



## COMMUNITY DEVELOPMENT DEPARTMENT

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### PLANNING COMMISSION STAFF REPORT

Meeting: June 10, 2025

#### **Subject**

Consider a Development Permit, Use Permit, Tentative Map, Architectural and Site Approval, and Tree Removal Permit to consider the construction of a 59-unit townhome condominium development. The project utilizes Senate Bill 330 and provisions of State Density Bonus law. (Application No(s): DP-2024-002, U-2024-007, TM-2024-001, ASA-2024-005, TR-2024-024; Applicant(s): SummerHill Homes, LLC; Location: 20770, 20830, and 20840 Stevens Creek Blvd; APNs: 359-08-025, -026, -027, and -028 (partial).

#### **Recommended Actions**

Staff recommends 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. Make the required findings of No Net Loss (SB 166) and
3. Approve the following permits:
  - a. Development Permit (DP-2024-002) (Attachment 1);
  - b. Use Permit (U-2024-007) (Attachment 2);
  - c. Architectural & Site Approval Permit (ASA-2024-005) (Attachment 3);
  - d. Tentative Final Map (TM-2024-001) (Attachment 4); and
  - e. Tree Removal Permit (TR-2024-024) (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 (Crossroads subarea)	
<b>Zoning Designation</b>	P(CG, Res)	
<b>Lot Area</b>	2.97 acres (gross), 2.90 acres (net)	
	<b>Allowed/Required</b>	<b>Proposed</b>
<b>Maximum Density</b>	Up to 25 units per acre*	20.34 units per acre
<b>Height of Structures</b>	Up to 45 feet measured from sidewalk to top	45'8" and 45'-10" (for two buildings)

	of cornice, parapet, or eave line of a peaked roof.	<i>(Waiver Requested)</i>
<b>Setbacks</b>		
Front	<i>35 feet from edge of curb</i>	26 feet from edge of curb <i>(Waiver Requested)</i>
Sides	<i>One-half height of building (18'-7 ½")</i>	15 feet <i>(Waiver Requested)</i>
Rear	<i>One and one-half height of building (59'-1½")</i>	32'-5" <i>(Waiver Requested)</i>
<b>Parking</b>	<i>2 spaces per unit* (118 spaces)</i>	129 spaces
<b>Usable Open Space</b>		
Common	<i>150 square feet per unit (8,850 square feet)</i>	13,977 square feet
Private	<i>60 square feet per unit and no dimension less than 6 feet</i>	Minimum of 60 square feet per unit. <i>(Waiver requested for reduced dimensions)</i>
<b>Project Consistency with:</b>		
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 height, setbacks, and retail requirements	
Zoning	Consistent under SB330 and state density bonus law. Density bonus waivers requested for lot coverage, parking design, and park land dedication requirements	
<i>* 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 submittal of a SB330 preliminary application apply. While the site is a Housing Element site (Priority Housing</i>		

<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\\*\\_czE3NDkwMDIwNzAkbyY2IGcxJHQxNzQ5MDAyMDgwJGo1MCRsMCRoMA..](https://records.cupertino.org/WebLink/DocView.aspx?id=1019620&dbid=0&repo=CityofCupertino&_gl=1*_gufghv*_ga*OTc5OTgwMjc4LjE3NDQ3Mzc0NDM.*_ga_NCY1KGMD5Y*_czE3NDkwMDIwNzAkbyY2IGcxJHQxNzQ5MDAyMDgwJGo1MCRsMCRoMA..)

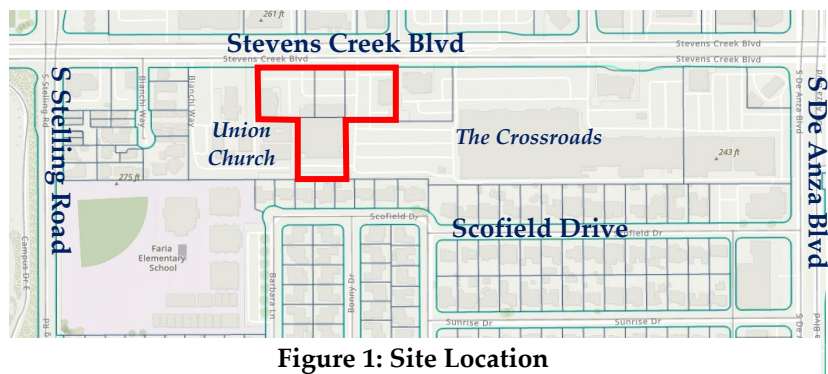
<sup>2</sup> The applicable version of the Heart of the City Specific Plan can be found online at <https://www.cupertino.gov/files/assets/city/v/1/departments/documents/community-development/planning/land-use-plans/heart-of-the-city-specific.pdf>

*Element site no. 40-43) 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. The current parking standard for a townhome development is 1 space per unit, but the applicable standard in this case is 2 spaces per unit.*

## **Background**

On July 22, 2024, the City received an application to redevelop a property located at 20770, 20830, and 20840 Stevens Creek Boulevard<sup>3</sup>. The project site is located within the Crossroads subarea of the Heart of the City (“HOC”) Specific Plan Area.

