



## COMMUNITY DEVELOPMENT DEPARTMENT

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### CITY COUNCIL STAFF REPORT

Meeting: October 18, 2022

#### Subject

Application for Tentative Subdivision Map and planning permits for the development of six single-family homes on the parcel located at 20860 McClellan Road (Application No.(s): TM-2021-006, R-2021-040 to R-2021-045, RM-2022-015, -016, -022 to -025; Applicant(s): District McClellan LLC, c/o Alok Damireddy; Location: 20860 McClellan Road; APN: 359-20-030)

#### Recommended Actions

That the City Council take the following actions (Attachments A-C):

1. Find that the project qualifies for CEQA exemption pursuant to Section 15332;
2. Approve the Tentative Map to subdivide the subject parcel into six lots (TM-2021-006);
3. Approve the Two-Story Permits (R-2021-040, -041, -042, -043, -044 -045); and
4. Approve Minor Residential Permits (RM-2022-015, -016, -022, -023, -024, -025)

#### Executive Summary

The applicant applied for a Tentative Map application to consider the subdivision of a 1.25-acre parcel located at 20860 McClellan Road into six residential parcels ranging between 7,526 square feet and 9,615 square feet. The proposed project also includes consideration of Two-Story Permits for the development of six single-family homes and Minor Residential Permits for the proposed second story balcony with each new residence. (Application No.(s): TM-2021-006, R-2021-040 to R-2021-045, RM-2022-015, -016, -022 to -025; Applicant(s): District McClellan LLC, c/o Alok Damireddy; Location: 20860 McClellan Road; APN: 359-20-030)

On October 22, 2021 the applicant applied for a Rezone, Tentative Map, and Two Story Permit applications and on June 14, 2022, Applicant elected to invoke his right under the Housing Accountability Act to pursue a project consistent with general plan density standards without rezoning. Applicant elected to revise the project to comply with all applicable objective standards and pursue an infill exemption in lieu of finalizing the Draft IS/MND. Even though the Environmental Review Committee determined that a Mitigated Negative Declaration is the appropriate environmental review for the original project, the revised project as invoked under the Housing Accountability Act is eligible to qualify for an infill exemption per CEQA Guidelines Section 15332. Since June, an Infill Exemption Memorandum was prepared for the project by CEQA consultants. Acknowledging concerns brought up by the Environmental Review

Committee in May, the applicant voluntarily committed to complying with mitigation measures that were identified in the IS/MND that were previously prepared for the original project scope. Such mitigations have been included as project conditions of approval (Attachment E).

On September 13, 2022, the Planning Commission conducted a public hearing and recommended to the City Council (3-2, Kapil and Wang voted no) that the project applicant elected to invoke his right under the Housing Accountability Act to be approved in accordance with the draft resolutions (TM-2021-006, R-2021-040 to R-2021-045, RM-2022-015, RM-2022-016, R-2022-022 to RM-2022-026). Staff finds the project to be in full compliance with necessary requirements and complies with all objective development standards, staff therefore recommends City Council to approve the infill exemption under the CEQA Guidelines 15332 and approve the Tentative Map, Two-Story Permits and the Minor Residential Permits.

**Project Data:**

Neighborhood Area	Jollyman	
	Existing	Proposed
<b>General Plan Land Use Designation</b>	Low Residential (1-5 DU/ac)	No change
<b>Zoning</b>	R1-10	No change <sup>1</sup>
<b>Parking</b>		
	Required	Proposed
<b>Per Unit</b>	6 total spaces	6 total spaces
<i>Garage</i>	2 spaces	2 spaces
<i>On-site</i>	2 spaces	3 spaces
<i>On Street</i>	2 spaces, else provide on-site	1 space plus 1 additional on site

	Net lot area	Lot Width	FAR (not including streamlined ADU)	Height
<b>Lot 1 Development</b>	8,851 sq. ft.	69 feet	3,719 sq. ft. (43.3%)	27'
<b>Lot 2 Development</b>	7,535 sq. ft.	60 feet	3,385 sq. ft. (44.9%)	26'-4"
<b>Lot 3 Development</b>	7,532 sq. ft.	60 feet	3,385 sq. ft. (44.9%)	26'-11"
<b>Lot 4 Development</b>	7,526 sq. ft.	63 feet	3,385 sq. ft. (44.97%)	26'-4"
<b>Lot 5 Development</b>	8,469 sq. ft.	62 feet	4,745 sq. ft. (43%)	25'
<b>Lot 6 Development</b>	9,615 sq. ft.	61 feet	4,025 sq. ft. (42%)	27'-1"

<b>Project Consistency</b>	
<b>General Plan</b>	Yes
<b>Zoning</b>	Yes, pursuant to State law
<b>Environmental Review</b>	Categorically Exempt per Section 15332

<sup>1</sup>Pursuant to State law, rezoning not required. See discussion in Analysis section below.

