

PLANNING COMMISSION RESOLUTION

RESOLUTION NO. 2023-021

RESOLUTION OF THE NOVATO PLANNING COMMISSION
RECOMMENDING THE NOVATO CITY COUNCIL ADOPT A
MITIGATED NEGATIVE DECLARATION AND MITIGATION
MONITORING AND REPORTING PROGRAM FOR THE
VILLAGE AT NOVATO MIXED-USE PROJECT AT 7530
REDWOOD BOULEVARD (APNs 143-011-05 & 143-011-08)

WHEREAS, the City of Novato (“City”) received applications from Metrovation LLC (“Applicant”), representing ROIC LLC (“Property Owner”), proposing a General Plan Land Use Amendment, Zoning Map Amendment, Use Permit, Design Review, and Density Bonus for the development of the Village at Novato Mixed-Use project, which includes 178 residential units, 14,000 square feet of commercial space, and ancillary improvements (“Project”), at 7530 Redwood Boulevard, APNs 143-011-05 & 143-011-08 (“Project Site”); and

WHEREAS, the City determined that 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/Mitigated Negative Declaration (“IS/MND”) was prepared in compliance with the provisions of CEQA and the CEQA Guidelines, and the procedures set forth in City of Novato’s Environmental Review Guidelines. The Initial Study considered the Project Site and its setting and potential effects of and 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 that the Project could result in potentially significant impacts to the environment in the CEQA topical areas of: Biological Resources, Cultural Resources, Geology/Soils, Noise and Tribal Cultural Resources. 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 prepared a Mitigated Negative Declaration in compliance with CEQA, the CEQA Guidelines as promulgated by the State Secretary of Natural Resources Agency, and the procedures for review set forth in the City of Novato’s 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 IS/MND; and

WHEREAS, on August 27, 2020, the Applicant hosted a neighborhood meeting to present the Project and to receive feedback from the public. This meeting was noticed and conducted in accordance with the requirements of Novato Zoning Ordinance Section 19.40.070.D; and

WHEREAS, on October 7, 2020, the Novato Design Review Commission conducted a publicly noticed workshop to review the site design, circulation, building massing, architectural design and landscaping proposed for the Project; and

WHEREAS, on May 19, 2021, the Novato Design Review Commission adopted a motion recommending the Planning Commission and City Council approve the Project's site design, circulation, building massing, architectural design and landscaping; and

WHEREAS, a notice of intent to adopt a Mitigated Negative Declaration for the Project and announcing a 30-day public review period beginning on November 9, 2023 and ending on December 11, 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 a notice pursuant to Section 19.58.020 of the Novato Municipal Code, CEQA, the CEQA Guidelines, and published in the Marin Independent Journal, a newspaper of local circulation on November 9, 2023; 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 a notice pursuant to Section 19.58.020 of the Novato Municipal Code, and published in the Marin Independent Journal, a newspaper of local circulation, on December 1, 2023; and

WHEREAS, the Planning Commission held a duly noticed public hearing on December 11, 2023, and considered all oral and written comments on the Mitigated Negative Declaration, Mitigation Monitoring and Reporting Program, its accompanying Initial Study, and the Project.

NOW, THEREFORE, BE IT RESOLVED, the Planning Commission does hereby recommend that the City Council adopt a Mitigated Negative Declaration for the Project based on the following findings:

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 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) Novato General Plan 2035 and its certified final EIR ("EIR"), the Novato 2023-2031 Housing Element, and the Novato Municipal Code, (5) all designs, plans, studies, data and correspondence submitted to the City in connection with the Project, (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 requires, and (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 of Novato 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 November 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 Section 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 hearing before the public, reviewed and considered the information contained in the IS/MND prior to making a recommendation to the City Council regarding the Project; and
- c. The IS/MND reflects the City’s independent judgement and analysis as Lead Agency.

Section 3. CEQA Findings

The Planning Commission hereby adopts and recommends the City Council adopt the IS/MND dated November 2023, and based thereon and on the Record as a whole, the Planning Commission hereby finds and recommends that 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 by reference, the Planning Commission finds, determines and recommends the City Council find and determine that the Project will not have a significant effect upon the environment.

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, property owner and any successor(s) in interest, whether in whole or in part, 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 decision(s) at issue herein. This indemnification shall include damages or fees awarded against the City, if any, costs of suit, attorney's fees, and other costs and expenses incurred in connection with such action whether incurred by the Applicant, the City, and/or parties initiating or bringing such action.
- b. The Applicant, property owner and any successor(s) in interest, whether in whole or in part, shall defend, indemnify, and hold harmless the City, its agents, employees, and attorneys for all costs incurred in additional investigation of or study of, or for supplementing, preparing, redrafting, revising, or amending any document, if made necessary by said legal action and the Applicant desires to pursue securing such approvals, after initiation of such litigation, 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 above is brought, the City shall promptly notify the Applicant, property owner, and/or any successor(s) in interest 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, property owner, and/or any successor(s) in interest in the defense of said claim, action, or proceeding. If the City chooses to have counsel of its own to defend any claim, action, or proceeding where the developer 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, property owner and/or any successor(s) in interest.
- d. The Applicant, property owner and any successor(s) in interest, whether in whole or in part, 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 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 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 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 11th day of December 2023, by the following vote:

AYES: Commissioners Crockett, Dawson, Derby, Engdahl, Havel, 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 11th day of December 2023.

