CITY OF CUPERTINO

COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: March 17, 2026

Subject

Consider a Tentative Map, Architectural and Site Approval, and Tree Removal Permit for the construction of a 51-unit townhome condominium development on Housing Element Priority Housing Sites 25 through 28[1]. The project utilizes Senate Bill 330 and provisions of State Density Bonus law. (Application No(s): TM-2024-009, ASA-2024-015, TR-2024-044; Applicant: SummerHill Homes, LLC; Location: 10857, 10867, 10877, and 10887 Linda Vista Drive; APNs: 356-06-001, -002, -003, and -004).

Recommended Action

1. Find the project exempt from the California Environmental Quality Act (CEQA);
2. Make the required findings of No Net Loss (SB 166); and
3. Approve the following permits:
    a. Adopt Resolution No. 26-XXX approving Tentative Final Map (TM-2024-009) (Attachment A);
    b. Adopt Resolution No. 26-XXX approving Architectural & Site Approval Permit (ASA-2024-015) (Attachment B); and
    c. Adopt Resolution No. 26-XXX approving Tree Removal Permit (TR-2024-044) (Attachment C).

Executive Summary

This report outlines a project proposed by SummerHill Homes, LLC, for a 51-unit townhome development located across four existing residential properties. The report covers the applicable State laws, including the Housing Accountability Act, Housing Crisis Act, No Net Loss law, and Density Bonus law, and local standards applicable to the project. Finally, the report summarizes the findings necessary for the Council to take action on the project.

Reasons for Recommendation and Available Options

Staff and the Planning Commission recommend approval of the project, as proposed, because the project and its conditions of approval support the findings for approval of the proposed project, consistent with Chapters 14.18, 18.28, 19.56, 19.156, and 19.168 of the Cupertino Municipal Code.

[1] Previously identified as Sites 29 through 32 in City Council Resolution 24-039 but later renumerated to 25 through 28 following a revision to the site list removing previous sites 13 through 16.

<u>Discussion</u>

<u>Project Data</u>

General Plan Land Use Designation	Residential – Medium High Density with a minimum density of 20.01 du/ac and maximum density of 35 du/ac	
Zoning Designation	R-3/TH	
Lot Area	2.56 acres (gross), 2.51 acres (net)	
	Allowed/*Required*	**Proposed**
Minimum Density	20.01 units per acre	20.35 units per acre
Maximum Density	35 units per acre	
Height of Structures	Up to 30 feet, measured from natural grade to top of roof.	Building 1: 37′ Building 2: 39′-3″ Building 3: 40′-7″ Building 4: 39′-3″ Building 5: 40′-1″ Building 6: 37′-6″ Building 7: 38′-9″ Building 8: 39′-5″ Building 9: 37′-11″ Building 10: 38′-3″ ***(Waiver Requested)***
	Allowed/*Required*	**Proposed**
***Setbacks** (from property lines before project development)*		
Front (All Floors)	*20′*	20′
Interior Sides (All Floors)	*6′** **Additional 10 feet for third floors more than one story higher than any adjacent primary residential structures.*	10′ The project site is located adjacent to properties with two story structures.
Street Sides (All Floors)	*12′*	3′-7″ ***(Waiver Requested)***
Rear (All Floors)	*15′*	22′-11″
Maximum Lot Coverage	55% of net lot area	49,629 sq. ft. or 45.5%
Maximum Floor Area Ratio	85% of net lot area	148,473 sq. ft. or 136% ***(Waiver Requested)***
Parking	*1 space per unit (51 spaces)*	102 spaces
Usable Open Space		
Private	*60 square feet per unit and no dimension less than 6 feet*	Minimum of 60 square feet per unit. (***Waiver requested for reduced dimensions)***

Project Consistency with:	
General Plan[2]	Consistent under state density bonus law.
Zoning	Consistent under SB 330 and state density bonus law. Density bonus waivers requested for height, street side setbacks, private open space dimensions, and park land dedication requirements
Note: Since the project utilizes the provisions of SB 330 (as discussed later in the report) the development standards, regulations and fees applicable at the time of submittal of a SB 330 preliminary application apply.	

Background

On December 18, 2024, the City received an application to redevelop the properties located at 10857, 10867, 10877, and 10887 Linda Vista Drive. The 2.51 net-acre property is bounded by Linda Vista Drive, with single family uses across the street, to the east, a single-family residence and the Cupertino Hills Swim and Racquet Club to the north, single family homes to the south, and the Stevens Creek trail, connecting McClellan Ranch Park and Linda Vista Park, and Deep Cliff Golf Course to the west. Four single-family residences built between 1947 and 1957 are currently located onsite, one on each existing lot. Evulich Court, a public, unpaved road, goes through the center of the property and will be expanded as part of this project. (See Figure 1)

