

ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY  
PLANNING DEPARTMENT



STAFF REPORT

**TO:** Alameda County Planning Commission

**HEARING DATE:** August 3, 2020

**APPLICATION:** PLN2019-00024

**PROPONENT:** Eden Housing, Ellen Morris

**PROPOSAL:** APPEAL BY ANN E. MARIS, GROVE WAY NEIGHBORHOOD ASSOCIATION, OHLONE AUDUBON SOCIETY, CHERRYLAND COMMUNITY ASSOCIATION, MY EDEN VOICE |PARKS AND OPEN SPACE COMMITTEE, EDEN COMMUNITY LAND TRUST, PADRES UNIDOS DE CHERRYLAND, AND FRIENDS OF SAN LORENZO CREEK, SITE DEVELOPMENT REVIEW, New affordable, multi-family project with 72 rental housing units with associated parking and open space areas, and new a creek side trail.

**AFFECTED PROPERTIES:** Three parcels, totaling 6.3 acres with Crescent Avenue to the north, Ruby Street to the northeast, and A Street to the southeast, Castro Valley area of unincorporated Alameda County. Previous County Assessor's Parcel Numbers 415-230-2, -3, -5, -11, -12, -13, -14, -15, -16, -17, -18, -19, -21, -22, -23, -24, -69, -70, -72, and -73. New parcel numbers have not been assigned yet.

**ZONING:** R-S-D-20 (Suburban Residence, one residential dwelling unit allowed for every 2,000 sq. ft. of land)

**GENERAL PLAN DESIGNATION:** General Plan land use designation of *Castro Valley General Plan* (Residential Low-Density Multi-Family (RLM): 18-22 dwelling units/acre)

**ENVIRONMENTAL REVIEW:** The proposed application has been reviewed in accordance with the provisions of the California Environment Quality Act (CEQA) pursuant to Section 21083.3 of the state CEQA statutes and Section 15183 of the State CEQA Guidelines. As provided for in Section 15183, "projects which are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project specific significant effects which are peculiar to the project or its site."

**STAFF RECOMMENDATION:** Hear a presentation by staff on the project, take public testimony regarding the appeal of the Planning Director's approval of the Site Development Review, deny the appeal, and approve the project.

## **BACKGROUND**

The subject planning application (PLN2019-00024) was submitted in February 2019, and re-submitted in June 2019. During this time, it was thoroughly reviewed by senior staff and a consultant team of land use experts, biologists and other environmental professionals. As a Site Development Review (SDR) public hearings for the project were conducted by the Castro Valley Municipal Advisory Council (CVMAC), the details of those hearings is described in more detail below. These hearings introduced the project to the CVMAC and the community at-large and was the principal forum to provide detailed information on particular issues. The CVMAC recommended approval of the project on June 8<sup>th</sup>, 2020 and was approved by the Planning Director shortly thereafter. A timely appeal was filed by the appellants which is the subject of this report. The staff reports, project plans, public comments received, and environmental documents are publicly available on the Planning Department's website:

<https://www.acgov.org/cda/planning/landuseprojects/currentprojects.htm>.



The project site was identified as a housing site in the 2012 Castro Valley General Plan, as a housing site in the County's Housing Element, and has been zoned for residential uses for many decades. The project requires approval of a Site Development Review permit from the County's Planning Department which also must include an analysis of potential environmental impacts pursuant to the California Environmental Quality Act (CEQA). The Planning Department determined that a CEQA Community Plan Exemption (CPE) was the appropriate level of environmental review during the pre-application meeting held in 2018.

During 2019 and prior to publication of the CPE, staff reviewed and considered several issues raised in public comments, which resulted in changes such as widening the creek setback so that it conforms to the County's Watercourse Protection Ordinance requirements, and a second site reconnaissance survey by a qualified biologist to delineate a riparian boundary. This review and consideration of dozens of public comments extended the timeline for publication of the CPE and associated staff report and project hearings for several months while staff worked with the applicant and CEQA consultant to improve the project.

At the CVMAC meeting regarding the highway 238 parcels on August 26, 2019, after hearing public concerns specific to environmental impacts, the CVMAC requested that the next hearing focus solely on the CEQA CPE for the Ruby Street Apartments Project before they would consider action on the project. Subsequent to this hearing the CEQA CPE was published on the Planning Department's website in October 2019.