Lia Heath

Chair Lia Heath

Attachments

Exhibit A – Initial Study/Mitigated Negative Declaration Statement of CEQA Findings and Facts

Exhibit B – Village at Novato Mitigation Monitoring and Reporting Program

Project Reference No.: P2020-037, P2021-040, P2021-041 & P2021-042

EXHIBIT A

VILLAGE AT NOVATO MIXED-USE PROJECT

STATEMENT OF CEQA FINDINGS AND FACT

The California Environmental Quality Act (“CEQA”) requires that if an Initial Study/Mitigated Negative Declaration (“IS/MND”) identifies one or more potentially significant environmental effects for a proposed project that 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 that describes 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 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. Biological Resources Impact:** Construction activities, if occurring during nesting season (February 1st – September 15th), have the potential to impact nests of the native nesting birds or lead to the abandonment of active nests by causing auditory, vibratory and/or visual disturbance. Therefore, the Project would have potentially significant impacts related to nesting birds, and implementation of Mitigation Measure BIO-1 would be required. *(IS/MND Section 4, Biological Resources)*

Construction of the Project would result in filling and grading of the ephemeral stream/ditch features on-site, which would result in approximately 0.03 acre of impact to State and Federally protected waters. Therefore, with obtainment of the applicable aquatic resources permits, and implementation of Mitigation Measure BIO-2 requiring compensatory mitigation, impacts to State and federally protected waters would be reduced to less than significant. *(IS/MND Section 4, Biological Resources)*

Finding: Based on the Record, the Planning Commission finds that changes or alterations that have been required in, or incorporated into, the Project which will avoid or substantially lessen the potentially significant environmental impact related to the disturbance of nesting birds by implementation of the Mitigation Measure BIO-1 and impacts to the ephemeral stream/ditch features on-site by implementation of Mitigation Measure BIO-2 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 nesting birds during construction of the Project. Mitigation Measure BIO-1 requires pre-construction surveys for nesting birds within or immediately adjacent to the Project Site no more than 14-days prior to the commencement of construction or grading activities. Mitigation Measure BIO-1 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 a qualified biologist has determined that all young birds have fledged and are independent of the nest.

Mitigation Measure BIO-2 has been proposed in the IS/MND to offset impacts to the ephemeral stream/ditch in the Project Site by requiring compensatory mitigation for loss of aquatic resources at an off-site agency approved mitigation bank.

- B. Cultural Resources Impact:** The Project Site is considered sensitive for containing subsurface archaeological resources due to general proximity to previously recorded archaeological resources, proximity to Novato Creek, and general proximity to a previously recorded Native American village. Additionally, the alluvial soils below the top one to five feet of fill have higher sensitivity for containing in context subsurface archaeological resources due to the episodic nature of alluvial sedimentation. Thus, archaeological sensitivity is limited to below the initial top-fill layer, within the alluvial sediments. Adherence to Mitigation Measures TCR-1 and TCR-2 and to the following mitigation measures for a Worker's Environmental Awareness Program (CUL-1), Discovery and Treatment Plan (CUL-2), archaeological monitoring (CUL-3), and unanticipated discoveries during construction (CUL-4) would reduce project impacts to archaeological and cultural resources to less than significant levels under CEQA. (*IS/MND Section 5, Cultural Resources*)

Finding: Based on the Record, the Planning Commission finds that changes or alterations that 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 by implementation of the Mitigation Measures TCR-1, TCR-2, CUL-1, CUL-2, CUL-3 and CUL-4 as identified in the IS/MND.

Facts in Support of Finding: Please see the discussion below under the Facts in Support portion of the Tribal Cultural Resources Impact section for information relevant to Mitigation Measures TCR-1 and TCR-2.

Mitigation Measures CUL-1, CUL-2, CUL-3 and CUL-4 have been proposed in the IS/MND to reduce and/or avoid the Project's potential to ensure the protection of archaeological resources which could be impacted due to the construction of the Project:

CUL-1 (Worker's Environmental Awareness Program): The Applicant shall conduct a Worker's Environmental Awareness Program for all Project personnel working in the Project Site. The City shall retain a qualified archaeologist who meets the Secretary of Interior's Professional Qualification Standards for archaeology (National Park Service

1983) to conduct a training for all construction personnel on archaeological sensitivity prior to the commencement of any Project work activities. The Worker's Environmental Awareness Program training will include a description of the types of cultural material that may be encountered, cultural sensitivity issues, the regulatory environment, and the proper protocol for treatment of the materials in the event of a find.

