

PLANNING COMMISSION RESOLUTION

RESOLUTION NO. 98-039

RESOLUTION OF THE PLANNING COMMISSION
RECOMMENDING APPROVAL OF THE BLACK POINT GOLF
LINKS VESTING TENTATIVE MAP

Based on the below-described Evidence, the Planning Commission does hereby find, determine, adopt, resolve and order as follows:

Section 1. Background

- (a) Black Point Partners ("Applicant") seeks to develop approximately 174.8 acres of the 238.5-acre "Project Site" (located east of U.S. Highway 101 and directly south of Highway 37) with 53 single-family homes, an 18-hole golf course, a clubhouse and mitigation lands. The remaining 63.7 acres of the Project Site, also included in the development proposal, are owned by the American Land Conservancy and will be used as a wildlife preserve on the Project Site. The collective total of the uses proposed on the Project Site and referred to alternatively as the "1997 Master Plan Alternative" and as the "Black Point Golf Links and Residential Proposal" are also referred to in this Resolution as "Black Point."
- (b) As part of the Black Point proposal, the Applicant previously submitted and received approval of an application requesting a "Rezoning" of the Project Site from PCR:F-2 (Planned Commercial Recreation with Combining Floodway Regulations) to RSP:F-2 (Planned Single-Family Detached with Combining Floodway Regulations) and a Master Plan application to allow development of 53 single-family homes, an 18-hole golf course and clubhouse facility and a wildlife habitat area.
- (c) Prior to a Planning Commission hearing on the Rezoning, a notice describing the proposed Rezoning was prepared and mailed to interested persons and nearby property owners, and published in a newspaper of general circulation in the affected area, pursuant to the City's Zoning Ordinance and State law.
- (d) On August 25, 1997, following a duly noticed public hearing, the Planning Commission adopted Resolution No. 97-035, certifying the Environmental Impact Report ("EIR") described in that Resolution. Prior to acting on the Rezoning, the Planning Commission considered the information in the EIR.
- (e) At its August 25, 1997 meeting, the Planning Commission held a duly noticed public hearing on the Rezoning for Black Point. During the public hearing, the Planning Commission considered oral and written comments on the Rezoning. At that August 25 meeting, the Planning Commission found the Rezoning to be consistent with the City's 1996 *General Plan* and, through Resolution No. 97-036, recommended that the City Council adopt the Rezoning.

The Planning Commission based its actions and determinations on those comments and the "Evidence" described in Resolution No. 97-036.

- (f) At its August 25, 1997 meeting, the Planning Commission also held a duly noticed public hearing on the 53-unit Master Plan proposed for the Black Point development, submitted by the Applicant in September 1996 (hereafter the "Master Plan"). During the public hearing, the Planning Commission received comments from the Applicant, project consultants, City staff, public agencies and members of the general public. Prior to acting on the Master Plan, the Planning Commission considered the information in the EIR. At that August 25 meeting, the Planning Commission approved Resolution No. 97-037, which recommended to the City Council that it approve the Master Plan. The Planning Commission based its actions and determinations on those comments and the "Evidence" described in its Resolution No. 97-037.
- (g) Prior to the City Council's hearings on the Rezoning and on the Master Plan, a notice describing the proposed Rezoning and Master Plan was prepared and mailed to neighboring property owners and interested persons, and published in a newspaper of general circulation in the affected area, pursuant to the City's Zoning Ordinance and State law.
- (h) At its meeting of September 23, 1997 (extending into the early hours of September 24th), and following a duly noticed public hearing, the City Council unanimously adopted Resolution No. 135-97, certifying the EIR for Black Point. The "EIR" for the purposes of that City Council certification and this Resolution is comprised of the "1994 EIR," the "1997 EIR Update" (as both of those terms are defined in City Council Resolution No. 135-97 (September 29, 1997)), the public comments thereon, the City's responses thereto, and the Mitigation Monitoring and Reporting Program. The City Council considered the information in the EIR prior to acting on the Rezoning and the Master Plan.
- (i) At its meeting of September 23, 1997 (extending into the early hours of September 24th), the City Council held a public hearing at which time it considered oral and written comments on the Rezoning. The City Council based its actions taken in Ordinance No. 1375 (approving the Rezoning) on those comments and on the "Evidence" described in that Ordinance. For the reasons set forth in its Evidence, the City Council found that the Rezoning is consistent with the *1996 General Plan*, and adopted the reasons and findings set forth in that Evidence. The City Council approved the Rezoning subject to the conditions that: (a) no development shall be permitted on the 63.7-acre parcel which in any way significantly and adversely affects the woodland habitat existing on said parcel at the time any request for development is acted upon; and (b) the residential density of the entire Project Site shall not exceed 53 units; and subject to the Mitigation Measures in *Attachment 1 to Exhibit A* of City Council Resolution No. 135-97.
- (j) At its meeting of September 23, 1997 (extending into the early hours of September 24th), the City Council held a public hearing on the Master Plan at which time it considered oral and written comments on the Master Plan. The City Council based its actions taken in that Ordinance on those comments and on the "Evidence" described in City Council Ordinance No. 1376 regarding the Master Plan. For the reasons and findings set forth in the Evidence

