

ORIGINAL

CITY COUNCIL OF THE CITY OF NOVATO

RESOLUTION NO. 2022-029

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NOVATO APPROVING A TENTATIVE SUBDIVISION MAP TO CREATE 5 RESIDENTIAL LOTS ON A 6.8-ACRE SITE LOCATED ON THE SOUTHERLY SIDE OF BAHIA DRIVE (APN 143-151-06)

WHEREAS, the City of Novato ("City") received an application from Bahia Lands, LLC ("Applicant") for a Tentative Subdivision Map (TSM) (P2018-079) proposing to create 5 residential lots, on a 6.8-acre site located on the southerly side of Bahia Drive, APN 143-151-06 (hereafter "Project Site"); and

WHEREAS, in addition to the application for a TSM, the Applicant has also submitted applications for a zoning map amendment (rezone) and design review (collectively, the "Project"); 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, by separate resolution adopted prior hereto, the City Council adopted an Initial Study/Mitigated Negative Declaration ("IS/MND") for the Project, and considered the IS/MND prior to taking action on the Project, including the TSM at issue herein; and

WHEREAS, on April 24, 2017, the Applicant hosted a neighborhood meeting to present the Project to and receive feedback from the public, which was noticed and conducted in accordance with the requirements of Novato Zoning Code Section 19.40.070D; and

WHEREAS, on July 19, 2017, the Novato Design Review Commission conducted a publicly noticed workshop to review the design aspects of the Project; and

WHEREAS, on September 18, 2019, the Novato Design Review Commission conducted a publicly noticed hearing to consider providing a recommendation to the Planning Commission and City Council regarding the design aspects of the Project; and

WHEREAS, on September 18, 2019, the Design Review Commission adopted a motion recommending the Planning Commission and City Council deny the design aspects of the Project; and

WHEREAS, public notices describing the Planning Commission's public hearing on 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, and all persons requesting notice pursuant to Novato Municipal Code Section 19.58.020 and California Government Code Sections 65905 and 65091, on July 30, 2021, and published in the Marin Independent Journal, a newspaper of general circulation, on July 30, 2021; and

WHEREAS, the Planning Commission held a duly noticed public hearing on August 9, 2021, to consider and receive public testimony on the Project, including the TSM at issue herein; and

WHEREAS, at its public hearing held on August 9, 2021, the Planning Commission recommended the City Council deny the TSM on a vote of three (3) commissioners in favor of approving the TSM, three (3) commissioners opposing the TSM, and one (1) commissioner absent. Accordingly, the motion to approve the TSM failed; and

WHEREAS, following the Planning Commission's recommendation, the Applicant has voluntarily offered to limit the height of new single-family residences located on the parcels created by the TSM to 18 feet. This offer is based on the Applicant's desire to address neighborhood concerns about views across the project site; and

WHEREAS, public notices announcing the time, date, and location of the City Council's public hearing on the proposed Project were sent to all 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, the Marin County Clerk, all persons requesting 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 February 25, 2022; and

WHEREAS, the City Council held a public hearing on March 8, 2022, to consider and receive public testimony on the Project, including the TSM at issue herein.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF NOVATO DOES FIND AND ORDAIN AS FOLLOWS:

**Section 1. Recitals**

The foregoing recitals are true and correct and are incorporated into the findings herein.

**Section 2. Record**

The Record of Proceedings ("Record") upon which the City Council bases its decision includes, but is not limited to: (1) the IS/MND and Mitigation Monitoring Reporting Program ("MMRP"); (2) the staff reports, City files and records and other documents prepared for and/or submitted to the City relating to the IS/MND and MMRP, the Project, and; (3) the evidence, facts, findings and other determinations set forth in this resolution; (4) the City of Novato 1996 General Plan and its related EIR, the Novato 2015-2023 Housing Element and its related EIR, and the Novato Municipal Code; (5) all designs, plans, studies, data and correspondence submitted to the City in connection with the IS/MND, MMRP, and the Project; (6) all documentary and oral evidence received at public workshops, meetings, and hearings or submitted to the City during the comment periods relating to the IS/MND and MMRP, and the Project; (7) all other matters of common knowledge to the City Council 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 3. Findings**

#### *Tentative Subdivision Map*

The City Council hereby makes the following findings as required by Section 9-7.002.e.2 of the Novato Municipal Code with the respect to the tentative subdivision map (TSM):

- a. The proposed subdivision, together with the provisions for its design and improvement is consistent with the Novato General Plan and any specific plans;
- b. The proposed subdivision is consistent with the Zoning Ordinance and any master plan or precise development plan adopted pursuant thereto;

**Facts in Support:** The Project and its accompanying TSM have been reviewed for consistency with applicable 1996 General Plan policies. *Exhibit C*, attached and incorporated by reference, includes 1996 General Plan consistency findings and facts in support. Based on the facts presented in *Exhibit C*, the Project is consistent with applicable policies and programs of the 1996 Novato General Plan.

The Project has been reviewed for consistency with Novato Municipal Code Chapter 19, *Zoning*, Chapter 5, *Development Standards*, and Chapter 9, *Land Subdivision*. Chapter 5 includes development standards for lot size and configuration, easements, sewage disposal, solid waste disposal and recycling, street design, utilities, and water conveyance. Chapter 9 includes regulations and standards for access, park dedication, improvement plan requirements, and minimum vesting tentative map submittal requirements. Chapter 19 includes standards for minimum lot size, minimum lot dimensions, and the creation of new parcels on properties subject to Novato Hillside and Ridgeline Protection Ordinance (NMC Division 19.26).

The Applicant has submitted sufficient evidence that the TSM complies with applicable requirements of the noted chapters of the Novato Municipal Code, and the Project has been adequately conditioned to ensure that development will occur in conformance with said subdivision requirements, as indicated in the Record. In addition, the Applicant voluntarily offered to limit the height of new single-family residences located on the parcels created by the TSM to 18 feet. This offer is based on the Applicant's desire to address neighborhood concerns about views across the project site. This offer is memorialized as a condition of approval stipulated in *Exhibit A* attached hereto and incorporated herein by reference. Based on said analysis and facts, the City Council herein finds the proposed Project and accompanying TSM to be consistent with findings a. and b. above.

The Project Site is not subject to a master plan, precise development plan, or specific plan.

- c. The effect of the approval on the housing needs of the region has been considered and balanced against the public service needs of the residents of Novato and available fiscal and environmental resources.

**Facts in Support:** The Project includes a 5-lot tentative subdivision map to support development of one detached single-family residence on each lot. The addition of 5 new residences would incrementally expand Novato's housing stock and meet unmet demand for such units in the community. Notably, the Novato 2015-2023 Housing Element anticipates incremental

development of housing throughout the City, especially on those sites identified in Table 46 Available Land Inventory, such as the Project Site. Table 46 includes a list of land that will contribute to the City's Regional Housing Needs, which is a requirement of the California Department of Housing and Community Development and State laws regarding Housing Element compliance. Failure of the City to meet its Regional Housing Needs Assessment (RHNA) allotment may result in certain penalties associated with deficient levels of housing production.

Table 46 lists the project site as being able to accommodate up to 8 units. The proposed 5 units will contribute to the City's housing goals, consistent with the Novato 2015-2023 Housing Element. The proposed 5 units is less than the 8 units anticipated in Table 46, however, the City has adequate lands designated for low density residential use that the 3-unit deficiency will not result in a net loss of adequate sites for above-moderate housing development. See below under the *Housing Element No Net Loss Findings* section for additional information and analysis regarding the City's Housing Element and RHNA allocation, progress, and available land.

The public service demands of the Project were considered by the Novato Public Works Department, Novato Sanitary District, North Marin Water District, Novato Police Department, and the Novato Fire Protection District. These government entities are responsible for ensuring the provision of adequate infrastructure and service for water, sewer, emergency medical/fire, public safety, and stormwater control for residential subdivisions in Novato. Each agency provided conditions of approval, as necessary, to ensure the Project provides adequate infrastructure and safety improvements, such as stormwater control measures, and fire suppression and rescue features. These recommended conditions of approval are included as conditions to this resolution and implemented through the construction design plans and construction phases of the Project. These agencies did not identify any service, fiscal, or resource (e.g., water) constraints that would negatively affect the ability to serve the Project or existing residents in Novato. Based upon the above, the City Council finds that the approval of the proposed Project balances the housing needs of the region against the public service needs of the residents of Novato and available fiscal and environmental resources.