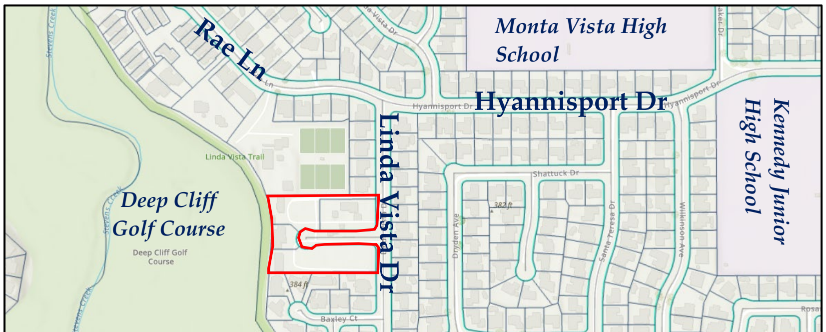

Figure 1: Site Location

The project site was designated as a Priority Housing Site with the City's 2024 6th Cycle Housing Element update in May 2024.[3] The sites were first identified as potential Priority Housing Sites at the January 25, 2022 Planning Commission meeting, the first of an estimated 10 meetings to discuss the Housing Inventory Site list.[4] [5] The Housing Element revised the zoning designation

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[2] The applicable General Plan can be found online at https://records.cupertino.org/WebLink/DocView.aspx?id=1125907&dbid=0&repo=CityofCupertino&_gl=1*k60mdd*_ga*OTc5OTgwMjc4LjE3NDQ3Mzc0NDM.*_ga_NCY1KGMD5Y*czE3NzA2NjU5NTMkbzMwNSRnMSR0MTc3MDY2NTk2MCRqNTMkbDAkaDA.

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

[4] A list of Housing Element meetings can be found online at www.cupertino.gov/housingelement.

[5] The site was originally recommended a minimum density of 30 units per acre by the Planning Commission, but, upon the request of the property owner, was reduced to a minimum density of 20 units per acre by the City Council.

for this site from R1-7.5, Single Family Residential, to R-3/TH, Multiple Family Residential with a Townhome Combining Designation.

Due to the requirements of State law, the project site is subject to the development standards of the General Plan and the City's Municipal Code, including the Multiple Family "R-3," and Townhome "TH" zoning designations, as they were in October of 2024[6], when the SB 330 Preliminary Application was received. The "R-3" zoning designation is detailed in Cupertino Municipal Code Chapter 19.36 Multiple-Family Residential Zones. The "R-3" zoning designation is intended to provide regulations for permitting medium, medium-high, and high density multiple-family residential uses. These regulations are intended to guide future development and ensure a healthy functional environment for future residents living within the proposed development and between the proposed development and adjoining neighborhood parcels. The R-3 zoning district may be combined with the TH zoning district in accordance with Municipal Code Chapter 19.46. The "TH" zoning designation is intended to modify the regulations of the multiple-family residential (R-3 and R-4) zoning districts to permit townhome development in those districts, primarily in conjunction with multiple-family development, and to establish specific townhome development standards. Projects utilizing the City's allowance for townhome development within the "TH" designation must meet the requirements of Chapter 19.46 and, where this chapter is silent, development must adhere to Multifamily (R-3) zoning regulations.

Generally, the proposed project consists of 51 townhome-styled condominiums. Review of the project is limited by several State laws including the Housing Accountability Act, the Housing Crisis Act (SB 330), and Density Bonus Law.

Housing Accountability Act

The Housing Accountability Act (HAA), codified in Government Code § 65589.5, prohibits cities from disapproving, or adding conditions of approval that would render infeasible a housing development project unless the proposal is found to be in violation of an objective general plan or zoning standard,[7] 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. Among many components, the law

[6] Chapter 19.48 (fences) was amended in 2025, but the code changes do not weigh on the project as proposed.

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

includes a provision to allow applicants to vest, or "lock-in" fees, ordinances, policies, and standards that were in effect at the time of submittal of an SB 330 preliminary application to the City. Only the limited information specified in State law is required for the submittal of an SB 330 preliminary application. Further, the law prohibits the City from conducting more than five hearings in connection with the approval of a housing development project.

This project is governed by an SB 330 preliminary application submitted on October 9, 2024 and, in accordance with the requirements of the HCA, the project was reviewed under the requirements in effect at that time. A complete list of the standards included in the review is provided as Attachment D.

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

- A density "bonus" that allows for an increase to a property's base density[8];
- Unlimited waivers to development standards that would physically preclude the construction of the project, as designed[9];
- Concessions that modify development standards in order to achieve an identifiable and actual cost reduction[10]; and
- Reduced parking standards[11].

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

As proposed, the project includes a request for 5 waivers and one concession from applicable standards of the General Plan and Zoning Code. These requests are discussed later in this report.

Project Proposal
The project applicant, SummerHill Homes, LLC, is proposing a 51-unit townhome condominium development. The project consists of ten buildings, each three stories in height, with individual units ranging in size from 2,356 square feet to 2,779 square feet. As required by the City's Below Market Rate (BMR) Housing Program, ten of the units will be allocated as affordable housing units for sale to median- and moderate-income households.

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[8] 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.
[9] I.e., modifications or elimination of any development standard
[10] Specified number of incentives as identified in state law based on the level of affordability and percentage of affordable units
[11] 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

The project also includes the removal and replacement of 35 trees, 8 of which are considered protected specimen trees[12]. Based on the scope of work, the City has required the following permits: Architectural and Site Approval, Tree Removal, and a Vesting Tentative Map. Based on State Density Bonus Law, the applicant is requesting density bonus waivers, as described later in this report.

