



COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: February 3, 2026

Subject

Consideration of (i) an Architectural and Site Approval permit, (ii) adoption of a Notice of Exempt Surplus Land Act Declaration, and (iii) a Disposition and Development Agreement by and between the City of Cupertino, a municipal corporation and Mary Avenue, L.P., a California limited partnership in connection with the development of a 40-unit below market rate development (Mary Avenue Villas Project) on a Housing Element Site, of which 19 units are dedicated to the Intellectually Developmentally Disabled and 21 units reserved for extremely low, very low, and low income residents of the community, located on public property. (Application No(s): ASA-2025-006; Applicant(s): Charities Housing; Location: (APN: 326-27-053, Mary Avenue Right-of-Way).

Recommended Actions

1. Find the project exempt from the California Environmental Quality Act (CEQA)
2. Adopt Resolution No. 26-___ approving Architectural & Site Approval Permit (ASA-2025-006) (Attachment A);
3. Adopt Resolution No. 26-___ declaring the Property Exempt Surplus Land pursuant to the Surplus Land Act (Attachment B)
4. Adopt Resolution No. 26-___ approving the Disposition and Development Agreement (Attachment C)

Discussion

Project Data

General Plan Land Use Designation	Residential - High/Very High Density	
Zoning Designation	R4	
Lot Area	.79 acres	
	Allowed/Required	Proposed
Maximum Density	50 - 65 units per acre	50.6 units per acre
Height of Structures	Max. 70 feet	23 feet

Setbacks		
Front	<i>First Floor - 12 feet from property line Second Floor – 18 feet from property line</i>	4 feet from property line (Waiver Requested)
Sides	<i>1) First Floor – 10 feet 2) Upper Floor – 10 feet and additional 10 feet for floors more than one story higher than any adjacent primary residential structure.</i>	4 feet on southern side and 7 feet on northern side (Waiver Requested)
Rear	<i>1) First Floor – 30 feet 2) Upper Floor - 30 feet</i>	7 feet (Waiver Requested)
Usable Open Space		
Private	<i>48 square feet per unit and no dimension less than 4 feet</i>	0 square feet (Waiver Requested)
Project Consistency with:		
General Plan	Consistent under state density bonus law.	
Zoning	Consistent under state density bonus law.	

Executive Summary

This report outlines a project proposed by Charities Housing, for the development of a 40-unit below market rate development (Mary Avenue Villas Project) on a Housing Element Site located on City owned property within the Mary Avenue Right-of-Way. Consideration will be given to a Disposition and Development Agreement between the developer and the city, as well as Notice of Exempt Surplus Land Act Declaration for the sale of this parcel. The report covers the applicable State laws, including the Housing Accountability Act, Density Bonus law, CEQA and local standards applicable to the project.

Background

Since Fiscal Year (FY) 2020-21, the City Work Program prioritized engaging with philanthropic organizations to develop extremely low-income housing (ELI) for the intellectually and developmentally disabled (IDD) community. The FY 2021-22 City Work Program narrowed down this item to excess City-owned property within the Mary Avenue right-of-way (the “Project Site”). A Site Map of the .79-acre Project Site, as well as a Vicinity Map, is provided as Figure 1. The Adopted FY 2025-27 City Work Program continues to include this ongoing project.

Since 2022, the City has been working with Charities Housing to develop this site in accordance with the City Work Program. Further, on May 14, 2024, City Council adopted the



Figure 1 Site context

Housing Element, which designated this site as a Priority Housing Site (HE Site 10) and amended the General Plan Land Use designation of the property to High/Very High Density (50-65 dwelling units per acre). The site was subsequently rezoned in July 2024 to R-4 Residential, consistent with the High/Very High Land Use designation ¹.

The site is surrounded by a mix of residential and public uses, including the Westport Townhome development to the south, the Glenbrook Apartments to the east (across Mary Avenue), the Mary Avenue Dog Park to the north, and the Highway 85 on Ramp to the west.

Charities Housing submitted its development application (ASA-2025-006) for the 100% affordable housing project on April 3, 2025.

