

1500 Willow Pass Court  
Concord, CA 94520  
Phone (925) 685-0110  
Fax (925) 685-0660



## TRANSMITTAL

TO: City of Sonoma  
Attn: Alaina Lipp  
No. 1 The Plaza  
Sonoma, CA 95476

DATE: February 6, 2023

RE: SB 330/BUILDER'S REMEDY SUBMITTAL -  
64 UNITS AT MONTALDO APARTMENTS

<input type="checkbox"/> Contract	<input checked="" type="checkbox"/> Documents	<input type="checkbox"/> Misc.
<input type="checkbox"/> Change Order	<input checked="" type="checkbox"/> Plans	
<input type="checkbox"/> Bid Package	<input type="checkbox"/> RFP Package	

QTY.	DESCRIPTION
1	Completed/Signed SB 330 Application Form, Cost Recovery, Legal Letter
1	Cost Recovery Check for required \$5,000 payment to City
5	Copies of current Preliminary Title Report
1	Set of reduced 11"x17" site plan, ALTA survey/existing conditions map, and architectural package
5	Full size 24"x36" sets of the 64 unit site plan
5	Full size 24"x36" sets of the ALTA survey to outline the existing conditions
5	Full size 24"x36" sets of the architectural package containing elevations

### Comments:

Please find enclosed a SB 330/Builder's Remedy application package for 64 apartment units at the Montaldo Apartments property. We will be ready to meet and discuss with City Staff further as soon as time permits in everyone's schedules.

Sincerely,

Trent Sanson  
VP of Land Acquisition & Entitlements  
Email: trent@denovahomes.com  
Cell Phone: (925) 382-0245

RECEIVED

FEB 06 2023

CITY OF SONOMA

*Building a Better Community*



*Building a Better Community\**

1500 Willow Pass Court  
Concord, CA 94520

☎ 925.685.0110  
☎ 925.685.0660

February 6, 2023

**VIA HAND DELIVERY AND FEDERAL EXPRESS**

Alaina Lipp, Associate Planner  
City of Sonoma  
No. 1 The Plaza  
Sonoma, CA 95476

**RE: Montaldo Apartments: SB 330 Application for 64 Lots  
Assessor's Parcel Numbers 127-202-006-000 and 127-202-007-000**

Dear Ms. Lipp:

We are pleased to present the accompanying preliminary application for the Montaldo Apartment Project ("Project") pursuant to the Housing Crisis Act of 2019 ("Housing Crisis Act" or "HCA," also known as SB 330). This project is being processed in addition to, and not in lieu of, the existing application for development.

The Project is a "housing development project" subject to the Housing Crisis Act and is protected by the Housing Accountability Act ("HAA") (Gov. Code § 65589.5), because more than two-thirds of the Project's square footage is devoted to residential uses. (Gov. Code § 65905(b)(3); Gov. Code § 65589.5(h)(2).)

By submitting a preliminary application with the information required by Government Code section 65941.1, and the permit processing fee, an applicant obtains a vested right to develop a housing development project in accordance with the applicable ordinances, policies, and standards in effect when the preliminary application is submitted. (Gov. Code § 65589.5(o)(1).)

As confirmed by the California Department of Housing and Community Development ("HCD"), the state agency delegated by the Legislature with "primary responsibility for development and implementation of housing policy" (Health & Saf. Code § 50152), these vested rights include a right to proceed under the Housing Element compliance status in effect at the time of preliminary application submittal. (See HCD, "3030 Nebraska Avenue, Santa Monica – Letter of Technical Assistance" (Oct. 5, 2022).)<sup>1</sup>

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<sup>1</sup> Available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/santa-monica-TA-100522.pdf>

When a preliminary application submittal “occurs at a time when the jurisdiction does not have a compliant housing element, any potential benefits afforded to the applicant as a result of the jurisdiction’s noncompliant status . . . remain throughout the entitlement process even if the jurisdiction subsequently achieves compliance during the entitlement process.” (*Ibid.*) The preliminary application is not reviewed for completeness. (Gov. Code § 65941.1(d)(3).)

The applicant will submit a complete planning application for the Project within 180 days, consistent with the HCA and the Permit Streamlining Act. (Gov. Code § 65941.1(d)(1).)