described in and adopted by Ordinance No. 1376, the City Council found that the Master Plan is consistent with the *1996 General Plan*, and made the additional findings regarding the Master Plan required to be made by the City Council pursuant to the City's Zoning Ordinance Section 19-11.046b.4.(c).

- (k) The Applicant requested exceptions from certain City Development Standards (Chapter 5 of the Novato Municipal Code) described in the Master Plan text. Based on the Evidence, the City Council approved certain exceptions to the Development Standards (described in the Ordinance approving the Master Plan) and made the requisite findings concerning Development Standards exceptions, as required by the Novato Municipal Code.
- (l) In accordance with Planning Commission Resolution No. 97-037, and based on the Evidence, the City Council designated the Project Site as an area where rural street standards would apply because it falls within the classifications specified in Section 5-45.008b.2(a) of the Novato Municipal Code.
- (m) Based on the Evidence and the findings set forth in the Ordinance, the City Council adopted Ordinance No. 1376 and approved the Master Plan, subject to the Mitigation Measures in Attachment 1 to Exhibit A and subject to the Conditions of Approval in Exhibit B, both of which Exhibits were incorporated by reference into City Council Ordinance No. 1376.
- (n) In February 1998, the voters of the City of Novato -- by a margin of 61% to 39% -- adopted "Measure A" and "Measure B." Measure A was an initiative which enacted the Rezoning and the Master Plan in the same form as they were approved by the City Council. Measure B did not enact new ordinances but, via referendum, ratified the actions of the City Council in approving the Rezoning and the Master Plan. Therefore, under both Measure A and Measure B the Rezoning and Master Plan become effective.
- (o) A Vesting Tentative Map application ("VTM Application") seeking the establishment of 60 parcels on the Black Point Project Site was prepared and submitted by the Applicant, was determined to be complete by the City, and was transmitted to interested agencies pursuant to the Subdivision Map Act and the Novato Municipal Code.
- (p) A public notice describing the VTM Application was sent to neighboring property owners and interested persons pursuant to Section 19-5.014 of the Novato Municipal Code.
- (q) At a public hearing on June 15, 1998, and prior to taking action on the action on the VTM Application set forth in this Resolution, the Planning Commission received and considered oral testimony, correspondence, information provided by City staff, members of the public, individuals representing different interest groups, the property owners and their representatives, members of the Planning Commission and others, the documents and reports relating to Black Point including, but not limited to, Measures A and B, Planning Commission Resolution Nos. 97-036 and 97-037, City Council Ordinance Nos. 1375 and 1376 (and the "Evidence" described in those Planning Commission and City Council actions), the *1996 General Plan*, the EIR certified for Black Point, and the City Staff Report regarding the VTM

Application. The collective total of all such information is referred to as the "Evidence" in this Resolution.

- (r) Based on the Evidence referred to in paragraph (q), this Planning Commission has made the findings and determinations and taken the actions contained in this Resolution.
- (s) Pursuant to a Condition of Master Plan Approval (including a Condition of Approval in Measure A), the VTM Application must secure City Council approval.

