



COUNCIL REPORT

DATE: April 8, 2025
CATEGORY: Public Hearing
DEPT.: Community Development
TITLE: **Residential Development Project at 294-296 Tyrella Avenue (Builder's Remedy)**

RECOMMENDATION

1. Adopt a Resolution of the City Council of the City of Mountain View Conditionally Approving a Development Review Permit to Construct a Seven-Story, 80-Unit Residential Condominium Building Replacing an Existing Single-Family House, a Heritage Tree Removal Permit to Remove Six Heritage Trees on a 0.48-Acre Project Site Located at 294-296 Tyrella Avenue (APN 160-32-001 and 160-32-002), and Finding the Project to be Categorically Exempt from the California Environmental Quality Act Pursuant to Section 15332 ("In-Fill Development Projects") of the California Environmental Quality Act Guidelines, to be read in title only, further reading waived (Attachment 1 to the Council report).
2. Adopt a Resolution of the City Council of the City of Mountain View Conditionally Approving a Tentative Tract Map to Create a Single Lot for 80 Condominium Units and One Common Lot at 294-296 Tyrella Avenue (APN 160-32-001 and 160-32-002) and Finding the Project to be Categorically Exempt from the California Environmental Quality Act Pursuant to Section 15332 ("In-Fill Development Projects") of the California Environmental Quality Act Guidelines, to be read in title only, further reading waived (Attachment 2 to the Council report).

BACKGROUND

Project Location: 294-296 Tyrella Avenue (APN 160-32-001 and 160-32-002), on the southwest corner of Middlefield Road and Tyrella Avenue.

Project Site Size: Approximately 0.48 acre.

General Plan Designation: Medium-High Density Residential.

Zoning Designation: R3-1 (Multiple-Family) Zoning District.

Surrounding Land Uses: North—two-story condominiums across Middlefield Road; south—one-story multi-family buildings; east—one-story single-family residence across Tyrella Avenue; and west—two-story condominiums.

Current Site Conditions: Vacant lot and one existing single-family residence.

Applicant/Owner: Forrest Linebarger of Tower Investment, LLC.

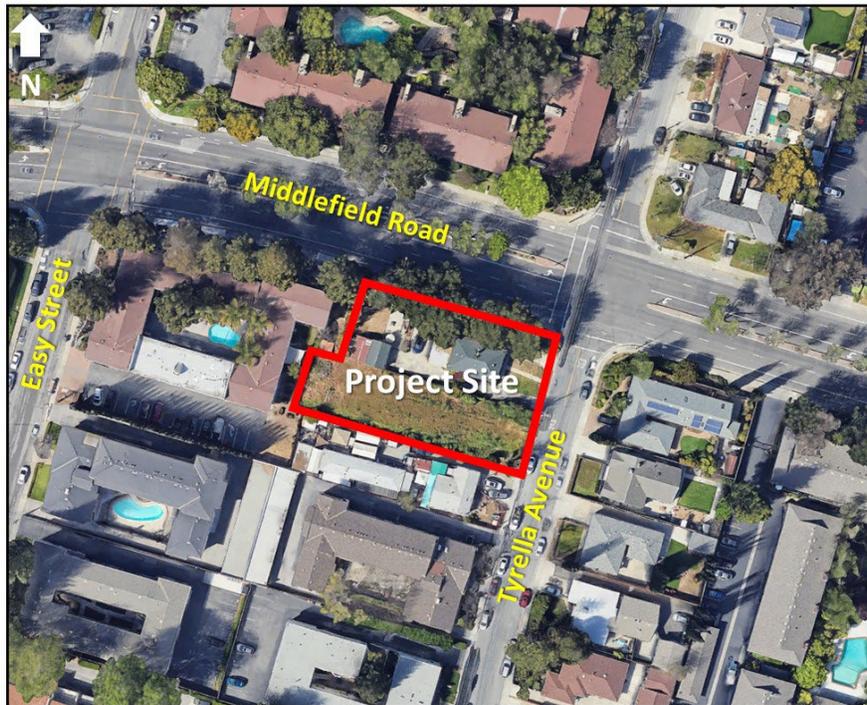


Figure 1: Location Map

Project Overview

Builder's Remedy

The California Legislature adopted the Housing Accountability Act (Gov. Code § 65589.5) to “significantly increase the approval and construction of new housing for all economic segments of California’s communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects...” (Gov. Code § 65589.5(a)(2)(K)). It is the policy of the state that the Housing Accountability Act (HAA) “be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.” (Gov. Code § 65589.5(a)(2)(L)).

The "Builder's Remedy" is a provision of the HAA that is applicable to qualifying housing development projects when a preliminary application is submitted before the City adopted a substantially compliant Housing Element. Forrest Linebarger of Tower Investment, LLC (Applicant), submitted a preliminary application for a housing development project which proposes 20% of its total units to be affordable to lower-income households before the City adopted a substantially compliant Housing Element. Therefore, the project qualifies as a Builder's Remedy project.

