



COUNCIL REPORT

DATE: November 19, 2024
CATEGORY: Public Hearing
DEPT.: Community Development
TITLE: **Residential Development Project at 2645-2655 Fayette Drive (Builder's Remedy)**

RECOMMENDATION

1. Adopt a Resolution of the City Council of the City of Mountain View Conditionally Approving a Planned Community Permit and Development Review Permit to Redevelop the Project Site by Removing Six Dwelling Units and a 6,900 Square Foot Commercial Building to Construct a Seven-Story, 70-Unit Condominium Development (20% Affordable) Above a Subterranean Parking Garage, a Provisional Use Permit for a Roof Deck, and a Heritage Tree Removal Permit to Remove Nine Heritage Trees on a 0.67-Acre Project Site Located at 2645-2655 Fayette Drive, and Adopting an Addendum to the Previously Adopted Initial Study/Mitigated Negative Declaration for the 2645-2655 Fayette Drive Residential Project, Pursuant to the California Environmental Quality Act, 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 Vesting Tentative Tract Map to Create a Single Lot for 70 Residential Condominium Units at 2645-2655 Fayette Drive, to be read in title only, further reading waived (Attachment 2 to the Council report).

BACKGROUND

Project Location: 2645-2655 Fayette Drive (APN: 148-016-008 and 148-016-009), between Del Medio Avenue and San Antonio Road.

Project Site Size: Approximately 0.67 acres.

General Plan Land Use Designation: High-Density Residential.

Zoning Designation: "Residential Only" Use-Restricted Area within the P(40) San Antonio Precise Plan.

Surrounding Land Uses: Northwest and southwest—three- and four-story residential multi-family buildings; southeast—San Francisco Public Utilities Commission (SFPUC) open space area (Fayette Greenway); and northeast (across Fayette Drive)—a City park (Fayette Park).

Current Site Conditions: Six dwelling units and an approximately 6,900 square foot commercial building previously used for carpet cleaning operation. All structures on the site are currently vacant.

Applicant/Owner: Octane Fayette, 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. Octane Fayette, LLC (Applicant), submitted a preliminary application before the City adopted a substantially compliant Housing Element for a housing development project which proposes 20% of its total units to be affordable to lower-income households. 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....”

¹ 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))

Project Scope

The proposed Builder's Remedy project includes redevelopment of two parcels that currently contain six dwelling units and a 6,900 square foot commercial building with a seven-story residential condominium building above a two-story parking garage (one level of parking located below-grade) with a total of 101 parking spaces (see Attachment 3—Project Plans). The project includes 70 for-sale condominium units, including 14 affordable units (20%), and is approximately 126,005 square feet (excluding basement parking) in total size. The proposed dwelling unit mix is comprised of five studio units, six junior one-bedroom units, six one-bedroom units, 29 two-bedroom units, and 24 three-bedroom units.

Project parking is located at-grade and in a one-level, below-grade parking garage. The vehicular access to the site is available from Fayette Drive. The ground floor of the building includes an entry lobby, bicycle storage, a mail room, and other service areas. The residential units are located on Floors two through seven, and the building also includes a second-floor courtyard amenity area and a rooftop deck. In addition, the project includes the removal of nine Heritage trees and seven non-Heritage trees. Along with the overall site and landscape improvements, the project includes a 14'3" to 30'8" wide plaza in front of the project entrance.