The 2.90 net-acre property is bounded by Stevens Creek Boulevard to the north, South Stelling Road to the west, and South De Anza Boulevard to the east. The site abuts single-family residences along Scofield Drive to the south, Union Church of Cupertino to the west, and the Crossroads shopping center to the east. (See Figure 1)



**Figure 1: Site Location**

Three commercial buildings are currently located onsite, including an operating office supply store (Staples) and two vacant buildings that were previously used as restaurant facilities (Pizza Hut and Fontana’s). The project site was designated as a Priority Housing Site through the City’s 2024 Housing Element update in May 2024, but, at the time of the SB330 preliminary application submittal, was not a designated Priority Housing Site.<sup>4</sup>

Due to the requirements of State law, 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 January 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 (R3) zoning regulations. Generally, the

<sup>3</sup> The current property owners completed a lot line adjustment to APN: 359 08 028 through the approval of Lot Line Adjustment application PW-2025-0084 in February 2025 resulting in the project site.

<sup>4</sup> Housing Element available online at: [www.cupertino.gov/gp](http://www.cupertino.gov/gp). See Table B4-9 in Appendix B.

proposed project consists of 59 townhome-styled condominiums. Review of the project is limited by several State laws including the Housing Accountability Act, the Housing Crisis Act and Density Bonus Law.

#### Housing Accountability Act

The Housing Accountability Act (HAA), codified in 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>5</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 “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. Among many components, the law includes a provision to allow applicants to vest (“lock-in”) fees, and ordinances, policies, and standards that are in effect at the time of submittal of an SB330 preliminary application to the City. Only the limited information specified in State law is required for the submittal of an SB330 preliminary application. Further, the law prohibits the City from conducting more than five hearings in connection with the approval of a housing development project.

This project is governed by an SB330 preliminary application submitted on January 29, 2024 and, in accordance with the requirements of the HCA, the project was reviewed under the requirements in effect at that time. A complete list of the standards included in the review is provided as Attachment 6. As noted previously, the project site is partially located on a Priority Housing Site; however, the project is not subject to the newly adopted standards (including increased density requirements) and Housing Element updates as the SB330 preliminary application for the project was submitted prior to the Housing Element being adopted in May 2024, four months after the preliminary application was received by the City.

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<sup>5</sup> Unless otherwise waived or reduced through use of the Density Bonus law, discussed further below.

### 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>6</sup>;
- Unlimited waivers to development standards that would physically preclude the construction of the project as designed<sup>7</sup>;
- Concessions that modify development standards in order to achieve an identifiable and actual cost reduction<sup>8</sup>; and
- Reduced parking standards<sup>9</sup>.

It is important to note that, while qualifying projects can increase their density, an applicant may elect to only utilize the available waivers, concessions, or the reduced parking standards, without requesting a density bonus, as is the case with the subject project.

The project includes a request for 11 waivers and two concessions from applicable standards of the General Plan and Zoning Code. These requests are discussed later in this report.

### Project Proposal

The project applicant, SummerHill Homes, LLC, is proposing a 59-unit townhome condominium development. The project consists of eight buildings, ranging from three to four stories in height, with units ranging in size from 1,799 square feet to 2,723 square feet. As required by the City's Below Market Rate (BMR) Housing Program, twelve of the units will be allocated as affordable housing units for sale to median- and moderate-

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<sup>6</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>7</sup> I.e., modifications or elimination of any development standard

<sup>8</sup> Specified number of incentives as identified in state law based on the level of affordability and percentage of affordable units

<sup>9</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

income households. The project also includes the removal and replacement of 45 protected development trees (see Figure 2 for Site Plan<sup>10</sup>). Based on the scope of work, the City has required the following permits: Development Permit, Use Permit, Architectural and Site Approval, Tree Removal, and a Vesting Tentative Map. Based on State Density Bonus Law, the applicant is requesting density bonus waivers, as described later in this report.



Figure 2: Site Plan

### Architecture and Site Design

The applicant has proposed a “Contemporary Spanish” style development with stucco exteriors and trim, concrete tile roofing, and metal accents. The design also incorporates trellis elements on the rear elevations. The landscape design incorporates trees and decorative planting throughout the site, as well as common outdoor spaces with recreational features including seating, tables, and a grill. The project also includes a public art installation in the form of a small plaza along the Stevens Creek Boulevard frontage, adjacent to the neighboring Crossroads commercial development.