CUL-2 Discovery and Treatment Plan. Prior to the start of construction, the Applicant shall ensure a Discovery and Treatment Plan (Plan) is completed specific to this Project. The Applicant shall retain a qualified archaeologist who meets the Secretary of Interior's Professional Qualification Standards for archaeology (National Park Service 1983) to prepare a Plan. The Plan will be prepared in consultation with the Federated Indians of Graton Rancheria and the City and shall be implemented in the event of an unanticipated discovery of Tribal cultural resources or human remains during construction. The Plan shall include City of Novato ordinance 4.7-3(b) regarding archaeological resources and is subject to review and acceptance by the City of Novato. The Plan will discuss the methodology and procedures to be undertaken should cultural resources or human remains be identified during Project activities. The Plan shall include, at minimum, an overview of background context, a description of potential discoveries/cultural resources, protocols to be followed (including suspension of all earth-disturbing work in the vicinity of the find), appropriate treatment methods, a timeline of notification, guidance on significance evaluation, and reporting requirements.

CUL-3 Archaeological Monitoring. Archaeological monitoring of Project-related ground-disturbing activities shall be conducted by a qualified archaeologist. Archaeological monitoring should be performed under the direction of an archaeologist meeting the Secretary of the Interior's Professional Qualification Standards for archaeology (National Park Service 1983). Monitors will have the authority to halt and redirect work should any archaeological resources be identified during monitoring. If archaeological resources are encountered during ground-disturbing activities, work in the immediate area must halt and the find evaluated for listing in the CRHR in accordance with the Plan detailed in CUL-2. Archaeological monitoring may be reduced to spot-checking or eliminated at the discretion of the monitors, in consultation with the lead agency, as warranted by conditions such as encountering bedrock, or sediments being excavated are fill. If monitoring is reduced to spot-checking, spot-checking shall occur when ground-disturbance moves to a new location within the Project Site and when ground disturbance will extend to depths not previously reached (unless those depths are in bedrock).

CUL-4 Unanticipated Discovery of Cultural Resources. In the event that archaeological resources are unexpectedly encountered during ground-disturbing activities, work within the immediate vicinity of the find shall halt and an archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards for archaeology (National Park Service 1983) shall be contacted immediately to evaluate the resource in accordance with the Discovery and Treatment Plan. If the resource is determined by the qualified archaeologist to be prehistoric, then a Native American representative shall also be contacted to participate in the evaluation of the resource. If the qualified archaeologist and/or Native American representative determines it to be appropriate, archaeological testing for CRHR

eligibility shall be completed if the resource cannot be avoided. If the resource is eligible for the CRHR and significant impacts to the resource cannot be avoided via Project redesign, a qualified archaeologist shall prepare a data recovery plan tailored to the physical nature and characteristics of the resource, per the requirements of the California Code of Regulations (CCR) Guidelines Section 15126.4(b)(3)(C) and any relevant protocols included in the Discovery and Treatment Plan prepared for this Project. The data recovery plan shall identify data recovery excavation methods, measurable objectives, and data thresholds to reduce any significant impacts to cultural resources related to the resource. Pursuant to the data recovery plan, the qualified archaeologist and Native American representative, as appropriate, shall recover and document the scientifically consequential information that justifies the resource's significance. The City shall review and approve any data recovery plan as appropriate, and the resulting documentation shall be submitted to the regional repository of the California Historical Resources Information System, per CCR Guidelines Section 15126.4(b)(3)(C).

Mitigation Measures CUL-1, CUL-2, CUL-3 and CUL-4 have been proposed in the IS/MND to reduce Project impacts to archaeological resources.

- C. **Geology/Soils Impact:** As the Project Site is located in a low sensitivity geologic unit, the Project is unlikely to encounter paleontological resources. However, the possibility exists that construction may uncover previously undiscovered paleontological resources. Impacts would be less than significant with incorporation of Mitigation Measure GEO-1. (*IS/MND Section 7, Geology and Soils*)

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

Facts in Support of Finding: Mitigation Measure GEO-1 has been proposed in the IS/MND to ensure the protection of paleontological resources which could be impacted due to the construction of the Project through the implementation of the following measures during ground disturbing activities:

- **Paleontological Worker Environmental Awareness Program.** Prior to the start of construction, a Qualified Professional Paleontologist (as defined by SVP [2010]) or their designee shall conduct a paleontological Worker Environmental Awareness Program (WEAP) training for construction personnel regarding the appearance of fossils and the procedures for notifying paleontological staff should fossils be discovered by construction staff.
- **Unanticipated Discovery of Paleontological Resources.** In the event a fossil is discovered during construction of the Project, excavations within 50 feet of the find shall be temporarily halted or delayed until the discovery is examined by a Qualified Professional Paleontologist. The Project Applicant shall include a standard inadvertent

discovery clause in every construction contract to inform contractors of this requirement. If the find is determined to be significant, the Applicant shall retain a Qualified Professional Paleontologist to direct all mitigation measures related to paleontological resources. The Qualified Professional Paleontologist shall design and carry out a data recovery plan consistent with the SVP (2010) standards.

