



March 20, 2024

Steve Marshall, Deputy Director of Community Development
City of Novato
922 Machin Avenue
Novato, CA 94945

RE: Response Preliminary Eligibility, Objective Standards, & Density Bonus Determination
Project No. P2023-056
1212 and 1214 Grant Ave | APNs 141-262-12 & -13

Dear Mr. Marshall,

Thank you for your review letter dated September 21, 2023. We have reviewed the comments in detail and provide responses below to each of the comments made.

AB 2011 – Preliminary Eligibility Determination

Below are our responses to the specific eligibility items that the City determined we did not meet.

• **City Comment: California Government Code Section 65912.112**

(a) One hundred percent of the units within the development project, excluding managers' units, shall be dedicated to lower income households at an affordable cost, as defined by Section 50052.5 of the Health and Safety Code, or an affordable rent set in an amount consistent with the rent limits established by the California Tax Credit Allocation Committee.

Does Not Meet Criteria. AMG's application package indicates the Project will provide 59 affordable housing units and one (1) market rate manager's unit. The affordable housing units are proposed to be reserved for rent by households with very low (6 units at 50% of AMI) and low incomes (6 units at 60% of AMI and 47 units at 80% of AMI). The percentage of AMI for the low income units is not consistent with the requirements of California Health and Safety Code Section 50052.5. This Section specifies lower income units shall not exceed 70% of AMI. Accordingly, the 47 low income units proposed at 80% of AMI do not meet this criteria.

AMG indicates it will pursue tax credits for the Project and will comply with the applicable rent levels required for such credits. The Department notes that AMG's proposed affordable unit allocation by percentage of AMI is not consistent with the requirements to receive affordable housing tax credits. Specifically, the proposed unit allocation does not reserve 20% of the proposed dwellings for households earning 50% of AMI, 40% of the proposed dwellings for households earning 60% of AMI, or a unit and AMI blending achieving an average of 60% of AMI. As proposed, AMG's unit allocation equates to an average of approximately 75% of AMI.

As presented, the proposed affordability of the Project does not meet the applicable criteria of Government Code Section 65912.112(a).

AMG/CalHDF's Response: AMG and CalHDF disagree with the City's interpretation of the law and how it applies to our proposed affordability for the following reasons:

- The City determined that our proposed affordability does not qualify by resting their argument on Gov. Code §65912.112(a) (part of AB 2011), which states,

One hundred percent of the units within the development project, excluding managers' units, shall be dedicated to lower income households at an affordable cost, as defined by Section 50052.5 of the Health and Safety Code...

Section 50052.5 of the Health & Safety Code (HSC) states [emphasis added],

*For lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the area median income adjusted for family size, the product of **30 percent times 70 percent of the area median income** adjusted for family size appropriate for the unit. In addition, for any lower income household that has a gross income that equals or exceeds 70 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 30 percent of the gross income of the household.*

The City states that the meaning of HSC §50052.5 is that "lower income units shall not exceed 70% of AMI." But that is not what the section says. HSC §50052.5 defines affordable housing cost, not the income eligibility for occupancy. This section establishes special rent ceilings for families that fall between the very low-income threshold of 50% AMI, and the lower-income threshold of 80% AMI. Specifically, the section says that for households with incomes between 50% and 70% of AMI, "affordable housing cost," or the rent to be paid, means 30% of 70% of AMI. It also says that for low income households with incomes above 70% of AMI (implying some low income households will exceed that threshold) local and federal agencies may require that housing costs not exceed 30% of the household income to qualify as "affordable." (As the City notes, the succeeding section, 50053, which defines "affordable rent," has similar language, but with respect to 60%, rather than 70%, of AMI. This further proves the point.)

- Furthermore, Gov. Code §65912.112(a) is clearly pointing to HSC §50052.5 to define "affordable cost," not "lower income." "Lower income" is already defined within AB 2011, see Gov. Code §65912.101(i): "'Lower income households' has the same meaning as defined in Section 50079.5 of the Health and Safety Code." HSC§50079.5 states [emphasis added]:

*Lower income households' means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. The limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for lower income households for all geographic areas of the state at **80 percent of area median income**, adjusted for family size and revised annually."*

42 USC 1437a(b)(2)(A) sets the Section 8 limit for "lower income" at 80% of AMI, and the backup language in HSC§50079.5 stating that in the event that federal standards are discontinued, 80% AMI will remain lower-income, serves as further confirmation that 80% of AMI is the correct threshold.

Therefore, based on the definitions for "affordable" and "lower income" provided by HSC and AB 2011, our proposed affordability is consistent with the law and therefore this criterion should be considered met. All units, except for three manager's units, will be affordable to households earning up to 80% AMI.

- **City Comment: California Government Code Section 65912.113**

(c)(1) The development proponent shall complete a phase I environmental assessment, as defined in Section 25319.1 of the Health and Safety Code.

- 2) If a recognized environmental condition is found, the development proponent shall undertake a preliminary endangerment assessment, as defined in Section 25319.5 of the Health and Safety Code, prepared by an environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.
 - A. If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with current state and federal requirements.
 - B. If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with current state and federal requirements.

Does Not Meet Criteria. AMG provided a Phase I environmental site assessment (ESA) for the Project Site dating to 2020. The ESA identified a single recognized environmental condition (REC) in connection with the Project Site related to past use of the property by a dry cleaning business and the same on an adjoining property. The ESA acknowledges past auto, marine, and tree service equipment repair and maintenance activities at the Property and notes evidence of surface staining in area of the site occupied by the tree service company at the time of the ESA. Further, the ESA acknowledges the banning of lead based paint in 1978 and indicates the buildings on the Project Site were constructed in 2000 and that lead contamination is unlikely.

The Department agrees the past occupancy of the site by a dry cleaner and the existence of a neighboring dry cleaner represent an REC. However, the ESA omits recognizing the past auto, marine, and tree equipment servicing activities as a REC despite surface staining visible at the site and disregards the reasonable potential for petroleum contamination commonly found at sites with histories of occupancy by automotive related uses. Additionally, the ESA lists an incorrect construction date for buildings at the Project Site in its analysis of potential contamination by lead based paints. According to the aerial photography review in the ESA, the Project Site is observed to have been developed with a building in 1942 and an additional building in 1952, both of which remain at the Site. These buildings are of an age when lead based paint was used. Therefore, it is reasonable to presume that soil at the exterior perimeter of these buildings could be potentially impacted by lead contamination due to peeling lead based paint or disturbance (e.g.,

sanding, scraping, etc.) of such paint during preparation for repainting.

The subsequent subsurface environmental assessment, prepared on the basis of the ESA and presumably Health and Safety Code Section 25319.5, involved soil borings and soil-gas sampling over approximately half of the Project Site, focusing on areas immediate to the former location of the dry cleaning operations at and adjacent to the Site. The remaining half of the site was not sampled for contaminants. According to the results of the subsurface assessment, soil-vapor and sub-slab soil vapor tested positive for Tetrachloroethene (PCE). The assessment indicates there is no residential screening level for soil-vapor containing PCE and notes a sub-slab soil vapor screening level of 15 micrograms per meter for PCE. The assessment concludes no further subsurface assessment work or remedial action is warranted for the Property as the sub-slab test results were found to be below the residential environmental screening thresholds for PCE.