Section 2. General Plan Consistency

- (a) For the reasons set forth in *Attachment A*, attached hereto and incorporated herein by this reference as if set forth in full, this Planning Commission finds the VTM application and its approval consistent with the City's *1996 General Plan*.

Section 3. CEQA Compliance and Adoption of CEQA Findings

- (a) The City previously made and adopted findings and a Statement of Overriding Considerations relating to the Black Point Golf Links Residential and Golf Community project pursuant to the California Environmental Quality Act (CEQA) (see for example *Exhibit A* to City Council Resolution No. 135-97). The Planning Commission finds and determines that the above-described EIR is adequate for approval of the VTM Application, and there is no need to prepare a subsequent or supplemental EIR to evaluate changes to the project, changes in circumstances, or new information related to the development in connection with its approval of the VTM Application, and recommends the same findings and determinations to the City Council. Approval of the VTM Application will not cause any changes resulting in new significant environmental effects or a substantial increase in the severity of previously identified significant environmental effects. As explained in these findings, approval of the VTM Application will not change the Black Point development but will only authorize development to proceed consistent with the provisions of Measures A and B, the provisions of the *1996 General Plan* and the *Rezoning and Master Plan*. In addition, no substantial changes have occurred with respect to the circumstances under which the development is undertaken which would result in new significant environmental effects or an increase in the severity of previously identified significant effects. Finally, no new information of substantial importance showing new significant environmental impacts, an increase in the severity of previously identified significant effects, or the availability of new mitigation measures or alternatives that would substantially reduce one or more significant environmental impacts, has become available. The Planning Commission therefore relies on those earlier CEQA findings made by the City Council and hereby readopts them and incorporates them herein by this reference as if set forth herein in full.
- (b) The Planning Commission finds that by reason of the matters set forth in subsection 2(a), no additional findings or Statement of Overriding Considerations (beyond those incorporated by reference in subsection 2(a)) are required.

Section 4. Adoption of Map Findings

The following findings are made regarding the VTM Application pursuant to the Subdivision Map Act and Section 9-7.002e(2) of the Novato Municipal Code based on the documentation in the staff report incorporated herein by reference and the Evidence and determinations set forth in this Resolution:

- (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 proposal is consistent with the Zoning Ordinance and any Master Plan or Precise Development Plan adopted pursuant thereto.
- (c) The effect of the approval on the housing needs of the region has been considered and balanced against public service needs of the residents of Novato and available fiscal and environmental resources.
- (d) The design of the subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities in the subdivision.
- (e) The construction of on- and off-site improvements is a necessary prerequisite to the orderly development of the parcel and the surrounding area.
- (f) In providing for future passive or natural heating or cooling opportunities in the design of Black Point, consideration was given to local climate, to contour, to configuration of the parcels to be divided, and to other design and improvement requirements. These provisions did not reduce the allowable density or the percentage of a lot which may be occupied by buildings or structures under the applicable planning and zoning in force at the time the VTM Application was filed.
- (g) All governmental and utility agencies affected by the VTM Application have been notified and given the opportunity to respond to the VTM Application.
- (h) The Black Point Project Site's "physical suitability" for the type and proposed density and intensity of development has been analyzed in the EIR. The EIR concluded that the location of Black Point's buildings, facilities and infrastructure is suitable based on the implementation of Black Point's mitigation measures.
- (i) As described in greater detail in Section 2 above, the design of Black Point and the proposed improvements are generally not likely to cause substantial environmental damage or substantially or unavoidably injure fish or wildlife or their habitat, because Black Point's design incorporates mitigation measures described in the EIR which will reduce identified impacts to a non-significant level. Certain impacts will not be totally mitigated, and are therefore identified as unavoidable impacts in the EIR but have been found acceptable through the Statement of Overriding Considerations referenced in the CEQA findings.