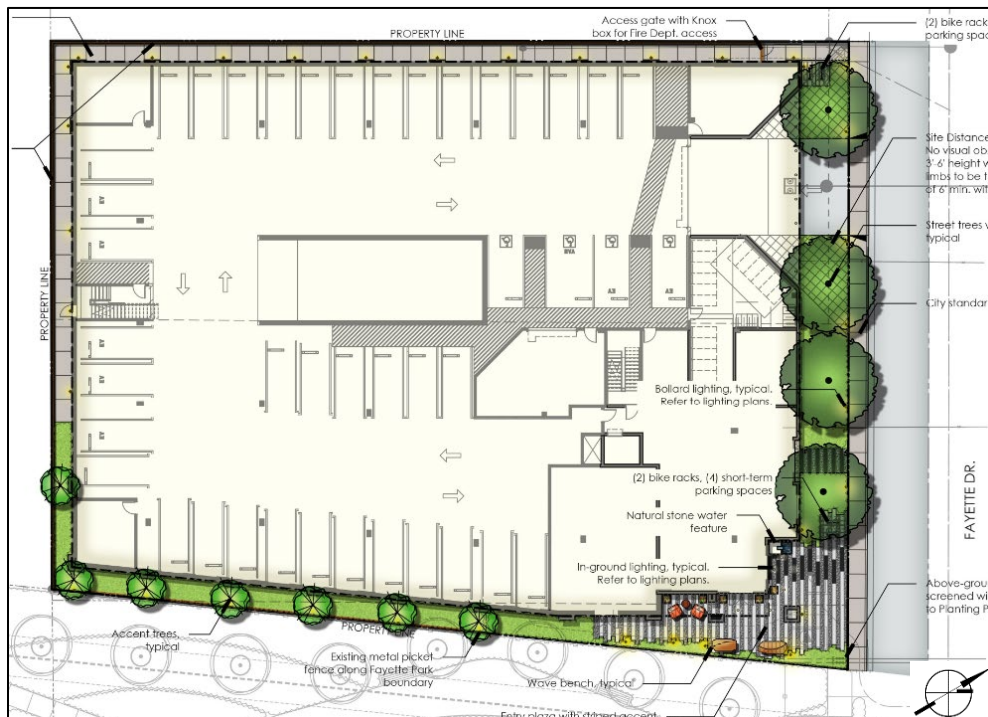


Figure 2: Site Plan

Prior Meetings and Hearings

Previous Project Approval

On June 7, 2016, the City Council approved a 24-unit, four-story condominium development on this site that was consistent with the R3-D Zoning District (refer to [June 7, 2016 Previous Project Council Report](#)). That entitlement has since expired.

Subsequently, on November 17, 2020, the City Council adopted ordinances for a Zoning Map Amendment and Precise Plan Amendment to rezone the property from R3-D to P(40) San Antonio Precise Plan, and approved a residential project on the site by the same applicant ([November 17, 2020 Previous Project Council Report](#)). The project was compliant with objective standards and requirements of the Precise Plan and General Plan utilizing provisions of State Density Bonus Law. The previously approved project proposed redevelopment of the site with a six-story, 44-unit condominium development and included a two-story subterranean parking garage. The project also included the construction of an enhanced crosswalk across Fayette Drive to connect the on-site publicly accessible plaza to Fayette Park as part of a public benefits package to exceed base floor area ratio (FAR), painted bicycle shared lane markings ("sharrows") on Fayette Drive, and a monetary contribution into the homeowners association (HOA) reserve and San Antonio public benefits fund. A one-year extension was approved by the Joint Administrative Zoning/Subdivision Committee on November 9, 2022; however, the entitlements and extension have since expired. It is important to note that the public benefits proposed as part of the previously approved project are not proposed for the Builder's Remedy project.

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 alert them to the project. This meeting is not mandatory, but applicants typically comply with this suggestion, and the project planner traditionally attends the meeting. The Applicant declined to conduct a neighborhood meeting for this project.

Development Review Consultation (DRC)

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.

Environmental Planning Commission

On October 16, 2024, the Environmental Planning Commission (EPC) reviewed the project at a public hearing (see Attachment 4—[EPC Staff Report Dated October 16, 2024](#)). Prior to the meeting, staff received six written public comments letters/emails (see Attachment 5—Public Comments). This includes a letter of support, another letter challenging the City's imposition of certain development standards under the Builder's Remedy provisions of HAA, and other comments focused on concerns with proposed tree planting, tree removals, and attached sidewalk condition. One member of the public, a representative of the local carpenters union, spoke at the meeting to advocate that the contractor for the project pay prevailing wages and other measures.

Additionally, during the hearing, staff recommended the following two amendments to the conditions of approval:

1. Condition of Approval No. 42, *Bike Parking Facilities*—Correction to the number of proposed and required bicycle parking stalls from 89 to 83; and
2. Condition of Approval No. 108, *Reach Codes for Multifamily-Residential*—Remove sub bullet (b), *Electric Requirements*.

