

City of Cupertino

**10268 BANDLEY DRIVE
RESIDENTIAL DEVELOPMENT PROJECT**

May 2026 | CEQA Exemption Memorandum



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for City of Cupertino

City of Cupertino

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SOURCES

All documents cited in this report and used in its preparation are hereby incorporated by reference into this document. Copies of documents referenced herein are available for review at the City of Cupertino Community Development Department at 10300 Torre Avenue, Cupertino, California 95014.

1. INTRODUCTION

This section describes the standards for determining a significant effect on the environment from construction and operation of the proposed 10268 Bandley Drive Residential Development (proposed project) pursuant to the requirements of the California Environmental Quality Act (CEQA). The City of Cupertino (City) is the lead agency for the proposed project.

1.1 STATUTORY EXEMPTIONS

Once it is determined that an activity is a project subject to CEQA, it is then determined whether the project is exempt from CEQA. Pursuant to State CEQA Guidelines Section 15061(b), a project is exempt from CEQA if:

1. The project is exempt by statute (e.g., Article 18, commencing with CEQA Guidelines Section 15260).
2. The project is exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.
3. The activity is covered by the common-sense exemption that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.
4. The project will be rejected or disapproved by a public agency (see Section 15270(b)).
5. The project is exempt pursuant to the provisions of Article 12.5 of Chapter 3.

The proposed project would be exempt as a “statutory” exemption under State CEQA Guidelines Section 15061(b)(1) because the proposed project would meet the requirements of the Public Resources Code (PRC) Section 21080.66(a), as further discussed in Section 3, *Findings Concerning CEQA Exemption*.

This document has been prepared to demonstrate CEQA compliance as it pertains to the proposed project. This document also provides information to decision makers regarding a finding that the proposed project is exempt under CEQA.

1. INTRODUCTION

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2. PROJECT DESCRIPTION

2.1 REGIONAL LOCATION

The project site is in the city of Cupertino, approximately 38 miles southeast of the city and county of San Francisco. Cupertino is on the western edge of Santa Clara County and north of the city of Saratoga, east of unincorporated Santa Clara County, south of the city of Sunnyvale, and west of the city of San José. Regional access to the project site is provided by Interstate 280 (I-280) via North De Anza Boulevard to the north, and by Highway 85 via Stevens Creek Boulevard to the west. The City is also supported by Santa Clara Valley Transportation Authority (VTA) bus service and Caltrain via the Sunnyvale, Lawrence, and Santa Clara Caltrain stations.

2.2 PROJECT SITE

The 1.55-acre project is at 10268 Bandley Drive, in an urbanized area. The project site is developed with commercial buildings and a surface parking lot with ornamental landscaping. The site is surrounded by commercial development on all sides, with residential development east of North De Anza Boulevard and west of Bandley Drive.

According to *Plan Bay Area*, the project site is within a Santa Clara VTA City Cores, Corridors & Station Areas Priority Development Area (PDA) and a Transit Priority Area (TPA). The project site is within a quarter mile walking distance from VTA Bus Routes 23, 25, 51, and 55, which are considered major transit stops.

2.3 LAND USE AND ZONING DESIGNATIONS

The project site is assigned Assessor's Parcel Number (APN) 326-33-097. The project site is subject to the following:

- **General Plan Land Use.** Office/Industrial/Commercial/Residential.
- **Specific Plan.** North DeAnza Boulevard Special Area.
- **Zoning District.** Mixed Use Planned Development with General Commercial, Light Industrial, and Residential (P(CG, ML, Res)).
- **Residential Density.** 25 dwelling units per acre (maximum).
- **Height.** 45 feet.

2. PROJECT DESCRIPTION

Pursuant to the State Density Bonus Law and the City's Density Bonus ordinance (Cupertino Municipal Code [CMC] Chapter 19.56, *Density Bonus*), the project applicant has requested the following, to the extent needed to comply with applicable objective standards:

- A concession or incentive to eliminate the requirement to include a retail, commercial, or other mixed-use component in the proposed project.
- Waivers or reduction of development standards to reduce the front and rear setbacks for portions of the proposed project.
- A waiver or reduction of development standards to reduce the planter strip requirement.
- A waiver or reduction of development standards in the landscape setback and area.