Consistent with its intent to facilitate the approval of housing, the HAA limits the City's ability to deny or condition approval of a housing development project for very low-, low-, or moderate-income households in a manner that renders the project infeasible for affordable housing development (Gov. Code § 65589.5(d)). In addition, the Builder's Remedy provision of the HAA prohibits the City from relying on inconsistency with Zoning and General Plan standards as a basis for denial of a housing development project for very low-, low-, or moderate-income households.¹

However, the HAA contains provisions that maintain the City's ability to enforce some objective development standards, conditions, and policies if enforcement does not render the project infeasible or require a reduction in the proposed density. Section 65589.5(f)(1) of the HAA states that "nothing in [the HAA] shall be construed to prohibit a local agency from requiring the housing development project to comply with objective,² quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need" as long as they are applied to "facilitate and accommodate development at the density permitted on the site and proposed by the development." Section 65589.5(f)(3) of the HAA states that "[n]othing in [the HAA] shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project...."

Senate Bill 1214

Senate Bill 1214 (2022), codified in Government Code Section 65103.5, requires local planning agencies to ensure copyrighted architectural drawings are made available to the public in a manner that does not facilitate their copying, public distribution, or online posting unless granted

¹ Pursuant to the Builder's Remedy Law in effect January 1, 2024 through December 31, 2024, a "housing development project for very low-, low-, or moderate-income households" for purposes of the Builder's Remedy means a housing project in which at least 20% of the total units will be sold or rented to lower-income households as defined in Section 50079.5 of the Health and Safety Code, or 100% of the units will be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income as defined in Section 65008 of the Government Code.

² Under the HAA, "objective" means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official. (Gov. Code § 65589.5(h)(9))

permission by the copyright owner. If the copyright owner does not grant permission, project applicants must submit a site plan and massing diagram for public distribution and online posting.

The copyright owner for the proposed project has not given the City its consent to publicly distribute and post the architectural plans online and has instead provided a limited plan package (i.e., site plan and original massing diagram) to be posted on the City website for public viewing. Therefore, only the limited set of plans have been made available online to the public in compliance with the law. The full set of plans and copies of all associated project documents are available for review in person at the Community Development Department public counter at City Hall during normal business hours.

Project Scope

The proposed Builder's Remedy project includes redevelopment of two parcels (one of which is vacant and the other containing a single-family residence) with the construction of a new seven-story residential condominium building which includes a three-level parking podium to accommodate a total of 83 parking stalls (see Attachment 3, Project Plans). The project includes 80 residential condominium units, including 16 affordable units (20% of the unit total), and is approximately 109,807 square feet in total size.³ The proposed dwelling unit mix is comprised of 20 studio units, 31 one-bedroom units, 26 two-bedroom units, and 3 three-bedroom units.

Vehicular access to the podium off-street parking area is available from Tyrella Avenue. One level of the parking garage is subgrade, and two levels are above grade. The primary pedestrian entrance to the site is also accessed from Tyrella Avenue. The ground floor consists of a small lobby area, a mail room, one 1-bedroom unit, and other utility/service areas. The top floor consists of 11,219 square feet of usable open area for the residential building, which includes a pickleball court, barbecue area, dog run, a mini-putting area, and passive seating. Private balconies are also available for most of the units. Site improvements proposed for the project include walkways and landscaping around the perimeter of the site. The project proposes removal of six Heritage trees as discussed later in this report.

³ A project revision was submitted March 5, 2025, which revised the project units from 85 to 80 units and included modifications to the parking layout to replace the puzzle lifts with a three-level podium parking with standard stalls.

