



COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

Date: March 3, 2026

Subject

Study Session on options to comply with state law related to No Net Loss (SB166) due to the lack of adequate capacity to accommodate the City's moderate and lower-income Regional Housing Needs Allocation (RHNA)

Recommended Action

Receive staff's presentation and provide direction on housing site selection strategies to address the lack of adequate capacity to accommodate the City's moderate and lower-income Regional Housing Needs Allocation (RHNA) as required by state law.

Background

Due to the City's approval of several residential developments on Housing Element Priority Housing Sites at both lower densities and with proportionally lower levels of low- and moderate-income units than anticipated in the Housing Element, the City has been unable to make the No Net Loss findings required by State law since mid-December 2025. The recent modification for the Vallco Town Center/Rise Development, which was a significant pipeline project in the Housing Element, exacerbated the No Net Loss situation further by greatly reducing the number of low-income units included in the project. Under State law, the City has 180 days from the date (December 16, 2025) that it was initially unable to make the No Net Loss findings to amend its Housing Element and bring it into compliance as it relates to SB166 (No Net loss law). An informational memo was provided to the City Council in January 2026 as background (see Attachment A) on this issue.

In short, No Net Loss requires that when a city approves a development on a parcel identified in its Housing Element sites inventory with fewer units, or a different mix of affordability levels, than shown in its Housing Element, the city must either:

1. Make findings that the Housing Element's remaining sites have sufficient capacity to accommodate the remaining unmet RHNA by each income level, or
2. Identify additional sites to again have sufficient Priority Housing Sites to accommodate the remaining unmet RHNA for each income category by
3. Upzoning existing Priority Housing Sites to accommodate additional residential capacity, so long as that upzoning can be realistically developed.

Options 2 and 3 require the Housing Element of the General Plan to be amended and, pursuant to Government Code section 65585(b), be submitted to the California Housing and Community Development Department (HCD) for its review in order to obtain certification regarding substantial compliance with State Housing Element law, similar to the process followed when the City completed its Housing Element update in 2024.

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 to the proposed number of units for the projects that the City has approved so far. The third row from the bottom of the table shows the current unit deficits in the lower- and- moderate income categories.

		Income Category		
		Lower Income (30-80% AMI)	Moderate (80-120% AMI)	Above Mod. (>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>SummerHill I (Fontana’s, etc.)</i>	<i>Projected (50-65 du/ac)</i>	59	24	62
	<i>Actual (20 du/ac)</i>	0	12	47
	<i>Change</i>	<i>-59</i>	<i>-12</i>	<i>-15</i>
<i>Toll Brothers (United Furniture)</i>	<i>Projected (65-80 du/ac)</i>	0	93	70
	<i>Actual (20 du/ac)</i>	0	11	44
	<i>Change</i>	0	<i>-82</i>	<i>-26</i>
<i>Dividend Homes I (Partial) (20111 Stevens Creek Blvd)</i>	<i>Projected (50-65 du/ac)</i>	45	18	47
	<i>Actual (~20 du/ac)</i>	0	6	30
	<i>Change</i>	<i>-45</i>	<i>-12</i>	<i>-17</i>
<i>Mary Ave Villas (Charities Housing)</i>	<i>Projected (50-65 du/ac)</i>	40	0	0
	<i>Proposed (~50 du/ac)</i>	40	0	0
	<i>Change</i>	0	0	0
<i>Vallco Town Center/Rise (Pipeline project)</i>	<i>Projected – Phase 1</i>	581	0	1,321
	<i>Proposed – Phase 1</i>	232	0	1,137
	<i>Change</i>	<i>-349</i>	0	<i>-184</i>
<i>SummerHill II (Evulich Ct)</i>	<i>Projected (20-35 du/ac)</i>	31	18	35
	<i>Proposed (~20 du/ac)</i>	0	10	41
	<i>Change</i>	<i>-31</i>	<i>-8</i>	+6
Unmet 6th Cycle RHNA		1,608	716	654
Remaining Total Units Projected		1,281	694	1,462
Total Remaining Surplus/Deficit		-327	-22	808
Building Permits issued through 2025		82	61	225

* Includes Very Low- and Low-Income

Income Category		
Lower Income (30-80% AMI)	Moderate (80-120% AMI)	Above Mod. (>120% AMI)

*** Due to the elimination of office s.f. on the west side of the development, the market rate units on the west side are larger in size and spread across a larger footprint. As a result, the number of units in Phase 1 are reduced*

While the City has a high unmet RHNA number, it can get credit for building permits issued (Building permits issued through the end of 2025 are indicated in the table above) and for projects that the City entitled on sites that are not Priority Housing Sites (pipeline projects).

Since late 2025, staff has been considering strategies to address the No Net Loss issue and refining a scope of work and budget for this effort. As of March 1, 2026, the City will have a deficit in both the lower and moderate income RHNA levels. As a result, staff recommends that the City Council consider the following options being presented to update the Priority Housing Sites Inventory and provide direction to staff.

