



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION STAFF REPORT

Meeting: March 24, 2026

Subject

Consider a Use Permit, Tentative Map, Architectural and Site Approval, and Tree Removal Permit for the construction of a 122-unit residential development, consisting of 66 small-lot single family homes and 56 townhomes located at the Stevens Creek Office Center site, which includes a multi-tenant retail building (Voyager Coffee and Panera Bread). The project utilizes Senate Bill 330 and provisions of State Density Bonus law. (Application No(s): U -2024-008, TM-2024-006, ASA-2024-011, TR-2024-033; Applicant: Kevin Choy, Harvest Properties; Location: 20807, 20813, 20823 & 20883 Stevens Creek Blvd; APNs: 326-32-050, -051, -052, and -053.

Recommended Actions

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

1. Find the project statutorily exempt from the California Environmental Quality Act (CEQA); and
2. Approve the following permits:
 - a. Use Permit (U-2024-008) (Attachment 1);
 - b. Architectural & Site Approval Permit (ASA-2024-011) (Attachment 2);
 - c. Tentative Final Map (TM-2024-006) (Attachment 3); and
 - d. Tree Removal Permit (TR-2024-033) (Attachment 4).

Discussion

Project Data

General Plan Land Use Designation	Commercial / Office / Residential with a maximum residential density of 25 du/acre*
Special Planning Area	Heart of the City Specific Plan (Crossroads subarea)
Zoning Designation	P(CG, Res)*
Lot Area	6.93 acres (gross), 6.84 acres (net)

	Allowed/Required	Proposed
Maximum Density	Up to 25 units per acre*	17.84 units per acre
Height of Structures	Max. 45 feet measured from sidewalk to top of cornice, parapet, or eave line of a peaked roof.	50'-6" <i>(Waiver)</i>
Setbacks		
Front	<i>35 feet from edge of curb</i>	32 feet from edge of curb <i>(Waiver)</i>
Sides	<i>One-half height of buildings or 10', whichever is greater (16' to 25'-3")</i>	Townhomes: 6' to 10' Detached SFDs: 8' to 9.5' <i>(Waiver)</i>
Rear	<i>One & one-half height of building, with a minimum of 20' (64')</i>	10' 1" <i>(Waiver)</i>
Usable Open Space		
Common	<i>150 square feet per unit of multi-unit buildings (8,400 square feet)</i>	183 square feet (average per attached unit)
Private	<i>60 square feet per unit and no dimension less than 6 feet</i>	Between 61 square feet – 642 square feet per unit.
Project Consistency with:		
General Plan ¹	Consistent under SB330 & state density bonus law.	
Specific Plan ²	Consistent under state density bonus law. Density bonus waivers requested for setbacks, building height, and Heart of the City Landscape Easement.	
Zoning	Consistent under SB330 and state density bonus law. Density bonus waivers requested for lot coverage, number of stories, setbacks, minimum lot width.	
* Since the project utilizes the provisions of SB330 (as discussed later in the report) the development standards, regulations & fees applicable at the time of submitting a SB330 preliminary application apply. One		

¹ The applicable General Plan can be found online at https://records.cupertino.org/WebLink/DocView.aspx?id=1019620&dbid=0&repo=CityofCupertino&_gl=1*gufighv*_ga*OTc5OTgwMjc4LjE3NDO3Mzc0NDM.*_ga_NCY1KGMD5Y*cE3NDkwMDIwNzAkbyY2IGcxIH0xNzO5MDAyMDgwJGo1MCRsMCRoMA.

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

of the sites (APN: 326-32-050) is a Housing Element site (Priority Housing Site no. 9) in the 6th Cycle Housing Element, with a General Plan land use designation of High/ Very High Density Residential, with a minimum density of 50 du/ac and a maximum density of 65 du/ac, and has a zoning designation of R-4. However, the applicant vested the project prior to the adoption of the current Housing Element & under SB330, the applicable General Plan land use designation is Commercial/Office/Residential with a maximum residential density of 25 du/ac and an applicable zoning designation of P(CG/Res) – Planned Development Zoning District intended to be developed with General Commercial and residential uses.

Background

On April 1, 2024, the City received an SB330 pre-application to redevelop the property located at 20807, 20813, 20823 and 20883 Stevens Creek Blvd. The project site is located within the Crossroads subarea of the Heart of the City (“HOC”) Specific Plan Area. The applicant subsequently submitted a formal project application for the proposal on September 25, 2024, within 180 days of the submission of the SB-330 pre-application, which granted it certain vesting privileges under State law.

The 6.84 net-acre property is comprised of four parcels bound by Stevens Creek Boulevard to the south and Alves Drive to the north. The site is currently developed with 1- and 2-story office buildings and a retail commercial building with surface parking.

The project site shares a property line with Abundant Life Assembly of God Church, Whole Foods Market, and a single-family home to the west; and a commercial strip mall (Saich Way Station) and Happy Child Development Center to the east. Other surrounding uses include single-family homes, duplexes, and the YMCA located across Alves Drive to the north, and the recently approved SummerHill townhome development (currently occupied by Staples, and the former Fontana’s and Pizza Hut buildings) across Stevens Creek Boulevard to the south. The Target Bottegas Center is located directly across from Saich Way, to the east of the project site (See Figure 1).