<u>Architecture and Site Design</u>

The project includes ten buildings with three to six units each, oriented parallel to Linda Vista Drive (see Figure 2 for Site Plan[13]). The project proposes primary access to the site from the existing cul-de-sac, Evulich Court. There will be two new driveway entrances along the northern side of the street for access to buildings 2, 3, 4, and 5 , two new driveway entrances along the southern side of the street for access to buildings 7, 8, 9, and 10, and a single driveway access point at the terminus of Evulich Ct. for access to buildings 1 and 6 proposed along the western edge of the property. The homes fronting Linda Vista will incorporate front porches and entryways facing the street, with garage access at the rear. Two paseos are planned between Buildings 3 and 4 and between Buildings 8 and 9.

Figure 2: Site Plan

The applicant has proposed a "Contemporary Spanish" style development with stucco exteriors and trim, concrete tile roofing, and metal accents. The design also incorporates trellis elements on some of the rear elevations. The landscape design incorporates trees and decorative planting throughout the site, as well as common outdoor spaces with recreational features including

[12] Chapter 14.00 of the Cupertino Municipal Code defines a protected tree as 1) Heritage trees in all zoning districts, 2) All mature specimen trees on private property (see Appendix A). 3) Approved development trees(s), and 4) Approved privacy protection planting in R-1 zoning districts.

[13] 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 and Councilmembers 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.

seating, tables, and a grill. The project also includes a public art installation in the form of a small plaza at the corner of Evulich Court and Linda Vista Drive.

Analysis

General Plan Compliance

The proposed project consists of a residential development consistent with the subject site's General Plan Land Use Designation of Residential – Medium High Density. The General Plan designation requires a minimum density of 20.01 dwelling units per acre and allows a maximum density of 35 dwelling units per acre, which equates to a minimum of 51 units and a maximum of 88 units for the 2.51-acre site. The 51 units proposed are at the minimum required General Plan density.

Staff has evaluated the project's consistency with the General Plan and concludes that, based on the conformance with the General Plan Land Use designation for the site, the general alignment of design with General Plan requirements, and the absence of environmental impacts as analyzed in the Notice of Exemption memo (see Environmental Review section of this Staff Report), the proposed project supports several of the City's General Plan goals, as outlined below. A complete list of the standards included in staff's review is provided in Attachment D.

- **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.
- **Strategy LU-3.3.9: 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-11.1: Connectivity.** Create pedestrian and bicycle access between new developments and community facilities. Review existing neighborhood circulation to improve safety and access for students to walk and bike to schools, parks, and community facilities such as the library.
- **Strategy LU-27.6.1: Provision of Outdoor Areas**. Provide outdoor areas, both passive and active, and generous landscaping to enhance the surroundings for multi-family residents. Allow public access to the common outdoor areas whenever possible.
- **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.

Fire Hazard Severity Zoning Designation

The project site was included in the City's 6th Cycle Housing Element Update as a Priority Housing Site and was rezoned, as required by the California Department of Housing and Urban Development (HCD), from R1-7.5 to R3/TH through this update in July 2024. At the time of the property's rezoning, the site was located in a High Fire Hazard Severity Zone (FHSZ) and the City's Wildland-Urban Interface Fire Area (WUIFA). An assessment of the potential wildfire impacts of rezoning this site, along with others included in the 6th Cycle Housing Element Update, was outlined in the Update's Environmental Assessment[14]. This assessment indicated that the rezoning would not result in a cumulatively considerable impact with respect to wildfire, as future development of these properties in the Very High FHSZ or WUIFA would be subject to State and local regulations, required to undergo separate CEQA review, and have to identify wildfire impacts and appropriate mitigation measures.

In February of 2025, after the property was rezoned and the proposed project application was submitted, the California Department of Forestry and Fire Protection ("CALFire") released updated FHSZ Maps[15]. These maps identified areas with moderate, high, and very high FHSZ, which have been established according to the anticipated severity of fire hazards in those areas. The updated map for Cupertino, adopted by the City in June 2025, identifies this project site as located in a Very High FHSZ.

With this change in the FHSZ designation, the proposed project was reviewed under State and local regulations applicable to Very High FHSZ areas. Additionally, under the project's proposed CEQA exemption (see discussion below), a project within a Very High FHSZ is required to meet the requirements of Government Code Section 65913.4(a)(6)[16].