The EPC deliberated on several issues, including open space, parking, and concerns raised in public comments. They expressed overall disappointment with the reduced park land dedication in-lieu fees, inadequate community outreach, and the decision by the Applicant to not adhere to the City's BMR requirements for proportional unit mix. Overall, the EPC was concerned that the project was taking advantage of Builder's Remedy provisions to bypass City standards.

The EPC voted 6-1 (Yin no) to recommend the City Council adopt the staff recommendation to conditionally approve the project (with the modifications to the conditions of approval described above) and the Vesting Tentative Map, and adopt an Addendum to the previously adopted Initial Study/Mitigated Negative Declaration.

Following the EPC hearing, City staff and the Applicant continued to engage in further communications and meetings regarding their different positions on the applicability of state housing laws, including the Builder's Remedy provisions of the HAA, and the legality and amount of applicable fees and City requirements. To avoid the delay, expense, and uncertainty of litigation over Builder's Remedy law, the City and the Applicant reached a compromise and have entered into a negotiated settlement agreement. Staff recommends modifications to a number of standard conditions of approval in accordance with the settlement agreement.

ANALYSIS

General Plan

The project site is comprised of two parcels. Both parcels have a General Plan land use designation of High-Density Residential (36 to 80 dwelling units per acre), which allows for residential projects up to 80 dwelling units per acre, thereby allowing up to 51 dwelling units on this 0.67-acre site. Although the proposed density of 104.97 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.

However, the project is consistent with a number of General Plan policies. Specifically, the project supports the following General Plan policies:

- **LUD 3.1: Land use and transportation.** Focus higher land use intensities and densities within one-half-mile of public transit service and along major commute corridors.

The project proposes a high-density residential development that is located within one-half mile of major public transit service and along major commute corridors.

- **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.

- **LUD 6.1: Neighborhood character.** Ensure that new development in or near residential neighborhoods is compatible with neighborhood character.

The project proposes a multi-family residential use that is consistent with the surrounding high-density residential uses in the area.

- **LUD 10.9: Sustainable roofs.** Encourage sustainable roofs to reduce a building's energy use, reduce the heat island effect of new and existing development, and provide other ecological benefits.

The project includes a cool roof to reflect sunlight and absorb less energy to reduce energy consumption.

Zoning

Precise Plan Standards

The proposed project is located on two parcels that are zoned P(40), San Antonio Precise Plan (SAPP). In accordance with the SAPP, only residential uses are permitted on these parcels. Additionally, the project is subject to the applicable Mixed-Use Corridor subarea development standards and guidelines. Pursuant to the SAPP, projects proposing greater than 1.35 FAR are also required to provide public benefits.

Although the project is inconsistent with a number of the above-noted SAPP development standards, 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 Precise Plan development standards.

Table 1: Project Compliance Assessment with the Precise Plan

Standards	Requirement	Proposed
Maximum Floor Area Ratio (FAR)	1.35 FAR (base), without public benefits; 1.85 FAR (Tier 1), with public benefits	4.34 FAR, without public benefits
Minimum Setbacks	Frontage: 24' (curb line)	Frontage: 16'10-3/8"
	Neighborhood transition area: 25', plus upper-floor step-backs (minimum 10' per story)	Neighborhood transition: Ground level: Rear (west): 4' Side (north): 4'6-7/8" Second to Seventh Floors: Rear (west): 15'2-3/4" Side (north): 10'4-7/8"
Maximum Height	45' (base) without public benefit; 55' (Tier 1) with public benefits (Up to five stories (65') considered on a case-by-case basis with significant public benefits or major open space	84'4-1/2" Seven stories (no step-backs)

Standards	Requirement	Proposed
	improvements per SAPP Figure 4-2) Maximum four stories (55') at frontage setback line. Where more than four stories allowed, 80% of linear frontage above four stories step back 10' minimum on every street face.	
Maximum Automobile Paving Coverage	40% (11,619.6 square feet)	83.5% (24,255 square feet)
Minimum Vehicle Parking	Per Assembly Bill (AB) 2097 , no parking spaces required	Total: 101 spaces Guest: 0 spaces
Minimum Open Area/Landscaping and Common Usable Open Space	Open Area/Landscaping: 40% (11,619.6 square feet) Common Usable Open Space: 175 square feet per unit (12,250 square feet)	Open Area/Landscaping: 65.7% (19,083 square feet) Common Usable Open Space: 7,406 square feet (Per Applicant's plan data)
Minimum Personal Storage	164 cubic feet/unit	76 cubic feet/unit

