



## COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL  
10300 TORRE AVENUE • CUPERTINO, CA  
95014-3255 TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333  
CUPERTINO.ORG

### PLANNING COMMISSION STAFF REPORT

Meeting: December 9, 2025

#### Subject

Consideration of a new residential development of 57 townhomes, including 11 affordable units, to replace two office buildings on a 2.6-acre site, located close to the northeast corner of the intersection of Stevens Creek Blvd and Randy Lane. (Application No(s): DP-2025-001, ASA-2024-016, TM-2024-010, TR-2024-045, & U-2025-006; Applicant(s): Dividend Homes; Location: 20085 & 20111 Stevens Creek Blvd. (A.P.N.: 316-23-025, -026)

#### Recommended Actions

Staff recommend that the Planning Commission adopt the draft resolutions recommending that the City Council:

1. Find the project exempt from the California Environmental Quality Act (CEQA)
2. Approve the following permits:
  - a. Development Permit (DP-2025-001) (Attachment 1);
  - b. Use Permit (U-2025-006) (Attachment 2);
  - c. Architectural & Site Approval Permit (ASA-2024-016) (Attachment 3);
  - d. Tentative Final Map (TM-2024-010) (Attachment 4)
  - e. Tree Removal Permit (TR-2024-045) (Attachment 5)

#### Discussion

##### Project Data

<b>General Plan Land Use Designation</b>	Commercial / Office / Residential at a maximum residential density of 25 du/acre*	
<b>Special Planning Area</b>	Heart of the City Specific Plan (Central Stevens Creek Boulevard subarea)	
<b>Zoning Designation</b>	P(CG, Res)	
<b>Lot Area</b>	2.69 acres (gross), 2.65 acres (net)	
	<b>Allowed/Required</b>	<b>Proposed</b>
<b>Maximum Density</b>	Up to 25 units per acre*	21.5 units per acre

Height of Structures	Max. 45 feet measured from sidewalk to top of cornice, parapet, or eave line of a peaked roof.	45'-10" <i>(Waiver Requested)</i>
Setbacks		
Front	35 feet from edge of curb	26 feet from edge of curb <i>(Waiver Requested)</i>
Sides	One-half height of building (22'-5")	12 feet <i>(Waiver Requested)</i>
Rear	One and one-half height of building (64')	13' 6" <i>(Waiver Requested)</i>
Usable Open Space		
Common	150 square feet per unit (8,550 square feet)	0 square feet <i>(Waiver Requested)</i>
Private	60 square feet per unit and no dimension less than 6 feet	Average per unit 316 square feet
Project Consistency with:		
General Plan <sup>1</sup>	Consistent under SB330 and state density bonus law. Density bonus concession for mixed-use requirement requested	
Specific Plan <sup>2</sup>	Consistent under state density bonus law. Density bonus waivers requested for setbacks, common open space design, and retail requirements	
Zoning	Consistent under SB330 and state density bonus law. Density bonus waivers requested for lot coverage.	
* Since the project utilizes the provisions of SB330 (as discussed later in the report) the development standards, regulations and fees applicable at the time of submitting a SB330 preliminary application apply. While one of the sites is a Housing Element site (Priority Housing Site no. 8) in the 6 <sup>th</sup> Cycle Housing Element, and has a minimum density of 50 du/ac and a maximum density of 65 du/ac, under SB330 the applicable residential is 25 du/ac.		

<sup>1</sup> The applicable General Plan can be found online at [https://records.cupertino.org/WebLink/DocView.aspx?id=1019620&dbid=0&repo=CityofCupertino&\\_gl=1\\*\\_gufghv\\*\\_ga\\*OTc5OTgwMjc4LjE3NDQ3Mzc0NDM.\\*\\_ga\\_NCY1KGMD5Y\\*\\_czE3NDkwMDIwNzAkbnY2IGcxJHQxNzQ5MDAyMDgwJGo1MCRsMCRoMA..](https://records.cupertino.org/WebLink/DocView.aspx?id=1019620&dbid=0&repo=CityofCupertino&_gl=1*_gufghv*_ga*OTc5OTgwMjc4LjE3NDQ3Mzc0NDM.*_ga_NCY1KGMD5Y*_czE3NDkwMDIwNzAkbnY2IGcxJHQxNzQ5MDAyMDgwJGo1MCRsMCRoMA..)

<sup>2</sup> The applicable version of the Heart of the City Specific Plan can be found online at <https://www.cupertino.gov/files/assets/city/v/1/departments/documents/community-development/planning/land-use-plans/heart-of-the-city-specific.pdf>

## **Background**

On December 19, 2024, the City received an application to redevelop the property located in 20085 and 20111 Stevens Creek Blvd. The project site is located within the Central Stevens Creek Boulevard subarea of the Heart of the City (“HOC”) Specific Plan Area.