The Department finds the subsurface assessment to be inadequate on the basis of the guidelines developed to implement Health and Safety Code Section 25319.5 and for the purpose of qualifying the Project Site for residential use under AB 2011. The subsurface investigation, due to the omissions of the ESA, does not address potential petroleum and lead based paint contamination at the site. The subsurface investigation reads to have been based on an authoritative sampling strategy focusing on the areas proximal to the former and current dry cleaning operations. However, given the historic uses at the site, including auto repair and maintenance, the Department is of the position that a systematic random sampling approach was warranted to address not only contaminants related to dry cleaning activities, but also petroleum and lead contamination. Further, the subsurface investigation and environmental screening levels must factor for the design and occupancy of the Project, including the areas of the property that will be overlain by the slab for the proposed mixed-use building.

Based on the observations above, the Department finds the ESA and the subsequent subsurface environmental assessment to be inadequate to qualify the Project Site and Project for residential development under the criteria of AB 2011.

AMG/CalHDF's Response: *Please see the enclosed letter (Exhibit B) from our consultant KCE Matrix (KCE). The letter addresses each of the concerns raised: potential petrol contamination, lead based paints, and the location of site sampling. The subsurface environmental assessment report that further analyzed potential RECs identified by the Phase 1 report found that RECs were not detected at a rate that would prohibit residential use. Please note that lead based paint is not considered an REC (see the first paragraph on page 2 of KCE's letter). Therefore, this material should not be used to deny meeting this criterion. In the letter, KCE also lays out how we could approach the City's concern over lead-based paint. The proposed work would be done at the time the buildings will be demolished when the site is open and available for the suggested work. Even with the issues raised, this criterion should be considered met*

- **City Comment: California Government Code Section 65912.113**

- f) The development will meet the following objective zoning standards, objective subdivision standards, and objective design review standards:
 - 1) The applicable objective standards shall be those for the zone that allows residential use at a greater density between the following:
 - A. The existing zoning designation for the parcel if existing zoning allows multifamily residential

use.

- B. The zoning designation for the closest parcel that allows residential use at a density that meets the requirements of subdivision (b).
- 2) The applicable objective standards shall be those in effect at the time that the development application is submitted to the local government pursuant to this article.

Does Not Meet Criteria. The Project Site is assigned the Downtown Core (CD) land use designation of Novato General Plan 2035 and is zoned Downtown Core Retail (CDR). This designation allows mixed-use projects with a multi-family residential density range of 20.0 to 23.0 dwelling units per acre. The parcel closest to the Project Site allowing residential use is designated Medium Density Multiple Family Residential (R10) by General Plan 2035. The R10 designation permits a density of 10.0 to 20.0 dwelling units per acre. Based on the criteria of (f)(l), the objective standards applicable to the Project are those applied to new development pursuant to the CD land use designation, CDR zoning district, and all other standards applied generally and specifically to mixed-use developments as specified in the Novato General Plan and Novato Municipal Code.

The Project does not meet all applicable objective standards as discussed in Exhibit A attached hereto.

AMG/CalHDF's Response: Please see our responses to Exhibit A attached.

Thank you for your comments. Please contact me if you have any questions regarding our project or resubmittal.

Sincerely,



Amanda Locke
AMG & Associates, LLC



Dylan Casey
California Housing Defense Fund

EXHIBIT A: 3rd & GRANT MIXED-USE PROJECT [P2023-056]

OBJECTIVE STANDARDS COMPLIANCE - PRELIMINARY CONSISTENCY DETERMINATION

NOVATO GENERAL PLAN 2035

GP POLICY/PROGRAM	DEVELOPMENT STANDARD	CONSISTENCY REPORT	AMG/CALHDF RESPONSE
<p>Land Use Table GP-3 Policy LU 1 & Program LU 18</p>	<p>Downtown Core - 10.0 to 23.0 dwelling units per gross acre in mixed-use developments. Maximum FAR is 1.2 with the potential for a maximum of 2.0 where housing is incorporated. A mixed-use project must meet both the applicable maximum density and FAR levels.</p>	<p>Consistent (Land Use). The Project is a mixed-use project which is allowed under the Downtown Core (CD) land use designation of General Plan 2035.</p> <p>Inconsistent (Density). The Project proposes a density of approximately 177 dwelling units per acre, a level exceeding the maximum density of 23 dwelling units per acre allowed on parcels designated CD.</p> <p>AMG is requesting a density bonus pursuant to Government Code Section 65915(b)(l)(G) to exceed the maximum density of the CD land use designation. If the Project is found to qualify for a density bonus, then the maximum density of the CD land use designation is inapplicable by operation of law.</p> <p>Inconsistent (FAR). The Project proposes a 3.2 FAR where a maximum 2.0 FAR is allowed.</p>	<p>Acknowledged.</p> <p>Acknowledged. We continue to request a density bonus for this project.</p> <p>The project now proposes a 3.06 FAR. The density bonus memo is revised and now incorporates FAR as a concession request.</p>
<p>Policy MO 2</p>	<p>Level of Service Standards. Establish traffic Level of Service (LOS) standards as follows for use in evaluating the impacts of proposed development projects so the project can be redesigned or effective mitigation measures can be implemented, making improvements to the roadway system, and determining</p>	<p>Inconsistent. The Project will contribute new vehicle trips to Novato's transportation network, including at intersections subject to the LOS criteria of Policy MO 2. AMG did not submit a traffic study demonstrating whether the Project is consistent with the applicable LOS criteria. There is no other information in AMG's application materials that can be used to determine whether the Project is consistent with Policy MO 2.</p>	<p>AMG/CalHDF believe this is not an objective standard and therefore shouldn't apply to the project. Please find enclosed a separate memo prepared by CalHDF explaining the reasoning (Exhibit C).</p>

	<p>appropriate traffic impact fees. Continue to consider LOS standards in evaluating the merits of proposed development or traffic infrastructure projects in addition to consideration of standards associated with Vehicle Miles Traveled (VMT) in the required environmental review process.</p> <p>Acceptable LOS standards for intersections in the City are:</p> <p>At intersections with signals or four- way stop signs: operation at LOS D,</p> <p>At intersections with stop signs on side streets only: operation at LOS E.</p>		
NOVATO MUNICIPAL CODE (NMC) - CHAPTER 19, ZONING			
GP POLICY/PROGRAM	DEVELOPMENT STANDARD	CONSISTENCY REPORT	AMG/CALHDF RESPONSE
NMC 19.12.030-Table 2-7	Multi-family dwellings are allowed in a mixed-use project where combined with a commercial component.	Consistent. The Project Site is zoned Downtown Core Retail (CDR). The Project is a mixed-use project which is allowed in the CDR zoning district. Mixed-use projects normally require a use permit in the CDR zoning district. However, AMG has submitted the Project under AB 2011 therefore a use permit cannot be required for the Project.	Acknowledged.
NMC 19.12.030-Table 2-7	Allowed commercial land uses in the CDR zoning district: retail and office. Offices are permitted on upper floors of a building or at the rear of a site.	<p>Consistent. The Project includes a retail space on the ground level of the building at Grant Avenue.</p> <p>Inconsistent. The Project includes an office space (leasing office) at the ground floor, street frontage at Grant Avenue. An office is not permitted in this location.</p>	<p>Acknowledged.</p> <p>This development standard is requested as a concession. Please see the density bonus memo.</p>