Project Design

The project features a contemporary design with primary building materials of stucco, lap siding, and thin brick in warm brown, tan, and white tones. The elevations provide large glazing for residential units, and the overall building base incorporates a brick veneer and stucco base to enclose, primarily to screen the ground-level parking garage. The thin brick material extends vertically in defining locations. The massing is also vertically articulated by balconies throughout the elevations to provide plane variation and help to break large spans of wall plane as well as provide open space for the residents.



Figure 3: View of the Project from the East Along Fayette Drive

The building frontage is located along Fayette Drive and is set back approximately 16'10-3/8" from the curb line. The entry to the ground-level garage is accessed near the northwest corner on Fayette Drive, and the lobby is located on the opposite (northeast) corner of the site, closest to San Antonio Road, behind a small entry plaza. The ground floor has much shorter setbacks along the interior side and rear, which abuts multi-family residential buildings to the southwest and northwest and are designated neighborhood transition areas. The setbacks along these property lines are 4'0" in certain locations and, as shown in the table above. Although the 4'0" setbacks along the property lines do not comply with the neighborhood transition setbacks in the Precise 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 development standard.



Figure 4: View of the Project from the North with Neighborhood Context

Provisional Use Permit

A Provisional Use Permit (PUP) is required for properties within the Precise Plan that have any rooftop amenities above the third floor. This project proposes a common roof deck above the seventh floor, which requires approval of a PUP. The proposed roof deck is approximately 2,950 square feet and is located along the southeasterly corner of the roof and generally spans along the southeast frontage facing the Fayette Greenway. A portion of the deck extends along the southwest elevation toward the adjacent four-story apartment complex (Domus).

The PUP is intended to facilitate discretionary review of the location and design of such improvements, with the aim of limiting off-site impacts. City staff has requested information about the programming of this space; however, to date, the Applicant has not provided any details. Staff will require the information for review during the building permit process for compliance with applicable building code provisions, per Condition of Approval No. 24. Staff supports the proposed roof deck as it assists with the project's compliance with the open space requirements in the Precise Plan.

Open Space and Landscaping

The proposed development includes several open space areas for future residents and guests. The project contains approximately 19,083 square feet of open space/landscaping, including ground-level landscaping which includes an outdoor plaza, a 4,456 square foot upper-floor courtyard, and 2,950 square feet of roof deck above the seventh (top) floor. The upper-level courtyard includes landscaped areas, outdoor furniture, accent pavers, and amenities such as outdoor kitchen and barbecue grill and a spa adjacent to an indoor amenity club room. The courtyard area is largely framed on three sides by the building's interior elevations but opens along the edge of the western frontage toward the neighboring apartment complex (Fayette Town Houses). An outdoor plaza with seating is located near the project entrance at ground level. A proposed roof deck located above the seventh (top) floor along the southeast corner of the building would provide additional open space for tenants and guests. The programming of the roof deck has not been determined yet, and details will be provided during building permit review.

