



July 14, 2023

Project Planner  
City of Novato Planning Division  
922 Machin Avenue  
Novato, CA 94945

**Re: Request for Density Bonus and Concessions  
1212-1214 Grant Avenue | APN 141-262-12 & -13**

To Whom It May Concern:

AMG & Associates, LLC (AMG) and the California Housing Defense Fund (CalHDF) are requesting concessions for the aforementioned property pursuant to State Density Bonus Law (SDBL) [Government Code (GC) Section 65915]. According to the City’s 2035 General Plan and the zoning code, the site is classified as General Commercial with the Affordable Housing overlay. This overlay, per the zoning code, is “applied to housing sites as described in the housing element” and permits a density of 20.0-23.0 dwelling units per gross acre according to the General Plan.

The project is a total of 350 units with a gross floor area of 254,702 square feet. The project’s affordability will be distributed according to the below table and consistent with the following applicable codes:

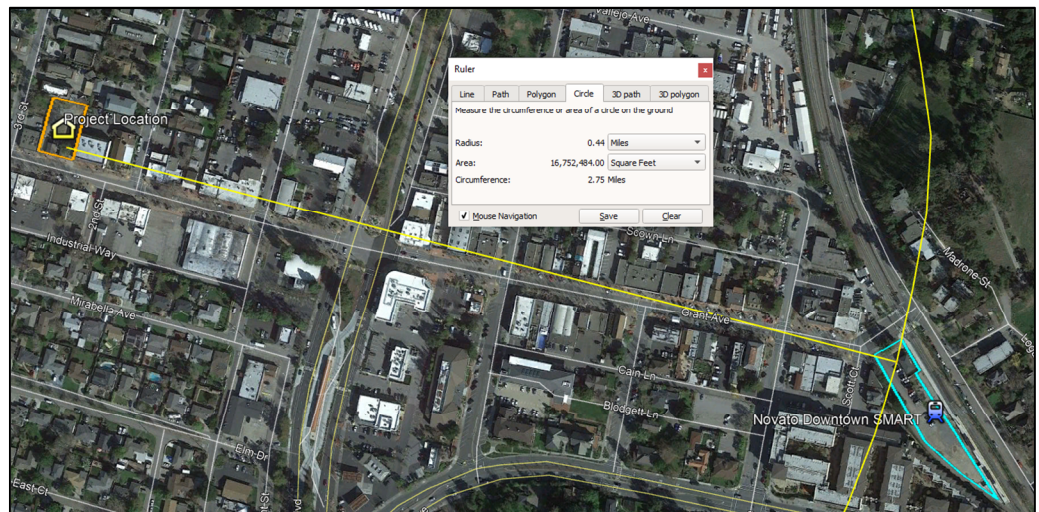
Income Level Area Median Income	Very Low 50% AMI	Low 60% AMI	Low 80% AMI	Manager Unit Market Rate	TOTAL
# UNITS	35	35	276	4	350
% OF TOTAL	10%	10%	80%		

- 1. City of Novato’s affordability requirements [Novato Municipal Code (NMC) §19.24]:** The City’s Code requires that a residential rental project of 20 or more units designate 20% of its units as affordable [NMC §19.24.030]. Of those designated units, half must be set aside to be rented at 50% AMI and the balance to be rented at 60% AMI. This requirement is met as indicated in the above table.
- 2. Housing Accountability Act [GC §65589.5]:** The Housing Accountability Act (HAA) offers additional protection for housing developments that set aside at least 20% of their units for lower income households (80% AMI) as defined by Health and Safety Code (HSC) §50079.5 [GC §65589.5(h)(3)]. This project meets this requirement by setting aside 80% of its units to families earning 80% AMI, and therefore qualifies for protection under the HAA.
- 3. SDBL [GC §65915]:** We request a density bonus and concessions in accordance with SDBL. Below please find descriptions for each item requested.

i. Density Bonus: Pursuant to SDBL, a housing development is exempt from “maximum controls on density” when it meets two criteria:

- **Affordability [§65915(b)(1)(G) and (f)(3)(D)]**: 100% of the units in the development, except those units designated for manager’s units, are for lower income households, as defined by HSC §50079.5, and that up to 20% percent of the units are for moderate-income households, as defined in HSC §50053. Please note that per HSC §50079.5, lower income households also include very low and extremely low income households. Thus, the very low income units set aside for the purpose of meeting the City’s affordability requirements can be counted toward the affordability requirements of SDBL. Therefore, this project meets this requirement as illustrated in the above table.
- **Proximity to Transit [§65915(f)(3)(D)(ii)]**: The project must be located within one-half mile of a major transit stop. State Density Bonus Law defines the measurement of one-half mile as follows (emphasis added): “that **any point on a proposed development**, for which an applicant seeks a density bonus, other incentives or concessions, waivers or reductions of development standards, or a vehicular parking ratio pursuant to this section, is within one-half mile of **any point on the property** on which a major transit stop is located, **including any parking lot** owned by the transit authority or other local agency operating the major transit stop” [§65915(o)(3)]. SDBL relies on Public Resources Code §21064.3 for the definition of a “major transit stop” which, amongst other things, can be “an existing rail or bus rapid transit station.”

The Downtown Novato SMART train, an existing rail service, is located within one-half mile of the project site when measured from any point on the development to any point on the property where the major transit stop is located, including the parking lot that serves the stop as illustrated below.



The enclosed HCD Technical Memo dated November 17, 2021 provides further clarification on how the one-half mile distance should be measured. HCD states that it is a “broad definition” and that the “Legislature intended this this broad definition when it chose the very general term ‘any point on the property’”.

Since this project complies with both criteria mentioned above, this project is eligible for an unlimited density bonus. Pursuant to §65915(e)(3), a project that receives unlimited density shall only be eligible for four incentives plus an increase in height of up to 33 feet or three stories. Waivers may be requested but it is up to the City to agree to these waiver requests. No waivers are being requested. Please see the “Concessions” section of this memo for details on the concessions being requested at this time.

- ii. Concessions & Waivers: Pursuant to §65915(e)(3), a project that receives unlimited density shall only be eligible for four concessions plus an increase in height of up to 33 feet or 3 stories. As previously indicated “maximum controls on density” do not apply to this project. Four concessions are requested. Please see the “Concessions” section of this for details on what is being requested at this time. Waivers may be requested but it is up to the City to agree to these waiver requests. At this time no waivers are being requested.
- iii. Parking Standards: As permitted by §65915(p)(3)(A), a project that meets the affordability requirements of (b)(1)(G) and is located with “unobstructed access” within one-half mile of a major transit stop is not subject to parking standards. This project meets both of these items, and therefore is not required to provide parking. However, 24 vehicular stalls are provided.

**4. AB 2011 [GC §65400]:** Article 2 of AB 2011 [GC §65912.110 - §65912.114] provides specific direction for 100% affordable projects in commercial zones. A project is permitted to use this streamlined, ministerial process if it meets two criteria:

- i. 100% of the units, excluding managers’ units, are set at an affordable cost for low income households (as defined by HSC §50052.5) or at a rent consistent with rent limits established by California Tax Credit Allocation Committee (CTCAC). The project is 100% affordable and the rent limits will be consistent with CTCAC. The maximum rent level permitted by CTAC is 80% of AMI, therefore the project assumes to meet this criterion.
- ii. A deed restriction shall be recorded for 55 years for rental units or 45 years for owner-occupied units. As stated above, we intend to submit a CTCAC Application and hopefully be awarded an allocation. Receiving an allocation requires that we enter into a deed restriction for a period of 55 years. Therefore the project assumes to meet this criterion.

## Concessions

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Pursuant to §65915(e)(3), we are entitled to four concessions and a height increase of 33 feet or three stories. Therefore, please see below three concessions that are being requested which results in actual, identifiable costs.