Reasons for Recommendation and Options

Policy Considerations

One factor in the City’s No Net loss shortfall in affordable units is that the City does not have minimum residential density requirements for the development of sites that are not Priority Housing Sites. The lack of a minimum required density acts as an incentive to develop at a density that is most lucrative for certain types of projects, that currently being townhomes at a density of around 20 units/acres. Such owner-occupied developments are not required by the City’s Below Market Rate (BMR) housing program to provide lower income level units, only moderate income level units are required, and they do not provide a meaningful number of total units to help the City attain its RHNA targets. For example, projects have proposed densities as low as 17 du/ac in areas along the City’s major transportation corridors with great access to amenities (Stevens Creek Office Center/Harvest Properties), where development of a maximum of 25 du/ac is allowed.

In addition to not being productive in the lower income levels, continued development at 20 du/ac would require the identification of many more sites for residential development. Affordable housing developers are not attracted to this density and the cost of land increases significantly, since such densities are prime for market rate developers. On the other end of the spectrum, Hanover is proposing 363 units on a 2.67 acre site (~136 du/ac) (19260 and 19300 Stevens Creek Blvd). Due to the size of the units and potential future rents at this development, the City may be able to claim lower income level categorization for some of these units, despite these not being deed restricted affordable housing. The City could consider the establishment of minimum densities for sites along the commercial corridors and higher maximum densities for some sites to allow such development.

Another factor in the No Net Loss shortfall in affordable units is the City's RHNA calling for 57.5% of the 6th Cycle Housing Element units to be affordable to Very Low, Low and Moderate income households, while the City's below market-rate (BMR) housing requirements are only 15% Low income units (this includes Very Low income units) for new rental developments, such as apartments, and 20% Moderate income units (this includes Median and Moderate income units) for new owner-occupied developments, such as townhomes and condominiums. This disparity in affordability levels between the RHNA and the City's BMR requirements inevitably results in shortfalls as sites develop, unless projects on Priority Housing sites develop largely as affordable housing projects or provide BMR units at percentages greater than required by the City. Only two projects have been proposed as largely affordable housing developments – Mary Ave Villas (on property owned by the City) and Wolfe Road Teacher Housing (on property controlled by the County). In addition, it should be noted that cities must offer an in-lieu of BMR unit fee to allow developers the option to “fee out” of BMR program requirements. This further limits the production of housing units at lower income levels. However, the City should have an adequate fee to off-set the loss of housing unit production, which it currently does not.

Options for additional Priority Housing Sites

City staff has, in the past few months, been contacted by several property owners to add sites to the Priority Housing Sites Inventory. These include:

- Kimco Property (Cupertino Village) for some portions of their site (e.g. existing hotel site) at much higher densities,
- AlphaX – four sites on the northeast corner of the intersection of N. Foothill Blvd and Stevens Creek Blvd, including three parcels which will allow residential development at an existing density of 15 units per acre and one parcel with a land use density and zoning that allows single family (R1) uses.

In addition to requests from property owners, the City could consider upzoning additional non-residential sites along the major transit corridors of Stevens Creek and De Anza Blvd at higher densities for inclusion in the Priority Housing Sites Inventory. State law (AB2011) already allows residential development at certain minimum densities along defined commercial corridors. However, since there are labor requirements associated with the use of this law, developers do not readily utilize these provisions. The City could adopt a local version of these regulations without the labor requirements to allow the development of some of the sites along the major transportation corridors, with potential exclusions for sites that the City wishes to retain as commercial, to allow higher density residential development. While the commercial sites excluded from the local program could develop under provisions of state law, they would have to meet the higher labor standards required by the state. Identifying sites along Stevens Creek/De Anza would address issues the City has faced with locating Priority Housing Sites within residential neighborhoods (e.g. Evulich Ct., McClellan Road etc.).

Options for upzoning existing Priority Housing Sites

Some property owners have been interested in upzoning their existing Priority Housing Sites. These include:

- Marina Plaza

Other strategies

There may be other strategies that the City's consultant could come up with, which are acceptable to HCD for finding compliance with state law. City staff will confer with the consultant and propose reasonable strategies at a later date.

Sustainability Impact

No sustainability impact.

Fiscal Impact

This project will involve amending the Housing Element and will include consultant costs estimated between \$100,000 to \$300,000 depending on the extent of the environmental review and community outreach processes. A majority of the deficit stems from changes to state law regarding applicability of SB35 and associated affordable housing requirements. In June 2024, the City entered into a Settlement Agreement related to the Vallco Town Center (Rise) development, in which the developer committed to funding long term planning efforts which arise as a result of the development. Since the current No Net loss issue stems largely from modifications made to affordability levels in the project, staff is determining the developer's share of this planning effort's cost.

City Work Program (CWP) Item/Description

FY 25-26 - Housing Site Inventory: Options for expanding Housing Element Site inventory to address potential shortfall in zoned capacity

Council Goal

Housing

California Environmental Quality Act

Amending the Housing Element will be subject to the California Environmental Quality Act (CEQA), but the level of CEQA review has yet to be determined.

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Reviewed by: Benjamin Fu, Director of Community Development

Floy Andrews, Interim City Attorney

Approved for Submission by: Tina Kapoor, City Manager

Attachments:

A – City Council Informational Memo re: No Net Loss dated January 30, 2026