The North Marin Water District (NMWD) recently adopted an emergency ordinance (Ordinance No. 41) regarding water conservation measures associated with the current drought. Ordinance No. 41 does not preclude new water connections for residential development. The ordinance does limit the use of potable water for outdoor irrigation purposes until the drought is over and the conservation measures are no longer necessary. Depending on the timing of residential development at the site, the developer may need to sign an agreement with NMWD regarding limitations of water use associated with new water connections.

- d. The design of the subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities in the subdivision.

**Facts in Support:** The Project is designed, to the extent feasible, for passive heating and cooling. Based on the layout and orientation of the 5 lots, there are adequate options for new residences to be oriented for southern sun exposure for passive solar energy. Additionally, the future residences will likely be able to incorporate rooftop solar given the lot configuration and beneficial southern exposure.

Based on the facts discussed above, the City Council finds that the design of the subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities.

### *Housing Element No Net Loss Findings*

Government Code Section 65863, subsection (c)(2), often referred to as the “No Net Loss” provision, states that if the City approves a housing development for fewer units than the number of units identified in the City’s adopted housing element, that the City needs to have in its inventory adequate surplus land so that the City’s available land inventory is still adequate to accommodate housing. The Novato 2015-2023 Housing Element identifies sites in Table 46 (Available Site Inventory) suitable for residential development intended to meet the City’s Regional Housing Needs Assessment (RHNA) allocation. Table 46 identifies the Project Site as having a reasonable development capacity of 8 residential units. The Applicant has requested to subdivide the Project Site into five lots supporting the creation of 5 residential units.

For the current Housing Element cycle (2015-2023), the City’s total allocation is 415 units across all income levels. As of January 1, 2021, the City has produced 260 of the required 415 units, equal to a deficit of 155 units. Based on the R1 land use density of 1.1-5 units per acre at the site, the City considers the site as suitable for above-moderate priced housing. For the current planning period, the City has produced 146 of 167 allocated above-moderate units, a current deficit of 21 units. The Housing Element identifies sites for 256 new above-moderate single-family residences. Given the total above-moderate income housing allocation for the planning period is 167 units and the City has identified lands suitable for 256 units, the 3-unit reduction (5 lots vs. 8 lots) associated with this Project will not result in a loss of units that would result in a deficiency regarding the City’s share of regional housing needs for the above-moderate income level.

The City Council makes the following findings pursuant to Government Code Section 65863(c)(2) based on the above information:

1. The Applicant’s proposed 5-unit subdivision is less than the 8 units anticipated to be developed at the site pursuant to the Novato 2015-2023 Housing Element Table 46, Available Land Inventory; and
2. The Novato 2015-2023 Housing Element RHNA allocation requires available land for the production of 167 above-moderate income residential units; and
3. The Novato 2015-2013 Housing Element has adequate land designated R1 and RVL (Very Low Density Residential) to accommodate 256 above moderate-income residential units; and
4. As of January 1, 2021, 146 above moderate-income units have been permitted during the current planning cycle; and
5. Accepting 3 fewer residential units at the Project Site will not result in a deficiency of land needed to meet the City’s RHNA allocation and goal for above moderate-income residential units; and
6. Remaining sites in the Novato 2015-2023 Housing Element are adequate to accommodate the City’s RHNA allocation and goal for above moderate-income residential units.

**Section 4. Tentative Subdivision Map Approval, Conditions of Approval, and Indemnity and Time Limitations**

NOW, THEREFORE, BE IT FURTHER RESOLVED, the City Council hereby approves the Tentative Subdivision Map (TSM) set (10 Sheets), prepared by CSW ST2, plot dated January 19, 2022, and Polsky Perlstein Architects, plot date January 20, 2022, included herein by reference, based on the findings set forth herein and subject to the following conditions of approval and those Conditions of Approval set forth in *Exhibit A* and *Exhibit B*, attached hereto and incorporated herein by reference:

1. The approval shall expire two years from the date of approval unless a Final Map is submitted for recordation to the satisfaction of the City Engineer.
2. The Applicant, or any successor in interest to the Project, shall comply with the additional conditions of approval specified in *Exhibit A*, attached hereto and incorporated herein by reference.
3. The Applicant, or any successor in interest to the Project, shall develop the Project in compliance with the applicable Mitigation Measures, as detailed in the Mitigation Monitoring and Reporting Program (MMRP), as set forth in *Exhibit B*, attached hereto and incorporated herein by reference.
4. The Applicant, or any successor in interest to the Project, shall pay all applicable development impact fees prior to issuance of a building permit.
5. Indemnity and Time Limitations
  - a. The Applicant, property owner and any successor 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 action(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 property owner, the City, and/or parties initiating or bringing such action.
  - b. The Applicant, property owner The Applicant, property owner and any successor 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 action(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 property owner, and/or successor(s) in interest, the City, and/or parties initiating or bringing such action.
  - c. The Applicant, property owner and any successor 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 developer 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.

- d. In the event that a claim, action, or proceeding described in no. a or b above is brought, the City shall promptly notify the Applicant, property owner and any successor 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 developer 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 Applicant, property owner and any successor in interest 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 in interest.
  
- d. The Applicant, property owner and any successor 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.

\* \* \* \* \*

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the City Council of the City of Novato, Marin County, California, at a meeting hereof, held on the 8<sup>th</sup> day of March, 2022, by the following vote, to wit:

AYES:	Councilmembers	Athas, Milberg, Wernick
NOES:	Councilmembers	Eklund, Lucan
ABSTAIN:	Councilmembers	
ABSENT:	Councilmembers	

Jana McDowell  
City Clerk of the City of Novato

Approved as to form:

Mary B Bell  
City Attorney of the City of Novato

**Attachments**

Exhibit A – Bahia River View Conditions of Approval

Exhibit B – Mitigation Monitoring and Reporting Program (Conditions of Approval)

Exhibit C – Novato General Plan Consistency Findings

Reference: P2020-079

## **EXHIBIT A**

### **Bahia River View**

#### **Conditions of Approval**

The following conditions of approval shall be met to the satisfaction of the Novato Community Development Department – Planning Division:

1. The Applicant, or any successor in interest to the Project, shall develop the project in compliance with the applicable mitigation measures, as detailed in the Mitigation Monitoring and Reporting Program (MMRP), as set forth in Exhibit B, attached hereto and incorporated as conditions of approval by reference.
2. The tentative subdivision map shall remain valid for 24 months from the date of approval. If the tentative map is granted an extension(s) pursuant to Novato Municipal Code, Division 9-7, the term of said extension(s) shall also apply to the design review approval accompanying the tentative subdivision map.
3. The approval granted herein shall not become effective until all appropriate fees billed by the City of Novato to the application account are paid in full in accordance with the City's Cost Based Fee System. Failure to pay said fees may result in the City withholding issuance of related building permits, certificate of occupancy, and recordation of final maps or other entitlements.
4. The Applicant, or any successor in interest to the Project, shall be subject to paying all applicable development impact fees as specified in City Council Resolutions No. 67-02 and 69-02, as subsequently amended from time to time.
5. The Project shall comply with Novato Municipal Code Division 19.21, Art Program regarding the payment of an in-lieu fee for development on each individual lot.
6. The Project shall meet the affordable housing requirements of NMC Division 19.24 by payment of an in-lieu fee. In-lieu fee shall be paid prior to issuance of a building permit on each individual lot.
7. No structure constructed on Lot 1 shall extend 125 feet above sea level to comply with the Hillside and Ridgeline Protection Ordinance codified in NMC Section 19.26.050, subsection J.
8. The maximum building height of a single-family dwelling within the Project shall not exceed 18 feet. Building height shall be measured pursuant to NMC Section 19.26.050, subsection J.3.

9. A landscape plan shall be submitted for each lot. The landscape plan shall specify the exact number, type, size, and location of trees proposed for removal and replacement trees to be planted in conformance with the City's Woodland and Tree Preservation Ordinance codified in Division 19.39. Replacement trees shall be planted at a minimum ratio of 3:1 (replacement:removal). Placement of new trees shall also conform to the requirements of Division 19.20.080 (Scenic Resources Protection).
10. Prior to issuance of any construction or grading permits, design level geotechnical investigations for individual lots shall be reviewed by the City Engineer. In addition to a design level geotechnical investigation for individual lots, the construction on each lot shall be designed to comply with the recommendations provided in the Geologic and Geotechnical Feasibility Study by Miller Pacific Engineering Group, dated March 17, 2017.
11. Prior to the issuance of any building permits, design review approval is required for each single-family residence proposed to be constructed within the Project pursuant to NMC Division 19.26 and Section 19.42.030.
12. Development on each individual lot at the Project Site is subject to all Novato Municipal Code provisions, requirements, and regulations applicable at the time application for said development is deemed complete or determined to be complete under applicable law.