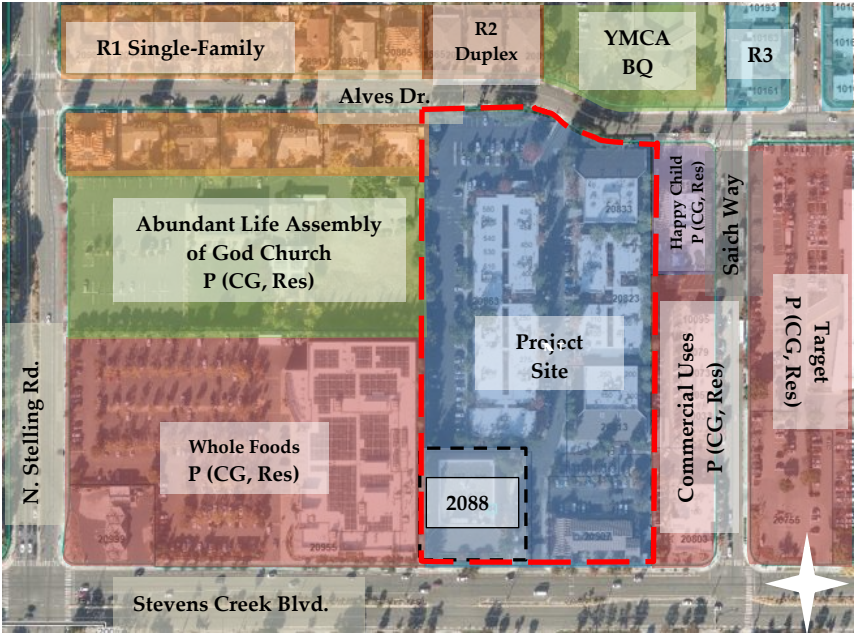


Figure 1: Project site outlined in red. Priority Housing Site no. 9 outlined in black

Existing uses at the site consist of roughly 109,000 square feet of office space and 7,000 square feet of retail space. Approximately 107,000 square feet of office space is currently occupied by several office tenants and the retail space is occupied by two tenants, Panera Bread and Voyager Coffee.

The south-west corner of the site (APN 326-32-050), outlined in black in Figure 1, was designated as a Priority Housing Site through the adoption of the City's 2024 Housing Element update in May 2024³ and rezoned two months later, in July, to accommodate high-density residential development. The current land use designation for APN 326-32-050 would require a minimum density of 50.01 units per acre and a maximum of 65 units per acre. However, when the SB 330 preliminary application was submitted in April 2024, the City's Housing Element had not yet been officially certified by the California Department of Housing and Community Development (HCD). This allowed the applicant to "lock in" the development standards that were in place at the time of their preliminary application submittal. Therefore, the project site is subject to the development standards of the General Plan, Heart of the City Specific Plan, and Planned Development "P" zoning designation, as they were in April of 2024. In April 2024, the parcels had a land use designation of Commercial/Office/Residential which allowed residential development of up to 25 units per acre and a zoning designation of P(CG,Res)

The "P" zoning designation is detailed in Cupertino Municipal Code, Chapter 19.80, Planned Development Zones. The "P" zoning designation is intended to provide a means of guiding land development or redevelopment within the city that is uniquely suited for planned coordination of land uses and land development. Where residential development is proposed on properties in the Planned Development zoning district, and where the Specific Plan is silent, development must adhere to Multifamily (R-3) zoning regulations. Principally, the proposed project consists of 56 townhome-style condominiums and 66 detached single-family dwellings. Since the project is 100% residential, review of the project is limited by several applicable State laws, including the Housing Accountability Act, the Housing Crisis Act (SB330), and Density Bonus Law (see Attachment 5).

While the first two State laws apply because the project meets the definition of a "housing development project," State density bonus law (SDBL) applies because the project proposes to provide qualifying amounts of affordable housing. Twenty percent, or 24⁴ of the proposed 122 residential units, will be affordable to moderate- and median-income households, consistent with the City's Below Market Rate (BMR) requirements, making

³ The City's Housing Element is available online at: Cupertino.gov/gp.

⁴ The Project is required to provide 24.4 units (20% of 122 units). Pursuant to the City's BMR program, 24 units will be provided on site, and 0.4 units will be paid in in-lieu fee.

the project eligible for all applicable benefits of SDBL. It is important to note that, while qualifying projects are allowed to increase their density and the total number of units proposed, an applicant may also elect to only utilize the available waivers, concessions, or the reduced parking standards, without providing additional density bonus units, as is the case with the proposed project. The project includes a request for 12 waivers and one concession from applicable standards of the General Plan, HOC, BMR Manual and Zoning Code. These requests are discussed later in this report.