Implementation of Mitigation Measure GEO-1 requires a paleontological Worker Environmental Awareness Program training and implementation of measures in the event paleontological resources are encountered. Should such resources be discovered, they would be salvaged, evaluated for significance, and curated in a scientific institution, if appropriate. Therefore, Mitigation Measure GEO-1 would reduce Project impacts to paleontological resources to a less-than-significant level.

- D. Noise Impact:** The primary source of on-site operational noise from the Project would be heating, ventilation, and air conditioning equipment (HVAC) equipment. Noise levels generated by a five-ton HVAC equipment system can reach up to 70 dBA L_{eq} at a distance of five feet from the source (Illingworth & Rodkin, Inc. 2009). Assuming approximately one ton of cooling capacity would be required for every 600 square feet, the Project would require approximately 77 five-ton units. HVAC equipment would mostly be located on the rooftop of the proposed buildings. The Project which will avoid or substantially lessen the potentially significant environmental impact related to adversely impacting noise by implementation of the Mitigation Measure NOI-1 as identified in the IS/MND. (*IS/MND Section 13, Noise*)

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

Facts in Support of Finding: Mitigation Measure NOI-1 has been proposed in the IS/MND to ensure that the Project will reduce HVAC related equipment noise through the use of noise control measures such as, but not limited to:

- Mechanical equipment screening (e.g., parapet walls of sufficient height to block line of sight)
- Equipment setbacks
- Silencers
- Acoustical louvers
- Other sound attenuation devices as made available

If a method other than mechanical equipment screening (e.g., parapet walls) is chosen, a project-specific design plan demonstrating that the noise level from operation of HVAC units would not generate noise levels that exceed 45 dBA L_{eq} at noise-sensitive receivers shall be completed.

Generally, blocking the line of sight from a noise source to a receiver will provide at least a 5 dBA reduction in source noise levels at the receiver (FHWA 2011). Therefore, with the implementation of Mitigation Measure NOI-1, operational HVAC noise levels would be reduced to below 45 dBA L_{eq} at adjacent exterior use areas of noise-sensitive receivers. Impacts would be less than significant with mitigation.

- E. Tribal Cultural Resources Impacts:** During consultation meetings conducted between the City and FIGR, FIGR identified the Project Site as a tribal cultural resource. The Project Site is not listed on nor eligible for inclusion in the CRHR, or in a local register as defined in Public Resources Code Section 5020.1(k). Resource TJ-1 and the area identified as sensitive during the canine detection survey, discussed further in Section 5, Cultural Resources, are not eligible for inclusion in the CRHR or local register. Further, the City concluded, in its discretion and based on a lack of substantial evidence, that there is not a known significant tribal cultural resource within the property. There is however always potential to uncover buried tribal cultural resources during ground disturbing activities, such as the excavation and grading that would be required for Project construction. Should Project construction activities encounter and damage or destroy a Tribal Cultural Resource, impacts would be potentially significant. Implementation of Mitigation Measure TCR-1 for an environmentally sensitive area consistent with Public Resources Code (PRC) Section 21084.3(b), described below, and Mitigation Measure CUL-1 through Mitigation Measure CUL-4 outlined in Section 5, Cultural Resources, above, would ensure that potential impacts to tribal cultural resources would be reduced to a less than significant level. *(IS/MND Section 18, Tribal Cultural Resources)*

Finding: Based on the Record, the Planning Commission finds that changes or alterations that have been required in, or incorporated into, the Project which will avoid or substantially lessen the potentially significant environmental impact related to adversely impacting tribal cultural resources by implementation of the Mitigation Measures TCR-1, TCR-2, CUL-1, CUL-2, CUL-3 and CUL-4 as identified in the IS/MND.

Facts in Support of Finding: Mitigation Measures TCR-1 and TCR-2 have been proposed in the IS/MND to reduce and/or avoid the Project's potential to ensure the protection of tribal cultural resources which could be impacted due to the construction of the Project:

TCR-1 Environmentally Sensitive Area Delineation (ESA). An ESA shall be delineated around the area determined sensitive by the canine detection survey conducted on February 21, 2023, inclusive of an 8-foot buffer to account for the canine survey's margin of error. The ESA shall be marked with high visibility material to prevent any unauthorized construction equipment and/or personnel from disturbing the area. To ensure confidentiality, no specific identification will be made other than where the area is environmentally sensitive. Avoiding any ground disturbing work within the ESA as feasible, is the preferred option. One of the two following options shall be selected:

- 1) *Preferred Option:* The site plan shall be modified to establish the ESA as an undisturbed landscape element, avoiding any excavation work within all areas of the ESA. Any excavation within 25-feet of the ESA shall be limited to constructing

necessary for emergency vehicular access and circulation and shall be monitored by a qualified archaeologist and locally affiliated Native American monitor. If human remains and/or associated funerary items are identified, they shall be retained, treated, and repatriated as specified in Mitigation Measure CUL-2 (Discovery and Treatment Plan) and following NAGPRA guidelines. No further site treatment or investigations are required for areas left undisturbed or where only fill materials are imported for ground cover and no excavation occurs.

