

City of Santa Rosa
Planning & Economic
Development Department
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Creekside Village Townhomes Project

SB 35 Development Application

Project Description/Cover Letter

July 3, 2020

Table of Contents

1. Executive Summary
2. SB 35 Eligibility and Compliance
3. Consistency With Objective City Standards
4. Land Use Summary
5. Project Entitlements
6. State Density Bonus Law
7. Housing Accountability Act
8. SB 330 – The Housing Crisis Act of 2019

Appendices

A	Statement of Design
B	State Density Bonus Law Application Form
C	SB 35 Application Form
D	Statement of Consistency with Objective Standards (Objective Standards Compliance Table)
E	Development Plan Set (divided into 3 parts to meet electronic submittal requirements for maximum file size) <ul style="list-style-type: none"> • Part 1 of 3 • Part 2 of 3 • Part 3 of 3
F	Title Report
G	Arborist Report
H	Hydrology and Hydraulics Report
I	Stormwater Determination Worksheet/SUSMP Plan & Report
J	Project Valuation
K	Traffic Impact Report
L	Affordability Certification
M	Tree Mitigation Worksheet
N	SB 330 Preliminary Application Form
O	Electronic/Digital Signature Disclosure
P	Habitat Assessment Memorandum
Q	Subdivision Map Application Form
R	Preliminary Eligibility Determination Letter

1. Executive Summary

Barry Swenson Builders-Green Valley Corporation (“Applicant” or “Swenson”) is pleased to submit the enclosed SB 35 Application, State Density Bonus Law Application, and Tentative Map Application, with associated required materials, for the Creekside Village Townhomes Project (“Project”) located at 2653 Montgomery Drive (“Project Site”) in Santa Rosa, California (“City”). This development application is submitted pursuant to Government Code Section 65913.4 (SB 35, as modified by AB 1485 (2019)). SB 35 authorizes qualifying multi-family housing development applications to be processed pursuant to a streamlined, ministerial approval process.

The Project Site is 8.64 acres located between Highway 12 and Montgomery Drive, roughly 1.6 miles west of Downtown Santa Rosa. The Project Site has been vacant for many years, with naturally occurring landscape. To the north of the site is the Santa Rosa Creek, where a creek trail is planned adjacent to the Project Site, separately from this Project. The western edge of the Project Site is bordered by the Saint Eugene Cathedral and school, and the south edge borders Montgomery Drive. To the east is the Carillo Adobe, which is to be restored separately from this Project.

The vision for the Creekside Village Townhomes Project is a development characteristic of the best urban design practices currently expanding outward from Santa Rosa’s core. The townhome concept balances density with significant open space and amenities to create a cohesive community.

The Project proposes 162, for-sale townhome-style units in 24 buildings. Uses include 276,996 square feet of purely residential space, 74,928 square feet of garages attached to the residential units, a 247 square foot pool house, and a 2,351 square foot clubhouse. Ten percent, or 16, of the base residential units will be affordable to low income households in accordance with SB 35 and Density Bonus Law requirements. Approximately 324 covered parking spaces will be provided in garages attached to the townhomes, with 41 street-side spaces, for a total of 365 spaces. The Project also includes approximately 57,461 square feet of open space.

While the Project is entitled to an up to 20% density bonus pursuant to the State Density Bonus Law, Gov. Code § 65915 *et seq.*, the Project is seeking a modest 3.8% density bonus. The Project further seeks two (2) waivers from development standards that would physically preclude construction of the development at permitted densities, and continues to reserve the right to seek one (1) concession/incentive to reduce the costs of the Project (including potentially a reduction or waiver of development impact fees), as discussed in greater detail below in [Section 6](#) and in [Appendix B – State Density Bonus Law Application](#).

2. SB 35 Eligibility and Compliance

Pursuant to SB 35, cities that are not on track to meet their share of the Regional Housing Needs Allocation (RHNA) must follow a streamlined, ministerial review process for housing

development projects that provide the requisite affordable housing and satisfy specified objective planning standards.