NMC 19.12.040-Table 2-8	Maximum FAR is 1.2, with the potential for an increase to 2.0 when housing is incorporated into a mixed-use project.	Inconsistent. The Project proposes a 3.2 FAR where a maximum 2.0 FAR is allowed.	The project now proposes a 3.06 FAR. The density bonus memo is revised and now incorporates FAR as a concession request.
NMC 19.12.040-Table 2-8	Front Setback - None Required	Consistent. The Project maintains a 5-foot front setback.	Acknowledged.
NMC 19.12.040-Table 2-8	Side Setback - 6 ft. if adjacent to a single-family residential zone; 10 ft. if building is over 20 ft. in height at the building setback line, and adjacent to a single-family residential zone; none required otherwise.	Consistent. The Project Site is not adjacent to a single-family zoning district, therefore no side setbacks are required.	Acknowledged.
NMC 19.12.040 - Table 2-8	Rear Setback - 10 ft. if adjacent to a single-family residential zone; 15 ft. if building is over 20 ft. in height at the building setback line and adjacent to a single-family residential zone; none required otherwise.	Consistent. The site is not adjacent to a single-family zoning district, therefore no rear setback is required.	Acknowledged.
NMC 19.12.040-Table 2-8	Height limit - 35-feet; within the Downtown Overlay zone, the height limit may be increased up to 45 feet for the habitable floor area with Design Review approval, in accordance with Section 19.20.070.	Inconsistent. The Project has a height of 64'-4". The Project exceeds the maximum height limit of 35-feet. AMG is requesting a density bonus pursuant to Government Code Section 65915(b)(I)(G). Accordingly, the Project may be entitled to receive a height increase of up to 33-feet pursuant to Government Code Section 65915(d)(2)(D), allowing a total building height of 68-feet. If the Project is found to qualify for this height increase then the height limit of NMC 19.12.040 is inapplicable by operation of law	Acknowledged. A concession is still requested for this development standard.
NMC 19.12.040-Table 2-8	Building Coverage - 100% of lot area.	Consistent. The Project is not subject to a limitation on building coverage.	Acknowledged.
NMC 19.20.030	Access to Streets. Every structure	Consistent. The Project Site consists of two	Acknowledged.

	shall be constructed upon, or moved to, a legally recorded parcel with permanent means of legal access to a public street.	parcels fronting Grant Avenue. Access is available to Grant Avenue.	
NMC 19.20.040	Maximum fence height - 8 ft.	Consistent. The Plans for the Project indicate a new 6 ft. high wood fence will be constructed along the east property line. Existing fencing is proposed to remain in place.	Acknowledged.
NMC 19.20.040 0.	Sight Visibility Area Required. On properties within or adjacent to residentially zoned districts, property improvements, including structures, landscaping, materials, vehicles or any type of screening shall be designed, placed or maintained to provide a sight visibility area for all types of traffic, including but not limited to vehicles, pedestrians and bicycles. Structures, landscaping, materials, vehicles or any type of screening shall not be located in a manner which adversely affects the required sight visibility area for any public roadway, private roadway, alley, driveway, or pedestrian or vehicular access point. Landscaping in all zoning districts shall also comply with the requirements of Municipal Code Section 17-3.8 (Trees and Shrubs - Obstructing Visibility).	Consistent. The Project Site adjoins a residentially zoned property to the north. However, there is no intervening roadway, driveway, or access easement between the Project Site and this property. As such, no sight visibility area is applicable to the Project or Project Site.	Acknowledged.
NMC 19.20.090 B.	Roof or ground mounted mechanical equipment (e.g., air conditioning, heating, ventilation ducts, and exhaust, etc.), loading docks, refuse storage areas, and	Inconsistent. No wall or roof mounted equipment is indicated on the plans for the Project. However, the engineering plans indicate above-grade backflow prevention valves visible from Grant Avenue.	The height of the backflow prevention devices will be between 4 and 4 ½ feet. Please see sheet L1. Karl Foerster Feather Reed Grass is proposed

	utility services (electrical transformers, gas meters, etc.) shall be screened from public view from adjoining public streets and rights-of-way and adjoining area(s) zoned for residential uses.	The plans for the Project include a note indicating the backflow prevention valves will be screened with plants. However, the plans do not indicate the height of the backflow prevention valves. As a result, it is not possible to determine whether the plants proposed for screening will actually be of a sufficient height at maturity to prevent views of the valves.	to screen the backflow prevention device. The height of this plant at maturity can reach up to 6 feet.
NMC 19.20.120 B.1.	Individual Unit Storage Requirements. Each dwelling shall be designed to provide an indoor area for the indoor storage of solid waste and recyclable material prior to its placement in a common storage area. A minimum of three cubic feet shall be provided for the storage of solid waste and a minimum of three cubic feet shall be provided for recyclable material.	Consistent. The plans for the Project do not identify a specific location for solid waste and recycling storage complying with the noted requirement. However, the typical floor plan for the studio units in the Project indicate an area adjacent to the entry door to the unit where solid waste and recycling could be stored. This area exceeds 3 cubic ft.	Acknowledged.
NMC 19.20.120 B.2.	Common Storage Requirements. Multi-family residential projects shall provide solid waste and recyclable material storage areas in compliance with Table 3-3. Table 3-3 requires 144 sf. of solid waste and 144 sf. of recycling storage space for projects of 51 to 75 dwelling units. 51 to 75 dwelling units.	Consistent. The Project includes 60 multi-family housing units. Accordingly, 288 sf. of common storage space for solid waste and recycling is required. The plans for the Project identify a trash collection room at the ground level of the mixed-use building with a scaled area of approximately 334 sf.	Acknowledged.
NMC 19.20.120 C.	Required Storage for Non-residential Structures and Uses. Non-residential structures and uses within all zoning districts shall provide solid waste and recyclable material storage areas in	Consistent. The Project includes 4,006 sf. of non-residential space, including amenity rooms and commercial space (office/retail). Accordingly, 24 sf. of common storage space for solid waste and recycling is required.	Acknowledged.

	<p>compliance with Table 3-4.</p> <p>Table 3-4 requires 12 sf. of solid waste and 12 sf. of recycling storage space for non-residential uses up to 5,000 sf. in area.</p>	<p>The plans for the Project identify a retail trash collection room with a scaled area of approximately 422 sf.</p>	
NMC 19.20.120 0.2.	<p>location Requirements. Solid waste and recyclable materials storage areas shall be located as follows:</p> <p>The storage area(s) shall be accessible to residents and employees. Storage areas within multi-family residential projects shall be located within 100 feet of an access doorway to each dwelling unit which they are intended to serve.</p>	<p>Consistent. The plans for the Project indicate a trash chute connecting to the ground-level trash collection area is provided on each residential level of the mixed-use building. The trash chute room is approximately 63-feet from the door of the furthest multi-family dwelling. The non-residential areas of the ground floor are within 100-feet of the retail trash collection room.</p>	Acknowledged.
NMC 19.21- Art Program	<p>Construction of non-residential development shall require that an art project be installed and maintained as part of the project. The art project shall have a value of not less than one- third of one percent of the construction cost of the completed development project. An in-lieu fee equal to one-half of one percent of the construction cost, or the difference between the cost of the art installed and one-half of one percent of the development's construction cost. The Division does not apply to the affordable housing component of a mixed-use project.</p>	<p>Consistent. AMG has indicated it will pay a fee in-lieu of installing an art piece with the Project.</p>	Acknowledged.
NMC 19.22.060	<p>Light or glare from interior or</p>	<p>Consistent. The application materials for the</p>	Acknowledged.