The following condition of approval shall be met based on the request of the Marin County Airport Land Use Commission (ALUC), included in a resolution adopted by ALUC at a public hearing on July 12, 2021:

13. The applicant shall grant avigation easement to the County and the easement shall be recorded concurrent with the Final Map.
14. Future developments of each parcel shall not exceed the height 25 feet above surrounding grade.

The following conditions of approval shall be met to the satisfaction of the Novato Fire Protection District (NFPD):

15. An automatic residential fire sprinkler system is required to be installed in all new residences including garages conforming to NFPA Std. 13D, Fire Protection Standard #401, and as modified by the Fire Marshal. Plans and hydraulic calculations shall be submitted to the Fire Marshal for review prior to installation. Contact the North Marin Water District should an upgrade for the domestic water meter be needed. Additional sizing may be required due to available pressures and fire flow. The above requirement may be waived provided the new and existing remodel and addition does not exceed 50% of the total existing floor area. Reference Std. #401.

16. Fire hydrants capable of supplying 1,500 gallons per minute minimum will be required to be installed so that spacing between hydrants does not exceed 300 feet. The fire hydrants shall be spotted by the Fire Marshal and contain at least one 4 and 1/2 inch and one 2 and 1/2 inch outlets. Installation shall conform to the specifications of the North Marin Water District.
17. Fire hydrants shall be installed in accordance with the applicable standard, tested and operational prior to framing.
18. Fire hydrants shall be painted Rustoleum high gloss yellow or equal. Hydrants shall have a blue reflective roadway marker installed per NFPD Standards.
19. Proposed roads and driveways shall not exceed 18 percent grade.
20. An irrigated greenbelt Vegetation Management Plan (VMP) Fuels Management Plan conforming to the standards of the NFPD shall be prepared and implemented at the Project Site. The VMP-Fuels Management Plan shall conform to Novato Fire Protection Standard #220. The plan shall be incorporated into the landscape plan for the project and submitted to the Fire Marshal for review prior to implementation. The plan shall be implemented prior to building final.
21. The Project is located in a wildland-urban interface area and must meet all applicable California Building Code requirements. See CBC Chapter 7A.
22. Permit application and associated fees shall be submitted with plan submittal package.
23. The address shall be posted clearly visible from the street with numerals illuminated and contrasting color to their background conforming to Novato Fire Protection Standard #205.
24. The facility and improvements shall comply with the California Building Code and State Fire Marshal building standards and regulations.
25. The NFPD shall be contacted at least 48 hours in advance for all noted inspections.

The following conditions of approval shall be met to the satisfaction of the North Marin Water District (NMWD):

26. Construction of new water distribution facilities is required before water service can be provided to the Project.
27. The owner or authorized representative must apply to NMWD; enter into an agreement with NMWD and complete financial arrangements for the new facilities as a condition of permit approval. Occupancy approval shall not be granted until water service installation is complete.

28. The Project must conform to District Regulation 15 – Mandatory Water Conservation Measures. Occupancy approval shall not be granted until compliance with water conservation measures, as applicable, can be verified.
29. Installation of an above-ground reduce pressure principle (RPP) backflow prevention device at any dedicated irrigation meter is required in accordance with the District's Regulation 6 and CA Department of Health Regulations (Title 17). Upon installation, an inspection report (device testing) must be completed and returned to the District prior to the commencement of business activities.
30. New water service will need to comply with Emergency Water Conservation Ordinance No. 41 until such time the emergency ordinance is rescinded.

The following conditions of approval shall be met to the satisfaction of the Novato Sanitary District (NSD):

31. The NSD will require that the Project obtain a District Sewer Main Extension permit to serve this development.
32. The Project will need to construct approximately 1,100 lineal feet of eight-inch sewer main and appurtenances to serve the Project.
33. The NSD will require that all dwellings make separate lateral connections to the new sewer main.

The following conditions of approval shall be met to the satisfaction of the Novato Public Works Engineering Division:

**General Conditions of Approval:**

34. Applicant shall design and construct all necessary and required improvements and facilities in accordance with Chapter V – Development Standards of the Novato Municipal Code (NMC) and the Uniform Construction Standards All Cities and County of Marin (UCS), unless specific design exceptions have been approved. Approval of a site plan depicting improvements that do not conform to the NMC does not constitute approval of a design exception, unless explicitly stated herein or in another approved City resolution.
35. Applicant shall be responsible for all City plan check, map check and inspection costs. The Applicant shall enter into a Cost Recovery Agreement and deposit funds with the City upon the initiation of plan check services. The amount of the initial deposit shall be determined by the City Engineer. Additional funds may be required based upon actual plan check, map check and inspection costs.

36. Applicant shall submit for review and approval Improvement Plans prepared by a California Registered Civil Engineer for all necessary and required on-site and off-site public and private improvements. The Improvement Plans shall show all existing and proposed utilities, above and below ground, including water, sanitary sewer, storm sewer, communication lines, electricity, natural gas, transformers, vaults and meters. The final plan set shall include all civil, landscape and joint trench drawings under a single cover sheet. Improvement Plans must be approved by the City Engineer prior to any on-site or off-site construction. An Encroachment Permit is required for any work within City right of way. An Encroachment Permit will not be issued prior to the approval of the Improvement Plans.
37. All existing and proposed electrical and communications lines, both on the site and along its frontages, shall be placed underground at the Applicant's expense. All pull boxes, junction structures, service cabinets, vaults, valves and similar devices shall be installed behind the back edge of walkways within the City right-of-way or within a public utility easement, at locations approved by the City Engineer. If any utility appurtenances are permitted to be above ground, such as vaults and boxes, they shall be painted a color approved by the City. New improvements within existing and proposed utility easements shall be subject to the approval of the appropriate utility company.
38. Unless otherwise explicitly permitted, all existing wells, septic tanks and/or underground fuel storage tanks shall be abandoned under permit and inspection of Marin County Department of Environmental Health Services or other designated agency. If there are none, the project engineer shall provide a letter describing the scope of the search done to make this determination. This condition shall be satisfied prior to approval of the Improvement Plans. No new wells or septic systems are permitted on the subject property.
39. A detailed design level Geotechnical Report shall be prepared and submitted for review with the initial submittal of the Improvement Plans. The report shall address, at a minimum, potential for liquefaction, R-values, expansive soils and seismic risk. The improvement plans shall incorporate all design and construction criteria recommended in the Geotechnical Report. Prior to City approval of the Improvement Plans, the geotechnical engineer shall sign off on the cover sheet confirming that the plans are in conformance with their recommendations.

If at any time, prior to final acceptance of the project improvements, the City Engineer requests an independent geotechnical investigation and report, then an independent geotechnical engineer, shall be retained by the City at the applicant's expense, to conduct requested investigations.

40. A final drainage study prepared by a California Registered Civil Engineer shall be submitted for review with the initial submittal of the Improvement Plans. The report shall include hydrologic and hydraulic calculations, narrative and exhibits to support the design and sizing of all public and private drainage facilities including storm drains and detention facilities.

The report shall address existing downstream storm drain facilities and hydraulic conditions which may impact the design of proposed facilities and improvements. This study shall include a hydraulic grade line analysis of the existing downstream storm drain. Analyses of the conveyance of onsite and downstream facilities shall be based on the 25-year storm. The report shall also include an analysis of the 100-year storm overland flow.

41. Prior to the approval of the Improvement Plans and prior to the issuance of a grading permit, the applicant shall obtain all necessary permits, approvals and/or clearances from any other regulatory agencies with jurisdiction over the project, including but not limited to the Marin County Flood Control District, Regional Water Quality Control Board, Department of Fish and Game and U.S. Army Corp of Engineers. Proof of approval and/or clearances, including but not limited to, North Marin Water District, and the Novato Sanitary District shall be submitted to the City prior to approval of the improvement plans. A complete set of improvement plans shall be submitted to all agencies, districts, and utilities affected by, or providing service to the development, for review and comment.
42. The Applicant shall obtain approval from Novato Fire Protection District (NFPD) for requirements for emergency vehicular access and appropriate posted signage and markings. Applicant shall locate signs and red painted curbs as required by NFPD to the satisfaction of the City Engineer.
43. Prior to City approval of the Improvement Plans, Applicant shall obtain signatures from representatives of the Novato Fire Protection District and the Novato Sanitary District on the final Improvement Plans acknowledging their review.
44. The Applicant shall design and construct all new pedestrian walkways, ramps and accessible parking spaces to meet current Americans with Disabilities Act Accessibility Guidelines, California Title 24 requirements, and City maximum cross-slopes and grades.

