and construction issues associated with earthworks, foundations, retaining walls and roadway pavement.	<ul style="list-style-type: none"> Ensure that project plans and specifications incorporate all geotechnical recommendations included in the Geotechnical Exploration. 	Prior to construction and grading permit approval	Once, or additionally as necessary for phased projects.	City of Novato Community Development Department – Planning Division			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
GEO-2: Discovery of Previously Unidentified Paleontological Resources							
In the event a previously unknown paleontological resource is uncovered during construction, all work shall cease until a certified paleontologist can investigate the find(s) and make appropriate recommendations. Any artifacts uncovered shall be recorded and removed for storage at a location to be determined by the paleontologist.	<ul style="list-style-type: none"> ▪ Verify all work is suspended if a previously unknown paleontological resource is uncovered and verify findings with a certified paleontologist. ▪ Ensure that recommendations for recording and storing the find(s) are followed. 	Ongoing throughout construction as necessary	As needed	City of Novato Community Development Department – Planning Division			
		Ongoing throughout construction as necessary	As needed				
Noise							
NOI-1 Noise Control Plan							
Reasonable regulation of the hours of construction, as well as regulation of the arrival and operation of heavy equipment and the delivery of construction material, are necessary to protect the health and safety of persons, promote the general welfare of the community, and maintain the quality of life. The construction crew shall adhere to the following construction best management practices to reduce construction noise levels emanating from the site and minimize disruption and annoyance at existing noise-sensitive receptors in the project vicinity. The construction contractor shall develop a construction noise control plan, including, but not limited to, the following available controls:	<ul style="list-style-type: none"> ▪ Review the construction noise control plan. ▪ Verify that all recommendations in the plan are implemented. 	Prior to construction	Once	City of Novato Community Development Department – Planning Division			
		Prior to issuance of the respective building permit	Once				
<ul style="list-style-type: none"> ▪ Ensure that grading and equipment operations are limited to the hours of 7:00 a.m. to 6:00 p.m. on weekdays only. Construction activities, including warming 							

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
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<p>up or servicing equipment and any preparation for construction shall be limited to the hours of 7:00 a.m. to 6:00 p.m. on weekdays and to the hours of 10:00 a.m. to 5:00 p.m. on Saturdays. No construction is allowed on Sundays or official federal national holidays, except as otherwise authorized by the community development director.</p> <ul style="list-style-type: none"> ▪ Construct temporary noise barriers along the perimeter of the project site where activities would occur within 50 feet of adjoining noise-sensitive receptors when construction noise would exceed 70 dBA within the residential units (noise-sensitive receptors) with the windows and other openings closed. Temporary noise barriers (e.g., fences) should be designed to provide a five (5) dBA noise reduction by interrupting the line-of-sight between the noise source and receptor and constructing the barriers in a manner that eliminates any cracks or gaps. ▪ Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. ▪ Unnecessary idling of internal combustion engines should be strictly prohibited. ▪ Locate stationary noise-generating equipment, such as air compressors or portable power generators, as far as possible from sensitive receptors as feasible. If they must be located near receptors, adequate muffling (with enclosures where 							

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
<p>feasible and appropriate) shall be used to reduce noise levels at the adjacent sensitive receptors. Any enclosure openings or venting shall face away from sensitive receptors.</p> <ul style="list-style-type: none"> ▪ Construction staging areas shall be established at locations that will create the greatest distance between the construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction. ▪ Locate material stockpiles, as well as maintenance/equipment staging and parking areas, as far as feasible from residential receptors. ▪ Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site. ▪ Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule. 							

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					Initial	Date	Comments
NOI-2 Acoustical Study							
A detailed acoustical study shall be prepared during final building design to evaluate the potential noise generated by outdoor building mechanical equipment and demonstrate the necessary noise control to meet the City's nighttime threshold of 45 dBA Leq at the property lines of each residential lot per the requirements of the City's Municipal Code Section 19.22.070. Noise control features such as the installation and use of less noisy HVAC equipment, sound attenuators, baffles, and barriers shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 45 dBA Leq at the property line of each residence located on the project site. The noise control features identified by the study shall be incorporated into the project prior to issuance of a building permit.	<ul style="list-style-type: none"> Review the acoustical study for compliance with the City's Municipal Code Section 19.22.070 	Prior to issuance of the respective building permit	Once	City of Novato Community Development Department – Planning Division			
Tribal Cultural Resources							
TCR-1 Unanticipated Discovery of Tribal Cultural Resources							
If cultural resources of Native American origin are identified during construction of the project all earth-disturbing work in the vicinity of the find must be temporarily suspended or redirected until an archaeologist has evaluated the nature and significance of the find and an appropriate Native American representative, based on the nature of the find, is consulted. If the City determines that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and	<ul style="list-style-type: none"> Verify and approve a mitigation plan is prepared and implemented if a significant Native American cultural resource is identified. 	Ongoing throughout construction	As needed	City of Novato Community Development Department – Planning Division			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
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implemented in accordance with state guidelines and in consultation with Native American groups. The plan would include avoidance of the resource or, if avoidance of the resource is infeasible, the plan would outline the appropriate treatment of the resource in coordination with the archeologist and the appropriate Native American representative.							
Wildfire							
WF-1 Implement Post-Fire Erosion Control Plan and Application							
<p>As part of the permitting process, the project proponent shall develop a plan for immediate erosion control to be deployed in the event of a wildfire that affects slopes of 20 percent or more within the project site. The plan shall include provisions for erosion control as soon as possible after the event and shall include one or more of the following, as applicable:</p> <ol style="list-style-type: none"> 1. Install mulch to cover the soil and reduce rain drop impact, overland flow, and soil particle movement. This can be certified weed-free straw, slash, and geotextile fabrics and should be installed as quickly as possible after the fire event. 2. Apply hydro-mulch mixture of water, fiber mulch, and tackifier on burned slopes to prevent soil erosion and foster revegetation. Seed, fertilizer, or soil stabilizing polymers can also be applied with the hydro-mulch. 3. Spray seed grasses or legumes with a layer of straw mulch over seeded grasses. 	<ul style="list-style-type: none"> ▪ Ensure that an immediate erosion control plan is developed. ▪ Verify that any applicable provisions were implemented. 	<p>During permitting process</p> <p>Prior to construction</p>	<p>Once</p> <p>Once</p>	<p>City of Novato Community Development Department – Planning Division</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
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Ensure the mix of seed includes native grasses and plants with value for local wildlife.							