- 2) *Alternate Option:* No modifications made to the site plan, and all ground disturbing work conducted within the ESA (such as excavation) shall be done with manual equipment and monitored by a qualified archaeologist and locally affiliated Native American monitor. Soils subject to disturbance within the ESA shall be screened through a 1/8" mesh by a qualified archaeologist to confirm the presence/absence of any cultural resources, including fragmented human remains. If human remains and/or associated funerary items are identified, they shall be collected, treated, and repatriated as specified in Mitigation Measure CUL-2 (Discovery and Treatment Plan) and following NAGPRA guidelines. No further site treatment or investigations are required for areas left undisturbed or where only fill materials are imported for ground cover and no excavation occurs.

TCR-2 Native American Monitoring. Native American monitoring of Project-related ground-disturbing activities shall be conducted by a local Native American consultant. Native American monitoring should be provided by a locally affiliated tribe. Monitors will have the authority to halt and redirect work should any tribal cultural resources be identified during monitoring. If tribal cultural resources are encountered during ground-disturbing activities, work in the immediate area must halt and the find evaluated for listing in the CRHR. Native American monitoring may be reduced to spot-checking or eliminated at the discretion of the monitors, in consultation with the lead agency, as warranted by conditions such as encountering bedrock, or sediments being excavated are fill. If monitoring is reduced to spot-checking, spot-checking shall occur when ground-disturbance moves to a new location within the project site and when ground disturbance will extend to depths not previously reached (unless those depths are in bedrock).

Mitigation Measures TCR-1 and TCR-2 have been proposed in the IS/MND to reduce Project impacts to tribal cultural resources.

EXHIBIT B

VILLAGE AT NOVATO MIXED-USE PROJECT MITIGATION MONITORING AND REPORTING PROGRAM

The Initial Study-Mitigated Negative Declaration (IS-MND) for the Village at Novato Mixed-Use Project (project) identifies the mitigation measures required to reduce the environmental impacts associated with the project. The California Environmental Quality Act (CEQA) requires a public agency to adopt a monitoring and reporting program for assessing and ensuring compliance with any required mitigation measures applied to proposed development. As stated in Section 21081.6(a)(1) of the Public Resources Code:

“the public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment.”

Section 21081.6 also provides general guidelines for implementing mitigation monitoring programs and indicates that specific reporting and/or monitoring requirements, to be enforced during project implementation, shall be defined as part of making findings or adopting a mitigated negative declaration. The mitigation monitoring table lists the identified mitigation measures for the project. To ensure that the mitigation measures are properly implemented, a monitoring program has been devised which identifies the timing and responsibility for monitoring each measure. The first column, “Mitigation Measure”, identifies mitigation measures that were identified in the IS-MND. The second column, “Action Required,” refers to the monitoring action that must be taken to ensure the implementation of the mitigation measure. The third column, “Timing,” refers to when the monitoring will occur to ensure that the mitigation action is complete. The fourth column, “Frequency”, refers to how often the mitigation will be implemented. The fifth column, “Responsibility,” refers to the agency responsible for oversight or ensuring that the mitigation measure is implemented. The remaining “Compliance Verification” columns are where the City verifies that the measures have been implemented.

Mitigation Measure	Action Required	Timing	Frequency	Responsibility	Compliance Verification		
					Initial	Date	Comments
Biological Resources							
BIO-1 Nesting Bird Avoidance and Minimization Measures							
<p>The following avoidance and minimization measures shall be implemented during project construction activities:</p> <ul style="list-style-type: none"> ▪ Initial site disturbance should occur outside the general avian nesting season (February 1 through September 15), if feasible. ▪ If initial site disturbance occurs in a work area within the general avian nesting season indicated above, a qualified biologist shall conduct a pre-construction nesting bird survey no more than 14 days prior to initial disturbances in the work area. The survey shall include the entire area of disturbance area plus a 50-foot buffer (relevant to non-raptor species) and 300-foot buffer (relevant to raptors) around the site. If active nests are located, all construction work shall be conducted outside a buffer zone from the nest to be determined by the qualified biologist. The buffer should be a minimum of 50 feet for non-raptor bird species and at least 300 feet for raptor species. Larger buffers may be required and/or smaller buffers may be established depending upon the species, status of the nest, 	<ul style="list-style-type: none"> • Confirm initial ground disturbance occurs outside of February 1 through September 15. • If initial ground disturbance occurs during February 1 through September 15, confirm a qualified biologist has been retained to conduct a nesting bird and raptor pre-construction survey in the disturbance footprint and buffer area. • If there is a break in ground disturbance greater than two weeks, confirm a qualified biologist is retained to conduct a subsequent pre-construction survey. • Confirm a report of the nesting bird and raptor survey results is submitted to the City. • If nests are found during the pre-construction survey, confirm the locations are flagged and mapped, and confirm avoidance buffers are established. • Confirm that all construction work is conducted outside the established avoidance buffers. 	<ul style="list-style-type: none"> • Prior to construction: Confirm initial ground disturbance timing; confirm retention of qualified biologist for pre-construction surveys, confirm a report detailing results of the nesting bird and raptor surveys is submitted to the City (prior to grading activities), confirm identified nests are flagged and mapped, confirm avoidance buffers are established. • During construction: confirm retention of qualified biologist for on-site monitoring, if required. 	<p>Once: confirm construction start date; confirm retention of biologist; confirm pre-construction survey is completed, and as needed if there is an extended break in ground disturbance; confirm survey results report is submitted; confirm identified nests are flagged and mapped; confirm retention of biologist for on-site monitoring, if required.</p>	<p>City of Novato Community Development Department</p>			