- 1. Building Coverage [NMC §19.16.070]:** This standard permits a maximum building coverage of 40%. The proposed building coverage is 60% (55,227 square foot building footprint ÷ 91,911.6 square foot lot). If we complied with this standard then the building footprint must shrink to approximately 36,764.6 square feet. Incorporating this standard creates a domino effect wherein the building would need to shrink drastically and redesigned, resulting in a reduction in the proposed number of units. Maintaining the sizes of the courtyard and roof deck and the height of the building, we estimate that shrinking the building footprint results in a loss of approximately 155 units. The difference between land cost per unit at 195 units (without the concession) and at 350 units (with the concession) is \$7,494.51 per unit. A concession for this development standard results in an “actual and identifiable cost reduction” for the construction of this affordable housing project.

	Project with Concession	Project without Concession
<b>Total Units</b>	350	195
<b>Land Cost/Unit</b>	\$9,428.57	\$16,923.08

- 2. Outdoor Open Space [NMC §19.16.070]:** This standard requires a minimum of 150 square feet of open space per unit or 52,500 square feet for 350 residential units proposed. The project proposes approximately 31,973 square feet of outdoor open space in the form of a courtyard and corner roof deck. Meeting this requirement would necessitate the incorporation of an additional 20,527 square feet by growing the size of the interior courtyard by approximately 10,500 square feet and incorporating an approximately 10,000 square feet roof top deck. Growing the courtyard means removing 114 units. The difference between land cost per unit at 265 units (without the concession) and at 350 units (with the concession) is \$4,554.48 per unit.

	Project with Concession	Project without Concession
<b>Total Units</b>	350	236
<b>Land Cost/Unit</b>	\$9,428.57	\$13,983.05

Additionally, incorporating a rooftop deck results in a large increase in the overall construction budget as a rooftop deck involves extra structural support and design, waterproofing measures, and additional maintenance requirements amongst other things. We estimate, based on other similarly designed and constructed projects, that a rooftop deck costs approximately \$42/square foot. Therefore, we could expect an increase in the construction budget of approximately \$420,000. A concession for this development standard results in an “actual and identifiable cost reduction” for the construction of this affordable housing project.

**3. Side Setback [NMC §19.16.070]:** This standard requires that structures greater than 20 feet in height shall have a setback of 20 feet from the side property lines. The project meets the western side setback with a 33'-11" to 40' setback. But the eastern setback at its shortest distance is 11'-4" and does not comply. This setback needs to expand an additional 8'-8" to meet the requirement. Doing so creates a domino effect wherein multiple elements of the project would need to be redesigned (e.g. relocating stairwells, laundry facilities, units etc.), resulting in a reduction in the proposed number of units. This change would result in a loss of approximately 24 units. The difference between land cost per unit at 332 units (without the concession) and at 635 units (with the concession) is \$694.13 per unit. A concession for this development standard results in an "actual and identifiable cost reduction" for the construction of this affordable housing project.

	<b>Project with Concession</b>	<b>Project without Concession</b>
<b>Total Units</b>	350	326
<b>Land Cost/Unit</b>	\$9,428.57	\$10,122.70

In addition to the three concessions requested, a height increase of 33 feet or three stories is permitted for projects that are not imposed with "maximum controls on density." In the Affordable Housing Overlay district, the maximum height is 35 feet. Therefore, a height of 68 feet is permitted. Per Sheet A5.0, the height of the building is 67'-7" at roof level, taking into account structures and structural features that are excepted from the height limited as detailed in NMC §19.20.070(C)(1).

Granting the concessions allows us to develop the project at the allowed 350 units pursuant to State Density Bonus Law. AMG and CalHDF reserve the right to revise or request additional concessions and waivers should they be needed during the entitlement phase of the project. Should you have any further questions, please feel free to contact me at [alocke@amgland.com](mailto:alocke@amgland.com) or (818) 600-2518.