### Analysis

#### General Plan Compliance

The proposed project consists of a residential development consistent with the subject site’s General Plan Land Use Designation of Commercial/Office/Residential.<sup>11</sup> The

<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.

<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

General Plan designation allows a maximum density of 25 dwelling units per acre, which would allow 72.5 units for the 2.90-acre site. The project proposes 59 units, as permitted by the General Plan density.

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 to be acquired when housing is proposed on non-Housing Element mixed-use sites<sup>12</sup>. The project applicant is requesting use of a Density Bonus concession to waive the requirement for retail to be a substantial component of a project in this zoning category. The concession request is 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, 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. A complete list of the standards included in staff's review is provided in Attachment 6.

- **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.

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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.

<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 January 29, 2024 and the project is therefore vested and subject to the requirements in place in January of 2024.

- **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.
- **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 located in the Heart of the City Special Area – Crossroads 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 height, setbacks, 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 open space and other site design requirements, which, per staff's review, are consistent with the remaining applicable requirements of the HOC Specific Plan (see Attachment 6).

#### Tree Removal and Replacement

The proposal includes the removal and replacement of 45 protected development trees within the construction footprint and the removal and replacement of 9 trees within the required right-of-way landscape strips. Trees within the construction footprint include two African Fern-Pine Trees, 15 Silver Dollar Gum Trees, 19 Crape Myrtle Trees, one London Plane Tree, 8 Callery Ornamental Pear Trees, and two Chinese Tallow Trees. All impacted trees are non-native species.

An arborist report was prepared for the applicant by HortScience Bartlett Consulting and was peer reviewed by the City's third-party consultant, West Coast Arborists. The report and peer review concluded that 45 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 other nine 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:

Diameter of Trunk of Removed Tree	# of Trees Proposed for Removal	Replacement Tree Size Required	Replacement Trees Required
12 inches or less	32	One 24" box tree	32 (24" box trees)
Greater than 12 inches and up to 24 inches	13	Two 24" box trees or One 36" box tree	26 (24" box trees) or 13 (36" box trees)
<b>Total: 58 (24" box trees) or 45 (24" and 36" box tree mix)</b>			

The applicant proposes to replace the 45 trees with 71 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 existing lot 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 determines the application is 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 to build exclusively residential units and is, therefore, required to obtain Conditional Use Permit approval.

#### Public Art

In accordance with Cupertino Municipal Code Chapter 19.148, the project incorporates a proposed public art plaza in the northeastern corner of the property. While details have not been included in this permit application, staff will review the public art proposal

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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.

when an application for public artwork is received. Once submitted, the application will be presented to the Arts and Culture Commission for review and approval. The applicant is required to submit an application for the artwork prior to certificates of occupancy being granted for any of the units and must install the public art prior to certificates of occupancy being issued on more than 50% of the units. A condition of approval has been included to require the maintenance of any public artwork incorporated into the project. Any proposal to change the approved artwork, or removal thereof in the future, would require additional public review and approval by the Arts and Culture Commission.

#### Park Land Dedication

Under Cupertino Municipal Code Section 13.08.050 (A) 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 0.32 acres of park area or an in-lieu of dedication fee, based on Municipal Code Chapter 13.08 requirements. 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 is recommending the payment of an in-lieu fee rather than requiring a dedication of onsite park land. In line with staff's recommendation, the applicant has requested to pay an in-lieu fee instead of providing park land. Thus, the project is conditioned to pay a parkland in-lieu fee of \$2,538,000 for the 47 market rate units.<sup>15</sup> As this request is consistent with staff's recommendation and conditions of approval, a waiver of the park land requirement is not required. However, per the City's BMR Program, the in-lieu of park land dedication fees for the BMR units are waived.

#### Density Bonus

The project includes 12 below-market rate units or 20.3% 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 six 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 require that, prior to occupancy, the applicant record a regulatory agreement with the City requiring the designated six BMR units to be for-sale to median income households and remain affordable for 99 years, with the six BMR rental units be for sale to moderate income households and remain affordable for 99 years.

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<sup>14</sup> Faria Sports Field is located 0.2 miles to the southwest and Memorial Park is located 0.3 miles to the west 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.

### *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 10 waivers and two concessions.

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:

1. That the housing development is eligible for the density bonus requested and any incentives or concessions, waivers or reductions in parking standards 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 is 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 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.

### *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 10 waivers as follows:

1. 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

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<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.

eave line of a peaked roof. The applicant has requested a waiver to increase the height allowed for two buildings as follows:

- Building 5 maximum height 45-feet, 8-inches
- Building 6 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 as proposed.