Project Proposal

The project applicant, Charities Housing, proposes a 100% affordable, forty (40) unit, two-story, apartment development. The individual apartments will be a mix of studio, one-, and two-bedroom units with one three-bedroom staff unit. The proposal is structured as a Special Needs project which requires a minimum of 45% (19 units) to be reserved for a special needs population, in this case, IDD. The remaining twenty-one (21) apartments will serve extremely low, very low, and low-income residents of the community. The affordability levels of the proposed units will range from 30% to 60% of the Median Income Area (AMI). The exact affordability mix by unit type is still to be determined, but the average affordability level for the entire development will not exceed 40% AMI. Based on the scope of the project, the City has required the following permits: Architectural and Site Approval².

¹ On September 4, 2024, HCD notified the City that the Housing Element adopted by the City Council on May 14, 2024, follows the State Housing Element Law. This included the Mary Avenue parcel as a Housing Element Site.

² As an approved Priority Housing Element Site (HE Site 10) that is under 50 units, this could be approved as an Administrative Review at an Administrative Hearing, exempt from CEQA and subject only to design review based on objective standards. However, City Council will ultimately be the decision-making body approving the lease and disposition agreement with Charities Housing for the development on site.

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 standard³ 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.

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 density⁴;
- Unlimited waivers to development standards that would physically preclude the construction of the project as designed⁵;
- Concessions that modify development standards to achieve an identifiable and actual cost reduction⁶; and
- Reduced parking standards⁷.

Since 100 percent of the project’s units will be affordable to very low-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 6 waivers and 2 concessions from applicable standards of the Zoning Code. These requests are discussed later in this report.

³ Unless otherwise waived or reduced through use of the Density Bonus law, discussed further below.

⁴ 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.

⁵ I.e., modifications or elimination of any development standard

⁶ Specified number of incentives as identified in state law based on the level of affordability and percentage of affordable units

⁷ 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

Architecture and Site Design

The proposal envisions a 100% affordable, 40-unit rental housing development, consisting of two, two-story buildings, on City-owned surplus property of approximately 0.79 acres along the west side of Mary Avenue right-of-way, adjacent to Highway 85. The buildings and site plan are tailored specifically to linear sites, which have dimensions of 860'x 38'. The individual apartments will be a mix of studio, one-, and two-bedroom units with one three-bedroom staff unit. The Mary Avenue right-of-way will be modified to accommodate the proposed development, as well as maintain the sidewalk, bike lanes, and vehicle lanes along Mary Avenue. Approximately 79 of the existing angled street parking spaces located along the west side of Mary Avenue, including those within the limits of the parcel, will be replaced by 33 parallel spaces in the right-of-way⁸. Along the eastern side of Mary Avenue, 43 parallel parking spaces will also be removed, resulting in a net-on-street parking loss of 89 spaces (79+43-33 spaces). Bike lanes in both directions will continue to be provided, with the addition of a sidewalk in front of the Project where one does not exist currently.

The proposed two-story building design fits within and complements the scale of the surrounding neighborhood, providing a linear and geometric design featuring projecting and recessing wall panels with differing wall plains, visual screens above outdoor areas and varying roof heights. The articulation and detailing of the building design keeps the structures at human scale. All 40 of the accessible residential units have access to a community center for neighborhood social activities. Along the buildings' frontages, trees and wood screens will line a meandering path with landscaped areas that provide shade for residents and passing pedestrians.

This building design, with a central parking area in the middle, meets the City's residential design guidelines, featuring a contemporary design style that a blend of geometric forms and varying colors.



Figure 2 View of the southern building and Community Center

⁸ The Transportation Study prepared by Hexagon Transportation Consultants, Inc., dated November 13, 2025, recommended line of site modifications to on street parking at the southern driveway which could have the potential of removing three of the proposed on-street parking spaces.