Mitigation Measure	Action Required	Timing	Frequency	Responsibility	Compliance Verification		
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<p>and construction activities occurring in the vicinity of the nest. The buffer area(s) shall be closed to all construction personnel and equipment until the adults and young are no longer reliant on the nest site. A qualified biologist shall confirm that breeding/nesting is completed and young have fledged the nest prior to removal of the buffer.</p> <ul style="list-style-type: none"> If construction activities in a given work area cease for more than 14 days, additional surveys shall be conducted for the work area. If active nests are located, the aforementioned buffer zone measures shall be implemented. 							
BIO-2 Compensatory Mitigation							
Impacts to jurisdictional aquatic features shall be offset through purchase of wetland/waters mitigation credits at a USACE, RWQCB, and/or CDFW-approved mitigation bank for creation or enhancement of wetlands at a minimum 1:1 ratio. Additional mitigation may be required under agency permits.	Ensure that wetland/water mitigation credits are purchased, or enhancement of wetlands occurs at a minimum 1:1 ratio.	Prior to construction activities.	Once prior to construction activities then periodically, as needed.	City of Novato Community Development Department USACE RWQCB			
Cultural Resources							
CUL-1 Worker's Environmental Awareness Program							
The applicant shall conduct a Worker's Environmental Awareness Program for all project personnel working in the project site. The City shall retain a qualified archaeologist who meets the Secretary of Interior's <i>Professional Qualification Standards</i> for archaeology	Confirm the applicant conducts a Worker's Environmental Awareness Program.	Prior to the start of construction activities.	Once prior to construction.	City of Novato Community Development Department			

Mitigation Measure	Action Required	Timing	Frequency	Responsibility	Compliance Verification		
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<p>(National Park Service 1983) to conduct a training for all construction personnel on archaeological sensitivity prior to the commencement of any project work activities. The Worker’s Environmental Awareness Program training will include a description of the types of cultural material that may be encountered, cultural sensitivity issues, the regulatory environment, and the proper protocol for treatment of the materials in the event of a find.</p>							
<p>CUL-2 Discovery and Treatment Plan</p>							
<p>Prior to the start of construction, the applicant shall ensure a Discovery and Treatment Plan (Plan) is completed specific to this project. The applicant shall retain a qualified archaeologist who meets the Secretary of Interior’s <i>Professional Qualification Standards</i> for archaeology (National Park Service 1983) to prepare a Plan. The Plan will be prepared in consultation with the Federated Indians of Graton Rancheria and the City and shall be implemented in the event of an unanticipated discovery of Tribal cultural resources or human remains during construction. The Plan shall include City of Novato ordinance 4.7-3(b) regarding archaeological resources and is subject to review and acceptance by the City of Novato. The plan will discuss the methodology and procedures to be undertaken should cultural resources or human remains be identified during project activities. The Plan shall include, at minimum, an overview of background context, a description of potential discoveries/cultural resources, protocols to be followed (including suspension of</p>	<p>Confirm the applicant conducts a Worker’s Environmental Awareness Program.</p>	<ul style="list-style-type: none"> • Confirm plan prior to the start of construction. • Confirm plan adheres to City policies and regulations. 	<p>Once prior to construction.</p>	<p>City of Novato Community Development Department Federated Indians of Graton Rancheria</p>			