2. 35-Foot Front and 9-foot Landscape Easement Setback (HOC Specific Plan Section 1.01.030)

The HOC Specific Plan requires that development have a minimum front setback of 35 feet measured from the edge of curb with a 9-foot setback from the required Boulevard Landscape Easement. The applicant has requested a waiver to allow the following reductions in front setbacks:

	Setback from Curb		Setback from Landscape Easement	
Building	Required	Proposed	Required	Proposed
2	35'	26'	9'	0'
3	35'	26'	9'	0'
1	35'	32'	9'	6'

This waiver would not result in the reduction to any landscape strips or sidewalk areas as required by the HOC Specific Plan.

Imposing these front 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.

3. Side Setbacks (HOC Specific Plan Section 1.01.030)

The HOC Specific Plan requires that development 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 four buildings for which waivers are requested:

Building	Height	Required Side Setback	Proposed Side Setback
1	36'-11"	18'-5 ½"	West side: 15'; South side: 16'
4	36'-11"	18'-5 ½"	East side: 15'
7	37'-3"	18'-7 ½"	East side: 16'-2"
8	37'-3"	18'-7 ½"	West side: 15'

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.

4. Rear Setback (HOC Specific Plan Section 1.01.030)

The HOC Specific Plan requires that development 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
7	37'-3"	55'-11"	32'-5"
8	37'-3"	55'-11"	37'-5"

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.

5. Service Access (HOC Specific Plan Section 1.01.040)

The HOC Specific Plan requires that access for on-site services, such as trash and recycling pick-up, be routed from rear parking areas to ensure unsightly structures and services are located with rear "alley" access and for ease of servicing the entire block, rather than having to enter and exit on to the main street to service each project separately. However, the project proposal includes a trash pick-up route that takes access from the front of the property. The applicant has requested a waiver from the requirement for service access to be taken from the rear of the site as the applicant claims that doing so would require routing of services through the neighboring property or require additional area be dedicated to on-site circulation. Recology, the City's trash and recycling service provider, has reviewed and approved the proposed service access taken from the front of the property.

Imposing the service access requirement could potentially 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. Private Outdoor Space Clearance (HOC Specific Plan Section 1.01.040)

The HOC Specific Plan requires that at least 60 square feet of private outdoor space be provided for each unit. It also requires that no single dimension of the outdoor space be less than six feet. While the proposal includes at least 60 square feet of private outdoor space for each unit, the applicant has requested a waiver to allow

for a reduction in the minimum dimensions required from six feet (6') to four feet six-inches (4'6").

The applicant states that it is not physically possible to comply with the Private Outdoor Space requirement without eliminating units or reducing the floor area of units, which is not consistent with the project as proposed by the applicant.

7. 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 two buildings (Buildings 7 and 8) located adjacent to residentially developed parcels to the south. 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 7 and 8.

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.

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

The Municipal Code requires that development subject to the requirements of the R3 zoning district have a maximum lot coverage of 40% of the net lot area. The proposed project has a net lot area of 2.90 acres or 126,425 square feet and would be allowed a maximum lot coverage of 50,570 square feet under Section 19.36.070 (A). The applicant has requested a waiver to increase the lot coverage allowed for the project to accommodate a total lot coverage of 54,262 square feet, or 43% of the net lot 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.

9. Minimum Parking Space Size (CMC Section 19.124.040 (A))

The Municipal Code 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, 10 inches by 18 feet for spaces provided in Unit style 1 for 21 units.

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.

10. Parking Planter Strip (CMC Section 19.124.040 (N))

The Municipal Code requires that parking areas provide a landscape planter strip that is at least five feet wide by the length of the parking space. The proposed project has two parking areas along the private streets. Each has landscaped areas adjacent to it, but the larger parking area in the eastern corner of the property does not have a five-foot-wide landscape planter strip as required by this section. The parking spaces are instead lined by a pedestrian pathway, as required by other portions of the Municipal Code and the General Plan. The applicant has requested to waive the requirement for a planter strip at this location.

Imposing the requirement for a five-foot-wide planter strip would result in changing the 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.

*Concessions 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. General Plan Land Use Element Strategies LU-1.3.1 (1) and LU-15.1.1

Land Use Element Strategy LU-1.3.1 (1) states that “all mixed-use areas with commercial zoning will require retail as a substantial component.” Strategy LU-15.1.1 states that “[g]round floor uses shall have active retail uses with storefronts.” As the project site is located in the HOC Crossroads Subarea, in a mixed-use zoning district with commercial zoning (i.e. P(CG, Res), it is required to provide retail as a substantial component of the project. Therefore, to

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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.

accommodate the 100% residential development, as proposed, the applicant is requesting that this standard be waived through the use of a Density Bonus concession. The applicant noted that “[a]fter consulting with commercial owners who are familiar with the local Cupertino market, SummerHill has determined that dedicated retail, office or other commercial space on the project site as part of the project would not be able to generate revenue sufficient to cover the cost of land and construction. Therefore, development of dedicated retail, office or other commercial space would incur a financial loss for the project, and eliminating the dedicated retail, office or other commercial space would result in identifiable and actual cost reductions to provide for affordable housing costs.”