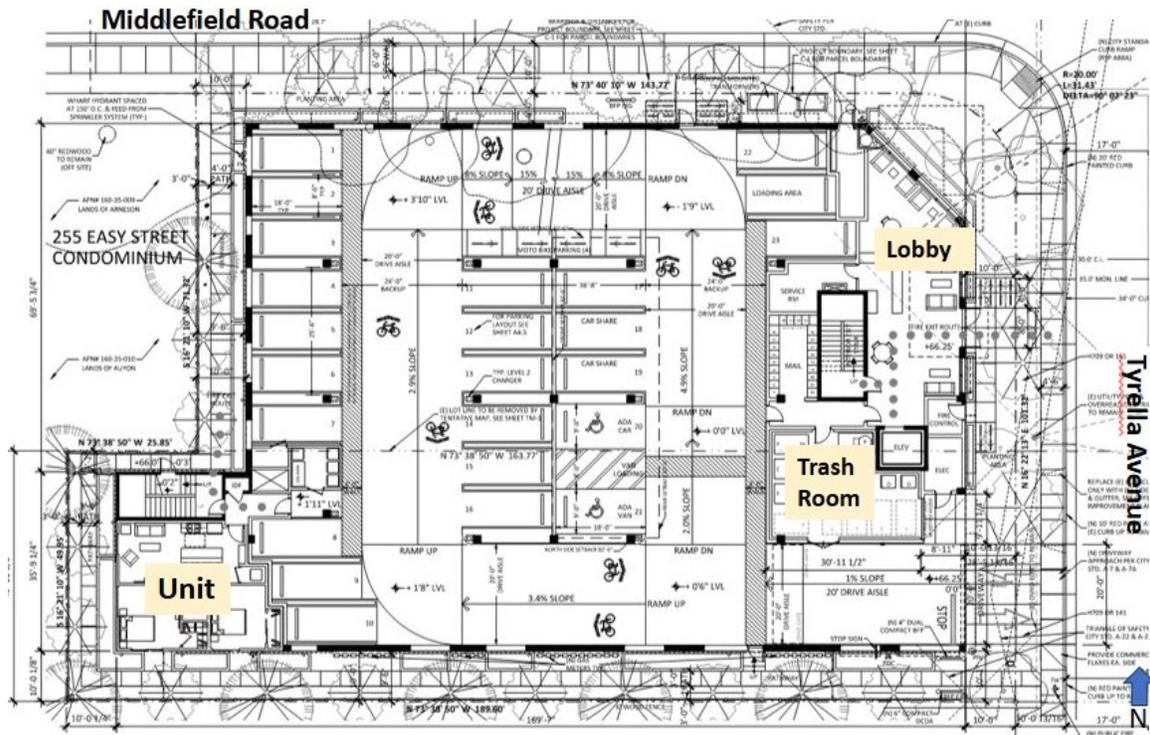


Figure 2: Site Plan

Prior Meetings and Hearings

Previous Projects on this Site

On November 16, 2021, City Council approved a three-story, 11-unit rowhouse project on this site that was consistent with the R3-1 Zoning District ([November 16, 2021 Council Report](#)). That entitlement has since expired.

Subsequently, on April 29, 2022, the Applicant submitted an SB 330 preliminary application and formal application for a Development Review Permit with a State Density Bonus request with development waivers and concessions to construct a 33-unit apartment building. This application was deemed complete; however, the Applicant subsequently submitted the current request under the Builder's Remedy provisions of state law, and the most recent application has been prioritized for processing by staff and the Applicant.

Neighborhood Meeting

Applicants are strongly encouraged by staff to host a neighborhood or community meeting during the project review process to engage with the community and inform them about a proposed project. This meeting is not mandatory, but applicants are typically agreeable to the

suggestion, and the project planner traditionally attends the meeting. The Applicant declined to conduct a neighborhood meeting for this project.

Design Review

As part of the development review process, applicants typically undergo design review, including a public design review consultation (DRC) meeting. This meeting is not mandatory, but applicants typically do participate. The Applicant declined to attend a DRC meeting to discuss the project design in a public setting.

Administrative Zoning and Subdivision Committee Meeting

The development project and Tentative Map were scheduled at a Joint Administrative Zoning and Subdivision Committee public hearing on November 13, 2024. Staff opened the public hearing for public comment and continued the matter to a date uncertain to carefully consider the submitted comments. Prior to this meeting, staff received 12 written public comment letters/emails from the general public, the California Housing Defense Fund (CalHDF), and the Applicant's attorney (see Attachment 4, Public Comments). The items raised in the public comment letters include concerns regarding parking, traffic/circulation impacts, density, and building scale. One letter voiced concern over the project's seismic stability and its potential impacts to neighboring properties given the proposed height and minimal setbacks of the building.

The public hearing on the project and Tentative Map was rescheduled to March 12, 2025, where the Zoning Administrator and Subdivision Committee unanimously recommended that the City Council approve the project and map (see Attachment 5, Administrative Zoning/Subdivision Committee Meeting—March 12, 2025). The Applicant and 13 members of the public spoke at the meeting with a majority in opposition of the project and one in favor. Prior to the meeting, staff received seven written public comments letters/emails from the general public, CalHDF, and the Applicant's attorney (see Attachment 5, Public Comments). The public comments raised similar items as discussed in the November public comment letters, but additional concerns were raised regarding construction impacts and air quality, impacts of the additional density to existing infrastructure, such as schools and roads, and concerns of the roof deck's impacts on privacy and noise associated from the rooftop pickleball court.

Following the joint Zoning Administrator and Subdivision Committee public hearing, staff continued project review and recommends certain deletions, revisions, and additions to the conditions of approval in a good-faith effort to reduce financial constraints on housing development projects for lower-income households, as follows:

- Removal of Project Conditions of Approval regarding Utility Payment Agreement, Notice of Potential On-Street Parking Removal, Off-Site Trash Capture Devices, Full Trash Capture, and Full Trash Capture (Off Site Improvement).
- Modification of Project Conditions of Approval regarding BMR Units—Continued Affordability and Building Codes.
- Addition of Project Condition of Approval acknowledging Government Code Section 65589.5(o)(2)(D).

ANALYSIS

General Plan

The project site is comprised of two parcels. Both parcels have a General Plan Land Use Zoning Designation of Medium-High Density Residential which allows a maximum density of 35 dwelling units per acre, thereby allowing up to 17 dwelling units on the 0.48-acre project site. Although the proposed density of 167 dwelling units per acre exceeds the allowable density in the General Plan, pursuant to the Builder's Remedy provisions of the HAA, the City may not disapprove the project based on the project's noncompliance with this General Plan development standard.