The 2.65 net-acre property comprising of two parcels is bounded by Stevens Creek Boulevard to the south, office uses to the east (and the subject of another housing development project), and retail/single-family uses to the west. The site abuts single-family residences to the north (See Figure 1)



**Figure 1 Aerial of project site.**

On each of the two parcels are multi-tenant commercial buildings. At 20111 Stevens Creek, the approximately 26,000 square-foot office building has a mix of office tenants on both floors, and a day care center on a portion of the first floor, while the approximately 13,000 square-foot building at 20085 Stevens Creek is occupied by miscellaneous office tenants. .

The larger western portion (20111 Stevens Creek Blvd. APN 316-23-026) of the project site was designated as a Priority Housing Site through the adoption of the City’s 2024 Housing Element update in May 2024 and rezoned two months later in July to accommodate high-density residential development, consistent with the site’s location on Stevens Creek Boulevard with a minimum density of X units per acre and a maximum of Y units per acre. However, at the time the SB330 preliminary application was submitted in June 2024, the City’s Housing Element, while submitted, was not yet certified by the CA Department of Housing and Community Development (HCD) and the development standards in place at that time were essentially “locked in” by the

submittal of the preliminary application.<sup>3</sup> Therefore, the project site is subject to the development standards of the General Plan, Heart of the City Specific Plan, and Planned Development “P” zoning designation, as they were in June of 2024.

The “P” zoning designation is detailed in Cupertino Municipal Code Chapter 19.80 Planned Development Zones. The “P” zoning designation is intended to provide a means of guiding land development or redevelopment within the city that is uniquely suited for planned coordination of land uses and land development. Where residential development is proposed on properties in the Planned Development zoning district, and where the Specific Plan is silent, development must adhere to Multifamily (R-3) zoning regulations. Principally, the proposed project consists of 57 townhome-style condominiums. Review of the project is limited by several State laws including the Housing Accountability Act, the Housing Crisis Act (SB330) and Density Bonus Law.

#### Housing Accountability Act

The Housing Accountability Act (HAA), codified in California Government Code § 65589.5, prohibits cities from disapproving, or adding conditions of approval that would render infeasible a housing development project unless the proposal is found to be in violation of an objective general plan or zoning standard<sup>4</sup> or the project will result in a specific adverse impact to public health and safety. While changes to the project may be applied by the decision-making, or hearing, body to further applicable City goals, policies, and strategies – any changes required by the decision-making, or hearing, body that are not based on objective standards may not result in making the project, as proposed, infeasible or reduce the number of housing units.

As this project consists exclusively of residential units, it is considered a “housing development project” under the HAA.

#### Housing Crisis Act (a.k.a. “SB 330” or “HCA”)

Adopted in 2019 under Senate Bill 330, and amended in 2021 by Senate Bill 8, the HCA broadly aims to address actions that would decrease or delay the approval and development of new housing by requiring the timely processing of permits by local agencies. Among many components, the law includes a provision to allow applicants to vest (“lock-in”) fees, ordinances, policies, and standards that are in effect at the time of submittal of a SB330 preliminary application to the City. Only the limited information specified in State law is required for the submittal of a SB330 preliminary application.

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<sup>3</sup> Housing Element available online at: [www.cupertino.gov/gp](http://www.cupertino.gov/gp). See Table B4-9 in Appendix B.

<sup>4</sup> Unless otherwise waived or reduced through use of the Density Bonus law, discussed further below.

Further, the law prohibits the City from conducting more than five hearings, or meetings, in connection with the approval of a housing development project.

In summary, the proposed project is governed by a SB330 preliminary application submitted on June 27, 2024, and, in accordance with the requirements of the HCA, the project was reviewed under the requirements in effect at that time.

### Density Bonus Law

California's Density Bonus Law (DBL), codified in California Government Code § 65915-65918, aims to promote and facilitate the creation of affordable units in new housing projects by allowing:

- A density "bonus" that allows for an increase to a property's base density<sup>5</sup>;
- Unlimited waivers to development standards that would physically preclude the construction of the project as designed<sup>6</sup>;
- Concessions that modify development standards to achieve an identifiable and actual cost reduction<sup>7</sup>; and
- Reduced parking standards<sup>8</sup>.

Since 20 percent, or 11<sup>9</sup> of the proposed 57 town homes, of the project's units will be affordable to moderate and median income households, consistent with the City's Below Market Rate (BMR) requirements, the project is eligible for a density bonus. It is important to note that, while qualifying projects are allowed to increase their density and total number of units proposed, an applicant may elect to only utilize the available waivers, concessions, or the reduced parking standards, without providing additional density bonus units, as is the case with the proposed project.

The project includes a request for 8 waivers and 1 concession from applicable standards of the General Plan, HOC, and Zoning Code. These requests are discussed later in this report.

### Project Proposal

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<sup>5</sup> I.e., more market rate units than allowed by the density, as determined by the specific percentage and level of affordability of the affordable units included in a project.

<sup>6</sup> I.e., modifications or elimination of any development standard

<sup>7</sup> Specified number of incentives as identified in state law based on the level of affordability and percentage of affordable units

<sup>8</sup> Parking standards identified in state law by project type, proximity of transit facilities, affordability level of the development (or affordable units) and/or number of bedrooms

<sup>9</sup> The Project is required to provide 11.4 units (20% of 57 units). Pursuant to the City's BMR program 11 units will be provided on the site and the 0.4 unit will be paid in in-lieu fee.