- (j) The design of Black Point and the type of improvements are not likely to cause serious public health problems not already resolved by the EIR, the CEQA findings, the mitigation measures, the *1996 General Plan* and Measures A and B.
- (k) The design of Black Point and the type of improvement proposed with Black Point will not conflict with easements acquired by the public at large for access through or use of the property within Black Point because the easements are incorporated into the design of Black Point.
- (l) The discharge of waste from Black Point into an existing community sewer system will not result in a violation of existing requirements of the Bay Area Regional Water Quality Control Board.
- (m) None of the conditions otherwise described in the Subdivision Map Act or Novato Municipal Code requiring denial of the VTM Application exists with respect to the VTM

Section 5. Adoption of Findings and Recommendation of Approval of Development Standards Exceptions

The Planning Commission does hereby recommend that the City Council grant exceptions to the following sections of the Development Standards Chapter:

- Section 5-23.008b.1(c)-(f) - Maximum height for cut and fill slopes; *the exception is approved for the golf course only.*
- Section 5-29.008b.3(c) - Lot size and configuration.
- Section 5-28.008b.3(a) - Provide landscape areas with a minimum width of ten feet to separate a parking lot from the street.
- Section 5-28.008b.5 - Removal of vegetation from perimeter of development areas.
- Section 5-28.008b.3 - Standards for planting of street trees.
- Section 5-45.008a & b.2 - Street lighting.
- Section 5-45.008b.2(k)(4) - Minimum grade for streets of one percent.
- Section 5-53.002 - Underground installation of all utilities and related facilities; *the exception is approved only for the lowland portion of the project, undergrounding would be required in upland areas.*
- Section 5-45.008b.2(c) - Road designed for speeds of less than 25 miles per hour.
- Section 4-3 - Depth of ponds subject to fencing.

with the following findings (a-d) based on the staff report analysis incorporated herein by reference:

- (a) Due to special circumstances or conditions affecting this property, the strict application of this chapter would create an unnecessary hardship.
- (b) That the exception is consistent with the intent of the requirements of the Development Standards Chapter and does not constitute a grant of special privilege.
- (c) That the exception would not result in significant increased adverse environmental impacts compared to the strict application of the Development Standards Chapter.
- (d) That the granting of the exception will not be detrimental to the public health, safety, convenience, and general welfare or injurious to other property in the territory in which said property is situated.

Section 6. Recommendation of Approval of VTM Application and Conditions of Approval.

The Planning Commission does hereby recommend approval to the City Council of the VTM Application, subject to the following Conditions of Approval:

1. This approval shall expire according to the provisions of the State Subdivision Map Act and any amendments thereto and applicable provisions of the Novato Municipal Code consistent with the State Subdivision Map Act.
2. This Vesting Tentative Map will employ multiple phased Final Maps which shall be prepared in accordance with state and local laws.
3. Prior to Final Map approval, a Lot Line Adjustment shall be approved for the area where the golf course encroaches onto American Land Conservancy land as described by the Applicant on page 14 of the written text submitted with Precise Development Plan and Vesting Tentative Map applications.
4. Any and all plans, analyses and studies (collectively "plans") that are required to be prepared pursuant to these conditions shall be subject to the review by and the approval of the designated City official(s). In addition, the improvements, landscaping, structures, and/or any man-made features or activities shown depicted or analyzed in said plans shall be constructed, erected, installed and/or implemented in accordance with the applicable plan.
5. Prior to Final Map approval, a written protocol for use by the golf course operator and golf course users shall be submitted to the Community Development Director for review and approval describing the methodology for retrieving golf balls from wetlands, environmentally sensitive areas and mitigation areas.
6. The following requirements shall be met to the satisfaction of the North Marin Water District:
 - a. The Applicant shall work with the District to determine the appropriate size for the proposed water tank. The Applicant shall not be responsible for costs associated with

any over sizing of water facilities required by the District to provide benefit to uses outside the project area.

