**COMMUNITY DEVELOPMENT DEPARTMENT**
**CITY ATTORNEY'S OFFICE**

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3403
CUPERTINO.GOV

**CITY COUNCIL STAFF REPORT**

Date: December 2, 2025

Subject

Study Session on Mary Avenue project ("Mary Ave." or "Project") with history, timeline, status, and recommended next steps

Recommended Action

Consider Mary Ave. project and provide direction on next steps

Executive Summary

Over the past five years the City has been planning a housing project to accommodate the Intellectually Developmentally Disabled ("IDD") population with Extremely Low Income ("ELI") housing units and subsequently issued a Request For Proposal ("RFP") for such development. The project was initiated at City Council direction through the City Work Program. The Cupertino Rotary Housing Corporation, Housing Choices Coalition, and Charities Housing were, together, the sole respondent to that RFP. In April 2025, the City authorized just over $4 million in funding for the Project. In July 2025, the City received an Article 34 allocation from the County of Santa Clara, satisfying the State Constitutional requirement that voters approve the use of public funds for such housing.

Now, various additional City approvals will be required to enable the development, including entering into an agreement to transfer certain real property rights to the developer via a sale or ground lease, vacating certain interests in the City right-of-way, filing a declaration with the California Department of Housing and Community Development's ("HCD") stating that the property is exempt surplus land owned by the City that will be used for below market rate housing, and issuing the entitlements under the State's housing laws and the City's municipal code.

Project History

Starting with the Fiscal Year (FY) 2019-20 City Work Program, the City has included a project item to engage with philanthropic organizations to find a way to facilitate the construction of ELI housing units for the IDD populations within the City. Specifically, the objective had been to explore the possibility of building six to eight affordable ownership townhomes for this population. During the FY 2021-2022 City Work Program update, the project objective evolved to analyze the feasibility of developing housing for this target population on City owned property within the public right-of-way along Mary Avenue. Since this time, the City has taken the following actions to address the City Work Program item:

- March 10, 2021 – City sought legal counsel regarding the requirements of the Surplus Land Act and its applicability to the Project.

- December 15, 2021 – Execution of a Permanent Local Housing Allocation Consortium Agreement with County of Santa Clara (relevant to funding of Project).

- December 22, 2021 – Execution of a First Amendment to Permanent Local Housing Allocation Consortium Agreement with County of Santa Clara.

- March 15, 2022 – City Council directed staff to initiate the RFP for the Project, specifically pointing out that Council would like the Project to be developed as 100% affordable with a preference for the IDD population, and to provide flexibility to staff members compiling the RFP to optimize our chances of having a successful project. The draft parcel map was introduced to the City Council as well as the steps necessary to transfer the City-owned property in compliance with the Surplus Land Act. The motion was carried unanimously.

- August 18, 2022 - an RFP was circulated to qualified housing developers.

- October 10, 2022 - the first draft of the Housing Element was made public with the Mary Avenue parcel identified as a Housing Element Site.

- October 18, 2022 - the City received a single response to the RFP submitted jointly by The Cupertino Rotary Housing Corporation Housing Choices Coalition, and Charities Housing.

- May 2, 2023 – Parcel Map recorded

- February 6, 2024 - City Council unanimously approved an Exclusive Negotiating Agreement.

- April 9, 2024 - Execution of Exclusive Negotiating Agreement.

- May 14, 2024 - City Council adopted the 6th Cycle Housing Element, which designated this site as a Priority Housing Site (HE Site 10), with an R4 zoning designation and a residential density of 50-65 DU/acre.

- September 4, 2024 – City Council authorized the remaining budget amount (up to $235,000) to evaluate the proposal received for the City-owned property on Mary Avenue. The motion passed 4-0-1, with one Councilmember absent.

- September 4, 2024 - HCD notified the City that the Housing Element adopted by the City Council on May 14, 2024, is in compliance with the State Housing Element Law. This included the Mary Avenue parcel as a Housing Element Site.