The project applicant, Dividend Homes, is proposing a 57-unit townhome-condominium development. The project consists of ten buildings, three stories in height, with individual units ranging in size (including garage space) from 2,136 square feet to 2,704 square feet.

As required by the City's Below Market Rate (BMR) Housing Program, eleven of the units will be allocated as affordable housing units for sale to median- and moderate-income households<sup>10</sup>. Based on the scope of project, the City has required the following permits: Development Permit, Use Permit, Architectural and Site Approval, Tree Removal Permit and a Vesting Tentative Map.



**Figure 2 Site Plan.**

### Architecture and Site Design

The applicant proposes a “contemporary” style architecture, typified by flat-roofed buildings with rooftop decks and generous window areas. The project's architecture reflects its more urban, commercial context, which also features flat roofs and a contemporary aesthetic. The use of clean, modern forms and details ensures the development better integrates with the more commercial character of the area. Materials and colors are used to accentuate changes in building plane, which adds visual interest through form-oriented architecture without relying on faux ornamentation. Each unit includes a roof deck providing private outdoor space, with some units also offering private side yards.

The project falls within the Central Stevens Creek Boulevard: Flowering Orchard Guidelines as identified in the Heart of the City Specific Plan. Accordingly, the trees selected for the frontage are Flowering Pears, a deciduous tree with a showy fall color. The majority of the trees proposed for the interior of the site are also deciduous, flowering trees. Shrubs, ornamental grasses, vines and groundcovers selected are low to moderate

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<sup>10</sup> Due to limitations of Government Code § 65103.5, the distribution of copyrighted material associated with the review of development projects is limited. Plans have been emailed under separate cover to allow the Commissioners to review the proposed plans. Commissioners and Councilmembers cannot share plans with outside parties, including community members. The public is able to make an appointment with the Planning Division to view these plans at City Hall.



in water use, many of which provide flowers or foliage color. Evergreen shrubs will be used to screen all above ground utilities.

Pedestrian walkways will be colored concrete with a stone texture finish. Crosswalks will be delineated with an earth tone color stamped asphalt. This is also used to break up the vehicular access street paving. An arbor is located at the entry of the development from Stevens Creek Boulevard. Vine covered arbors are also placed at the entry to the paseos leading to the residential entries. Benches beneath arbors are located at the ends of the paseo providing quiet spots to relax. Community mailboxes are centrally located with an arbor/screen located to soften the units and provide a central vertical element along the main drive entering the development.

A good neighbor board-on-board fence is proposed to provide privacy and security along the east property boundary. Existing walls along the north and west property lines will remain in place. Private back yards are provided for nine of the units. A 6' horizontal fence will be used to create private back yards between each unit.

A fully automated drip irrigation system will be designed to water all new plant material. The system will include rain and soil moisture sensors as well as a wi-fi-enabled controller.

## **Analysis**

### **General Plan Compliance**

The proposed project consists of a residential development consistent with the site's General Plan Land Use Designation of Commercial/Office/Residential.<sup>11</sup> The General Plan designation allows a maximum density of 25 dwelling units per acre, which would allow 67 units for the 2.65-acre site. The project includes 57 units, as permitted by the General Plan density in effect when the SB330 Preliminary Application was submitted.

The City's General Plan Land Use Element Strategies LU-1.3.1 (1) and LU-15.1.1 require all mixed-use areas with commercial zoning to provide retail as a substantial component of a project and Land Use Element Strategy LU-1.3.1 (4) requires a Conditional Use Permit

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<sup>11</sup> While the General Plan requires the development of the property using the Commercial Centers and Mixed-use Village concept, when a residential development is proposed, state law, under SB330 prohibits the City from applying any non-objective standards. The General Plan language describing the Mixed-use Village concept is subjective and therefore, cannot be applied to the project. In addition, since this project utilizes the provision of Density Bonus, the developer would have the option to invoke unlimited waivers to propose the 100% residential project, as designed.

to be approved when housing is proposed on non-Housing Element mixed-use sites<sup>12</sup>. The project applicant is requesting a Density Bonus concession to waive the requirement for retail to be a substantial component of a project in this zoning category. They are further requesting a waiver of the 1:1 slope line from curb. The concession and waiver request are discussed in further detail in the Density Bonus Section of this Staff Report. A Conditional Use Permit has been included in this review to address the requirements of LU-1.3.1 (4).

Staff has evaluated the project's consistency with the General Plan and concludes that based on the conformance with the General Plan Land Use designation for the site, the general alignment of design with General Plan requirements, notwithstanding the limitations of state law, and the absence of environmental impacts as analyzed in the Notice of Exemption memo (see Environmental Review section of this Staff Report), the proposed project supports several of the City's General Plan goals, as outlined below.