As you know, as of the date this preliminary application is submitted, the City of Sonoma has not adopted a Housing Element that is substantially compliant with Housing Element Law as certified by HCD. As noted in technical guidance issued by the Association of Bay Area Governments, “[i]f a locality has not adopted a housing element in substantial compliance with state law, developers may propose eligible housing development projects that do not comply with either the zoning or the general plan.” (Association of Bay Area Governments, *The “Builder’s Remedy” and Housing Elements* (Nov. 2022).)<sup>2</sup> This is known informally as the “Builder’s Remedy.”

Specifically, under the HAA, a local agency cannot deny a housing development project “for very low, low-, or moderate-income households,” unless the local agency can make one of five findings in Government Code section 65589.5, subdivision (d). Ordinarily, a city is permitted to disapprove a project for being noncompliant with local General Plan or zoning requirements. (See Gov. Code § 65589.5(d)(5).) But the HAA makes a city’s ability to do this contingent upon having a substantially compliant Housing Element in place. (*Ibid.*)<sup>3</sup>

For purposes of the HAA, housing “for very low, low-, or moderate-income households,” includes projects in which at least 20 percent of the units are made available for rent or sale at affordable levels to lower-income households, and projects in which 100% of units are made available for rent or sale to “middle-income” households. (Gov. Code § 65589.5(h)(3).)

Here, 100% of the units in the Project will be made available to “middle income” households, which include households earning less than 150% of the county’s area median income. (Gov. Code § 65008.)<sup>4</sup> To the extent there is any question about whether this suffices to invoke the law, the Project would in that event reserve 20% of the Project’s units at affordable prices for lower-income households,

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<sup>2</sup> Available at <https://abag.ca.gov/sites/default/files/documents/2022-11/Builders-Remedy-and-Housing-Elements-Nov-2022.pdf>

<sup>3</sup> The other four potential findings under Gov. Code § 65589.5, subd. (d) do not apply either. Subd. (d)(1), like (d)(5), cannot be invoked if a city lacks a compliant housing element. Subds. (d)(3) and (d)(4) do not apply because denial of the Project is not required to comply with state or federal law, and the Project is not “proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project. Subd. (d)(2) only applies if a city can make findings based on a preponderance of the evidence that a project will cause “significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete,” and further find there are no feasible measures available to mitigation such an “impact.” The Legislature has emphasized that these circumstances will “arise infrequently,” Gov. Code § 65589.5(a)(3), and that General Plan and zoning inconsistency does *not* qualify. Gov. Code § 65589.5(d)(2)(A).

<sup>4</sup> As noted in the ABAG technical advisory, “[t]here are no standards in the HAA for housing costs for middle income households.”

or will comply with the City's adopted Inclusionary Housing requirements within Section 19.44.020 of the Municipal Code if such compliance is required for DeNova to avail itself of the Builder's Remedy and protections afforded by the HAA.

The Project therefore qualifies as a housing development project "for very low, low-, or moderate-income households," and since the City lacks a substantially compliant Housing Element, the Project need not comply with general plan or zoning standards.

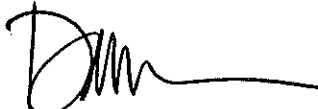
For this reason, the Project is not designed to comply in all respects with the General Plan and zoning standards that would otherwise apply.

We note that, irrespective of the Builder's Remedy, the Project might well qualify for modifications from these General Plan and zoning standards pursuant to the Density Bonus Law, pursuant to Government Code section 65915, but in any event, the General Plan and zoning are both rendered inapplicable as a matter of law by the Housing Accountability Act.

As courts have noted, the Legislature "has made increasingly clear" that mandates included in the HAA "are to be taken seriously and that local agencies and courts should interpret them with a view to giving 'the fullest possible weight to the interest of, and the approval and provision of, housing.'" (*Cal. Renters Legal Advoc. & Educ. Fund v. City of San Mateo*, 68 Cal. App. 5th 820, 902 (2021) (citing Gov. Code § 65589.5(a)(2)(L)).)

We look forward to working further with City officials to promptly advance the consideration of the Project in a manner consistent with state law. We welcome the opportunity to meet with those at the City interested in discussing this application.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Dana', with a long horizontal flourish extending to the right.