Sincerely,



Amanda Locke  
AMG & Associates, LLC



Dylan Casey  
California Housing Defense Fund

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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November 17, 2021

Jennifer Carman  
City of Morgan Hill  
Development Services Director  
17575 Peak Avenue  
Morgan Hill, CA 95037

Dear Jennifer Carman:

**RE: Morgan Hill State Density Bonus Law – Letter of Technical Assistance**

The purpose of this letter is to provide technical assistance on the application of State Density Bonus Law (SDBL) (Gov. Code, § 65915.) The California Department of Housing and Community Development (HCD) has reviewed and responded to the questions contained in your letter dated August 31, 2021. Prior to receiving your letter, HCD received a request for technical assistance from AMG & Associates, LLC (AMG) on August 20, 2021, which posed very similar questions. This letter is intended to answer questions and provide clarifications applicable to both letters.

**Project Description**

HCD understands that AMG proposes to develop 200 units of deed-restricted affordable housing on two parcels located at 17910 and 17920 Monterey Street in Morgan Hill. The approximately 1.7-acre site, consisting of two parcels, currently contains an auto repair shop. One hundred percent of the units of the development would be affordable. These would include 20 units for households earning up to 50 percent of the area median income (AMI), 140 units for households earning up to 80 percent of AMI, and 40 units for households earning up to 120 percent of AMI.

The project site has a general plan land-use designation of Mixed-Use Flex, allowing residential densities of 7-24 dwelling units per acre (du/ac). The site is zoned Mixed-Use Flex, which also allows residential densities from 7 du/ac through 24 du/ac. Since the project site is 1.7 acres with a maximum allowable residential density of 24 du/ac, the base density of the site is 41 units. Given that the proposed development would provide 200 units, which represents an approximately 500 percent density bonus, the development would only be possible if found eligible for the “unlimited” density bonus provided under Government Code section 65915, subdivision (f)(3)(D)(ii). Pursuant to this subdivision, no maximum controls on density may be imposed on a development for which one hundred percent of all units are for lower-income households (containing

up to 20 percent moderate-income units) and that is located within one-half mile of a major transit stop.

As described in the project description, 160 units (80 percent) would be for lower-income households and 40 units (20 percent) would be for moderate-income households. This would qualify the proposed development with respect to affordability. The main question then is whether the project is located within one-half mile of a major transit stop. (Gov. Code, § 65915, subs. (f)(3)(D)(ii), (o)(3); Pub. Resources Code, § 21155, subd. (b).) The City and applicant agree that the nearby Morgan Hill Caltrain station meets the definition of a major transit stop under this definition. The sole question presented here is whether the project site is within one-half mile of the Morgan Hill Caltrain station.

### **Interpretation of Subdivision (o)(2)**

Recently enacted changes to Government Code section 65915, subdivision (o)(2), explain that “Located within one-half mile of a major transit stop” means that “*any* point on a proposed development, for which an applicant seeks a density bonus, other incentives or concessions, waivers or reductions of development standards, or a vehicular parking ratio pursuant to this section, is within one-half mile of *any* point on the property on which a major transit stop is located, including any parking lot owned by the transit authority or other local agency operating the major transit stop.” (Emphasis added.)

Despite the definition contained in state law, it is apparent that approaches vary in the real-world application of these newly adopted measurements. Therefore, HCD offers the following technical assistance in the interpretation of the point of measurement on “any point on a proposed development” and “any point on the property upon which a major transit stop is located”.

**Liberal Interpretation.** Subdivision (r) of Government Code section 65915 requires that the SDBL be interpreted liberally in favor of producing the maximum number of total housing units. HCD remains mindful of this interpretive directive whenever offering technical assistance on the SDBL.