**Special Conditions of Approval:**

45. The Applicant shall submit a complete set of Improvement Plans for the entire development, prepared by a registered Civil Engineer (Engineer of Record) in substantial conformance with the Tentative Map Plan Set for Bahia Riverview Subdivision (9 sheets) prepared by CSW/Stuber-Streoh Engineering Group, Inc., plot dated January 19, 2022, referred to herein as "Tentative Map".
46. Applicant shall construct all of the **Public Improvements** generally as shown on the Tentative Map and more specifically described below.
  - a. Construct a new 4.5-foot wide sidewalk (exclusive of the curb width) along the entire Bahia Drive frontage of the subject parcel.
  - b. Construct a driveway aprons with offset sidewalk for each lot in accordance with UCS Standard Drawing No. 120.

- c. Remove any unused existing driveway curb cuts along the Bahia Drive frontage and replace them with UCS Type "A" curb and gutter. Remove and replace all existing cracked curb and gutter.
- d. Replace the three existing streetlights along north side of Bahai Drive opposite from the frontage of the subject parcel with new streetlights meeting current City standards.
- e. The existing 12-foot wide striped center median shall be restriped as a two-way left-turn lane along the Bahia Drive frontage for ingress and egress to the subject lots.

**Final Map Conditions of Approval:**

- 47. A final map, as defined in the State Subdivision Map Act, shall be prepared by a licensed land surveyor or civil engineer. The Final Map shall show all parcels, rights-of-way, and easement(s), and shall be submitted to the City Engineer for review. The Final Map shall be in substantial conformance with the approved Tentative Map and all applicable conditions of approval. The Final Map is not valid until approved by the City and recorded. Closure calculations shall be provided at the time of initial Final Map submittals. All calculated points within the map shall be based upon one common set of coordinates. All information shown on the Final Map shall be directly verifiable by information shown on the closure calculation printout. The point(s) of beginning shall be clearly defined. All lot sizes shall be shown on the Final Map and shall be verifiable from information shown on the closure calculation printout. A current title report (within past 30 days) shall be submitted at the time of initial Final Map submittal.
- 48. The Applicant shall transmit by certified mail a copy of the conditionally approved Tentative Map together with a copy of Section 66436 of the State Subdivision Map Act to each public entity or public utility that is an easement holder of record.
- 49. The Final Map will not be approved prior to approval of the Improvement Plans.
- 50. On the Final Map, the Applicant shall irrevocably offer for dedication public access easements as necessary over offset sidewalks at the driveway aprons.
- 51. Prior to approval of the Final Map, the Applicant shall either complete all of the required and necessary public improvements, or enter into an Improvement Agreement in accordance with NMC Section 9-27 to ensure completion of all of the public improvements, including but not limited to, grading and construction of any curbs, gutters, sidewalks, roadway improvements, storm drainage facilities, water facilities, sewer facilities, street lighting, signage, striping, and other utilities, to the satisfaction of the City Engineer. The Improvement Agreement shall be secured to guarantee the faithful performance of the agreement in the amount of 100% of the estimated cost of the improvements and for the payment of labor and materials in the amount of 100% of the estimated cost of the improvements. A certificate of occupancy shall not be issued for any structure until required improvements are completed to the

satisfaction of the City Engineer.

52. Prior to the approval of the Final Map, the Applicant shall pay fifty percent (50%) of the total Park In-lieu Fees. The remainder of the Park In-lieu Fees shall be paid prior to issuance of Building Permits. The total amount of the Park In-lieu Fees shall be calculated in accordance with NMC 9-20.008.

**Construction Conditions of Approval:**

53. Construction stormwater pollution prevention measures as indicated in the SWPPP shall be consistent with the details in the most recent version of the California Stormwater Quality Association Stormwater Best Management Handbook-Construction or the Caltrans Storm Water Quality Handbook Construction Site BMPs Manual. A Qualified SWPPP Practitioner shall be responsible for implementing the measures at the site and performing all required monitoring and inspection/maintenance/repair activities. The project applicant shall also prepare a Rain Event Action Plan (if required based on the determined risk level) as part of the SWPPP.
54. Construction activities shall be limited to the days and hours stipulated in Novato Municipal Code 19.22.070B. City established inspection hours are Monday through Thursdays, and alternating Fridays from 7 a.m. until 4 p.m. except on City recognized holidays. Applicant shall be responsible for the City's additional cost to provide inspection during times not established as regular City inspection hours.
55. A City of Novato Encroachment Permit shall be obtained prior to any grading, trenching, pavement, construction of improvements or any other work in the public right-of-way.
56. If any hazardous materials are encountered during the construction of this project, all work shall be immediately stopped and the Marin County Environmental Health Service Department, the Novato Fire Protection District, and the City Inspector shall be notified immediately. Work shall not proceed until clearance has been issued by all of these agencies.
57. Upon completion of the project and prior to acknowledgment of completion, all new storm drains 15" in diameter and larger shall be professionally televised and a video of the recording delivered to the City Engineer for review. The video shall indicate the pipe being televised, indicate station points along each pipe, and shall have the bottom of the pipe at the bottom of the monitor when viewed. The televised speed shall be slow enough to enable viewers to ascertain the pipe condition and the speed shall be reduced or paused as necessary at sags, gaps, obstructions and damaged areas of the pipe. Prior to acknowledgment of completion of the project, pipe damage and obstructions shall be repaired to the satisfaction of the City Engineer.
58. The Applicant shall keep adjoining public streets free and clean of project dirt, mud, materials, and debris during the construction period, as is found necessary by the City

Engineer. The Applicant's contractor shall provide dust control seven (7) days a week, twenty-four (24) hours a day and this provision shall be noted on the plans.

59. The following shall be added to the general notes on the civil plans, "All roads used within the City of Novato during construction shall be cleaned daily, or more often as required by the City Engineer, of all dirt and debris spilled or tracked onto the City streets, or private driveways."
60. Prior to final preparation of the subgrade and placement of base materials, all underground utilities shall be installed, and service connections stubbed out behind the sidewalk. Public utilities, Cable TV, sanitary sewers and water lines, shall be installed in a manner that will not disturb the street pavement, curb, gutter and sidewalk, when future service connections or extensions are made.
61. Where soil or geologic conditions encountered in grading operations are different from that anticipated in the soil and/or geologic investigation report, or where such conditions warrant changes to the recommendations contained in the original soil investigation, a revised soil or geologic report shall be submitted for approval by the City Engineer. Additionally, if field conditions warrant installation of any subdrains, the location, size and construction details must be provided to the City for review and approval prior to construction.
62. Utilities to be abandoned shall be removed or completely filled with suitable material and capped to the approval of the applicable utility agency and to the approval of the City Engineer.
63. After all of the new underground utilities within existing public streets have been installed, the entire affected areas shall be milled and repaved to present a neat finished pavement area. Multiple trench patches are not acceptable.
64. Upon completion of the building and site improvements, the Applicant shall clean, repair, or reconstruct the curb, gutter, and sidewalk along the entire frontage of the developed property as may be required by the City Engineer to conform to the City standards prior to receiving an occupancy permit for the building.

#### **Building Permits Conditions of Approval**

65. Prior to issuance of a Building Permit for any individual lot, the building permit applicant shall submit a Stormwater Control Plan Template for Small Projects/Single-Family Homes prepared in accordance with the current Bay Area Stormwater Management Agencies Association (BASMAA) Post Construction Manual. Site improvements shall incorporate Low Impact Design (LID) principles.

#### **Occupancy Conditions of Approval:**

66. Prior to occupancy of any building, the Applicant shall submit a certification by the Geotechnical Engineer of Record confirming that all the work has been completed in substantial conformance with the recommendations in Soils Investigation/Geotechnical Report.
67. Prior to occupancy of any building, the Applicant shall provide a letter from the Civil Engineer of Record certifying that all the site improvements were constructed and inspected in substantial conformance with the approved plans and City Standards.
68. Prior to occupancy of any building, the applicant shall provide a digital copy of the Improvement Plans that include all as-built or field changes.