Moreover, the proposed project is consistent with several General Plan policies. Specifically, the project supports the following General Plan policies:

- **LUD 3.5: Diversity.** Encourage residential developments serving a range of diverse households and incomes.

The proposed project is a residential development that supports a range of incomes as the project proposes 80 dwelling units with 20% affordable units (64 market-rate units and 16 low-income units).

- **LUD 3.9: Parcel assembly.** Support the assembly of smaller parcels to encourage infill development that meets City standards and spurs neighborhood reinvestment.

The project site is currently two separate parcels; however, the project proposes a Tentative Map that creates a single parcel for condominium purposes.

The City’s recently adopted Sixth-Cycle Housing Element 2023-2031 also includes goals and policies which the project meets. The project supports the following Housing Element goals and policies:

- **Policy 1.1:** Ensure that adequate residential land is available to accommodate the City’s Regional Housing Needs Allocation (RHNA), with special focus on Precise Plan areas near transit, employment centers, and services.

The project will provide units to help the City meet its RHNA requirement.

- **Policy 1.2:** Encourage a mix of housing types at a range of densities that serves a diverse population, including rental and ownership units serving both young and mature families, singles, young professionals, single-parent households, seniors, and both first-time and move-up buyers, at a broad range of incomes through development policies and City-subsidized affordable housing.

The project will create a mix of housing units for diverse populations as the project proposes 20% low-income units (16 affordable units).

Zoning

The site is located in the R3-1 (Multiple-Family) Zoning District. Multi-family housing is a permitted use in this Zoning District, subject to the provisions of the Section 36.10.70 (R3 Zone Development Standards) of the Zoning Ordinance.

Although the project is inconsistent with a number of the development standards in the R3 Zoning District, pursuant to the Builder’s Remedy provisions of the HAA, the City may not disapprove the project based on the project’s noncompliance with these development standards.

Table 1 below compares the project proposal to the development standards in the R3 Zoning District (Section 36.10.70).

Table 1: Project Compliance Assessment with R3-1 Development Standards⁴

Standard	Requirement	Proposed
Maximum Allowed Density	17 units	80 units
Maximum Floor Area Ratio (FAR)	1.05	5.21

⁴ The plan sets do not utilize the correct lot area when showing compliance with development standards. Therefore, this compliance table reflects the corrected lot area as many of these development standards, except for FAR, is based off the new lot area of 0.48 acre.

Standard	Requirement	Proposed
Minimum Front, Side, and Rear Setback	Front, Side, and Rear Setback: 15' or the height of the adjacent building wall of the subject parcel as measured to top of the wall plate, whichever is greater.	See below.
First Floor	13'6"	Front (Tyrella Avenue): 10' Side (Middlefield Road): 6' Side (South): 10' Rear: 4' to 10'
Second Floor	23'9"	Front (Tyrella Avenue): 8' to 10' Side (Middlefield Road): 4' to 6' Side (South): 10' Rear: 3'10" to 10'
Third Floor	35'9"	Front (Tyrella Avenue): 8' Side (Middlefield Road): 4' Side (South): 10' Rear: 4'1" to 10'
Fourth Floor	47'9"	Front (Tyrella Avenue): 8' Side (Middlefield Road): 4' Side (South): 10' Rear: 4'1" to 10'
Fifth Floor	59'9"	Front (Tyrella Avenue): 8' to 10' Side (Middlefield Road): 4' to 6' Side (South): 10' Rear: 4'1" to 10'
Sixth Floor	71'9"	Front (Tyrella Avenue): 10' Side (Middlefield Road): 6' Side (South): 10' Rear: 4'1" to 10'

Standard	Requirement	Proposed
Seventh Floor	87'9"	Front (Tyrella Avenue): 10' Side (Middlefield Road): 6' Side (South): 10' Rear: 4'1" to 10'
Maximum Site Coverage	35%	77%
Maximum Pavement Coverage	20%	Less than 1%
Maximum Height Limit	45' max building height 36' top of wall plate	96'3" building height 87'11" wall plate height
Minimum Open Area	55%, which shall include a minimum 40 square feet of private open space per unit	11,219 sq. ft. roof deck + 3,882 sq. ft. private balconies + 5,014 sq. ft. ground-level landscaping = 20,115 sq. ft. (95%) 54 units will have 65 to 72 sq. ft. of private open space. 26 units will have no private open space.
Minimum Personal Storage	500 cubic feet of enclosed and secured storage area per unit	15 units at 208 cubic feet
Minimum Vehicle Parking	Studio unit: 1.5 spaces per unit, one space shall be covered (20 units x 1.5 spaces = 30 spaces) One-bedroom greater than 650 square feet or two-bedroom or more: two spaces per unit, one space shall be covered (60 units x 2 = 120 spaces) Guest: 15% of total spaces (23 spaces) Motorcycle: None Total Parking Required: 173 parking spaces	83 parking stalls 8 parking spaces for motorcycle parking Zero spaces for guest
Minimum Bicycle Parking	Resident: One space per unit (80 spaces)	Resident: 144 spaces
	Guest: One space per 10 units (8 spaces)	Guest: 10 spaces

Project Design

The project features a contemporary design with flat roof forms. The material palette for the project includes cement plaster of varying colors, horizontal siding, steel accents, fabric awnings, and glass railings. The project incorporates balcony stacks to break up the building mass. The steel awnings are used to highlight key features of the building, such as the primary pedestrian entrance fronting Tyrella Avenue, and to provide additional detailing to the building's corner element. Fabric awnings are utilized to break up building mass on the south elevation.