Dana C. Tsubota  
Chief Legal Officer

cc: David B. Sanson  
Trent Sanson



**City of Sonoma**  
Planning and Community Services  
Department

**Housing Development  
Project**  
**(Preliminary Application)** - SB 330/  
Revised 07/21/21 *Builder's Remedy*

Submitting a complete application is the key to finishing the planning process quickly. This checklist describes all the plans, documents, and other information necessary to prepare a complete application

Please check entitlements being requested:

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Use Permit (Major)                     | <input type="checkbox"/> Design Review       | <input type="checkbox"/> Demolition Permit  |
| <input type="checkbox"/> Use Permit (Minor)                     | <input type="checkbox"/> Landscape Plan      | <input type="checkbox"/> Certificate of Compliance                                      |
| <input type="checkbox"/> Tentative Subdivision Map (5+ lots)    | <input type="checkbox"/> Exception           | <input type="checkbox"/> Pre-zoning/Annexation  |
| <input type="checkbox"/> Tentative Parcel Map (4 or fewer lots) | <input type="checkbox"/> Lot Line Adjustment | <input type="checkbox"/> Rezoning   |
| <input type="checkbox"/> Planned Development Permit             | <input type="checkbox"/> Merger              | <input type="checkbox"/> General Plan Amendment   |
| <input type="checkbox"/> Variance                               | <input type="checkbox"/> Sign Permit         | <input checked="" type="checkbox"/> Other: <i>SB 330 Pre-App +<br/>Builder's Remedy</i> |

**TO BE COMPLETED/PROVIDED BY APPLICANT:**

1. Assessor's Parcel No(s): 127-202-006 + 007

2. Project Address: 19320 Sonoma Highway 12

3. Property Size: +/- 2.15 acres

4. Property Owner: Civic Park Sonoma Highway, LLC

Owner Address: 1500 Willow Pass Ct.

Email: trent@denovahomes.com

5. Applicant/Agent: Trent Sanson

Applicant Address: 1500 Willow Pass Ct.

Email: trent@denovahomes.com

General Plan designation: Housing Opportunity

Zoning District: Commercial

Planning Area: Northwest Planning Area

Phone: 925-852-0541

City/Zip: Concord, CA 94520

Phone: 925-382-0245

City/Zip: Concord, CA 94520

(If applicant/agent is not the owner of the subject property, the following must be signed by the owner:

**AGENT AUTHORIZATION**

Civic Park Sonoma Highway, LLC is the owner of the property for which a preliminary application for a housing development project is being submitted.

The address of the property is: 19320 Sonoma Highway 12

The Agent for this project is: Name: Trent Sanson  
Address: 1500 Willow Pass Ct.

Concord, CA 94520

Telephone: 925-852-0541

Signature(s) of Property Owner(s):

Trent Sanson

Print name:

Trent Sanson for  
Civic Park Sonoma Highway, LLC

6. Proposed Uses: Multi-family residential
7. Project Description: 64 units spread across eight separate buildings.
8. Submit elevation plans showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied. Please see attached architecture concepts.
9. Provide a legal description of the property in a Preliminary Title Report that is no older than six months from the date of submittal of this "Preliminary Application". Further, the Title Report shall include the location of any recorded public easement, such as easements for storm drains, water lines, and other public rights of way. Included
10. Any species of special concern known to occur on the property: (Yes: ☐/No: ☒)
11. Whether a portion of the property is located within any of the following:  
(A) A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178. (Yes: ☐/No: ☒)  
(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993). (Yes: ☐/No: ☒)  
(C) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code. (Yes: ☐/No: ☒)

Pursuant to California Government Code Section 65962.5(e), before a local agency accepts as complete an application for any development project, the applicant shall consult the latest State of California Hazardous Waste and Substances Sites List on file with the Planning and Community Services Department and submit a signed statement indicating whether the project is located on a site which is included on the List.

Statement: I have consulted the latest State of California Hazardous Waste and Substances List on file with the Planning and Community Services Department, and I have determined that the project site is is not (please circle one) included on the List.

Date of List consulted:

2/3/2023

Source of the listing:

DTSC Envirostor

(D) A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. (Yes: \_\_\_\_/No: X)

(E) A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2. (Yes: \_\_\_\_/No: X)

(F) A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code. (Yes: \_\_\_\_/No: X)

12. Does the project propose any point sources of air or water pollutants. (Yes: \_\_\_\_/No: X)

13. Are any historic or cultural resources known to exist on the property. (Yes: X/No: \_\_\_\_)  
*The property has been identified as a potential historic resource, but in the study performed pursuant to CEQA,*

14. Provide the number of proposed below market rate units and their affordability levels.

Please see the attached  
legal cover letter.

*there is no restriction on demolition provided appropriate steps are taken to mitigate (as outlined in study previously provided).*

15. Provide the number of bonus units and any incentives, concessions, waivers, or parking reductions requested pursuant to Section 65915.