- b. The Applicant shall provide required geotechnical review and recommendations for construction of a water tank at the proposed tank site.
 - c. The water tank shall be either an above grade steel tank "foliage green" in color, or a buried or partially buried concrete tank.
 - d. Pump station modifications shown as off-site improvements required may include relocation and upgrade of existing facilities at the District's temporary School Road Pump Station site to a permanent pump station site adjacent to Bahia Drive.
 - e. An easement shall be provided to the District between the proposed Black Point Drive and existing District easement between the subject property and Grandview Drive.
 - f. If recycled water becomes available for golf course irrigation, the Applicant shall submit an application to the District in accordance with District regulations.
 - g. The District shall review the golf course irrigation design prior to provision of potable water for that use.
 - h. The project shall comply with the District's Regulation 15, Water Conservation - Novato Service Area, which includes mandatory restrictions on nonresidential landscaping and voluntary rebate programs from residential landscaping, in addition to requirements for water conserving plumbing fixtures.
 - i. Upon receiving this approval, the applicant shall make an immediate application to the District in order to provide timely water service to the project.
7. The following requirements shall be met to the satisfaction of the Novato Sanitary District:
- a. The project site shall be annexed to the District.
 - b. A sewer main extension, including gravity sewers, a sewer pump station, and force main shall be constructed to serve the project.
 - c. Prior to approval of sewer facilities plans and specification and issuance of any District permits, the Applicant shall provide the District with documentation that both the City and County recognize and endorse the proposed sizing of sewage conveyance facilities.
 - d. The Applicant shall provide the District with a letter to the flood control agencies that delineates the specific flood control measures to be implemented. The letter shall provide assurance (with technical backup information) that the additional flow generated by the project will not result in any increase in the frequency, duration, or

magnitude of flooding of downstream properties. If such assurances cannot be made, then the Applicant shall implement improvements to the stormwater conveyance and pumping facilities to keep flood potential to pre-project levels.

- e. The Applicant shall be responsible to the District and other interested parties for the Applicant's share of any increased maintenance costs to the District of flood control facilities caused by Applicant's development.
 - f. The Applicant shall provide free and clear all-weather access to the existing access point at the District Site 7 reclamation area.
8. An access easement shall be dedicated to the Marin County Flood Control and Water Conservation District along Pump Station Road from the public road to the property line. The easement shall be a minimum of 20 feet wide and shall follow historic access where possible.
9. Pursuant to Section 9-20 (Park Dedication and In-Lieu Fees) of the Novato Municipal Code, a \$137,287 park dedication fee shall be paid: 50 percent shall be paid prior to recordation of the first Final Map and the remainder shall be paid prior to issuance of building permits for residential units. A reduction in the in-lieu fee may be authorized by the Director of Parks, Recreation and Community Services.
10. The following shall be required prior to the approval of any Final Map involving residential lots or the Clubhouse to the satisfaction of the Engineering Division:
- a. Plans for the improvements to the intersection of State Highway 37 and Atherton Avenue shall be submitted subject to the review and approval of the County of Marin, Caltrans and the City Engineer.
 - b. Plans for improvement of the railroad crossing shall be submitted subject to the review and approval of the City Engineer, Northwestern Pacific Railroad Authority (NWPRA), and all other appropriate agencies.
 - c. The Applicant shall prepare a feasibility report for constructing an additional southbound traffic lane on Atherton Avenue under Highway 37 near the intersection of Harbor Drive solely for project traffic. The purpose of this additional lane would be to provide storage capacity for project traffic during the periods when the railroad crossing will be closed. Traffic in the adjoining inside lane would then be able to make left turns onto Harbor Drive while the railroad crossing is closed. Should the report indicate that a new storage lane is warranted, such lane shall be designed and constructed as part of the subdivision improvements for Black Point Drive. The feasibility report and, if required, the improvement plans and street construction shall be subject to the review and approval of Caltrans and the City Engineer.