<sup>2</sup>Since only one on-street parking space is provided, one additional onsite parking space is provided per unit to be consistent with CMC Section 19.124.040 (Regulations for Off-Street Parking).

## **Discussion**

### **Background:**

#### *Site and Location Description*

The project is located at the southwest corner of McClellan Road and Cherryland Drive, a private street, in the Jollyman neighborhood area of the General Plan.

The property is bounded by McClellan Road to the north, Cherryland Drive to the east, Church uses to the west, and residential single-family homes to the south. (see Figure 1). Other surrounding uses include De Anza College to the west and single family residential homes to the north, east, and south of the property. The site has a gross area of 1.25 acres, which, after required frontage improvements to complete the street and sidewalk on the west side of Cherryland Drive, would result in a net area of 1.13 acres. The site is currently occupied by a single-family residence, garage, and an accessory structure used to park/store heavy vehicles and boats (See Attachment E).



**Figure 1: Project Location**

The site has a gross area of 1.25 acres, which, after required frontage improvements to complete the street and sidewalk on the west side of Cherryland Drive, would result in a net area of 1.13 acres. The site is currently occupied by a single-family residence, garage, and an accessory structure used to park/store heavy vehicles and boats (See Attachment E).

#### *Application Requests*

The applicant, Alok Damireddy, is requesting a Tentative Map to allow the subdivision of one parcel into six parcels on a 1.25-acre site. The project would demolish the existing structures and construct six two story single family residential units with second story balconies, six attached accessory dwelling units (ADU), and associated landscape and street improvements on the new lots. Two story permits and Minor Residential permits are required under the City's Municipal Code to construct the homes and second story balconies, respectively. The ADUs are subject to a separate ministerial approval process under Government Code section 65852.2 and are included in the scope for informational only

#### *Project History*

<b>Date</b>	<b>Summary of Project History</b>
<b>10/22/21</b>	<ul style="list-style-type: none"><li>• Application for a rezoning, tentative map, and six homes received.</li></ul>
<b>5/19/22</b>	<ul style="list-style-type: none"><li>• Draft IS/MND presented to Environmental Review Committee (ERC), prepared due to need for rezoning.</li><li>• ERC determined on a 3-2 vote (No: Scharf and Moore) that an IS/MND was the appropriate environmental document but directed additional soil testing and peer review.</li></ul>

6/14/22	<ul style="list-style-type: none"><li>• Applicant invokes right under Housing Accountability Act to pursue project consistent with general plan density standards and meeting all applicable objective standards <b><u>without rezoning</u></b>.<sup>1</sup></li><li>• Applicant commits to complying with draft mitigation measures identified in IS/MND.</li><li>• Project now eligible for Infill Exemption under CEQA.</li></ul>
6/23/22	<ul style="list-style-type: none"><li>• Infill Exemption Memorandum to ensure project meets the criteria of the CEQA Guidelines prepared.</li></ul>

*Planning Commission Review:*

On September 13, 2022, the Planning Commission reviewed the proposed project and adopted Resolutions 6957, 6958, and 6959 <sup>2</sup> recommending that the City Council approve the project on a 3-2 vote (no: Kapil and Wang). Ten members of the public spoke at the meeting and comments were received on the following topics:

- Privacy impacts of proposed balcony on lot six.
- Traffic impacts and on street parking.
- Fencing along lot six.
- ADU setbacks and layout.
- Housing is needed in area and should support surrounding employees working at De Anza College/adjacent commercial development.
- Concerns related to access from Cherryland Drive, the existing private street, with shared ingress/egress easements.

The Planning Commission reviewed the proposed project and discussed the following:

- The proposed project's parking proposal and whether it is consistent with CMC Chapter 19.14 Parking Regulations.
- Proposed widening of Cherryland Drive and available parking.
- Additional soil testing recommended during the ERC meeting and why the project is not required to prepare an IS/MND and/or provide further testing.
- Accessory Dwelling Unit setbacks and how these are ministerially approved.