2. HOC Specific Plan Section 1.01.020 (A) and (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. Paralleling 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 through the use of a Density Bonus concession for the reasons outlined in the concession request above.

*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>	12	4	2,166 square feet
<b>Market-Rate Units</b>	15	3	1,799 square feet
	32	4	2,588 square feet



The proposed market-rate units have a mix of three- and four-bedroom units and the proposed BMR units are all four-bedroom units. The market-rate units have an average unit size of 2,336 square feet per unit while the BMR units have an average unit size of 2,166 square feet per unit, an approximately seven percent difference in the average unit size. The BMR units are dispersed throughout the property with three units in Building 7, two units in Buildings 1 through 4, and one unit in Building 8. Only two buildings are proposed without BMR units - Buildings 5 and 6. 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 (SB166)

Government Code Section 65863 (No Net Loss Law) requires the City 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 unmet RHNA for each income category. In May 2024, the City adopted new Priority Housing Sites with the 6<sup>th</sup> Cycle Housing Element Update, which are anticipated to provide units to meet the City's RHNA for each income category. The City calculated the number of units by affordability 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, the project site is listed as a Priority Housing Site in the City's 6<sup>th</sup> Cycle Housing Element and, while the project site is not subject to the requirements established in association with the 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 approval, the decision 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 concurrent 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 or increase the density of an existing Priority Housing Site to ensure that sites are available to accommodate its RHNA.

The table below quantifies the remaining unmet need for the 2023-2031 RHNA by income level and the remaining capacity of across all Priority Housing Sites by comparing the projected number of units at this Priority Housing Site with the actual number of units proposed.

	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>Units <b>Projected</b> on Sites 40-43</i>	59	24	62
<i>Units <b>Proposed</b> on Sites 40-43</i>	0	12	47
<b>Unmet 6<sup>th</sup> Cycle RHNA</b>	<b>1,880</b>	<b>743</b>	<b>1,906</b>
<b>Remaining Capacity</b>	<b>1,978</b>	<b>823</b>	<b>2,935</b>
<b>Remaining Surplus – all Sites</b>	<b>98</b>	<b>80</b>	<b>1,029</b>
<i>* Includes VLI and LI</i>			

As indicated in the table, the City will be able to make the findings of No Net Loss with the approval of this project.<sup>18</sup>

### **Permit Findings**

The Cupertino Municipal Code sets forth the findings for approval of the various permits necessary to approve the proposed project. These provide a framework for making decisions and facilitating an orderly analysis of the review of a project. Listed below are the findings for the three permits sought by the applicant that the City must make in rendering a decision on this project.

#### **A. Development Permit & Use Permit (CMC 19.156.040)**

1. The proposed development and/or use, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

*The project is consistent with the land use designations in the General Plan, Zoning Ordinance, and the Heart of the City Specific Plan. It has been designed to be compatible with adjoining land uses, including but not limited to wider setbacks from the single-*

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<sup>18</sup> It is noted that there are three 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 Toll Brothers proposal at the United Furniture site, the Dividend Homes proposal near Randy Lane and the Harvest Properties proposal at the Stevens Creek Office Center.

*family residences on the southern property line, as well as providing landscaping along the building frontages to help mitigate potential massing impacts and compatible with the existing streetscape. The project is conditioned to comply with the Environmental Protection Standards of Cupertino Municipal Code Chapter 17.04. In addition, under the CEQA Guidelines section 15332 (Infill Development Projects), the project has been found to be Categorically Exempt from CEQA as further documented in the memorandum prepared by the City's environmental consultant, PlaceWorks. The project must meet all Fire and Building Code requirements, which will be further reviewed prior to issuance of building permits. Therefore, the project will not be detrimental or injurious to properties or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.*

2. The proposed development and/or use will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan, underlying zoning regulations, and the purpose of this title and complies with the California Environmental Quality Act (CEQA).

*The General Plan land use designation for the property is Commercial/Office/Residential with a maximum residential density of 25 dwelling units per acre at the time of submittal of an SB330 Preliminary Application for the project in January 2024. The residential use at the proposed 20.34 dwelling units per acre is consistent with the General Plan in terms of density pursuant to state law, even though a portion of the property has a higher density at the date of approval of this project. The applicant is requesting concessions for the development of this site with exclusively residential uses and is requesting waivers for height, setback, lot coverage, and parking design, as required by the Heart of the City Specific Plan's and the City's Municipal Code standards. The proposed development has met all other applicable development standards of the Heart of the City Specific Plan. The project is further conditioned to comply with the Environmental Protection Standards of Cupertino Municipal Code Chapter 17.04. In addition, under the CEQA Guidelines section 15332 (Infill Development Projects), the project has been found to be Categorically Exempt from CEQA as further documented in the memorandum prepared by the City's environmental consultant, PlaceWorks. Therefore, the proposed development will be located and conducted in accordance with the General Plan and underlying zoning regulations and complies with the California Environmental Quality Act (CEQA).*