This provision of California law states that sites in Very High FHSZs are not disqualified from the CEQA exemption, so long as, they have adopted fire hazard mitigation measures pursuant to existing building standards or State fire mitigation measures applicable to the development, including, but not limited to, standards established under all of the following or their successor provisions:

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[14] The City's Housing Element adoption was the subject of a lawsuit and the City entered into a Stipulated Judgement dated January 8, 2024, which exempted the City's actions related to the adoption of the Housing Element Update from CEQA, under State law. Pursuant to Government Code Section 65759, these actions are fully described and analyzed in an Environmental Assessment which was incorporated into the General Plan as Appendix G and can be found here: https://www.cupertino.gov/files/assets/city/v/2/departments/documents/community-development/planning/general-plan/current-gp-documents/cupgp_appendix_g_2024update_9-30-2024_reduced_size.pdf

[15] Updated Fire Hazard Severity Map, adopted by Cupertino City Council in June of 2025: https://links-1.govdelivery.com/CL0/http:%2F%2Fwww.cupertino.gov%2Ffirehazardseverityzonemap%3Futm_medium=email%26utm_source=govdelivery/1/010001958258d33f-a1b6e4e4-cea8-43a9-9a57-7d00460c17a6-000000/tZr5a_yMGWzuZNdeGCpAzt0G-BUqah5UksE9D0zovkA=395

[16] Government Code Section 65913.4(a)(6): https://codes.findlaw.com/ca/government-code/gov-sect-65913-4/#:~:text=(6)%20The%20development,under%20conservation%20easement

(i) Section 4291 of the Public Resources Code[17] or Section 51182[18], as applicable.
(ii) Section 4290 of the Public Resources Code.[19]
(iii) Chapter 7A of the California Building Code[20] (Title 24 of the California Code of Regulations).

The Santa Clara County Fire Department has found that the project has demonstrated consistency with these requirements. For more details, please see the attached CEQA Exemption Memorandum (Attachment E), Fire Department Alternative Means and Methods Request (AMMR) approval (Attachment F), and the Fire Department's project review approval letter (Attachment G).

It should also be noted that under state law, a project specific evacuation study is not required to be prepared as part of the project's CEQA review, and the City does not have any adopted objective standards pertaining to evacuation in the event of a major fire or other environmental emergency. As a result, an evacuation study has not been required or reviewed by the Fire Department or the City.

<u>Tree Removal and Replacement</u>
The proposal includes the removal and replacement of 8 protected, mature specimen trees within the construction footprint of the development. Protected trees within the construction footprint include seven oak trees and one deodar cedar. An arborist report was prepared for the applicant by HortScience Bartlett Consulting and was peer reviewed by the City's third-party consultant, West Coast Arborists. The arborist report and peer review concluded that the 8 trees proposed for removal are within the construction footprint and could, therefore, not be preserved or otherwise adequately and feasibly protected during construction.

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

Diameter of Trunk of Removed Tree	# of Trees Proposed for Removal	Replacement Tree Size Required	Replacement Trees Required
Greater than 12 inches and up to 24 inches	8	Two 24" box trees or One 36" box tree	16 (24" box trees) or 8 (36" box trees)

The applicant proposes to replace the 8 protected trees with on-site trees, varying in size between 24-inch box and 36-inch box trees and of various species, in compliance with the Municipal Code. A total of 50 new trees will be provided on site, including replacements for the 8 protected trees

[17] Public Resources Code Section 4291: https://law.justia.com/codes/california/code-prc/division-4/part-2/chapter-3/section-4291/
[18] Public Resources Code Section 51182: https://codes.findlaw.com/ca/government-code/gov-sect-51182/
[19] Public Resources Code Section 4290: https://law.justia.com/codes/california/code-prc/division-4/part-2/chapter-2/section-4290/
[20] California Building Code Chapter 71: https://up.codes/viewer/california/ca-building-code-2022/chapter/7A/sfm-materials-and-construction-methods-for-exterior-wildfire-exposure#7A

being removed. The project has been conditioned to ensure that the replacement trees are a native or non-native species, as approved by the City's third-party consulting arborist.

All trees on-site will be considered protected, and a condition of approval has been included to require that an agreement be executed to ensure the ongoing preservation, maintenance, and protection of the new trees by future property owners. Additionally, the project includes the addition of 27 new street trees along Evulich Court and Linda Vista Drive.

Vesting Tentative Map

The application for the Vesting Tentative Map (VTM) proposes to subdivide the existing lot to create a condominium subdivision. The approval of a vesting tentative map confers a vested right upon the applicant to proceed with development in substantial compliance with the city's ordinances, policies, and standards in effect at the date the city determines the application is complete (March 19, 2025).

Public Art

In accordance with Cupertino Municipal Code Chapter 19.148, the project incorporates a proposed public art plaza at the southern corner of the intersection of Evulich Court and Linda Vista Drive. While details have not been included in this permit application, staff will review the public art proposal when an application for public artwork is received. Once submitted, the application will be presented to the Arts and Culture Commission for review and approval. The applicant is required to submit an application for the artwork prior to certificates of occupancy being granted for any of the units and must install the public art prior to certificates of occupancy being issued on more than 50% of the units. A condition of approval has been included to require the maintenance of any public artwork incorporated into the project. Any proposal to change the approved artwork, or removal thereof in the future, would require additional public review and approval by the Arts and Culture Commission.

