



March 6, 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. P2023-058
1316-1320 Grant Ave & 1020 Fourth Street | APN 141-261-29

Dear Mr. Marshall,

Thank you for your review letter dated October 23, 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 205 affordable housing units and two (2) market rate manager's units. The affordable housing units are proposed to be reserved for rent by households with very low (21 units at 50% of AMI) and low incomes (21 units at 60% of AMI and 163 units at 80% of AMI). The AMI threshold for the low income units is not consistent with the requirements of California Health and Safety Code Section 50052.5 as cross-referenced to Health and Safety Code Section 50053. Health and Safety Code Section 50053(b)(4) specifies lower income rental eligibility shall not exceed 60% of AMI. Accordingly, the 163 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 AMI threshold is inconsistent 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 dwelling 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 Site dating to 2020. The ESA revealed no evidence of recognized environmental conditions (REC), historical recognized environmental conditions (HREC) or any controlled recognized environmental conditions (CREC) in connection with the Project Site. However, the ESA acknowledges the banning of lead-based paint in 1978 and indicates the buildings on the Site were constructed sometime between 1961 and 1963, and that it is possible that some of the building materials in such structures may have been painted with Lead Based Paint (LBP) at some point in time. However, no further investigation was made regarding soil that 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. As a result the Department considers the ESA inadequate.

The Department considers the applicable eligibility criteria to indicate a site must be acceptable for residential occupancy and, therefore, any ESA and subsequent testing must demonstrate such. AMG's environmental consultant may provide supplemental information and findings regarding potential soil contamination by lead based paint and its relevance to redevelopment of the Site with residential dwellings.

***AMG/CalHDF’s Response:** Please see the enclosed letter (Exhibit B) from our consultant KCE Matrix (KCE). The current Phase 1 report indicates no RECs found onsite. Please note that lead based paint is not considered an REC (see paragraph 5 of KCE’s letter). Therefore, this criterion should be considered met and consistent with §65912.113(c)(2). In the letter, KCE also lays out how we could approach the City’s concern over lead-based paint.*

- **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 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 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. The Site's existing land use and zoning designation allow residential use at the greatest density.

Based on the criteria of (f)(2), 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. We believe we have met the applicable objective standards and where are not in compliance we will attempt to incorporate into the project design or request a concession.*

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: GRANT AND 4TH STREET MIXED USE [P2023-058]
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 1B</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 185 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)(1)(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 3.38 FAR where a maximum 2.0 FAR is allowed.</p>	<p>Acknowledged.</p> <p>Acknowledged. AMG/CalHDF continues to request a density bonus for this project.</p> <p>The project now proposes a 3.5 FAR. Please see the revised density bonus memo. FAR is added as a concession.</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 appropriate traffic impact fees. Continue to consider LOS standards in evaluating the merits of</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 believes 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>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>a. At intersections with signals or four-way stop signs: operation at LOS D,</p> <p>b. At intersections with stop signs on side streets only: operation at LOS E.</p>		
NOVATO MUNICIPAL CODE (NMC) – CHAPTER 19, ZONING			
MUNICIPAL CODE REFERENCE	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 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.	Consistent. The Project includes retail spaces on the ground level of the building at Grant Avenue.	Acknowledged. The project continues to include retail spaces at the ground level.
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 3.38 FAR where a maximum 2.0 FAR is allowed.	The project’s FAR is now 3.5. Please see the revised density bonus memo. FAR is now requested as a concession.
NMC 19.12.040 – Table 2-8	Front Setback – None Required	Consistent. The Project maintains a 5-foot front setback.	Acknowledged. The project continues to meet this setback standard.
NMC 19.12.040 – Table	Side Setback - 6 ft. if adjacent to a	Consistent. The Site is not adjacent to a single-	Acknowledged.