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<sup>1</sup> The Housing Accountability Act (HAA), California Government Code Section 65589.5(j)(4), requires that when a proposed project is consistent with objective General Plan standards and criteria but the current zoning for the project site is inconsistent with the General Plan, the local agency shall not require a rezoning. While the City may require the proposed project to comply with objective standards and criteria of a zoning district which is consistent with the General Plan, the standards and criteria must be applied in a manner which will facilitate and accommodate development at the density allowed on the site by the General Plan and proposed by the project.

<sup>2</sup> Available online at:

<https://records.cupertino.org/WebLink/Browse.aspx?id=975387&dbid=0&repo=CityofCupertino>

## **Analysis:**

### *General Plan and Zoning Consistency*

The project site has a General Plan land use designation of low density residential (1-5 du/acre). Low Density Residential is intended to promote a suburban lifestyle of detached single-family homes. The property is located in the Jollyman neighborhood and surrounded predominantly by single-family residential homes.

The proposed project site is 1.25 acres and, consistent with HAA, at the maximum density of five dwelling units per acre, the applicant may propose a project with a maximum of six primary residential units. Therefore, the proposed project complies with the City's General Plan by providing a maximum of six primary residential units.

Staff has evaluated the project's consistency with the General Plan and has concluded that based on the site's General Plan Land Use Designation (*Low Density Residential*) and state law guidance, the proposed project supports several of the City's other General Plan goals including:

### Chapter 3: Land Use and Community Design

- **POLICY LU-3.3: BUILDING DESIGN** *Ensure that building layouts and design are compatible with the surrounding environment and enhance the streetscape and pedestrian activity.*
- **Strategy LU-3.3.1: Attractive Design** - *Emphasize attractive building and site design by paying careful attention to building scale, mass, placement, architecture, materials, landscaping, screening of equipment, loading areas, signage and other design considerations.*
- **Strategy LU-3.3.5: Building Location.** *Encourage building location and entries closer to the street while meeting appropriate landscaping and setback requirements.*
- **Strategy LU-3.3.6: Architecture and Articulation.** *Promote high-quality architecture, appropriate building articulation and use of special materials and architectural detailing to enhance visual interest.*
- **Policy LU-27.2: Relationship to the Street:** *Ensure that new development in and adjacent to neighborhoods improve the walkability of neighborhoods by providing inviting entries, stoops and porches along the street frontage, compatible building design and reducing visual impacts of garages.*
- **Strategy LU-27.7.1: Lot Size.** *Ensure that subdivision and lot line adjustment requests respect the neighborhood lot size patterns. Consider revisions to lot size requirements if the neighborhood lot pattern is different from the zoning requirements.*
- **Policy LU-27.4: Connections** - *Support pedestrian and bicycling improvements that improve access with neighborhoods to parks, schools and local retail, and between neighborhoods. Support traffic calming measures rather than blocking the street to reduce traffic impacts on neighborhoods.*

Since buildout of the project site consistent with the R1-10 zoning standards would not allow development of six units on the site, under state law, the development standards for the R1-10 zoning district cannot be applied to the proposed project. However, HCD guidance does allow the City to "require the proposed housing development project to comply with the objective standards and criteria contained elsewhere in the zoning code that are consistent with the general plan designation." Staff

reviewed the project and determined that the R1-7.5 zoning district standards are consistent with the General Plan land use designation and should be applied to this project. The R1-7.5 zoning designation requires a minimum lot size of 7,500 sq. ft. The proposal is to subdivide the existing lot into six residential lots ranging from 7,526 sq. ft. to 9,615 sq. ft., consistent with the minimum lot size in the R1-7.5 district. Additionally, under R1 zoning lot development regulations, each lot has to be a minimum of 60 feet in width at the front setback line. The proposed project is consistent with this standard. The project also complies with parking requirements in Municipal Code Chapter 19.124, as discussed below.

#### *Tentative Tract Map*

The project proposes seven (7) separate parcels to be created from one (1) existing parcel (see Attachment E). Six residential lots will each contain a single-family dwelling and the seventh lot would accommodate the widening and completion of an existing private roadway and cul-de-sac on Cherryland Drive. A condition of approval has been added to the Tentative Map to require reciprocal ingress and egress access across Lot Seven and an agreement between the Cherryland HOA and applicant for McClellan Subdivision shall be established for ingress, egress, and maintenance of the fully widened private roadway prior to Final Map approval.