The following conditions of approval were added at the March 8, 2022, City Council hearing:

69. All exterior lighting shall be concealed and/or down shielded so that the light beam points downward, the light source (e.g. bulb or L.E.D.) is not visible from off-site locations, and the light does not spill beyond where it is needed. Each light fixture shall be directed downward and away from adjoining properties and public rights-of-way, so that no on-site light fixture directly illuminates an area off the site. Exterior lighting shall also comply with NMC Section 19.22.060 (Light and Glare).
70. The Applicant, or any successor in interest to the Project, shall consider annexing the Site into the adjacent Bahia Homeowners Association (HOA) if the HOA is mutually agreeable accepting the Site into the HOA.

EXHIBIT B

DRAFT MITIGATION MONITORING AND REPORTING PROGRAM

**Draft Bahia River View Project Mitigation Monitoring and Reporting Program**

The California Environmental Quality Act (CEQA) requires that when a lead agency adopts a Mitigated Negative Declaration (MND), it shall prepare a mitigation monitoring and reporting program (MMRP) for all required mitigation measures (CEQA Guidelines Section 15097). This MMRP identifies the monitoring program for mitigation measures identified by the IS/MND to reduce or avoid impacts associated with implementing the proposed Bahia River View Project. The MMRP shall be maintained by the City of Novato.

Number	Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Mitigation Timing	Performance Evaluation Criteria
<b>Biological Resources</b>					
MM-BIO-1	<p>If tree removal or construction activities begin during the nesting season (February 1 through August 31), a qualified biologist shall conduct pre-construction surveys for any raptor or other nesting migratory bird nests within or immediately adjacent to the project site no more than 30 days prior to the commencement of any construction activity or tree removal. The pre-construction surveys shall be conducted between February 1 and August 31 and shall follow accepted survey protocols for nesting birds. Trees within a 200-foot radius shall be included in the surveys. If active nests are located in the work area, the biologist, in consultation with the California Department of Fish and Wildlife (CDFW), shall establish an appropriately sized buffer around the nest within which no work shall be allowed until the young have successfully fledged. Unless otherwise agreed upon in consultation with CDFW, a 50-foot buffer shall be placed around passerine nests and a 250-foot buffer shall be placed around raptor nests. If the qualified biologist determines that a smaller buffer zone is acceptable, the size of the</p>	Project Contractor	City of Novato	<p>Survey conducted within 15 days prior to commencement of ground clearing activities if commencement will occur between February 1 and August 31</p>	<p>Preconstruction surveys are conducted if necessary, based on timing  No-disturbance buffer zones are maintained around active nests until the subject nests are no longer active</p>

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DRAFT MITIGATION MONITORING AND REPORTING PROGRAM

Number	Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Mitigation Timing	Performance Evaluation Criteria
MM-BIO-2	<p>buffer zone may be reduced upon approval by CDFW.</p> <p>No more than 30 days prior to construction (including demolition work and tree trimming/removal activities), a qualified biologist will conduct a visual and acoustic preconstruction survey for roosting special-status bats and/or bat sign (i.e., guano) within 300 feet of suitable tree roosting habitat. A minimum of one day and one evening will be included in the visual preconstruction survey, which should concentrate on the period when roosting bats are most detectable (i.e., when leaving the roosts between one hour before sunset and two hours after sunset).</p> <p>If bats (individuals or colonies) are detected, the California Department of Fish and Wildlife (CDFW) shall be notified immediately. If a bat roosting or maternity colony cannot be completely avoided, a qualified biologist shall prepare a bat mitigation and monitoring plan for CDFW review and approval. Potential measures to be included in the plan are restrictions of timing of activities, placement of exclusion barriers when bats are foraging away from the roost, and replacement of roosting structures.</p>	Project Contractor	City of Novato	Survey conducted within 30 days prior to construction	<p>Pre-construction surveys are conducted</p> <p>Avoidance of impacts to active bat roosts</p> <p>If avoidance is infeasible, notification of CDFW, preparation and implementation of mitigation monitoring plan</p>
<b>Cultural Resources</b>					
MM-CUL-1	In the event that archaeological resources (sites, features, or artifacts) are exposed during construction activities for the proposed project, all construction work occurring within 100 feet of the find shall	Project Contractor	City of Novato	Throughout construction	Impacts avoided to unanticipated archaeological resources

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Number	Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Mitigation Timing	Performance Evaluation Criteria
MM-CUL-2	<p>immediately stop until a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualification Standards, can evaluate the significance of the find and determine whether or not additional study is warranted. Depending upon the significance of the find under CEQA (14 CCR 15064.5[f]; California Public Resources Code, Section 21082), the archaeologist may simply record the find and allow work to continue. If the discovery proves significant under CEQA, additional work such as preparation of an archaeological treatment plan, testing, or data recovery may be warranted.</p> <p>In accordance with Section 7050.5 of the California Health and Safety Code, if human remains are found, the County Coroner shall be immediately notified of the discovery. No further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the County Coroner has determined, within 2 working days of notification of the discovery, the appropriate treatment and disposition of the human remains. If the County Coroner determines that the remains are, or are believed to be, Native American, he or she shall notify the Native American Heritage Commission in Sacramento within 24 hours. In accordance with California Public Resources Code, Section 5097.98, the Native American Heritage Commission must immediately notify those persons it believes to be the most likely descendant from the deceased Native American. The most likely</p>	Project Contractor	City of Novato	Throughout construction	<p>Compliance with California Health and Safety Code</p> <p>Impacts minimized or avoided to potential human remains</p>

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Number	Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Mitigation Timing	Performance Evaluation Criteria
<b>Geology and Soils</b>					
MM-GEO-1	<p>descendant shall complete their inspection within 48 hours of being granted access to the site. The designated Native American representative would then determine, in consultation with the property owner, the disposition of the human remains.</p> <p>Prior to the issuance of any construction or grading permits, design level geotechnical investigations for individual lots shall be reviewed by City of Novato Engineering and Services, Project Design and Construction Management section. In addition to a design level geotechnical investigation for individual lots, the proposed project shall be designed to comply with the recommendations provided in the Geologic and Geotechnical Feasibility Study by Miller Pacific Engineering Group, dated March 30, 2017 (Appendix D), as a condition of project approval.</p>	Project Contractor	City of Novato Engineering	Prior to issuance of construction or grading permits	<p>Submission of geotechnical reports for individual lots</p> <p>Compliance with Geotechnical Feasibility Study</p>
MM-GEO-2	<p>In the event that paleontological resources (e.g., fossils) are exposed during construction activities for the project, all construction work occurring within 50 feet of the find shall immediately stop until a qualified paleontologist meeting the professional standards of the Society of Vertebrate Paleontology can evaluate the significance of the find and determine whether or not additional study is warranted. If the discovery is clearly not significant, the paleontologist may document the find and allow work to continue. If the discovery proves potentially significant under CEQA, additional work such as preparation of a paleontological treatment plan and monitoring in the area of the find</p>	Project Contractor	City of Novato	Throughout construction	<p>Impacts to paleontological resources avoided or minimized</p> <p>Preparation and implementation an Erosion and Sediment Control Plan for all construction activities</p>

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EXHIBIT B

Number	Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Mitigation Timing	Performance Evaluation Criteria
	<p>may be warranted. In order to reduce runoff and erosion and minimize the potential of sedimentation as a result of project construction and operation, the developer for each lot shall, prepare and implement an Erosion and Sediment Control Plan for all construction activities.</p>				
	<p><b>Hazards and Hazardous Materials</b></p>				
MM-HAZ-1	<p>The following measures shall be implemented prior to and during construction and shall be incorporated into project plans and specifications, including the Erosion and Sediment Control Plan and/or Storm Water Pollution Prevention Plan.</p> <ul style="list-style-type: none"> <li>All equipment shall be inspected by the contractor for leaks prior to the start of construction and regularly throughout project construction.</li> <li>Leaks from any equipment shall be contained and the leak remedied before the equipment is again used on the site.</li> <li>Best management practices for spill prevention shall be incorporated into project plans and specifications and shall contain measures for secondary containment and safe handling procedures.</li> <li>A spill kit shall be maintained on site throughout all construction activities and shall contain appropriate items to absorb, contain, neutralize, or remove hazardous materials stored or used in large quantities during construction.</li> </ul>	Project Contractor	City of Novato	Prior to and during construction	<p>Implement measures prior to and during construction</p> <p>Handle hazardous substances in accordance with Title 22 of the California Code of Regulations</p>