Mitigation Measure	Action Required	Timing	Frequency	Responsibility	Compliance Verification		
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all earth-disturbing work in the vicinity of the find), appropriate treatment methods, a timeline of notification, guidance on significance evaluation, and reporting requirements.							
CUL-3 Archaeological Monitoring							
Archaeological monitoring of project-related ground-disturbing activities shall be conducted by a qualified archaeologist. Archaeological monitoring should be performed under the direction of an archaeologist meeting the Secretary of the Interior’s <i>Professional Qualification Standards</i> for archaeology (National Park Service 1983). Monitors will have the authority to halt and redirect work should any archaeological resources be identified during monitoring. If archaeological resources are encountered during ground-disturbing activities, work in the immediate area must halt and the find evaluated for listing in the CRHR in accordance with the Plan detailed in CUL-2. Archaeological monitoring may be reduced to spot-checking or eliminated at the discretion of the monitors, in consultation with the lead agency, as warranted by conditions such as encountering bedrock, or sediments being excavated are fill. If monitoring is reduced to spot-checking, spot-checking shall occur when ground-disturbance moves to a new location within the project site and when ground disturbance will extend to depths not previously reached (unless those depths are in bedrock).	<ul style="list-style-type: none"> • Confirm an archaeological monitor is present during all ground-disturbing activities. • Ensure work is halted if any archaeological resources are identified during project construction, until the resource can be evaluated by a qualified archaeologist. 	During ground disturbing activities.	As needed during the duration of ground-disturbing construction activities.	City of Novato Community Development Department			
CUL-4 Unanticipated Discovery of Cultural Resources							

Mitigation Measure	Action Required	Timing	Frequency	Responsibility	Compliance Verification		
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<p>In the event that archaeological resources are unexpectedly encountered during ground-disturbing activities, work within the immediate vicinity of the find shall halt and an archaeologist meeting the Secretary of the Interior’s Professional Qualifications Standards for archaeology (National Park Service 1983) shall be contacted immediately to evaluate the resource in accordance with the treatment plan. If the resource is determined by the qualified archaeologist to be prehistoric, then a Native American representative shall also be contacted to participate in the evaluation of the resource. If the qualified archaeologist and/or Native American representative determines it to be appropriate, archaeological testing for CRHR eligibility shall be completed if the resource cannot be avoided. If the resource is eligible for the CRHR and significant impacts to the resource cannot be avoided via project redesign, a qualified archaeologist shall prepare a data recovery plan tailored to the physical nature and characteristics of the resource, per the requirements of the California Code of Regulations (CCR) Guidelines Section 15126.4(b)(3)(C) and any relevant protocols included in the Discovery and Treatment Plan, prepared for this project. The data recovery plan shall identify data recovery excavation methods, measurable objectives, and data thresholds to reduce any significant impacts to cultural resources related to the resource. Pursuant to the data recovery plan, the qualified archaeologist and Native American representative, as appropriate, shall recover and document the scientifically</p>	<ul style="list-style-type: none"> Confirm work is halted if any archaeological resources are identified during project construction, until the resource can be evaluated by a qualified archaeologist and the Native American monitor. Ensure that all identified prehistoric resources are also evaluated by a Native American representative. 	<ul style="list-style-type: none"> Confirm work is halted if a resource is identified and evaluated during construction. Confirm prehistoric resources are evaluated by a Native American monitor following discovery. 	As needed during construction.	City of Novato Community Development Department			

Mitigation Measure	Action Required	Timing	Frequency	Responsibility	Compliance Verification		
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consequential information that justifies the resource's significance. The City shall review and approve any data recovery plan as appropriate, and the resulting documentation shall be submitted to the regional repository of the California Historical Resources Information System, per CCR Guidelines Section 15126.4(b)(3)(C).							
Geology and Soils							
GEO-1 Discovery of Previously Unidentified Paleontological Resources							
<p>The following measures than be implemented during ground disturbing activities:</p> <p>Paleontological Worker Environmental Awareness Program. Prior to the start of construction, a Qualified Professional Paleontologist (as defined by SVP [2010]) or their designee shall conduct a paleontological Worker Environmental Awareness Program (WEAP) training for construction personnel regarding the appearance of fossils and the procedures for notifying paleontological staff should fossils be discovered by construction staff.</p> <p>Unanticipated Discovery of Paleontological Resources. In the event a fossil is discovered during construction of the project, excavations within 50 feet of the find shall be temporarily halted or delayed until the discovery is examined by a Qualified Professional Paleontologist. The project applicant shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. If the find is determined to be significant, the applicant shall retain a Qualified Professional Paleontologist to</p>	<ul style="list-style-type: none"> • Confirm the applicant conducts a Paleontological Worker's Environmental Awareness Program. • Confirm work is halted if any paleontological resources are identified during project construction, until the resource can be evaluated by a qualified paleontologist. • Confirm any paleontological resource discovered during construction is examined by a Qualified Professional Paleontologist and mitigated appropriately. • Confirm project applicant shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. 	<ul style="list-style-type: none"> • Confirm WEAP has been conducted. • Confirm work is halted if a resource is identified and evaluated during construction. • Confirm any identified paleontological resources are examined by a Qualified Professional Paleontologist and mitigated appropriately. • Confirm project applicant shall include a standard inadvertent discovery clause in every construction contract. 	<p>Prior to the start of construction activities and then as needed during construction.</p>	<p>City of Novato Community Development Department</p>			