Park Land Dedication (Quimby Act)

Under Cupertino Municipal Code Section 13.08.050(A) developments of more than 50 units must provide park land on site and/or pay an in-lieu fee for the required park land dedication. The project would be required to provide approximately 0.36 acres of park area or an in-lieu of dedication fee, based on Municipal Code Chapter 13.08 requirements. However, the four existing residences were built prior to the establishment of the Quimby Act in 1965 and are therefore applied as a credit to the total parkland area required or the payment of in-lieu fees on site, as applicable. Based on the property size, project size, the provision of a small private open space area on site, and the location of the property within a quarter mile of existing park facilities[21], staff is recommending the payment of an in-lieu fee rather than requiring a dedication of onsite park land.

In line with staff's recommendation, the applicant requests to pay an in-lieu fee instead of providing park land. Thus, the project is conditioned to pay a parkland in-lieu fee of $1,998,000

[21] Deep Cliff Golf Course and Linda Vista Park are adjacent to the project site.

for the net new 37 market rate units.[22] As this request is consistent with staff's recommendation and conditions of approval, a waiver of the park land requirement is not required. However, per the City's BMR Program, the in-lieu of park land dedication fees for the BMR units are waived.

In accordance with General Plan requirements, including General Plan Policy LU-11.1, the applicant has also proposed a pedestrian connection between the project property and the adjacent Linda Vista Trail. The applicant is requesting that the cost to construct the trail connection, not to exceed $377,000[23], the estimated construction cost of the trail connection improvements, be applied to the required in-lieu fee, reducing the required fee to $1,621,000.

A condition of approval has been included to indicate that a pedestrian and bicycle trail connection, as depicted on the Trail Connection Exhibit in the project's plan set, will be added to the project contingent upon the City Council authorizing a credit to the project's in-lieu Parkland Dedication Fees equal to the verified cost to design and construct the trail connection, not to exceed $377,000. The Planning Commission reviewed this request and recommended that the City Council approve this request (*as further described in the Planning Commission section below*).

<u>Affordable Units</u>

Cupertino Affordable Housing Requirements

Under the City's BMR requirements, the project must provide at least 20% or 10.2 of the 51 for-sale units as below-market rate units. The project, as proposed, includes 10 below-market rate units and payment of an in-lieu fee for the fractional unit. As required by the City's BMR Housing Program, five 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 record a regulatory agreement with the City requiring the designated ten BMR units to be for-sale to median and moderate income households and remain affordable for 99 years.

Density Bonus - Affordability Requirements

The State of California's Density Bonus Law, codified at California Government Code Section 65915, requires local governments to grant residential developers additional density and other development incentives when they include a specified percentage of affordable housing units in a project. To qualify, a developer must dedicate a minimum share of the project's base units to lower-income households.

Additionally, the law includes a replacement housing requirement that applies when a proposed density bonus project is on a site that, within the five years preceding application, contains or

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[22] Due to the SB 330 nature of the project, the Park Fees payable are those in effect as of October of 2024. Additionally, this number reflects the reduction of four existing market rate units on the site, in accordance with Cupertino Municipal Code Chapter 13.08.

[23] Estimated costs to be verified prior to issuance of any grading, building, or tree removal permit associated with the trail connection's construction. If the verified costs are less than the credited amount, the applicant shall pay the difference to the City.

contained rental units subject to a recorded affordability covenant, rent or price control ordinance, or occupied by lower-income households. In order to qualify for a density bonus and related incentives, the developer must replace those existing units (Government Code Section 65915(c)(3)).[24] Under Density Bonus Law, "replacement" means providing at least the same number of units of equivalent size that are affordable to and occupied by households in the same or lower income category as those previously on the site.

On February 11, 2026, the City received an email indicating that one of the existing units may be currently rented by a lower-income household. While the applicant had previously indicated that the replacement requirements of Government Code Section 65915(c)(3) were met by the project, the project has been conditioned to verify the tenant's income and to ensure that, should the tenant be a lower-income household, the affordability of the units be modified to meet the replacement requirements of Government Code Section 65915(c)(3).

Density Bonus - 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 one concession and five waivers.

Section 19.56.070 of the City's Density Bonus Ordinance ("Findings") requires that, before approving an application which includes a request for a density bonus, waivers, or reduction in parking standards, the decision-making body must determine that the proposal is consistent with State Density Bonus Law by making the following findings[25], as applicable:

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

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

Waivers Requested
As a density bonus project, the applicant may submit to the City proposals for an unlimited number of waivers, or reduction of development standards, that would have the effect of physically precluding the construction of the project as proposed and designed (Government Code Section 65915(e)). It should be noted that under State Density Bonus Law, a city may not

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[24] These replacement requirements are incorporated into the City's General Plan under Strategy HE-1.3.11.

[25] 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.

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 five waivers as follows:

1. 30-Foot Height Limitation (Municipal Code Section 19.46.070 (C))

   Cupertino's Municipal Code requires that developments have a maximum height of 30 feet, as measured from the natural grade to the top of a building's roof. Additionally, General Plan Strategy LU-3.3.10 indicates that buildings above 30 feet in height should be allowed only when the buildings abut an arterial or major collector, or if allowed by State law. The applicant has requested a waiver to increase the height allowed for all ten proposed buildings, as follows:

Building No.	Maximum Height
1	37′
2	39′-3″
3	40′-7″
4	39′-3″
5	40′-1″
6	37′-6″
7	38′-9″
8	39′-5″
9	37′-11″
10	38′-3″

   Imposing the 30-foot height restriction would result in changing the height and design of the buildings, which is not consistent with the project, as proposed.