2-8	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.	family zoning district; therefore, no side setbacks are required.	
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 a height bonus may be granted to allow a height of 45 feet with Design Review approval in accordance with Section 19.20.070.	Inconsistent. The Project has a height of 77-feet. The Project exceeds the maximum height limit of 35-feet. The Project is not entitled to the height exception offered by NMC 19.20.070 C.2. as this bonus can only be considered and granted through a discretionary design review, which is not permitted by AB 2011. AMG is requesting a density bonus pursuant to Government Code Section 65915(b)(1)(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, inclusive of any rooftop mechanical equipment screening, elevator overruns, and/or stairwells. The Project does not comply with Government Code Section 65915(d)(2)(D).	The drawings are revised to achieve a maximum height of 78' (to top of stair). AMG wishes to utilize the 45' height bonus allowed by NMC Section 19.20.070 as long as the design review is conducted consistent with §65912.114(e) of AB 2011 which permits processing via design review as long as the review is strictly limited to objective standards.
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 shall be constructed upon, or moved to, a legally recorded parcel with permanent means of legal access to a public street.	Consistent. The Site consists of four parcels fronting Grant Avenue and three parcels fronting onto Fourth Street. Access is available to Grant Avenue and Fourth Street.	Acknowledged.
NMC 19.20.040	Maximum fence height - 8 ft.	Consistent. The Plans for the Project indicate a	Acknowledged.

		new 6 ft. high wood fence will be constructed along the east property line. Existing fencing is proposed to remain in place.	
NMC 19.20.070 D.	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).	Inconsistent. The Site adjoins a residentially zoned property to the north. The intervening fire and utility access lane between the Site and this property maintains conforming sight visibility areas. However, the proposed building encroaches into the 15-foot sight visibility area applicable to the driveway accessing the parking garage - see NMC 19.20.070 D.1.b.	A 15-foot visibility triangle is shown on sheet C-5 at the garage entry. The fire lane is not meant to be accessible to residents or retail customers of the project.
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 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.	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 and Fourth Street. 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 height of the backflow prevention devices will be between 4 and 4 ½ feet. Sheets L1 and L2 indicate that Feather Reed Grass will be planted around the device which reaches a mature height of 3 to 6 feet. This planting should sufficiently screen the devices.

		the valves.	
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.	<p>Consistent. The plans for the Project do not identify a specific location for solid waste and recycling storage complying with the noted requirement.</p> <p>The conceptual unit plans presented on Sheet A3.0 indicate various labels (e.g., P, S, R, CB, and L) at different locations in each unit. These labels are not defined. As such, it is not possible determine whether one or more of these features are intended to denote the location of solid waste and recyclables storage.</p> <p>This matter can be clarified by noting the features intended to provide the required storage area and submit the dimensions of these features, including height, to confirm compliance.</p>	A note is included on sheet A3.0 for this requirement.
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.	Consistent. The Project includes 207 multi-family housing units. Accordingly, 768 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 1,646 sf.	The project increased in density to 209 units. The three trash collection rooms at the ground level in total are approximately 1,471 square feet and are therefore still in compliance with this standard.
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 compliance with Table 3-4. Table 3-4 requires 48 sf. of solid waste and 48 sf. of recycling storage space for non-residential uses of 10,001 – 25,000 sf. in floor area.	<p>Consistent. The Project includes 10,840 sf. of non-residential space, including amenity rooms and commercial space (office/retail). Accordingly, 96 sf. of common storage space for solid waste and recycling is required.</p> <p>The plans for the Project identify a retail trash collection room with a scaled area of approximately 300 sf.</p>	<p>The non-residential space in the project (retail spaces, leasing office, and clubhouse) now has a square footage of 7,670. As a result, 48 sf of space for solid waste and recycling is required.</p> <p>The retail trash collection room is approximately 481 sf and meets this standard.</p>
NMC 19.20.120 D.2.	Location Requirements. Solid	Consistent. The plans for the Project indicate that	Acknowledged.

	<p>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>on each residential level of the mixed-use building there are three (3) trash chutes rooms connecting to ground-level trash collection areas. The trash chute rooms are within 100-feet from the door of the furthest multi-family dwelling. The non-residential areas of the ground floor are within 100-feet of retail trash collection rooms.</p>	
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.</p>	<p>Acknowledged.</p>
NMC 19.22.060	<p>Light or glare from interior or 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</p>	<p>Consistent. A photometric study was provided identifying the location and intensity of proposed exterior lighting. The study indicates de minimis light levels at the boundaries of the Site.</p>	<p>Acknowledged.</p>