- d. The off-site improvements outlined in items a through c above shall be guaranteed with the first Subdivision Improvement Agreement entered into between the subdivider and the City.
- e. A homeowner's association or other suitable mechanism for the enforcement of this condition shall be created and appropriate documents shall be recorded which require that the project property owners will maintain, repair and replace the private roads and related grading, retaining walls and drainage facilities within the project. These documents shall be subject to the review and approval of the Community Development Director, the City Engineer and the City Attorney.
- f. The Applicant shall petition the City Council for traffic enforcement by the City within the private roads per California Vehicle Code Section 21107.7 in order to assure adherence to parking restrictions and speed regulations.
- g. Parking bays or other parking facilities shall be provided along the private roads so that at least 45 residential parking spaces are provided. These spaces may be placed in groups or separated as necessary to take advantage of topography and to reduce grading and tree removal. These parking facilities shall also be placed in locations least likely to be disturbed by future driveway approaches. The half width of the road where parking bays are provided shall be 14 feet. Parking bays for parallel spaces shall be 24 feet long for each vehicle space. Parking bay transitions from the outer edge of the bays to the normal edge of road pavement at each end shall be eight feet long.
- h. The Applicant shall provide mail boxes (including clusters of boxes, if appropriate) per U.S. Postal Service requirements. Road turnouts may be required to accommodate these mail boxes subject to the review and approval of the City Engineer.
- i. Asphalt concrete berms or appropriately lined ditches shall be installed to control drainage on the low sides of all private roads where the road grade exceeds 4 percent. Where road grades are 4 percent or less, lined ditches, geogrid reinforced ditches, grass swales or similar drainage facilities may be installed. All such drainage facilities shall be subject to the review and approval of the geotechnical engineer (for soil stability) and the City Engineer (for drainage adequacy).
- j. Sufficient storm drainage facilities shall be installed in the roads so that the maximum storm water encroachment into the travel lanes will not exceed five feet.
- k. Final grading plans shall be subject to the review and approval of a qualified geotechnical engineer. Written confirmation shall be made by the subdivider's geotechnical engineer affirming compliance or otherwise addressing each of the recommendations made in geotechnical peer reviews. Such review shall be paid for by the subdivider.

- l. Access and utility easements which serve more than one lot shall be 25 feet in width.
- m. Two foot wide setbacks to the tops and toes of graded banks shall be provided at the outside of all ditches, berms or other road improvements. This requirement applies to all road sections.
- n. Appropriate drainage facilities, such as ditches, lined ditches or berms where required, shall be provided for the fire road. The fire road profile grades and surfacing materials shall be subject to the review and approval of the Novato Fire District.
- o. Design and construction of the off-site sewer and water facilities shall be subject to the review and approval by the appropriate district. Work within the road rights of ways for these facilities shall be subject to review and approval by the County, State or other affected jurisdiction.
- p. Golf cart path road crossing locations, signs and striping shall be in conformance with the California Vehicle Code, applicable City Codes and subject to the review and approval of the City Engineer. Where golf cart paths are proposed parallel to and within the public right-of-way, the design of such paths shall be done with consideration for the safety of motorists, pedestrians, bicyclists and golfers. The portions of any such paths in public right-of-way must be available for use by the public. Berms, barriers, landscaping, fences and similar items may be required to separate the roadway from the cart paths. Design and construction of these permanent encroachments shall be subject to the review and approval of the City Engineer. Maintenance and liability protection agreements for these encroachments shall be subject to the review and approval of the City Attorney
- q. Additional drainage facilities such as grassy swales, geogrid reinforced swales, lined ditches and pipes may be required in the residential area to provide for the increase in runoff due to construction of roads, parking and houses. Existing drainage patterns shall be maintained. All swales and ditches shall be subject to the review of the geotechnical engineer (for stability) and the City Engineer (for capacity and alignment). Drainage easements shall be offered for dedication on all Final Maps for 1) road drainage across lots and for; 2) lot drainage when surface or underground flows for two or more lots contribute to the existing or proposed drainage facility.
- r. Additional access easements may be required at the ends of the private roads serving two to four lots to provide for vehicular turning movements. The need for these easements will be determined when the subdivision improvement plans are reviewed.
- s. The maximum centerline profile road grades at the ends of cul de sacs shall be eight percent.
- t. Edge of road curves at entrances to cul de sacs shall have minimum radii of 60 feet.

