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By Contra Costa County
Department of Conservation and Development

1125 Northgate Rd

Vesting Tentative Map and Density Bonus (2nd submission)

I. Property Description

The property is situated at 1125 Northgate Rd. Walnut Creek, CA 94598 (APN: 138-180-002) in unincorporated Walnut Creek and consists of a total of approximately 9.83 gross acres (property). The property's topography consists of generally gentle slopes less than 8% through the site. The property has a Single-Family Residential-Very Low Density (SV) general plan land use designation under the 2005-2020 Contra Costa County General Plan (General Plan), which allows a range of 0.2-0.9 single-family units per acre. The property is zoned R-40 single-family residential under the Contra Costa County Zoning Code, which allows, as a permitted use, a detached single-family dwelling on each lot and the accessory structures and uses normally auxiliary to it. The property has direct access to Northgate Rd. and is surrounded by existing single-family residential development and designated Open Space (OS). The property is within the County's existing Urban Limit Line (ULL). Walker Creek forms the northern boundary of the property. The property is within the boundaries of the Northgate Specific Plan. Additionally, Ordinance 2016-03 adopted by the Board of Supervisors, included the subject property in the Special Tax area for Police Services District, P-6, on May 24, 2016.

II. Project Description

The project proposes to subdivide an existing legal parcel, which contains an existing single-family residence that is occupied (and has been occupied by the current property in excess for five years), into a total of 19 lots for single-family residential homes. Access to the property from Northgate Rd. would be provided from a new private street. The new access street from Northgate Rd. would be approximately 22-feet wide with no parking on either side. Access into the subdivision would be controlled by a vehicle access gate. The new access road that begins after the access gate would be a double loaded street that would be 36-feet wide with an eight-foot parking lane on each side and a single 5-foot sidewalk along the north-east section of the entirety of proposed roadway. The terminus of the new roadway would contain a cul-de-sac with 90' diameter. All of the foregoing internal circulation plans adhere to applicable Fire Code requirements and are consistent with the applicable Contra Costa County Fire Protection District standards. The project would comply with all applicable development standards set forth in the Contra Costa County General Plan, Zoning Code and Northgate Specific Plan, as modified pursuant to an application for a density bonus and incentives, concessions, waivers and/or parking ratios under the State Density Bonus Law (further detailed below).

Several landscaped on-site bio-retention basin facilities would be located throughout the proposed project, consistent with applicable C.3 storm water requirements. Storm water generated from the new street and from lots 1,2, and 10 through 19 would be cleaned and retained by these bio-retention basins and the associated new stormwater vaults (which would be placed underground) and then placed into an existing 30-inch storm water pipe and associated easement that benefits the subject property (see Instrument No. 2010-0186188, Parcel 4 as described in Preliminary Title Report) of currently crosses through the Walker Creek Ct subdivision to the east. Stormwater from Lots 3 through 9 would be collected into front yard bio-retention basin facilities and released into the rear yards of these lots to replicate the existing storm water sheet flows that currently exists to the west. All on-site bio-retention basins would be landscaped pursuant to applicable standards and requirements to provide an attractive feature visible within the project.

The proposed project would connect into an existing Central Contra Costa Sanitary District (Central San) 8" sewer line within the property. Additionally, the project would connect into an existing Contra Costa Water District (CCWD) domestic water line located within Northgate Rd. The property is within the existing service areas of Central San and CCWD.

The project has been designed to maximize, to the extent feasible, the retention of existing trees on-site. Specifically, trees along the northern boundary have been retained as part of the project's design by pulling the grading back from the drip line of these trees to ensure that no grading encroachment occurs within the dripline of the riparian trees associated with Walker Creek. Additionally, the project has been designed to ensure the 50-foot setback requirement to Walker Creek as required by the Northgate Specific Plan and County General Plan is maintained; as proposed, the project would exceed this setback requirement by providing for a larger creek structure setback to Walker Creek.

III. Density Bonus Law

A. <u>In General</u>

Government Code section 65915 *et seq*. (State Density Bonus Law) and section 922-2.404 of the ordinance code of Contra Costa County (Local Density Bonus Ordinance) are collectively referred to herein as "Density Bonus Law".

Pursuant to Government Code Section 65195(b)(1), the Density Bonus Law requires cities and counties to grant a density bonus and other incentives, concessions, waivers and parking ratios to housing development projects in which any of the following are provided:

- At least 5% of the housing units are restricted to very low-income residents.
- At least 10% of the housing units are restricted to lower income residents.
- At least 10% of the housing units in a for-sale development are restricted to moderate income residents.

Section 65915(j)(1) states that granting a density bonus, concession, incentive, or waiver, "shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval." Nor may the County require the "waiver of a local ordinance" to accommodate the additional density (or associated concessions or waivers) in the proposed project. Gov. Code section 65915(j)(2).