- April 3, 2025 - Charities Housing applied for an Architectural and Site Approval (ASA-2025-006) consistent with the Municipal Code requirements for Housing Element Sites that are over 20% low-income units.

- April 15, 2025 – City Council authorized an allocation of $4,083,250 of cash assistance for the Project. The allocation is comprised of $3 million of funds from the City's BMR Affordable Housing Fund, $908,683 of Permanent Local Housing Allocation ("PLHA") funds, and $174,567.37 of Community Development Block Grant ("CDBG") funds to be used for public infrastructure improvements. These three allocations provided a total of $4,083,250 in cash assistance to the Project.

- July 15, 2025 – City Council conducted a Study Session on the Project. City Council adopted a motion (3-2) to allow the project to proceed as previously described; to address the newly raised Article 34 issue; and to address the questions of parking in an additional informational memo.

- July 29, 2025 – Article 34 allocation awarded from County of Santa Clara to Charities Housing for Mary Ave Project.

The proposal envisions a 100% affordable, 40-unit, two-story, rental housing development project on city-owned surplus property of approximately 0.79 acres along the Mary Avenue right-of-way, adjacent to Highway 85. The individual apartments will be a mix of studio, one-, and two-bedroom units with one three-bedroom staff unit. The proposal is structured as a special needs project which requires a minimum of 45% (19 units) to be reserved for the special needs population, in this case, IDD. The remaining 21 apartments will serve extremely low and very low-income residents of the community. The affordability levels of the proposed units will range from 30% to 60% of the Area Median Income (AMI). The Mary Avenue right-of-way will be modified to accommodate the proposed development, as well as maintain the sidewalk, bike lanes, and vehicle lanes along Mary Avenue. Approximately 79 of the existing angled street parking spaces located along the west side of Mary Avenue, including those within the limits of the parcel, will be replaced by 33 parallel spaces in the right-of-way. Along the eastern side of Mary Avenue, 43 parallel parking spaces will also be removed, resulting in a net on-street parking loss of 89 spaces (79+43-33 spaces). Please reference Attachment H – Existing Conditions and Demolition Plan to review an outline of the parcel and the existing parking on the westside of Mary Avenue. Bike lanes in both directions will continue to be provided, with the addition of a sidewalk in front of the Project where one does not exist currently.

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

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

<u>Financial Status</u>

The City engaged an independent firm to assess the reasonableness of the developer's pro forma assumptions and inputs in order to analyze the Project's financial feasibility and need for a financial subsidy from the City. The review concluded that the developer's pro forma was reasonable. As the Project has developed, changes have been made to the Project and the developer's financial position, necessitating updates to the pro forma. The City has committed the following financial support for the Project:

1. The sale of the property under a Disposition and Development Agreement ("DDA") for the nominal price of $1 with a repurchase option under certain circumstances or a long-term Ground Lease with nominal rent.

2. A hard money loan of approximately $3 million from the City's BMR Fund with repayment at 3% simple interest per annum. Payments commence once the Project achieves positive cash flow, with accrued interest capitalized until such time.

3. A payment of $908,683 in PLHA funds for predevelopment expenses.

4. CDBG grant funds in the amount of approximately $174,567.37.

5. City is waiving Park Development Impact Fees in the amount of $2.16 million.

<u>Current State of Project</u>

On April 3, 2025, Charities Housing applied for an Architectural Site Approval (ASA-2025-006). The application was deemed complete on September 4, 2025. Currently, the application is being reviewed for consistency with the objective standards as set forth in the General Plan and the R4 Zoning District, as well as being reviewed by Public Works, Cupertino Sanitary, and the Santa Clara County Fire Department. Before California's 2025 Building Code takes effect on January 1, 2026, the applicant is hoping to submit building plans for review with the understanding that permit issuance will be subject to Project approval by City Council.