Figure 3: Building Rendering at Corner of Middlefield Road and Tyrella Avenue

The building fronts two streets, with Middlefield Road to the north and Tyrella Avenue to its east. The ground floor of the building is primarily taken up by service rooms and podium parking, except for the small lobby area located at the northeast corner of the site and the one-bedroom unit at the southwest corner of the building. Vehicular access to the three levels of parking is located at the south end of the site, fronting Tyrella Avenue. Trash services are located just north of the driveway entrance. The main pedestrian entrance to the site is also located along Tyrella Avenue.

Due to the smaller setbacks at the ground level, the primary open space area (approximately 11,219 square feet) for the site is located on the rooftop and includes a variety of amenities, such as fire pits, a pickleball court, dog run, putting area, roof garden, hot tub, and outdoor kitchen.

Open Space and Landscaping

The project includes a total of 20,115 square feet of open space that can be used by future residents and guests. The total open space consists of an 11,219 square foot rooftop amenity

area, private unit balconies, and landscape open area at the ground floor. The rooftop programming includes a variety of both passive and active uses. More passive amenity areas, such as seating, a rooftop garden, and putting area are located on the south side of the roof, adjacent to the neighboring one-story multi-family buildings. The more active uses are located closer to Middlefield Road, such as the dog run, fire pit, wet bar, and hot tub. A pickleball court is also proposed on the west side of the rooftop, adjacent to the two-story condominium complex to the project site's west.

A perimeter walkway and landscaping are proposed around the building. The perimeter pathway ranges from 3' to 4' in width, with a 3' to 4' landscape strip along both sides of the pathway in most locations with a mix of native and nonnative plantings. There are some areas of the pathway that do not have any landscaping. The project plans identify achieving 83% native plant species but do not accurately list out all nonnative plant species used in the landscaping plan. Therefore, it is unclear at this time if the current proposal will meet the City Council's 75% native landscaping goal, but changes to these plant species, if the Applicant is amenable, could result in meeting this goal.

The project proposes 95% (20,115 square feet) of open area/landscaping, which far exceeds the required minimum in the R3 Zoning District of 55% (11,589 square feet) of the site area. However, the project proposal for private open space does not meet the private open space requirement as only 54 of the units have private open space (65 to 72 square feet) when 40 square feet of private open space per unit is required. Since not all units are provided private open space, this does not meet the requirement of the R3 Zoning District.

Notwithstanding the above-noted inconsistencies with the development standards in the R3 Zoning District, pursuant to the Builder's Remedy provisions of the HAA, the City may not disapprove the project based on the project's noncompliance in this regard.

Trees

There are seven Heritage trees on-site, eight non-Heritage trees on-site, and one Heritage street tree along Tyrella Avenue. The Heritage trees include one Spanish dagger, three Monterey pines, and four Coast live oaks. The project proposes to remove six Heritage trees along the Middlefield Road frontage (three Monterey pines and three Coast live oaks). The Heritage trees are either in good or fair condition but, due to conflicts with the building envelope, are proposed for removal as the tree locations would impact the proposed number of units and would conflict with proposed storm drains. Additionally, the Applicant's arborist reviewed the viability of transplanting the Heritage trees but found they were unsuitable candidates for tree transplant due to the large size of the trees, age, project costs, and unavailability of land on-site for tree relocation. The April 18, 2024 arborist report was prepared by Kielty Arborist and reviewed by the City arborist, and a site visit was conducted on December 28, 2023 (see Attachment 6—Arborist Report).

In order to ensure that newly planted trees result in replacing the canopy coverage over time, a total of 17 new on-site trees will be planted to replace the six Heritage trees proposed for removal. In addition to the on-site trees, the project proposes to plant 12 street trees, which includes Coast live oaks, eastern redbuds, and cork oaks. The tree replacement proposed is 2.8:1, which exceeds the City's standard practice for a 2:1 replacement ratio for Heritage trees. The following is the existing and anticipated tree canopy coverage for the site over time:

Table 2: Tree Canopy Coverage

Canopy	Site Coverage
Existing	9.6%
New Canopy (at planting)	3.4%
New Canopy (5 to 10 years)	11.6%
New Canopy (full growth)	14.8%

Many of the new trees (approximately 16 trees) will be planted in the perimeter landscaping along with landscaping. The resulting tree removal and planting plan carefully considers the City Code requirements and incorporates native planting. Staff, therefore, recommends the proposed tree removal and replacement plan.