2.4 PROPOSED PROJECT

The project applicant, SummerHill Homes, is proposing a residential development that would involve the demolition of the existing commercial building and parking lot and the construction of 27 new townhome-style condominiums in four buildings. The proposed project would total 67,668 gross square feet.

The townhomes would be three stories and range in size from 1,507 to 2,292 square feet, with private outdoor space and garages. Three of the buildings would be 40 feet tall and one building would be just over 41 feet tall. The proposed project would provide 59 on-site vehicle parking spaces, with each unit having a 2-car garage and 5 additional guest spaces provided on-site.

3. FINDINGS CONCERNING CEQA EXEMPTION

3.1 PUBLIC RESOURCES CODE SECTION 21080.66

Assembly Bill (AB) 130, signed into law on June 30, 2025, and codified in Public Resources Code (PRC) Section 21080.66, 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. This section demonstrates that the proposed project meets the requirements of PRC Section 21080.66 and is organized as follows:

- **Infill Requirements.** This section describes 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.** This section describes the individual environmental requirements pursuant to PRC Section 21080.66(a), subdivisions (6) and (7).
- **Tribal Cultural Resources.** This section describes the tribal notification and outreach requirements pursuant to PRC Section 21080.66(b).
- **Environmental Assessment (Hazardous Materials).** This section describes the requirements for the identification and treatment of hazardous materials pursuant to PRC Section 21080.66(c).
- **Other Requirements.** This section describes 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.

3.2 ANALYSIS IN SUPPORT OF FINDINGS

Infill Requirements

Table 1, *Infill Requirements and Project Consistency*, demonstrates that the project meets the requirements of PRC Section 21080.66(a), which specifically defines a “housing development project” in Government Code Sections 65905.5(b) and 65589.5(h)(2).

3. FINDINGS CONCERNING CEQA EXEMPTION

Table 1 Infill Requirements and Project Consistency

Infill Requirements	Consistency Determination
<p>PRC Section 21080.66(a). Use Type. The project meets the definition of a “housing development project” pursuant to Government Code Sections 65905.5(b) and 65589.5(h)(2). The project meets any of the following criteria for a housing development:</p> <ul style="list-style-type: none"> ▪ Residential units only ▪ Mixed-use development which includes residential and non-residential uses that meet any of the following criteria: <ul style="list-style-type: none"> ○ At least two-thirds of the project's new or converted square footage is designated for residential use ○ At least 50 percent of the project's new or converted square footage is designated for residential use and the project meets both of the following: <ul style="list-style-type: none"> - The project includes at least 500 net new residential units - No portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging¹ ○ At least 50 percent of the net new or converted square footage is designated for residential use and the project meets all of the following: <ul style="list-style-type: none"> - The project includes at least 500 net new residential units - The project includes the demolition or conversion of at least 100,000 square feet of non-residential use - The project includes the demolition of at least 50 percent of the existing non-residential uses on the site - No portion of the project is designated for transient lodging, except a portion of the project may be designated for use as a residential hotel (as described above) ▪ Transitional housing or supportive housing; or ▪ Farmworker housing, as defined in California Health and Safety Code Section 50199.7(h) 	<p>Consistent. The proposed project includes the construction of 27 residential units only.</p>

3. FINDINGS CONCERNING CEQA EXEMPTION

Table 1 Infill Requirements and Project Consistency

Infill Requirements	Consistency Determination
<p>PRC Section 21080.66(a)(1): Size. A project site does not exceed 20 acres or four acres for a builder’s remedy project as defined in Government Code Section 65589.5(h)(11), or a housing development project or emergency shelter that meets the criteria in Government Code Section 65589.5(d)(5) as it read before January 1, 2025.</p>	<p>Consistent. The project site is 1.55 acres.</p>
<p>PRC Section 21080.66(a)(2): Location. The project site is within the boundaries of an incorporated municipality or an urban area, as defined by the United States Census Bureau. Based on the U.S. Census Bureau’s criteria for urban areas, an area must encompass at least 5,000 people or at least 2,000 housing units to be considered an urban area. In addition, an area must have 425 housing units per square mile, which defines the initial urban core. Two hundred (200) units per square mile shall fill in the remainder of the urban area. Each urban area shall contain at least one high-density nucleus, with 1,275 housing units per square mile.²</p>	<p>Consistent. The site is within the city of Cupertino, an incorporated city.</p>
<p>PRC Section 21080.66(a)(3): Urban Development. The project site meets any of the following criteria:</p> <ul style="list-style-type: none"> ▪ The site has been previously developed with an urban use; ▪ At least 75 percent of the perimeter of the site adjoins parcels developed with urban uses; ▪ At least 75 percent of the area within a one-quarter mile radius of the site is developed with urban uses; ▪ At least three sides of the site are developed with urban uses and at least two-thirds of the site’s perimeter adjoins parcels that are developed with urban uses (for sites with four sides) 	<p>Consistent. The project site is developed with an existing commercial building and a paved surface parking lot. The site is surrounded by urban uses and paved public streets. In addition, surrounding land uses within one-quarter mile of the site are developed with urban uses.</p>