The 2026 California State Low Income Tax Credit program application deadlines have not yet been confirmed. However, the tentative deadline to apply for 9% tax credits is anticipated to be April 7, 2026, or another date in early Spring. There are two rounds of applications per year, with the next available date being July 21, 2026. In order to have a competitive application and ensure the success of the project, it is optimal to have the City's financial commitments, funding loans, and transfer of property rights executed by late February 2026. Execution of regulatory documents, such as affordability restrictions, shall be completed concurrently with closing. Adhering to this schedule will allow Charities Housing, as the developer, enough time to prepare a successful application.

Legal Questions

*Vacation*

1. The Streets and Highways Code ("SHC") (§8300 et seq.) does not establish any specific timing requirements regarding when a non-summary vacation must occur within a broader project or transactional timeline, as long as it is completed prior to disposition of the property. Accordingly, the City remains within the permissible timeframe to undertake the vacation process and plans to do so at the appropriate stage.

2. The SHC sets forth two vacation procedures: a summary vacation and a non-summary vacation. Because the property does not qualify for the summary procedure, this Staff Report addresses only the non-summary vacation process. Govt. C §66434(g) also allows for abandonment of public streets and public easements through the filing of a map in lieu of the formal vacation process under the SHC; however, such subsection does not apply to this Project and therefore is not discussed herein.

3. The non-summary vacation procedure is as follows:

    a. Planning Commission: If the City's general plan applies to the property that is proposed to be vacated, then the proposed vacation must be submitted to the planning commission for review pursuant to Government Code ("Govt. C") §65402(a); SHC §8313. The Planning Commission must make a report regarding the conformity of the proposed street vacation with the City's general plan within 40 days of submission unless a longer period of time is designated by the City Council pursuant to Govt. C §65402.

    b. Notice: After the Planning Commission's finding of conformity, the City Council may initiate proceedings by setting a hearing pursuant to SHC §8320. A notice which sets forth the time and place of the hearing must be (i) published in a daily, semiweekly, or weekly newspaper (SHC §8322), and (ii) posted along the street line no more than 300 feet apart, with at least three notices posted. SHC §8323. The hearing must be held at least 15 days after the publication and posting of the notice. SHC §8320. Additional requirements are imposed for streets exceeding 1 mile which do not apply here and have therefore been omitted.

c. <u>Hearing</u>: At the hearing, City Council must hear evidence presented by interested persons. SHC §8324(a).

d. <u>Resolution</u>: If the street is found to be unnecessary for present or prospective public use, the City Council may adopt a resolution vacating the street. The resolution may (i) impose conditions of approval (SHC §8324(b)), and (ii) reserve from vacation any easements related to future sewers, storm drains, other utilities, future streets, existing utilities, future vehicular and nonvehicular trails for use by the public. SHC §8340. A certified copy of the resolution must be recorded. SHC §8325(a). From the date of recordation and compliance with any applicable conditions, the vacation is complete. SHC §8325(b).

*Surplus Land Act*

1. The Surplus Land Act ("SLA") is codified in Govt. C §§54220-54234 and implemented in accordance with the HCD'sSurplue Land Act Guidelines ("HCD Guidelines"). The SLA does not impose a specific deadline for a local agency to designate property as surplus land or exempt surplus land as long as it is completed prior to disposition of the property. Accordingly, the City remains within the permissible timeframe to make the required SLA declaration. Common municipal practice is for the City making the exempt surplus land determination to do so concurrently with approval of the DDA.

2. The SLA sets forth two procedures, one for surplus land and another for exempt surplus land. The Project was structured from inception to qualify as exempt surplus land. Therefore, the procedures for surplus land shall only be described to the extent that it is relevant in clarifying questions that have arisen from the public. However, please note that an exhaustive description of the procedure for surplus land is not included herein.