	<p>exterior lighting, mechanical or chemical processes, or from reflective materials used or stored on a site, shall be shielded or modified to prevent emission of light or glare beyond the property line. The placement of exterior lights shall eliminate spillover illumination or glare onto adjoining properties to the maximum extent feasible, and not interfere with the normal operation or enjoyment of adjoining properties. All non-essential internal and exterior lighting including lighted signs shall be turned off after 11:00 p.m. (except for uses with extended hours).</p>	<p>Project do not indicate the placement of any exterior lights. Accordingly, the Project is consistent with the requirements of NMC 19.22.060 on the basis exterior lighting is not being provided for the Project.</p>	
NMC 19.22.070	<p>NMC 19.22.070 - Uses, activities, and processes shall not generate or emit any noise or sound in excess of the levels provided in Table 3-5 beyond the property line of the parcel on which they are located, except as provided in Subsection B.</p> <p>The "Commercial" noise thresholds of Table 3-5 apply in mixed-use districts. Accordingly, the Project is subject the following noise thresholds:</p> <p>10 PM to 6 AM - 60 dBA 6AM to 10 PM - 70 dBA</p>	<p>Inconsistent. The plans for the Project do not indicate the placement of any ground, wall, or roof mounted equipment at the exterior of the mixed-use building. However the plans for the Project indicate a variety of electrical and mechanical equipment rooms located at the ground floor level.</p> <p>No information was provided by AMG regarding the number, type, size, venting/exhaust requirements, and noise characteristics of the equipment located within the electrical and mechanical equipment rooms of the building. Further, the plans for the Project do not describe the wall assemblies surrounding the equipment. As such, it is not possible to determine whether the Project complies with the applicable noise thresholds.</p>	<p>This information is not typically known until the construction document and building permit phase of the project. AMG/CalHDF requests that this be a condition of approval that must be met during the building permit phase.</p>
NMC Division 19.24	NMC Division 19.24 specifies the	Consistent. The Project is proposed as a 100%	Acknowledged. The project

	requirements for inclusionary affordable housing. In summary, AMG is required to reserve 20% of the dwellings in the Project for rent to households with very-low and low incomes. The required affordable housing units shall be divided equally into the very-low (50% AMI) and low (60% AMI) income categories. An affordable housing agreement is required.	affordable residential development. The Project reserves six (6) units for very- low income households with incomes of 50% of AMI and six (6) units for low income households with incomes at 60% of AMI. These dwelling units satisfy the requirements of NMC Division 19.24. The balance of the dwelling units in the Project, with exception of a manager's unit, are reserved for rent to low income households with incomes at 80% of AMI. AMG has committed to executing an affordable housing agreement with the City.	density changed slightly but the affordability distribution is maintained – 6 units at very low (50%), 6 units at low (60%), 43 units at low (80%), and 1 manager’s unit.
NMC Division 19.25 - Density Bonus	Refer to NMC Division 19.25.	Please refer to the compliance letter for comments regarding the density bonus and concessions requested for the Project. Additionally, refer to the Department's completeness response to AMG's density bonus application, dated August 24, 2023.	Acknowledged. The density bonus memo is revised to address the comments of the completeness memo.
NMC 19.28.040 A.1.	Minimum Dimensions. Landscaped areas shall have a minimum interior width of three feet. Landscaped areas containing trees shall have a minimum interior width of four feet.	Inconsistent. The Project includes landscape areas with an interior width of less than 3 ft.	The plans have been revised so there are no planters with landscape materials that are less than 3 feet. Please see sheet L1.
NMC 19.28.040 A.3.	Protective Curbing. Required landscaping on sites within the R10, R20, and non-residential zoning districts shall be protected with a minimum six-inch high concrete curb, except adjacent to bicycle paths or where deemed unnecessary the Director.	Inconsistent. The landscape plan for the Project includes a note indicating 6" concrete curbing. However, it is unclear whether this curbing is being applied at all planter locations. There is insufficient evidence to determine whether the Project is consistent with this standard.	6" concrete curbing is indicated as Plan Note D on sheet L1. It is also visually represented if Plan Note D is not called out.
NMC 19.28.040 A.4.	Irrigation System Required. All landscaped areas (except areas to be maintained with intentionally unirrigated native plants) shall be provided with an automatic irrigation system.	Consistent. The landscape plan for the Project includes details indicating the installation of an automatic irrigation system.	Acknowledged.

NMC 19.28.040 A.S.a. through c.	Safety Requirements. Landscape materials shall be located so that at maturity they do not: a. Interfere with safe sight distances for vehicular, bicycle, or pedestrian traffic; b. Conflict with overhead utility lines, overhead lights, or walkway lights; or c. Block pedestrian or bicycle ways.	<p>Consistent. Item a. The landscape plan for the Project does not show plants over 3 ft. in height at locations where planting could interfere with safe sight distances for bicyclists and pedestrians.</p> <p>Consistent. Item b. The plans for the Project do not identify overhead utility lines or exterior lighting of any type. As such, the landscape plan does not present any conflicts.</p> <p>Consistent. Item c. The landscape plan does not show any plants with a spread at maturity encroaching into pedestrian or bicycle ways.</p>	<p>Acknowledged.</p> <p>Acknowledged.</p> <p>Acknowledged.</p>
NMC 19.28.040 C.1.b.	Plant materials shall be sized and spaced to achieve immediate effect and shall not be less than a 15-gallon container for trees, five-gallon container for specimen shrubs and a one-gallon for mass planting, unless otherwise approved by the Review Authority on the basis that the alternate size will achieve the desired immediate effect equally well.	Inconsistent. The landscape plan indicates trees of a 5 gallon size.	No trees are proposed for this project. Please see the plant schedule on sheet L1.
NMC 19.28.040 C.2.b.	Trees in landscape planters less than 10 feet in width or located closer than five feet from a permanent structure shall be provided with root barriers.	Inconsistent. The trees shown on the landscape plan are located in planters that are less than 10 feet in width. The landscape plan does not indicate the installation of root barriers for these trees.	No trees are proposed for this project. Please see the plant schedule on sheet L1.
NMC 19.28.040 C.2.d.(3) and (4)	Number of trees: (3) Balance of site: one per 600 square feet of landscaped area; and (4) Street trees: one per 40- foot length of right-of-way.	<p>Consistent. Item (3). The Project is required to provide eight (8) trees based on 4,820 sf. of required landscape area. The landscape plan indicates 22 trees (1 Japanese maple; 21 Skyrocket juniper)</p> <p>Consistent. Item (4). The Project Site has approximately 100 feet of frontage at Grant</p>	<p>Acknowledged.</p> <p>Acknowledged.</p>

		Avenue. As a result, two (2) street trees are required. The Project will be retaining the two (2) existing street trees at Grant Avenue.	
NMC Division 19.30 - Parking	Minimum required on-site parking and associated parking facility standards.	Not Applicable. Government Code 65863.2 prohibits public agencies from requiring parking for any residential, commercial, or other development project located within one-half mile of a major transit stop. The Project Site is located within one-half mile of the Downtown Novato SMART station, a major transit stop. Parking is not required.	Acknowledged.
NMC 19.30.090 A.1., A.2., and A.3.	<p>Multi-family projects shall provide bicycle parking spaces equal to a minimum of 10 percent of the required vehicle spaces, unless separate secured garage space is provided for each unit. The bicycle spaces shall be distributed throughout the project.</p> <p>Retail commercial uses shall provide bicycle parking spaces equal to a minimum of five percent of the required vehicle spaces, distributed to serve customers and employees of the project.</p> <p>Other non-residential uses providing employment shall provide bicycle parking spaces equal to a minimum of 10 percent of the required vehicle spaces, distributed to serve employees and visitors to the project.</p>	Consistent. Notwithstanding the provisions of Government Code Section 65863.2, the Project would otherwise be required to provide 85 parking stalls. Accordingly, a total of 9 bicycle parking spaces are required based on the number of proposed dwellings, retail area, and office space. The plans for the Project indicate 6 bicycle parking spaces are provide at an internal courtyard and another 24 bicycle parking stalls are provided at the ground floor of the mixed-use building.	Acknowledged.
NMC 19.30.090 8.1.	Each bicycle parking space shall include a stationary parking device to adequately secure the bicycle.	Consistent. The plans for the Project indicate bicycle racks will be provided to secure bicycles.	Acknowledged.