	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).		
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	<p>NMC Division 19.24 specifies the 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.</p>	<p>Consistent. The Project is proposed as a 100% affordable residential development. The Project reserves twenty-one (21) units for very-low-income households with incomes of 50% of AMI and twenty-one (21) units for low-income households with incomes at 60% of AMI. These dwelling units satisfy the requirements of NMC Division 19.24.</p> <p>The balance of the dwelling units in the Project, except for the two (2) manager’s units, are reserved for rent to low-income households with</p>	<p>Acknowledged. The project density changed slightly but the affordability distribution is maintained – 21 units at very low (50%), 21 units at low (60%), 164 units at low (80%), and 3 manager’s units.</p>

		<p>incomes at 80% of AMI.</p> <p>AMG has committed to executing an affordable housing agreement with the City.</p>	
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.	Any planters that did not meet this standard we attempted to remove.
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” curbing at landscaped areas. 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.	Please see sheet L2. Plan Note F is indicated throughout the drawings to indicate the location of the 6" curbing.
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.5.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 (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 (b.). The plans for the Project do not identify overhead utility lines. The selected landscaping does not present any conflicts to proposed overhead lighting. As such, the</p>	<p>Acknowledged.</p> <p>Acknowledged.</p>

		<p>landscape plan does not present any conflicts.</p> <p>Consistent (c.). The landscape plan does not show any plants with a spread and height at maturity that would block pedestrian or bicycle ways.</p>	Acknowledged.
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.	Consistent . The proposed plant materials comply with applicable size requirements.	Acknowledged.
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.	This can be found under Planting Notes. Please see item L on sheet L2.
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 (3). The Project is required to provide ten (10) trees based on 6,191 sf. of total landscape area. The landscape plan indicates 41 new trees (6 Princeton Sentry Gingkos; 32 Wichita Blue Junipers, and 3 Crape Myrtle Coral Pink).</p> <p>Inconsistent (4). The Site has approximately 175 feet of frontage at Grant Avenue. Accordingly, four (4) street trees are required. The Project will be retaining the five (5) existing London Plane street trees at Grant Avenue. However, the Project does not provide any street trees along Fourth Street as required.</p>	<p>Acknowledged.</p> <p>Street trees along Grant Avenue will remain. A concession is now requested for this standard because there is a significant cost to providing street trees along Fourth Street. This request is detailed in our density bonus memo.</p>
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	Acknowledged.

		development project located within one-half mile of a major transit stop. The Site is located within one-half mile of the Downtown Novato SMART station, a major transit stop. Parking, including motorcycle stalls, is not required.	
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>	<p>Consistent. Notwithstanding the provisions of Government Code Section 65863.2, the Project would otherwise be required to provide 282 parking stalls (259 residential and 23 retail). Accordingly, a total of 27 bicycle parking spaces are required. The plans for the Project indicate 48 bicycle parking spaces are provided at the podium level of the mixed-use building.</p>	<p>Acknowledged. Please note that this resubmitted version of the project plans incorporates 42 stalls.</p>
NMC 19.30.090 B.1.	Each bicycle parking space shall include a stationary parking device to adequately secure the bicycle.	<p>Consistent. The plans for the Project indicate bicycle racks will be provided to secure bicycles.</p>	<p>Acknowledged.</p>
NMC 19.30.090 B.2.	<p>Aisles providing access to bicycle parking spaces shall be at least five feet in width.</p> <p>Each bicycle space shall be a minimum of two feet in width and six feet in length, and have a minimum of seven feet of overhead</p>	<p>Consistent. A 6 ft. wide aisle is provided to access the bicycle racks located at the ground floor of the building.</p> <p>Inconsistent. The bicycle storage room scales to a length of 28-feet and provides 18 bicycle parking spaces along this distance representing 1.50-feet of spacing for each stall.</p>	<p>Acknowledged.</p> <p>The bicycle storage is relocated and reconfigured. Each Bicycle space is two feet wide and six feet in length and have a minimum of seven feet of overhead</p>