Parking

Vehicular Parking

The project proposes a three-level parking garage with one level of parking subgrade and two levels aboveground. The total number of parking stalls included in the project is 83, which will be unbundled from the residential units. The Applicant is proposing to designate two parking stalls as car-share spaces and two parking stalls as Americans with Disabilities Act (ADA) spaces. The project is noncompliant with Section 36.32.50 (Required number of parking spaces) of the City Code, which requires the project to have 173 total parking spaces.

Notwithstanding the above-noted inconsistencies with the development standards in the R3 Zoning District, pursuant to the Builder's Remedy provisions of the HAA, the City may not disapprove the project based on the project's noncompliance in this regard.

Bicycle Parking

The project proposes 144 long-term bicycle parking spaces and 10 short-term bicycle spaces. The long-term spaces are located in bike rooms located in Level 0 and Level 2. The short-term bicycle spaces are located at-grade near the primary building entrance at Tyrella Avenue and along the building frontage on Middlefield Road. The number of bicycle spaces is compliant with the City's

bicycle parking requirement, but the bike rack design does not comply with the clearance requirements as 24" clearance is required from the centerline of each adjacent bicycle, but only 14.4" is provided.

Notwithstanding the above-noted inconsistencies with development standards in the R3 Zoning District, pursuant to the Builder's Remedy provisions of the HAA, the City may not disapprove the project based on the project's noncompliance in this regard.

Green Building Requirements

Subject to Mountain View Green Building Code (MVGBC), new multi-family developments with three or more units are required to be designed and constructed to meet mandatory CALGreen, Mountain View Green Building Code (MVGBC) requirements, and meet the intent of LEED® Gold certification. Applicable requirements under MVGBC multi-family residential projects include compliance with Title 24, Part 6 of the California Energy Code (CalEnergy), and electric vehicle (EV) parking requirements.

The project has been conditioned to meet requirements under the CALGreen, CalEnergy, and the MVGBC and will be reviewed for compliance at the building permit stage.

Below-Market-Rate Housing

Percentage Requirement

The Mountain View Below-Market-Rate (BMR) Ordinance requires ownership residential developments with seven or more units to provide at least 15% of the total number of dwelling units or parcels within the development as BMR units affordable to households earning between 80% and 120% of the area median income (AMI) (City Code Section 36.40.10(b)(1)).

The project is proposing to provide at least 20% of the total units to lower-income households (i.e., 16 units at 80% AMI), which exceeds the City's BMR Ordinance percentage requirement.

Location and Design (Proportionality)

The City's BMR Ordinance (City Code Section 36.40.10(f)) also requires the affordable units to be reasonably dispersed throughout the project and have a distribution of units by number of bedrooms proportionate to the market-rate units. The project proposal includes 16 studio units. Table 3 below compares the proposed BMR unit mix to the BMR unit mix required under the City's BMR Ordinance.

Table 3: Proportionality of Affordable Units

Unit Mix	Total Units	Proposed BMR Unit Mix	Required BMR Unit Mix
Studio	20	16	4
One bedroom	31	0	6
Two bedroom	26	0	5
Three bedroom	3	0	1
Total	80	16	16

City staff inquired whether the Applicant's proposed BMR unit mix could be modified to better align with the City's proportionality requirements, and the Applicant informed staff that any such modifications would make the project infeasible.

Homeowners Association Reserve Fund

The BMR Ordinance states: "For units sold to households earning less than eighty (80) percent AMI, the developer shall set aside a reserve and describe the reserve in the CC&Rs to cover future special assessments and increases in HOA dues for those households, and the total housing cost shall not exceed thirty (30) percent of the household's selected income level for the unit over the life of the mortgage. The community development director or designee may establish standards for calculating the amount of the reserve." (City Code Section 36.40.20)

Tower Investment, LLC, is preparing a condominium subdivision map as part of their project entitlements. Due to the economy, the developer intends to initially rent the units but has indicated that they may convert to an ownership product in the future. The Homeowners Association (HOA) Reserve requirement applies to any ownership unit sold for 80% AMI or lower and would apply to this project. The developer noted that if there were a condo conversion, it would be much later, such as in 20 years or even longer. The timing of when the reserve needs to be established is not defined under these circumstances.

The developer has objected to requiring the HOA Reserve should the units start out as rental units. The developer has agreed to voluntarily pay into a pro rata HOA Reserve Fund for each BMR unit sold within 10 years of occupancy of the unit.

Based on that input, a sunset term of 20 years or more, such as 25 years, would be reasonable. If the units were to convert after the sunset date, the project would not be subject to the HOA Reserve.

Duration of Deed Restriction

Pursuant to City Code Section 36.40.10.H (Term), "BMR units shall be maintained as affordable housing in perpetuity." In 2019, the City of Mountain View revised the BMR program, which included a provision to extend the deed restriction term from 55 years to in perpetuity. The primary goal of the revised duration was to address tenant displacement efforts but also responds to the preservation of BMR units and to retain the supply of affordable housing. The City Code exceeds state requirements; however, the project proposes a term of 30 years, which is consistent with the provisions of Builder's Remedy Law in effect between January 1, 2024 through December 31, 2024. Pursuant to the Builder's Remedy provisions of the HAA, the City may not disapprove the project based on the project's noncompliance in this regard.