**Point of Measurement–Major Transit Stop.** HCD interprets “any point on the property upon which a major transit stop is located” to mean any point on the parcel(s) that make up the property upon which a major transit stop is located. HCD believes that the Legislature intended this broad definition when it chose the very general term “any point on the property”. Had the Legislature specifically intended the boarding platform itself to be the point of measurement, as is suggested by the City, it could have done so. Because land is most commonly understood in terms of parcels, parcels represent a familiar way to establish the boundaries of a “property”. Cities also typically perform

measurements from the edges of parcels in other situations (e.g., public hearing notice mailing radius).

While the edges of a boarding platform should not serve as a point of measurement for the purposes of establishing eligibility under the SDBL, the boarding platform (and by extension, the parcel upon which it sits) is certainly a “point on the property.” Therefore, and based on information provided by the applicant, HCD interprets that a straight-line measurement should be taken from the westernmost point on Parcel Number 726-13-050. This point is coincident with the eastern edge of the East Main Avenue right-of-way.

HCD recognizes that the shape of parcels containing boarding platforms associated with major transit stops are often irregularly shaped and inconsistent in size. Irregular parcel shapes, such as long/narrow railroad rights-of-way, can distort the true proximity of the project site to the major transit stop to a certain extent. For example, the Cottle Light Rail Station in San Jose is located on an I-shaped parcel that extends northward from the boarding platform almost 0.2 miles. Measurements taken from the edges of inconsistently sized and irregularly shape of parcels would, as a matter of chance, advantage certain potential development sites and disadvantage others. However, such variation does not provide adequate justification to allow a local agency to apply a stricter standard than is provided by the statute.

**Point of Measurement – Proposed Development.** HCD interprets that the point of measurement on the site of a proposed development should be any portion of the parcel(s) containing the structures, parking areas, landscaping, etc., that make up the development. Given the infill nature of the proposed development (and lacking a site plan for the proposed development), HCD anticipates that all or nearly all of the site will meet this requirement. Therefore, an appropriate point of measurement would likely be on or near the parcel edge nearest to the Morgan Hill Caltrain Station.

**Project Eligibility for Unlimited Density.** Applying the definitions and methodology described in this letter, it appears that the proposed development lies approximately 2,050 feet from the property on which a major transit stop is located. Therefore, the proposed project appears to be located within one-half mile (2,640 feet) of the major transit stop.

**Parking Exemption.** In subdivision (p) of Government Code section 65915, the SDBL provides for a variety of parking reductions and exemptions. Subparagraph (3) provides that a development that consists solely of housing affordable to lower-income families located within one-half mile of a major transit stop is exempt from local requirements to provide on-site parking. Per the project description, the proposed development contains 20 percent moderate-income units. Moderate-income units (i.e., serving households earning 80-120 percent of AMI) do not serve lower-income families. Therefore, the proposed development does not appear to meet the



requirements of subparagraph (3) in subdivision (p) and is not eligible for that specific parking exemption. As noted in the City's letter dated August 21, 2021, the City recognizes that other reduced parking standards under subdivision (p) may apply and that the applicant may request incentives, concessions, or waivers related to further parking reductions. The ability of an applicant to pursue reductions in off-street parking requirements is described in subdivision (p)(6) of Government Code section 65915.

### **Conclusion**

In conclusion, HCD interprets that the proposed development is located within one-half mile of a major transit stop and therefore qualifies for "unlimited" density under Government Code section 65915, subdivision (f)(3)(D)(ii). HCD interprets that the proposed development does not qualify for the parking exemption described in Government Code section 65915 subdivision (p)(3). HCD strongly supports the development of affordable housing in Morgan Hill generally and on this project site specifically. Morgan Hill has met its RHNA targets for all income levels except Very Low Income (VLI), where it has constructed only 29.3 percent (80 units) of its target of 273 units. The construction of additional VLI units should therefore be a top priority. HCD believes that the residents of the proposed development would benefit greatly from the walkable proximity to a Caltrain station and the other amenities of downtown Morgan Hill.

If you have questions or need additional information, please contact Brian Heaton at [Brian.Heaton@hcd.ca.gov](mailto:Brian.Heaton@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West  
Housing Accountability Unit Chief