- **Policy LU-2.2: Pedestrian-Oriented Public Spaces.** Require developments to incorporate pedestrian-scaled elements along the street and within the development such as parks, plazas, active uses along the street, active uses, entries, outdoor dining & public art.
- **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-3.3.10: Entrances.** In multi-family projects where residential uses may front on streets, require pedestrian-scaled elements such as entries, stoops and porches along the street.
- **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.
- **Policy INF 2.4.2 Development.** Require undergrounding of all utility lines in new developments and highly encourage undergrounding in remodels or redevelopment of major projects.

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<sup>12</sup> While a portion of the project site is designated as a Priority Housing Site by the City's Housing Element update of 2024, the project's SB330 preliminary application was received on June 27, 2024 and the project is therefore vested and subject to the requirements in place in June of 2024.



- **Strategy HE-2.3.7: Density Bonus Ordinance.** The City will encourage use of density bonuses and incentives, as applicable, for housing developments which include:
  - At least 10 percent of the housing units in a for-sale common interest development are restricted to moderate income residents.

#### Specific Plan Compliance

The site is in the Heart of the City Special Area – Central Stevens Creek Boulevard Subarea. The City’s HOC Specific Plan establishes heights, setbacks, and other development requirements for projects on sites within this area. The proposal includes several density bonus waivers for setbacks, common space, and commercial space requirements from the HOC standards, which are discussed in further detail in the density bonus section of the staff report.

The project has incorporated some site design requirements, which, are consistent with the remaining applicable requirements of the HOC Specific Plan.

#### Tree Removal and Replacement

The proposal includes the removal and replacement of 59 protected development trees within the construction footprint and the removal and replacement of 3 trees within the required right-of-way landscape strips. Trees within the construction footprint include, but not limited to, Canary Pine Trees, Arbutus Marina Trees, Evergreen Pear, and Modesto Ash. All impacted trees are non-native species.

An arborist report was prepared for the applicant by Ray Morneau and was peer reviewed by the City’s third-party consultant, West Coast Arborists. The report and peer review concluded that 59 of the trees proposed for removal would be within the construction footprint and could, therefore, not be preserved or otherwise adequately and feasibly protected during construction. The street trees proposed for removal are non-compliant street trees that will be removed and replaced with a species consistent with the requirements of the Heart of the City Specific Plan.

The City’s requirements for tree replacement, consistent with Cupertino Municipal Code Section 14.18.160 (A), are as follows:

<b>Diameter of Trunk of Removed Tree</b>	<b># of Trees Proposed for Removal</b>	<b>Replacement Tree Size Required</b>	<b>Replacement Trees Required</b>
12 inches or less	48	One 24" box tree	48(24" box trees)

Greater than 12 inches and up to 18 inches	4	Two 24" box trees or One 36" box tree	8 (24" box trees)
Greater than 18 inches and up to 36 inches	6	Two 24" box trees or One 36" box tree	6 (36" box trees)
Over 36 inches	1	One 36" box tree	1 (36" box trees)
<b>Total: 56 (24" box trees) or 63 (24" and 36" box tree mix)</b>			

The applicant proposes to replace the 59 trees with 63 trees, varying in size between 24-inch box and 36-inch box trees and of various species. All trees on-site will be considered protected, and a condition of approval has been included to require that an agreement be executed to ensure the ongoing preservation, maintenance, and protection of the new trees by future property owners.

#### Vesting Tentative Map

The application for the Vesting Tentative Map (VTM) proposes to subdivide the three existing lots to create a condominium subdivision. The approval of a vesting tentative map confers a vested right to proceed with development in substantial compliance with the city's ordinances, policies, and standards in effect at the date the City determined the application was complete.

#### Use Permit

The project proposal requires a Use Permit to allow the development of residential units on a non-Housing Element site.<sup>13</sup> Under the regulations in effect at the time of submittal of the SB330 Preliminary Application, the General Plan and Cupertino Municipal Code Chapter 19.80: *Planned Development (P) Zones* required that a residential development proposed on a site that is not a Priority Housing Site be a conditional use. The applicant proposes building exclusively residential units and is therefore required to obtain Conditional Use Permit approval.

#### Park Land Dedication

Under Cupertino Municipal Code Section 13.08.050(A), proposed developments of more than 50 units must provide park land on site and/or pay an in-lieu fee for the required park land dedication. The project would be required to provide approximately 0.55 acres

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<sup>13</sup> While this is not a current requirement, since this was a requirement at the time of submittal of the applicant's SB330 Preliminary Application, a Use Permit is required. None of the sites was identified as a Priority Housing Element in the 5<sup>th</sup> Cycle Housing Element.

of park area or an in-lieu of dedication fee, based on Municipal Code Chapter 13.08 requirements. The applicant has requested to pay an in-lieu fee instead of providing park land. Based on the property size, project size, the provision of a small private open space area on site, and the location of the property within a quarter mile of existing park facilities<sup>14</sup>, staff recommends the payment of an in-lieu fee rather than requiring the dedication of onsite park land. Thus, the project is conditioned to pay a parkland in-lieu fee. Since the project includes 11 deed-restricted affordable units, consistent with the City's Housing Element policies and the BMR Mitigation Manual, these units are exempt from paying parkland dedication fees. Therefore, the project would pay \$2,430,000 for the 45 proposed market rate units.<sup>15</sup> .

