



## COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL  
10300 TORRE AVENUE • CUPERTINO, CA  
95014-3255 TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333  
CUPERTINO.ORG

### CITY COUNCIL STAFF REPORT

Meeting: January 17, 2024

#### Subject

Application for a seven-unit townhome development and associated environmental review under the California Environmental Quality Act. (Application No(s): DP-2023-001, ASA-2023-002, TM-2023-001 & TR-2023-008; Applicant(s): Leon Hu of Top Mission Realty & Investment, Inc.; Location: 10046 Bianchi Way, APN: 359-07-021.)

#### Recommended Actions

1. Find the project exempt from the California Environmental Quality Act (CEQA) Guideline Sections 15332 (Infill Development Projects) and
2. Approve the following permits:
  - a. Adopt Resolution No. 24-XXX approving the Development Permit (DP-2023-001) (Attachment A);
  - b. Adopt Resolution No. 24-XXX approving the Architectural & Site Approval Permit (ASA-2023-002) (Attachment B);
  - c. Adopt Resolution No. 24-XXX approving the Tentative Final Map (TM-2023-001) (Attachment C); and
  - d. Adopt Resolution No. 24-XXX approving the Tree Removal Permit (TR-2023-008) (Attachment D).

#### Reasons for Recommendation

#### **Background:**

On January 30, 2023, the applicant, Top Mission Realty & Investment, Inc., submitted both a preliminary application under Senate Bill (SB) 330<sup>1</sup> and a project application to redevelop an existing four-unit residential duplex located at 10046 Bianchi Way with seven new townhomes (the Leon Townhome Development) on a 0.34 gross-acre,

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<sup>1</sup> Under SB 330, a housing development project is generally subject only to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted. (Gov. Code, § 65589.5(o).) SB 330 allows applicants to submit their project application within 180 days of their preliminary application. In this case, the applicant submitted both on the same day.

rectangular lot near the southeast corner of Stevens Creek Boulevard and Stelling Road. The Planning Commission reviewed the project and recommended its approval (3-1, 1 absent) by the City Council at its December 12, 2023, meeting.

The project site is located in the Heart of the City Specific Plan Special Area; within the Crossroads subarea. The lot size is just under three-eighths of an acre and bounded by Stevens Creek Boulevard to the north, Bandley Drive to the east, Pepper Tree Lane to the south and South Stelling Road to the west (Figure 1).

Figure 1 Project area



The immediately surrounding uses are:

- North: Cupertino Acupuncture and Chinese Medicine.
- West: a mix of commercial and residential uses, including an 8-unit townhome development, duplex and small-lot single-family residences.
- South: a 24-unit multi-family (rental) housing development operated by Mid-Peninsula Housing Corp. (Cupertino Community Housing for the disabled).
- East: Union Church of Cupertino and associated uses.

The primary components of the proposed Leon Townhome project are listed below. (See Attachment I<sup>2</sup> for site plan):

- Two residential buildings:
  - Building A is a three-story building with four attached townhomes, located along the eastern property line, adjacent to the Union Church parking lot.
  - Building B is a three-story building with three attached townhomes, located along the western property line, fronting Bianchi Way.
- Units range in size from 2,067 to 2,089 square feet, with approximately 400-square-foot two-car garages.
- New public sidewalk, landscaped parkway, and street trees along the project frontage.

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<sup>2</sup> Due to limitations of state law ((Government Code § 65103.5 (SB 1214)), the distribution of copyrighted material associated with the review of development projects is limited. Plans have been emailed under separate cover to allow the Councilmembers to review the proposed plans. Councilmembers and Commissioners 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.

- Area reserved for public art installment in the northwest corner of the site.
- 10 tree replacements and in-lieu of tree replacement fees, to offset the removal of 10 protected development trees.
- A tentative final map for condominium purposes for the division of air space to create seven townhomes.

In addition, the applicant has requested parking reduction through density bonus and waivers for building setbacks, common open space, and service access requirements. City permits required include Development, Architectural and Site Approval, Tree Removal, and a Tentative Final Map.