Analysis

General Plan Compliance

The proposed project consists of a residential development consistent with the site's General Plan Land Use Designation of Residential – High/Very High Density. The General Plan designation has a density range of 50-65 dwelling units per acre, which would allow the development of 40-51 units on the .79-acre site, without the inclusion of density bonus units. Thus, the proposed project is the fewest number of units allowed by the General Plan Land Use designation. Furthermore, Table B4-8: *Priority Housing Sites in Residential Zones – Additional Site Details* of Appendix B: Housing Element Technical Report, this site is identified as HE Site 10 with an intention to develop with IDD residents and specifically references this site as being developed as proposed by Charities Housing.

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, as well as its designation as a Housing Element Priority Housing Site, and the absence of any potential 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-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.
- **Policy HE-2.3: Development of Affordable Housing and Housing for Persons with Special Needs.** Make every reasonable effort to disperse affordable units throughout the community but not at the expense of undermining the fundamental goal of providing affordable units. Ensure that the City's development standards accommodate housing needed by persons with special needs.
- **Strategy HE-2.3.1: Support Affordable Housing Development.** Work with housing developers to expand opportunities for affordable lower-income housing

for special-needs groups, including persons with physical and developmental disabilities, female-headed households, large families, extremely low-income households, and persons experiencing homelessness by creating partnerships, providing incentives, and pursuing funding opportunities (Partial).

- Support affordable housing development and give priority to permit processing for projects providing 100 percent affordable housing for special-needs groups throughout the city, including in areas that are predominantly single-family residential. The target populations include seniors; persons with disabilities, including developmental disabilities; female-headed households; and persons experiencing homelessness to reduce the displacement risk for these residents from their existing homes and communities.
 - Promote the use of the density bonus ordinance, application process streamlining, fee deferrals, and consider development fee exemption for projects that are 100 percent affordable to encourage affordable housing, with an emphasis on encouraging affordable housing in high-resource areas and areas with limited rental opportunities currently.
- **Strategy HE-2.3.10: Extremely Low-income Housing.** The City will continue to encourage the development of adequate housing to meet the needs of extremely low-income households particularly for seniors, victims of domestic violence, and persons with disabilities (including persons with developmental disabilities), through a variety of actions. The development of housing for extremely low-income households will be facilitated citywide, but priority will be given to areas with currently low percentages of renter-occupied households to facilitate housing mobility and integration of ownership and rental units, including the Monta Vista North neighborhood. Additionally, priority will be given to areas with high rates of housing cost burden, such as the city's north side (Partial).
 - Provide financing assistance using the Below-Market Rate Affordable Housing Fund (BMR AHF) and Community Development Block Grant (CDBG) funds.
 - Grant reductions in off-street parking as required by density bonus law and other state statutes.
 - Partner with and/or support the funding application of qualified affordable housing developers for regional, state, and federal affordable housing funds, including HOME funds, Low-Income Housing Tax Credits (LIHTC), and mortgage revenue bond.
- **Strategy HE-2.3.11: Assistance For Persons with Developmental Disabilities.** To increase housing mobility opportunities and support persons with developmental disabilities, the City will (Partial):

- Encourage housing providers to designate a portion of new affordable housing developments for persons with disabilities, including persons with developmental disabilities, to increase housing mobility opportunities and pursue funding sources designated for persons with special needs and disabilities.

Density Bonus

The project scope is 100% of the total number of units proposed as Very Low-Income Units. A condition of approval has been included ensuring the recordation of a regulatory agreement with the City, prior to occupancy, requiring the designated BMR units to be rented to households at the specified income levels for a [55 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 findings⁹, as applicable:

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 high-density, multi-family projects to provide 2 parking spaces per dwelling unit (one covered and one open), State

⁹ 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.

Density Bonus Law provides its own parking ratios for qualifying projects, as in this case special needs housing. Specifically, the Density Bonus Law allows this qualifying project to provide parking at a ratio of 0.3 parking spaces per unit. No additional guest spaces are required under Density Bonus law provisions.