Specifically, SB 35 requires cities to approve qualifying projects of more than 150 units within 180 days of application submittal, if the project complies with “objective zoning standards,” “objective subdivision standards,” and “objective design review standards” – traditional, subjective review criteria cannot be applied. These “objective” standards are defined as “standards 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 prior to submittal.” “Objective design review standards” must be published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application and broadly applicable to development within the jurisdiction. A locality may not require a development proponent to meet any standard for which the locality typically exercises subjective discretion, on a case-by-case basis, about whether to impose that standard on similarly situated development proposals.

In reviewing the Project’s compliance with objective standards, Government Code Section 65913.4(b)(3) states that “a development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.” Thus, if a reasonable person would conclude that the Project is consistent with all objective standards, the City must find it consistent.

The California Environmental Quality Act (CEQA) does not apply to the SB 35 approval process because the approval is ministerial and projects are judged based on compliance with objective planning standards that do not require the exercise of discretion. *See* Cal. Pub. Res. Code § 21080(b)(1)(CEQA does not apply to ministerial projects); *see also* 14 Cal. Code Regs. § 15268(a)(“Ministerial projects are exempt from the requirements of CEQA”). As a ministerial project whose approval is mandatory pursuant to state law, the Project is further not subject to the City’s Growth Management ordinance requirements, Mun. Code Ch. 21-03.

For purposes of SB 35, the project’s proposed “additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915” are not considered when assessing the project’s compliance with the City’s objective standards. Gov. Code § 65913.4(a)(5). That means that if the base project and its “otherwise allowable gross maximum residential density,” is consistent with objective standards, then the proposed SB 35 application and its density bonus, waivers/modifications, and/or concessions/incentives must also be approved consistent with the statutes.

The Project is fully compliant and conforms with all of the requirements of SB 35. We note that on June 3, 2020, Adam Ross of the City’s Planning & Economic Development Department issued a determination that the Project is preliminarily eligible for streamlined processing under SB 35 – see [Appendix R – Preliminary Eligibility Determination Letter](#). Further

documentation of eligibility is provided in the below table, which provides SB 35 criteria and an analysis of the Project’s consistency with each:

SB 35 CRITERIA	PROJECT CONSISTENCY ANALYSIS
<p>Unit Count: The project contains 2 or more residential units.</p>	<p>Consistent. The Project is residential and will consist of 162 units.</p>
<p>Urban Residential/ Mixed-Use Site: The project is located on a site that satisfies all of the following:</p> <p>(A) Is a legal parcel or parcels located entirely within an urbanized area or urban cluster, as designated by the United States Census Bureau, or within a city that contains a portion of an urbanized area or urban cluster.</p> <p>(B) At least 75 percent of its perimeter adjoins parcels that are developed with urban uses.</p> <p>(C) Is zoned for residential use or residential mixed-use development (or has a General Plan designation that allows residential use or a mix of residential and nonresidential uses), with at least two-thirds of the square footage of the development designated for residential use.</p>	<p>Consistent. The Project is a residential project on a site that is in an urbanized area.</p> <p>(A) The Project is located within the Santa Rosa urban area as designated by the United States Census Bureau.</p> <p>(B) The Project will be surrounded by residential, commercial, and public institutional (park) uses.</p> <p>(C) The Project site is designated Medium Residential, and the project is 100% residential with accessory amenities.</p>
<p>Affordable Housing: The project satisfies both of the following:</p> <p>(A) Is located in a jurisdiction where the Department of Housing and Community Development (HCD) has determined that the number of units that have been issued building permits is less than the share of the regional housing needs, by income category, for that reporting period. (Or, is located in a jurisdiction that has not submitted an annual housing element report to the department pursuant to Gov. Code § 65400(a)(2) for at least 2 consecutive years before the project submitted an application for approval).</p> <p>(B) The project provides the following minimum percentage of housing units affordable to households making below 80 % of the area median income:</p> <p>(i) 10% for projects in jurisdictions that have approved fewer units of above moderate-income housing than required by their RHNA (and that have 10 or more units); or</p> <p>(ii) 50% for projects in jurisdictions that have issued fewer building permits for below-moderate units than required by their RHNA.</p>	<p>Consistent. With implementation of this affordable housing requirement, the Project is consistent with this element.</p> <p>(A) According to the Department of Housing and Community Development’s SB 35 Statewide Determination, the City is on the list of cities that have not met their targets and are subject to SB 35.</p> <p>(B) The Project is located within a jurisdiction where developers qualifying for SB 35 streamlining must provide at least 10% of a project’s housing units at rents affordable to households earning 80% of the area median income (AMI). The Project will provide 10% affordable units for low-income families.</p>
<p>Recorded Min. Durations: If the project contains subsidized units, the proponent has recorded, or is required by law to record, a land use restriction for the following applicable minimum durations:</p> <p>(A) 55 years for units that are rented.</p>	<p>Consistent. Swenson Builders will meet this requirement.</p>