#### *Two Story Residential Development Regulations (Zoning)*

The project proposes to develop the six residential lots each with a two-story single-family residence with a second story balcony and an attached accessory dwelling unit (ADU). As shown in the table on page 2, the proposed lots range from 7,526 sq. ft. to 8,851 sq. ft. and the six homes range between 3,719 sq. ft. and 4,025 sq. ft. The proposed homes comply with building development standards including the maximum floor area ratio and lot coverage requirements pursuant to Cupertino Municipal Code Chapter 19.28, proposing a 45% maximum floor area ratio and 50% lot coverage for each residence. The six single family homes comply with the first and second floor setbacks for each lot.

The proposal includes attached ADUs ranging between 557 sq. ft. and 600 sq. ft. State law allows these units to be approved ministerially, as a result the actions of the Council do not include a decision related to the ADUs. However, for information, the proposed ADUs meet and, in most cases exceed, the four-foot setbacks allowed under state law. The proposed ADUs are considered a separate unit for purposes of the Building Code and must meet all Building Code requirements as they pertain to a separate dwelling unit. In compliance with the City's zoning code, the plans provide for no connection between the primary dwelling unit and the ADU.

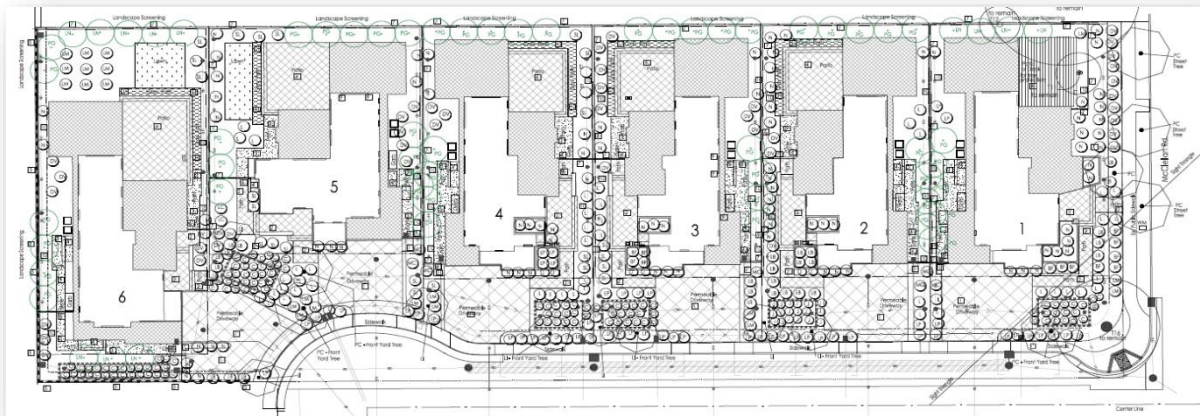
#### *Site Planning, Landscaping and Architectural Design*

The project would include demolishing all existing buildings and removal of several unprotected trees to allow for the development of six residences on six new residential lots. These trees have been reviewed in an Arborist Report (See Appendix A to Attachment D – Infill Exemption Memorandum) prepared for the project. The proposed subdivision would allow the development of six two-story single-family residences on the west side of Cherryland Drive. The proposed

development provides vehicle and pedestrian access through Cherryland Drive from McClellan Road to each of the homes. Each lot will be developed in traditional suburban style with a single-family home, an attached accessory dwelling unit, garage, and required yard areas. The site also incorporates on-site and off-site parking spaces as required by the City's parking ordinance. The houses all have prominent front porches and entries that face the existing homes on Cherryland Drive to create a strong front façade that promotes interaction with the private street and generally creates a neighborhood in the cul-de-sac.

As shown in the Figure 2 on the next page, the project proposes decorative landscaping along the front yards of the homes, privacy planting along the viewsheds to mitigate privacy impacts to adjacent neighbors from the new second story windows and balconies, and a front yard tree as required pursuant to Cupertino Municipal Code Section 19.28.120 and Chapter 14.15. The project also proposes to maintain three protected trees on-site, two coast live oak trees located near/on lot one, and one deodar cedar at the corner of Cherryland Drive and McClellan Road. There is one unprotected tree that would remain at the rear of lot one, three new street trees along McClellan Road, and six new trees proposed on each lot. These six new trees are not considered development or protected trees and may be retained and/or removed at the future property owners' discretion.