As a state mandate, the Density Bonus Law entitles a developer who meets the requirements of the law to receive the density bonus and other benefits thereunder as a matter of right. The amount of density bonus as well as the number of incentives and concessions are based on the amount and type of affordable housing provided.

Effective January 1, 2024, AB 1287 (Gov't Code § 65915(v)) allows a project applicant to seek an additional density bonus of up to 50% in exchange for providing additional very-low income or moderate income units on site. In other words, AB 1287 created a new stackable density bonus (bonus on top of bonus). The additional bonus is provided on a sliding scale, with the percentage of bonus units increasing as more affordable units are included in the plan. For example, a project that maximizes the available density bonus under Section 65915(f)(1), (2), or (4)[1] by providing either 15% of the units at very-low income (50% AMI), 24% of the units at lower income (80% AMI), or 44% of the units at moderate income (120%AMI), is eligible to receive an additional density bonus of up to 50% in exchange for additional affordable units in the base project. Pursuant to Section 65915(v)), in an ownership or rental project, an applicant may receive up to a 38.75% bonus (on top of the first density bonus) by providing up to an additional 10% of the number of units in the base project as affordable to very-low income level households.

In calculating the first density bonus as well as the additional bonus, state law requires that the same base density be used. This means that both bonuses are added together, and then that total percentage equates to the amount of density bonus units to be added to the base density, for a total unit count. As noted above, the number of affordable units are calculated based on the base density (not the total number of units). Examples of these calculations follow.

B. The Project Qualifies for Benefits Under Density Bonus Law

The proposed project has gross base density of 10 units (9.83*.99=9.7: which rounds to 10 units). The project applicant seeks and agrees to construct 20% on-site very low income affordable units. In so doing, this would maximize the available density bonus under § 65915(f)(2), and thus equate to the maximum bonus of 50%, or 5 units. (Gov't Code §§ 65915(f)(2); 65915(v)(1)(B)).

The project proposes to construct an additional 10% very low-income units; using the 10-unit base density, this would equate to 1 additional unit being affordable to very-low-income households. By constructing this additional affordable unit, the project would qualify for an additional bonus of 38.75% under AB 1287. This additional density bonus would equate to 3.8 units which rounds to 4.

In total, the project proposes to construct 10 base units + 5 density bonus units + 4 double density bonus units, totaling 19 units. (See Gov't Code § 65915(v)(2).)

In addition to the density bonus for which the project qualifies, under AB 1287, it would also qualify for additional benefits under Density Bonus Law. Specifically, because at least 16% of its total units would be reserved for very-low-income households in an ownership project, the project is eligible for a total of four incentives/concessions. (See Gov. Code § 65915(d)(2)(F).)

The for-sale homes on Lots 17, 18, and 19 would be restricted to very low-income households (and thus constitute qualifying affordable units under the Density Bonus law). As a result of the inclusion

[1] For ease of reference, all section references are to the Government Code unless otherwise indicated.

of these three affordable units, the project would be eligible for a density bonus plus incentives/concessions and waivers pursuant to Density Bonus Law.

C. Summary of Project's Density Bonus Calculation

• **Gross Site**: 9.83 acres (please see the Incentive and Concession for discussion regarding gross acreage utilization);

• **Base density**: 9.83 [gross] acres x .99 du/ac = 9.7 du, (fractional unit rounds up) for a total of 10 base units;

• **Local Inclusionary Housing Obligations Pursuant to County Code § 822-4.402(b)**: Satisfied through the inclusion of the proposed three affordable units.

• **% of Base Units**: 3 (very low-income affordable units)/10 (base units) = 30% of base units would be restricted for very low-income households.

• **Density Bonus (Total)**:

- *First Density Bonus*: Project qualifies for 50% density bonus by agreeing to construct and restrict 15% of the base units for very-low income households.

- *Additional Density Bonus*: Project qualifies for another 38.75% density bonus by agreeing to construct and restrict an additional 10% of the base units for very-low income households.

- *Total Density Bonus*: This results in a total (50% + 38.75% =) 88.75% density bonus.

• **Density Bonus Unit Calculation (Total)**:

- *Bonus Unit Total*: 10 base units X 88.75% = 8.875 density bonus units; rounds to 9 units.

- *Total Project Unit Count*: for project (both market rate and affordable) = 19 units.

As described in detail above, the project seeks and agrees to construct and restrict at least 30% of the base units for very low-income households, and thereby qualifies for a density bonus and related benefits. Thus, under the Density Bonus Law, and as explained in more detail below, the County would be required to grant all of the following as mandatory benefits of Density Bonus Law:

1. A density bonus (per Gov't. Code § 65915(b)(1) to allow for the construction of a total of 19 units (10 base units + 9 density bonus units);
2. Waiver/reductions to development standards that have the effect of physically precluding the construction of the qualifying housing development containing the target affordable units (per Gov't Code § 65915(e)(1) (unlimited in number); and

3. A total of four Incentives or concessions (per Gov't Code § 65915(d)(1); and 3.3 parking spaces per unit for lots 17, 18, and 19 as configured on the Vesting Tentative Map.