2. 12-Foot Streetside Setback (Municipal Code Section 19.46.070 (D) (2) (b))

   Cupertino's Municipal Code requires that townhome developments have a minimum streetside setback of 12 feet. The applicant has requested a waiver to allow the following reductions in streetside setbacks along Evulich Court:

	Setback from Property Line	
Building	Required	Proposed
3, 4, 5	12′	3′-7″
8, 9, 10	12′	4′-9″
2	12′	6′-1″
7	12′	7′-10″

   This waiver would not result in the reduction to any landscape strips or sidewalk areas along Evulich Court. Additionally, Evulich Court will provide access exclusively to the proposed development and therefore, this reduced setback along Evulich Court would not result in a visual impact on the neighbor pattern of streetside yard setbacks. Imposing these side setback requirements would, however, 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. <u>85% Maximum Floor Area (Municipal Code Section 19.46.070 (B))</u>
Cupertino's Municipal Code limits the allowable floor area ratio (FAR) for townhome developments to 85% of the net lot area. In this instance, based on the area of the project site, the allowable floor area would be 92,786 square feet. The applicant, however, is requesting a waiver to allow for 148,473 square feet, or a 136% FAR. The applicant states that imposing the maximum FAR requirement would result in the elimination of units, the reduced floor areas of units, or a substantial change to the design of the buildings, which is not consistent with the project as proposed by the applicant.

4. <u>Private Outdoor Space Clearance (Municipal Code Section 19.36.070 (D))</u>
Cupertino's Municipal Code requires that at least 60 square feet of private outdoor space be provided for each proposed residential unit. It also requires that no single dimension of the outdoor space be less than six feet in width or length. While the proposal includes at least 60 square feet of private outdoor space for each unit, the applicant has requested a waiver to allow for a reduction in the minimum dimensions required from six feet (6′) to four feet six-inches (4′6″) for unit type 1, five feet, six inches (5′6″) for unit type 2, and five feet, five inches (5′5″) for unit type 3. Five of the end units will also be provided with fences private side yard area for additional private open space.

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

5. <u>Minimum Parking Space Dimensions (Municipal Code Section 19.124.040)</u>
Cupertino's Municipal Code requires that townhome developments have minimum parking space dimensions of 9′-6″ by 20′. The applicant is requesting a waiver to allow for a reduced length of the parking spaces from 20′ to 18′-6″. The applicant states that imposing the parking space dimension requirements would result in the elimination of units, the 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.

Concessions Requested
As a density bonus project with at least 10% of the proposed units reserved for sale to moderate-income households[26], the applicant may submit to the City a requests for one concession. 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 a concession as follows:

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

1. <u>BMR Unit Mix</u>

   As described below, the project is required to be consistent with the objective standards of the City's BMR Manual. The BMR Manual requires that BMR units be comparable to market rate units in terms of unit type. The applicant has requested a concession to allow for development of BMR units that are of one single type, not otherwise reflected in the market rate unit mix. The developer proposes four model types, three of which are designated as market-rate units (Types 2, 3, and 3ALT) and one that is designated as the BMR unit (Type 1). The Type 1 layout will be used exclusively for the BMR units, and no market-rate units will utilize this configuration. All model types include four bedrooms, however Type 1 units have a tandem garage and an overall smaller footprint.

   The applicant has indicated that designating alternative plan types as BMR units would impose a substantial burden and materially impair the financial feasibility of the Project. These impacts would be inconsistent with the project as proposed and would prevent the stated objectives of the project.

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	10	4	2,356 square feet
Market-Rate Units	41	4	2,727 square feet

The proposed market-rate and BMR units are four-bedroom units. The market-rate units have an average unit size of 2,727 square feet per unit while the BMR units have an average unit size of 2,356 square feet per unit, an approximately fourteen percent difference in the average unit size. The BMR units are dispersed throughout the property, with four units in Building 2, two units in Buildings 3 two units in Building 4, and two units in Building 5. Six buildings are proposed without BMR units - Buildings 1, and 6 through 10. 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.

<u>No Net Loss Discussion (SB 166)</u>

Government Code Section 65863 (No Net Loss Law) requires the City to ensure development opportunities remain available to accommodate the City's regional housing need allocation

(RHNA), especially for lower- and moderate- income households, by maintaining adequate sites to accommodate the unmet RHNA for each income category. In May 2024, the City adopted new Priority Housing Sites as part of the 6th Cycle Housing Element Update. The Priority Housing Sites are forecast to provide the units necessary to meet the City's RHNA for each income category. The City calculated the number of proposed units, by RHNA affordability categories, 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 consists of four contiguous lots listed as Priority Housing Sites (for the purposes of this report the term Priority Housing Site refers to all four parcels) in the City's 6th Cycle Housing Element and the City is 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 project approval, the decision body must make the following findings:

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

In the event the City is unable to make the findings of No Net Loss, the City must either 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 or increase the density of an existing Priority Housing Site to ensure that sites are available to accommodate its RHNA.