At the November 25, 2019 CVMAC meeting, the Planning Department provided an overview of key CEQA environmental issues of interest to the public and received public comments on several issues. Consequently, the CVMAC directed the Planning Department to coordinate with the CEQA consultant to address public comments in a master response which was completed and made public in early May 2020. The Planning Department would like to note that public circulation and responding to comments are not

required for CEQA exemptions; the Planning Department conducted public circulation outside of the CEQA requirements at the request of the CVMAC and to engage the community.

At the June 8, 2020 CVMAC meeting, the CVMAC recommended that the Planning Director approve the project. The Planning Director approved the SDR on June 17, 2020. The CEQA Notice of Exemption was filed and the County Clerk date stamp is June 22, 2020. The Planning Department received an appeal on June 24, 2020 from Ann Maris, co-signed by a number of community organizations named above. This staff report addresses the issues raised in the appeal letter dated June 24, 2020 (attached). The appellant provided a total of over 70 files and have been reviewed by staff and our consultant team as needed. As of this writing no other appeal letters or an explanation of how the files should be reviewed with regards to the initial appeal letter has been received. Nonetheless staff has reviewed them all and provides an in-depth analysis on the appeal below. These appeal files can be found here:

<https://www.acgov.org/cda/planning/landuseprojects/currentprojects.htm>

## **SITE AND CONTEXT DESCRIPTION**

**Physical Features:** The site is mostly undeveloped and is covered with non-native annual grassland with ruderal (weedy) species and trees. San Lorenzo Creek forms the southern boundary of the site, and portions of the creek bank in the project vicinity are currently undergoing habitat restoration. The site is generally flat with the exception of the area immediately adjacent to San Lorenzo Creek, which contains some steeper areas along the bank of the creek. The site has its major frontage on Ruby Street (440'), and is also accessed from Crescent Avenue (170'). Ruby Street and Crescent Avenue are two-lane residential streets. Two small residential structures are located at the northeast corner of the site (at new parcel B) along A Street.

The project site also contains a Caltrans conservation easement, which is largely contiguous with the San Lorenzo Creek. The conservation easement is used for riparian enhancement and restoration, which comprises mitigation for a separate Caltrans project, the SR-84 Safety Improvement project at Pigeon Pass in Alameda County.

**Adjacent Area:** The parcels located directly adjacent to the project site along the northwest corner of the project site, bounded by Crescent Avenue and Ruby Street, contain one- and two-story single-family homes and duplexes. Land uses to the north across Crescent Avenue and the northeast across Ruby Street consist of one- and two-story single-family homes apartment buildings. The parcel further east of the project site, bounded by Ruby Street and A Street, contains a two-story warehouse and an associated parking lot. The San Lorenzo Creek forms the southern border of the project site, and the area south of the creek is residential and commercial land under jurisdiction of the City of Hayward. The Douglas Morrison Theater and the Hayward Japanese Gardens are two establishments located in the western vicinity of the project site. A Street is a major northeast-southwest arterial corridor through Castro Valley.

## **PARCEL ZONING HISTORY**

July 18, 1957, the 133<sup>rd</sup> Zoning Unit designated large areas of the County into various zone districts, including the project site and surrounding area. This historic zoning designation map indicates that the project area was zoned as R-1 (single family residence).

October 16, 1958, 204<sup>th</sup> Zoning Unit, shows the project site zoning designation as R-S-D-3 (2,000 square feet per dwelling unit).

The current zoning of RS-D20 is similar to the historical zoning of 1958.