D. Summary of Project's Request Under Density Bonus Law

1. Density Bonus Request

In compliance with the Density Bonus Law, the applicant hereby seeks and agrees to construct 30% of homes (as calculated from base density) for very low-income households. This would result in an 88.75% bonus or 9 additional bonus units.[2] The applicant would agree to enter into an affordable housing agreement to stipulate the terms of affordability and any and all other mutually acceptable and appropriate terms and conditions, consistent with Density Bonus Law.

2. Parking Ratios

Pursuant to Gov't. Code § 65915(p)(1)(C) upon the developer's request, the County may not require more than 2.5 parking spaces for the 4-bedroom units. The market rate lots will significantly exceed the County's parking requirements, however the proposed very low units on Lots 17-19 contain 4 bedrooms and will have a proposed parking ratio of 3.3 parking spaces per unit (two on each lot, with one-assigned guest space for each unit plus 1 un-assigned guest space for the three units for a total of 10 parking spaces). Onsite spaces may be provided through tandem parking within the setbacks, despite the County's ordnance to the contrary. Requesting these parking standards does not count as an incentive or concession.

3. Waiver/Reduction of Development Standards

The County must waive or reduce, as requested by the project applicant, any and all development standard(s) that would have the effect of physically precluding the construction of the project at the proposed densities or with the requested concessions and incentives, pursuant to Gov't Code Section 65915(e)(1). Pursuant to the foregoing, the applicant hereby requests the following waivers or reductions of development standards:

Contra Costa County Ordinance Code 84-12.602-Lot—Area.

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[2] *Under Density Bonus Law, had the applicant elected to provide an additional 15% of the base units as moderate-income units (rather than the proposal to provide an additional 10% of the base units as very-low income units), the project would have the right to obtain an additional bonus of 50% (vs. 38.75%). Under the foregoing scenario, the project would have the right to a total density bonus of 100% vs. 88.75% currently being sought. Nevertheless, the applicant has elected to seek less than the full 100% density bonus in order to provide a deeper level of affordability, which is significant particularly given the for-sale nature of the housing product being offered by the applicant.*

(a) For lands that are zoned R-40, such as the property, the Contra Costa County Ordinance Code requires the minimum parcel size to be 40,000 square feet. The parcel size of each of the lots within the project is proposed to be as follows on the table on the subsequent page.

> *Required Waiver/Reduction, Lot Area*: No project lots would be able to comply with the 40,000 sf minimum lot size standard because doing so would have the effect of physically precluding the construction of the proposed housing development (please see the table for the square footage of each lot). If the project were not allowed to reduce the minimum lot size standard to below the minimum lot area requirement, the project would be physically precluded from being constructed, including the very low-income units, because the density would be required to be significantly decreased to accommodate larger lots. Accordingly, a waiver/reduction to decrease the minimum lot area requirement is needed to allow the construction of the project, including the proposed affordable units.

Contra Costa County Ordinance Code 84-14.1002-Side Yard

(b) Contra Costa County Ordinance Code requires an aggregate side yard width of at least forty feet and no side yard less than twenty feet wide. The proposed project requires a minimum side yard width of five feet, with an aggregate minimum side yard width of ten feet. The side yards of the project is shown on the table on the subsequent page.

> *Required Waiver/Reduction, Side Yard Setback*: None of the project's lots would be able to comply with the minimum side yard standards because doing so would have the effect of physically precluding the construction of the proposed housing development (please see the table for the side yard of each lot). The proposed market rate homes are 45-feet in width and the proposed lots range from 60'-80' in width. Applying the minimum side yard setback would preclude construction of the homes as designed (60-45'=15' 80'-40'=40'). The affordable units located on lots 17-19 are 37 feet in width and the 40 aggregate side yard setback would preclude all construction on the proposed lots if the side yard standard were applied. If the project were not allowed to reduce the side yard standards to below the minimum, the construction of the project, including the very low-income units, could not physically be provided and the proposed density would be precluded. Accordingly, a waiver/reduction to decrease the side yard requirements is needed to allow construction of the project, including the proposed affordable units.

Contra Costa County Ordinance Code 84-14.1004–Front Yard Setback.

(c) Contra Costa County Ordinance Code requires front yard setbacks to be twenty-five feet. The front yard setback of the project is shown on the table on the subsequent page.

> *Required Waiver/Reduction, Front Yard Setback*: All of the project's market rate lots comply with the minimum front yard standard (please see the table for proposed yards of each lot). However the affordable lots: 17-19 do not comply with this requirement because the lots lack the depth to set the houses back 25 feet. The proposed lots are approximately 52 feet in depth, complying with front yard requirement would reduce the depth to less than the homes as designed and would have the effect of physically precluding the construction of the

proposed housing development. If the project were not allowed to reduce the minimum front yard standard, the construction of the very low-income units, could not physically be provided because the buildable area of each lot would be reduced significantly, resulting in a home that did not contain basic standard provision of a home such as a garage, kitchen or eating area. Accordingly, a waiver/reduction to decrease the front yard requirement is needed to allow the construction of the proposed affordable units.