3. FINDINGS CONCERNING CEQA EXEMPTION

Table 1 Infill Requirements and Project Consistency

Infill Requirements	Consistency Determination
<p>PRC Section 21080.66(a)(4): General Plan or Zoning Consistency. The project is consistent with the applicable general plan <u>or</u> zoning ordinance, and any local coastal program as applicable.</p> <p>If the zoning and general plan are not consistent with one another, the project would satisfy this requirement if it were consistent with one.</p> <p>The approval of a density bonus, incentives or concessions, waivers or reductions of development standards, and reduced parking ratios shall not be the basis for determining that the project is inconsistent with this requirement.</p>	<p>Consistent. The project site is within the General Plan North DeAnza Boulevard Special Area and the General Plan land use designation is Office/Industrial/Commercial/Residential. The zoning district is Mixed Use Planned Development with General Commercial, Light Industrial, and Residential (P(CG, ML, Res)). The General Plan land use designation allows residential development and an established residential density of up to 25 dwelling units per acre. The North DeAnza Boulevard Special Area, which is consistent with the General Plan assumptions for the site, includes residential as a supporting use and allows for fully residential development through the use of a Density Bonus Concession. In addition, the project site’s zoning district allows for residential development on the property. The proposed project would provide a residential density of 17.4 dwelling units per acre, which is within the density allowed for the project site under the General Plan. The proposed maximum building height of 41 feet is consistent with the General Plan’s 45-foot height limit allowed for the site.</p>
<p>PRC Section 21080.66(a)(5): Density. The project will be at least one-half of the following applicable density specified in Government Code Section 65583.2(c)(3)(B), to accommodate housing for lower income households³</p> <ul style="list-style-type: none"> ▪ At least 15 units per acre allowed for sites within an incorporated city within a non-metropolitan county and for a non-metropolitan county that has a micropolitan area ▪ At least 10 units per acre allowed for sites within an unincorporated area in a non-metropolitan county not included in the above requirement ▪ At least 20 units per acre allowed for sites within suburban jurisdictions ▪ At least 30 units per acre allowed for sites within a jurisdiction in a metropolitan county. 	<p>Consistent. The project site is in a metropolitan county (i.e., Santa Clara County). Therefore, the minimum density requirement under PRC Section 21080.66(a)(5) is at least one half of 30 dwelling units per acre. The project would have a residential density of 17.4 dwelling units per acre.</p>

3. FINDINGS CONCERNING CEQA EXEMPTION

Table 1 Infill Requirements and Project Consistency

Infill Requirements	Consistency Determination
<p>PRC Section 21080.66(a)(8): Lodging Uses. For a project that was deemed complete pursuant Government Code Section 65589.5(h)(5) on or after January 1, 2025, no portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging. For the purposes of this section, “other transient lodging” does not include either of the following:</p> <ul style="list-style-type: none"> ▪ A residential hotel, as defined in Section 50519 of the Health and Safety Code. ▪ After the issuance of a certificate of occupancy, a resident’s use or marketing of a unit as short-term lodging, as defined in Section 17568.8 of the Business and Professions Code, in a manner consistent with local law. 	<p>Consistent. The proposed project would not include hotel, motel, bed and breakfast inn, or other transient lodging uses.</p>

Notes:

- 1 For a project that was deemed complete pursuant to Government Code Section 65589.5(h)(5) on or after January 1, 2025, no portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging. Other transient lodging does not include either of the following: a residential hotel, as defined in Section 50519 of the Health and Safety Code, or a resident’s use or marketing of a unit as short-term lodging, as defined in Section 17568.8 of the Business and Professions Code.
- 2 United States Census Bureau, 2026, March 19 (accessed), Redefining Urban Areas following the 2020 Census, <https://www.census.gov/newsroom/blogs/random-samplings/2022/12/redefining-urban-areas-following-2020-census.html>.
- 3 California Legislative Information, 2026, March 19 (accessed), Government Code – GOV: ARTICLE 10.6. Housing Elements [65580 - 65589.11], https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65583.2.&nodeTreePath=12.1.10.10&lawCode=GOV.