	<p>clearance.</p> <p>Land uses required to provide bicycle parking spaces shall provide bicycle and pedestrian paths to and from the required parking and locker facilities; access across the site frontage; and provide connections through the interior of the site to any adjacent public open space, rights-of-way, park or community facilities.</p>	<p>Inconsistent. The bicycle storage room scales to width of 15-feet and provides a minimum walkway aisle of 5-feet leaving a length of 5-feet for a bicycle racks and tire overhang on either side of the walkway. The bicycle stalls do not meet the 6-foot length requirement.</p> <p>Consistent. The applicable standard addresses a space with a minimum ceiling height of 7-feet. Bicycle parking is located in room with a ceiling height of 12-feet.</p> <p>Consistent. The plans for the Project indicate pathways are provided to the bicycle parking area.</p>	<p>clearance. See sheet A2.0 Conceptual Building Plans for dimension callouts.</p> <p>The bicycle storage is relocated and reconfigured. Each Bicycle space is two feet wide and six feet in length and have a minimum of seven feet of overhead clearance. See sheet A2.0 Conceptual Building Plans for dimension callouts.</p> <p>Acknowledged.</p> <p>Acknowledged.</p>
NMC 19.30.100 A. and B.	<p>Number of Spaces Required.</p> <p>A. A minimum of one motorcycle parking space shall be provided for each 50 automobile spaces or fraction thereof.</p> <p>B. Space Dimensions. Motorcycle spaces shall have minimum dimensions of four feet by seven feet.</p>	<p>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 major transit stop. The Site is located within one-half mile of the Downtown Novato SMART station, a major transit stop.</p> <p>Motorcycle parking is not required. However, the Project provides three (3) motorcycle parking stalls that comply with the applicable space dimensions.</p>	Acknowledged.
NMC 19.30.110 B.	<p>Number of Loading Spaces Required. Nonresidential uses with less than 10,000 square feet of gross floor area shall provide one loading space, which may be combined with parking spaces.</p>	<p>Consistent. The plans for the Project identify retail space under 10,000 sq. ft. and as such are required to provide one (1) loading space. The plans for the Project identify one (1) exterior loading space at Fourth Street.</p>	Acknowledged.
NMC 19.34.100 C.	<p>The FAR allowed by the applicable zoning district may be increased within the Downtown Core Retail, Downtown Core Business and</p>	<p>Inconsistent. The Project proposes a 3.38 FAR where a maximum 2.0 FAR is allowed.</p>	<p>The project's FAR is 3.5. Please see the revised density bonus memo. FAR is added as a concession.</p>

	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.		
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 2 nd through 6 th floors. 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 Section 19.34.124 B. 2. Standards for Required Open Space. a. The minimum open space area required by this Section shall have no other primary use. b. At least one-half of the required open space shall be immediately available to and private for the occupants of	Inconsistent. The Project is required to provide 31,050 sf. of open space, of which 15,525 sf. must be allocated for private use (e.g., patio or balcony) at each individual housing unit and 15,525 sf. of common outdoor open space. The plans for the Project do not indicate the provision of any private outdoor open space. The plans identify a 9,800-sf. common outdoor patio area in the podium portion of the mixed-use building. The Project does not comply with the applicable standards. 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)(1)(G). If the	The podium outdoor area is now 9,338 sf. This remains as a concession in our revised density bonus memo.

	<p>each dwelling unit, while the remainder may be combined in common areas available to other residents of the project.</p> <p>c. The open space area may include a deck or balcony having no dimension less than six feet.</p> <p>d. Front yard setbacks may be used only as common open space areas, except for allowable deck projections.</p>	<p>Project is found to qualify for these concessions pursuant to the criteria of Government Code Section 65915 then NMC 19.34.100 K. and NMC 19.34.124 B.2. are inapplicable by the operation of law.</p>	
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	Refer to the determinations regarding the Project’s compliance with NMC Division 19.28 above.	AMG/CalHDF is currently working with Planning on an agreement pertaining to these standards.

	standards are generally duplicative of those contained in NMC Division 19.28.		
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.	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)	<p>(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.</p> <p>(c) Paving. Same as for sidewalks [Portland cement concrete; 4" minimum thickness].</p> <p>(d) Obstructions. Same as for sidewalks.</p> <p>(e) Walkways shall be in conformance with the latest regulations for handicapped access adopted by the Office of the State Architect.</p>	<p>Consistent (a). The walkways shown on the plans for the Project indicate all pathways are a minimum of 4 ft. in width.</p> <p>Inconsistent (c). The plans for the Project do not provide a paving section detail for the proposed walkways and offer no notes indicating paving thickness.</p> <p>Consistent (d). No pathway is obstructed.</p> <p>Inconsistent (e). The plans for the Project do not provide the cross-slope of all pathways proposed at the Project Site. Therefore, it is not possible to determine whether the walkways comply with disabled access requirements.</p>	AMG/CalHDF is currently working with Planning on an agreement pertaining to these standards.
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 regarding the specific design and routing of a new 6" lateral leading to a new manhole, including its depth, alignment and any potential impact on the surrounding infrastructure. 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.