		qualifies for a density bonus per Government Code Section 65915(b)(l)(G). If the Project is found to qualify for this concession then the requirements of NMC 19.30.110 B. are inapplicable by the operation of law.	feel that a loading space should not be required. However, we wish to utilize NMC 19.30.110.D in order to incorporate a dual trash staging/loading area at the project frontage. Please see sheet A1.0 for our proposal.
NMC 19.34.100 C.	The FAR allowed by the applicable zoning district may be increased within the Downtown Core Retail, Downtown Core Business and Neighborhood Commercial districts pursuant to Section 19.12.040, Table 2-8, and for projects in the Mixed Use district pursuant to Section 19.14.040, Table 2-10, where the difference between the base FAR and up to the maximum FAR allowed by the applicable zoning district is entirely used for residential purposes.	Inconsistent. The Project proposes a 3.2 FAR where a maximum 2.0 FAR is allowed.	The density bonus memo is revised and now incorporates FAR as a concession request.
NMC 19.34.100 E.	Setbacks. Structures with heights greater than 20 feet shall set back the upper portions of the structure a minimum of 10 feet from the side property lines for each additional story above two.	Inconsistent. The plans for the Project do not indicate an upper story setback of 10 ft. at the 3rd through 5th floor. AMG is requesting a concession to waive this requirement pursuant to Government Code Section 65915(d)(2)(E) on the basis the Project qualifies for a density bonus per Government Code Section 65915(b)(1)(G). If the Project is found to qualify for this concession then NMC 19.34.100 E. is inapplicable by the operation of law.	This remains as a concession in our revised density bonus memo.
NMC 19.34.100 K. NMC 19.34.124 B.2.	K. A minimum outdoor open space area of 150 square feet shall be required for each dwelling unit in accordance with the standards in	Inconsistent. The Project is required to provide 9,000 sf. of open space, of which 4,500 sf. must be allocated for private use (e.g., patio or balcony) at each individual housing unit and	This remains as a concession in our revised density bonus memo.

	<p>Section 19.34.124 B.</p> <p>2. Standards for Required Open Space.</p> <p>The minimum open space area required by this Section shall have no other primary use.</p> <p>At least one-half of the required open space shall be immediately available to and private for the occupants of each dwelling unit, while the remainder may be combined in common areas available to other residents of the project.</p> <p>The open space area may include a deck or balcony having no dimension less than six feet.</p> <p>Front yard setbacks may be used only as common open space areas, except for allowable deck projections.</p>	<p>4,500 sf. of common outdoor open space.</p> <p>The plans for the Project do not indicate the provision of any private outdoor open space. The plans identify a 361 sf. common outdoor patio. The Project does not comply with the applicable standards.</p> <p>AMG is requesting concessions to waive the open space requirements pursuant to Government Code Section 65915(d)(2)(E) on the basis the Project qualifies for a density bonus per Government Code Section 65915(b)(l)(G). If the Project is found to qualify for these concessions pursuant to the criteria of Government Code Section 65915 then the requirements of NMC 19.34.100 K. and NMC 19.34.124 B.2. are inapplicable by the operation of law.</p>	
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Novato Municipal Code (NMC) - Chapter 5, Development Standards

MUNICIPAL CODE REFERENCE	DEVELOPMENT STANDARD	CONSISTENCY REPORT	AMG/CALHDF Response
NMC 5-15.008	NMC 5-15.008 a. to h. provides standards detailing the calculations and minimum design requirements for on-site drainage improvements and connections to the public stormwater drainage system. These standards are lengthy; refer to NMC 5-15.008.	Inconsistent. AMG submitted preliminary drainage documentation, but did not provide the full range of engineering calculations and construction detail information required by NMC 5-15.008. As such, it is not possible to determine whether the proposed storm drainage system complies with applicable standards.	AMG/CalHDF is currently working with Planning on an agreement pertaining to these standards.

NMC 5-27.008	NMC 5-27.008 requires construction detail improvement plans addressing drainage, grading, construction of pavement sections, gutters and sidewalks, profiles drawn to scale showing ground and grade elevations on centerline elevations of all streets, highways, walkways, alleys, sanitary and storm sewers, and drainage ways.	Inconsistent. AMG did not submit construction detail improvement plans addressing many of the applicable standards of NMC Chapter 5 as detailed separately herein.	AMG/CalHDF is currently working with Planning on an agreement pertaining to these standards.
NMC 5-28.008	NMC 5-28.008 provides standards addressing landscaping, screening, and hydroseeding. These standards are generally duplicative of those contained in NMC Division 19.28.	Refer to the determinations regarding the Project's compliance with NMC Division 19.28 above.	Responses provided in relation to NMC Division 19.28 above.
NMC 5-34.008. b.1.(b)	(b) Walkways shall also be provided to connect the primary points of origination and destination within the project such as parking with unit, common recreation area with units which it serves, etc.	Consistent. The Project includes paved walkways connecting to primary points of origin and destination, including the sidewalk along Grant Avenue and points of entry to the ground floor service rooms and amenity spaces serving tenants.	Acknowledged. Please note that AMG/CalHDF is currently working with Planning on an agreement pertaining to these standards.
NMC 5-34.008. b. 2. (a), (c), (d), and (e)	(a) Width. Walkways shall be at least four feet in width. Additional width may be required based on numbers and/or size of units which a common walkway serves. Paving. Same as for sidewalks [Portland cement concrete; 4" minimum thickness]. Obstructions. Same as for sidewalks. (e) Walkways shall be in conformance with the latest regulations for handicapped access	Consistent. The walkways shown on the plans for the Project indicate all pathways are a minimum of 4 ft. in width. Inconsistent. The plans for the Project do not provide a paving section detail for the proposed walkways and offer no notes indicating paving thickness. Consistent. The walkway shown on the plans for the Project do not indicate any obstructions. Inconsistent. The plans for the Project do not provide the cross-slope of all pathways proposed at the Project Site.	Consistencies acknowledged. Please note that AMG/CalHDF is currently working with Planning on an agreement pertaining to these standards.

