

Northgate Town Square Project Density Bonus Application

By this application, Merlone Geier Partners, LLC, requests to use the State Density Bonus Law, Government Code section 65915, in connection with the proposed Northgate Town Square project at the 44.76-acre Northgate Mall property located at 5800 Northgate Drive in the City of San Rafael (the "Property").

A. Project Eligibility Under the Density Bonus Law

At full buildout, the Northgate Town Square project will include 1,422 residential units consisting of 138 units in townhome structures and 1,284 multifamily residential apartments, approximately 219,380 square feet of new and renovated commercial building area, and associated open space and parking (the "Project"). While current plans show anticipated locations and heights for Project buildings and uses, approved Project uses, units, and floor area may be built across any and all parcels within the Property.

It is anticipated that the Project will be developed in two phases identified in current plans as the 2025 Master Plan phase and the 2040 Vision Plan phase. As currently proposed, each phase of the Project will provide affordable and market-rate residential units as follows:

- *2025 Master Plan phase:* The 2025 Master Plan phase of the Project includes development of 864 new residential units. Eighty-seven (87) of these 864 units will be set aside for low-income households, while the remaining 777 units will be offered at market rates. Accordingly, 10.1 percent of units provided under the 2025 Master Plan will be affordable to low-income households.
- Four (4) units affordable to low-income households under the 2025 Master Plan will be located on "Residential 1," 10 low-income units will be located on "Residential 2," 28 low-income units will be located on "Residential 3," and 45 low-income units will be located on "Residential 4."
- *2040 Vision Plan phase:* The 2040 Vision Plan phase of the Project includes development of 558 new residential units, in addition to those units developed under the 2025 Master Plan phase. Under the 2040 Vision Plan phase, fifty-six (56) of the 558 new units will be set aside for low-income households, while the remaining 502 new units will be offered at market rates. Accordingly, 10.0 percent of new units provided under the 2040 Vision Plan will be affordable to low-income households.
- Thirty-one (31) newly developed low-income units under the 2040 Vision Plan will be located on "Residential 5," while the remaining 25 low-income units will be located on "Residential 6."
- *Total Project development:* By completion of the 2040 Vision Plan phase, a total of 1,422 residential units will have been constructed as part of the Project. Of the 1,422 total units developed under the Project, at least 143 units will be set aside for low-income households, while the remaining 1,279 will be offered at market rates. 10.1 percent of all Project units, therefore, will be affordable to low-income households.

The unit counts identified above can be summarized in table form, as follows:

Phase	Total Units	Minimum Affordable Units	Affordable Unit Share of Total	Max. Market-Rate Units
2025 Master Plan	864	87 low-income units	10.1%	777
2040 Vision Plan (new units)	558	56 low-income units	10.0%	502
2040 Vision Plan (total units)	1,422	143 low-income units	10.1%	1,279

Under Government Code section 65915(b)(1)(A), both phases of the Project qualify for benefits under the Density Bonus Law because each Project phase constitutes a “housing development” that contains at least 10 percent of total units for rental or sale to low-income households. The Density Bonus Law defines “housing development” to mean “a development project for five or more residential units, including mixed-use developments.” (See Gov’t Code § 65915(i).) As noted, the Project contemplates development across all portions of the Property.

B. No Requested Increase in Density

As expressly authorized by Government Code section 65915(f), the Project applicant requests no increase in density over the otherwise maximum allowable gross residential density. Both phases of the Project comply with the density limitations (1) imposed by San Rafael General Plan 2040 and (2) that will be imposed by the zoning regulations proposed for the Northgate Town Square Planned Development District. The Project, therefore, requires no increase in density under the Density Bonus Law.

C. Requests for Incentives/Concessions

1. Project Eligibility

“Incentives or concessions” are available to qualifying projects under the Density Bonus Law on a sliding scale based on the percentage of affordable units provided and their level of affordability. Both phases of the Project are eligible for one incentive/concession, as at least 10 percent of units in each Project phase are for low-income households. (Gov’t Code § 65915(d)(2)(A).)