As of the City's December 16, 2025 City Council meeting, at which the redevelopment of the United Furniture site was approved, the City has been unable to make the findings of No Net Loss and, pursuant to SB 166, is required to identify additional sites to accommodate its RHNA within 180 days from project approval.

As indicated in the table below, this project contributes to an increase in the total deficit from fourteen (14) Moderate income units to twenty-two (22) units since the Housing Element estimated eighteen (18) Moderate (the" Moderate "designation, as used in the Housing Element, includes both Moderate- and Median-income units) units and 31 Lower income units would be developed on Priority Housing Sites 29-32. Consistent with the City's minimum BMR requirements, the project includes only 10 Moderate and zero Lower Income units, resulting in a shortfall of 8 Moderate income units and 31 Lower Income units. While the City is unable to identify additional sites to accommodate its RHNA concurrently with this project's approval, it is working toward being compliant with State law in a timely manner.

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)**
6th 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
SummerHill (Fontana's, etc.)	*Projected*	*59*	*24*	*62*
	Actual	*0*	*12*	*47*
	Change	*-59*	*-12*	*-15*
Toll Brother's (United Furniture)	*Projected*	*0*	*93*	*70*
	Actual	*0*	*11*	*44*
	Change	*0*	*-82*	*-26*
Dividend Homes (20085 & 20111 Stevens Creek Blvd)	*Projected*	*45*	*18*	*47*
	Actual	*0*	*6*	*30*
	Change	*-45*	*-12*	*-17*
Mary Avenue Villas (Charities Housing)	*Projected*	*40*	*0*	*0*
	Actual	*40*	*0*	*0*
	Change	*0*	*0*	*0*
Vallco Town Center/The Rise	*Projected*	*581*	*0*	*1,321*
	Actual	*232*	*0*	*1,137*
	Change	*-349*	*0*	*-184*
Units Projected – remaining sites		***1,312***	***712***	***1,497***
Projected Surplus – remaining sites		***-296***	***-14***	***802***
SummerHill Evulich (Sites 29-32)	*Projected*	*31*	*18*	*35*
	Proposed	*0*	*10*	*41*
	Change	*-31*	*-8*	*+6*
Unmet 6th Cycle RHNA		**1,608**	**716**	**654**
Remaining Total Units Projected		**1,281**	**694**	**1,462**
Total Remaining Surplus		**-327**	**-22**	**808**
** Includes Very Low- and Low-Income*				

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.

As part of Public Works' review, a geotechnical report was prepared by the applicant and peer reviewed by the City's third-party consultant, Cotton Shires & Associates (Attachments H and I).

The peer review indicated that the project is feasible from a geotechnical standpoint. The geotechnical report recommended and the project incorporates a 25-foot structural setback from the top of the western slope. Recommended conditions from the peer review have been included as conditions of approval for this project.

California Environmental Quality Act

The applicant requested that the development be reviewed in accordance with Assembly Bill (AB) 130, signed into law and effective on June 30, 2025, and codified in Public Resources Code (PRC) Section 21080.66. This law exempts qualifying infill housing development from CEQA review, creating a new statutory exemption. This exemption applies to any required permits, entitlements, or other discretionary approvals for a broad range of housing types. The attached CEQA Exemption Memorandum (Attachment E) demonstrates that the proposed project meets the requirements of PRC Section 21080.66 and is organized as follows:

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

As analyzed in the attached CEQA Exemption Memorandum, Public Resources Code Section 21080.66, the proposed project meets the criteria for statutory exemption. Accordingly, this document finds that a Notice of Exemption is appropriate for the proposed project pursuant to CEQA Guidelines Section 15062. The analysis included review of a biologic report, Phase I and Phase II Environmental Site Assessments, and an Underground Storage Tank Closure Report. Each of these reports were subject to third-party review and have been included as Attachments J through P.

Through the compliance review process, the City also participated in tribal consultation, as required under Public Resources Code Section 21080.66. This process, detailed in the attached memorandum, generally consisted of City staff consulting with representatives of Tamien Nation to discuss the project, the potential sensitivity of the area from the Tamien Nation's perspective, and measures that would reduce potential impacts to cultural and tribal cultural resources, if present on-site. The tribal consultation period concluded without mutual agreement for alternative conditions having been reached. As such, the project is subject to the standard conditions described in Public Resources Code Section 21080.66 (b) (4).

AB 130 also introduced additional timelines for project processing, including a requirement in Section 65950 of the Government Code that the City must approve or deny a project within thirty days from:

a. The conclusion of the process outlined in subdivision (b) of Section 21080.66 of the Public Resources Code.
b. The expiration of the applicable time limit in paragraph (2) of subdivision (j) of Section 65589.5.

As the tribal consultation outlined in subdivision (b) of Section 21080.66 of the Public Resources Code concluded on January 4, 2026, the processing deadline would have concluded on February 3, 2026. However, in accordance with Government Code Section 65957 the applicant agreed to a 60-day extension which moved the processing deadline to April 4, 2026.

For all of the reasons described above, staff recommends approval of the project as proposed. With respect to the requested Density Bonus concessions and waivers, evidence in the record demonstrates that the project meets the standards for granting the concession and waivers under the State Density Bonus Law.