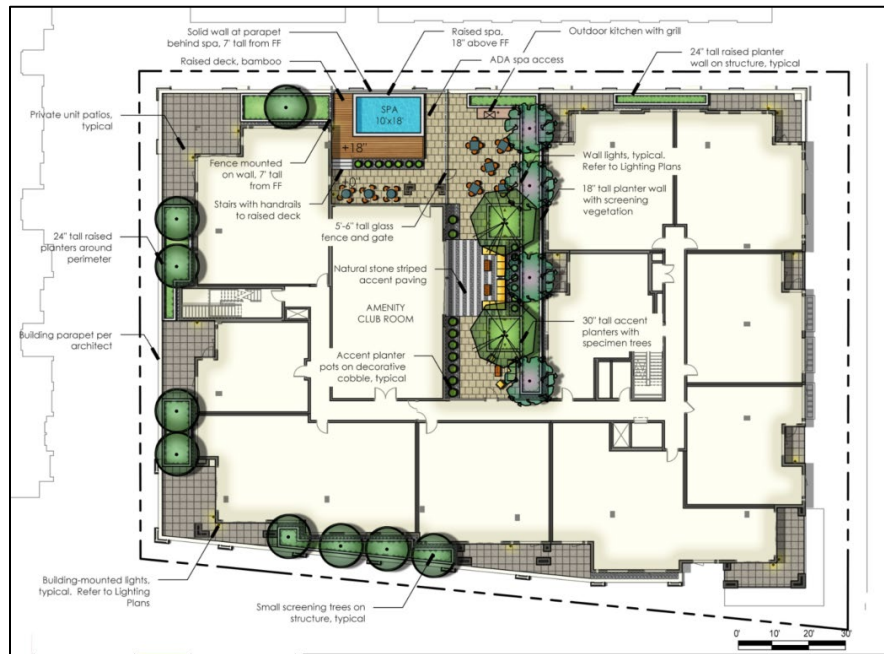


Figure 5: Second-Floor Common Amenity Area

The project also includes accent-paved pedestrian walkways, an entry plaza, and landscaped areas along the frontage and setbacks on the ground floor. Low-water-use groundcover and new street trees line the remainder of the frontage. The rear and side setbacks include a concrete walkway for egress along the western property line and a majority of the southern property line. Low-water-use groundcover and California native accent trees line the remainder of the perimeter, particularly along the shared property line with Fayette Greenway.

The landscaping plan utilizes a number of native plants; however, it is unclear at this time whether the proposal will meet the City Council's 75% native landscaping goal.

The project proposes 65.7% (19,083 square feet) of open area/landscaping, which meets the required minimum in the SAPP of 40% (11,619.5 square feet) of the site area. However, the project proposal of 7,406 square feet of common usable open space per unit does not meet the SAPP required minimum 175 square feet of common usable open space per unit (12,250 square feet).

Notwithstanding the above-noted inconsistencies with SAPP development standards, 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 16 trees on the project site, including nine Heritage trees and seven non-Heritage trees. The project is proposing to remove nine Heritage trees and seven non-Heritage trees. A majority of the existing trees to be removed are in fair to fair-poor condition. In particular, Tree Nos. 6 and 17 shows significant structural decline and Tree Nos. 1 and 21 have significant health issues. All nine Heritage trees to be removed are located within the building footprint, necessitating their removal for project construction, and requiring a Heritage Tree Removal Permit. The Applicant proposes to plant a total of 18 replacement trees with a minimum 24” box size (a 2:1 replacement ratio). The seven non-Heritage trees are also within the building footprint and must also be removed due to construction impacts. The Applicant proposes to provide a total of seven replacement trees for the non-Heritage tree removals with a minimum 24” box size (at a 1:1 replacement ratio). Staff has requested the Applicant explore and provide analysis for the preservation and relocation of on-site trees, particularly for a Heritage palm tree that was originally to be relocated as part of the previous project. Although staff requested this information, the Applicant has indicated that the available landscape area on the project site is not suitable for replanting these trees, and the project materials do not show if an option to transplant these trees on-site has been explored or evaluated.

To compensate for the loss of existing tree canopy coverage over time, a total of 26 new trees will be planted to replace the 16 existing trees being removed. The tree replacement proposal is 2:1 and meets the City’s standard practice for a 2:1 replacement ratio for Heritage trees and a 1:1 replacement ratio for non-Heritage trees. The following is the existing and estimated future tree canopy coverage for the site over time:

Table 2: Tree Canopy Coverage

Canopy	Site Coverage
Existing	17.6%
New after five years	6.1%
New after 10 years	10.7%
New at full maturity	15.1%

Nonetheless, the resulting tree removal and planting plan carefully considers the implementation of the vision of the SAPP, meets the City Code landscaping requirements, and includes some native and drought-tolerant planting. Staff, therefore, recommends the proposed tree removal and replacement plan.