<p>(B) 45 years for units that are owned.</p>	
<p>Consistency with Objective Standards: The project, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Gov. Code § 65915, is consistent with objective zoning and design review standards in effect at the time that the development is submitted to the local government pursuant to this section.¹</p>	<p>Consistent. SB 35 requires that the Project be consistent with “objective zoning standards and objective design review standards,” excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law (Gov. Code § 65915, <i>et seq.</i>).</p> <p>Zoning Code Objective Zoning and Design Review Standards: The Project site is zoned PD 05-003 and the Project complies with applicable development standards and the City’s Design Review standards <i>to the extent they are objective</i>, as explained in Appendix D – Statement of Consistency with Objective Standards (Objective Standards Compliance Table).</p>
<p>Site Conditions: The development is not located on a site that is any of the following:</p> <p>(A) A coastal zone.</p> <p>(B) Either prime farmland or farmland of statewide importance, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.</p> <p>(C) Wetlands.</p> <p>(D) Within a high or very high fire hazard severity zone.</p> <p>(E) A hazardous waste site listed on the Cortese List or a hazardous waste site designated by the Department of Toxic Substances Control, unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.</p> <p>(F) Within a state-delineated earthquake fault zone, unless the project complies with applicable seismic protection building code standards adopted by the California Building Standards Commission, and by any local building department.</p> <p>(G) Within a special flood hazard area, unless the project has been issued a Letter of Map Revision or flood plain development permit.</p>	<p>Consistent.</p> <p>(A) The Project is not located within a Coastal Zone.</p> <p>(B) The Project site is zoned PD, not for agricultural use. The Project is also not identified on the Farmland Mapping and Monitoring Program of the Department of Conservation.</p> <p>(C) The Project is not wetlands. See Appendix P.</p> <p>(D) The Project site is not located within a High or Very High Fire Hazard Severity Zone as mapped by the California Department of Forestry and Fire Prevention.</p> <p>(E) The Project site does not appear on any of the defined lists.</p> <p>(F) The Project site is not within a mapped earthquake fault zone.</p> <p>(G and H) The Project site is not located within a “floodplain” or “floodway” as designated by FEMA.</p>

¹ A development shall be deemed consistent with the objective zoning standards related to housing density if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

<p>(H) Within a floodway, unless the project has received a no-rise certification.</p> <p>(I) Lands identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.</p> <p>(J) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the Federal Endangered Species Act, California Endangered Species Act, or the Native Plant Protection Act.</p> <p>(K) Lands under conservation easement.</p>	<p>(I) The Project site is not identified for conservation under the City's General Plan, but rather is designated for residential use. The Project site is not located within a habitat conservation plan or natural community conservation plan.</p> <p>(J) The Project is not habitat. See Appendix P.</p> <p>(K) The Project site is not under conservation easement.</p>
<p>Demolition of Housing/Historic Structures: The project is not located on a site where any of the following circumstances would apply:</p> <p>(A) The project would require the demolition of housing that:</p> <p>(i) is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;</p> <p>(ii) is subject to any form of rent or price control through a public entity's valid exercise of its police power; or (iii) has been occupied by tenants within the past 10 years.</p> <p>(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the proponent submits an application under this section.</p> <p>(C) The project would require the demolition of a historic structure that was placed on a national, state, or local historic register.</p> <p>(D) The site contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.</p>	<p>Consistent. The Project will not demolish any housing or historic structure, and is not located on a site that was previously used for housing and occupied by tenants in the last 10 years.</p>
<p>Prevailing Wage/Skilled and Trained Workforce: The proponent has done both of the following, as applicable:</p> <p>(A) Certified to the locality that either of the following is true, as applicable:</p> <p>(i) The entirety of the project is a public work for purposes of Labor Code § 1720 <i>et seq.</i></p> <p>(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area. Additionally, for those</p>	<p>Consistent. Swenson Builders shall meet the applicable requirements.</p>