**Project Data:**

|  |  |  |
|--|--|--|
| <b>General Plan Land Use Designation</b>   | Commercial / Office / Residential                          |  |
| <b>Special Planning Area</b>   | Heart of the City Specific Plan (HOC) (Crossroads subarea) |  |
| <b>Zoning Designation</b>  | P(CG, Res)   |  |
| <b>Lot Area (Gross)</b>  | 14,975 Square Feet   |  |
|  | <b>Allowed/Required</b>                                    | <b>Proposed</b>                        |
| <b>Maximum units based on General Plan</b>   | 8.5 (round up to 9)  | 7                                      |
| <b>Height of Structures</b>  | Up to 45 feet  | 30                                     |
| <b>Setbacks (from property lines after any required dedications)</b>                                       |  |  |
| Front (per P zoning) <sup>3</sup>  | 20 feet  | 6 feet ( <b>Waiver Requested</b> )     |
| Side (per HOC - One-half (1/2) the height of the building or ten (10) feet, whichever is greater)          | 15 Feet  | 10 Feet<br>( <b>Waiver Requested</b> ) |
| Rear (per HOC - one and one-half (1.5) times the height of the building with a minimum setback of 20 feet) | 45 Feet  | 12 Feet<br>( <b>Waiver Requested</b> ) |
| <b>Parking (per Municipal Code)</b>  | 20 Spaces <sup>4</sup>                                     | 14 Spaces                              |

<sup>3</sup> Front zoning standards are per P zoning since there are no front setbacks identified in the Heart of the City Specific Plan for properties with frontage on streets like Bianchi Way. P zoning requires the use of standards in the R-3 zoning district in such instances.

<sup>4</sup> Parking required for the Residential units per the Municipal Code is 2.8 spaces per unit for a total of 20 spaces. However, Density Bonus law (Govt. Code Section 65915(p)) allows different parking standards, ranging between 0.5 space for studio/one-bedroom units to 2.5 spaces for units with 4 or more bedrooms. Thus, while the applicant’s minimum parking requirement is 11 spaces (1.5 spaces/per unit with two to three bedrooms), they are proposing 14.

|  |  |  |
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|  |  | <i>(Parking Reduction requested under state Density Bonus law)</i> |
| <b>Private Open Space (s.f. per unit)</b>      | <i>60 s.f. per unit</i>  | Between 127 s.f. – 150 s.f.  |
| <b>Common Open Space per HOC Specific Plan</b> |  |  |
| Residential ( <i>150 s.f. per unit</i> )       | <i>1,050 s.f.</i>  | none<br><i>(Waiver Requested)</i>                                  |
| <b>Project Consistency with:</b>               |  |  |
| General Plan:                                  | Yes  |  |
| Zoning:  | <ul style="list-style-type: none"> <li>▪ Density Bonus waivers requested for building setbacks, common open space, etc.</li> <li>▪ Density Bonus law parking standards proposed</li> </ul> |  |

*Site and Location Description*

The project site is currently developed with two single-story residential duplex structures, providing four individual units. The existing four-unit development is a rental property operating on month-to-month lease agreements. The property is not registered in the City’s below market rate (BMR) program, and not operated as rent-controlled or income-restricted units. Therefore, any rental dwelling units vacated or demolished preceding this application are not subject to replacement of affordable units in accordance with Government Code Section 65915(c)(3).

**Analysis:**

*General Plan Compliance*

The proposed townhome project is consistent with the General Plan Land Use Designation of Commercial/Residential, which allows for residential land uses up to 25 units/acre. The site is located in the Heart of the City (HOC) Special Area—Crossroads Subarea. The primary use of the Crossroads Subarea is commercial/retail, with a supporting use of residential located behind primary uses that front Stevens Creek Boulevard. The subject site is located on a residential street approximately 60 feet south of the Stevens Creek Blvd Corridor, behind a commercially used lot.

Per the General Plan Land Use Element, the site has a maximum residential development potential of nine units (rounded up from 8.5 units). The seven units proposed are, therefore, consistent with the General Plan.

The General Plan’s Community Form Diagram establishes building heights and setbacks for development on sites within each of the City’s Special Areas. The proposed development is located in the Crossroads Subarea of the HOC Specific Plan, which

permits structures up to 45-feet tall. The proposed buildings are approximately 30 feet in height, with density bonus waiver requests from the minimum required setback standards. The waiver requests are discussed in further detail in the Density Bonus Section of this Staff Report.