3. The determination of whether the Project is surplus land or exempt surplus land is made based on the following:

   a. Surplus land is defined in Govt. C §54221(b)(1) and HCD Guidelines §102(dd) as "land owned in fee simple by any local agency for which the local agency's governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency's use. Land shall be declared either 'surplus land' or 'exempt surplus land,' as supported by written findings, before a local agency may take any action to dispose of it consistent with an agency's policies or procedures."

      i. Disposition of surplus land must comply with Govt. C §54222 and Articles II and III of HCD Guidelines. These requirements include, among other things, issuing a Notice of Availability to all entities that have filed a statement of interest with HCD, adhering to prescribed negotiation procedures and restrictions, following the required prioritization of qualifying proposals, and engaging in a good-faith negotiation process.

b. Section 103(a) of the HCD Guidelines, exempts surplus land from compliance with Articles II and III of such guidelines (a more detailed description of the process of exempt surplus land is included in Section 4 below). The Project was structured from its inception to meet the requirements for an exemption. The Project likely qualifies for either of the following two exemptions from the SLA:

   i. Surplus land that is transferred pursuant to Govt. C §§25539.4 or 37364, Govt. C §54220 (f)(1)(A), and

   ii. Surplus land that is to be developed for a housing development, which may have ancillary commercial ground floor uses, that restricts 100 percent of the residential units to persons and families of low or moderate income, with at least 75 percent of the residential units restricted to lower income households, as defined in §50079.5 of the Health and Safety Code ("HSC"), with an affordable sales price or an affordable rent, as defined in HSC §50052.5 or HSC §50053, for a minimum of 55 years for rental housing, land use for ownership housing, and 50 years for rental or ownership housing located on tribal trust lands, and in no event shall the maximum affordable sales price or rent level be higher than 20 percent below the median market rents or sales prices for the neighborhood in which the site is located. Govt. C §54220 (f)(1)(F)(i).

4. The procedure for exempt surplus land is as follows:

   a. <u>Declaration of Exemption</u>: The exemption of surplus land can be effectuated in one of two ways:

      i. The City Council may declare the property to be "exempt surplus land" at a regular public meeting and the declaration must be supported by written findings demonstrating that the land meets the requirements of the applicable exemption. Govt. C §54221(b)(1), HCD Guidelines §103(c).

      ii. The City may identify the land in a notice that is published and available for public comment, including notice to the entities identified in Govt. C §54222(a) and HCD Guidelines §201(a), at least 30 days before the exemption takes effect. Govt. C §54221(b)(4), HCD Guidelines §103(c)(1). The notice must include the information required in HCD Guidelines §400(e)(3).

   b. <u>Notice to HCD</u>: The City must provide HCD with a copy of the resolution (or other document recording formal action) declaring the property exempt surplus land, written findings supporting such a declaration, and a copy of the DDA at least **30 days prior to disposition**. HCD Guidelines §§103(c)(2)(A), 400(e)(1-4).

*Disposition and Development Agreement (Not Development Agreement)*

1. A Development Agreement is a contract authorized by Govt. C §65864 et seq. that allows a city and a developer to vest development rights and "freeze" applicable land use regulations as of the date of the agreement's approval. Development Agreements were historically created to provide certainty to developers, particularly for multi-year projects, by protecting them from subsequent changes in zoning or other land use regulations. State law establishes a defined approval process: the agreement must be consistent with the City's General Plan and applicable policies, must undergo a noticed public hearing before both the Planning Commission and the City Council, and must ultimately be approved by ordinance.

2. A Disposition and Development Agreement is not created under a specific statutory scheme; it is a contract governed by general contract principles and the City's discretionary authority to dispose of property. A DDA typically combines elements of a purchase and sale agreement with detailed development obligations, such as required improvements, performance milestones, affordability or public benefit requirements, and remedies for nonperformance. Because DDAs are contractual rather than statutory, there is no prescribed approval procedure beyond the City's standard requirements for approving contracts involving the conveyance of public property. Generally, such process involves City Council approval at a noticed public meeting. The form of approval is typically a resolution authorizing the City Manager to execute the agreement unless a local ordinance requires otherwise.