3. FINDINGS CONCERNING CEQA EXEMPTION

Environmental Criteria

Pursuant to PRC Section 21080.66(a), the project site must meet the environmental criteria identified in Government Code Section 65913.4(a)(6) in addition to PRC Section 21080.66(a)(7). These environmental criteria and the proposed project’s consistency are detailed in Table 2, *Environmental Criteria and Project Consistency*. As shown in Table 2, the project site would meet the environmental criteria.

Table 2 Environmental Criteria and Project Consistency

Environmental Criteria	Consistency Determination
PRC Section 21080.66(a)(6)	
Coastal Zone. The project site cannot be located in a coastal zone, as defined in the Public Resources Code (PRC) Division 20.	Consistent. The project site is not in a coastal zone. It is approximately 20 miles east of the Pacific Ocean. The California Coastal Commission designates the boundary of coastal zones to extend 3 nautical miles offshore and does not include the project site. ¹
Farmland. The project site cannot be located on either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.	Consistent. The project site is not on prime farmland or farmland of statewide importance. The California Department of Conservation designates the city of Cupertino as Urban and Built-Up Land. ² Additionally, as discussed in Section 2.3, <i>Land Use and Zoning Designations</i> , the project site is not zoned for agricultural uses.
Wetlands. The project site cannot be located on wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2.	Consistent. The United States Fish and Wildlife Service does not identify any wetlands on or near the project site. ³
Fire Hazard Severity Zone. The project site cannot be within a very high fire hazard severity zone (FHSZ), as determined by the Department of Forestry and Fire Protection (CAL FIRE) pursuant to Government Code Section 51178, or within a high or very high FHSZ as indicated on maps adopted by CAL FIRE pursuant to PRC Section 4202. This requirement does not apply to sites that have adopted fire hazard mitigation measures pursuant	Consistent. The project site is not within a very high FHSZ, as designated by CAL FIRE. It is approximately 2.8 miles east of a high FHSZ in a Local Responsibility Area, and 3 miles east of lands that CAL FIRE designates as a high FHSZ in a State Responsibility Area. ⁴

3. FINDINGS CONCERNING CEQA EXEMPTION

Table 2 Environmental Criteria and Project Consistency

Environmental Criteria	Consistency Determination
to existing building standards or state fire mitigation measures applicable to the development.	
<p>Hazardous Waste Site. The project site cannot be on a hazardous waste site that is listed pursuant to Government Code Section 65962.5 (Cortese List) or a hazardous waste site designated by the Department of Toxic Substances Control (DTSC) pursuant to Health and Safety Code Section 25356 (EnviroStor online database), unless DTSC has cleared the site for residential use or residential mixed uses.</p>	<p>Consistent. The project site is not included on the Hazardous Waste and Substances Site List (Cortese) pursuant to Government Code Section 65962.5.⁵ Additionally, the project site is not listed on any of the following California Environmental Protection Agency’s (CalEPA) Cortese List Data Resources:⁶</p> <ul style="list-style-type: none"> ▪ List of Hazardous Waste and Substances sites from DTSC EnviroStor database⁵ ▪ List of Leaking Underground Storage Tank (LUST) sites from the State Water Resource Control Board’s (SWRCB’s) GeoTracker⁷ ▪ List of solid waste disposal sites identified by SWRCB with waste constituents above hazardous waste levels outside the waste management unit⁸ ▪ List of “active” Cease and Desist Orders and Cleanup and Abatement Orders from SWRCB⁹ ▪ List of hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code, identified by DTSC¹⁰
<p>Earthquake Fault Zone. The project site cannot be within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law of Health and Safety Code Division 13, and by any local building department under Title 2 of the Government Code, Division 1, Chapter 12.2.</p>	<p>Consistent. The California Geological Survey does not map an earthquake fault zone in or near the project site.¹¹</p>