The proposed project provides a robust landscape plan that includes a wide variety of drought tolerant shrubs and trees throughout the frontage of the property. The landscape must comply with the City's Landscape Ordinance pursuant to Chapter 14.15. Decorative, permeable pavers for the driveway along with retention basins in the front yard are proposed to contribute to drainage for the site as recommended and approved by Cupertino's Public Works Department.



**Figure 2: Proposed Landscape Plan**

By integrating projecting and recessed wall planes, and with variations in wall height and the roofline, the applicant has worked to reduce the massing of the custom detached single-family homes. The applicant has introduced different projections and a variation of materials along the building frontage that help to reduce the massing of the structure (see Figure 3 on the next page). The applicant incorporates sophisticated building materials which include a mix of vertical and horizontal composite siding and stone veneer that blend the neutral color tones of the homes.



**Figure 3: Renderings**

The living area is closer to the street, while the garage is setback more to articulate the street facing elevation. Second story walls are articulated with an assortment of window sizes/bold trims and a variation in materials to reduce the apparent mass of the second story. The custom homes display a conscious mix of vertically or horizontally aligned windows, doors and architectural elements that provide symmetry along the building facade. The proposed design is substantially consistent with Section 19.28.110 of the Cupertino Municipal Code (Single Family Residential Design Guidelines and Principles).

The project also includes second story balconies at the front of each residence. The balconies range from 55 sq. ft. to 206 sq. ft. in size and propose a decorative railing that is at least 75% open. As discussed in the site planning section above, potential privacy impacts from the second story balconies are mitigated with proposed privacy plantings that provide screening for adjacent neighbors as required by the Cupertino Municipal Code.

#### *Circulation, Pedestrian, and Bicycle Improvements*

The proposed project proposes to improve and complete the cul-de-sac at Cherryland Drive. The proposal retains Cherryland Drive as a two-lane street with parking on either side of the private street.

The project meets the City's parking requirements found in Chapter 19.124: Parking Regulations. The table on the following page identifies the parking requirements for each of the lots in the project:



	<b>Required</b>	<b>Proposed</b>
Garage	2 spaces	2 spaces
Driveway	2 spaces	2 spaces
Additional on-site, if NO on-street	2 spaces	1 space – On street 1 space – Driveway
<b>Total</b>	<b>6 spaces</b>	<b>6 spaces</b>

As indicated, the Parking ordinance requires each single-family home to provide 2 open and 2 enclosed garage spaces. It also requires that in the event on-street parking, on a public or private street is not provided, two additional parking spaces must be provided on site. The project proposes to provide five parking spaces on each lot - two (2) within an enclosed garage and three (3) on the driveway for each residence. In addition, one on-street parking space is provided for each of the lots on Cherryland Drive. Thereby providing 6 parking spaces per lot. No parking is required for any proposed ADUs. There is no required bicycle parking for single-family homes on residentially zoned lots.

The proposed project also includes pedestrian and bicycle related improvements along McClellan Road, which include but not limited to, modifications to the raised island along McClellan Road due to the existing driveway removals and trash collection requirements. All improvements shall be reviewed and approved by the Public Works Department prior to building permit approval. A condition of approval has been added to the draft Resolution for Tentative Map (TM-2021-006) (Attachment A) to ensure completion of the improvements.

*Other Department/Agency Review*

The City's Building Division, Public Works Department, and Environmental Services Division and the Santa Clara County Fire Department have reviewed the project. The proposed conditions of approval incorporate these departmental and agency requirements.

*Environmental Review*

An Infill Development Project Exemption Memorandum has been prepared for the project (See Attachment D) Article 19 of the CEQA Guidelines, Sections 15300 through 15333, includes a list of classes of projects that have been determined not to have a significant effect on the environment, and are therefore exempt from CEQA. Section 15332 of the CEQA Guidelines provides a categorical exemption (Class 32) for infill development projects that meet the following criteria:

- A. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- B. The proposed development occurs within the city limits on a project site of no more than five acres substantially surrounded by urban uses.
- C. The project site has no value as habitat for endangered, rare, or threatened species.

- D. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- E. The site can be adequately served by all required utilities and public services.

As noted above, the project is consistent with the General Plan land use designation for the site and applicable requirements of the R1-7.5 zoning district. The Infill Exemption Memorandum provides additional analysis to support a Class 32 exemption for the project.