Number of Units	Parking Spaces under State Density Bonus Law	Parking Spaces Provided
40	12	22

As proposed by the applicant, each unit will provide approximately 0.5 spaces per unit (22 total spaces), when only 12 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. Front Setback (CMC § Table 19.38.070(C)(1))

The Municipal Code requires developments in the R-4 zone to maintain a front setback of 12 feet. The development proposes a front setback of 4 feet. If the proposed development were to accommodate the required front yard setback and upper floor setback, it would eliminate residential units and consequently decrease the proposed number of affordable housing units. As a result, complying with this standard would physically preclude development of the proposed units.

2. Side Setbacks (CMC § Table 19.38.070(C)(2))

The Municipal Code requires developments in the R-4 zone to maintain a minimum side setback of 10 feet for the first floor, with an additional 10 feet on the second floor. The following table indicates the required setback and the proposed waiver for the eight buildings for which waivers are requested:

Building	Required Side Setback	Proposed Side Setback
North	1) First Floor – 10 feet	7 feet
South	2) Upper Floor – 10 feet and additional 10 feet for floors more than one story higher than any adjacent primary residential structure.	4 feet

If the proposed development were to accommodate the required interior side yard setbacks and upper floor stepbacks, it would eliminate residential units and consequently decrease the proposed number of affordable housing units.

As a result, complying with this standard would physically preclude development of the proposed units.

3. Rear Setback (CMC § Table 19.38.070(C)(3))

The Municipal Code requires developments in the R-4 zone to maintain a minimum rear setback of 30 feet. 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 development proposes a rear setback of 7 feet.

The applicant states that imposing the rear setback requirement would result in the elimination of units, reduce 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.

4. Private Outdoor Space (CMC § Table 19.38.070(D))

The Municipal Code requires developments in the R-4 zone to provide a minimum of 48 square feet of private open space per unit. The proposed development does not provide private outdoor space for every unit. If the proposed development were to accommodate this standard, it would require additional space in exchange for housing units to provide private outdoor space for every unit. As a result, complying with this standard would physically preclude development of the proposed units.

5. Maximum Number of Vehicles in Front or Street Side Setback (CMC § 19.124.030 (A)(1)(a))

The Municipal Code requires that a development shall not have more than 6 vehicles within the front or side yard setbacks. The on-site parking lot is within the front yard setback zone. There are 20 stalls in the setback area, which exceeds the maximum 6 spaces requirement.

To accommodate the proposed number of parking spaces, the development must include the 22 parking spaces in the front yard setback area. If the development were to include these spaces outside the setback area, the proposed development would have to reconfigure the design and unit layout of the buildings. This would consequently impact and reduce the proposed residential density and units.

6. Bicycle Parking (CMC § 19.124.040(P))

The project is required to provide One Class I space per two residential units. The proposed development includes 16 inverted “U-type” bike racks (Class II – short term), which hold two bicycles per rack. This brings the total number of bicycle spaces to 32 spaces.

If the proposed project were to accommodate Class I bicycle spaces, it would require additional space within the buildings to provide a secure and weather-protected bicycle room. Consequently, this would eliminate space for residential units, in exchange for a secure bicycle room.

As a result, complying with this standard would physically preclude development of the proposed units.

Concession Requested

As a density bonus project with 100% of units reserved for lease to very low-income households, 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. Electric Vehicle (EV) Charging – Residential (CMC § 16.58.400)¹⁰

The Municipal Code requires that in new residential construction, forty percent (40%) of the proposed dwelling units with parking spaces shall be EVCS (i.e., electrical vehicle charging station) with Level 2 EV Ready. An Automatic Load Management System (ALMS) shall be permitted to reduce load when multiple vehicles are charging. Sixty percent (60%) of dwelling units with parking spaces shall be provided with at minimum a Level 1 EV Ready space. EV ready spaces and EVCS in multifamily developments shall comply with California Building Code, Chapter 11A, Section 1109A. EVCS shall comply with the accessibility provisions for EV chargers in the California Building Code, Chapter 11B.

This request is for the developer to comply with the State's (Cal Green) EV parking requirements, which are 40% of the proposed parking spaces equipped with low power Level 2 chargers and 10% with Level 2 chargers.

The City of Cupertino requires 100% operational charging for the proposed parking spaces, which is not feasible for 100% affordable housing development. Complying with this requirement would cost approximately \$5,000 per parking space.