### Density Bonus

The project includes 11 below-market rate units or 20% of the total number of units proposed. As required by the City's BMR Housing Program, six of the units will be allocated as affordable housing units for sale to median-income households (100-120% of Area Median Income) and the other five will be allocated as affordable for sale to moderate-income households (80-100% of Area Median Income). A condition of approval has been included to ensure the recordation of a regulatory agreement with the City, prior to occupancy, requiring the designated BMR units to be for-sale to households at the specified income levels for a 99 year term.

### *Density Bonus and Waiver Requests*

The project is eligible for Density Bonus waivers and concessions consistent with the City of Cupertino Municipal Code Chapter (CMC) 19.56 *Density Bonus* and State Density Bonus Law. The project includes requests for 6 waivers.

Section 19.56.070 of the City's Density Bonus Ordinance ("Findings") requires that, before approving an application which includes a request for a density bonus, waivers, or reduction in parking standards, the decision-making body must determine that the proposal is consistent with State Density Bonus Law by making the following findings<sup>16</sup>, as applicable:

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<sup>14</sup> Wilson Park is located 0.28 miles to the southeast and Portal Park is located 0.21 miles to the northeast of the project site.

<sup>15</sup> Due to the SB330 nature of the project, the Park Fees payable are those in effect as of January 2024.

<sup>16</sup> Government Code Section 65915 (d)(4): The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

1. That the housing development is eligible for the density bonus being requested as well as any incentives or concessions, waivers or reductions in parking standards that are requested.
2. That the development standard(s) for which the waiver(s) are requested would have the effect of physically precluding the construction of the housing development with the density bonus and incentives or concessions permitted, if a waiver was not requested.

The City may not deny a waiver of a development standard that would physically preclude the construction of the project *as it is designed*, unless it is found that the waiver or reduction would have a specific, adverse impact upon health or safety, for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, or would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

### *Parking*

While the City's Municipal Code (Chapter 19.124) requires townhome projects to provide 2.8 parking spaces per dwelling unit, State Density Bonus Law provides its own parking ratios for qualifying projects. Specifically, the Density Bonus Law allows qualifying projects to provide parking at a ratio of 1 parking space per studio to one-bedroom unit; 1.5 parking spaces per two- or three-bedroom unit; and 2.5 parking spaces per four- or more-bedroom unit. No additional guest spaces are required under Density Bonus law provisions.

Unit Type	Number of Units	Parking Spaces under State Density Bonus Law	Parking Spaces Provided
Three Bedroom	40	60	80
Four Bedroom	17	43	34
Guest	-	-	12
	<b>57</b>	<b>103</b>	<b>126</b>

As proposed by the applicant, each unit will provide two enclosed garage spaces (114 total spaces), with 12 additional spaces for guests, for a total of 126 spaces onsite, when only 103 are required.

### *Waivers Requested*

As a density bonus project, the applicant may submit to the City proposals for an unlimited number of waivers, or reduction of development standards, that would have

the effect of physically precluding the construction of the project as proposed/designed (Government Code Section 65915(e)). It should be noted that under State Density Bonus Law, a city may not deny a proposed project based on the theory that another project, with a similar number of units, might be designed differently and accommodated without waivers of development standards.

The project requires 6 waivers as follows:

1. Building Bulk (General Plan Community Form Diagram (Figure LU-2))

The General Plan requires that new development maintain the building below a 1:1 slope line drawn from the arterial/boulevard curb line or lines except for the Crossroads Area. As this project fronts Stevens Creek Blvd., buildings 1 and 10 would have to be within this line. Both buildings are approximately 45-feet, and are requesting a setback waiver for 26-foot setback from the 35-foot setback requirement, resulting for a portion of the third floor of the buildings being within the 1:1 slope line. Compliance would negatively impact the density as the buildings will have to be +/- 45-feet behind the curb. Doing so would negatively impact the density of the project as proposed, so therefore the project is requesting a waiver from this requirement.

2. 45-Foot Height Limitation (HOC Specific Plan Section 1.01.030)

The HOC Specific Plan requires that developments have a maximum height of 45 feet, as measured from the sidewalk to the top of a building's cornice, parapet, or eave line of a peaked roof. The applicant has requested a waiver to increase the height allowed for two buildings as follows:

- Building 4 maximum height 45-feet, 7-inches
- Building 5 maximum height 45-feet, 2-inches
- Building 6 maximum height 45-feet, 1-inch
- Building 7 maximum height 45-feet, 10-inches
- Building 8 maximum height 45-feet, 1-inch
- Building 10 maximum height 45-feet, 10-inches

The other six buildings proposed meet the height requirement of the HOC Specific Plan. Imposing the 45-foot height restriction would result in changing the height and design of the buildings, including the potential removal of private open space in the form of rooftop decks, which is not consistent with the project proposed.

3. Front Setback (HOC Specific Plan Section 1.01.030)

The HOC Specific Plan requires that developments have a minimum front setback of 35 feet from the edge of curb (nine (9) feet from the required Boulevard Landscape Easement while also allowing for the encroachment of uninhabitable building elements, such as chimneys and eaves, up to four feet into the required setback areas. The following table indicates the required setback and the proposed waiver for the two buildings for which waivers are requested.