Parking

Vehicular Parking

The Precise Plan has specific minimum parking ratios for residential developments. However, [Assembly Bill \(AB\) 2097](#) (Residential, commercial, or other development types: parking requirements) prohibits cities from enforcing minimum parking requirements on developments within one-half mile of a major transit stop. The project site is within one-half mile of a major transit stop; therefore, there is no minimum parking space requirement. However, the Applicant is voluntarily proposing 101 parking stalls, which will be unbundled and will include required electric vehicle equipment-installed parking spaces and spaces that are accessible to persons with disabilities. The proposed parking is located in two levels of garage parking (ground-level and basement-level) and includes short-term and long-term bicycle parking spaces that exceed the minimum standard.

Below-Market-Rate Housing

Percentage Requirement

Currently, under the Mountain View Below-Market-Rate (BMR) Ordinance, ownership residential developments with seven or more units shall 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, which exceeds the City's BMR Ordinance percentage requirement. The fourteen BMR units will be designated as follows: four (4) at fifty percent (50%) AMI maximum and ten (10) at eighty percent (80%) AMI maximum.

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 five studio units and nine standard one-bedroom 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	5	5	1
One-bedroom	12	9	2
Two-bedroom	29	0	6
Three-bedroom	24	0	5
TOTAL	70	14	14

Although the City and Applicant dispute whether this project must meet proportionality requirements, this issue has been resolved through a settlement agreement and City staff recommends approval of the project consistent with the settlement agreement.

Affordability Restrictions

The City's BMR Ordinance requires a legal mechanism, usually in the form of a deed restriction, that preserves identified BMR units at affordable levels in perpetuity (City Code, Chapter 36, Article XIV). Under the Builder's Remedy provisions of the HAA, the Applicant must provide sufficient legal commitments to ensure that all affordable units remain affordable for a minimum of 30 years. Pursuant to the terms of a negotiated settlement agreement, the Applicant has agreed to a 55-year deed restriction.

Tenant Relocation Assistance

The six existing dwelling units on the property are vacant. Therefore, this project is not subject to the City's Tenant Relocation Assistance Ordinance (City Code, Chapter 36, Article XIII).

Replacement Requirements

Five of the six existing dwelling units to be demolished are subject to the replacement requirements outlined in state law. By providing 14 BMR units, the Applicant will fulfill the requirement to replace the five units. All five of the replacement units will be standard one-bedroom units. Four of the five units will be affordable at the very low-income level (fifty percent (50%) AMI maximum) and one unit will be affordable at the low-income level (eighty percent (80%) AMI maximum).

Transportation and Circulation

Transportation Demand Management

The SAPP allows a development project to exceed Base FAR and height limits through the Tier 1 process. Since this project surpasses Base FAR and height standards (as shown in Table 1 above), it will be subject to Tier 1 process and standards. The SAPP also identifies specific transportation demand management (TDM) requirements for Tier 1 development projects, including a requirement for new developments to join the Mountain View Transportation Management Association (TMA), or form and join a San Antonio-specific TMA, along with a TDM Plan that provides details on the implementation and reporting of the TDM measures. Additionally, a new residential development is required to provide transit pass subsidies for one year for all residents and for the first 10 years of the project for all employees.

The Applicant submitted a TDM Plan but has stated that they are not committing to implement any TDM measures "due to applicability of Builder's Remedy." After the EPC meeting, City staff continued to work with the applicant on the details and scope of the conditions of approval for the project related to TDM. Although the City and Applicant dispute whether this project must meet the TDM requirements, this issue has been resolved through a settlement agreement and City staff recommends approval of the project consistent with the settlement agreement.

Multi-Modal Transportation Analysis

On June 30, 2020, the City Council endorsed a Vehicle Miles Traveled (VMT) analysis methodology for development projects that requires transportation analysis Citywide in combination with requirements 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).

Typical project review for a project of this scale includes preparation of the MTA to determine project impacts. However, because this is a Builder's Remedy project, the City will not be imposing this requirement.

Streetscape Design

The SAPP outlines a streetscape, including a 4' wide planter strip and a 6' wide detached sidewalk. The proposed plans show a 5' wide attached sidewalk with planting behind the sidewalk. The Applicant has agreed to provide a 6' wide attached sidewalk as indicated in the Conditions of Approval.