Mitigation Measure	Action Required	Timing	Frequency	Responsibility	Compliance Verification		
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direct all mitigation measures related to paleontological resources. The Qualified Professional Paleontologist shall design and carry out a data recovery plan consistent with the SVP (2010) standards.							
Noise							
NOI-1 HVAC Noise Reduction							
The project applicant shall reduce HVAC equipment noise levels at noise-sensitive uses through noise control measures such as, but not limited to: <ul style="list-style-type: none"> • Mechanical equipment screening (e.g., parapet walls of sufficient height to block line of sight) • Equipment setbacks • Silencers • Acoustical louvers • And other sound attenuation devices as made available If a method other than mechanical equipment screening (e.g., parapet walls) is chosen, a project-specific design plan demonstrating that the noise level from operation of HVAC units would not generate noise levels that exceed 45 dBA L_{eq} at noise-sensitive receivers shall be completed.	Confirm applicant includes HVAC noise control measures in project-specific design plan.	Prior to project approval.	Once	City of Novato Community Development Department			
Tribal Cultural Resources							
TCR-1 Environmentally Sensitive Area Delineation (ESA)							
An ESA shall be delineated around the area determined sensitive by the canine detection survey conducted on February 21, 2023 inclusive of an 8-foot buffer to account for the canine survey's margin of error. The ESA shall be marked with high visibility material to prevent any unauthorized construction equipment	<ul style="list-style-type: none"> • Confirm an ESA is delineated with an 8-foot buffer around the site survey area. • Confirm ESA is marked with high visibility material to prevent any unauthorized construction equipment. 	Confirm ESA prior to the start of ground disturbing activities.	As needed during construction.	City of Novato Community Development Department			

Mitigation Measure	Action Required	Timing	Frequency	Responsibility	Compliance Verification		
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<p>and/or personnel from disturbing the area. To ensure confidentiality, no specific identification will be made other than where the area is environmentally sensitive. Avoiding any ground disturbing work within the ESA as feasible, is the preferred option. One of the two following options shall be selected:</p> <p>1) Preferred Option. The site plan shall be modified to establish the ESA as an undisturbed landscape element, avoiding any excavation work within all areas of the ESA. Any excavation within 25-feet of the ESA shall be limited to constructing necessary for emergency vehicular access and circulation and shall be monitored by a qualified archaeologist and locally affiliated Native American monitor. If human remains and/or associated funerary items are identified, they shall be retained, treated, and repatriated as specified in Mitigation Measure CUL-2 (Discovery and Treatment Plan) and following NAGPRA guidelines. No further site treatment or investigations are required for areas left undisturbed or where only fill materials are imported for ground cover and no excavation occurs.</p> <p>2) Alternate Option. No modifications made to the site plan, and all ground disturbing work conducted within the ESA (such as excavation) shall be done with manual equipment and monitored by a qualified archaeologist and locally</p>	<ul style="list-style-type: none"> Ensure groundwork is avoided within the ESA, as feasible through the preferred or alternate option. 						

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<p>affiliated Native American monitor. Soils subject to disturbance within the ESA shall be screened through a 1/8" mesh by a qualified archaeologist to confirm the presence/absence of any cultural resources, including fragmented human remains. If human remains and/or associated funerary items are identified, they shall be collected, treated, and repatriated as specified in Mitigation Measure CUL-2 (Discovery and Treatment Plan) and following NAGPRA guidelines. No further site treatment or investigations are required for areas left undisturbed or where only fill materials are imported for ground cover and no excavation occurs.</p>							
<p>TCR-2 Native American Monitoring</p>							
<p>Native American monitoring of project-related ground-disturbing activities shall be conducted by a local Native American consultant. Native American monitoring should be provided by a locally affiliated tribe. Monitors will have the authority to halt and redirect work should any tribal cultural resources be identified during monitoring. If tribal cultural resources are encountered during ground-disturbing activities, work in the immediate area must halt and the find evaluated for listing in the CRHR. Native American monitoring may be reduced to spot-checking or eliminated at the discretion of the monitors, in consultation with the lead agency, as warranted by conditions such as encountering bedrock, or sediments being excavated are fill. If monitoring is</p>	<ul style="list-style-type: none"> • Confirm a Native American monitor is present for all ground disturbing activities. • Confirm work is halted, if required by monitor, if any identified cultural resource of Native American origin during construction, until the resource can be evaluated by a local Native American representative. 	<ul style="list-style-type: none"> • Confirm a Native American monitor is present for all ground disturbing activities. • Confirm work is halted if a cultural resource of Native American origin is identified during construction. • Confirm a mitigation plan is prepared and implemented following determination that a discovery is a 	<p>As needed during construction.</p>	<p>City of Novato Community Development Department</p>			

Mitigation Measure	Action Required	Timing	Frequency	Responsibility	Compliance Verification		
					Initial	Date	Comments
reduced to spot-checking, spot-checking shall occur when ground-disturbance moves to a new location within the project site and when ground disturbance will extend to depths not previously reached (unless those depths are in bedrock).		tribal cultural resource.					