Building	Required Front Setback	Proposed Front Setback
1 & 10	35' from edge of curb	26' from edge of curb

4. Side Setbacks (HOC Specific Plan Section 1.01.030)

The HOC Specific Plan requires that developments have a minimum side setback of one-half of the height of the building, or ten feet, whichever is greater. It also allows for the encroachment of uninhabitable building elements, such as chimneys and eaves, up to three feet into the required setback areas. The following table indicates the required setback and the proposed waiver for the eight buildings for which waivers are requested:

Building	Height	Required Side Setback	Proposed Side Setback
1-4	45'-10"	22'-11"	West & East: 12' to building face
7-10	45'-10"	22'-11"	

Imposing the side setback requirements would result in the elimination of units, reduced floor areas of units, or a substantial change to the design of the buildings, which is not consistent with the project as proposed by the applicant.

5. Rear Setback (HOC Specific Plan Section 1.01.030)

The HOC Specific Plan requires that developments have a minimum rear setback of one-and-one-half of the height of the building, or 20 feet, whichever is greater. It also allows for the encroachment of uninhabitable building elements, such as chimneys and eaves, up to three feet into the required setback areas. The following table indicates the required setback and the proposed waiver for the two buildings for which waivers are requested:

Building	Height	Required Rear Setback	Proposed Rear Setback
4-7	45'-10"	68'-10"	14'

The applicant states that imposing the rear setback requirement would result in the elimination of units, reduced floor areas of units, or a substantial change to the design of the buildings, which is not consistent with the project as proposed by the applicant.

6. Building Forms (HOC Specific Plan Section 1.01.040)

The HOC Specific Plan requires that buildings adjacent to residentially developed parcels be stepped back, or terraced, or have adequate setbacks so that privacy is maintained. It also requires that buildings requiring terracing shall have a 1.5:1 setback to height ratio. The proposal includes four buildings (Buildings 4-7) located adjacent to single-family residentially developed parcels to the north. While the project has been designed to address potential privacy concerns through building orientation and landscape screening, it does not meet the HOC Specific Plan's required rear setback and is therefore not consistent with this requirement. The applicant has requested a waiver to allow for a reduced rear setback and waiver of requirements for step backs for Buildings 4-7.

Like the preceding required setback waivers, the applicant states that imposing the building form requirement would result in the elimination of units, reduced floor areas of units, or a substantial change to the design of the buildings, which is not consistent with the project proposed by the applicant.

7. Maximum Lot Coverage (CMC Section 19.36.070 (A))

The Municipal Code requires that a development subject to the requirements of the R-3 zoning district has a maximum lot coverage of 40% of the net lot area. The proposed project has a net lot area of 2.65 acres or 115,434 square feet and would be allowed to have a maximum lot coverage of 46,174 square feet under Section 19.36.070 (A). The applicant has, therefore, requested a waiver to increase the lot coverage allowed for the project to accommodate a total lot coverage of 41.2% of the net lot area, or 47,558 square feet of building or surface area.

Imposing the 40% lot coverage restriction would result in changing the height and design of the buildings, including the potential reduction in the size and number of units which is not consistent with the project as proposed by the applicant.

8. Minimum Parking Space Size & Tandem Garages (CMC Section 19.124.040 (A))

The Municipal Code (as of February 2024) requires that parking spaces in multiple-family developments have a minimum parking space size of 10 feet by 20 feet. The applicant has requested a waiver to modify this requirement to reduce the minimum parking space size to 9 feet by 18 feet for spaces provided in the parking along the private streets. Furthermore, 27 of the units are proposing tandem parking where townhomes are required to provide the standard 20 feet by 20 feet parking garage.



Imposing the parking space requirement would result in changing the size and design of the buildings, including the potential increase in the project lot coverage, reduction in open space, or potentially the number of units which is not consistent with the project as proposed by the applicant.

9. Common Open Space (HOC Specific Plan Section 1.01.040)

The project is required to provide 150 sf of common open space per unit (8,550 square feet total). This area must be outside of all required setbacks. The applicant is requesting a waiver from the Common Open Space requirements. Providing this requirement would cause a redesign of the project, and a potential loss of units. Due to this waiver request, the project also requests waivers from the Common Landscape and Common Hardscape requirements since these requirements would not apply.