Contra Costa County Ordinance Code 84-12.604-Lot—Width (average).

(d) Contra Costa County Ordinance Code requires a minimum of one-hundred-forty feet in average width for each parcel. The project's lot width is proposed to be as follows on the table on the subsequent page.

Required Waiver/Reduction, Lot Width: None of the project's lots would be able to comply with the minimum average lot width because doing so would have the effect of physically precluding the construction of the proposed housing development (please see the table for the lot width of each lot). The project contains approximately 800 linear feet of lot frontage, in these 800 feet are 10 lots, which equate to an average of 80 feet of lot width. If the project were not allowed to contain lots below the average lot width requirement, construction of the project, including the very low-income units, would be physically precluded because the standard lot width (140x10=1,400) would simply not fit within the 800 feet of frontage and the density would need to be reduced below the density permitted by this Density Bonus. Accordingly, a waiver/reduction to be below the average lot requirement is needed to allow the construction of the project, including the proposed affordable units.

Contra Costa County Ordinance Code 84-16.606 - Lot—Depth

(e) Contra Costa County Ordinance Code requires a minimum of one-hundred-forty feet in in depth for each parcel. The project's lot depth is proposed to be as follows on the table on the subsequent page.

Required Waiver/Reduction, Lot Depth: Lots 1 and 17-19 would not be able to comply with the minimum lot depth because doing so would have the effect of physically precluding the construction of the proposed housing development (please see the table for the lot depth of each lot) because there is simply not enough land area to provide for the required lot depth. If the project were not allowed to contain lots below the lot depth requirement, construction of the project, including the very low-income units, would be physically precluded and the density would need to be reduced below the density permitted. Accordingly, a waiver/reduction to be below the depth lot requirement is needed to allow the construction of the project, including the proposed affordable units.

(f) *Contra Costa County Ordinance Code 82-4.270–Structure: Retaining Wall higher than 3 feet.* Contra Costa County Ordinance Code requires retaining walls larger than 3 feet to meet specific setback requirements. Lots 1, 3, 4, 5, 7, 8, 9, 10, 11, and 13 would be required to contain retaining walls larger than 3 feet that are less than the structure setbacks required in the R-40 zone.

Required Waiver/Reduction, Retaining Wall Setback: The proposed project would not be able to comply with the retaining wall setback requirement because doing so would have the effect of physically precluding the construction of the proposed housing development (please see the table for the proposed setback). If the project were not allowed to have retaining walls encroach into the setback requirement, the construction of the project, including the affordable units, could not be provided because the lots would not contain adequate flat area to construct a post-tension slab which is required because of the how the homes are designed and the structural requirements set forth by the geotechnical engineer.

Lot #	Gross Area (sf)	Net Area (sf)	Depth (ft)	Rear Setback (ft)	Average Width (ft)	Front Yard Setback (ft)	Side Yard (aggregate)	Max Retaining Wall height (ft)	Building Height to Finished Ground (ft)
Lot 1	25,240	21,764	191	N/A	101	25	5 (15)	4.7	31
Lot 2	25,564	24,804	315	15	79	25	5 (15)	3	34
Lot 3	21,651	20,470	295	15	69	25	5 (15)	3.1	31
Lot 4	18,861	17,608	270	15	65	25	5 (15)	3.5	34
Lot 5	17,516	16,264	250	15	65	25	5 (15)	3.4	31
Lot 6	15,326	14,138	230	15	61	25	5 (15)	3	34
Lot 7	13,918	12,183	212	15	57	25	5 (15)	4.6	31
Lot 8	20,103	19,354	208	15	93	25	5 (15)	3	34
Lot 9	63,760	62,686	418	15	150	25	5 (15)	4.1	31
Lot 10	30,851	28,817	272	15	106	25	5 (15)	4.6	34
Lot 11	15,491	12,002	207	15	58	25	5 (15)	4.6	31
Lot 12	17,825	15,967	216	15	74	25	5 (15)	3	34
Lot 13	18,196	16,304	224	15	73	25	5 (15)	4.9	31
Lot 14	22,733	20,385	230	15	89	25	5 (15)	4.9	34
Lot 15	19,615	16,574	213	15	78	25	5 (15)	3	31
Lot 16	20,812	19,410	250	15	78	25	5 (15)	3	34
Lot 17	8,999	8,074	85	15	95	13	5 (10)	3	26

Lot 18	3,597	2,616	75	15	35	13	5 (10)	3	26
Lot 19	4,603	2,882	62	14	46	13	5 (n/a) double frontage	3	26

(h) *Contra Costa County Ordinance Code* 822-4.412 requires the following:

(a) Inclusionary units must be dispersed throughout the residential development and have access to all on-site amenities that are available to market rate units.