<p>portions of the development that are not a public work all of the following shall apply:</p> <p>(I) The proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.</p> <p>(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages.</p> <p>(III) All contractors and subcontractors shall maintain and verify payroll records and make those records available for inspection and copying as provided therein.</p> <p>(B) For certain projects, certified to the locality that a skilled and trained workforce will be used to complete the project.</p>	
<p>Subdivision: The project did not or does not involve a subdivision unless either of the following apply:</p> <p>(A) The project has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to paragraph (8)(A), above.</p> <p>(B) The project is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8), above.</p>	<p>Consistent. The Project would be subject to the prevailing wage and skilled/trained workforce requirement of SB 35, thus satisfying (B).</p>
<p>Mobilehomes: The project must not be located on an existing parcel of land or site that is governed by certain statutes related to mobilehomes.</p>	<p>Consistent. The Project site is not subject to the statutes related to mobilehomes.</p>

3. Consistency with Objective City Standards

The Project is consistent with all of the objective zoning and design review standards in effect at the time that this application is submitted to the City. A comprehensive analysis of the Project’s consistency with all applicable objective City standards, as required by SB 35 and the City’s SB 35 application form, is provided in [Appendix D – Statement of Consistency with Objective Standards \(Objective Standards Compliance Table\)](#).

Many zoning code and General Plan standards are aspirational, visionary, or subjective, meaning that they involve personal or subjective judgment; are not uniformly verifiable; or that they have historically been applied in a discretionary manner on a case-by-case basis on similarly situated development proposals in the City of Santa Rosa, and thus are not “objective zoning standards” or “objective design review standards” as defined by SB 35. Any standards which are not objective, as defined by SB 35, have either not been included in [Appendix D](#), or [Appendix D](#) explains which portions of a standard do and do not apply. However, in addition to meeting all objective standards as defined by SB 35, the Project has been designed to comply with and be consistent with many of the City’s subjective standards, as is explained in [Appendix D](#) as well.

4. Land Use Summary

This section describes the land uses that will be constructed as part of the Creekside Village Townhomes Project. All plans submitted as part of this SB 35-compliant submittal package are incorporated by reference, and to the extent this summary differs from information in the plan set, the plan set controls – see [Appendix E – Development Plan Set](#). The Project’s land uses are summarized in [Table 4-1: Land Use Summary](#) and described in greater detail in the “Project Design” section.

Table 4-1: Land Use Summary

Land Use	Amount
Residential Dwelling Units	162
Residential Uses (sf)	276,996
Residential garages (sf)	74,928
Clubhouse (sf)	2,351
Pool house (sf)	247
Open Space (sf)	57,461

Notes: Values are approximate and may be subject to further refinement.

The residential units will be for sale. Of the Project’s units, 10% of the base units (16 units) will be affordable to low income households, in accordance with SB 35, density bonus, and local affordable housing requirements.

The Project creates a high quality development through careful design of public access routes, open space uses, a mix of residential product types, architectural design, and compatibility with adjoining uses. The residential units will be a mix of 3-, and 4-bedroom three-story townhomes ranging from approximately 1,674 (2,130 with garage) to 1,795 (2,273 with garage) square feet, including approximate 68 square-foot covered outdoor balconies on the second floor of each unit. The residential units are in 24 different buildings of 4 to 8 units each. Approximately 324 covered parking spaces will be provided in garages attached to the townhomes, with 41 street-side spaces, for a total of 365 spaces. The Project also includes approximately 57,461 square feet of open space.

Further details regarding the site plan and each use are provided in the attached plan set – see [Appendix E – Development Plan Set](#).

4.1 Project Design

The Project is a townhome project with community amenities including a pool and clubhouse. The units are designed in a style that is compatible with the neighborhood, with lap-board siding, composition shingles, brick, and stucco, while also using a blend of “modern” materials as an accent to create a contemporary, of-its-time style. Boxed bay windows wrapped with metal panels, metal canopies, modern railings, metal panel trim, and

contemporary lighting blend the past with the present while still maintaining a contextual residential makeup.