3. The applicant has requested Density Bonus concessions and waivers. Pursuant to Cupertino Municipal Code Section 19.56.070, before approving an application that includes a request for density bonus, concession, parking reduction and/or waiver, the decision-making body shall make the following findings, as applicable:

- a. That the residential project is eligible for the density bonus and any concessions, parking reductions or waivers requested.  
*The project includes 12 Below Market Rate (BMR) units or 20.3% of the total number of units proposed. Six of the twelve BMR units will be affordable to median-income households (100-120% of Area Median Income) and the other six will be affordable to moderate-income households (80-100% of Area Median Income) in compliance with the City's BMR Program. As a density bonus project with at least 20% of units reserved for sale to moderate-income households as defined by state law (80-120% of Area Median Income), the applicant may request up to two concessions and an unlimited number of waivers.*
- b. That any requested concession will result in identifiable, financially sufficient, and actual cost based on the financial analysis and documentation provided.  
*This finding is superseded by the requirements of State Density Bonus Law, Government Code Section 65915 which restricts a city's ability to deny certain requests for concessions to the findings outlined in section 4 below. The project applicant has indicated that the application of requirements to provide commercial uses on the site would result in a significant financial burden and may impact the number of units provided.*
- c. If the density bonus is based all or in part on donation of land, that all requirements included Section 19.56.030C have been met.  
*No density bonus is proposed; therefore, the finding is not applicable.*
- d. If the density bonus is based all or in part on the inclusion of a childcare facility, that all requirements included in Section 19.56.030 (D) have been met.  
*No density bonus is proposed; therefore, the finding is not applicable.*
- e. If the density bonus or incentive is based on a condominium conversion, that all the requirements included in Section 19.56.030 (E) have been met.  
*No density bonus is proposed; therefore, the finding is not applicable.*
- f. If the incentive includes mixed-use development, that all requirements including in Section 19.56.40 (B) (2) have been met.  
*The project is not a mixed-use development; therefore, the finding is not applicable.*
- g. If a waiver is requested, that that the development standards for which the waivers are requested would have the effect of physically precluding the construction of the housing development with the density bonus and incentives or concessions permitted.

*The development standards height, setbacks, lot coverage, parking design, and park land dedication requirements would physically preclude the development as proposed. These development standard limitations could affect the project by the loss of units or unit sizes, which may include those designated as affordable.*

- h. That all the applicable requirements in Section 19.56.040C have been met, if a reduction in off-street parking standards for an eligible housing development is requested.

*No reduction in off-street parking requirements is being requested; therefore, the finding is not applicable.*

- 4. Since the above applicable findings can be made, the decision-making body may only deny an application for a waiver or concession if one of the following written findings can be made, supported by substantial evidence:

- a. That the incentive or concession, or waiver would have an adverse impact on real property listed in the California Register of Historic Resources; or

*No property on the site, or near it, is listed in the CA Register of Historic Resources.*

- b. That the incentive or concession, or waiver would have a specific, adverse impact upon public health or safety or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the residential project unaffordable to low- and moderate-income households. For the purpose of this subsection, "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the residential project was deemed complete; or

*Both the Fire and Building departments have preliminary reviewed the plans and not found conditions proposed which would create a "specific, adverse impact." In addition, the project is conditioned to ensure compliance with both Fire and Building Code, prior to issuance of building permits. The project is also conditioned to comply with the Environmental Protection Standards of Cupertino Municipal Code Chapter 17.04. Further, under the CEQA Guidelines section 15332 (Infill Development Projects), the project has been found to be Categorically Exempt from CEQA as further documented in the memorandum prepared by the City's environmental consultant, PlaceWorks. Therefore, the proposed development, incorporating the proposed concessions and waivers, is not expected to have a specific, adverse impact upon public health or safety or the physical environment.*

- c. That the incentive or concession, or waiver is contrary to state or federal law. *The requested concessions and waivers are not contrary to state or federal law.*

**B. Architectural and Site Approval Permit (CMC 19.168.030)**

1. The proposed development, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

*The project is consistent with the land use designations in the General Plan, Zoning Ordinance, and the Heart of the City Specific Plan. It has been designed to be compatible with adjoining land uses, including but not limited to wider setbacks from the single-family residences on the southern property line, as well as providing landscaping along the building frontages to help mitigate potential massing impacts and compatible with the existing streetscape. The project is conditioned to comply with the Environmental Protection Standards of Cupertino Municipal Code Chapter 17.04. In addition, under the CEQA Guidelines section 15332 (Infill Development Projects), the project has been found to be Categorically Exempt from CEQA, as further documented in the memorandum prepared by the City's environmental consultant, PlaceWorks. The project must meet all Fire and Building Code requirements, which will be further reviewed prior to issuance of building permits. Therefore, the project will not be detrimental or injurious to properties or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.*

2. The proposed development is consistent with the purposes of this chapter, the General Plan, any specific plan, zoning ordinances, applicable planned development permit, conditional use permits, variances, subdivision maps or other entitlements which regulate the subject property including, but not limited to, adherence to the following specific criteria:

- a. Abrupt changes in building scale should be avoided. A gradual transition related to height and bulk should be achieved between new and existing buildings.

