



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION STAFF REPORT

Meeting: November 12, 2025

Subject

Consideration of a new residential development project consisting of 55-townhome-condominium units and 10 ADUs, housed within ten three-story buildings, on three contiguous parcels, totaling 2.72-acres, located on the south side of Stevens Creek Boulevard at the present location of the Idlewild Shopping Center/United Furniture. (Application No(s): DP-2024-004, ASA-2024-008, TM-2024-005, & U-2025-004; Applicant(s): Nick Kosla (Toll Brothers); Location: 10075 E. Estates & 19610 Stevens Creek Blvd. (A.P.N.: 369-06-002, - 003, -004)

Recommended Actions

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

1. Find the project exempt from the California Environmental Quality Act (CEQA) and
2. Approve the following permits:
 - a. Development Permit (DP-2024-004) (Attachment 1);
 - b. Use Permit (U-2025-004) (Attachment 2);
 - c. Architectural & Site Approval Permit (ASA-2024-008) (Attachment 3);
 - d. Tentative Final Map (TM-2024-005) (Attachment 4)

Discussion

Project Data

General Plan Land Use Designation	Commercial / Office / Residential at a maximum residential density of 25 du/acre*	
Special Planning Area	Heart of the City Specific Plan (East Stevens Creek Boulevard subarea)	
Zoning Designation	P(CG, Res)	
Lot Area	2.72 acres (gross), 2.68 acres (net)	
	Allowed/Required	Proposed
Maximum Density	Up to 25 units per acre*	20.52 units per acre

Height of Structures	Up to 45 feet measured from sidewalk to top of cornice, parapet, or eave line of a peaked roof.	44'-4 1/2"
Setbacks		
Front	35 feet from edge of curb	35 feet from edge of curb
Sides	One-half height of building (20'-8")	10 feet <i>(Waiver Requested)</i>
Rear	One and one-half height of building (62'-2")	11" – Richwood Drive <i>(Waiver Requested)</i>
Usable Open Space		
Common	150 square feet per unit (8,250 square feet)	28,242 square feet
Private	60 square feet per unit and no dimension less than 6 feet	Average per unit 396 square feet
Project Consistency with:		
General Plan ¹	Consistent under SB330 and state density bonus law. Density bonus concession for mixed-use requirement requested	
Specific Plan ²	Consistent under state density bonus law. Density bonus waivers requested for setbacks, common open space design, and retail requirements	
Zoning	Consistent under SB330 and state density bonus law. Density bonus waivers requested for lot coverage.	
<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 submitting a SB330 preliminary application apply. While the site is a Housing Element site (Priority Housing Site no(s). 34-36) in the 6th Cycle Housing Element, and has a minimum density of 65 du/ac and a maximum density of 80 du/ac, under SB330 the applicable residential is 25 du/ac.</i>		

¹ 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*_czE3NDkwMDIwNzAkY2I_GcxJHQxNzQ5MDAyMDgwJGo1MCRsMCRoMA..

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

Background

On July 31, 2024, the City received an application to redevelop the property located at 10075 E. Estates & 19610 Stevens Creek Blvd., known as the Idlewild Shopping Center/United Furniture site. The project site is located within the East Stevens Creek Boulevard subarea of the Heart of the City (“HOC”) Specific Plan Area.

The 2.68 net-acre property is bounded by Stevens Creek Boulevard to the north, East Estates Drive to the east, and Richwood Dr. to the south. The site abuts single-family residences along Richwood Drive to the south, Marketplace Shopping Center to the west, and The Rise development site to the north. (See Figure 1)