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 and the minimal environmental impacts of the project, the proposed project supports several of the City's General Plan Policies and implements several General Plan strategies to achieve these policies including:

- **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-3.3.1: Attractive Design.** *Emphasize attractive building and site design by paying careful attention to building scale, mass, placement, architecture, materials, landscaping, screening of equipment, loading areas, signage, and other design considerations.*
- **Strategy LU-3.3.5: Building Location.** *Encourage building location and entries closer to the street while meeting appropriate landscaping and setback requirements.*
- **Strategy LU-3.3.6: Architecture and Articulation.** *Promote high-quality architecture, appropriate building articulation and use of special materials and architectural detailing to enhance visual interest.*
- **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.*
- **Strategy LU-27.1.3: Flexibility.** *When neighborhoods are in transition, add flexibility for requirements for new development that acknowledge the transition while continuing to respect the existing neighborhood.*
- **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-1.3.4: Flexible Development Standards.** *- The City recognizes the need to encourage a range of housing options in the community. The City will continue to:*

- Offer flexible residential development standards in planned residential zoning districts, such as smaller lot sizes, lot widths, floor area ratios and setbacks, particularly for higher density and attached housing developments.
- **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.

### *Density Bonus and Waiver Requests*

The project includes requests pursuant to State Density Bonus Law, for waivers, incentives, and parking reductions.

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, waiver or reduction in parking standards, the decision-making body must determine that the proposal is consistent with State Density Bonus Law by making the following findings, as applicable:

1. That the housing development is eligible for the density bonus requested and any incentives or concessions, waivers or reductions in parking standards requested.
2. That the development standard(s) for which the waiver(s) are requested would have the effect of physically precluding the construction of the housing development with the density bonus and incentives or concessions permitted if a waiver is requested.

The City may not deny a waiver unless the waiver or reduction would have a specific, adverse impact upon health or safety, for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact or would have an adverse impact on any property that is listed in the California Register of Historical Resources.

By providing one unit (14% of the total) affordable to households at median income levels, the project is eligible for a Density Bonus under state law. The applicant, however, is not requesting a Density Bonus (i.e., developing additional market rate units based on providing some number of affordable units), as allowed pursuant to Density Bonus law<sup>5</sup>. Instead, since the project is consistent with Density Bonus law, it is eligible for: unlimited waivers; a limited number of incentives/concessions, depending on percentage and income levels of affordable housing provided; and reductions in parking standards.

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<sup>5</sup> Per Section 65915(f) (*extract*): For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density.

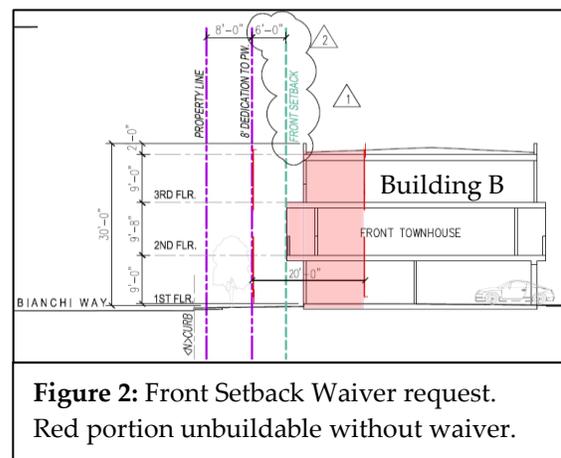
Based on the project's eligibility, the applicant has requested six waivers, one concession and a reduction in parking standards, as discussed below.

### Waivers Requested

As a density bonus eligible project, the applicant may request an unlimited number of waivers, or reduction of development standards, that would otherwise have the effect of physically precluding the construction of the proposed project (Government Code Section 65915(e)). As stated, the applicant has requested six waivers, without which a redesign of the project would be necessary, potentially resulting in the loss of residential units or the construction of smaller units in the development. The specific waivers requested are the following:

1. **Front Setback:** Since the property is zoned Planned Development (P), when no standards are identified in the underlying zoning district (HOC Specific Plan, in this case), the standards default to the multi-family (R3) zoning district development standards. Therefore, the required minimum front building setback is 20-feet.