As part of the environmental analysis, traffic impacts of the proposed project were evaluated in the Infill Exemption Memorandum. Specifically, CEQA guidelines provide specific considerations for evaluating the projects vehicle miles traveled (VMT) which is found to be the most appropriate measure of transportation impacts. Additionally, Chapter 17.08 of the Cupertino Municipal Code provides standards allowing some projects to be screened out or assumed to not have VMT impacts if they fall within the following categories:

1. Local serving retail of up to 500,000 square feet.
2. 100% affordable housing projects.
3. Projects located within ¼ mile of Stevens Creek Blvd (from SR 85 east), measured in walking distance.
4. Small projects that generate less than 110 new trips per day, and do not exceed square footage thresholds.

The project is expected to generate an average of 101 new daily vehicle trips and is a residential project of less than 20 units, which would categorize the proposed project as a small project that generates less than 110 new trips per day and does not exceed the square footage thresholds per the City's White Paper on VMT.<sup>3</sup> Consequently, the proposed project would result in a less-than-significant effect related to VMT.

The Infill Exemption Memorandum also evaluated the project's potential effects related to noise, air quality and water quality. The proposed project would include typical residential noise and short-term operable noise due to construction activity, which would be similar to adjacent residential noise generation and construction activity to develop the project. The Memorandum concludes that short-term construction or long-term residential noise generation would not result in a significant effect on the environment. The proposed projects construction and operational emissions were evaluated as they pertain to air quality and found that the project would not have a significant effect on the environment as the emission levels would be below the applicable thresholds of significance with implementation of the Bay Area Air Quality Management District's (BAAQMD) Basic Construction Mitigation Measures. Similarly, the projects consistency with applicable water quality standards and water discharge requirements during construction and operation were evaluated. The new development would be required to comply with all

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<sup>3</sup> This White Paper on VMT was prepared to assist with implementing SB743 and was accepted by the City Council on February 16, 2021. The document contains supporting evidence for Cupertino's VMT standards, it describes the way VMT is measured, and also includes the full range of considerations used to set thresholds of significance for Cupertino.

regulatory standards and permit processing as referenced in the Infill Exemption Memorandum and not violate any water quality standards or waste discharge requirements; therefore, the project would not result in any significant effects to the environment.

Prior to preparation of the infill exemption memorandum, a Draft IS/MND was prepared and presented to the Environmental Review Committee (ERC) as indicated in the project history section above. While the applicant modified the project to ensure that the project could comply with the requirements of the Categorical Exemption related to Infill Development, the applicant also voluntarily committed to complying with all the draft mitigation measures identified in the Draft IS/MND. As a result, these measures have been included in the conditions of approval for the project. Those conditions include the following:

- **Geology & Soils:** All grading and foundation plans for the proposed project shall be designed by a Civil and Structural Engineer, peer-reviewed by a third-party qualified Geotechnical Engineer, paid for by the applicant, and reviewed and approved by the City Engineer, and Chief Building Official, prior to issuance of building permit or grading permit, whichever comes first, to ensure that all geotechnical recommendations specified in the Geotechnical Investigation prepared for the proposed project by GeoEngineering Consultants are properly incorporated and utilized in the project design.
- **Hazards and Hazardous materials Phase II Recommendations:** Prior to initiation of demolition or construction activities, the project applicant shall comply with all applicable recommendations within the Limited Phase II ESA prepared for the proposed project by ReDevelop Inc. including the excavation and proper disposal of OCP impacted soils, the development of a Health and Safety Plan to protect workers during grading and construction activities, and the installation of vapor barrier protection for residences. OCP-impacted soils located within the project site shall be removed to a depth of one foot and off-hauled by a licensed hazardous waste contractor (Class A) and contractor personnel that have completed 40-hour OSHA hazardous training. The soil shall be disposed of appropriately in accordance with applicable federal, State, and local regulations associated with hazardous waste. Prior to the issuance of the first grading and/or building permit, the applicant's compliance with the recommendations shall be verified by the City of Cupertino Community Development Department and the Santa Clara County Environmental Health Department through their Voluntary Cleanup Program.
- **Hazards and Hazardous Materials Asbestos And/or Lead Assessor Consultation:** Prior to issuance of a demolition permit for on-site structures, the project applicant shall consult with certified Asbestos and/or Lead Risk Assessors to complete and submit for review to the Building Department an asbestos and lead survey. If asbestos containing materials or lead-containing materials are not discovered during the survey, further mitigation related to asbestos-containing materials or lead containing materials shall not be required. If asbestos containing materials and/or lead-containing materials are discovered by the survey, the project applicant shall prepare a work plan to demonstrate how the on-site asbestos-