*The proposed project is a redevelopment of three retail buildings (the tallest of which was approximately 30 feet) with eight, new three- to four-story townhome-style buildings. The adjacent commercial center building to the east of the property has a similar massing and the church building to the west incorporates a tall, sloped roof feature. The proposed buildings are approximately 15 feet taller than the existing buildings. Additionally, the townhomes are setback from the street and have vegetation and trees planted along Stevens Creek Boulevard in accordance with the Heart of the City Specific Plan for visual screening. There is also landscaping proposed at the perimeter which will help reduce the apparent mass and bulk of the proposed buildings.*

- b. In order to preserve design harmony between new and existing buildings and in order to preserve and enhance property values, the materials, textures and colors of new buildings should harmonize with adjacent development by being consistent or compatible with design and color schemes, and with the future character of the neighborhood and purposes of the zone in which they are situated. The location, height and materials of walls, fencing, hedges and screen planting should harmonize with adjacent development. Unsightly storage areas, utility installations and unsightly elements of parking lots should be concealed. The planting of ground cover or various types of pavements should be used to prevent dust and erosion, and the unnecessary destruction of existing healthy trees should be avoided. Lighting for development should be adequate to meet safety requirements as specified by the engineering and building departments and provide shielding to prevent spill- over light to adjoining property owners.

*The design quality of the development is consistent with the high-quality standards encouraged by City Staff. The buildings meet the design qualities of a contemporary Spanish style development. The architectural style is consistent throughout the development and is complementary to the mix of contemporary Mediterranean/Mission architectural theme of the previous upgrades to the Crossroads Shopping Center. Utility installation has been designed to be screened by landscaping and or incorporated into the building design. The final lighting for the development will be reviewed as part of the review of the project construction documents to ensure that they meet safety requirements while avoiding spill-over light to adjacent properties and meet applicable Dark Sky standards. The proposed windows are consistent with the City's bird-safe ordinance as well.*

- c. The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures shall minimize traffic hazards and shall positively affect the general appearance of the neighborhood and harmonize with adjacent development.

*No signage is proposed as part of this project.*

- d. With respect to new projects within existing residential neighborhoods, new development should be designed to protect residents from noise, traffic, light and visually intrusive effects by use of buffering, setbacks, landscaping, walls and other appropriate design measures.

*While the project abuts an existing single-family residential neighborhood to the south, it is surrounded on all other sides by commercial uses. The townhome buildings have been designed in accordance with many of the non-objective design guidelines outlined*

*in the Heart of the City Specific Plan. Further, the project incorporates a row of evergreen trees along the rear property line to provide privacy screening and a larger setback between the two buildings closest to the adjacent single-family residential neighborhood/properties.*

C. Tentative Map (CMC 18.16.060)

1. That the proposed subdivision map is consistent with the City of Cupertino General Plan.

*The subject property is consistent with the General Plan since the property is permitted to have up to 25 dwelling units an acre pursuant to the vesting provisions of SB330 which vested the development standards to January 2024.*

2. That the design and improvements of the proposed subdivision are consistent with the General Plan and specific plans.

*The off-site improvements are consistent with the City's General Plan and Heart of the City Specific Plan policies related to applicable pedestrian and bicycle safety with improvements made in accordance with the right-of-way design and an urban canopy within the public right-of-way. While the development is required to have a 35 foot setback from the street curb, state density bonus law requires the City to provide a waiver from local standards and still consider the design consistent with the General Plan and Specific Plan.*

3. That the site is physically suitable for the type of development.

*The proposed tentative map is compatible with the adjoining land uses and no physical constraints are present that would conflict with anticipated land use development. There are no topographical anomalies that differentiate this property from adjacent properties. The site is located on the valley floor and is not listed within any environmentally sensitive zone.*

4. That the site is not physically suitable for the proposed density of development.

*The subject property is physically suitable in size and shape in conformance to development standards and is configured to accommodate a multi-unit development.*

5. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish and wildlife or their habitat.

*The design of the subdivision and proposed improvements are not likely to substantially injure fish and wildlife or their habitat because the property is a developed site, with no fish and wildlife or their habitat in the immediate vicinity, and is located in an urbanized area where residential land use is allowed.*



6. That the design of the subdivision or the type of improvements associated therewith are not likely to cause serious public health problems.