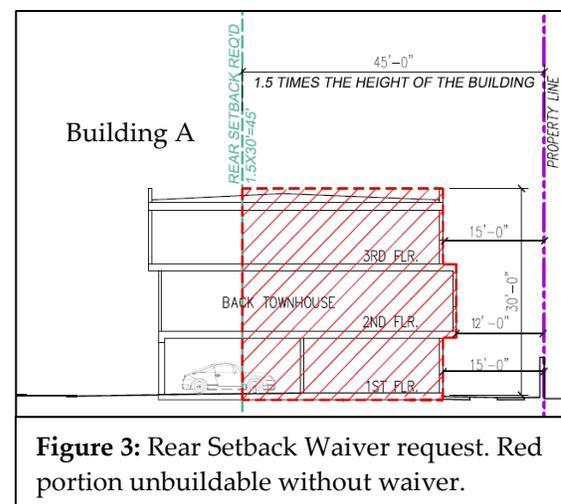
The applicant is requesting waivers to allow building B to encroach into the required 20-foot front setback (see Figure 2), with a setback of six feet from the new property line at the second story level, and a setback of at least nine feet at the first and third floor levels.



**Figure 2:** Front Setback Waiver request. Red portion unbuildable without waiver.

2. **Rear Setback:** The HOC Specific Plan requires new development to be setback at a distance equal to 1.5 times the height of the proposed building, with a minimum setback of 20 feet. Since the proposed building is 30 feet high the required rear setback would be 45 feet based on HOC requirements.

Given this extensive setback the applicant is requesting a waiver to allow Building A to encroach into the required 45-foot rear setback (see Figure 3), resulting in a setback



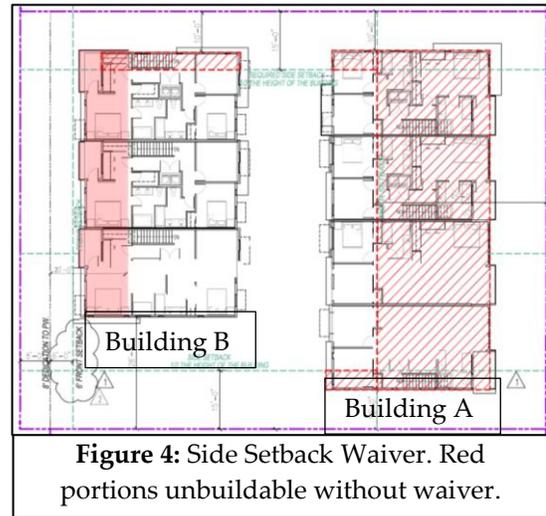
**Figure 3:** Rear Setback Waiver request. Red portion unbuildable without waiver.

12 feet from the rear property line at the second-story level but at least 15 feet at the first and third-floor levels.

3. **Side setback:** HOC Specific Plan requires a minimum side setback of 1/2 the height of the proposed building or 10 feet, whichever is greater.

While no side setback waiver from the required 15-foot side setback is requested for the right (south) side setback for Building B, the applicant is requesting the following waivers (see Figures 4 and 5):

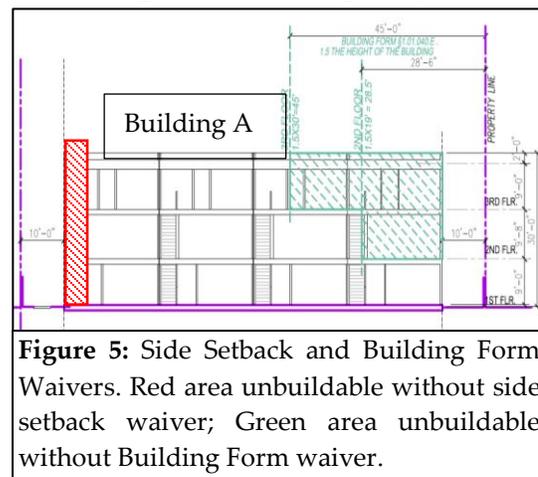
- Building A would have reduced side setbacks of 10 feet on both sides.
- Building B would have a reduced left (north) side setback of 10 feet.



**Figure 4:** Side Setback Waiver. Red portions unbuildable without waiver.

4. **Building Design, Forms:** The HOC Specific Plan requires buildings adjacent to residentially developed parcels to be stepped back, or terraced, at a 1.5:1 to height ratio if minimum setbacks cannot be provided.

The applicant is requesting that this standard be waived since this would render the green portions (indicated in Figure 5) of Building A on the south side unbuildable. The adjacent property to the south is zoned P (CG, Res), it is currently used as a parking lot with carports to provide parking for an existing multi-family housing development.



**Figure 5:** Side Setback and Building Form Waivers. Red area unbuildable without side setback waiver; Green area unbuildable without Building Form waiver.

5. **Common Open Space:** The HOC Specific Plan requires residential common open space at 150 square feet per unit, which would be 1,050 square feet of residential common open space for the proposed project.