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Number	Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Mitigation Timing	Performance Evaluation Criteria
	<ul style="list-style-type: none"> <li>Project plans and specifications shall identify construction staging areas and designated areas where equipment refueling, lubrication, and maintenance may occur. Areas designated for refueling, lubrication, and maintenance of equipment shall be approved by the City.</li> <li>In the event of any spill or release of any chemical or wastewater during construction, the contractor shall immediately notify the City.</li> </ul> <p>Hazardous substances shall be handled in accordance with Title 22 of the California Code of Regulations, which prescribes measures to appropriately manage hazardous substances, including requirements for storage, spill prevention, and response and reporting procedures.</p>				
<b>Noise</b>					
MM-NOI-1	<p>A pre-construction meeting shall be held between the City of Novato and the general contractor/on-site project manager to confirm that noise management practices are completed prior to commencement of construction (e.g., construction hours, neighborhood notification, posted signs).</p> <ul style="list-style-type: none"> <li>A notice regarding an on-site complaint and enforcement manager shall be posted. The manager shall respond to and track complaints. The manager shall be responsible for responding to any complaints regarding construction noise and for</li> </ul>	Project Contractor/ Manager and City of Novato	City of Novato	Prior to commencement of construction  Throughout construction	Attend pre-construction meeting  Comply with required noise management practices

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Number	Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Mitigation Timing	Performance Evaluation Criteria
	<p>coordinating with adjacent land uses/owners. The manager shall determine the cause of any complaints and coordinate with the construction team to implement effective measures (considered technically and economically feasible) to correct the problem. The telephone number of the on-site complaint and enforcement manager and the number for the City Code Enforcement (415-899-8989) shall be posted at the construction site and provided to neighbors in a notification letter.</p> <ul style="list-style-type: none"> <li>• Noise-generating construction activities shall be limited to between 7:00 a.m. and 6:00 p.m. on weekdays and between 10:00 a.m. and 5:00 p.m. on Saturdays. No construction shall occur on Sundays or official national holidays, except as otherwise authorized by the Director of Community Development.</li> <li>• Semi-stationary equipment (e.g., generators, compressors) shall be located as far from nearby residences as possible.</li> <li>• The quietest available equipment and electrically powered equipment shall be used, rather than internal combustion engines, where feasible.</li> <li>• Equipment and on-site trucks used for project construction shall use the best available noise control techniques (e.g., improved mufflers,</li> </ul>				

EXHIBIT B

DRAFT MITIGATION MONITORING AND REPORTING PROGRAM

Number	Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Mitigation Timing	Performance Evaluation Criteria
	<p>equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds). All construction equipment shall be inspected at periodic intervals to ensure proper maintenance and resulting lower noise levels.</p> <ul style="list-style-type: none"> <li>• Impact tools (e.g., jack hammers, pavement breakers, rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed-air exhaust from pneumatically powered tools. An exhaust muffler on the compressed-air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to approximately 10 A-weighted decibels (dBA). External jackets on the tools themselves shall be used where feasible, which could achieve a reduction of 5 dBA.</li> <li>• All internal combustion construction equipment shall be equipped with mufflers in working order.</li> <li>• All stationary equipment shall be located as far as feasible from adjacent residences.</li> </ul>				

## EXHIBIT C

### BAHIA RIVER VIEW ZONING MAP AMENDMENT, TENTATIVE SUBDIVISION MAP, AND DESIGN REVIEW

#### NOVATO GENERAL PLAN CONSISTENCY FINDINGS

The City Council hereby finds that the Project is consistent with the Novato General Plan, including, but not limited to, the following applicable General Plan policies:

#### **NOVATO 1996 GENERAL PLAN**

##### ***LAND USE CHAPTER***

**LU Policy 1 Implementation of Land Use Map.** Implement the Land Use Map (Map GP-1) and Land Use Designations (Table GP-3) by approving development and conservation projects consistent with adopted land use designations, densities and intensities. Ensure consistency between the General Plan, Zoning Ordinance and other land use regulations.

Facts in Support: The Project Site is designated Low Density Residential (R1) on General Plan Land Use Map GP-1. Single-family residences are an allowed use on parcels assigned the R1 land use designation. The Amendment and Project are proposed to accommodate single-family residential uses consistent with the R1 land use designation.

Based on the facts above, the Project is consistent with and advances LU Policy 1.

**LU Policy 2 Development Consistent with General Plan.** Allow development at any density within the range shown by the Land Use Designations Map provided applicable objectives, policies and programs of all chapters of the General Plan are met. Maximum densities (top of stated density range applied to total gross acreage) may in some cases be achieved, but there is no guarantee of achieving the maximum density.

The density and intensity ranges in LU Table 2 will be applied to a site's gross acreage, i.e., to the total site including land area that will subsequently be used for public rights-of-way or retained in an undeveloped state to preserve environmental resources. See also LU Policy 4 and associated comment.

Facts in Support: The allowable density range of the R1 land use designation is 1.1 to 5 units per acre. The gross density of the Project is 0.72 units per acre based on the total area of the Project Site. However, the net density, factoring for General Plan policies regarding hillside locations and density reduction standards of the Hillside Ordinance, is 2.9 units per acre based on a net developable land area of 1.72 acres. The net density is within the allowable density range and is consistent with the R1 land use designation.

The City completed environmental review for the Project pursuant to the California Environmental Quality Act (CEQA). The Initial Study/Mitigated Negative Declaration (IS/MND) did not identify any potential environmental impacts that could not be mitigated to a less than significant impact. The proposed lots are consistent with the R1 land use designation and the proposed R1-10 zoning district. The lots are a similar size in size to the existing residential lots located in the Bahia neighborhood.

Based on the observations above, the Project is consistent with LU Policy 2.

**LU Policy 5 Compatibility with Surroundings.** Ensure that clustered development is compatible with the surrounding residential neighborhoods. Compatibility is to be determined by the appropriate City authority judging a development project, based on appearance, use characteristics, proximity, and other factors. Compatibility does not require, in the case of two residential neighborhoods, that housing type, lot size, or density be the same. Rather, visual conflict, interference with established use, and negative physical impacts are to be avoided.

Facts in Support: The proposed rezone and 5-lot subdivision would result in lot sizes that range from 0.36 to 4.11 acres. The smaller lots are located closer to the existing residential uses near the Bahia Drive and Topaz Drive intersection, with the larger lots located on the western portion of the Project Site that is adjacent to the City of Novato open space lot. The proposed density is consistent with the R1 General Plan land use designation assigned to the site and consistent with the proposed rezone to the R1-10 zoning district. It is anticipated that 5 single-family residences and ancillary uses will be developed on the 5 lots. The anticipated single-family residential uses at the proposed density is consistent with the existing land uses in proximity to the Project Site, which includes single-family residential uses to the east and south and open space to the immediate north (across Bahia Drive) and west.

The IS/MND considered the potential visual impacts of the Project in the Aesthetics section of the document. It was determined that, while the introduction of new development at the Project Site will change the current landscape, the result will be a less than significant impact. New residences at the site will not eliminate views of the Petaluma River, San Pablo Bay, or the hills in the distance.

Based on the observations above, the Project is consistent with LU Policy 5.

**LU Policy 8 Development to Pay Fair Share.** Require new developments to pay their fair share of infrastructure improvements and public service costs to maintain infrastructure capacity and service levels in the City, to the extent allowed by law and except as provided by other policies and programs in this Plan.

Facts in Support: The Project and future development at the site will be required to pay development impact fees, park in-lieu fees, and other fees associated with new residential development. Payment of said fees is considered to be consistent with LU Policy 8.

**LU Policy 9 Constraints Analysis.** Assess environmental constraints when considering development of lands with high environmental value or significant hazards. Encourage development sponsors to use such Constraints Analysis in designing their projects, to avoid unnecessary expense in redesigning their project to incorporate the issues defined by Constraints Analysis. The Constraints Analysis expands the City's current development analysis on property. The property owner is being provided the option of submitting the Constraints Analysis prior to submittal of the project application and environmental documentation or submitting it with the environmental documentation. The Constraints Analysis is an analysis in addition to that required by CEQA.