The residential units are 3-, and 4-bedroom townhomes grouped in four- to eight-unit buildings. Each unit has private outdoor space, including approximately 68 square foot private balconies on the second floor of each unit, and either a porch or entry opening to the street, roadway, park, or landscaped path. The Project's open space provides a vibrant and comfortable space for sitting, playing, eating, and socializing. Open space and amenities available to the entire project community include a pool and clubhouse, with three park areas. The Project's layout connects the community (internally and externally) via existing roadways, and walkable, pedestrian and bike-friendly interconnections.

For further information about the Project's design concept, please see [Appendix A – Statement of Design](#).

4.2 Site Access and Circulation

4.2.1 Vehicular Circulation

Access to the Project's private, interior drives are provided via Montgomery Drive. Access to the Project site is carefully designed to allow for pedestrian and bicycle access. The Project's interior drives are designed to provide adequate access for emergency vehicles and vehicular travel. A discussion regarding traffic and transportation is provided in [Appendix K – Traffic Impact Report](#). Although CEQA does not apply to this SB 35 application, the Traffic Impact Report has been completed in compliance with the City of Santa Rosa's requirements for the SB 35 application. The report concludes that the Project meets all relevant City requirements, but provides suggestions for improvements for a safe and comfortable community, which the Project will implement.

4.2.2 Parking

Under SB 35, the Project is permitted to provide parking ratios as low as one space per unit. Nonetheless, the Project includes sufficient parking to meet the demand for this use, and as such is providing 365 parking spaces. On-site parking consists of 324 covered parking spaces provided in garages attached to the townhomes, with 41 street-side spaces.

4.2.3 Pedestrians and Bicycle Circulation

The Project is designed to provide safe connections for pedestrians and bicyclists. The Project's site plans show the pathways throughout the Project site, which enhance pedestrian connectivity and allow for connections between streets exterior to the Project site, the Project residences, the Project's open space and amenities, and surrounding areas.

4.3 Infrastructure Improvements

This section address infrastructure necessary to support the Project, including water, wastewater, stormwater management, and dry utilities.

4.3.1 Water

The project proposes a looped private 12” fire main and 6” domestic main served by two separate combination water service connections from Montgomery Avenue. The water system will be maintained by the HOA.

4.3.2 Wastewater

The project proposes a private 8” Sewer main to serve the site. Connection of the service to the public main will be at Montgomery Drive and Hahman Ave. The waste water system will be maintained by the HOA.

4.3.3 Stormwater Management

The Project proposes a private storm drain and treatment system. Stormwater treatment will include an infiltration basin at the north edge and will treat the entirety of the site. A further discussion of stormwater can be found in Appendix I – Stormwater Determination Worksheet and SUSMP Plan and Report. The project outfalls to Santa Rosa Creek, with outfall work being completed as part of a separately approved project that has obtained all appropriate resource agency permits. A Hydrology and Hydraulic Analysis of the storm drain system is included with the submittal. The report includes 10 and 100 year storm event analysis of the storm drain system and creek capacity per SCWA criteria.

4.3.4 Dry Utilities

The Project will be served by PGE electrical service, Comcast cable service and AT&T telephone service. All necessary easements will be coordinated upon application with each respective utility.

4.3.5 Construction Sequencing

Grading and subsequent redevelopment of the Project site is expected to occur in a single construction phase over approximately 22 months. It is currently anticipated that construction would begin approximately one year after SB 35 approval of the project. Construction will be continuous on the site. Market conditions or construction requirements may require modifications to this sequencing.

Staging of commercial equipment and vehicles will be on-site, with no staging within the public right-of-way. Code-required fire and emergency access to the adjacent properties will be maintained throughout construction.

5. Project Entitlements

This application package is submitted pursuant to SB 35, which supersedes the City’s conventional discretionary entitlements process. The City’s normal permitting process and findings or other requirements that go beyond confirming SB 35 compliance and consistency with objective standards are not applicable. As stated above, SB 35 defines objective

standards to mean “standards 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 prior to submittal.” SB 35 also prohibits the City from requiring discretionary approvals, citing a Conditional Use Permit (CUP) as an example.

Table 5-1: Required Project Entitlements identifies the plans, entitlements, and permits (or equivalent entitlements) covered by this SB 35 submittal package.