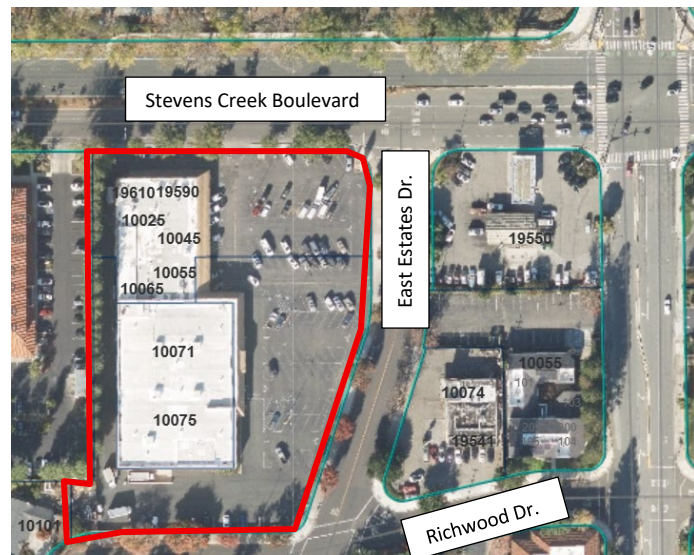


Figure 1 Site Location

One multi-tenant, 35,170 square foot commercial building is currently located onsite, which includes an operating furniture store (United Furniture) and several vacant spaces. The project site was designated as a Priority Housing Site through the adoption of the City’s 2024 Housing Element update in May 2024 and rezoned two months later in July to accommodate high-density residential development, consistent with the site’s location on Stevens Creek Boulevard. However, at the time the SB330 preliminary application was submitted in February 2024, the City did not have a certified Housing Element and the development standards in place at that time were essentially “locked in” by the submittal of the preliminary application.³

Therefore, 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 February of 2024. The “P” zoning designation is detailed in Cupertino Municipal Code Chapter 19.80 Planned Development Zones. The “P” zoning designation is intended to provide a means of guiding land development or redevelopment within the city that is uniquely suited for planned coordination of land uses and land development. Where residential development is proposed on properties in the Planned Development zoning district, and where the Specific Plan is silent, development must adhere to Multifamily (R-3) zoning regulations. Principally, the proposed project consists of 55 townhome-style

³ Housing Element available online at: www.cupertino.gov/gp. See Table B4-9 in Appendix B.

condominiums. Review of the project is limited by several State laws including the Housing Accountability Act, the Housing Crisis Act (SB330) and Density Bonus Law.

Housing Accountability Act

The Housing Accountability Act (HAA), codified in California Government Code § 65589.5, prohibits cities from disapproving, or adding conditions of approval that would render infeasible a housing development project unless the proposal is found to be in violation of an objective general plan or zoning standard⁴ or the project will result in a specific adverse impact to public health and safety. While changes to the project may be applied by the decision-making, or hearing, body to further applicable City goals, policies, and strategies – any changes required by the decision-making, or hearing, body that are not based on objective standards may not result in making the project, as proposed, infeasible or reduce the number of housing units.

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

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

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

In summary, the proposed project is governed by a SB330 preliminary application submitted on February 7, 2024, and, in accordance with the requirements of the HCA, the project was reviewed under the requirements in effect at that time. As noted previously, the project site is 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’s adoption in May 2024, three months after the preliminary application was received by the City.

⁴ 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 density⁵;
- Unlimited waivers to development standards that would physically preclude the construction of the project as designed⁶;
- Concessions that modify development standards to achieve an identifiable and actual cost reduction⁷; and
- Reduced parking standards⁸.

Since 20 percent, or 11 of the proposed 55 town homes, of the project's units will be affordable to moderate and median income households, consistent with the City's Below Market Rate (BMR) requirements, the project is eligible for a density bonus. It is important to note that, while qualifying projects are allowed to increase their density and total number of units proposed, an applicant may elect to only utilize the available waivers, concessions, or the reduced parking standards, without providing additional density bonus units, as is the case with the subject project.

The project includes a request for 6 waivers from applicable standards of the General Plan, HOC, and Zoning Code. These requests are discussed later in this report.



Figure 2 Site Plan

Project Proposal

The project applicant, Toll Brothers, is proposing a 55-unit townhome-condominium development, including 10 Accessory Dwelling Units (ADU). The project consists of ten

⁵ 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.

⁶ I.e., modifications or elimination of any development standard

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

⁸ 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

buildings, three stories in height, with individual units ranging in size (including garage space) from 2,011 square feet to 2,780 square feet. As required by the City's Below Market Rate (BMR) Housing Program, eleven of the units will be allocated as affordable housing units for sale to median- and moderate-income households.⁹). Based on the scope of project, the City has required the following permits: Development Permit, Use Permit, Architectural and Site Approval, and a Vesting Tentative Map.