		AMG may provide a will serve letter from the Sanitary District to satisfy the requirements of NMC 5-37.008.	
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 eight feet in width, 26½ feet in length, an inside turning radius of 25 feet and an outside turning radius of 36 feet. 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>Inconsistent. The Project includes a solid waste storage area in the northeastern portion of the podium level of the mixed-use building that is located further than 75-feet from both Grant Avenue and Fourth Street.</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>	AMG/CalHDF is currently working with Planning on an agreement pertaining to these standards.
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.	AMG/CalHDF is currently working with Planning on an agreement pertaining to these standards.
NMC 5-55.008	Each use or development proposal which involves or requires water	Inconsistent. North Marin Water District, in a letter dated August 9, 2023, states that new	AMG/CalHDF is currently working with Planning on an agreement pertaining to

	<p>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>	<p>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> <p>AMG may provide a will serve letter from the Water District to satisfy the requirements of NMC 5-55.008.</p>	<p>these standards.</p>
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February 27, 2024

KCE-2020-048E-LR1

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

RE: Environmental Site Assessment
Update Letter Report
Commercial/Retail and Residential Property
1316-1324 Grant Avenue and 1020 4th Street
Novato, California 94945

KCE Matrix, Inc. (KCE Matrix) was previously retained to perform a Phase I Environmental Site Assessment (ESA) for the above referenced property. In April and through May of 2020, the Phase I ESA work was performed by KCE Matrix as presented in a summary report designated as (KCE-2020-048E-R1) dated May 15, 2020. KCE Matrix performed that investigation in conformance with the scope and limitations of ASTM Practice E1527-13. Any exceptions to, or deletions from, the practice are described in the referenced KCE Matrix report.

The assessment revealed no evidence of a Recognized Environmental Condition (REC), an Historic Recognized Environmental Condition (HREC) or a Controlled Recognized Environmental Condition (CREC) in connection with the subject property at that time.

Subsequently, in October of 2023, AMG and Associates, LLC received a letter from the City of Novato (CN) referencing the Phase I ESA performed previously by KCE Matrix for the subject property as noted above. The CN letter makes note of the fact that no RECs, HRECs or CRECs were identified during the ESA work performed. However, the CN letter expresses a concern with regard to the possibility that the two structures on site were first constructed between 1961 and 1963 and that some of the building materials within these structure may contain Lead Based Paint (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 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. PROPOSED ENVIRONMENTAL ASSESSMENT AND SITE MANAGEMENT PLAN

In reviewing the City of Novato (CN) letter dated October 23, 2023; the primary concern related to potential LBP materials is identified as the potential of such LBP materials impacting soil in the vicinity of the two 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 21 shallow subsurface exploratory soil borings (21 borings for assessment of Lead)
- Geologic logging during drilling of the 21 subsurface exploratory soil borings.
- Soil sampling during drilling of the 21 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 21 exploratory borings (to be designated as EB-1 through EB-21) 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 21 exploratory borings are shown on the site plan in Appendix A, Figure 1. 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 21 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 (42 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 for delivery to a California State certified laboratory, and analyzed as follows:

- Forty-two (42) soil samples collected from exploratory borings EB-1 through EB-21 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.