In an effort to avoid protracted and expensive litigation over Builder's Remedy law, which will only serve to delay this housing development project, and to demonstrate the City's commitment to meeting its share of the regional housing need to address the state and regional housing crisis, City staff recommends approval of the project as currently proposed, notwithstanding its noncompliance with the proportionality, HOA reserve fee, and duration of deed restriction requirements for the BMR units.

Transportation and Circulation

Multi-Modal Transportation Analysis

On June 30, 2020, the Council endorsed the Vehicle Miles Traveled (VMT) analysis methodology for development projects that require transportation analysis in combination with a requirement for a local-level analysis of multi-modal transportation impacts, (including bicycle, pedestrian, and vehicle movements), referred to as a Multi-Modal Transportation Analysis (MTA).

A small-scope MTA was conducted to analyze the vehicular, pedestrian, and bicycle operations of the project. Several recommendations to address the adverse effects of the project were outlined. Many of those recommendations, such as eliminating a driveway on Middlefield Road, eliminating a secondary service driveway on Tyrella Avenue, adding loading spots on-site, and prohibiting on-street parking on Middlefield Road were incorporated into the project plans. The remaining MTA recommendations for off-site improvements, including contributing funding to the adjacent Capital Improvement Program (CIP) for Rectangular Rapid Flashing Beacons (RRFB), construction of a bulb-out at the southwest corner of the Middlefield Road and Tyrella Avenue intersection, and crosswalks on Middlefield Road, were determined to be unenforceable under Builder's Remedy and, therefore, not included as a condition of approval.

Streetscape Design

Along the Tyrella Avenue and Middlefield Road frontages, the existing conditions are a 5' wide attached sidewalk and a 6' wide attached sidewalk respectively (inclusive of the curb). The project is proposing to keep the existing configuration for both street frontages. The Applicant proposes only to replace damaged curb, gutter, and sidewalk when required due to construction or existing driveway removal. In addition, the project will install new street trees behind the attached sidewalk on both frontages and reconstruct the existing ADA curb ramp at the project frontage.

Pursuant to the Builder's Remedy provisions of the HAA, the project is not required to dedicate a frontage Public Utility Easement (PUE) or underground the overhead utility lines fronting the project and remove utility poles. This includes the existing overhead lines along Tyrella Avenue and across Middlefield Road. Additionally, the absence of a PUE may alter the location of the street trees as the final joint-trench design plans are developed.

Subdivision Map

The proposed Tentative Map for the project identifies one lot, Lot A, for 80 condominium units and one common lot. Staff recommends approval of the proposed map based on the findings in the attached resolution and subject to the recommended Conditions of Approval (see Attachment 2, Resolution for Tentative Map).

Park Land Dedication In-Lieu Fee and Transportation Impact Fee

In a good-faith effort to reduce financial constraints on housing development projects for lower-income households and to avoid protracted and expensive litigation over the Builder's Remedy law, the City will not impose conditions of approval requiring Park Land Dedication In-Lieu fees or Transportation Impact fees for this project.

WRITTEN REQUESTS SUBMITTED BY APPLICANT

The Applicant submitted written requests dated April 20, 2024 and June 12, 2024 regarding various City standards. A description of the requests and the City's responses are below:

1. **Street Encroachment for Construction Staging**—The Applicant has requested a permit to encroach onto City right-of-way (ROW) for construction staging, including, but not limited to, a crane, debris box, and two shipping containers. Typically, an applicant must submit additional information with the building permit set to detail the proposed encroachments. Staff will continue to work with the Applicant on this request, and, during the review of the building permit, staff expects that an amenable solution that incorporates the Applicant's construction needs and limits the impact to the public can be resolved with the Applicant.

The project has been conditioned to require the issuance of an Encroachment Permit for construction staging in the public ROW.

2. **Sewer and Water Capacity Charges**—The Applicant has requested a “waiver” of sewer and water capacity fees for the 16 low-income housing units and deferred payment of the sewer and water capacity fees on the remaining units until occupancy. These fees are essential to provide necessary public services and facilities to the housing development project, and the City Code does not authorize an exemption for affordable housing units. The project has been conditioned to require the payment of sewer and water capacity fees for the development in accordance with the City Code. Historically, payment of fees is required prior to issuance of the first building permit. The project has been conditioned to require payment of the fees prior to occupancy.
3. **Utility Connection**—The Applicant is proposing to install one sewer connection and one water meter for domestic water use for the entire building. City Code Section 35.37 (Connection authority and supervision; Application; Charges generally) requires one “water connection, one sewer connection... to each separate dwelling” unit, and City Code Section 35.38 (Minimum requirements) allows for an exception to this requirement with approval of the Public Works Director and an approved agreement in place. When this exception is granted for a multi-family dwelling, the City requires an agreement for payment of the utility services and a security deposit. The Applicant has requested that the City grant an exception without requiring a utility payment agreement. Following project approval, the Public Works Director will approve an exception to allow installation of one sewer connection and one water meter for domestic water use for the entire building, as shown on the submitted plans. A utility payment agreement will not be required.
4. **Photovoltaic**—The Applicant has stated that 8% of the roof area is proposed for photovoltaic (PV), as shown in the submitted roof plans, and is requesting that the City “waive” the PV system requirement. Pursuant to City Code Section 8.20.9, the City requires multi-family residential buildings to include rooftop PV systems designed to provide 100% of the annual kwh consumption. The PV requirement is one of many City-specific building code provisions that exceed state Building Code requirements, also known as the Mountain View Local Amendments. In a good-faith effort to reduce financial constraints on housing developments and to avoid protracted and expensive litigation over Builder's Remedy law, staff recommends that the City not impose the 100% PV system requirement. The conditions of approval include a requirement that the Applicant obtain a PV permit at the building permit stage prior to installation of any proposed PV system. However, if the project provides less than 100% of the annual kWh consumption, the Applicant will not be required to submit an exception request to the Chief Building Official based on hardship or lack of solar access at the site as is typically required by the City Code.