*The proposed subdivision design and improvements are not likely to cause serious public health problems. The proposed development is consistent with the intent of the policies of the General Plan for a development of this density on this site, and the on-site and off-site improvements improve neighborhood walkability through improved sidewalk construction with size-appropriate driveway curb-cuts and street and private trees planting.*

7. That the design of the subdivision and its associated improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision.

*No easement or right-of-way exists currently that would be impeded or conflict with the proposed subdivision.*

D. Tree Removal Permit (CMC 14.18.180)

The approval authority shall approve a tree removal permit only after making at least one of the following findings:

1. That the tree or trees are irreversibly diseased, are in danger of falling, can cause potential damage to existing or proposed essential structures, or interferes with private on-site utility services and cannot be controlled or remedied through reasonable relocation or modification of the structure or utility services;

*Not applicable.*

2. That the location of the trees restricts the economic enjoyment of the property by severely limiting the use of property in a manner not typically experienced by owners of similarly zoned and situated property, and the applicant has demonstrated to the satisfaction of the approval authority that there are no reasonable alternatives to preserve the tree(s).

*To accommodate for the new development's structures, walkways and internal street network to public open spaces, the existing trees cannot be preserved in their locations. The applicant proposes replacement trees throughout the site in conformance with the Municipal Code Ordinance requirements and proposes to locate the replacements where tree coverage is needed, while preserving virtually all the trees that are not within the development area of the project site.*

3. That the protected tree(s) are a detriment to the subject property and cannot be adequately supported according to good urban forestry practices due to the overplanting or overcrowding of trees on the subject property.

*Not applicable.*

4. That the mature specimen trees with single trunk between twelve inches DBH and twenty-four inches DBH, or multi-trunk between twenty-four inches DBH and forty-eight inches DBH in R1, A1, A, RHS, and R2 zones will be replaced by planting a replacement tree and/or by contribution to the City's Tree Fund.

*Not applicable.*

E. Housing Accountability Act

When a project complies with objective standards, the HAA allows a city to disapprove the project or to impose a condition that the project be developed at a lower density only if the city finds both of the following, supported by a preponderance of the evidence in the record:

1. The project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density; and
2. No feasible method to satisfactorily mitigate or avoid the adverse impact exists.  
*The project, as proposed, meets all applicable objective zoning, General Plan, and subdivision standards. Based on the record, including the findings in the Categorical Exemption memorandum, staff does not believe the above findings can be made with respect to the proposed project.*

F. No Net Loss Finding

The remaining sites identified in the Housing Element are adequate to meet the requirements of Government Code Section 65583.2 and to accommodate the City's share of the regional housing need. (Findings required by Government Code Section 65863(b)(2).)

*The remaining sites in the housing element inventory are adequate to meet the requirements of Government Code Section 65583.2 and to accommodate the City's share of the regional lower-income and moderate-income housing need. The proposed project reduces the density of the site below what was projected in the City's 6th Cycle housing element. Nonetheless the Priority Housing sites in the inventory are adequate to accommodate the City's share of the regional lower income housing need, in that a surplus of 98 lower-income and 80 moderate-income units remain following adjustments to projections made to reflect the proposed project.*

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**

A Categorical Exemption memorandum and a Notice of Exemption (Attachment 7) has been prepared to demonstrate compliance with California Environmental Quality Act (CEQA) and CEQA Guidelines as it pertains to the redevelopment of the site. The project scope falls within the Class 32 CEQA Exemption pursuant to CEQA Guideline Sections 15332 (Infill Development Projects) and it has been determined that, the project will not result in any significant effects on the environment. The project will be conditioned to comply with the Environmental Standards adopted by the City pursuant to Chapter 17.04 of the Municipal Code.

### **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.

### **Public Comment**

At the time this staff report being published, staff has received four letters of support for the project. These letters generally note support of the project's replacement of vacant retail space with residential uses and the addition of residences along Stevens Creek Boulevard. Please refer to Attachment 8 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

within 10 days of the decision. If the project is approved, the applicant may apply for building permits at that time.

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Prepared by: Emi Sugiyama, Senior Planner

Reviewed by: Piu Ghosh, Planning Manager

Approved by: Luke Connolly, Assistant Director of Community Development

**ATTACHMENTS:**

- 1– Draft Resolution for DP-2024-002
- 2 - Draft Resolution for U-2024-007
- 3 – Draft Resolution for ASA-2024-005
- 4 – Draft Resolution for TM-2024-001
- 5 – Draft Resolution for TR-2024-024
- 6 – Applicable Standards Matrix
- 7 – Categorical Exemption Memorandum
- 8 – Public Comment
- 9 – Project Site Plan