*Entitlements*

1. State housing law, including the Housing Accountability Act (Govt. C §65589.5), the Housing Crisis Act of 2019 (SB 330, Govt. Code §66300 et seq.), SB 35 (Gov. Code §65913.4), and Housing Element Law (Gov. Code §65580 et seq.) provides a framework that guides local decision-making on housing development. These laws establish objective standards and timelines for certain housing projects, encourage the City to maintain adequate zoning capacity to meet regional housing needs, and limit discretionary actions that would conflict with these objectives. Within this framework, the City Council retains discretion to review and shape projects, while also ensuring consistency with state housing policy and local planning goals.

<u>Future Required Actions and Expected Timing</u>

Today only a few milestones are left in the development approval process:

The parties must agree on the terms of the property right transfer, via a DDA with a buyback provision, including a clear formula for determining the repurchase price, or via a long-term Ground Lease. Approval of the DDA or Ground lease is expected to come before the City Council in early 2026.

The City Council must declare the property to be exempt surplus land and file such declaration with HCD.

The City Council must approve the vacation of the right-of-way. The final vacation approval need not occur at the time the City approves the terms of the property right transfer via execution of the DDA or Ground Lease. Rather, the final closing must be contingent on the final vacation of the right-of-way.

The City Council must approve entitlements.

Reasons for Recommendation and Available Options

The Mary Avenue parcel has been contemplated as a housing site that would target the IDD and low-income populations since the City Council FY 2020-21 Work program. The City of Cupertino's 2023-2032 Housing Element rezoned this site to R4, with a minimum density of 50 dwelling units per acre and a maximum density of 65 dwelling units per acre, or 40 dwelling units of realistic capacity. HCD approved the site as one in which all 40 units would be lower income units, consistent with what is proposed by Charities Housing. Further, the Housing Element provides the following Policies and Strategies that support the development of housing opportunities and partnerships with non-profits dedicated to persons with special needs:

- POLICY HE-2.3: Development of Affordable Housing and Housing for Persons with Special Needs.
- STRATEGY HE-2.3.1: Support Affordable Housing Development
- STRATEGY HE-2.3.10: Extremely Low-income Housing
- STRATEGY HE-2.3.11: Assistance For Persons with Developmental Disabilities

Based on the above and on the direction provided to staff since 2021, it is recommended that the City Council move forward with Project approvals and that the City Council appoint negotiators to facilitate the property transfer to Charities Housing, in either the form of a DDA including a sale with the right to repurchase or a Ground Lease.

Sustainability Impact

No sustainability impact.

Fiscal Impact

On April 15, 2025, the City Council authorized an allocation of $4,083,250 of cash assistance to the Project. The allocation is comprised of $3 million of funds from the City's BMR Affordable Housing Fund, $908,683 of PLHA funds, and $174,567.37 of CDBG funds to be used for public infrastructure improvements. These three allocations will provide a total of $4,083,250 in cash assistance to the Project. Costs associated with this work program item are budgeted in the BMR Housing Fund 265-72-71 750-052.

City Work Program (CWP) Item/Description

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

Council Goal:
Housing, Quality of Life

California Environmental Quality Act
The study session is not considered a project under CEQA.

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Prepared by: Michelle Hernandez, Interim Deputy City Attorney
Gian Martire, Senior Planner
Reviewed by: Chad Mosley, Director of Public Works
Benjamin Fu, Director of Community Development
Floy Andrews, Interim City Attorney
Approved for Submission by: Tina Kapoor, City Manager

Attachments:
A – Staff Report dated March 15, 2022
B – Parcel Map recorded on May 2, 2023
C – Staff Report dated February 6, 2024
D – Exclusive Negotiating Agreement executed on April 9, 2024
E – Staff Report dated September 4, 2024
F – Staff Report dated April 15, 2025
G – Staff Report dated July 15, 2025
H - Existing Conditions and Demolition Plan
I – Mary Avenue Project FAQ