ENVIRONMENTAL REVIEW

This project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 ("In-Fill Development Projects") of the CEQA Guidelines and none of the exceptions in CEQA Guidelines Section 15300.2 apply. This exemption applies to projects consistent with the applicable General Plan designation and all applicable General Plan policies as well as with applicable zoning designation and regulations. Pursuant to the HAA, the City is restricted from denying the project, reducing its density, or rendering it infeasible based on inconsistencies with the Zoning Ordinance and General Plan. Therefore, any existing zoning requirements and development standards that the project is not in compliance with are not "applicable" to the project within the meaning of CEQA Guidelines Section 15332, subdivision (a). For these reasons, the project is found to be consistent with the "applicable" designations and policies. The project also meets all other criteria. The project occurs within City limits, is located on a project site of no more than five acres, and is substantially surrounded by urban uses; the site has no known habitat for endangered, rare, or threatened species; the project would not result in any significant impacts relating to traffic, noise, air quality, or water quality; and the site can be served by all required utilities and public services.

The project met the City's VMT policy screening criteria based on the map-based screening criteria as the site is located in areas of low VMT (already 15% below baseline), compatible with surrounding development, does not require significant new utility improvements, and does not lead to residential displacement, defined as having a fewer number of moderate- or high-income residential units replace a higher number of naturally affordable units. The project was, therefore, presumed to have a "less-than-significant" impact on VMT; the project will be constructed to comply with applicable local, state, and federal noise and water quality regulations as it is conditioned to comply with Municipal Regional Permit requirements to implement stormwater treatment facilities; and the project is below the Bay Area Air Quality Management District (BAAQMD) screening levels and is conditioned to implement all the construction-related Best Management Practices (BMPs) required by BAAQMD.

FISCAL IMPACT

The City's current share of the County of Santa Clara property taxes from the project site is approximately \$1,000 per year, which is allocated to the General Operating Fund (GOF). The City typically receives an estimate on the construction valuation or average sale of units from applicants to generate property tax information. The Applicant did not provide this information to the City. In the absence of project-specific information from the Applicant, the City utilized data from a previous condominium project in Mountain View to estimate future property tax gains projected to be generated from this project. Based on this, if the site were redeveloped with the proposed project, the City is estimating it would receive an additional net property tax of \$114,000, resulting in a total of approximately \$115,000 in property tax revenue per year.

LEVINE ACT

California Government Code Section 84308 (also known as the Levine Act) prohibits city officials from participating in any proceeding involving a "license, permit, or other entitlement for use" if the official has received a campaign contribution exceeding \$500 from a party, participant, or agent of a party or participant within the last 12 months. The Levine Act is intended to prevent financial influence on decisions that affect specific, identifiable persons or participants. For more information see the Fair Political Practices Commission website: www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html

Please see below for information about whether the recommended action for this agenda item is subject to or exempt from the Levine Act.

SUBJECT TO THE LEVINE ACT

Land development entitlements

For more information about the Levine Act, please see the Fair Political Practices Commission website: www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html.

CONCLUSION

This project is consistent with some development standards, achieves General Plan and Housing Element goals by increasing market-rate and affordable housing opportunities in the City, and helps the City meet its RHNA requirements. Where the project is inconsistent, such inconsistencies are not a basis for disapproval of the project due to applicability of the HAA. The Zoning Administrator and Subdivision Committee recommend approval of the Builder's Remedy project subject to conditions of approval.

ALTERNATIVES

1. Approve the project with modified conditions of approval.
2. Refer the project back to the Zoning Administrator/Subdivision Committee for additional consideration.
3. Deny the project and adopt findings for denial.

PUBLIC NOTICING

The City Council's agenda is advertised on Channel 26, and the agenda and this report appear on the City's website. All property owners and tenants within a 750' radius and interested stakeholders were notified of this meeting.

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KP-DP-AB/1/CAM
828-04-08-25CR
204901

- Attachments:
1. Draft Project Resolution
 2. Draft Tentative Map Resolution
 3. Site Plan and Massing Diagram
 4. Public Comments
 5. [Administrative Zoning/Subdivision Committee Meeting—March 12, 2025](#)
 6. Arborist Report