Architecture and Site Design

The applicant has proposed a "Contemporary" style development, defined by a flat-roofed style featuring rooftop decks and generous window areas. Exterior materials include stucco in white and grey tones, cultured limestone masonry and glass deck railings. Given the prominent street frontage of Stevens Creek Blvd., this architecture style was chosen to promote the development of a more contemporary, urban style. The landscape design proposed enhances the architecture with a diverse mix of evergreen and flowering shrubs and groundcovers along with grasses and succulents. Evergreen and deciduous flowering trees will provide seasonal interest while also providing valuable shade for residents. A central open amenity space with a shade pavilion, picnic tables, lounge seating, bicycle racks, and modern Adirondack-style chairs will provide a valuable outdoor living area. Existing street trees will be retained and provide a mature landscape along the perimeter of the project and a strong aesthetic to the proposed project. The project also features a network of accessible paseos and walkways.

Analysis

General Plan Compliance

The proposed project consists of a residential development consistent with the site's General Plan Land Use Designation of Commercial/Office/Residential.¹⁰ The General Plan designation allows a maximum density of 25 dwelling units per acre, which would

⁹ 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.

¹⁰ While the General Plan requires the development of the property using the Commercial Centers and Mixed-use Village concept, when a residential development is proposed, state law, under SB330 prohibits the City from applying any non-objective standards. The General Plan language describing the Mixed-use Village concept is subjective and therefore, cannot be applied to the project. In addition, since this project utilizes the provision of Density Bonus, the developer would have the option to invoke unlimited waivers to propose the 100% residential project, as designed.

allow 67 units for the 2.68-acre site. The project offers 55 units, as permitted by the General Plan density in effect when the SB330 Preliminary Application was submitted.

The City's General Plan Land Use Element Strategies LU-1.3.1 (1) and LU-15.1.1 require all mixed-use areas with commercial zoning to provide retail as a substantial component of a project and Land Use Element Strategy LU-1.3.1 (4) requires a Conditional Use Permit to be approved when housing is proposed on non-Housing Element mixed-use sites¹¹. The project applicant is requesting a Density Bonus waiver to waive the requirement for retail to be a substantial component of a project in this zoning category. The waiver 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.

- **Policy LU-2.2: Pedestrian-Oriented Public Spaces.** Require developments to incorporate pedestrian-scaled elements along the street and within the development such as parks, plazas, active uses along the street, active uses, entries, outdoor dining & public art.
- **Policy LU-3.3: Building Design.** Ensure that building layouts and design are compatible with the surrounding environment and enhance the streetscape and pedestrian activity.
- **Strategy LU-3.3.10: Entrances.** In multi-family projects where residential uses may front on streets, require pedestrian-scaled elements such as entries, stoops and porches along the street.
- **Policy LU-27.2: Relationship to the Street.** Ensure that new development in and adjacent to neighborhoods improve the walkability of neighborhoods by providing inviting entries, stoops and porches along the street frontage, compatible building design and reducing visual impacts of garages.

¹¹ 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 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 – East Stevens Creek Boulevard Subarea. The City’s HOC Specific Plan establishes heights, setbacks, and other development requirements for projects on sites within this area. The proposal includes several density bonus waivers for setbacks, common space design, 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, according to staff’s review, are consistent with the remaining applicable requirements of the HOC Specific Plan.

Vesting Tentative Map

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

Use Permit

The project proposal requires a Use Permit to allow the development of residential units on a non-Housing Element site.¹² 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

¹² 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 5th Cycle Housing Element.

proposes building exclusively residential units and is therefore required to obtain Conditional Use Permit approval.

Park Land Dedication

Under Cupertino Municipal Code Section 13.08.050(A), proposed developments of more than 50 units must provide park land on site and/or pay an in-lieu fee for the required park land dedication. The project would be required to provide approximately 0.42 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 facilities¹³, staff recommends the payment of an in-lieu fee rather than requiring the 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 \$2,376,000 for the 44 proposed market rate units.¹⁴ As this request is consistent with staff's recommendation and conditions of approval, a waiver of the park land requirement is not required. However, according to the City's BMR Program, the in-lieu payment of park land dedication fees for the BMR units is waived¹⁵.

Density Bonus

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

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.

¹³ Wilson Park is located 0.23 miles to the southwest and Creekside Park is located 0.26 miles to the southeast of the project site.

¹⁴ Due to the SB330 nature of the project, the Park Fees payable are those in effect as of January 2024.

¹⁵ The 10 ADUs are not subject to the Park in-lieu fee.

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 findings¹⁶, 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 townhome projects to provide 2.8 parking spaces per dwelling unit, State Density Bonus Law provides its own parking ratios for qualifying projects. Specifically, the Density Bonus Law allows qualifying projects to provide parking at a ratio of 1 parking space per studio to one-bedroom unit; 1.5 parking spaces per two- or three-bedroom unit; and 2.5 parking spaces per four- or more-bedroom unit. No additional guest spaces are required under Density Bonus law provisions. Further, the Project cannot be required to provide any parking for the ADUs in accordance with State Law.