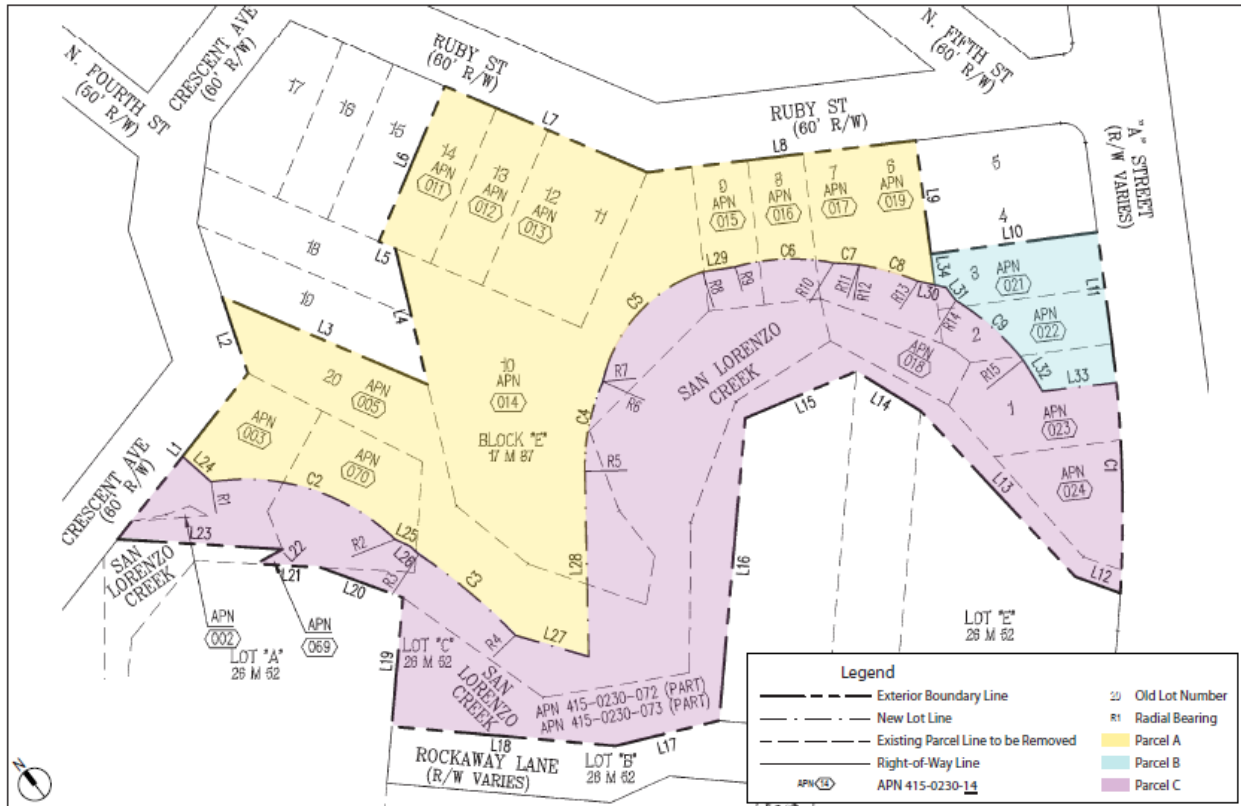
### PROJECT DESCRIPTION

The project proposal is to allow the construction of an affordable, multi-family residential building with 72 units in 79,917 square feet of floor area, with parking areas, open space and other site amenities on three parcels totaling 6.3 acres.

As shown in Figure 1, "Proposed Parcels on the Parcel Site" the project site was 20 separate parcels that were combined into three distinct parcels as part of a Boundary Adjustment in 2019, and reconfigured as follows:

- Parcel A – 2.95 acres
- Parcel B – 0.34 acre
- Parcel C – 2.99 acres

Figure 1: Proposed Parcels on the Project Site



Parcel A would be developed with the 72 dwelling units. The 72 units include 8 studio units, 27 one-bedroom units, 18 two-bedroom units, and 19 three-bedroom units. The proposed building would include a mix of two-story, three-story, and four-story floors with a maximum roofline height of 52 feet and 10 $\frac{3}{8}$  inches.

The ground floor of the building would include two lobbies, an approximately 1,260-square-foot community room, building offices, flex space, and a bicycle storage area with capacity for 56 bicycles.

Approximately 14,213 square feet of common open space would be provided in a courtyard with play mounds, a barbecue area, and benches. In addition, residents would have access to the proposed San Lorenzo Creek trail. The project design would avoid the required creek setback for San Lorenzo Creek, and it would also avoid the area near San Lorenzo Creek that is designated as a Caltrans conservation easement.

As shown on Figure 2, "Site Plan", the project would include two surface parking lots with a total of 109 parking spaces divided between one large lot accessed from Crescent Avenue and another smaller lot accessed from Ruby Street. In addition to the 56 spaces designated for permanent bike storage, eight outdoor bicycle spaces would be provided at the parking lots.

Figure 2: Site Plan



New sidewalks would be constructed along Ruby Street, A Street, and Crescent Avenue adjacent to the project site. Landscaping and light posts would be installed adjacent to the parking lots and sidewalks. Approximately 42 of the 58 existing on-site trees would be removed to accommodate the proposed building and parking lots. None of these trees are protected under local, state or federal law. Approximately 100 replacement trees are proposed.