Please see the attached legal cover letter  
for Builder's remedy; rights reserved.

16. Provide the number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied. Include any information necessary to determine compliance with Government code Section 66300(d), including, but not limited to, information on the number of dwelling units being removed if any, whether any dwelling units meet the definition of a "protected unit" (Cal. Gov't Code §66300(d)(2)E(ii)), whether any dwelling units were subject to rent or price control, and whether any dwelling units are for rent. *one (1) existing, unoccupied unit to be demolished.*

17. Provide a site plan showing the following:

(A) Location on the property.

(B) The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.

(C) The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.

(D) The proposed number of parking spaces (and existing spaces, if applicable).

(E) Streams or other resources that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code and an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.

Development applications require the submittal of five copies of the complete set of plans plus a reduced plan set no larger than 11 inches by 17 inches in size. Each full-sized set of plans should not exceed 24 inches by 36 inches, and must be collated and folded to a size no larger than 11 inches by 17 inches. All plans and reports need to be dated. Applications must be submitted by appointment to the Planning Department. If you are submitting to an existing application, the revisions must be clouded and properly identified with each revised sheet marked "revised" revision date clearly indicated. Please consult with your assigned planner when submitting revisions to see if you will be to submit complete sets of revised plans. All plans must be accurate and internally consistent.

18. Development Application fee deposit of \$5,000.00 and signed and dated Cost Recovery Agreement.

I agree to indemnify and hold City harmless for all costs and expenses, including attorney's fees, incurred by City or held to be the liability of the City in connection with City's defense of its actions in any proceeding brought in any State or Federal court challenging the City's actions with respect to the Applicant's project.

Applicant Signature: TAS Date 2-3-2023  
Property Owner Signature (if different): TAS Date: 2-3-2023

**City of Sonoma Planning Division**  
1 Sonoma Plaza, Sonoma CA 95476

**General Planning Counter hours:**  
Monday - Thursday: 8:00am – 12 noon  
Monday -Thursday: 1:00pm - 5:00pm, By Appointment Only  
Friday: Closed



**CITY OF SONOMA PLANNING DEPARTMENT/AND PUBLIC  
WORKS DEPARTMENT COST BASED FEE RECOVERY SYSTEM**

REVISED 06/17/20

**PROJECT NUMBER:**

Agreement for Payment of Full Cost Recovery Fees for Application Processing and Inspection Services  
(Not required for flat fee applications; contact Planning Department if you have any questions.)

Civic Park Sonoma Highway, LLC ("Owner") and \_\_\_\_\_  
[developer's name if different from Owner] (collectively, "Applicant") agree(s) to pay to the City of Sonoma all reimbursable costs, both direct and indirect, including State-mandated costs, associated with review and processing of all applications for land use entitlements and/or encroachment or grading permit and inspection(s) (collectively, "application") with respect to the property located at 19320 Sonoma Highway, APNs 127-202-006 & -007  
("subject property") [Location, Address or Assessor 's Parcel Number(s)] and the project referred to as Montaldo Apartments (Builder's Remedy/SB 330 Application for 64 units)  
("project") even if the application is withdrawn or not approved. Reimbursable costs include but are not limited to all items within the scope of the City's adopted Cost-Based Fee Recovery System. (adopted by City Resolution No. 86-2018, as same and/or its attachments may be amended from time to time), as well as the cost of retaining professional and technical consultant services and any services necessary to perform functions related to review and processing of the application and inspection of the work.

Owner and Applicant understand that one or more deposits will be required to be paid by Owner and/or Applicant to cover the costs noted above at such time(s) and of such amounts as requested by the Planning and Community Development Director, the Public Works Director, or designee. Upon the execution of this Agreement, the Applicant shall deposit with the City an initial amount of \$5,000.00 against which the City's reimbursable costs shall be charged on a monthly basis. The

City shall deliver monthly statements to the Applicant showing the reimbursable costs incurred by the City during the previous month. Said statements shall show how much of the deposit is being used to pay for the invoiced monthly costs, how much of the deposit remains and how much the Applicant must pay to the City, if anything. With the monthly invoice, the City shall supply to the Applicant the necessary documentation supporting the amounts charged against the Applicant's deposit and/or for which the City is demanding payment. Failure of the Applicant to object to an invoice, its contents and/or its supporting documentation, in writing, within 30 days of Applicant's receipt of said invoice shall be deemed a conclusive waiver of any such objection. In the event an objection to an invoice is timely made, and the City incurs additional costs in reviewing, researching and responding to said objection, said additional costs shall be charged against the deposit or, if there is insufficient deposit to pay said additional costs, they shall be paid by the Applicant to the City within 30 days of the City's notice to the Applicant to pay said additional costs; provided, however, that such additional costs shall not be charged against the deposit or paid by Applicant if the objection reveals that the objected-to item in the invoice was incorrect or inaccurate in any way.