3. FINDINGS CONCERNING CEQA EXEMPTION

Table 2 Environmental Criteria and Project Consistency

Environmental Criteria	Consistency Determination
<p>Federal Emergency Management Agency (FEMA) Designations. The project site cannot be within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by FEMA in any official maps published by FEMA, unless either of the following are met:</p> <ul style="list-style-type: none"> ▪ The site has been subject to a Letter of Map Revision prepared by FEMA and issued to the local jurisdiction. ▪ The site meets FEMA requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program. <p>The project site also cannot be within a regulatory floodway as determined by FEMA in any official maps published by FEMA, unless the development has received a no-rise certification in accordance with Title 44 of the Code of Federal Regulations, Section 60.3(d)(3).</p>	<p>Consistent. FEMA’s Flood Insurance Rate Map (FIRM) designates the project site as Zone X, which is defined as areas with 0.2% annual chance of flood. The project site is also not within a regulatory floodway.¹²</p>
<p>Conservation Plan. The project site cannot be on lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act, habitat conservation plan pursuant to the federal Endangered Species Act of 1973, or other adopted natural resource protection plan.</p>	<p>Consistent. A small portion of Cupertino is in the Santa Clara Valley Habitat Plan; however, the project site is approximately 1 mile north of the boundaries of the plan.¹³</p>
<p>Special Status Species Habitat. The project site cannot be in a habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973, the California Endangered Species Act, or the Native Plant Protection Act.</p>	<p>Consistent. The Classification and Assessment with Landsat of Visible Ecological Groupings habitat mapping program classifies the project site as an “Developed, High Intensity,” which tends to have low to poor wildlife habitat value due to replacement of natural communities, fragmentation of remaining open space areas and parks, and intensive human disturbance. The California Natural Diversity Database has no record of special-status plant and animal species on the project site or urbanized areas</p>

3. FINDINGS CONCERNING CEQA EXEMPTION

Table 2 Environmental Criteria and Project Consistency

Environmental Criteria	Consistency Determination
	within a one-mile area surrounding the site. ¹⁴ There are no natural lands within a one-mile area of the project site. Accordingly, the project site has no value as habitat for endangered, rare, or threatened species.
Lands under Conservation Easement. The project site cannot be on lands under conservation easement.	Consistent. The project site is not within a conservation easement.
PRC Section 21080.66(a)(7)	
Historic Structure. Pursuant to PRC Section 21080.66(a)(7), the project cannot require the demolition of historic structure that was placed on a national, state, or local historic register before the date a preliminary application was submitted for the project.	Consistent. The project would include the demolition of the site’s existing commercial building. The existing building on the project site is not currently listed on the National Register of Historic Places ¹⁵ or the list of California Register of Historical Resources, ¹⁶ or the most recent list of Cupertino historically significant resources. ¹⁷

Sources:

1. California Coastal Commission, 2019, Maps: Coastal Zone Boundary, <https://www.coastal.ca.gov/maps/czb/>, accessed March 19, 2026.
2. California Department of Conservation, 2022, California Important Farmland Finder, <https://maps.conservation.ca.gov/DLRP/CIFF/>, accessed March 19, 2026.
3. United States Fish and Wildlife Service, 2026, March 19 (accessed), National Wetlands Inventory, <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>.
4. California Department of Forestry and Fire Protection, 2026, March 19 (accessed), Fire Hazard Severity Zone Viewer, <https://osfm.fire.ca.gov/what-we-do/community-wildfire-preparedness-and-mitigation/fire-hazard-severity-zones>.
5. California Department of Toxic Substances Control, 2026, March 19 (accessed), Hazardous Waste and Substances Site List (Cortese), https://www.envirostor.dtsc.ca.gov/public/search?cmd=search&reporttype=CORTESE&site_type=CSITES,FUDS&status=ACT,BKLG,COM&reporttitle=HAZARDOUS+WASTE+AND+SUBSTANCES+SITE+LIST+%28CORTESE%29.
6. California Environmental Protection Agency, 2026, March 19 (accessed), Cortese List Data Resources, <https://calepa.ca.gov/SiteCleanup/CorteseList/>.
7. State Water Resources Control Board, 2026, March 19 (accessed), GeoTracker, <https://geotracker.waterboards.ca.gov/map/?CMD=runreport&myaddress=10268+bandley+drive>.
8. California Environmental Protection Agency, 2026, March 19 (accessed), Sites Identified with Waste Constituents Above Hazardous Waste Levels Outside the Waste Management Unit, https://calepa.ca.gov/wp-content/uploads/2026/02/CorteseList-Solid-Waste-Facilities_2026.pdf.
9. California Environmental Protection Agency, 2026, March 19 (accessed), List of “active” CDO and CAO from Water Board, https://calepa.ca.gov/wp-content/uploads/2026/03/2026_scp_cortese.list_lat.long_.pdf.