	adopted by the Office of the State Architect.	Therefore, it is not possible to determine whether the walkways comply with disabled access requirements.	
NMC 5-37.008	All developments and use proposals shall include provisions for connection to the public sewage facilities of the Novato sanitary district or other publicly-owned sewage facilities.	Inconsistent. The Novato Sanitary District provides sanitary sewer service in Novato. Pursuant to the District's letter dated August 10, 2023, the existing sewer lateral does not meet prescribed standards. The District is requesting AMG prepare and submit detailed information to use the existing lateral connection. If used, it must be connected at a manhole. Specifically indicate whether existing laterals will be used, or will be abandoned per district standards. Additionally, the District is requiring the commercial space to be plumbed for food service facilities including the ability to connect to a grease interceptor.	AMG/CalHDF is currently working with Planning on an agreement pertaining to these standards.
NMC 5-41.008 b.	<ol style="list-style-type: none"> 1. In all developments, solid waste collection points shall be provided within 75 feet of a through or cul-de-sac street. 2. Where provision 1, above, results in a common collection point accommodating three or more units, a screened platform or paved area, of sufficient size to accommodate a 35-gallon size container for each unit, shall be provided. 3. Where a bin-type container is to be used to store solid waste for collection, the location of that bin and the access thereto shall allow adequate maneuvering room for a truck 	<p>Consistent. The Project's solid waste storage areas are located less than 75- feet from Grant Avenue.</p> <p>Inconsistent (Nos. 2, 3, and 4). The plans and documents submitted for the Project do not describe the type and size of proposed trash and recycling containers. Therefore, it is not possible to determine consistency with the noted requirements.</p>	<p>Consistency acknowledged.</p> <p>Please note that AMG/CalHDF is currently working with Planning on an agreement pertaining to these standards.</p>

	<p>eight feet in width, 26½ feet in length, an inside turning radius of 25 feet and an outside turning radius of 36 feet.</p> <p>4. Where bin-type containers are to be used to store solid waste for residential developments such bins shall be provided on the basis of one 3-yard bin for each eight dwelling units.</p>		
NMC 5-53.008 b.1.	All utility transmission lines shall be installed underground.	Consistent. The plans for the Project do not identify any above-ground utility lines.	Acknowledged.
NMC 5-55.008	Each use or development proposal which involves or requires water service (domestic, commercial, industrial, agricultural) either for sanitary use, consumption, production, irrigation or visual amenity, shall provide for such water by agreement with the North Marin County Water District.	<p>Inconsistent. North Marin Water District, in a letter dated August 9, 2023, states that new water distribution facilities are likely required for the Project. However, the design of such improvements were not provided as part of the plans for the Project.</p> <p>The District's letter further states that if fire sprinklers are required then replacement and upsizing of both the service lateral and water meter are likely necessary to provide adequate water flow to the new sprinkler system. The Novato Fire Protection, in a letter dated August 11, 2023, indicates a fire sprinkler system is required for the Project.</p> <p>Based upon the Water District's statements, the Project has not ensured the District will provide service to the Project consistent with NMC 5-55.008 and that service is sufficient for the fire safety needs of the residential units therein.</p>	AMG/CalHDF is currently working with Planning on an agreement pertaining to these standards.

March 15, 2024

KCE-2020-132E-LR1

AMG and Associates, LLC
16501 Ventura Boulevard, Suite #400
Encino, California 91436

RE: Environmental Site Assessment
Update Letter Report
Commercial Property
1212-1214 Grant Avenue
Novato, California 94945

KCE Matrix, Inc. (KCE Matrix) was previously retained to perform subsurface Environmental Site Assessment (ESA) work for the above referenced property. In July and August of 2020, subsurface ESA work was performed by KCE Matrix as presented in a summary report designated as (KCE-2020-187E-R1) dated August 14, 2020. Based on the subsurface environmental site assessment work performed and the evaluation of the data as presented in the referenced report, KCE Matrix concluded that the subsurface soil and soil-gas on site had not been impacted by the contaminants of concern (Tetrachloroethylene (PCE) and Trichloroethylene (TCE)) and therefore, further subsurface assessment work or implementation of remedial action was not warranted or recommended at that time.

Subsequently, in September of 2023, AMG and Associates, LLC received a letter from the City of Novato (CN) with regard to the subject property expressing a concern with regard to the possibility that the two structures on site were first constructed between approximately 1942 and 1952 and that some of the building materials within these structure may contain Lead Based Paint (LBP). Furthermore, the CN letter also states a concern that the subsurface assessment work performed previously did not adequately address matters related to development of the subject property for residential use. More specifically, the concerns expressed are related to the former use of the subject property for auto, marine and tree equipment servicing. As such, the CN believes that additional subsurface sampling should be performed in areas not assessed, and that the samples be analyzed for petroleum, as well as for the past dry-cleaning usage, and for potential LBP.

As requested by the client, this update letter report is intended to provide additional environmental site assessment and potential remediation information specifically with regard to potential LBP, petroleum related contaminants and PCE at the subject property at this time.

It should also be noted that assessment of potential LBP or Lead containing materials is categorized as a “Non-Scope Consideration” based on the ASTM E1527 standard for performing Phase I ESA work. These are defined as environmental issues or conditions at a property that a given party may wish to assess but that are outside of the scope of the Phase I ESA practice.

I. SUBSURFACE ENVIRONMENTAL SITE ASSESSMENT

In reviewing the City of Novato (CN) letter dated September 21, 2023; the CN has a concern that the subsurface assessment work performed previously in July and August of 2020 did not adequately address matters related to development of the subject property for residential use. With regard to this matter, consideration should be given to the following:

- The referenced Phase I ESA report as prepared by Essel Environmental Engineering and Consulting (EEEC) dated July 6, 2020 identified one Recognized Environmental Condition (REC) as consisting of possible vapor encroachment originating from the subject property due to historic dry-cleaning operations on site and vapor encroachment originating from another nearby property located to the northwest of the subject site where dry-cleaning operations had been performed. No other RECs were identified by EEEEC during their Phase I ESA. EEEEC did not identify any Controlled Recognized Environmental Conditions (CRECs), Historic Recognized Environmental Conditions (HRECs) or de minimis conditions.
- The REC identified by EEEEC as noted above was further assessed by performing subsurface ESA work in July and August of 2020. During that subsurface ESA, 11 subsurface soil samples were collected and analyzed from seven exploratory boring locations. In addition, seven single-stage subsurface vapor probes were installed and eight subsurface soil-vapor samples were collected from these seven probes. Furthermore, two sub-slab vapor probes were installed and three additional soil-vapor samples were collected from these two probes.
- With regard to subsurface soil assessment: The analytical results of the 11 subsurface soil samples collected and analyzed in July and August of 2020 indicated no detectable concentrations of any of the 61 Volatile Organic Compounds (VOCs) analyzed. The VOCs analyzed included PCE and TCE (which are associated with dry-cleaning operations) and were not detected. Furthermore, the VOC’s analyzed included various breakdown products of petroleum hydrocarbons included Benzene, Toluene, Ethylbenzene and Xylenes (BTEX) as well as Methyl-Tertiary-Butyl-Ether (MTBE). These petroleum hydrocarbon constituents (BTEX and MTBE) were not detected in any of the 11 soil samples collected and analyzed.
- With regard to subsurface soil-vapor assessment for Benzene: The analytical results of the eight subsurface soil-vapor samples and the three sub-slab soil vapor samples indicated no detectable concentration of Benzene in six of the 11 samples collected and analyzed. Benzene was detected at trace concentrations ranging from 3.9 to 5.9

micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) in the five other soil-vapor samples. These trace concentrations of Benzene that were detected are all less than the current regulatory Environmental Screening Level for commercial/industrial site use of ($14 \mu\text{g}/\text{m}^3$) and are only slightly above the residential Tier 1 ESL of ($3.2 \mu\text{g}/\text{m}^3$) for Benzene. The trace concentrations of Toluene, Ethylbenzene, Xylenes and MTBE detected were also all less than the respective Tier 1 ESLs for each of these constituents.