Facts in Support: The City prepared a IS/MND analysis to determine if the Project would have a potentially significant impact to the environment, however, the analysis concluded that adequate mitigation measures are feasible to reduce potential impacts to a less than significant level.

Based on the observations above, the Project is consistent with LU Policy 9.

### ***TRANSPORTATION ELEMENT***

**TR Policy 22 Pedestrian Facilities.** Promote, provide, and maintain a safe and convenient pedestrian system.

Facts in Support: The tentative subdivision map that is being considered with the Project includes a sidewalk that would connect to an existing sidewalk located on Bahia Drive near its intersection with Topaz Drive along the site frontage. The Novato Municipal Code includes development standards for the design and placement of sidewalks, and a process for exception requests from said standards.

Based on the observations above, the Project is consistent with TR Policy 22.

**TR Policy 28 Airport Land Use Plan.** Support safety provisions of the Airport Land Use Plan. (See Safety Chapter).

Facts in Support: The Project Site is located within the Gness Field Airport Land Use Plan area and is located in the "Overflight Zone" of the Aviation Safety Zones detailed in Figure 3.1 (Gness Field Airport Land Use Plan (1991) ("Plan")). The Overflight Zone is defined as immediately outside the Traffic Pattern Zone; aircraft are still climbing out and/or descending in this area, but the risks this far from the Airport are minimal. The Project Site is not located in the flight tracks or the noise contours, as identified on Figure 3.2 of the Plan. According to the Plan, residential development should be limited to four dwelling units per gross acre in the Overflight Zone. The Project has a gross density of 0.72 units per acre, which is consistent with the limits on development. Additionally, allowable building heights of 25 feet will not conflict with airport operations.

The Project was reviewed by the Marin County Airport Land Use Commission (ALUC) on

July 12, 2021. The Commission determined that the Project is consistent with the Plan.

Based on the observations above, the Project is consistent with TR Policy 28.

### ***HOUSING ELEMENT***

**HO Policy 1.3 Neighborhood Meetings.** Continue to require developers of any major project to have neighborhood meetings with residents early in the process to undertake problem solving and facilitate more informed, faster and constructive development review.

Facts in Support: The Applicant held a neighborhood meeting April 24, 2017, at the Bahia HOA clubhouse.

Based on the facts set forth above, and the Record as a whole, the City Council finds the Project to be consistent with HO Policy 1.3.

**HO Policy 3.2 Design that Fits into the Neighborhood Context.** It is the City's intent that neighborhood identity and sense of community will be enhanced by designing all new housing to have a transition of scale and compatibility in form to the surrounding area.

**HO Policy 3.3 Housing Design Principles.** The intent in the design of new housing is to provide stable, safe, and attractive neighborhoods through high quality architecture, site planning, and amenities that address the following principles:

- a. Reduce the perception of building bulk. In multi-unit buildings, encourage designs that break up the perceived bulk and minimize the apparent height and size of new buildings, including, for example, the use of upper story stepbacks and landscaping. Application of exterior finish materials, including siding, trim, windows, doors and colors, are important elements of building design and an indicator of overall building quality.
- b. Recognize existing street patterns. Where appropriate, encourage transitions in height and setbacks from adjacent properties to respect adjacent development character and privacy. Design new housing so that, where appropriate, it relates to the existing street pattern.
- c. Enhance the "sense of place" by incorporating focal areas where appropriate. Design new housing around natural and/or designed focal points, emphasized through pedestrian/pathway or other connections.
- d. Minimize the visual impact of parking areas and garages. Discourage home designs in which garages dominate the public façade of the home (e.g. encourage driveways and garages to be located to the side or rear of buildings, or recessed, or along rear alleyways or below the building in some higher density developments).

Facts in Support: The Project Site is in area that is developed with single-family residential

uses. The application of the R1-10 development standards, Hillside and Ridgeline Protection Ordinance standards, and other applicable Novato Municipal Code standards will ensure that the Project fits into the neighborhood context. Additionally, a condition of approval will require design review approval of new residences at the Project Site. The design review process will give the public the ability to review proposed building plans prior to the issuance of building permits at the site.

The Project Site is listed in Table 46, Available Land Inventory, as a site for up to 8 new residential dwellings. The Project includes 5 lots that can accommodate 5 primary residential dwellings, the Project will contribute to the City's housing stock and assist with the City's Regional Housing Needs Assessment (RHNA) allocation. The City is tasked with developing 167 above moderate-income dwellings, and it is anticipated that the future homes at the Project Site will be priced at the above moderate-income level. As of January 1, 2021, the City needs to produce 21 additional above-moderate dwelling unit to satisfy the City's RHNA allocation for that income category by December 31, 2022.

Based on the facts set forth above, and the Record as a whole, the City Council finds the Project to be consistent with HO Policy 3.2 and 3.3.

### ***COMMUNITY IDENTITY***

**CI Policy 1: Compatibility of Development with Surroundings.** Ensure that new development is sensitive to the surrounding architecture, topography, landscaping, and to the character, scale, and ambiance of the surrounding neighborhood. Recognize that neighborhoods include community facilities needed by Novato residents as well as homes, and integrate facilities into neighborhoods.

Facts in Support: The proposed rezone and 5-lot subdivision would result in lot sizes that range from 0.36 to 4.11 acres. The smaller lots are located closer to the existing residential uses near the Bahia Drive and Topaz Drive intersection, with the larger lots located on the western portions of the site that is adjacent to the City of Novato open space lot. The proposed density is consistent with the R1 General Plan land use designation assigned to the site and consistent with the proposed rezone to the R1-10 zoning district. It is anticipated that 5 single-family residences and ancillary uses will be developed on the 5 lots. The anticipated single-family residential uses at the proposed density is consistent with the existing land uses in proximity to the site, which includes single-family residential uses to the east and south and open space to the immediate north and west.

The IS/MND considered the potential visual impacts of the proposed Project in the Aesthetics section of the document. It was determined that, while the introduction of new development at the site will change the current landscape, the result will be a less than significant impact.

Based on the observations above, the Project is consistent with CI Policy 1.

**CI Policy 7: Landscaping.** Encourage attractive native and drought-

tolerant, low-maintenance landscaping responsive to fire hazards.

Facts in Support: While specific landscaping has not been proposed at this time, the City and North Marin Water District require that landscaping include low water use and drought-tolerant plant types. Additionally, the Novato Fire Protection District (NFPD) has landscaping standards for houses that are located in a Wildland Urban Interface (WUI). A condition of approval regarding the submittal of a Vegetation Management Plan is included to conform to NFPD landscaping standards. When residences are proposed at the site, the City will have the ability to review proposed landscaping as part of the required design review process.

Based on the facts set forth above, and the Record as a whole, the Project is consistent with CI Policy 7.

**CI Policy 9: Underground Utilities.** Continue to require undergrounding of utilities.

Facts in Support: New utilities associated with the Project will be placed underground; based on this information, the Project is consistent with CI Policy 9.

**CI Policy 25: Architectural and Landscape Design.** Require attractive architectural and landscape design for all new developments as well as for expansion to existing uses, consistent with Downtown Specific Plan guidelines.

Facts in Support: The Project Site is adjacent to the Bahia neighborhood, with residential uses located south and east of the site on Topaz and Malobar drives and west of the site on Cerro Crest and Laguna Vista drives. Marin County Open Space and City of Novato Open Space are located north and west of the site. The proposed five lots are similar in size to the residential lots located in the vicinity. Future residences proposed at the Project Site will require design review approval, and those residences will be required to comply with the City's Hillside and Ridgeline Protection Ordinance, and other development standards applicable to the R1-10 zoning, R1 General Plan land use designation, and other codified development standards.

Based on the facts set forth above, and the Record as a whole, the City Council finds the Project to be consistent with CI Policy 25.

**CC Policy 30: Archaeological Resources Protection.** Continue to protect archaeological resources.

Facts in Support: An IS/MND was prepared for the Project, which includes an analysis of potential impacts to archaeological resources. Due to the potential for unknown archaeological resources that may be discovered during construction activities, mitigation measures MM-CUL-1, MM-CUL-2, and MM-GEO-2 are proposed to reduce those potential impacts to a less than significant level.

Based on the facts set forth above, and the Record as a whole, the City Council finds the Project to be consistent with CI Policy 30.