3. FINDINGS CONCERNING CEQA EXEMPTION

10. California Environmental Protection Agency, 2026, March 19 (accessed), Cortese List: Section 65962.5(a), <https://calepa.ca.gov/sitecleanup/corteselist/section-65962-5a/>.
11. California Geological Survey, 2026, March 19 (accessed), Earthquake Zones of Required Investigation, <https://maps.conservation.ca.gov/cgs/informationwarehouse/eqzapp/>.
12. Federal Emergency Management Agency, 2009, May 18, FEMA Flood Map Service Center: Search By Address, <https://msc.fema.gov/portal/search?AddressQuery=10268%20bandley%20Dr%2C%20Cupertino%2C%20CA%2095014>, accessed March 19, 2026.
13. Santa Clara Valley Habitat Agency, 2013, Santa Clara Valley Habitat Plan Geobrowser, <https://scvha.maps.arcgis.com/apps/webappviewer/index.html?id=f2268679c2fa49489e3f7d6e8377837e>, accessed March 19, 2026.
14. California Natural Diversity Database, 2026, March 19 (accessed), CNDDDB Maps and Data, <https://apps.wildlife.ca.gov/bios6/?tool=cnddbqv>.
15. National Park Service, 2024, July 10, National Register of Historic Places, <https://www.nps.gov/subjects/nationalregister/database-research.htm#table>, accessed March 19, 2026.
16. California Office of Historic Preservation, 2026, March 19 (accessed), California Historical Resources, <https://ohp.parks.ca.gov/ListedResources/?view=county&criteria=43>.
17. City of Cupertino, 2015, certified General Plan Amendment, Housing Element Update, and Associated Rezoning EIR, Chapter 4.5, *Cultural Resources*, Table 4.4-2, *Cultural Resources in the Project Study Area and Vicinity*, pages 4.4-8 to 4.4-12.

Tribal Cultural Resources

TRIBAL OUTREACH AND CONSULTATION

PRC Section 21080.66(b) requires local government to provide formal notification via certified mail and email to each California Native American tribe that is traditionally and culturally affiliated with the project site as an invitation to consult on the proposed project, its location, and the potential for the project to impact tribal cultural resources pursuant to one of the following deadlines:

- Within 14 days of the application for the project being deemed complete, pursuant to Government Code Section 65589.5(h)(5).
- Within 14 days of notifying the local government that the project is eligible to be exempt from this division pursuant to this section for projects whose applications were deemed complete before July 1, 2026.

Tribal Notification

The City received a request to be notified about projects in the city of Cupertino from the Tamien Nation on May 28, 2021, as the city is within the geographic area with which they are traditionally and culturally affiliated. The City routinely notifies the Tamien Nation of all applicable projects pursuant to the Native American Historic Resource Protection Act, commonly referred to as its legislative bill number, AB 52. In addition, the City sent a request to

3. FINDINGS CONCERNING CEQA EXEMPTION

the Native American Heritage Commission (NAHC) for a Tribal Contacts List on August 4, 2025. The NAHC provided a consultation list with a total of 23 contacts for nine tribes that are traditionally and culturally affiliated with the geographic area of the city of Cupertino on August 5, 2025:

- Amah Mutsun Tribal Band
- Amah Mutsun Tribal Band of Mission San Juan Bautista
- Costanoan Rumsen Carmel Tribe
- Indian Canyon Mutsun Band of Costanoan
- Muwekma Ohlone Tribe of the SF Bay Area
- Northern Valley Yokut / Ohlone Tribe
- Tamien Nation
- The Ohlone Indian Tribe
- Wuksachi Indian Tribe/Eshom Valley Band

SummerHill Homes notified the City that the proposed project is eligible to be exempt pursuant to PRC Section 21080.66 on November 6, 2025. On November 19, 2025, the City sent outreach request letters via certified mail and email for each tribal contact provided. Table 3, *Tribal Notification, Outreach, and Consultation Initiation*, shows the contacts that requested consultation.