Unit Type	Number of Units	Parking Spaces
Two Bedroom	10	15
Three Bedroom	10	15
Four Bedroom	35	88

¹⁶ 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.

	55	118
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As proposed by the applicant, each unit will provide two enclosed garage spaces (110 total spaces), with 9 additional spaces for guests, for a total of 119 spaces onsite.

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. Side Setbacks (HOC Specific Plan Section 1.01.030)

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

Building	Height	Required Side Setback	Proposed Side Setback
6	44'-2"	20'-8"	West abutting the Marketplace Shopping Center: 10' to building face and 17' to porch.
7	44'-2"	20'-8"	

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.

2. Rear Setback (HOC Specific Plan Section 1.01.030)

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

table indicates the required setback and the proposed waiver for the two buildings for which waivers are requested:

Building	Height	Required Rear Setback	Proposed Rear Setback
9	44'-2"	62'-2"	South facing Richwood Drive: 9' to porch 11' to building face
10	44'-2"	62'-2"	

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.

3. 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 one building (Building 9) located adjacent to single-family residentially developed parcels to the southwest. 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 9.

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

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

The Municipal Code requires that a development subject to the requirements of the R-3 zoning district has a maximum lot coverage of 40% of the net lot area. The proposed project has a net lot area of 2.68 acres or 116,740 square feet and would be allowed to have a maximum lot coverage of 46,696 square feet under Section 19.36.070 (A). The applicant has, therefore, requested a waiver to increase the lot coverage allowed for the project to accommodate a total lot coverage of 43% of the net lot area, or 50,198 square feet of building or surface area.

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

5. 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. Consistent with the previously discussed General Plan Land Use Element Strategy LU-1.3.1 (1), these standards generally require that retail or commercial uses be provided on site. The applicant is requesting that this standard be waived using a Density Bonus waiver. Complying with this standard would require the Project dedicate a significant share of the Property to non-residential uses because the retail/commercial use is the primary use. Doing so would reduce the overall number of residential units developable on the Property. Consequently, adherence to this retail/commercial use requirement physically precludes development of the Project at the proposed density.

6. HOC Specific Plan Section 2.01.010 (G)

Section 2.01.010 (G)(1) & (2) require certain design standards for common landscape and hardscape areas. These include that landscaped green and/or garden space comprise between 70% and 80% of common outdoor space and that this be in a courtyard, side yard, or rear yard. These areas should be rectilinear and enclosed by certain structures or landscaping. Further, common hardscape space that is provided should be 20% and 30% of common outdoor space and should be in the form of unit-paved or gravel areas and connected directly to the required landscaped space by stairs, walks, and/or ramps. Adhering to these requirements for common areas could result in the loss of units through site design, thus the applicant requests a waiver from these requirements.

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
BMR Units	7	4	2,546 square feet
	2	2	2,020 square feet
	2	3 + ADU	2,567 square feet
Market-Rate Units	28	4	2,546 square feet
	8	2	2,020 square feet
	8	3 + ADU	2,567 square feet

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

No Net Loss Discussion (SB166)

California Government Code Section 65863 (No Net Loss Law) requires cities to ensure development opportunities remain available to accommodate the City's regional housing need allocation (RHNA), especially for lower- and moderate- income households by maintaining adequate sites to accommodate the unmet RHNA for each income category. Through the 6th Cycle Housing Element's adoption in May 2024, the City designated new Priority Housing Sites, which are anticipated to provide the units to meet the City's RHNA for each income category. The City estimated the number of units, by income category, that are expected to be developed on each of these sites, resulting in the estimated unit counts shown in the table below. As noted previously, the project site is listed as a Priority Housing Site (the project site includes three Priority Housing Sites, Sites 34 through 36) in the City's 6th Cycle Housing Element. While the project site is not subject to the land use and housing density requirements established through the adoption of the 6th Cycle Housing Element (see SB330 discussion above), the City is nonetheless required to evaluate the project's impacts on expected housing production under Government Code Section 65863.