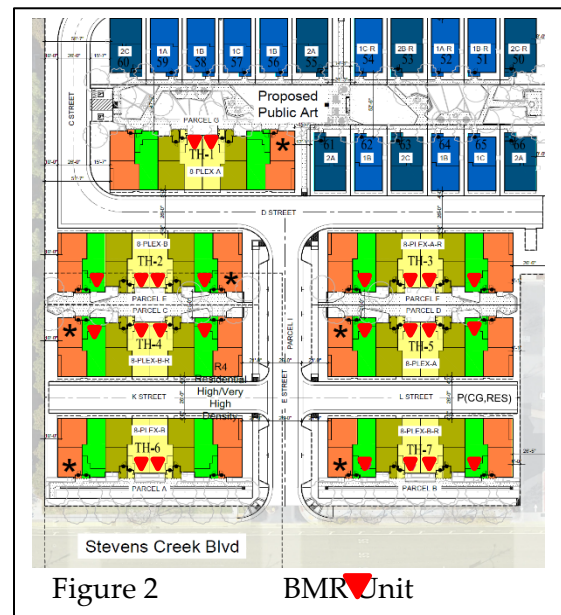
Project Proposal

The project applicant, Harvest Properties, is proposing a 122-unit residential development, consisting of a mixture of detached single-family residences and townhome-condominiums. The project consists of 56 townhomes located in seven 8-plex buildings, proposed on the south side of the site closer to Stevens Creek Boulevard, and 66 detached single-family residences, located along Alves Drive and the remainder of the site (see Attachment 7: Site Plan and Renderings).

The project proposes primarily three-story buildings, with 33 of the 122 units having fourth-floor access to proposed roof top decks. The units, inclusive of garage space, vary in size, with townhomes ranging between 2,273 square feet and 3,304 square feet and the detached single-family residences that are either 2,973 square feet or 3,541 square feet.

As required by the City’s Below Market Rate (BMR) Housing Program, 24 of the proposed units will be affordable housing units for sale to median- and moderate-income households⁵ (see Figure 2). The applicant proposes that all BMR units will be located in the townhomes; no single-family homes are being offered as BMR units.

Based on the scope of project, the City has required the following entitlements: Use Permit, Architectural and Site Approval, Tree Removal Permit and a Vesting Tentative Map.



⁵ Due to limitations of Government Code § 65103.5, the distribution of copyrighted material associated with the review of development projects is limited. Plans have been emailed under separate cover to allow the Commissioners to review the proposed plans. Commissioners and Councilmembers cannot share plans with outside parties, including community members. The public is able to make an appointment with the Planning Division to view these plans at City Hall.

Architecture and Site Design

The project places denser townhome development closer to Steven's Creek Boulevard in an attempt to blend in with the urban, commercial character of the Crossroads subarea. A variety of materials and colors are proposed to accentuate changes in building plane, which is intended to add visual interest to the architecture without having to rely on faux ornamentation. Roof decks are provided throughout the site for a total of 33 townhomes and single-family residences. All new residences will provide one private balcony on the second floor; additionally, each detached single-family residence will include private side yards at each unit. An approximately 32-foot-wide "central green" is provided as a buffer between the single-family neighborhood and the slightly denser townhome portion of the development.

The applicant has proposed a combination of three different architectural styles that alternate throughout the site: 1) Spanish Revival, 2) Modern French and 3) Craftsman. The Spanish style features lower-pitched roofs with gable ends, traditional stucco finishes, and arched or corbeled entries. The Modern French style includes shallow-pitched main roofs with steeper gable ends, simple bay window details, and fiber cement panel accents. The Craftsman style, applied only to the single-family detached homes, features a 6:12 roof pitch, gable ends with shingle-style siding, deep eaves with detailed trim, as well as bracket and corbel details.

The majority of the trees proposed for the interior of the site are also deciduous, providing flowers and/or foliage color. The primary water classification for new trees and landscape on site fall within low to moderate water usage. Shrubs will be utilized to screen all above ground utilities, as permitted by PG&E regulations. Private seven-foot-wide side yards are provided for all 66 detached single-family residences. A six-foot-tall "good neighbor" wood fence will be used to create private backyards between each detached unit.

Pedestrian walkways will be large, tile-stamped concrete, with color accents incorporated in walkways in common areas. Common areas will be planted with shade trees and provide a mix of benches, seat walls, tables and chairs for residents. Public art will be centered in the main common area with accessible pedestrian walkways (with a proposed public access easement) provided from both Stevens Creek Blvd. and Alves Drive. Crosswalks throughout the site will be delineated with an Ashlar pattern stamped asphalt in earthtone shades. The applicant will continue the decorative brick paving within the public right-of-way along Stevens Creek Blvd, adjacent to the accessible path of travel. This will connect the existing decorative paving pattern from 20807 Steven's Creek Blvd to 20955 Steven Creek Blvd. This improvement will complete the decorative brick pavers along the entire frontage of the project site.

The project falls within the Crossroads subarea: Flowering Orchard Guidelines as identified in the Heart of the City Specific Plan. Accordingly, the existing Flowering Pear trees along the frontage of Steven's Creek Blvd are proposed to remain and be protected in place; in addition, four new Flowering Pear trees are proposed to fill in the west parkway along Steven's Creek Blvd as required by the Heart of the City Specific Plan.