Table 3 Tribal Notification, Outreach, and Consultation Initiation

Tribe Name	Tribe Contact	Date of Response	Date of Consultation Initiation
Amah Mutsun Tribal Band	Ed Ketchum, Vice-Chairperson	--	--
Amah Mutsun Tribal Band	Valentin Lopez, Chairperson	--	--
Amah Mutsun Tribal Band of Mission San Juan Bautista	Garry Zimmer, Senior Cultural Monitor and Consultant	--	--
Amah Mutsun Tribal Band of Mission San Juan Bautista	Christopher Zimmer, Senior Cultural Monitor and Consultant, Councilman	--	--
Amah Mutsun Tribal Band of Mission San Juan Bautista	Michelle Zimmer, Senior Cultural Monitor and Consultant	--	--
Amah Mutsun Tribal Band of Mission San Juan Bautista	Irenne Zwierlein, Chairperson	--	--
Amah Mutsun Tribal Band of Mission San Juan Bautista	Shelby Brown, Senior Cultural Monitor and Consultant, Councilwoman	--	--
Costanoan Rumsen Carmel Tribe	Carla Munoz, Tribal Council	--	--
Costanoan Rumsen Carmel Tribe	Samuel Rodriguez, Cultural Resource Officer	--	--
Costanoan Rumsen Carmel Tribe	Henry Muñoz, Cultural Resource Officer	--	--

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Table 3 Tribal Notification, Outreach, and Consultation Initiation

Tribe Name	Tribe Contact	Date of Response	Date of Consultation Initiation
Indian Canyon Mutsun Band of Costanoan	Ann Marie Sayers, Retired Honorable Elder	--	--
Indian Canyon Mutsun Band of Costanoan	Kanyon Sayers-Roods, Tribal Chairwoman	1/6/2026	1/7/2026
Muwekma Ohlone Tribe of the SF Bay Area	Richard Massiatt, Councilmember/MLD Tribal Rep.	11/19/25	11/25/2025
Muwekma Ohlone Tribe of the SF Bay Area	Charlene Nijmeh, Chairperson	11/19/25	11/25/2025
Northern Valley Yokut / Ohlone Tribe	Katherine Perez, Chairperson	--	--
Northern Valley Yokut / Ohlone Tribe	Timothy Perez, Tribal Compliance Officer	--	--
Tamien Nation	Lillian Camarena, Secretary	12/2/2025	No consultation requested
Tamien Nation	Quirina Geary, Chairperson	12/2/2025	No consultation requested
Tamien Nation	Johnathan Wasaka Costillas, THPO	--	--
The Ohlone Indian Tribe	Desiree Vigil, THPO	--	--
The Ohlone Indian Tribe	Andrew Galvan, Chairperson	--	--
The Ohlone Indian Tribe	Vincent Medina, Cultural Leader	--	--
Wuksachi Indian Tribe/ Eshom Valley Band	Kenneth Woodrow, Chairperson	--	--

Source: Native American Heritage Commission, August 2025.

Note: Where no dates are identified, no response was received, thus consultation was not initiated.

Sacred Lands File Search

Concurrently with the tribal contact list request on August 4, 2025, the City also requested a Sacred Lands File (SLF) search. There are no known cultural resources on the project site and the results of the SLF search conducted by Mathew Lin, MPP, Cultural Resources Analyst, of the NAHC, on August 5, 2025, were negative.

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PROTECTION OF TRIBAL CULTURAL RESOURCES

Pursuant to PRC Section 21080.66(b)(4)(A), the project applicant is required to comply with any enforceable agreements reached during the project consultation. The Tamien Nation requested that, should any tribal or historical resources be discovered during grading or other ground-disturbing activities of the proposed project, they shall be notified immediately. No additional agreements, enforceable or otherwise, were requested during project consultation; therefore, no additional requirements were added to the proposed project. Further, pursuant to PRC Section 21080.66(b)(4)(B), a mutual agreement was made between the California Native American tribes that consulted and the project applicant; thus, none of the measures pursuant to PRC Section 21080.66(b)(4)(B) are required.

TRIBAL CULTURAL RESOURCES CONSISTENCY SUMMARY

The City completed the tribal outreach requirements pursuant to PRC Section 21080.66(b)(1) through (3) and the requirements of PRC Section 21080.66(b)(4) do not need to be included as a binding condition. As such, the project is consistent with the tribal outreach and consultation and protection of tribal cultural resources requirements described in PRC Section 21080.66(b).