Available Options

Trail Connection Options

Planning Commission's recommendation (*see below*) currently anticipates that the applicant will receive a credit for the trail connection offered at the west end of the project site *(as described in the Parkland Dedication Section of the staff report above)*.The Council may choose to deny the applicant's request for a credit for construction of the trail, forgo the trail connection being offered by the applicant and require payment of $1,998,000 in lieu of parkland dedication fees.

Planning Commission Review

On February 24, 2026, the Planning Commission conducted a public hearing regarding the proposed project. While all 5 Commissioners supported the townhome development, there was a split opinion regarding whether to recommend providing a credit to the project's in-lieu Parkland Dedication Fees equal to the verified cost to design and construct a trail connection, not to exceed $377,000. Commissioner Rao moved, seconded by Commissioner Scharf, to approve the project without the credit for the trail (with the additional conditions set forth in subjections "a" and "b" below). A substitute motion was made to approve the project with the trail connection credit. By a 3-2 vote (No: Rao, Scharf), the Commission adopted Planning Commission Resolution Nos. 2026-08 through 2026-1[27] recommending that the City Council find all actions exempt from

[27] Resolution Nos. 2026-08 through 2026-10 can be found at these links:
2025-08: https://cupertino.legistar.com/View.ashx?M=F&ID=15261917&GUID=6A006740-879B-47E5-96DF-6306F383F5CB
2025-09:
https://cupertino.legistar.com/View.ashx?M=F&ID=15261922&GUID=C5F37359-285B-4FFE-AC6D-331C47FFD680
2025-10:

CEQA and approve the proposed Architectural and Site Approval, Tentative Final Map, and Tree Removal Permit. The Commission also recommended adding the following conditions of approval to the draft resolutions:

a. Prohibit construction trucks between the hours of 7:30 a.m. to 9:30 a.m. and 2:00 p.m. to 4:00 p.m. for the streets surrounding the project, namely Linda Vista Drive, Hyannisport Drive, Bubb Road, and McClellan Road; and
b. Applicant to consider including privacy shrubs along shared property lines, if the applicant and the neighboring residents find this to be amenable.

The Draft Resolutions have been updated to include these recommendations.

The Commission received comments from twenty-one speakers of the public regarding potential traffic concerns, increased density, neighborhood impacts, privacy intrusion, and fire safety. The applicant responded to provide clarification on some of the items brought up by the public. The Commissioners then sought further clarification regarding the Fire Department's review of the project and the project's consistency with the eligibility criteria for a statutory exemption under AB 130. Further deliberation occurred related to the proposed trail connection. Discussion and deliberation concluded with the Commission making a recommendation to approve the project on a 3-2 vote.

<u>Public Outreach and Noticing</u>

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)* ▪ 449 public hearing notices were mailed to property owners within ~1,000 feet of the project site (*10 days prior to the hearing*) ▪ 1315 e-notifications were sent to individuals on the City's e-notification mailing lists (*7 days prior to the hearing*)	▪ Posted on the City's official notice bulletin board (*five days prior to the hearing*) ▪ Posted on the City of Cupertino's website (*five days prior to the hearing*)

The applicant has completed community outreach to residents and property owners by conducting community meetings in November of 2024 and January of 2026.

<u>Public Comment</u>

At the time of this staff report being published, staff had received three public comments from the public with concerns related to potential fire safety concerns (Attachment Q). Staff and the Planning Commission received comments from project supporters as well as members of the public with concerns related to project's density, traffic, and fire hazards. These comments have been included as Attachment R. Comments continue to focus on traffic impacts, fire safety, evacuation concerns, and neighborhood and privacy impacts.

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https://cupertino.legistar.com/View.ashx?M=F&ID=15261918&GUID=919627FB-777D-4606-9E00-E5A995CD9395

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 a Statutory Exemption and therefore it is expected that there will be no sustainability impact.

Fiscal Impact
No fiscal impact.

City Work Program (CWP) Item/Description
None.

City Council Goal
Housing.

Prepared by: Emi Sugiyama, Senior Planner
Reviewed by: Benjamin Fu, Director of Community Development
Floy Andrews, Interim City Attorney
Approved for Submission by: Tina Kapoor, City Manager

Attachments:
A – Draft Resolution for TM-2024-009
B – Draft Resolution for ASA-2024-015
C – Draft Resolution for TR-2024-044
D – Applicable Standards Matrix
E – AB 130 CEQA Exemption Memorandum
F – Alternative Means and Method Request Approval
G – County Fire Review Letter
H – Geotechnical Report
I – Geotechnical Report Peer Review
J – Biological Report
K – Biological Report Peer Review
L – Phase I Environmental Site Assessment
M – Phase II Environmental Site Assessment
N – Phase I and Phase II ESA Applicant Review
O – Phase I and II ESA Peer Review
P – Underground Storage Tank Closure Report
Q – Public Comments (2-25-2026 to 3-10-2026)
R – Public Comments (01-01-2024 to 2-24-2026)
S – Final Transportation Study
T – Project Site Plan