Analysis

General Plan Compliance

The proposed project consists of a residential development consistent with the site's General Plan Land Use Designation of Commercial/Office/Residential. The General Plan designation allows a maximum density of 25 dwelling units per acre, which equates to 173 units for the 6.93-acre site. The General Plan does not require a minimum density for this site. The proposed number of units is below the maximum allowed by the General Plan and consistent with the density in effect when the SB330 Preliminary Application was submitted.

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 applicable General Plan requirements, notwithstanding the limitations of State law, and the absence of environmental impacts as analyzed in the Notice of Exemption memo (see Environmental Review section of this Staff Report), the proposed project supports several of the City's General Plan goals, as outlined below.

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

- **Policy INF 2.4.2 Development.** Require undergrounding of all utility lines in new developments and highly encourage undergrounding in remodels or redevelopment of major projects.
- **Strategy HE-2.3.7: Density Bonus Ordinance.** The City will encourage use of density bonuses and incentives, as applicable, for housing developments which include:
 - At least 10 percent of the housing units in a for-sale common interest development are restricted to moderate-income residents.

Specific Plan Compliance

The project site is in the Heart of the City Special Area – Crossroads Subarea. The City’s HOC Specific Plan establishes building heights, setbacks, and other development requirements for projects within this area. The proposal includes several density bonus waivers for setbacks, building height, lot coverage and reduced parking garage dimension requirements from the Municipal Code and HOC standards, which are discussed in further detail in the density bonus section of the staff report.

The project has incorporated some site design requirements, which are consistent with the remaining applicable requirements of the HOC Specific Plan.

Tree Removal and Replacement

The project site contains 251 on-site trees and 18 off-site trees. Six of the off-site trees are street trees within the public right-of-way, and the remaining 12 off-site trees are on private property along the western property line. The proposal includes the removal of 249 protected development trees within the construction footprint. Two native coast live oaks are located off-site (on the Abundant Life Church property to the west) and will be protected in place. An arborist report was prepared for the applicant by Michelia Arboriculture, LLC and was peer reviewed by the City’s third-party consultant, HortScience | Bartlett (Attachment 6). The report and peer review concluded that 249 of the trees proposed for removal would be within the construction footprint and could not be preserved or otherwise adequately protected during construction. All 18 off-site trees are proposed to remain and will be protected in place. This is inclusive of the existing six Callery Pear street trees along Steven’s Creek Blvd., the species is consistent with the requirements of the Heart of the City Specific Plan “flowering orchard” planting theme.

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
12 inches or less	134	One 24" box tree	134 (24" box trees)
Greater than 12 inches and up to 18 inches	37	Two 24" box trees or One 36" box tree	74 (24" box trees) or 37 (36" box trees)
Greater than 18 inches and up to 36 inches	69	Two 24" box trees or One 36" box tree	138 (24" box trees) or 69 (36" box trees)
Over 36 inches	9	One 36" box tree	9 (36" box trees)
Total: 249 (24" box trees) or 63 (24" and 36" box tree mix)			

The applicant proposes to replace 249 trees with 151 on-site trees of various species. Replacement trees will be either 24 or 36-inch box in size, consistent with Municipal Code tree replacement requirements. Since the applicant proposes to pay an in-lieu of planting a replacement tree fee for the remainder of the trees due to the lack of available replanting space on-site, the valuation of the trees not being replaced upon removal has been calculated based on the standards outlined in CMC 14.18.160 Tree Replacement. The in-lieu of replacement fee has been calculated to be approximately \$147,422.00, which will be paid prior to issuance of site improvement/grading permits. It is noted that if the landscape plan needs to be revised due to code compliance requirements, the replacement plantings and in-lieu fee payment may be adjusted prior to issuance of building permits. This is reflected in the conditions of approval included with the Tree Removal Permit resolution. All new development trees and landscaping planted 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 and landscaping by future property owners.

Vesting Tentative Map

The application for the Vesting Tentative Map (VTM) proposes to subdivide the four existing lots to create a condominium subdivision. The map proposes to establish 66 single-family lots and 56 condominium (air-space) parcels for the proposed townhome units with additional roadway and open space parcels to support the development. The approval of a vesting tentative map confers a vested right to proceed with development in substantial compliance with the city's ordinances, policies, and standards in effect at the date the City determined the application was complete.

Use Permit

The project proposal requires a Use Permit to allow the development of residential units on a non-Housing Element site⁶. Under the regulations in effect at the time of submittal of the SB330 Preliminary Application, the General Plan and Cupertino Municipal Code Chapter 19.80: *Planned Development (P) Zones* required that a residential development proposed on a site that is not a Priority Housing Site be a conditional use. The applicant proposes building exclusively residential units and the project is, therefore, required to obtain Conditional Use Permit approval as part of its entitlement process.