II. 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

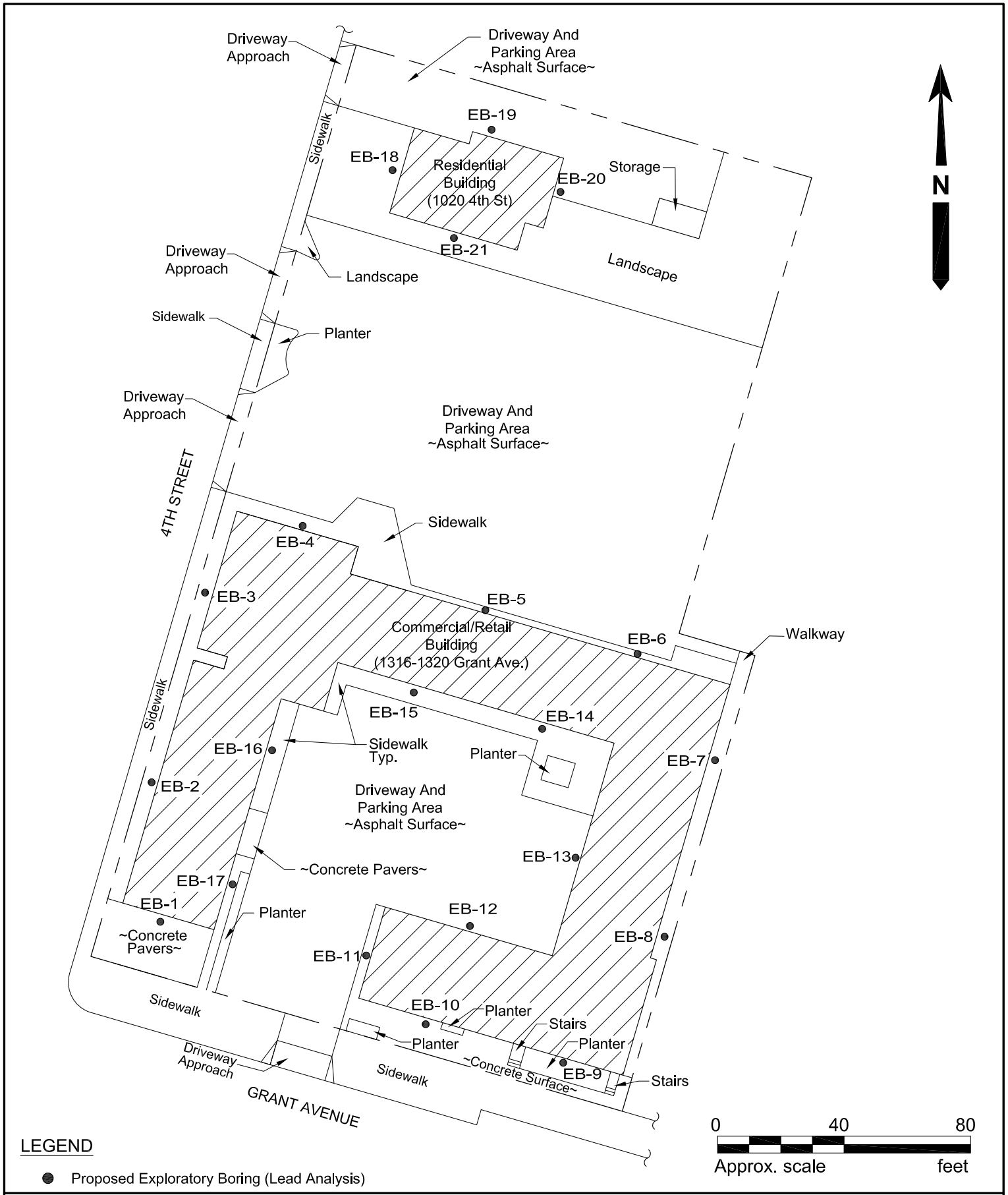


License No. C52428
Expiration Date: 12/31/2024

Attachments: Appendix A – Figure 1

APPENDIX A

(FIGURE 1)



KCE | M | A | T | R | I | X
 CONSULTING ENGINEERS
 STRUCTURAL, CIVIL & ENVIRONMENTAL

COMMERCIAL-RETAIL AND RESIDENTIAL PROPERTY
 1316-1324 GRANT AVENUE &
 1020 4TH STREET
 NOVATO, CALIFORNIA

PROJECT ID: KCE-2020-048E

FIGURE 1



To: Steve Marshall, Deputy Director of Community Development, City of Novato
 Re: Response to Policy MO 2 Inconsistency Determination for Grant Avenue & Fourth Street (P2023-058)
 Date: February 22, 2024

I. ISSUE

The City, in its letter concerning “Preliminary Eligibility, Objective Standards, & Density Bonus Determination” for Grant Avenue & Fourth Street (P2023-058), 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.