Table 5-1: Required Project Entitlements

Approvals	Comments
Design Review (Mun. Code Ch. 20-52.030)	Limited to objective design review standards per Gov. Code § 65913.4(a)(5). To the extent issuance of this permit typically requires the exercise of discretion, such discretion cannot be applied under SB 35.
Density Bonus Application (Mun. Code Ch. 20-31)	This application includes requests for privileges afforded by the State Density Bonus Law, including a 3.8% bonus, one reserved concession/incentive, and two waivers/modifications. Please see Section 6 for further information, as well as Appendix B – State Density Bonus Law Application .
Tentative Map for Condominium Purposes	SB 35 applies to projects that include a subdivision, if the project will pay prevailing wages and use a skilled and trained workforce. The Project includes a Tentative Map for Condominium Purposes that will create up to 162 condominium units within the Project on two lots of record. This Tentative Map is submitted in accordance with SB 35 and pursuant to Gov. Code §§ 66426 and 66427(a) for development, financing, construction, leasing and sales purposes. To the extent issuance of this permit typically requires the exercise of discretion, such discretion cannot be applied under SB 35. SB 35 specifies that, provided the Project is consistent with all local, objective subdivision ordinance standards, an application for a subdivision pursuant to the Subdivision Map Act is subject to SB 35’s exemption from CEQA review and its public oversight timeline requirements. (Gov. Code § 65913.4(c)(2)). Please see Appendix Q – Tentative Map Application , and the Tentative Map sheets in Appendix E – Development Plan Set , for further details.

Subsequent approvals are ministerial and thus must be granted by the City if the Project meets the applicable standards.

6. State Density Bonus Law

The Project is subject to and is applying for protections and benefits under the State Density Bonus Law and the City’s Density Bonus ordinance, Mun. Code Ch. 20-31. Under SB 35, additional density or other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law are not taken into account when evaluating compliance with the City’s “objective zoning standards” and “objective design review standards.”

The Project will include 16, or 10% of its base units, at the low income level, qualifying it for an up to 20% bonus. Under the General Plan, the maximum base density for the 8.64-acre site is 18 units/acre, for a base maximum of 156 units. The Project is requesting a modest 3.8%, or 6-unit bonus, for a total number of 162 units at a density of 18.8 units/acre.

As required by the City’s Density Bonus Ordinance and SB 35, the Applicant has certified that the affordability requirements will be met (see [Appendix L – Affordability Certification](#)), and the obligation to maintain these units as affordable units will be recorded in an agreement between the Applicant and the City.

Table 6-1: Density Bonus Summary Table

Base max. units permitted	Affordable units by income level	Bonus percentage	Bonus units	Total units proposed
156	Low: 16	3.8%	6	162

6.1 Concessions/Incentives

In addition to increasing the Project’s density, the City must grant incentives or concessions under the State Density Bonus Law. The Project qualifies for one incentive/concession, based on the inclusion of 10% of the total units for low income households. Under the State Density Bonus law, the City can only deny an incentive or concession if it finds that an incentive or concession does not result in identifiable and actual cost reductions; would have a specific, adverse impact on public health and safety or the physical environment; or would violate state or federal law. It is the City’s burden to provide the evidence supporting such findings.

Swenson hereby continues to reserve the right to seek a concession/incentive as the City processes the application, and if relief from a development standard is not identified during processing, may instead seek relief from development impact fees as a concession.

6.2 Waivers/Modification

In addition to a limited number of concessions/incentives, the State Density Bonus Law specifies that a project is entitled to a waiver from “any development standard that will have the effect of physically precluding the construction of a development... at the densities or

with the concessions or incentives permitted by this section.” Waivers are separate from concessions/incentives, are unlimited, and approval is mandatory if the standard would preclude development of the Project at its permitted density. The Project hereby seeks the following waivers from development standards, for the following reasons:

1. Per the standards approved for PD 05-003, maximum building height requirements are 36 feet within 75 feet of Montgomery Drive and 50 feet for the remainder of the Project site. For 6 buildings that comprise of 34 units, the Project proposes 42’-6” building height, which is necessary to provide the number of units proposed while ensuring all other City standards are met and site constraints respected.
2. Zoning Code Section 20-30.040 specifies that no structures may be built within the creekside setback area, and the definition of structures includes fences. There are no structures within the creekside setback area, with the exception of one split-rail fence. The fence is a necessary barrier between the Project and the creek area, and moving it any further into the Project site would preclude the Project from being built at its permitted density by requiring the elimination of several buildings.