Park Land Dedication

Under Cupertino Municipal Code Section 13.08.050(A), proposed developments of more than 50 units must provide park land on-site and/or pay an in-lieu fee for the required park land dedication. The project would be required to provide approximately 0.58 acres of park area or an in-lieu of dedication fee, based on Municipal Code Chapter 13.08 requirements. The applicant has requested to pay an in-lieu fee instead of providing parkland. Based on the property size, project size, the provision of common open space, and the location of the property within a quarter mile of existing park facilities⁷, staff recommends the payment of an in-lieu fee rather than requiring the dedication of onsite park land. Thus, the project is conditioned to pay a parkland in-lieu fee. Since the project includes 24 deed-restricted affordable units, consistent with the City's Housing Element policies and the BMR Mitigation Manual, these affordable units are exempt from paying parkland dedication fees. Therefore, the project would pay \$5,880,000 for the 98 proposed market rate units⁸.

Density Bonus

The project includes 24 below-market rate (BMR) units, or 20% of the total number of units proposed. As required by the City's BMR Housing Program, 12 of the units will be allocated as affordable housing units for-sale to median-income households (80-100% of Area Median Income) and the other 12 units will be allocated as affordable for sale to moderate-income households (100-120% of Area Median Income). A condition of approval has been included to ensure the recordation of a regulatory agreement with the City, prior to occupancy, requiring the designated BMR units to be for-sale to households at the specified income levels for a 99-year term.

⁶ While this is not a current requirement, since this was a requirement at the time of submittal of the applicant's SB330 Preliminary Application, a Use Permit is required. None of the sites were identified as a Priority Housing Element in the 5th Cycle Housing Element.

⁷ Memorial Park is located 0.28 miles to the west and Faria Elementary School Field is located 0.22 miles southwest of the project site.

⁸ Due to the SB330 nature of the project, the Park Fees payable are those in effect as of April 2024.

Density Bonus and Waiver Requests

The project is eligible for Density Bonus waivers and concessions consistent with the City of Cupertino Municipal Code Chapter (CMC) 19.56 *Density Bonus* and SDBL. The project includes requests for 12 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 SDBL by making the following findings⁹, as applicable:

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

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

Parking

While the City's Municipal Code (Chapter 19.124) requires townhome projects to provide 2.8 parking spaces per dwelling unit¹⁰, SDBL provides its own parking ratios for qualifying projects. Specifically, SDBL allows qualifying projects to provide parking at a ratio of 1 parking space per studio to one-bedroom unit; 1.5 parking spaces per two- or three-bedroom unit; and 2.5 parking spaces per four- or more-bedroom unit. No additional guest spaces are required under SDBL provisions.

⁹ 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.

¹⁰ While under updated Municipal Code amendments adopted in conjunction with Housing Element updates, townhomes are required to provide only one parking space per unit, since the project is vested under SB330 to standards in effect at the time the SB330 preliminary application was submitted, the project must provide 2.8 parking spaces (2 enclosed and 0.8 guest).

Unit Type	Number of Units	Municipal Code	State Density Bonus Law	Provided
Three Bedroom	42	84	63	84
Four Bedroom	80	160	200	160
Guest	-	98	-	28
Total	122	342	263	272

As proposed by the applicant, each unit will include two enclosed garage spaces (244 total spaces), with 28 additional spaces for guests, for a total of 272 spaces onsite, when only 263 are required per SDBL.

Waivers Requested

As a density bonus project, the applicant may submit 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 designed (Government Code Section 65915(e)). As previously noted, a city may not deny a proposed project based on the theory that another project, with a similar number of units, might be designed differently and accommodated without waivers of development standards.

The project requires 12 waivers as follows:

1. 45-Foot Height Limitation (HOC Specific Plan Section 1.01.030)

The HOC Specific Plan requires that developments have a maximum height of 45 feet, as measured from the sidewalk to the top of a building’s cornice, parapet, or eave line of a peaked roof. The applicant has requested a waiver for a total of 30 buildings to increase the height allowed for 26 detached single-family dwellings (SFD) and four townhouse buildings as follows:

Single Family			
Building No.	Building Height (feet)	Building No.	Building Height (feet)
Bldg. 1	50	Bldg. 38	50.5
Bldg. 5	49.3	Bldg. 39	48.8
Bldg. 7	48.8	Bldg. 41	49.2
Bldg. 8	47.1	Bldg. 45	47.6
Bldg. 11	45.4	Bldg. 46	48
Bldg. 12	47.1	Bldg. 49	46.4
Bldg. 17	50.1	Bldg. 50	47.5
Bldg. 18	48.5	Bldg. 52	46.9

Single Family			
Building No.	Building Height (feet)	Building No.	Building Height (feet)
Bldg. 23	47.8	Bldg. 55	48.8
Bldg. 24	47.9	Bldg. 57	48
Bldg. 27	46.7	Bldg. 60	49.4
Bldg. 28	47.6	Bldg. 61	45.2
Bldg. 31	47.4	Bldg. 63	43.5
Bldg. 32	48.7	Bldg. 66	43.4
Bldg. 34	49		
Townhome			
Building No.	Building Height (feet)	Building No.	Building Height (feet)
Bldg. 1	44.6	Bldg. 5	45.1
Bldg. 2	44.8	Bldg. 6	46.8
Bldg. 3	44	Bldg. 7	45.8
Bldg. 4	46.3		

The other 40 detached SFDs buildings and three townhome buildings meet the height requirement of the HOC Specific Plan as proposed. The applicant states that imposing the 45-foot height restriction on the buildings for which waivers have been requested would result in changing the height and design of the buildings, including the potential removal of private open space in the form of rooftop decks, which is not consistent with the project as proposed.