(b) The construction quality and exterior design of inclusionary units must be comparable to the market rate units. However, an inclusionary unit may:

(1) Be smaller in size by up to ten percent when compared to the average size of market rate units in the development that have the same number of bedrooms as the inclusionary unit.

(2) Be developed on smaller lots of up to ten percent when compared to the average lot size of market rate units in the development that have the same number of bedrooms as the inclusionary unit.

(3) Have alternative interior finishes that reduce interior construction costs by up to five percent when compared to the average interior construction cost of market rate units in the development that have the same number of bedrooms as the inclusionary unit.

(c)The average number of bedrooms for all inclusionary units must be equivalent to the average number of bedrooms for market rate units within the same residential development.

The project is a housing development project protected by the Housing Accountability Act (Gov't Code § 65589.5; "HAA"), a powerful housing production statute that places major responsibility for California's ongoing housing supply crisis at the feet of local agencies. Under the HAA, qualifying projects are required to adhere to all applicable objective General Plan, zoning and subdivision standards.[3] The HAA defines the term "objective" exceedingly narrowly to mean "involving no personal or subjective judgment by a public official and being 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." (Gov't Code § 65589.5(h)(8)).

[3] Pursuant to Government Code, § 65589.5(j)(3), the receipt of a density bonus pursuant to Density Bonus Law does not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision. Receipt of a density bonus can include a bonus in number of units, incentives, concessions, or waivers to development standards allowed under Density Bonus Law.

The County Ordinance Code 822-4.412(a) requirements that the local inclusionary units must be "dispersed" and "have access to all on-site amenities"; and 822-4.412 (b) require comparable quality and exterior design constitute requirements that would expressly and impliedly involve personal and/or subjective judgment. Therefore, these requirements cannot be imposed on the project.

Additionally, as a separate and distinct legal basis, requirements to "disperse" the affordable units or otherwise change the layout of the affordable units as compared to what is shown in the project's site plan would result in a reduction in density of the project, which would physically preclude the construction of the project, including the affordable units. Given the larger lots and footprint of the market rate units, if the affordable units were dispersed throughout the site or were on lots that were only 10% smaller than the market rate lots the density would need to be reduced below the density permitted by this Density Bonus because the project as designed would simply not fit within dimensional constraints of the site. Therefore, the County is required to grant a waiver to this requirement.

(i) *Contra Costa County Ordinance Code 82-4.412(c)* requires the average number of bedrooms for all local inclusionary units be equivalent to the average number of bedrooms for market rate units within the same residential development. The project's affordable units would have an average bedroom count of 4 bedrooms; however, the market rate units would have an average count of 5 bedrooms. If the affordable units were required to each have 5 bedrooms, the footprint of the affordable units would be required to increase, which would result in the reduction of density and the elimination of the target very-low-income units. Therefore, application of this requirement would physically preclude construction of the project. Accordingly, a waiver of the bedroom count requirement is needed to allow for construction of the project, including the affordable units.

(j) *Contra Costa County Ordinance Code* Contra Costa County municipal code 82-4.214- Building height" means the vertical distance measured from grade to the top of structure directly above with exceptions noted elsewhere in the code. Height may be measured from finished grade when such grade is below natural grade. Height shall be measured from natural grade when the finished grade is higher than natural grade. See section (r) below that discusses the requested waiver of where height is measured from.

Additionally, the project applicant hereby requests the following waiver/reduction of development standards from the North Gate Specific Plan:

(k) *North Gate Specific Plan Policy No 1 requires larger lots and increased rear and side yard setbacks on properties that abut public open space. Specifically, the Specific Plan states on page 6 under Policy 1 of Protecting public opens space and agricultural preserve land from encroachment of residential uses and facilities: Require larger residential lots and increased rear or side yard setback on properties that abut public open space or agricultural preserve areas.* ____.

As mentioned above, the project is a housing development project protected by the HAA (Gov't Code § 65589.5), a powerful housing production statute that places major responsibility for California's ongoing housing supply crisis at the feet of local agencies. The HAA defines the term "objective" exceedingly narrowly to mean "involving no personal or subjective judgment by a public official and being 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." (Gov. Code § 65589.5(h)(8)).

The Specific Plan provision reference that developments should "*Require larger residential lots and increased rear or side yard setback on properties*". By its terms, this is a requirement that involves personal and/or subjective judgement and distinctly indicates subjectivity. Therefore, since this requirement is not "objective" under the HAA, the County is expressly prohibited from imposing it on the project. For the same reasons, because what would constitute "larger lots" and "increased rear and side yards" is subjective in nature, the County is prohibited from imposing them on the project under the HAA.

Moreover, as a separate, independent legal basis, if the project were to be required to include "larger lots" and "increased rear and side yard setbacks," that would result in the reduction of density, thereby physically precluding construction of the project, including the affordable units. Accordingly, a waiver to the "Policy No 1" must be granted under Density Bonus Law.