- With regard to subsurface soil-vapor assessment for PCE: The analytical results of the eight subsurface soil-vapor samples and the three sub-slab soil vapor samples indicated no detectable concentration of PCE in seven of the 11 samples collected and analyzed. PCE was detected at concentrations ranging from 6.3 to $14 \mu\text{g}/\text{m}^3$ in three other soil-vapor samples all three of which are less than the current regulatory Tier 1 ESL of ($15 \mu\text{g}/\text{m}^3$) for residential site use. PCE was also detected at a concentration of $36 \mu\text{g}/\text{m}^3$ in the one other soil-vapor sample which is slightly greater than the Tier 1 ESL of ($15 \mu\text{g}/\text{m}^3$) but less than the current regulatory ESL for commercial site use of ($67 \mu\text{g}/\text{m}^3$).
- As noted in the Phase I ESA report and subsurface ESA report referenced above, the subject property measures approximately 15,000 square feet of total land area. Furthermore, the historic site usage and the locations of that usage were identified during the Phase I ESA performed in July of 2020. Based on that information, a site-specific subsurface ESA plan was developed and implemented which included the collection of 11 soil samples from seven boring locations and 11 soil-vapor samples from nine vapor probe locations. The soil and soil-vapor samples were analyzed for 61 VOCs which are applicable to performing assessment for both dry-cleaning operations as well as for assessment of various petroleum hydrocarbon constituents. The results of the subsurface ESA work performed are briefly presented and summarized above. Detailed information with regard to the subsurface ESA work performed is presented in the referenced report as prepared by KCE Matrix designated as (KCE-2020-132E-R1) dated August 14, 2020.

In summary, the proposed mixed-use commercial and residential usage of the subject property should be allowed to proceed based on the information presented above and based on the following:

- The amount of subsurface soil and soil-vapor sampling performed in July and August of 2020 is appropriate given the size of the subject property and the historic use information presented in the referenced Phase I ESA report prepared by EEEEC. Since August of 2020, the subject property has not been used for purposes related to dry-cleaning or to the storage or usage of petroleum hydrocarbon materials. As such, the results of the subsurface ESA work performed in August of 2020 remain valid and further testing of the areas already assessed is not warranted.
- The results of the soil samples collected and analyzed during the subsurface ESA work performed in July and August of 2020 did not indicate any detectable concentrations

of VOCs, including PCE and TCE as related to dry-cleaning; and no detectable concentrations of BTEX and MTBE as related to petroleum hydrocarbon constituents.

- The results of the soil-vapor samples collected and analyzed during the subsurface ESA work performed in July and August of 2020 indicated no detectable concentrations of VOCs for a majority of the samples, and only trace concentrations of PCE and Benzene.
 - With regard to PCE, seven of the 11 samples analyzed indicated no detectable concentrations of PCE, three of the 11 samples indicated trace concentrations less than the current regulatory Tier 1 ESL for residential land use, and only one sample that was greater than the Tier 1 was also substantially less than the commercial regulatory ESL. The location of this one sample (designated as vapor probe VP-2) was along the western property line in an area where a walkway will be constructed based on the proposed plans for development, and is not located beneath the area on site where the building is proposed to be constructed. The location of vapor probe VP-2 in relation to the proposed construction and development plan is shown in Appendix A, Figure 1.
 - With regard to Benzene, six of the 11 samples analyzed indicated no detectable concentrations of Benzene. Trace concentrations of Benzene were detected in the five other soil-vapor samples only slightly in excess of the Tier 1 ESL for residential land use and all five were less than the current regulatory commercial ESL.
- The proposed plan for development consists of commercial use on the ground floor and residential usage only on the second floor and the higher floors. The trace concentrations of PCE and Benzene that were detected in only one and five of the soil-vapor samples respectively, while greater than the current regulatory residential ESL are all less than the current commercial ESL.

II. PROPOSED ENVIRONMENTAL ASSESSMENT AND SITE MANAGEMENT PLAN

In reviewing the City of Novato (CN) letter dated September 21, 2023; the concern related to LBP materials is identified as the potential of such LBP materials impacting soil in the vicinity of the structures on site. As such, KCE Matrix proposes that surficial soil and shallow subsurface soil assessment work be performed in the immediate vicinity and along the perimeters of the structures on site.

More specifically, the scope of work to be performed by KCE Matrix will consist of the following:

- Drilling of 13 shallow subsurface exploratory soil borings (13 borings for assessment of Lead)
- Geologic logging during drilling of the 13 subsurface exploratory soil borings.

- Soil sampling during drilling of the 13 subsurface exploratory soil borings.
- Project coordination and management.
- Soil sample delivery to a state certified environmental testing laboratory with corresponding chain of custody documentation.
- Laboratory analysis.
- Data analysis, interpretation, and preparation of a report summarizing the subsurface environmental assessment work to be conducted.

The 13 exploratory borings (to be designated as EB-1 through EB-13) are proposed to be drilled and sampled to a total depth of approximately 1.5 feet bgs using hand-auger field drilling and sampling equipment. The proposed locations of the 13 exploratory borings are shown on the site plan in Appendix A, Figure 2. A site-specific health and safety plan will be prepared and implemented on site during field assessment activities.

Subsurface drilling and soil sampling will be conducted by or under the supervision of KCE Matrix's California State Certified Professional Civil Engineer or Certified Engineering Geologist. Soil samples will be collected from the 13 exploratory borings at the sampling intervals of (0-0.5) feet bgs and (1-1.5) feet bgs for soil classification purposes and laboratory analysis (26 total samples). Soil samples will be collected by hammering a core-sampler (with an inserted brass liner) ahead of the hand-auger field drilling and sampling equipment. Drilling and sampling equipment will be washed prior to drilling and between borings to prevent cross-contamination. Sampling equipment will be washed and decontaminated between samples with Trisodium phosphate (TSP) or an equivalent EPA-approved detergent.

Classification of soil will be done using the Unified Soils Classification System (USCS) by KCE Matrix's field engineer or geologist. Soil samples will be collected, labeled and stored on ice (if necessary) for delivery to a California State certified laboratory, and analyzed as follows:

- Twenty-six (26) soil samples collected from exploratory borings EB-1 through EB-13 for Lead by EPA method 6010B.

The analytical results of the soil samples collected and analyzed will be documented in an assessment summary report that will be signed and certified by a licensed California Professional Civil Engineer or Certified Engineering Geologist. The report will include site plans showing the location of the exploratory soil borings drilled, finalized Borehole Logs prepared from field logs that will include the soil sampling intervals, laboratory reports and chain of custody documentation. A copy of the site assessment report will be submitted to the City of Novato, for their review and consideration.

The proposed surficial soil and shallow subsurface soil environmental assessment work is proposed to be performed at the time of property development and construction activities that are planned in the near future, at which time the subject property will not be occupied with any tenants

and when surface improvements like asphalt and concrete surfaces can be more readily removed making the native soil material accessible for sampling.

Should the results of the subsurface ESA work proposed above be in excess of regulatory Environmental Screening Levels where remedial action is determined as being warranted, a site-specific site management plan will be developed for implementation of shallow subsurface soil remediation in the areas of concern identified on site.

III. SIGNATURE AND CERTIFICATION

KCE Matrix appreciates the opportunity to have provided services for this project. Should you have any questions regarding this report and the work performed, please do not hesitate to contact our office at 818-559-5500.

Sincerely,

KCE Matrix, Inc.