2. Front Setback (HOC Specific Plan Section 1.01.030)

The HOC Specific Plan requires that developments have a minimum front setback of 35 feet from the edge of curb (nine feet from the required Boulevard Landscape Easement) while also allowing for the encroachment of uninhabitable building elements, such as chimneys and eaves, up to four feet into the required setback areas. The following table indicates the required setback and the proposed waiver for the two buildings for which waivers are requested.

Building	Required Front Setback	Proposed Front Setback
6 & 7	35' from edge of curb	33' from Bldg. to edge of curb

The applicant states that imposing the front setback requirements would result in the elimination of units, reduced floor areas of units, or a substantial change to the design of the buildings, which is not consistent with the project as proposed.

3. Side Setbacks (HOC Specific Plan Section 1.01.030)

The HOC Specific Plan requires that developments have a minimum side setback of one-half of the height of the building, or ten feet, whichever is greater. It also allows for the encroachment of uninhabitable building elements, such as chimneys and eaves, up to three feet into the required setback areas. The following table indicates the required setback and the proposed waiver for the 15 buildings for which waivers are requested:

Detached SFD Bldgs. (Northern end of Parcel, closer to Alves Dr.)	Height	Required Side Setback	Proposed Side Setback
1	50'	25'	9'-6"
38	50.5'	25'-3"	9'-6"
39	48.8'	24'-5"	8'-6"
11	45.4'	22.7'	8.5'
27	46.7'	23.3'	8.4'
28	47.6'	23.8'	8.4'
49	46.4'	23.2'	8.3'
50	47.5'	23.7'	8.1'
66	43.4'	21.7'	8'
Townhome Bldgs. (Southern end of Parcel, closer to Stevens Creek)	Height	Required Side Setback	Proposed Side
West: 2, 4, 6	50'-6"	25'-3"	10'
East: 3, 5, 7	50'-6"	25'-3"	6'

The applicant states that imposing the side setback requirements would result in the elimination of units, reduced floor areas of units, or a substantial change to the design of the buildings, which is not consistent with the project as proposed.

4. Side-Yard Setback to Second Story Deck and Patio (CMC 19.36.070(E)(2))

The Municipal Code 19.36.070(E)(2) requires a 15-foot side-yard setback for second story decks and patios. As shown in Exhibit 1, Sheet A0.15, application of this standard would result in the loss of fifteen units. Absent this waiver, the Project could not fit as many residential units, thereby physically precluding construction of the proposed development at the density and with the incentives and concessions permitted by the SDBL. (Gov. Code, § 65915(e).)

5. Rear Setback (HOC Specific Plan Section 1.01.030)

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

Building	Height	Required Rear Setback	Proposed Rear Setback
1	50'	70'	20'
2	39.8'	59.7'	20'
3	38.3'	57.45'	20'
4	38.1'	57.15'	20'
5	49.3'	73.95'	20'
6	37.2'	55.8'	20'
7	48.8'	73.2'	10'
8	47.1'	70.65'	20.6'
9	35.1'	52.65'	19.5'
10	35'	52.5'	18'
11	45.4'	68.1'	18'

The applicant states that imposing the rear setback requirement would result in the elimination of units, reduced floor areas of units, or a substantial change to the design of the buildings, which is not consistent with the project as proposed by the applicant.

6. Rear-Yard Setback to Second Story Deck and Patio (CMC § 19.36.070(E)(3))

The Municipal Code 19.36.070(E)(3) requires a 20-foot rear-yard setback for second story decks and patios. As shown on Exhibit 1, Sheet A0.14, application of this standard would result in the loss of five units. Absent this waiver, the Project could not fit as many residential units, thereby physically precluding construction of the proposed development at the density and with the incentives and concessions permitted by the SDBL. (Gov. Code, § 65915(e)).

7. Building Forms (HOC Specific Plan Section 1.01.040)

The HOC Specific Plan requires that buildings adjacent to residentially developed parcels be stepped back, or terraced, or have adequate setbacks so that privacy is maintained. It also requires that buildings requiring terracing shall have a 1.5:1 setback to height ratio. The proposal includes eleven buildings (Buildings 1-3, 17, 18 & 36-41) located adjacent to residential use to the west. While the project has been designed to address potential privacy concerns through building orientation and landscape screening, it does not meet the HOC Specific Plan's required side setback

and is therefore not consistent with this requirement. The applicant has requested a waiver to allow for a reduced side setback and waiver of requirements for step backs for Buildings 1, 2, 17, 18 & 37-40.