Specifically, Government Code section 65915(b)(1)(A) provides that, consistent with applicable provisions of the Density Bonus Law, a city shall grant requested incentives or concessions if “an applicant for a *housing development* seeks and agrees to construct a *housing development*” that sets aside at least 10 percent of total units of the “housing development” for low-income households. (Emphasis added.) Section 65915(i) provides that a “[h]ousing development,” as used in this section, means a development project for five or more residential units, *including mixed-use developments.*” (Emphasis added.) Here, each phase of the Project, in its entirety, qualifies as a “housing development” that is eligible for an incentive/concession, because each Project phase is a “mixed-use development” that contains five or more residential units.

Neither the definition of “housing development” nor any other provision in the Density Bonus Law distinguishes between the residential and non-residential components of a qualifying mixed-use development like the Project. (For judicial recognition of this point, see, for example,

Wollmer v. City of Berkeley, 193 Cal. App. 4th 1329, 1346 (2011) (approving grant of Density Bonus Law waivers to authorize 15-foot ceilings in the *commercial* space of a mixed-use building).) Accordingly, incentives/concessions are not limited to the residential portion of a mixed-use “housing development.” State law prohibits cities from denying a requested incentive/concession on the basis that a non-residential portion of a qualifying project would benefit from the incentive/concession.

2. Project Requests

For each phase of the Project, the applicant requests an incentive/concession to increase the height limit across the Property, as detailed below, for purposes of the uses, units, and floor area included in the respective phase. Specifically:

- *2025 Master Plan phase*: The Project applicant requests an incentive/concession to increase the height limit for all 2025 Master Plan buildings and structures across the Property to 78 feet, including elevator penthouses and other projections of up to 12 feet above the 78-foot height limit. Such projections are not limited in number or type, except that no habitable space may be located above the 78-foot height limit. This requested increase is from the Property height limit of 36 feet that is both (1) identified in Figure 3-3 of San Rafael General Plan 2040 and (2) incorporated into proposed development standards for the Northgate Town Square Planned Development District.
- *2040 Vision Plan phase*: The Project applicant also requests an incentive/concession to increase the height limit for all 2040 Vision Plan buildings and structures across the Property to 78 feet, including elevator penthouses and other projections of up to 12 feet above the 78-foot height limit. Such projections are not limited in number or type, except that no habitable space may be located above the 78-foot height limit. This requested increase is from the Property height limit of 36 feet that is both (1) identified in Figure 3-3 of San Rafael General Plan 2040 and (2) incorporated into proposed development standards for the Northgate Town Square Planned Development District.
- *Note applicable to both phases*: As indicated, the 2025 Master Plan phase and the 2040 Vision Plan phase each provides for approved uses, units, and floor area to be built across any and all parcels included in the Property. All uses, units, and floor area in the 2025 Master Plan phase and in the 2040 Vision Plan phase, therefore, would remain subject to the requested incentive/concession for an increased height limit for each Project phase even if those uses, units, or floor area subsequently are relocated within the Property or included in structures of different heights than those shown in current plans.
- *Note regarding subsequent development*: Any subsequent development proposed as part of a different project on the Property would not be subject to the incentive/concession for an increased height limit requested for either phase.

The Project applicant makes this request for an incentive/concession for both phases, in part, to enable current plans to include 100 units in lower-density townhome structures along the southern edge of the Property. Previous plans included multifamily residential apartments of moderate height in this location. In response to City requests that the Project include a buffer next to existing residential uses, the Project applicant replaced apartments with townhomes to reduce heights significantly in this area. However, the Project then needed to accommodate, in buildings of increased height elsewhere on the Property, the units that were removed from the

site of the lower-density townhome structures. The requested incentive/concession for both phases helps facilitate this beneficial reallocation of height across the Property.

Consistent with state law, the Project applicant reserves the right to modify these requests and the analysis provided in this Density Bonus Application, and to request later any requisite waivers or reductions of development standards.