The applicant is requesting that this standard be waived in its entirety, since the development, as proposed, does not have any common open space. A waiver to the design standards for landscaped common space (2.01.010.G.1) and common hardscape space (2.01.010.G.2) is also requested, since these standards are contingent upon the provision of Common Open Space, which the proposed project is not

providing. Therefore, waivers are requested from Sections 1.01.040.C.2.a, 1.01.040.C.2.a, and 2.01.010.G1 of the HOC Specific Plan.

6. Service Access: The HOC Specific Plan requires service access to be provided from rear parking areas. All access to and from this site is from Bianchi Way, no other property lines border a public or private street. While the residential trash and recycling pick up will take place on the street, and this would not pose an issue with the proposed project, the applicant, nonetheless, is requesting that this standard be waived for this project.

As part of the application, the justification of the waivers (front, side and rear setbacks, common open space, and service access) was provided by the applicant in two letters, both submitted by Jolie Houston, Esq. of Berliner Cohen, LLP dated August 15, 2023, and September 21, 2023 (Attachment F). The City must approve the proposed waivers to comply with State Density Bonus Law since:

- Imposition of the six standards above would preclude the development of the project, as designed,<sup>6</sup> and
- There are no facts which support making the required findings to deny the waivers.

*Tree Removals and Density Bonus Incentive*

The development is requesting Tree Removal permits for ten development trees from the site (see table below). Both the applicant’s and the City’s consulting arborists evaluated the trees on the site, and one off-site tree located at the neighboring property along the south (right) property line.

| Tree #(s)    | Reason for Removal                | Total Trees Removed | Total Required Replacements (per CMC 14.18.160)       |
|--------------|-----------------------------------|---------------------|---|
| 1, 6, 7, 8   | Direct Conflict                   | 4                   | Eight 24" box trees <u>or</u><br>Four 36" box tree    |
| *9           | Direct Conflict                   | 1                   | **In-lieu Tree Replacement Fee (see discussion below) |
| 5, 10        | Poor Condition                    | 2                   | Four 24" box trees <u>or</u><br>Two 36" box tree      |
| 2, 3, 4      | Direct Conflict (Already Removed) | 3                   | Six 24" box trees <u>or</u><br>Three 36" box tree     |
| <b>Total</b> |                                   | 10                  | Eighteen 24" box<br><u>OR</u> Ten 36" box             |

\* See below re: Density Bonus Incentive for removal of Tree #9 and in-lieu-of replacement fee.

<sup>6</sup> Under State Density Bonus Law, the 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.

\*\* In lieu replacement fees may be paid if it is verified by an ISA certified arborist that the replacements cannot be reasonably accommodated on the site. See additional discussion below.

One off-site tree, a Monterey Cypress (#11), has been evaluated and is proposed to be retained. The arborist report has made recommendations to minimize the impacts to this tree, as much as possible, which have been incorporated as conditions of approval. Staff supports approval of the proposed tree removals since the following finding in Section 14.18.180 of the Municipal Code can be made: *“That the location of the trees restricts the economic enjoyment of the property by severely limiting the use of property in a manner not typically experienced by owners of similarly zoned and situated property, and the applicant has demonstrated to the satisfaction of the approval authority that there are no reasonable alternatives to preserve the tree(s).”*

Density Bonus Incentive: While tree removal permits have been requested to remove all trees on site, the applicant has additionally requested a density bonus incentive for removal of tree #9 – a 38.5-inch Coast Live Oak tree. It should be noted that removal of Tree #9 can be justified with the supporting documentation in the arborist report due to conflicts with the proposed construction. The applicant states that retention of tree #9 would result in a redesign of the project which would result in the loss of three units and an approximate loss of \$6 million dollars, while removal of the tree and payment of the in-lieu of tree replacement fee will save them approximately \$5.9 million dollars. While the applicant does not need an incentive from The City to allow removal of this tree, the City is required to approve this incentive under State Density Bonus law.

Tree Replacements: Due to the amount of building coverage and hardscape proposed, no more than ten 24” box trees can be accommodated on the project site. Given this, the applicant will pay an in-lieu fee for eight 24” box replacement trees. In addition, since Tree #9 has a trunk size greater than thirty-six inches and the required replacement tree cannot be accommodated on the site, an in-lieu of replacement tree fee based upon the valuation<sup>7</sup> of the removed tree must be paid. The Arborist Report outlines the total in-lieu of tree replacement fees at \$27,450.