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

8. Contextual Roof Plans and Setbacks (HOC Specific Plan 1.01.030 (C)(3))

The HOC Specific Plan allows building eaves to encroach up to three feet into setbacks. Eaves at front, side and rear setbacks encroach further than three feet into required setbacks. As shown on Exhibit 1, Sheet A0.18, compliance with this standard would result in the loss of thirty residential units. Absent this waiver, the project could not fit as many residential units, thereby physically precluding construction of the proposed development at the density and with the incentives and concessions permitted by the SDBL. (Gov. Code, § 65915(e)).

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

The Municipal Code requires that a development subject to the requirements of the R-3 zoning district has a maximum lot coverage of 40% of the net lot area. The proposed project has a net lot area of 6.84 acres, or 297,950 square feet, and would be allowed to have a maximum lot coverage of 119,180 square feet under Section 19.36.070 (A). The applicant has, therefore, requested a waiver to increase the lot coverage allowed for the project to accommodate a total lot coverage of 44% of the net lot area, or 131,197 square feet of building or surface area.

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

10. Minimum Lot Width CMC Table 19.36.060(C)

The Applicant seeks a waiver of the 70-foot minimum lot width at the front building line per CMC Table 19.36.060(C). As shown on Exhibit 1, Sheet A0.13, application of this standard would result in the loss of six units, thereby physically precluding construction of the proposed development at the density and with the incentives and concessions permitted by the SDBL.

11. Minimum Parking Space Size & Tandem Garages (CMC Section 19.124.040 (A)) The Municipal Code (as of April 2024) requires that parking spaces in multiple-family developments have a minimum parking space size of 10 feet by 20 feet. The

applicant has requested a waiver to modify this requirement to reduce the minimum parking garage dimensions for 17 units to 18.4 feet by 20 feet. Furthermore, 28 of the units are proposing tandem parking where townhomes are required to provide the standard 20 feet by 20 feet parking garage.

Imposing the parking space requirement would result in changing the size and design of the buildings, including the potential increase in the project coverage, reduction in open space, or potentially the number of units which is not consistent with the project as proposed by the applicant.

12. Parking Setback (CMC Table 19.36.070(I))

The Municipal Code restricts parking within a setback area where the lot adjoins property zoned (R-1) single-family. The applicant has requested a waiver to this standard to allow parking within the private garages of buildings 1, 2, 3 and 17 as these structures fall within the minimum side setback that adjoins property zoned (R-1) single-family.

Imposing the parking restriction would result in the loss of four units.

Concession Requested

As a density bonus project with at least 20% of units reserved for sale to moderate-income households¹¹, the applicant may submit to the City requests for up to 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 one concessions as follows:

1. BMR Housing Mitigation Program Procedural Manual Section 2.3.4

The Applicant requests a concession from BMR Housing Mitigation Program Procedural Manual Section 2.3.4 to the extent it would require the Project's affordable unit type to include four-bedroom units.

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.

¹¹ The project proposes a mix of moderate- and median-income units, as 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.

- 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 units within the development buildings by income level, type, and size:

	Number of Units	Number of Bedrooms	Average Unit Size
BMR Units	14	3	2,272 square feet
Townhouse Units	10	3	2,475 square feet
Market-Rate Townhouse Units	4	3	2,475 square feet
	14	3	2,603 square feet
	14	4	3,697 square feet
Market-Rate Detached-SFD	66	4	3,328 square feet

The Applicant requests a concession from BMR Housing Mitigation Program Procedural Manual Section 2.3.4 to the extent it would require the project’s affordable units to include four-bedroom units. The applicant has assessed and determined that the construction of four-bedroom units has an increased construction cost and an increased sales price subsidy compared to three-bedroom units. Therefore, the requested concession would result in actual cost savings by resulting in lower construction costs and decreased subsidies. The affordable units would be included in the townhome product type because the proposed density bonus project only includes four-bedroom detached units. Consistent with BMR Manual 2.3.4, after accounting for the requested concession, the affordable units would be dispersed through all seven townhouse buildings and comparable through the portions of the Project including three-bedroom units.

Additionally, there is no indication on the plans that the exterior finishes of the BMR units will be any different from the market rate units. As such, it is expected that they will be of the same quality; however, as allowed in the BMR manual, the affordable units may have different interior finishes.

No Net Loss Discussion (SB166)

California Government Code Section 65863 (No Net Loss Law) requires cities to ensure development opportunities remain available to accommodate the City’s regional housing need allocation (RHNA), especially for lower- and moderate- income households by maintaining adequate sites to accommodate the unmet RHNA for each income category. Through the 6th Cycle Housing Element’s adoption in May 2024, the City designated new Priority Housing Sites, which are anticipated to provide the units to meet the City’s

RHNA for each income category. The City estimated the number of units, by income category, that are expected to be developed on each of these sites, resulting in the estimated unit counts shown in the table below. As noted previously, one of the four parcels (APN 326-32-050) that make up this project site is listed as a Priority Housing Site (Site 9) in the City's 6th Cycle Housing Element. While the project site is not subject to the land use and housing density requirements established through the adoption of the 6th Cycle Housing Element (see SB330 discussion above), the City is nonetheless required to evaluate the project's impacts on expected housing production under Government Code Section 65863.