The City of Cupertino's EV Parking requirements are not feasible for the proposed 100% affordable housing development and avoiding 100% operational EV charging spaces will result in actual and identifiable cost savings for the project.

¹⁰ CMC 16.58.400 *Electric vehicle (EV) Charging—Residential* allows for exceptions where there is evidence suitable to the local enforcing agency substantiating that additional local utility infrastructure design requirements, directly related to the implementation of Section 4.106.4, may increase construction cost by an average of \$4,500 per parking space for market rate housing **or \$400 per parking space for affordable housing. EV infrastructure shall be provided up to the level that would not exceed this cost for utility service.**

The financial burden of providing additional EV parking infrastructure would significantly impact the project's feasibility, particularly in terms of providing affordable housing units.

2. Permitted Artwork (CMC § 19.148.030)

The Municipal Code requires a minimum expenditure for the artwork, including but not limited to design, fabrication, and installation, to be one percent of the construction valuation, with the following tiers:

- 1% of the first \$100 million of construction valuation.
- 0.9% of construction valuation for valuation in excess of \$100 million.

Complying with this requirement would cost approximately \$200,000 (1% of \$20 million construction) or cost up to \$5,000 per affordable housing unit. The City of Cupertino's artwork requirements are not feasible for the proposed 100% affordable housing development and avoiding the artwork requirement would result in actual and identifiable cost savings for the project.

Vacation of Public Right-of-Way

The property proposed for this development (APN 326-27-053) is currently part the public right-of-way along the west side of Mary Avenue. Should the project be approved, the City will need to vacate this portion of Mary Avenue to facilitate the project's construction per Streets and Highways Code Section 8320. "Vacation" of a street means that the City would terminate the public rights over this portion of right-of-way. A future City Council meeting will be scheduled to vacate the portion of right-of-way.

The actions for the vacation of the subject right-of-way are:

- a. At Least 15-days Prior To the Public Meeting: Staff will initiate public noticing, which will include posting notices at the property. The noticing will set the place, date, and time of the public meeting.
- b. Date of Public Meeting: City Council will conduct a public hearing to consider the adoption of a resolution to vacate the portion of public right-of-way. The adopted resolution vacates the subject portions of Mary Avenue right-of-way. Staff will record the resolution of vacation at the closing of the transaction, which completes the vacation process.

Staff has determined that adoption of the resolution to vacate the project site's portion (APN 326-27-053) of the Mary Avenue right-of-way to facilitate the housing envisioned in the Housing and Land Use Elements of the General Plan Housing can occur without adverse effect.

Disposition and Development Agreement (DDA) Summary

The City is recommending approval of a Disposition and Development Agreement by and between Mary Avenue, L.P., a California limited partnership (Developer) and City

(DDA) in connection with the sale and development of the previously described 40-unit below market rate affordable housing development (Project) on Assessor Parcel No. 326-27-053 is located along the west side of the Mary Avenue Right-of-Way (Property). Council approval of the DDA authorizes the framework and terms under which the Project may proceed but subject to specific conditions which must be satisfied prior to transfer of the Property.

Approval and execution of the DDA allows Developer to move forward with predevelopment activities, including securing financing (including tax credits), entitlements, and other approvals, all in accordance with the conditions and requirements set forth in the DDA. Closing of the transaction will occur at a later date, and only after all City's conditions precedent in the DDA have been satisfied, including (as applicable) financing approvals, recordation of the affordability restriction, and satisfaction of all other specified City requirements. **Title to the Property will not be conveyed to Developer until closing pursuant to the DDA.**

The DDA contains the financial terms, schedule, and obligations to implement this development, including the following:

1. **Financing.** The total estimated cost of the project is \$39,228,679, including both hard and soft costs of constructing the Project.

The City shall provide financial assistance to the Project as follows:

- a. Selling the Site valued at \$7,200,000 to Developer for the price of \$1.00;
- b. A hard money loan of \$3,000,000 from City's Below Market Rate Fund (BMR Loan);
- c. A grant of \$174,567.37 from City's Community Development Block Grant Fund (CDBG Grant);
- d. A loan of \$908,683 from City's Permanent Local Housing Fund administered by the county (PLHA Loan); and
- e. Waiver of Park Development Fees in the amount of \$2,160,000.