**CI Policy 32: Public Art.** Promote public art that enhances the cultural life of the community.

Facts in Support: Public art will be required to be placed on-site or payment of an in-lieu fee will be required. For residential projects, the City's Art Program (NMC Division 19.21) requires art on-site or a payment equal to one third of one percent (0.33 percent) of construction costs. The Applicant has indicated that payment of an in-lieu fee will be requested at the time of construction. A condition of approval is recommended to ensure compliance with this policy. Compliance with Division 19.21 will ensure consistency with CI Policy 32.

## ***ENVIRONMENT CHAPTER***

**EN Policy 7: Water Quality.** Encourage protection of water resources from pollution and sedimentation, and preserve their environmental and recreation values.

**EN Policy 37: Using CEQA to Reduce Water Quality Impacts.** Use the provisions of the California Environmental Quality Act (CEQA) process to identify measures to prevent erosion, sedimentation, and urban runoff pollution resulting from development.

Facts in Support: The Project includes stormwater retention areas for the proposed 5 lots at the site. Since buildout is unknown at this time, the Applicant's engineer conservatively estimated the area required for storm-water retention. When site-specific plans are developed for each of the 5 lots, development-specific stormwater retention areas will need to be developed consistent with the City's stormwater management guidelines. The City Engineer will ensure that proposed stormwater retention can adequately accommodate stormwater associated with future development. Additionally, the CEQA IS/MND includes an analysis of the Project's potential impacts to water quality. Two feasible mitigation measures are proposed MM-GEO-1 and MM-HAZ-1 that would reduce potential impacts to water quality to a less than significant effect.

Based on the observations above, the Project is consistent with EN Policies 7 and 37.

**EN Policy 13 Views.** Encourage protection of visual access to the San Pablo Bay Shoreline and the Petaluma River. EN Map 3, Scenic Resources.

**EN Policy 27 Scenic Resources.** Protect visual values on hillsides, ridgelines, and other scenic resources.

Facts in Support: The lower portion of the Project Site is located within a Scenic Conservation Area as identified on General Plan Map EN 3, Scenic Resources. Accordingly, Novato Municipal Code Section 19.20.080 (Scenic Resource Protection) and Division 19.26 (Hillside and Ridgeline Protection) includes criteria applicable to the Project that addresses the Scenic Conservation Area designation. The Project was

reviewed against applicable zoning standards and meets objective design criteria. For specific details supporting this position, refer to the staff report regarding consistency with the Novato Zoning Code.

Based on this review, the subdivision is considered to be consistent with EN Policies 13 and 27.

**EN Policy 18:** Species Diversity and Habitat. Protect biological resources that are necessary to maintain a diversity of plant and animal species.

Facts in Support: The City prepared an IS/MND for the Project. The CEQA analysis did not identify any potentially significant impacts to species diversity or habitat that could not be reduced to a less than significant impact through feasible mitigation measures. The IS/MND acknowledged the Project's construction could potentially impact nesting birds and roosting bats. As a result, Mitigation Measures BIO-1 and BIO-2 were recommended to require a pre-construction nesting bird and roosting bat surveys and specifies actions to be taken if nesting birds are present, such as establishing an adequate buffer from construction as recommended by a qualified biologist. Mitigation Measure BIO-1 and BIO-2 have been applied to the Project as a condition of approval. Compliance with this condition will be monitored pursuant to the Mitigation Monitoring and Reporting Plan prepared for the Project.

Based on the observations above, the Project is consistent with EN Policy 18.

**EN Policy 23:** Native Woodlands. Maintain age and species diversity of native woodlands, and preserve the health of trees and other vegetation wherever feasible.

**EN Policy 25:** Trees on Private Property. Encourage and, where appropriate, require actions by private property owners to protect the health of native woodlands and trees.

Facts in Support: The arborist's report identified 78 trees in the northern portion of the site that could be impacted by development. The City's Woodland and Tree Preservation Ordinance (NMC Division 19.39) implements policies 23 and 25. The ordinance includes standards for tree retention and mitigation, including the retention of 75 percent of existing native trees and at least a 3:1 replacement when trees are proposed for removal. Based on a review of the arborist's report and lot configuration, conformity with this policy and Division 19.39 is feasible. A condition of approval will require that when development plans for the residences are submitted for design review, compliance with NMC Division 19.39 will need to be demonstrated.

Based on the observations above, the Project is consistent with EN Policy 23 and 25.

**EN Policy 28:** Energy Conservation Consider land use patterns and policies that promote energy conservation.

**EN Policy 31:** Development Review Process. Consider energy

conservation in the development review process.

Facts in Support: The proposed lot configuration associated with the Project will provide southern exposure for the future residences and the potential for both passive and active solar energy production. Based on the observations above, the Project is consistent with EN Policies 28 and 31.

### ***SAFETY AND NOISE CHAPTER***

**SF Policy 3: Slope and Soil Instability.** Continue to enforce existing regulations and procedures to identify potential hazards relating to geologic and soils conditions.

Facts in Support: The IS/MND prepared for the Project includes an analysis of potential impacts to slope and soil instability. Additionally, the Applicant submitted a geotechnical report that includes recommendations regarding development on the lots. Based on the findings of the geotechnical report and site conditions, Mitigation Measure GEO-1 is proposed to ensure that future development at the site does not adversely impact slope instability. Additionally, at the time of building permit submittal for future development, a site-specific soils report will be required as part of the building permit review process.

Based on the observations above, the Project is consistent with EN Policies 28 and 31.

**SF Policy 16: Fire Risk in New Development.** Review all development proposals for fire risk, and require mitigation measures to reduce the probability of fire.

**SF Policy 17: Level of Fire Protection.** Work with Novato Fire Protection District to help ensure a continued high level of fire protection.

Facts in Support: The Project was referred to the Novato Fire Protection District (NFPD) for review and comment. The NFPD identified the site as being located in a Wildland Urban Interface (WUI) and subject to building code and vegetation management requirements associated with the WUI. NFPD provided the City with recommended conditions of approval that reflect NFPD development standards for the Project Site, including the requirement for a vegetation management plan and a residential fire sprinkler system for the future residences. Additionally, the CEQA IS/MND included an analysis of Wildfire risk at the site, and did not identify any significant, unavoidable impacts.

Conformance with SF policies 16 and 17 will be implemented through the design review and building permit process required prior to development on the five lots. Conditions of approval will ensure compliance with these policies.

**SF Policy 19: State Building Code.** Continue to enforce the State Building Code (UBC).

Facts in Support: Construction of new structures will require building permits consistent

with the California Building Code regulations in effect at the time a building permit is submitted. Based on this requirement, the Project will comply with SF Policy 19.

**SF Policy 35: Gross Field Airport Hazards.** Minimize risk to lives and property due to hazards associated with the operation of Gross Field Airport.

Facts in Support: The Project Site is located within the Gross Field Airport Land Use Plan area and is located in the "Overflight Zone" of the Aviation Safety Zones detailed in Figure 3.1 (Gross Field Airport Land Use Plan (1991) ("Plan")). The Overflight Zone is defined as immediately outside the Traffic Pattern Zone; aircraft are still climbing out and/or descending in this area, but the risks this far from the Airport are minimal. The Project Site is not located in the flight tracks or the noise contours, as identified on Figure 3.2 of the Plan. According to the Plan, residential development should be limited to four dwelling units per gross acre in the Overflight Zone. The Project has a gross density of 0.72 units per acre, which is consistent with the limits on development. Additionally, allowable building heights of 25 feet will not conflict with airport operations.

The Project was reviewed by the Marin County Airport Land Use Commission (ALUC) on July 12, 2021. The Commission determined that the Project is consistent with the Plan, and recommended that the City include a condition of approval requiring an aviation easement regarding aircraft noise for the proposed lots.

Based on the observations above, the Project is consistent with SF Policy 35.

**SF Policy 37: Noise and Land Use Compatibility Standards.** Encourage the maintenance of the noise and land use compatibility standards indicated in SF Table 3. The normally acceptable standards for outdoor noise are summarized below [noise measurements in Ldn].

Facts in Support: The IS/MND includes a noise analysis. The noise analysis concluded the Project would not generate noise in excess of the compatibility standards detailed in General Plan Table 3 based on the residential standards applicable to the Project Site. Additionally, the City's Municipal Code includes noise standards that implement the City's General Plan. City staff will review future development applications for compliance with NMC Section 19.22.040 and Section 19.22.070 to ensure that noise generating uses, especially electrical and mechanical equipment, are placed in a location and sound attenuated to an acceptable level, consistent with the Municipal Code and General Plan.

Based on the observations above, the Project is consistent with SF Policy 37.