



## CITY ATTORNEY'S OFFICE

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### CITY COUNCIL STAFF REPORT

Date: March 3, 2026

#### Subject

Consider Adopting a Resolution Declaring the Mary Avenue property (APN 326-27-053) Exempt Surplus Land under the California Surplus Land Act

#### Recommended Actions:

1. Find the project exempt from the California Environmental Quality Act (CEQA)
2. Adopt Resolution No. 26-XXX declaring the Mary Avenue property (APN 326-37-053) to be exempt surplus land pursuant to the provision of the Surplus Land Act codified at California Government Code subsection 54221(f)(1)(F)(i)

#### Background

The Mary Avenue property (APN 326-27-053) is located in the Garden Gate neighborhood, east of Highway 85 and is depicted on Attachment A to the Resolution attached hereto. The Mary Avenue project site is listed as Site 10 of the Housing Element contained in the City's General Plan, which the City Council adopted in May 2024. Thereafter, the State's Housing and Community Development Department found the City's Housing Element to be in substantial compliance with State Housing Element Laws (Gov. Code § 65580 et seq).

The real property at issue is situated along the westerly edge of Mary Avenue, between Stevens Creek Boulevard and Lubec Street, in the City of Cupertino (APN 326-27-053) ("Property") and includes 0.79 acres of right-of-way, owned by the City of Cupertino, including some on-street parking. Neighboring uses include multi-family residential uses, a dog park, condominiums, and Highway 85.

On February 3, 2026, the City Council voted to enter into a contingent Development and Disposition Agreement ("DDA") with Mary Avenue, L.P., a California limited partnership ("Developer"). Under the DDA, certain contingencies must be satisfied before the City may transfer the City-owned property to the Developer, including finding the Property to be exempt surplus land under the state's Surplus Land Act, and vacating 0.79 acres of public right-of-way contained within the project site. Only after satisfaction of these contingencies, may a transfer of property be perfected.

The City Council adopted Resolution No. 26-016 approving the Architectural & Site Approval Permit (ASA-2025-006) to allow for the development of the Mary Avenue project, a 40-unit project on the Mary Avenue project site ("Project"). Thirty-nine (39) of those units will be below market rate with nineteen (19) for residents with intellectual or developmental disabilities. One unit is reserved for a manager with no rent charged.

Additionally, pursuant to Government Code Section 65402(c), the Planning Commission reviewed the proposed disposition of the Property. On February 10, 2026, the Planning Commission adopted Resolution No. 2026-01 finding that disposition of the Mary Avenue project site (APN 326-27-053) to be consistent with the General Plan.

#### Surplus Land Act ("SLA") Exemption

Pursuant to California Department of Housing and Community Development ("HCD") Regulations Section 103(c), the governing board of a local agency may declare the property to be "exempt surplus land" at a regular public meeting and such declaration must be supported by written findings demonstrating that the land meets one of the statutory exemption requirements.

The Project qualifies for a statutory exemption pursuant to Government Code Section 54221(f)(1)(F) as the land will be developed for a housing development that restricts 100 percent of the residential rental units to households of low, very low, and extremely low income for a minimum of 99 years, meeting the thresholds of the exemption. In no event shall the maximum affordable rent level be higher than 20 percent below the median market rents or sales prices for the neighborhood in which the site is located. An affordable housing covenant which shall set forth these requirements shall run with the land.

Adoption of a declaration of exempt surplus land satisfies City's statutory obligations under the SLA and authorizes the City to proceed with the disposition process for the Property. Transfer of title will not occur until the closing, and after all conditions set forth in the DDA have been satisfied.

Upon adoption of the resolution declaring the Property as exempt surplus, City must send the resolution and the Disposition and Development Agreement ("DDA") to HCD for review. HCD has 30 days to respond to City confirming the Property is exempt under the SLA. Receipt of the HCD notice is a condition precedent to City's obligations in the DDA.

#### Reasons for Recommendation and Available Options

Staff recommends adoption of the resolution declaring the Property to be exempt surplus land to facilitate the housing envisioned in the Housing and Land Use Elements of City's General Plan without adverse effect. Such findings satisfy the City's procedural obligations under the Surplus Land Act and authorize City to proceed toward disposition of the Property in accordance with the Project's financing timeline and regulatory commitments.

Sustainability Impact

No sustainability impact.

Fiscal Impact

No fiscal impact.

City Work Program (CWP) Item/Description

Yes, FY 21-22

Develop New BMR/ELI Housing: Develop ELI (extremely low income) and BMR housing units for developmentally disabled individuals (IDD) on City-owned property as well as the County-owned sites.

Council Goal:

Housing

California Environmental Quality Act

No California Environmental Quality Act impact.

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Prepared by: Floy Andrews, Interim City Attorney

Reviewed by: Chad Mosley, Director of Public Works

Approved for Submission by: Tina Kapoor, City Manager

Attachments:

A – Map of Parcel 1

B – Draft Resolution