#### *Density Bonus Parking Reduction (and Parking Analysis)*

While the Municipal Code requires the project to provide 2.8 parking spaces per unit, for a total of 20 spaces, projects eligible for a State Density Bonus are entitled to a reduction of required residential parking. In this case, the applicant is allowed to provide only 11

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<sup>7</sup> Per Section 14.18.160 of the Municipal Code, the valuation is calculated using the most recent edition of the ISA Guide for Plant Appraisal published by the Council of Tree and Landscape Appraisers.

residential parking spaces under the provisions of state law<sup>8</sup>; however, the project includes 14 residential spaces, or two spaces per unit.

#### *Compliance with Below Market Rate (BMR) Housing Program*

Pursuant to the requirements of the City's BMR program, as a six-unit, market rate development, the applicant has an option of either providing a BMR unit affordable to median income household levels or paying a BMR mitigation fee. In this case, the developer has chosen to include one additional unit in the project (located in Building A), which would be affordable to households at median income levels, for a term of 99 years. The inclusion of one additional unit reserved for median income households, along with the six proposed market rate townhomes, results in a total of seven units in the development (See Attachment F) and enables the project to comply with the City's BMR Program.

All seven units in the proposed development, including the BMR unit, have 3 bedrooms, 1 den and 3.5 bathrooms. As required by the BMR manual, the BMR unit is comparable in size to the market rate units by being only 22 square feet smaller than the largest market rate unit. The exterior finishes of the BMR unit is the same as the market rate units, since it is part of the same building. Lastly, as allowed by the BMR manual, the affordable unit may have different interior finishes. As indicated on the project plans, the interior finishes will be durable, good quality and consistent with contemporary standards for new housing.

#### *Architectural and Site Approval*

The project's sole vehicular access is via a two-way driveway connecting to Bianchi Way. Three of the seven townhomes in Building B will have front porches facing Bianchi Way. No additional curb cuts are proposed on Bianchi Way; therefore, there will be no loss of on-street parking area. The remaining four townhomes (Building A) will be located along the shared driveway on the eastern property line. The site will have landscaped areas at the edges, with low water use landscaping, a total of ten trees on the site and three ornamental trees within the landscaped parkway along the new detached sidewalk along the frontage of the property on Bianchi Way.

The structures are contemporary in design, with architectural articulation on the east and west elevations of both buildings. There is less physical architectural articulation on the north and south elevations of the two buildings to respect the minimum setbacks

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<sup>8</sup> Government Code 65915(p) (Density Bonus law) has been updated after the City last updated Chapter 19.52 of the Municipal Code. Since the City must adhere to the requirements of state law, while Chapter 19.52 indicates that 2- and 3-bedroom units must provide 2 spaces per unit, state law only requires the provision of 1.5 spaces per unit.

proposed, however, the structures incorporate the use of change in colors in paint and materials to enhance architectural interest. Since the project applied for permits under SB330, the City can only apply adopted objective design standards to the design of the buildings, the City does not currently have objective design standards.

#### *Tentative Final Map*

The site is currently one legal parcel. The application for the Tentative Final Map includes a condominium map for the 7 townhomes with access easements from Bianchi Way for each of the units. A condition of approval has been added to the Tentative Final Map that would require dedication of reciprocal easements for public access, emergency vehicle access, public service, and public sewer easements. In addition, a condition of approval requires the applicant to obtain clearances for all easement vacations prior to Final Map recordation or issuance of building permits.

#### *Public Art*

A public art easement has been recorded on the tentative final map. The easement is located at the north-west corner of the property. While public art details have not been included in this permit application, staff will review the public art proposal with the property owner at the time the applicant applies for an application for public artwork. This must occur prior to certificates of occupancy for any of the residential units. Once submitted, the application will be presented to the Arts and Culture Commission for review and approval. The applicant must install the public art prior to certificates of occupancy being issued on more than 50% of the units in each of the two buildings – i.e., no more than 1 unit in Building B and no more than 2 units in Building A.

#### *Housing Accountability Act*

The Housing Accountability Act (HAA) (Gov. Code, § 65589.5) limits the ability of a city to deny or impose certain conditions on a housing development project when the project complies with applicable, objective general plan, zoning, and subdivision standards and criteria. This project is a “housing development project” under the HAA because it is a development consisting of only residential uses.