Developer anticipates submission of an application for 9% tax credits on or before April 15, 2026, which is the first filing deadline date in 2026.

The DDA provides that the transaction cannot close until all financing for the Project is in place subject to City's approval. Should Developer not receive an award of tax credits in the first round of applications in 2026, Developer has the right to submit an application for the subsequent round. If tax credits are not awarded to Developer in the second round, City and Developer will meet and confer to determine whether a third tax credit application is viable. Neither party is obligated to continue the DDA after 2 failed attempts to secure tax credits unless

mutually agreed. In summary, if the tax credits are not received in the second round, City has the right to terminate the DDA.

2. **Project Construction.** If Developer obtains the tax credit award in the first round, construction will commence after the Closing which is estimated to be around January of 2027 and is expected to be completed in approximately 24 months. Should Developer fail to secure tax credits in the first application round for 2026, this proposed schedule will be delayed.
3. **Option to Reacquire Property.** City has the option (but not the obligation) to reacquire the Property (Option) upon expiration of the Regulatory Agreement (in 55 years) for an amount equal to the fair market value of only the improvements at that time (specifically excluding value attributable to the land as determined by an MAI-certified appraiser mutually acceptable to the parties) (Reacquisition Price). The Reacquisition Price will not include the value of the underlying real property as it was donated to the Project for \$1. City will prepare a standard purchase and sale agreement to reflect the transfer of the Property for the Reacquisition Price which will include standard terms such as a grant deed, a title insurance policy, all real estate taxes paid current, removal of all recorded liens and repayment of all remaining amounts under City loans including, but not limited to, the BMR Loan and PLHA Loan. Upon expiration of the Regulatory Agreement, Developer may provide written notice to City regarding the Option which will trigger the requirement for City to exercise the Option to reacquire within 12-months of such notice. If that notice is not provided, the Option remains in effect.
4. **Regulatory Agreement and Declaration of Covenants and Restrictions (Regulatory Agreement).**

At the Closing under the DDA, the Property will be subject to a recorded Regulatory Agreement in City's favor for a term of 55 years which restricts the use of the Property by imposing mandatory affordability requirements and procedures for administering the affordable housing program, and restricts the rental of the units in the Project, including requirements such as:

1. Eligibility will be limited to persons who qualify as low, very low, or extremely low income;
2. Eligibility with respect to 19 units will be limited to households containing a person with an intellectual or developmental disability;
3. Priority will be given to a list of qualified tenants (See #1 & 2 above) approved through City's Below Market Rate Housing Program and provided by City to Developer from time to time;

4. Priority will also be extended for (i) displaced persons entitled to a preference pursuant to Government Code 7260 et. seq., (ii) persons identified pursuant to City's priority point system for placement as set forth in the BMR Admin Manual; and (iii) other persons meeting the eligibility requirements of this Agreement; and
5. Developer will be required to provide to City annually a Certificate of Continuing Program Compliance.

5. Surplus Land Act Exemption. City will declare the Property as exempt surplus land pursuant to the Surplus Land Act (SLA). The Project qualifies for an exemption under the Surplus Land Act pursuant to Government Code Section 54220(f)(1)(A) because it will be conveyed in fee to a nonprofit developer for the development of affordable housing in accordance with Government Code Section 25539.4. The proposed Project provides 100% affordable housing, including units restricted to extremely low, very low, and low income households. Adoption of a Notice of Exempt Surplus Land Act Declaration satisfies City's statutory obligations under the SLA and authorizes the disposition of the Property for the Project. Upon adoption of the resolution declaring the Property as exempt surplus, City must send the resolution and the DDA to the California Department of Housing and Community Development (HCD) for review. HCD has 30 days to respond to City confirming the Property is exempt under the SLA. Receipt of the HCD notice is a condition precedent to City's obligations in the DDA.