In the event the deposit falls or, within 30 days is anticipated to fall, below 50% of the original amount of the deposit, the Applicant shall, within 15 days after notice from the City, replenish the deposit to its original amount. Applicant shall pay to the City any other amounts demanded to be paid by the City pursuant to this Agreement within 15 days after receiving notice from the City to pay said amount(s). Any amounts not paid by Applicant shall accrue interest at the rate of 1% per month or 12% per annum until fully paid.

In the event any approval is appealed, additional amounts shall be required to be paid to the City by the Applicant, and payment thereof shall be a condition precedent to the processing of any such appeal.

City agrees to review and process the application in accordance with this Agreement and all applicable laws, regulations, ordinances, standards and policies. This agreement applies to all subsequent applications related to the project.

Owner and Applicant understand and agree that nonpayment or untimely payment of any amount owed hereunder may, at the sole and exclusive discretion of the Community Development Director or Public Works Director, result in temporary or permanent cessation of processing of the application or inspection of the work and, after notice, may result in (i) the denial of the application,

(ii) an order requiring cessation of all work, and/or (iii) the withholding of permits, plan checks, entitlements, approvals and/or certificates. In the event of the Applicant's breach of this Agreement, Applicant waives any rights under the California Permit Streamlining Act should the City cease processing any application. Prior to completion of processing of any phase of the project and/or the issuance of occupancy permits, any and all outstanding amounts due pursuant to this agreement shall be paid.

In any legal action arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including costs and attorneys' fees.

As part of this application, the Applicant agrees to defend, indemnify, release and hold harmless the City, its agents, offices, attorneys, employees, boards and commissions from any claim, action or proceeding brought against any of the foregoing individuals or entities ("indemnitees"), the purpose of which is to attack, set aside, void or annul the approval of this application or adoption of the environmental document which accompanies it. This indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees or expert witness fees that may be asserted or incurred by or awarded to any person or entity, including the Applicant, third parties and/or the indemnitees, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the indemnitees.

Nothing in this agreement shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that the Applicant is required to defend the indemnitees in connection with any said claim, action or proceeding, the City shall retain the right to (i) approve the counsel to so defend the indemnitees, (ii) approve all significant decisions concerning the matter in which the defense is conducted, and (iii) approve any and all settlements, which approvals shall not be unreasonably withheld by the City.

The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with the Applicant in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own defend any claim, action or proceeding where the Applicant has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City.

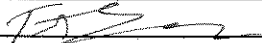
The Applicant also agrees to so indemnify the indemnitees for all costs incurred in additional investigation or study, or for supplementing, redrafting, revising or amending any document (e.g., the EIR, Specific Plan Amendment, Specific Plan, General Plan Amendment, Rezone, etc.) if such is made necessary by the claim, action or proceeding and if the Applicant desires approvals from the City which are conditioned on the approval of said documents.

The undersigned Owner hereby represents that he/she is the sole owner(s) of the subject property. The other Applicant warrants that s/he is a duly authorized agent of the Owner with full authority to execute this Agreement. All Applicants agree to be jointly and severally liable for payment of all fees and costs referenced above. Applicant agrees to notify City in writing prior to any change in ownership and to submit a written assumption of the obligations under this Agreement

signed by the new owner or his/her authorized agent.

Owner agrees that delinquent amounts shall constitute a lien on the subject property and expressly consents to recordation of a notice of lien and/or copy of this Agreement against the subject property with respect to any amounts which are delinquent.

Name of Property Owner: Civic Park Sonoma Highway, LLC

Signature of Property Owner: 

Date: 2-3-2013

Telephone 925-852-0541

Address: 1500 Willow Pass Court, Concord, CA 94520

  
Signature of Other Applicant

Date: 2-3-2013

Address: 1500 Willow Pass Ct., Concord, CA 94520

\_\_\_\_\_  
Signature of Staff Member Verifying Agreement Complete

Date: \_\_\_\_\_