When a project complies with objective standards, the HAA allows a city to disapprove the project or to impose a condition that the project be developed at a lower density only if the city finds *both* of the following, supported by a preponderance of the evidence in the record:

1. The project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density; and

2. No feasible method to satisfactorily mitigate or avoid the adverse impact exists.

The project, as proposed, meets all applicable objective zoning, General Plan, and subdivision standards. Based on the record, including the findings in the Notice of Exemption Memo, staff does not believe the above findings can be made with respect to the proposed project.

*Other Department/Agency Review*

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

**Planning Commission Summary**

On December 12, 2023, the Planning Commission conducted a public hearing on the item and on a 3-1 vote (Abstain: Madhhipatla, Absent: Mistry) adopted Resolution No.s 2023-20, 2023-21, 2023-22 & 2023-23<sup>9</sup> recommending that the Council approve the project as proposed. The Commission did not make any modifications to the conditions of approval recommended by staff.

At the hearing, the Commission received comments from the public regarding parking availability on Bianchi Way, existing sidewalk conditions, privacy concerns, and lack of guest parking in the development. Commissioners asked clarifying questions and discussed the public's concerns. In addition, they asked clarifying questions about potential shared parking arrangements with neighboring commercial sites, Density Bonus Law (DBL) as it applied to the proposed project, and sustainability requirements (i.e.) solar panels & battery storage, and EV Charging. Staff and the applicant responded to the public and commissioner's questions and comments at the hearing. In summary, the project will comply with the Municipal Code by ensuring that the units are EV charger ready and equipped with solar panels. However, there are no requirements for installation of back-up battery storage in the Municipal Code, the applicant, therefore, is not required to provide battery storage. Finally, the applicant indicated that inclusion of surface guest parking would come at the expense of reduction of units, which is financially not feasible.

*Additional Public Comments*

The City has received an email from an individual (see Attachment G) requesting that the project applicant double the width of the proposed sidewalk, prioritize fixing the Bianchi Way sidewalk and help the residents of the Le Beaulieu Apartments obtain parking

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<sup>9</sup> December 12<sup>th</sup>, 2023 Planning Commission Meeting Available online here: <https://chl-1f-app.cupertino.org/WebLink/Browse.aspx?id=1020492&dbid=0&repo=CityofCupertino>

permits for the existing street parking spaces. *Staff comments: The proposal meets the City's objective standards related to installation of a public sidewalk. Construction phasing in the right of way will be determined in conjunction with any encroachment permits requested. Finally, there are no objective standards related to the provision of parking permits to existing residents on the street by proposed residential development.*

### Sustainability Impact

The proposed project meets the City's Municipal Green Building Standards Code which requires all-electric (gas free) buildings and EV Ready garage spaces. New residential development is required to provide rooftop solar for new construction per Title 24, part 6 of the Energy code. The developments' landscape plan has demonstrated compliance with Cupertino's Water-Efficient Landscape Checklist & Water Budget Worksheet.

### Fiscal Impact

The project will increase property tax revenue to the City upon sale of the townhome units. The costs associated with providing services to the project will have minimal to no impact on the City's budget.

### Environmental Review

The City's environmental consultant, PlaceWorks, prepared a memo regarding the environmental review for the proposed project (see Attachment H). The report concludes that the project, as proposed, is categorically exempt from the California Environmental Quality Act ("CEQA") under Class 32 CEQA Exemption pursuant to CEQA Guideline Sections 15332 (Infill Development Projects) since none of the exceptions in CEQA Guidelines Section 15300.2 apply and the project meets the criteria outlined in this exemption list below:

- a. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- c. The project site has no value, as habitat for endangered, rare, or threatened species.
- d. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- e. The site can be adequately served by all required utilities and public services.

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Prepared by: Danielle Condit, Associate Planner

Reviewed by: Luke Connolly, Assistant Director of Community Development  
Benjamin Fu, Director of Community Development

Approved for submission by: Pamela Wu, City Manager

**ATTACHMENTS:**

A – Draft Resolution for DP-2023-001

B – Draft Resolution for ASA-2023-002

C – Draft Resolution for TM-2023-001

D – Draft Resolution for TR-2023-008

E – Arborist Report

F – Letter from Jolie Houston, Esq. of Berliner Cohen, LLP dated August 15, 2023, and  
September 21, 2023

G – Public Comments

H – PlaceWorks memo re: Categorical Exemption

I – Site Plan