**Project Approvals Required:**

**Alameda County Planning Commission**

- Hearing body for the current appeal



**Planning Director**

- Demolition permit for existing structures on Parcel B
- Approval of site development review

**Other Public Agencies Whose Approval is Required:**

- Alameda County Flood Control District – Watercourse Encroachment Permit
- San Francisco Bay Regional Water Quality Control Board – Section 401 certification under the Clean Water Act (CWA)
- California Department of Fish and Wildlife – Section 1602 streambed alteration agreement
- U.S. Army Corps of Engineers – Section 404 Permit under the CWA

**BASIS OF APPEAL:**

This appeal was submitted by Ann Maris and several other community-based organizations including the Grove Way Neighborhood Association, Ohlone Audubon Society, Cherryland Community Association, My Eden Voice Parks and Open Space Committee, Eden Community Land Trust, Padres Unidos de Cherryland, and Friends of San Lorenzo Creek. As mentioned above the appeal letter contained general statements about why the appeal was being submitted, and several documents were submitted to support the appeal. Staff has provided below a description of each appeal item along with a narrative prepared in support of the recommendation to deny the appeal.

**Appeal Item #1. The Planning Director lacked the authority to administratively approve the project.**

Pursuant to the Alameda County Code of Ordinances, the Planning Director has the authority to approve the project, which is a Site Development Review permit. Below are excerpts from the Zoning Code that speak to this issue:

Title 17, Zoning, Section 17.54.260 - Site development review—Action, the planning director shall determine from the reports and data submitted whether the use and structures will meet the requirements and intent of this title, and upon making an affirmative finding, shall approve said application. If from the information submitted, the planning director finds that compliance with the requirements of this title and the intent set forth herein would not be secure, the planning director shall disapprove or approve subject to such specified conditions, changes, or additions as will assure compliance.

Title 17, Section, 17.54.270 - Site development review—Effective date, the order approving or disapproving a site development review shall become effective ten days after the date of such action, unless a written appeal is filed pursuant to and in compliance with [Section 17.54.070](#).

As stated on the application for Site Development Review (SDRs), for applications in Castro Valley only, a public hearing is held before the CVMAC, which will make a recommendation to the Planning Director. If there is a hearing, staff presents a recommendation and public comments are taken. After the hearing, the Planning Director makes a decision on the project. The action is effective after ten days, unless a written appeal is filed. There is a 10-day appeal period.

The Planning Department held two informational meetings in 2019 with the CVMAC and one decision meeting on June 8, 2020, at which time the CVMAC recommended that the Planning Director approve the project.

The Alameda County Code of Ordinances does not require additional public hearings after the CVMAC makes a recommendation for the Planning Director to approve a project. Therefore, the appellant's claim is not correct.

**Appeal Item #2. The project is inconsistent with the General Plan, the 2009 Land Use Study, and community needs.**

The project is consistent with the Castro Valley General Plan (2012) land use designation and Alameda County zoning requirements, as follows:

**General Plan Conformity:** The proposal to add 72 dwelling units at the project site is consistent with the *Castro Valley General Plan's* land use designation of the site and surrounding area as Residential Low-Density Multi-Family, which permits between 18-22 units per acre. However, the applicant is using the state's Density Bonus law to increase the density by 35%.

**Zoning Ordinance Conformity:** The project site is designated as a R-S-D-20 zoning district. The R-S (Suburban Residence) districts are established to regulate and control the development in appropriate areas of relatively large building sites at various densities. The R-S district allows the following types of residential uses: one-family dwelling, two-family dwelling, multiple dwelling or dwelling groups. Together with the D-20 combing district, this zoning designation requires 2,000 square feet of building site per dwelling unit.

The residential property is 2.952 acres. At 2.952 acres, and with the R-S-D-20 zoning, up to 65 (rounded up from 64.3) units may be developed on this site. The state density bonus law allows the applicant to increase the maximum number of residential units by 35%, allowing a total of up to 88 (rounded up from 87.75) units. The proposed unit count is 72. The County has incorporated all relevant provisions of the state density bonus law into our code of ordinances as Chapter 17.106, Density Bonus. While the project would increase the number of units to a much more intense density compared to the adjacent dwelling units, the proposed 72 units are aligned with the General Plan and zoning designations for this site.