(l) *North Gate Specific Plan Policy No. 10 of the Land Use section requires the project to "Maintain feeling of openness."*

As mentioned above, the project is a housing development project protected by the HAA (Gov. Code § 65589.5), a powerful housing production statute that places major responsibility for California's ongoing housing supply crisis at the feet of local agencies. The HAA defines the term "objective" exceedingly narrowly to mean "involving no personal or subjective judgment by a public official and being 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." (Gov't Code § 65589.5(h)(8)).

As explained above, Policy No. 10 that references a requirement to "Maintain feeling of openness" is a requirement that involves personal and/or subjective judgement and distinctly indicates subjectivity. Therefore, since this requirement is not "objective" under the HAA, the County is expressly prohibited from imposing it on the project.

Moreover, as a separate, independent legal basis, if the project were required to "Maintain feeling of openness" that would result in the reduction of density, this would physically preclude construction of the project, including the affordable units. Accordingly, a waiver to the "Maintain feeling of openness" requirement must be granted under Density Bonus Law.

(m) *North Gate Specific Plan/Lot Size Minimum*. The Land Use Section of the North Gate Specific Plan requires that lots may be no smaller than 40,000 square feet and 65,000 square feet (on lots with more than 15% slope). For the reasons explained above, if the project were not allowed to reduce the minimum lot size standard to below the minimum lot area requirement, it would be physically precluded from being constructed, including the very low-income units, because the density would be required to be significantly decreased to accommodate larger lots. Accordingly, a waiver/reduction to decrease the minimum lot area requirement under the North Gate Specific Plan is needed to allow for the construction of the project, including the affordable units.

(n) *North Gate Specific Plan/Maximum Density*. The Land Use Section of the North Gate Specific Plan imposes a maximum density in the Single Family Residential Very Low Designation of : 0.1-1.0 Du/Ac maximum. The resultant gross density of the proposed project is 1.9 units per gross acre as a result of the requested Density Bonus. If the project were not allowed to increase the density to above the maximum of 1.0 unit per acre, the construction of the project, including the very low-income units, would be physically precluded because the density would be required to be significantly decreased to accommodate the maximum. Accordingly, a waiver to exceed the density maximum under the North Gate Specific Plan is needed to allow for the construction of the project,

(o) *North Gate Specific Plan/Minimum Lot Size*. The Land Use Section of the North Gate Specific Plan requires that the minimum lot size be 30,000 square feet. If the project were not allowed to reduce the minimum lot size standard to below the minimum lot area requirement, construction of the project, including the very low-income units, would be physically precluded because the density would be required to be significantly decreased to accommodate larger 30,000 square foot lots. Accordingly, a waiver/reduction to decrease the minimum lot area requirement is needed to allow for the construction of the project, including the affordable units.

(p) *North Gate Specific Plan/Lot Area Calculation.* The Land Use Section of the North Gate Specific Plan requires that new lots adjacent to a creek are not allowed to count creek area as part of lot area. If this requirement were imposed on the project, the resultant lots would be required to be a minimum of 30,000 square feet without the area included with the creek structure setback area. The result of this requirement is the reduction in density, because it would prevent land area from being counted in the lot square footage total. If the project were not allowed to count creek area toward lot size, the construction of the project, including the very low-income units, would be physically precluded because the density would be required to be significantly decreased to accommodate larger lots adjacent to the creek. Accordingly, a waiver/reduction to decrease the minimum lot area requirement and an ability to count creek area as part of lot area, is needed to allow for the construction of the project, including the affordable units.

(q) *North Gate Specific Plan/Setbacks.* The Development Regulations of the North Gate Specific Plan require that residences be setback 60’ from agricultural preserve and open space lands.

The project’s Lots 1 through 9 are adjacent to open space lands. Lots 2-9 meet the 60-foot setback; however construction of Lot 1would be physically precluded if it had to meet the 60’ setback because the buildable area of this lot would be eliminated, resulting in a loss of density. Accordingly, a waiver/reduction to decrease the setback 60’ from agricultural preserve and open space lands is needed to allow for the construction of the Lot 1.

(r) *North Gate Specific Plan/Height Limits.* The Land Use Section of the North Gate Specific Plan requires the imposition of a 25-foot height limit from the City of Walnut Creek ordinance. The City’s municipal code provides for the following exception for measuring height - City of Walnut Creek Municipal Code Section 10-2.1.303(47)(b):

“Pitched roofs, with a minimum of three and twelve (3:12) pitch, occupying at least seventy-five percent (75%) of the horizontal roof area and having a ridgeline, shall be measured four (4) feet below the highest ridgeline unless the building height to the top of the parapet is greater, in which case, the building height shall be measured to the highest point of the structure”.