Environmental Assessment (Hazardous Materials)

PHASE I ENVIRONMENTAL SITE ASSESSMENT

PRC Section 21080.66(c)(1)(A) states that local government shall require the project applicant to complete a Phase I Environmental Site Assessment (ESA) as a condition of approval for the development, as defined in Section 78090 of the Health and Safety Code. Based on PRC Section 21080.66(c)(1)(B), if a recognized environmental condition (REC) is found, the project applicant shall complete a preliminary endangerment assessment¹ (in accordance with the California Health and Safety Code Section 78095), prepared by an environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. Pursuant to PRC Section 21080.66(c)(1)(C), if release of a hazardous substance is found to exist on the site, the release shall be removed, or any effects of the release shall be mitigated to levels required by current federal and State statutory and regulatory standards before the local government issues a certificate of occupancy. Pursuant to PRC Section 21080.66(c)(1)(D), if a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall

¹ Based on the California Health and Safety Code Section 78095, preliminary endangerment assessment includes the following activities: Sampling and analysis of a site; a preliminary determination of the type and extent of hazardous material contamination of a site; and a preliminary evaluation of the risks the hazardous materials contamination of a site may pose to public health or the environment.

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be mitigated to levels required by current federal and State statutory and regulatory standards before the local government issues a certificate of occupancy.

A Phase I ESA was prepared and third-party peer reviewed as part of the City's requirements in Cupertino Municipal Code Chapter 17.04, *Standard Environmental Protection Requirements*, that identifies standard environmental protection requirements that all construction projects must meet. The results of the Phase I ESA did not find any RECs. However, a business environmental risk (BER), a condition that can have a material environmental or environmentally driven impact on the business associated with the current or planned use of commercial real estate, was identified. A limited Phase II Investigation was prepared and third-party peer reviewed that concluded there is not an unacceptable human health risk to future residents in regard to metals and Organochlorine Pesticides (OCPs) from past agricultural orchard use and no further investigation is recommended for the site. Accordingly, the project has complied with the requirements of PRC Section 21080.66(c)(1) regarding hazardous materials.

PROXIMITY TO FREEWAYS

For projects within 500 feet of a freeway, PRC Section 21080.66(c)(2) requires:

- The building shall have a centralized heating, ventilation, and air-conditioning (HVAC) system.
- The outdoor air intakes for the HVAC system shall face away from the freeway.
- The building shall provide air filtration media for outside and return air that provides a minimum efficiency reporting value of 16.
- The air filtration media shall be replaced at the manufacturer's designated interval.
- The building shall not have any balconies facing the freeway.

Project Consistency. The project site is approximately 0.4 miles (2,200 feet) away from the freeway; therefore, the proposed project is not subject to PRC Section 21080.66(c)(2) criteria.

Other Requirements

LABOR CODE

PRC Section 21080.66(d) includes additional labor requirements for housing development projects, including:

- The payment of at least the general prevailing rate of per-diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations, to construction

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workers employed in the execution of a 100 percent affordable housing development project.

- Compliance with the labor standards outlined in Government Code Section 65913.4(a)(8) for buildings over 85 feet in height above grade.
- Compliance with the labor standards of Government Code Section 65912.130 for projects of 50 units or greater in the city and county of San Francisco, for any construction craft where at least 50 percent of the units in market-rate multifamily housing projects that received their certificate of occupancy between 2022 and 2024, inclusive, were built by workers that were paid not less than the general prevailing rate of per-diem wages.
- Extension of Labor Code Section 218.8 to the project applicant in addition to the direct contractor or subcontractor.
- Allowance of a joint labor-management cooperation committee to undertake specific actions to court.

Project Consistency. The proposed project is not a 100 percent affordable housing development, over 85 feet in height above grade, or in the city or county of San Francisco. The proposed project would comply with the Labor Code and the Business and Professions Code described previously.

ELIGIBILITY FOR MODIFICATIONS OF DEVELOPMENT STANDARDS

As stated in PRC Section 21080.66(e), this PRC section does not affect the 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 Government Code Section 65915. Therefore, the applicability of this statutory exemption does not prohibit the proposed project from requesting the waivers, exception, and reduction described in Section 2.3, *Land Use and Zoning Designations*.

3.3 CONCLUSION

As analyzed in Section 3.1, *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.

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