Aram B. Kaloustian, P.E.
Project Manager



License No. C52428
Expiration Date: 12/31/2024

Attachments: Appendix A – Figures 1 and 2

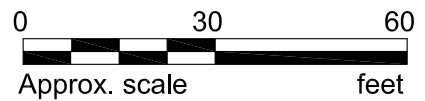
APPENDIX A

(FIGURES 1 AND 2)

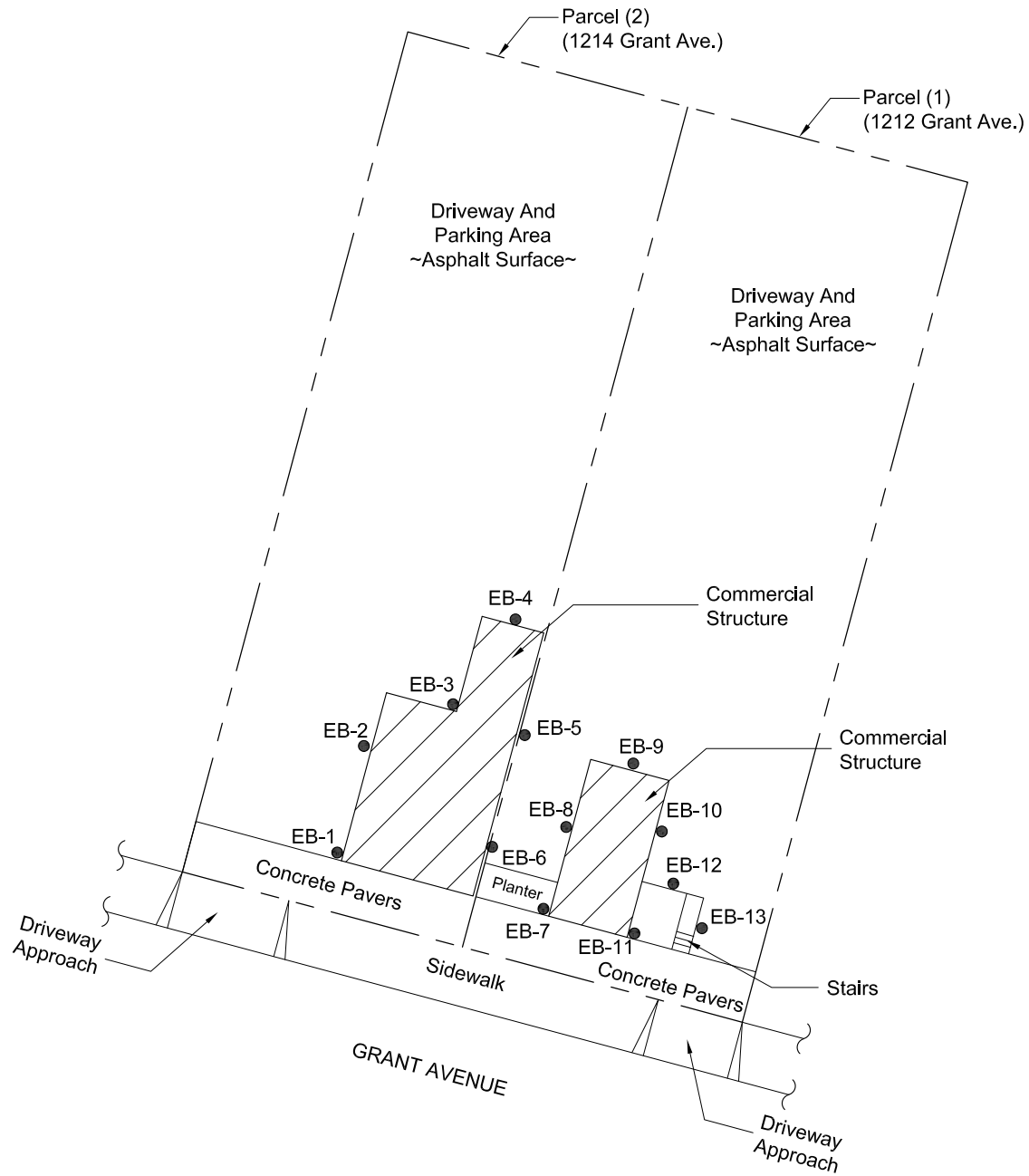


LEGEND

- ⊙ Vapor Probe (Sub-Slab)
- Soil Boring/Vapor Probe (Subsurface)

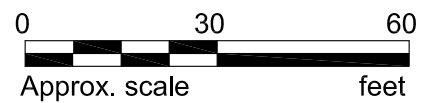


SITE PLAN - SUBSURFACE SOIL BORING AND SUBSURFACE AND SUB-SLAB VAPOR PROBE LOCATIONS



LEGEND

● Proposed Exploratory Boring (Lead Analysis)



SITE PLAN - PROPOSED EXPLORATORY SOIL BORING LOCATIONS



To: Steve Marshall, Deputy Director of Community Development, City of Novato
 Re: Response to Policy MO 2 Inconsistency Determination for 1212 & 1214 Grant Ave (P2023-056)
 Date: February 22, 2024

I. ISSUE

The City, in its letter concerning “Preliminary Eligibility, Objective Standards, & Density Bonus Determination” for 1212 & 1214 Grant Ave (P2023-056), submitted by CalHDF and AMG, judges the application inconsistent with Policy MO 2. The City requests a traffic study verifying the project will maintain LOS standards at relevant intersections.

II. RESPONSE

The City cannot require a traffic study based on Policy MO 2 because it is not an objective standard. AB 2011 restricts the City to applying “objective” standards. (Gov. Code § 65912.113(f).) “Objective” standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal.” (*Id.* at subd. (g).)

Policy MO 2 is a policy found in the City’s general plan. (Novato General Plan, pg. 6-51.) A “policy” is “a specific statement that guides decision-making as the City works to achieve its goals,” and is designed to “set out the standards that will be used by City staff, the Planning Commission, and the City Council in its review of land development projects, resource protection activities, infrastructure improvements, and other City actions.” (*Id.* at pg. 1-14.) A policy cannot be an objective standard, as defined in AB 2011, for two reasons:

1. Policies provide guidance to staff and the City’s legislative bodies. They do not impose duties on applicants seeking to construct housing development projects.
2. An applicant cannot know in advance and with certainty how, precisely, the City will apply a policy to its application. Policies are simply framed in terms too broad to allow such certainty, and their application is a matter of subjective discretion and interpretation on the part of staff, the Planning Commission, and the City Council.

Policy MO 2’s language confirms it is not an objective standard for both of these reasons:

1. Policy MO 2 states that staff must “[e]stablish traffic Level of Service (LOS) standards” and “[c]ontinue to consider LOS standards in evaluating the merits of proposed development [...] projects.” (Novato General Plan, pg. 6-51.) It does not state that applicants seeking to construct housing development projects must do anything. In particular, it says nothing about applicants’ being required to provide a traffic study. The City’s request for a traffic study cannot, therefore, rely on Policy MO 2, as that policy does not make “available and knowable” to the applicant “before submittal” that they must provide a traffic study. (Gov. Code § 65912.113(g).)

2. The language quoted above – that staff must “[e]stablish” standards and “consider LOS standards” – endows staff with discretion in interpreting and applying Policy MO 2. For example, as explained, the policy does not clearly notify the applicant that they must provide the City with a traffic study – that request flows from staff’s subjective interpretation and application of Policy MO 2. Staff may, of course, conduct their own traffic study, but they may not require one from an applicant.

III. CONCLUSION

Policy MO 2 is not an objective standard, for the purposes for AB 2011, and therefore cannot be applied to the application at issue. The City must withdraw its determination that the application is inconsistent with Policy MO 2 and must also withdraw its request for a traffic study.