The maximum height of the proposed homes is 33’-6” and includes a 5:12 roof pitch. The City of Walnut Creek municipal code allows the following for measuring base elevation: “a. Base Elevation (City of Walnut Creek 10-2.1.303(47)(a)):

“The existing or finished grade, whichever is lower, as shown on an approved topographical survey of the site at the time a Design Review application is submitted for approval of a structure on the site, or in such cases where Design Review is not required, at the time a building permit is submitted for approval. EXCEPTIONS: (1) Where unusual deviations occur in the existing grade such as a small swale, or the property is located in a flood plain, the Community Development Director may make minor adjustments in the building height envelope to permit reasonable building design consistent with the intent and purpose of the building height standards for that zone. (2) When a subdivision has been approved with grade changes on the property, the approved grade changes yet to be completed shall serve as the existing grade for the purpose of defining base elevation. (3) Where fill is required on a downhill lot to increase the building pad elevation to provide gravity flow to the street for sewer and/or storm drainage purposes, the base elevation shall be the approved finished grade.”

The project is increasing the building pad height to provide for gravity flow for the storm drainage and under the City of Walnut Creek’s municipal code, the calculated base elevation would be the finished grade shown on the proposed grading plan[4]. However, that section conflicts with the County’s municipal code that provides for the following definition of building height (Contra Costa County municipal code 82-4.214):

“Building height" means the vertical distance measured from grade to the top of structure directly above with exceptions noted elsewhere in the code. Height may be measured from finished grade when such grade is below natural grade. Height shall be measured from natural grade when the finished grade is higher than natural grade.”

The homes in the proposed subdivision would not be able to abide by the height limit of the Specific Plan or the County’s municipal code requirement without physically precluding development of the proposed project. The proposed market rate units on Lots 1 through 16 are two stories and in order to construct each floor with a 10-foot plate height, and a 5:12 roof pitch, this would require heights of approximately 29 feet (33’ minus 4’ for a roof over 3:12 as measured from finished grade), which would exceed the 25-foot height limit. Additionally, the base elevation as defined by the County would increase the heights of the homes from 26-29 feet as measured from finished grade to heights from 31-45 feet as measured from existing natural grade.

The affordable units on Lots 17 through 19 would be able to comply with the Walnut Creek 25-foot height limit, however the base elevation as defined by the County would increase the heights as

[4] Under the City of Walnut Creek’s municipal code base elevation is measure from the finished grade (City of Walnut Creek municipal code Section 10-2.1.303(47)(a)(3).

measured by the City of Walnut Creek from 21'-4" (minus 4 feet 25'-4" in height (as measured from existing finished grade). The increase in heights for the units are a result of grading the pads to accommodate the project and the conflicting requirements between the Specific Plan utilization of the City of Walnut Creek's height limit and the County's definition of where height is measured from.

Accordingly, a waiver/reduction to exceed the height limit of the Specific Plan and the County's definition of where height is measured from, is needed to allow for the construction of the project as envisioned, please see the table on page 8 that includes the height of each home as measured from natural grade.

Waivers Conclusion

In addition to the above-referenced County Ordinance Code waivers/reductions in development standards, the County must waive any and all other development standards that would have the effect of physically precluding the construction of a qualifying project, pursuant to Gov't. Code Section 65915(e)(1). Accordingly, the project applicant hereby reserves the right to modify and update this Density Bonus Law request if and when deemed appropriate by the applicant.

Enforcing the General Plan, Northgate Specific Plan and R-40 Zoning densities, minimum lot size, side yard, front yard, lot width, depth, retaining wall setbacks, height, density, open space setbacks, Specific Plan densities and lot size requirements, as well as the other requirements discussed above, would physically preclude the construction of the project at the proposed density, including the proposed very low-income units. The applicant proposes to replace these development standards with the modified standards as described herein. The waivers/reductions of development standards would not result in a significant, adverse impact upon the public health and safety (as defined in Section 65589.5(d)(2)) .. The property does not contain any rental dwelling units. The property contains no historic structures and is not listed in the California Register of Historical Resources. The requested waivers are required under Density Bonus Law and would not result in a violation of applicable State or Federal law.

4. Incentives and Concessions

In addition to the density bonus, parking ratios, and waivers discussed above, the County is also required to grant one or more "incentives" or "concessions" (in this case, a total of four) to each project that qualifies for a density bonus.[5] As detailed in Section 65915(k)(1), a concession or incentive is defined as a reduction in site development standards or a modification of zoning code or architectural design requirements that exceed the minimum building standards by the California Building Standards Commission, such as a reduction in setback or minimum square footage requirements; or approval of mixed-use zoning; or other regulatory incentives or concessions that result in identifiable and actual cost reductions to provide for affordable housing costs.

"Development standard" includes a site or construction condition, **including, but not limited to**, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a

[5] Cities and counties have the burden of proof for denial of a requested concession or incentive. See Section 65915(d)(4).

parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation. For example, net lot area is undoubtedly a development standard within the construct of Density Bonus Law (Gov. Code § 65915(o)(2)).