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

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

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

The table below quantifies the remaining unmet need for the 6th Cycle Housing Element 2023-2031 RHNA, by income level, and the remaining capacity across all Priority Housing Sites by comparing the projected number of units for this Priority Housing Site with the actual number of units proposed by the subject project. As indicated in the table, the City will not be able to make the findings of No Net Loss with the approval of this project. The Housing Element estimated eight Moderate¹² units and 21 Lower-income units would be developed on Priority Housing Site 9. While a total of 24 Moderate and zero Lower Income units are proposed with the project, meeting the requirements of the City's BMR Housing Mitigation Manual and allowing the project to utilize SDBL, only ten of the Moderate-income units are located on Site 9. The remaining 14 units proposed on Site 9 are Above-moderate income units. This results in a cumulative deficit of 348 units in the lower-income unit category and a cumulative deficit of 20 units in the Moderate-income unit category, as shown in the table below. With the proposed project, the City remains

¹² "Moderate" designation, for purposes of state law, includes both Moderate- and Median-income units

unable to make the findings for No Net Loss and will continue the separate process of identifying additional Priority Housing Sites.

		Income Category		
		Lower Income (30-80% AMI)*	Moderate (80- 120% AMI)	Above Moderate (>120% AMI)
6 th Cycle RHNA Requirement		1,880	755	1,953
Units Projected – all Sites		2,037	847	2,997
Projected Surplus – all Sites		157	92	1,044
<i>Approved Projects*</i>	<i>Projected</i>	756	153	1,535
	<i>Actual</i>	272	39	1,299
	<i>Change</i>	<i>-484</i>	<i>-114</i>	<i>-236</i>
<i>Unmet 6th Cycle RHNA before project</i>		1,608	716	654
<i>Overall Units Projected before project</i>		1,281	694	1,462
<i>Overall Surplus/deficit before project</i>		<i>-327</i>	<i>-22</i>	808
<i>Stevens Creek Office Center (Partial) (Priority Housing Element Site 9)</i>	<i>Projected</i>	21	8	22
	<i>Proposed</i>	0	10	14
	<i>Change</i>	<i>-21</i>	+2	<i>-8</i>
Unmet 6th Cycle RHNA after project		1,608	706	640
Remaining Units Projected after project		1,260	686	1,440
Total Remaining Surplus after project		<i>-348</i>	<i>-20</i>	800
* <i>Approved projects includes – SummerHill (Fontana’s, etc.); Toll Brothers (United Furniture); Dividend Homes I & II (Partial); Mary Avenue Villas (Charities Housing); Vallco Town Center/The Rise; and SummerHill Evulich.</i>				

Other Department/Agency Review

The City’s Building Division, Public Works Department, Environmental Services Division, Sheriff’s Department, Cupertino Sanitary District, and the Santa Clara County Fire Department have reviewed and conditioned the project.

Environmental Review

California Environmental Quality Act (CEQA)

The applicant requested that the development be reviewed in accordance with Assembly Bill (AB) 130, signed into law 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 7)

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 Section 3.2 of 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.

Public Outreach and Noticing

The following table is a summary of the noticing done for this project:

Notice of Public Hearing, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none"> ▪ Site Signage (<i>14 days prior to the hearing</i>) ▪ Legal ad placed in newspaper (<i>at least 10 days prior to the hearing</i>) ▪ Public hearing notices were mailed to property owners within 500 feet of the project site (<i>10 days prior to the hearing</i>) 	<ul style="list-style-type: none"> ▪ Posted on the City’s official notice bulletin board (<i>five days prior to the hearing</i>) ▪ Posted on the City of Cupertino’s website (<i>five days prior to the hearing</i>)

The applicant completed community outreach to residents and property owners on March 20, 2025.

Public Comment

At the time this staff report was published, staff received one public comment. The letter questioned whether or not the Saich Way Station (10091 Saich Way) retail was included in the current project proposal. Those properties are not included in the proposed project,

just the site which currently contains Voyager Coffee and Panera Bread. The letter is included in Attachment 8.

Conclusion

Staff recommends approval of the project, as proposed, because the project and its conditions of approval support the findings for approval of the proposed project, consistent with Chapters 14.18, 18.28, 19.56, 19.156, and 19.168 of the Cupertino Municipal Code. With respect to the requested Density Bonus concessions and waivers, evidence in the record demonstrates that the project meets the standards for granting the concessions and waivers under the SDBL.

Next Steps

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

Prepared by: Danielle Condit, Associate Planner

Reviewed by: Piu Ghosh, Planning Manager

Approved by: Luke Connolly, Assistant Director of Community Development

ATTACHMENTS:

- 1 - Draft Resolution for U-2024-008
- 2 – Draft Resolution for ASA-2024-011
- 3 – Draft Resolution for TM-2024-006
- 4 -- Draft Resolution for TR-2024-033
- 5 – Summary of Relevant State Law
- 6 – Arborist Report and Peer Review
- 7 – CEQA Exemption Memorandum
- 8 – Public Comment
- 9 – Project Site Plan and Renderings