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

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

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

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

	Income Category		
	Lower Income (30-80% AMI)*	Moderate (80- 120% AMI)	Above Moderate (>120% AMI)
6 th 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
Current Capacity – all sites	1,978	823	2,935
Current Surplus – all sites	98	80	1,029
Units <u>Projected</u> on Sites 34-36	0	93	70
Units <u>Proposed</u> on Sites 34-36	0	11	44
Unmet 6th Cycle RHNA	1,880	732	1,862
Remaining Capacity	1,978	730	2,865
Remaining Surplus – all Sites	98	(2)	1,003
* Includes Very Low- and Low-Income			

As indicated in the table, the City will not be able to make the findings of No Net Loss with the approval of this project¹⁷ since the surplus of 80 Moderate income units shown in the table will be reduced to a deficit of two units. The Housing Element estimated 93 Moderate (the "Moderate" designation, as used in the Housing Element, includes both

¹⁷ It is noted that there are two projects currently under review by the City, which vested lower densities than those adopted with the May 2024 Housing Element update under the provisions of SB330. These include the Dividend Homes proposal near Randy Lane and the Harvest Properties proposal at the Stevens Creek Office Center.

Moderate- and Median-income units) units would be developed on Priority Housing Site 34-36 and only 11 are proposed, resulting in a shortfall of 82 Moderate income units, for a deficit of two.

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 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-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 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).

A SB330 Preliminary Application was submitted for this project in February 2024, locking in the development standards in effect at that time. The General Plan land use designation for the property was Commercial/Office/Residential with a maximum residential density of 25 dwelling units per acre.. The residential use at the proposed 20.52 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 waivers for the development of this site to allow exclusively residential uses, setbacks, lot coverage, and common space 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 Categorical 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, concessions, parking reduction and/or waivers, 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 11 Below Market Rate (BMR) units or 20% 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 five 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.

No concession is being requested.
 - 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 donation of land 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 child care facility 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 condominium conversion 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, common area 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 California 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 preliminarily 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 the 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 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 building 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 consists of the redevelopment of three retail buildings (the tallest of which was approximately 43 feet) with ten, new, three-story townhome-style buildings. The adjacent commercial center building to the west of the property has a similar massing and the surrounding office buildings on Stevens Creek Boulevard are 3-4 stories in height. The proposed residential buildings are approximately 15 - 20 feet taller than the existing commercial 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 identified in the General Plan and Heart of the City Specific Plan. The buildings meet the design qualities of modern, contemporary development. The architectural style is consistent throughout the development and is complementary to the mix of architecture in the area. 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 per 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.

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. 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.

E. No Net Loss Finding

The remaining sites identified in the Housing Element are not adequate to meet the requirements of Government Code Section 65583.2 in order to accommodate the City's share of regional housing needs. (Findings required by Government Code Section 65863(b)(2).)

The remaining sites in the housing element inventory are inadequate to meet the requirements of Government Code Section 65583.2 and to accommodate the City's share of the regional 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. The Priority Housing sites in the inventory are not adequate to accommodate the City's share of the regional lower income housing need, in that a deficit of two Moderate-income units will result following the approval of the project, as proposed.

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 6) has been prepared to demonstrate compliance with the 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:

Notice of Public Hearing, Site Notice & Legal Ad	Agenda
▪ Site Signage (14 days prior to the hearing) ▪ Legal ad placed in newspaper (at least 10 days prior to the hearing)	▪ Posted on the City's official notice bulletin board (five days prior to the hearing)

▪ Public hearing notices were mailed to property owners within 500 feet of the project site (<i>10 days prior to the hearing</i>)	▪ Posted on the City of Cupertino's website (<i>five days prior to the hearing</i>)
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The applicant has completed community outreach to residents and property owners.

Public Comment

At the time this staff report was published, staff had received one letter of support for the project. Please refer to Attachment 7 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 18.28, 19.56, 19.156, and 19.168 of the Cupertino Municipal Code. With respect to the requested Density Bonus concessions and waivers, evidence in the record demonstrates that the project meets the standards for granting the concessions and waivers under the State Density Bonus Law.

Next Steps

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

Prepared by: Gian Paolo Martire, Senior Planner

Reviewed by: Luke Connolly, Assistant Director of Community Development

Approved by: Benjamin Fu, Director of Community Development

ATTACHMENTS:

1– Draft Resolution for DP-2024-004

2 - Draft Resolution for U-2025-004

3 – Draft Resolution for ASA-2024-008

4 – Draft Resolution for TM-2024-005

5 – Categorical Exemption Memorandum

6 – Public Comment

7 – Project Site Plan and Renderings