- u. Offers of dedications and easements on all Final Maps shall be subject to the review and approval of the City Attorney.
 - v. The Applicant shall submit a final landscape plan that includes a table listing specific types and size of plant materials and detailed plans at a 1"=20' scale showing landscape plans for parking lots and along the public portion of Black Point Drive (including the east side frontage that is not owned by the Applicant).
 - w. Concurrently with the recordation of the Final Map, there shall be recorded on each residential lot a binding covenant establishing the size of the designated building envelope of each lot and establishing the number of trees that may be removed from the designated building envelope of each lot in accordance with the Tree Budget.
 - x. Minor modifications to lot dimensions shall be permitted subject to the approval of the Community Development Director. The applicant shall submit preliminary plans for houses, parking and driveways for Lots A2, A3, A8, A15, A17, A19, A21, A34, B1, B7, B8, B9 and B15 or other information acceptable to the City Engineer at his sole discretion. Unless otherwise required, these preliminary plans shall be similar in level of detail to the plans for residential units provided with the Precise Development Plan; however, preliminary finished grades and grading shall be designed and shown on the plans per City standards.
 - y. Street lights shall be provided for that portion of Black Point Drive which will be a public street. The lighting requirements contained in the Novato Municipal Code may be reduced for this public street so long as the lighting installed provides for the safety of motorists, bicyclists and pedestrians. Project lighting shall be designed by an electrical engineer whose expertise is outdoor lighting, subject to the review and approval of the City Engineer.
11. The Applicant shall fully implement all of the conditions of approval of the Master Plan, Precise Development Plan, and Vesting Tentative Map, and all mitigations from the certified Environmental Impact Report for the project. Subject to the review and approval of the Community Development Director, the applicant may implement conditions of approval for a specific geographic area only when improvements are to be constructed or developed in that area.
12. Indemnity and Time Limitations:
- a. Pursuant to Government Code Section 66474.9(b), the Applicant shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys, or employees, to attack, set aside, void or annul the Planning Commission decision to approve the Vesting Tentative Map at issue herein. This indemnification shall include damages or fees awarded against the City, if any, cost 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 shall defend, indemnify and hold harmless the City, its agents, officers, 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 if 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. The Applicant indemnifies the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.
13. The conditions of approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions (collectively "exactions"). Certain of those exactions are currently known with specificity (e.g., the amount of certain existing impact fees), while others have not yet been determined by the City. Additionally, while certain existing fees are currently known, their possible future adjustments are not. Therefore, the following shall apply:
- a. For those exactions whose amount/scope could be determined today by Black Point Partnership because the amount/scope is set forth in or can be determined from adopted City action, these Conditions of Approval shall constitute written notice of a statement of the amount of such exactions. Black Point Partnership is hereby further notified that the 90-day period in which it may protest these exaction, pursuant to Government Code Section 66020(a) shall begin upon the date the City Council adopts the resolution approving the Vesting Tentative Map to which these conditions apply. If Black Point Partnership fails to file a protest within said 90 day periods complying with all of the requirements of Section 66020, Black Point Partnership will be legally barred from later challenging such exactions.
 - b. For those exactions whose amount/scope is set forth in or can be determined from adopted City action, but whose future adjustment is unknown, Black Point Partnership is hereby notified that the 90-day period in which is may protest these adjusted exactions, pursuant to Government Code Section 66020(a) shall begin upon the date the City Council adopts the adjustment of any such exactions. If Black Point Partnership fails to file a protest within said 90-day period complying with all of the requirements of Section 66020, Black Point Partnership will be legally barred from later challenging such exactions.
 - c. For those exactions whose amount/scope could not be determined today by Black Point Partnership because the amount/scope is not currently set forth in or cannot be determined from adopted City action, Black Point Partnership is hereby notified that the 90-day period in which it may protest such.exactions, pursuant to Government Code Section 66020(a) shall begin upon the date the City Council adopts the exactions. If Black Point Partnership fails to file a protest within said 90-day period complying with all of the requirements of Section 66020, Black Point Partnership will be legally barred from later challenging such exactions.

Section 7. Severability.

- (a) If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution. The Planning Commission hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, phrases, or clauses be declared unconstitutional on their face or as applied.

Section 8. Effective Date.

This Resolution shall take effect immediately upon its adoption. Planning staff shall immediately forward this Resolution to the City Council for its consideration.

Passed and adopted at a regular meeting of the Planning Commission of the City of Novato held on the 15th day of June, 1998 by the following vote:

AYES: Acting Chair Tiernan, Commissioners Brooks and Jacoby


NOES: Commissioner Karr

ABSTAIN: Chair Lagin and Commissioner van den Toorn

ABSENT: Commissioner Wood

* * * * *

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 15th day of June, 1998.



Acting Chair Peter Tiernan