*Concession Requested*

As a density bonus project with at least 20% of units reserved for sale to moderate-income households<sup>17</sup>, the applicant may submit to the City requests for up to two concessions. Concessions allow an applicant to deviate from development regulations when such regulations have the potential to make the project economically infeasible to build. The applicant has requested two concessions as follows:

1. HOC Specific Plan Section 1.01.020 (A) and Section 1.01.020 (B)

Section 1.01.020 (B) of the HOC Specific Plan requires that the amount of building space devoted to retail/commercial uses shall have a viable and substantial retail component and Section 1.01.020 (A) requires that “uses that do not involve the direct retailing of goods or services to the general public shall be limited to occupy no more than 25% of the total building frontage along Stevens Creek Boulevard and/or 50% of the rear of the building.” The project, as proposed, is entirely residential and would, therefore, not conform to these requirements. Consistent with the previously discussed General Plan Land Use Element Strategy LU-1.3.1 (1), these standards generally require that retail or commercial uses be provided on site. The applicant is requesting that this standard be waived using a Density Bonus concession. Complying with this standard would require the Project dedicate a significant share of the Property to non-residential uses because the

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<sup>17</sup> The project proposes a mix of moderate- and median-income units, has required by the City’s BMR standards. State law does not specify allowances for median-income units, however, median-income units have a higher income restriction than moderate-income units and are therefore counted towards the moderate-income unit total for the purposes of concession allowances.

retail/commercial use is the primary use. Doing so would reduce the overall number of residential units developable on the Property. Consequently, adherence to this retail/commercial use requirement physically precludes development of the Project at the proposed density.

*Compliance with BMR Unit Comparability & Dispersion Requirements*

The BMR Manual requires that the BMR Units:

- Shall be comparable to market rate units in terms of unit type, number of bedrooms per unit, quality of exterior appearance and overall quality of construction.
- Size should be generally representative of the unit sizes within the market-rate portion of residential project.
- Interior features and finishes in affordable units shall be durable, of good quality and consistent with contemporary standards for new housing.

The following table demonstrates the proposed unit mix within the eight buildings by income level, type, and size:

	Number of Units	Number of Bedrooms	Average Unit Size
<b>BMR Units</b>	3	4	2,656 square feet
	2	3	2,493 square feet
	6	3 + Tandem Garage	2,136 square feet
<b>Market-Rate Units</b>	14	4	2,656 square feet
	11	3	2,493 square feet
	21	3 + Tandem Garage	2,136 square feet

The proposed market-rate and BMR units consist of a mix of three-, three +Tandem garage-, and four-bedroom units. The square footage and programming of the market-rate and the BMR units are nearly identical and the BMR units are dispersed throughout the project. Additionally, there is no indication on the plans that the exterior finishes of the BMR units will be any different from the market rate units. As such, it is expected that they will be of the same quality; however, as allowed in the BMR manual, the affordable units may have different interior finishes.

No Net Loss Discussion (SB166)

California Government Code Section 65863 (No Net Loss Law) requires cities to ensure development opportunities remain available to accommodate the City's regional housing need allocation (RHNA), especially for lower- and moderate- income households by maintaining adequate sites to accommodate the unmet RHNA for each income category. Through the 6<sup>th</sup> Cycle Housing Element's adoption in May 2024, the City designated new

Priority Housing Sites, which are anticipated to provide the units to meet the City's RHNA for each income category. The City estimated the number of units, by income category, that are expected to be developed on each of these sites, resulting in the estimated unit counts shown in the table below. As noted previously, one of the two parcels (APN 316-23-026) that make up this project site is listed as a Priority Housing Site (Site 8) in the City's 6<sup>th</sup> Cycle Housing Element. While the project site is not subject to the land use and housing density requirements established through the adoption of the 6<sup>th</sup> Cycle Housing Element (see SB330 discussion above), the City is nonetheless required to evaluate the project's impacts on expected housing production under Government Code Section 65863.

Under No Net Loss Law, at the time of a project's approval, the decision-making body must make the following findings:

1. That the remaining sites identified in the Housing Element are adequate to meet the jurisdiction's remaining RHNA for the planning period, by income category.
2. A quantification of the remaining unmet need for the jurisdiction's RHNA at each income level and the remaining capacity of sites identified in the Housing Element, to accommodate that need by income level.

In the event the City is unable to make the findings of No Net Loss, the City must either concurrently with, or within 180 days of, approval of a housing development project at a lower density or different mix of housing affordability, identify another Priority Housing Site(s) or increase the density of an existing Priority Housing Site(s) to ensure that adequate sites are available to accommodate its RHNA.

The table below quantifies the remaining unmet need for the 6<sup>th</sup> Cycle Housing Element 2023-2031 RHNA, by income level, and the remaining capacity across all Priority Housing Sites by comparing the projected number of units at this Priority Housing Site with the actual number of units proposed by the subject project.

	Income Category		
	Lower Income (30-80% AMI)*	Moderate (80- 120% AMI)	Above Moderate (>120% AMI)
6 <sup>th</sup> Cycle RHNA Requirement	1,880	755	1,953
Units Projected – all Sites	2,037	847	2,997
Projected Surplus – all Sites	157	92	1,044
<i>Summer Hill (Fontana's etc.) - Capacity</i>	59	24	62

<i>Toll Brother's (United Furniture) - Capacity</i>	0	93	70
<b>Current Capacity – remaining sites</b>	<b>1,978</b>	<b>730</b>	<b>2,865</b>
<i>Summer Hill (Fontana's etc.) - Actual</i>	0	12	47
<i>Toll Brother's (United Furniture) - Actual</i>	0	11	44
Current Surplus – remaining sites	98	-2	1,003
Units <b><u>Projected</u></b> on Site 8	45	18	47
Units <b><u>Proposed</u></b> on Site 8	0	11	46
<b>Unmet 6<sup>th</sup> Cycle RHNA</b>	<b>1,880</b>	<b>721</b>	<b>1,816</b>
<b>Remaining Total Capacity</b>	<b>1,933</b>	<b>712</b>	<b>2,818</b>
<b>Total Remaining Surplus</b>	<b>53</b>	<b>-9</b>	<b>1,002</b>
<i>* Includes Very Low- and Low-Income</i>			