containing materials and/or lead-containing materials shall be removed in accordance with current California Occupational Health and Safety (Cal-OSHA) Administration regulations and disposed of in accordance with all CalEPA regulations, prior to the demolition and/or removal of the on-site structures. The plan shall include the requirement that work shall be conducted by a Cal-OSHA registered asbestos and lead abatement contractor in accordance with Title 8 CCR 1529 and Title 8 CCR 1532.1 regarding asbestos and lead training, engineering controls, and certifications. The applicant shall submit the work plan to the City of Cupertino for review and approval. The City has the right to defer the work plan to the Santa Clara County Department of Environmental Health for additional review. Materials containing more than one (1) percent asbestos that is friable are also subject to BAAQMD regulations. Removal of materials containing more than one (1) percent friable asbestos shall be completed in accordance with BAAQMD Section 11-2-303.

It should be noted that while there is soil remediation that is required for this project, the Infill Exemption is routinely applied and used for projects to encourage infill development such as that proposed.<sup>4</sup>

#### *Housing Accountability Act (HAA)*

The HAA applies to this project. Under the HAA, when a proposed housing development complies with the applicable, objective General Plan and zoning standards, a local agency cannot deny a project or impose a condition that reduces the project's density unless the agency makes written findings supported by substantial evidence that:

- The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and
- There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

The proposed project has been determined to comply with applicable, objective General Plan and zoning standards, including maximum height, density, minimum setbacks, useable private open space, and number of parking spaces. As a result, staff is not aware of any basis to make the findings listed above.

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<sup>4</sup> While the Infill Exemption is not available for certain contaminated sites designated by state agencies ("the Cortese List"), the proposed project is not located on a listed site.

Public Outreach and Noticing

The following table is a brief summary of the noticing done for this project:

<b>Notice of Public Hearing, Site Notice &amp; Legal Ad</b>	<b>Agenda</b>
<ul style="list-style-type: none"><li>▪ Site Signage (<i>10 days prior to the hearing</i>)</li><li>▪ Legal ad placed in newspaper (<i>at least 10 days prior to the hearing</i>)</li><li>▪ 76 Public hearing notices were mailed to property owners within 300' of the project site (<i>10 days prior to the hearing</i>)</li></ul>	<ul style="list-style-type: none"><li>▪ Posted on the City's official notice bulletin board (<i>one week prior to the hearing</i>)</li><li>▪ Posted on the City of Cupertino's website (<i>one week prior to the hearing</i>)</li></ul>

Fiscal Impacts

The project will most likely generate a source of property tax due to the property improvements that will result in a higher assessed value.

Sustainability Impacts

The proposed project would be required to propose low impact development measures, comply with Green Building Code, and Energy Code standards to ensure that the project would encourage increased environmental and health performance in residences and residential projects. One example of the projects efforts toward sustainability is that the project would include on-site renewable energy systems capable of producing 100 percent of the electricity demanded by the residences to be consistent with 2019 Building Energy Efficiency Standards. Prior to Building Permit issuance, the project will be reviewed and approved by the Building Division in accordance with the various code sections to promote sustainable construction practices.

Conclusion

Staff recommends approval of the project since the project and conditions of approval address all concerns related to the proposed development and all findings for approval of the project, consistent with Chapter 18.28, 19.156, and 19.168 of the Cupertino Municipal Code, can be made.<sup>5</sup>

Next Steps

The City Council's decision will be final unless reconsidered within 10 days of the decision.

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Prepared by:

Brianne Harkousha, Associate Planner  
Piu Ghosh, Planning Manager

Reviewed by:

Benjamin Fu, Director of Community Development

Approved for Submission by:

Pamela Wu, City Manager

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<sup>5</sup>Under state law, subjective findings contained in the Municipal Code cannot be a basis for disapproving the project or approving the project at a lower density, unless specific findings in state law are made.

**ATTACHMENTS:**

A – Draft Resolution for TM-2021-006

B – Draft Resolution for R-2021-040 to R-2021-045

C – Draft Resolution for RM-2022-015 to -016, RM-2022-022 to R-2022-025

D – Infill Exemption Memorandum

E – Project Plans