Section 822-2.602–of the County Ordinance Code states:

"An applicant may submit a written proposal for the specific concessions or incentives that the applicant requests. The county will grant the concession or incentive requested by the applicant unless the county makes a written finding pursuant to Government Code Section 65915(d)."

This application and the requests set forth herein shall be considered the project applicant's request for specific concessions/incentives. The number of required incentives or concessions is based on the percentage of affordable units in the project; for the reasons noted above, this project must be granted a total of four incentives/concessions. Each incentive individually and collectively would result in identifiable and actual cost reductions.

#1 Requested Incentive/Concession: Utilizing Gross Acreage for the Density Calculation

The existing gross acreage of the property is 9.83 acres. The gross density calculation is the product of the General Plan density range and the "gross" acreage of the property. The project hereby requests that as a concession, the gross acreage rather than the net acreage be utilized for the density calculation. Using the "gross maximum density" calculation for the subject property is as follows: 9.83 ac. X .99 du/ac results in a maximum gross residential density for the property of 9.7, rounded up equates to 10 units.

In compliance with the Density Bonus Law and as detailed above, the applicant seeks and agrees to construct (3/10=.30) 30% of the base units for very low income households (Lots 17, 18 & 19). In so doing, the project would qualify for an 88.75% bonus or nine additional units, for a project total of 19 units. The applicant would agree to enter into an affordable housing agreement to stipulate the terms of affordability and any and all other mutually acceptable and appropriate terms and conditions, consistent with Density Bonus Law.

In addition, as a separate, independent legal basis, Density Bonus Law requires the use of gross density in determining base density. AB 2501, signed by the Governor in September of 2016, made many changes to DBL including a clarification that a "density bonus" means the maximum allowable gross residential density. As amended by AB 2501, Government Code section 65915, subdivision(f) states:

> "For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable *gross residential density*..."

Finally, the Density Bonus Law states that "This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units." (Gov. Code § 65915(r)).

Therefore, under the Density Bonus Law the County must grant the applicant's request to utilize the gross acreage of the property and the associated calculation of the maximum allowable gross density. The calculation must be based upon the total gross acreage of the property and not reduced by the required roadway dedications or the new street.

> *#2 Requested Incentive/Concession: Utilize the proposed very-low affordable units proposed on lots 17, 18, and 19 to satisfy the County's Inclusionary requirements listed in Chapter 822-4.*

While the inclusionary units would be approximately 1,215 square feet and would involve high quality construction and exterior design appropriate for and compatible with the subdivision as a whole, the inclusionary units would be significantly smaller than the comparable market rate units, would be on smaller lots, and would involve finishes and materials that are more modest in comparison. This would result in result in identifiable and actual cost reductions by decreasing the construction costs of the affordable units, reducing the infrastructure costs of the subdivision, and reducing the payment of affordable housing fees.

Incentives and Concessions Conclusion

Incentives/concessions #1 would result in identifiable and actual cost reductions for the project by, for example, increasing the total number of units thereby spreading the fixed costs of the project (i.e., water, sewer, road, grading, etc.) over a larger number of units which will result in reducing the per unit costs. Additionally, incentives/concessions #2 would result in lower construction costs by eliminating higher cost material and improvements and reducing the total constructed square footage. Furthermore, the incentives/concessions would not have a specific, adverse impact (as defined in Section 65589.5(d)(2)) to public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to lower- and moderate-income households; nor is the requested incentives/concessions contrary to state or federal law.

Project Attachments:

1. Letter from Miller Star Regalia, Dated December 2, 2024;
2. Vesting Tentative Map, Sheets 1-16. Dated November 27, 2024; DK Engineering;
3. Storm Water Control Plan, DK Engineering
4. Signed Notice to Applicants;
5. Landscape Plans, Sheets L1-L9. Dated November 2024; Ripley Design Group, Landscape Architects
6. Architecture, Sheets CS-28. Dated October 2, 2024; William Hezmahalch Architects
7. Building Height Exhibit, 1-Sheet. Dated October 16, 2024; DK Engineering;
8. Yard Setback Exhibits, 1-Sheet. Dated December 2, 2024; DK Engineering
9. Preliminary Title Report, First American Title Co, dated November 4, 2024;
10. 1125 Northgate Rd Geotechnical Recommendations Updated, ENGEO, November 26, 2024;
11. 1125 Northgate Rd Fault Hazard Evaluation Report, ENGEO, November 15, 2024;
12. Preliminary Arborist Report, Hortscience, updated October 2024;
13. Biological Resource Report, Mosiac and Associates, dated July 2024;

14. Joint Trench Plan, 1 Sheet, Millenium Design and Consulting. August 21, 2024;
15. Density Bonus Checklist;
16. Housing Plan;
17. Planning Intake Application Property Owner Authorization, Signed by James Champion.