**General Plan Biological Resource Overlay Zone:**

One major concern regarding consistency with the CVGP was compliance with the Biological Resource Overlay Zone (BROZ). The CVGP Figure 7-2 Biological Resources Overlay Zone designates the project site as an area of *potential* High Priority Biological Resources. Because it is infeasible and extremely costly to conduct biological reconnaissance surveys for an entire General Plan area, this figure is intended solely as a broad guide based on a coarse and cursory documentation of existing land use features. As such, CVGP Action 7.1-1 Biological Resources Overlay Zone, page 7-12, requires that an environmental assessment be prepared by a qualified biologist. The CEQA CPE includes detailed information regarding the potential for biological resources at the project site. In addition, in response to several public comments, the Planning Department coordinated with the CEQA consultant to augment the environmental assessment with additional details, including a second site visit to document and delineate a riparian border (CEQA CPE Figure III.B-2, "Riparian Canopy and Project Site Plan") for the project site, and additional information regarding the CEQA thresholds related to wildlife corridors and the potential for sensitive plant communities, as defined by the California Department of Fish and Wildlife and / or the U.S. Fish and Wildlife Service.

The biology section in the CEQA CPE was augmented substantially to address public comments and questions related to biological resources. Based on two site visits and research performed by a qualified biologist, there are no substantial impacts related to riparian habitat or other biological resources. The CPE included several pre-construction surveys (which are typical protocol for most developments) and potential avoidance measures to protect biological resources should they be encountered. The Planning Department, while reviewing this application, followed the CVGP BROZ requirements specifying that a qualified biologist conduct a site specific study. The BROZ is a policy overlay that explicitly allows development to occur, but requires in-depth site specific analysis during project review, which was completed for the current project.

The appellant submitted additional environmental files after the June 17, 2020 SDR approval, but the appellant did not explain the information in the appeal files. Nonetheless, the Alameda County Planning Department requested that the CEQA consultant perform a cursory review of this additional information to determine if it invalidated the Planning Department's decision that the approved CPE was sufficient and legally adequate. The result of that cursory review is that no additional analysis is needed and that the conclusions of the approved CPE are correct.

**2009 Land Use Study:**

The appeal also claims the project approval is in conflict with a 2009 Land Use Study. Staff believes the appellant is referring to the Route 238 Bypass Land Use Study, a report prepared for the City of Hayward in 2009. This study was an alternatives report and was not formally adopted by the County nor did it change the zoning on the project site. The Castro Valley General Plan (2012) and other Alameda County land use laws are the regulations and requirements that pertain to the project site and the project application.

The appellant further claims the project is inconsistent with community needs. Community needs is a subjective term and no additional narrative was provided to support this claim.

**Appeal #3. The project was approved without complying with CEQA.**

The CEQA document was prepared as a Community Plan Exemption, pursuant to Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183, "Projects Consistent with a Community Plan or Zoning", states that projects that are "consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project specific significant effects which are peculiar to the project or its site." Such projects are eligible for streamlined environmental review. Section 15183(c) specifies that "if an impact is not peculiar to the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards (...), then an EIR need not be prepared for the project solely on the basis of that impact."

Further, Section 15183(b) states:

"In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis:

1. Are peculiar to the project or the parcel on which the project would be located;
1. Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent;



2. Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action; or
3. Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.”

Pursuant to CEQA Guidelines Section 15183, the project qualifies for a community plan exemption. The project meets the requirements for a community plan exemption, as it is permitted in the zoning district where the project site is located and is consistent with the land uses and densities envisioned for the site in the *Castro Valley General Plan* and General Plan EIR. This CEQA document concludes that the project would not result in significant impacts that: (1) are peculiar to the project or project site; (2) were not identified as significant project-level, cumulative, or offsite effects in the General Plan EIR; or (3) were previously identified as significant effects but are determined to have a more severe adverse impact than discussed in the General Plan EIR.