As indicated in the table, the City will not be able to make the findings of No Net Loss with the approval of this project<sup>18</sup> since the deficit of two (2) Moderate income units shown in the table will be reduced to a deficit of nine (9) units. The Housing Element estimated 18 Moderate (the "Moderate" designation, as used in the Housing Element, includes both Moderate- and Median-income units) units and 45 Lower income units would be developed on Priority Housing Site 8. Only 11 Moderate and zero Lower Income units are proposed, resulting in a shortfall of 7 Moderate income units and 45 Lower Income units. While the City is not in a position to identify additional sites to accommodate its RHNA concurrently with this project approval, the City has 180 days from project approval to find (an)other site(s) pursuant to SB166.

### **Other Department/Agency Review**

The City's Building Division, Public Works Department, Environmental Services Division, Sheriff's Department, Cupertino Sanitary District, and the Santa Clara County Fire Department have reviewed and conditioned the project.

### **Environmental Review**

The applicant requested that the development be reviewed in accordance with Assembly Bill (AB) 130, signed into law on June 30, 2025, and codified in Public Resources Code (PRC) Section 21080.66. This law exempts qualifying infill housing development from CEQA review, creating a new statutory exemption. This exemption applies to any

<sup>18</sup> It is noted that there are two projects currently under review by the City, which vested lower densities than those adopted with the May 2024 Housing Element update under the provisions of SB330. These include the Idlewild/United Furniture proposal (numbers included in the table as the item will heard by City Council on December 16, 2025) and the Harvest Properties proposal at the Stevens Creek Office Center.

required permits, entitlements, or other discretionary approvals for a broad range of housing types. The attached CEQA Exemption Memorandum (Attachment 5) demonstrates that the proposed project meets the requirements of PRC Section 21080.66 and is organized as follows:

- **Infill Criteria.** The project's consistency with the allowed housing development type defined in PRC Section 21080.66(a), subdivisions (1) through (5) and (8).
- **Environmental Criteria.** The project's consistency with the individual environmental requirements pursuant to PRC Section 21080.66(a), subdivisions (6) and (7).
- **Tribal Cultural Resources.** The project's consistency with the tribal notification and outreach requirements pursuant to PRC Section 21080.66(b).
- **Hazardous Materials.** The project's consistency with the requirements for the identification and treatment of hazardous materials pursuant to PRC Section 21080.66(c).
- **Other Requirements.** The project's consistency with the Labor Code requirements and eligibility of a housing development project for a density bonus, incentives or concessions, waivers or reductions of development standards, and reduced parking ratios pursuant to PRC Sections 21080.66(d) and (e), respectively.

As analyzed in Section 3.1 of the attached CEQA Exemption Memorandum, Public Resources Code Section 21080.66, the proposed project meets the criteria for statutory exemption. Accordingly, this document finds that a Notice of Exemption is appropriate for the proposed project pursuant to CEQA Guidelines Section 15062.

### **Public Outreach and Noticing**

The following table is a 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>14 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>▪ Public hearing notices were mailed to property owners within 500 feet 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>five days prior to the hearing</i>)</li><li>▪ Posted on the City of Cupertino's website (<i>five days prior to the hearing</i>)</li></ul>

The applicant has completed community outreach to residents and property owners on October 29, 2025.

### **Public Comment**

At the time this staff report was published, staff had received one letter from a neighbor. Please refer to Attachment 6 for full comments.

### **Conclusion**

Staff recommends approval of the project, as proposed, because the project and its conditions of approval support the findings for approval of the proposed project, consistent with Chapters 14.18, 18.28, 19.56, 19.156, and 19.168 of the Cupertino Municipal Code. With respect to the requested Density Bonus concessions and waivers, evidence in the record demonstrates that the project meets the standards for granting the concessions and waivers under the State Density Bonus Law.

### **Next Steps**

The Planning Commission's recommendation will be forwarded to the City Council for its decision on the project. The City Council's decision will be final unless reconsidered by the Council within 10 days of their decision. If the project is approved, the applicant may apply for building permits at that time.

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Prepared by: Gian Paolo Martire, Senior Planner

Reviewed by: Piu Ghosh, Planning Manager

Approved by: Luke Connolly, Assistant Director of Community Development

### **ATTACHMENTS:**

- 1– Draft Resolution for DP-2025-001
- 2 - Draft Resolution for U-2025-006
- 3 – Draft Resolution for ASA-2024-016
- 4 – Draft Resolution for TM-2024-010
- 5 - Draft Resolution for TR-2024-045
- 5 – CEQA Exemption Memorandum
- 6 – Public Comment
- 7 – Project Site Plan and Renderings