Please also see [Appendix B – State Density Bonus Law Application](#), for more information on the Project’s Density Bonus application.

7. Housing Accountability Act

In addition to SB 35, the Housing Accountability Act (Gov. Code § 65589.5) requires the City to approve the Project. The Project is protected under the Housing Accountability Act because the Project consists of more than two-thirds residential uses and complies with the City’s objective standards and criteria, as described in this Project Description and the attached [Appendix D](#).

The City is only permitted to reject a project under these circumstances if there is a preponderance of evidence that the Project would have a significant, unavoidable, and quantifiable impact on “objective, identified written public health or safety standards, policies, or conditions.” Gov. Code § 65589.5(j). The Legislature recently affirmed its expectation that these types of conditions “arise infrequently.” Ch. 243, Stats. 2018 (adding subdivision (a)(3) to Gov. Code § 65589.5). There is no evidence, let alone a preponderance of evidence, that the Project would have any impact on public health and safety that cannot be feasibly mitigated.

A broad range of plaintiffs can sue to enforce the Housing Accountability Act, and the City would bear the burden of proof in any challenge. Gov. Code § 65589.5(k). As reformed in the 2017 legislative session, the Housing Accountability Act makes attorney’s fees and costs of suit presumptively available to prevailing plaintiffs, requires a minimum fine of \$10,000 per housing unit for jurisdictions that fail to comply with the act within 60 days, and authorizes fines to be multiplied by five times if a court concludes that a local jurisdiction acted in bad faith when rejecting a housing development.

7.1 Other State Laws Protecting the Project

Numerous other State laws also prohibit the City from precluding housing development on this site. These laws include, but are not limited to, California's Housing Element Law (see Gov. Code §§ 65585(i), 65587(b), 65863, and 65913.1(a)), California's Planning & Zoning Law (Gov. Code §§ 65000, et seq.), California's "No Net Loss" housing law (see Gov. Code § 65863(b)), and fundamental legal principles that prohibit local governments from regulating land use in a manner that is arbitrary and capricious, discriminatory, or effecting an uncompensated regulatory taking of private property.

8. SB 330 – The Housing Crisis Act of 2019

As California's housing supply and homelessness crisis continues, the State Legislature has for the past several years passed numerous pieces of housing legislation in each legislative session. This year was no exception, with more than 30 individual pieces of housing legislation enacted into law. In particular, SB 330 or the "Housing Crisis Act"² creates important new vesting rights for housing developments.

As described above in Section 7, the Creekside Village Townhomes Project is an eligible "housing development" subject to the Housing Accountability Act and will therefore be subject to the provisions of SB 330. The applicability of several key SB 330 protections that relate to the Project are discussed below.

Specifically and most immediately relevant to this Project, SB 330 amends the HAA to specify that effective January 1, 2020, an application is "deemed complete" as defined in the HAA (and fees and other requirements are frozen as of the date of such completeness) if a qualifying "preliminary application" has been submitted.³ Accordingly, the Project shall be deemed to have submitted a qualifying preliminary application, provided it has submitted the information specified in Gov. Code § 65941.1(a). For further details regarding the SB 330 preliminary application requirements and a demonstration of the Project's compliance, see [Appendix N – SB 330 Preliminary Application](#), which uses the California Department of Housing and Community Development's eligibility form to demonstrate that this application package provides all of the relevant items for a qualifying preliminary application.

SB 330 has also amended the Permit Streamlining Act to specify that in the event the City determines the Project has not complied with the preliminary application materials requirement and the application is incomplete, it must provide an "exhaustive list of items that were not complete" within 30 days; after that, no further requests can be made for items not on this initial list, and the Project would be deemed to comply.⁴

While Swenson notes these requirements for the City's benefit, Swenson remains dedicated to a compliant and successful project achieved in collaboration with the City, and encourages

² See https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB330.

³ Gov. Code § 65589.5(h)(5).

⁴ Gov. Code § 65943 as amended by SB 330.

early and frequent communication regarding any potential issues with meeting these timelines, or further requests for information necessary to review the application.