CEQA Guidelines Section 15183(f) states that an impact is not peculiar “if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental impact when applied to future projects (...).” The County has such policies and standards in the County’s Municipal Code Zoning Ordinance, and General Plan, which are referenced as needed to reduce potential impacts of the project. Consistent with the requirements of CEQA, a determination of whether the project would have a significant impact was made prior to the approval of the project and, where applicable, policies and regulations have been identified to mitigate those impacts. In some instances, exactly how the measures/conditions identified will be achieved awaits completion of future studies, an approach that is legally permissible where measures/conditions are known to be feasible for the impact identified; where subsequent compliance with identified federal, state, or local regulations or requirements apply; where specific performance criteria are specified and required; and where the project commits to developing measures that comply with the requirements and criteria identified.

The *Castro Valley General Plan* (General Plan) is intended to serve as the basis for regulating land use and development in the unincorporated Castro Valley Planning Area (“Planning Area”) until the year 2025, which is the horizon year of the plan. The previous General Plan for Castro Valley was adopted in 1985. The *Castro Valley General Plan* was prepared over a seven-year period from 2004 to 2012. The Notice of Preparation for the Draft General Plan EIR was filed with the State Clearinghouse on March 7, 2007 (State Clearinghouse Number: 2006032036) and the Draft General Plan EIR was published in April 2007. Subsequent to the publication, the County Board of Supervisors (“Board”) voted to adjust the Planning Area boundary to include several additional neighborhoods. As a result, a revised draft of the General Plan was published for public review in July 2010, and the revised Draft General Plan EIR was published in August 2011. The revised Draft General Plan EIR analyzed the expansion of the Planning Area boundaries and included a new chapter analyzing the impact of the General Plan on climate change.

The Final General Plan EIR incorporates the added material from the revised Draft General Plan EIR: the new chapter on climate change and the revisions to the initial Draft General Plan EIR associated with expansion of the Planning Area boundary. This eliminates the need for reference to the revised Draft General Plan EIR. On March 27, 2012, the Board approved the revised General Plan and certified the General Plan EIR.

The Castro Valley General Plan EIR notes that the General Plan EIR “will be used as a basis for environmental review of projects the County and its agencies undertake within the Castro Valley Planning Area or projects that may have environmental effects within the Castro Valley Planning Area.”

Based on the findings included in the CEQA CPE document, the Planning Department determined that no additional environmental documentation or analysis is required.

**Appeal Item #4. The project will create hazards and decrease safety, health, and wellness of residents.**

The appellant provided no written narrative to support this point, and did not identify hazards or impacts to safety, health and wellness of residents. The project will be constructed following all applicable building and fire codes and no impacts to health and safety are anticipated.

**Appeal Item #5 Lack the authority to approve due to failure to first offer the Caltrans land to other public agencies.**

Alameda County did not and does not own any of the parcels at the project site. The issue of how the applicant, Eden Housing, acquired the property is not within the scope of authority for the Planning Department or any other agency of the County. As with any and all land use applications that the department receives, our regulatory oversight is limited to the land use and activities that are proposed at a project site. The Planning Department’s scope of review for this project is limited to the Site Development Review criteria, which involve ensuring that new buildings or land uses are compatible with their sites and with the surrounding environment, other development, and traffic circulation.

**CONCLUSION**

The proposed project is consistent with historical and current residential zoning, and also consistent with the residential land use designation documented in the 2012 Castro Valley General Plan. The state’s density bonus law allows concessions and waivers for additional density and less parking, and also less restrictive site development standards.

The project has been improved over time since its original submittal and will benefit residents both locally and regionally. In addition to being an affordable housing project in an area of high housing demand, the publicly accessible trail and potential trailhead will provide important open space linkages that don’t currently exist. In response to many concerns with protecting the creek and its biological habitat, the Planning Department conducted a very rigorous environmental review, with extra emphasis on biological resources, the San Lorenzo Creek, and cultural resources.

A thorough analysis of the appeal as detailed above has not provided sufficient reasoning to reconsider the original approval, and as such, staff recommends the Planning Commission adopt the attached resolution denying the appeal. The complete record is attached.

**ATTACHMENTS**

- Draft PC Resolution denying project
- Plan Set Exhibit B

- Appeal letter and attachments
- CVMAC staff report and minutes
- Community Plan Exemption
- Comment letters on CPE
- Other comment letters of support and opposition

Please note that the CEQA Community Plan Exemption and associated attachments are publicly available on the Alameda County Planning Department's website, by following this link: <https://www.acgov.org/cda/planning/landuseprojects/currentprojects.htm>.

Prepared By: Nisha Chauhan, Senior Planner

Reviewed By: Albert Lopez, Planning Director

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