Environmental Review

Under California Government Code § 65583.2(i) and City Code Section 19.12.030, the proposed entitlement is not considered a "project" subject to CEQA. The development meets all statutory requirements for this exemption, specifically regarding its location on a Housing Element site, its programming as a 100% affordable status, and it's with a density of over 20 dwelling units per acre.

The proposed DDA, pursuant to the requirements of the California Environmental Quality Act (CEQA), is not a development project, however, it would facilitate the construction and operation of a future 100% affordable housing development (future development) in Cupertino that is exempt from CEQA. The proposed DDA project qualifies for an exemption under State CEQA Guidelines Section 15332 (Class 32: Infill Development Projects) and, as a result, would not have a significant effect on the environment. No exceptions to the infill exemption, as identified in State CEQA Guidelines Section 15300.2, apply to the proposed project. Please refer to Attachment C, Notice of Exemption for further details.

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.

Public Outreach and Noticing

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

Notice of Public Hearing, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none">▪ Site Signage (<i>14 days prior to the hearing</i>)▪ Legal ad placed in newspaper (<i>at least 10 days prior to the hearing</i>)▪ Public hearing notices (approximately 450) were mailed to property owners within a custom range that incorporated the Garden Gate Neighborhood from Stevens Creek Boulevard to the south (including De Anza College), Highway 280 to the north, Highway 85 to the west, and the parcels along Castine Avenue to the east (<i>10 days prior to the hearing</i>)	<ul style="list-style-type: none">▪ Posted on the City's official notice bulletin board (<i>five days prior to the hearing</i>)▪ Posted on the City of Cupertino's website (<i>five days prior to the hearing</i>)

Charities Housing has proactively conducted three community outreach efforts at the Quinlan Center on the following dates and locations:

- Community Listening Session #1, July 23, 2024
- Community Listening Session #2, January 28, 2025
- Community Open House, September 11, 2025

Public Comment

Please refer to Attachment E for full comments.

Sustainability Impact

The project was reviewed by the Sustainability Division and the applicant completed the required Climate Action Plan Consistency Checklist. The project has been found to be exempt from CEQA through AB130 and therefore it is expected that there will be no sustainability impact.

Fiscal Impact

Costs associated with this work program item are budgeted in the BMR Housing Fund 265-72-71 750-052. No additional fiscal impact would incur should the City Council direct the remaining appropriated funds to be utilized for the entitlement review. Should the City Council deny the use of the appropriated funds, the remaining amount would remain to the City's BMR Affordable Housing fund for future uses.

On April 15, 2025, the City Council authorized an allocation of \$4,083,250 of cash assistance to the Project. The allocation is comprised of \$3 million of funds from the City's BMR Affordable Housing Fund, \$908,683 of Permanent Local Housing Allocation (PLHA) funds, and \$174,567.37 of CDBG funds to be used for public infrastructure

improvements. These three allocations will provide a total of \$4,083,250 in cash assistance to the Project.

City Work Program (CWP) Item/Description

Preserve existing and develop new BMR/ELI Housing: Explore opportunities to preserve existing expiring BMR housing. Develop ELI (Extremely Low Income) and BMR housing units for Developmentally Disabled individuals (IDD) on City-owned property as well as the County owned sites.

City Council Goal

Housing, Quality of Life

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 Chapter 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 City Council's decision will be final unless a request for reconsideration petition is filed in compliance with CMC 2.08.096 within 10 days of the notice by the Council of their decision. If the project is approved, the applicant may apply for building permits at that time.

Prepared by: Gian Paolo Martire, Senior Planner

Reviewed by: Luke Connolly, Assistant Director of Community Development

Benjamin Fu, Director of Community Development

Floy Andrews, Interim City Attorney

Approved for Submission by: Tina Kapoor, City Manager

ATTACHMENTS:

- A. Draft Resolution for ASA-2025-006
- B. Draft Resolution Declaring Exempt Surplus Land
- C. Draft Resolution Approving the Disposition and Development Agreement
- D. CEQA Exemption Memorandum
- E. Public Comment
- F. Project Plan Set