Subdivision Map

The proposed Vesting Tentative Map for the project creates a single lot for condominium purposes to accommodate up to 70 condominium units. 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, Exhibit B—Resolution for Vesting Tentative Map).

Park Land Dedication In-Lieu Fee

The General Plan sets a goal for an expanded and enhanced park and open space system to meet current City needs for parks and open space based on population growth arising from new residential development. New residential subdivisions have a significant impact on the use and availability of park and recreation space and facilities. The San Antonio Planning Area is currently developed with 26.91 acres of park land, where 41.85 acres of park land is required to support the current population in the area. Therefore, the area is deficient in park land, and additional land dedication or in-lieu fee payment would contribute to acquisition of additional park land for the project occupants and also prevent further impacts to enjoyment of already deficient park land by residents in the area.

The project is a new residential subdivision and, therefore, subject to the City's Park Land Dedication Ordinance (Chapter 41 of the City Code) requirement to dedicate park land in the amount of three acres per 1,000 residents or pay an in-lieu fee. In-lieu fees are based on park land dedication acreage required per dwelling unit, the number of new dwelling units, and the fair market value per acre of land per Section 41.9 of the City Code. The fair market value of the land is set by the City's Master Fee Schedule (MFS) each fiscal year. The fair market value per acre of land in effect at the time of preliminary application submittal (based on the Fiscal Year 2022-23 MFS) ranged between \$11.8 million and \$13.5 million, and the fair market value per acre of land currently in effect (based on the Fiscal Year 2024-25 MFS) ranges between \$11.3 million and \$13.0 million. Affordable units are not subject to the Park Land Dedication In-Lieu Fee.

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...."

Housing Program 1.8 (Park Land Ordinance Update) of the City's adopted Housing Element includes an objective to reduce constraints on residential development by reducing the monetary Park Land In-Lieu Fee payment by at least 20%, on average, across a range of typical residential projects. The time frame for adopting the reduced in-lieu fee, alternate mitigations, and/or other programs to reduce costs on residential development is December 31, 2025.

Although the City and Applicant have different positions regarding the park land dedication in lieu fees, this issue has been resolved through a settlement agreement and City staff recommends approval of the project consistent with the settlement agreement. City staff recommends that the Park Land Dedication In-Lieu Fees for this project be calculated by applying the lowest fair market value per acre of land identified in the Fiscal Year 2024-25 MFS and reducing the fee by 60%.

Application of the lowest fair market value per acre of land identified in the Fiscal Year 2024-25 MFS results in a Park Land In-Lieu Fee of \$67,800 per unit, or \$3,796,800 for 56 market-rate units. The per-unit fee is calculated by multiplying the \$11.3 million per acre value (based on the Fiscal Year 2024-25 MFS, which includes a fair market value range of \$11.3 million to \$13 million per acre), by the 0.0060 acreage requirement per dwelling unit. The in-lieu fees are used to purchase, develop, or improve parks and recreational facilities in or near the neighborhood where the new development is located. In-lieu fees can also be used to fund projects that provide a communitywide asset.

Staff has included a condition of approval (Project Condition of Approval No. 156, Park Land Dedication Fee; Subdivision Condition of Approval No. 12, Park Land Dedication Fee) that requires the Applicant to pay 40% of the Park Land Dedication In-Lieu Fee, or \$27,120 per unit, totaling \$1,518,720.

ENVIRONMENTAL REVIEW

In 2020, the City of Mountain View prepared an Initial Study (IS) and adopted a Mitigated Negative Declaration (MND) for a 44-unit condominium project proposed on this site. Impacts to air quality and noise and vibration were identified, but all impacts could be reduced to a less-than-significant level with the inclusion of mitigation measures and standard conditions of approval. The Draft IS/MND was circulated from March 6, 2020 to March 25, 2020. No comments were received. In November 2020, the City Council adopted the IS/MND and approved the 44-unit condominium development in compliance with the California Environmental Quality Act (CEQA).

As part of the environmental review of the proposed 70-unit project, the City has prepared an addendum to the previously adopted IS/MND in compliance with CEQA and CEQA Guidelines Sections 15162 and 15164 (Attachment 6). The addendum determined that none of the circumstances described in CEQA Guidelines Section 15162 have occurred. The proposed project would not result in any new impacts which were not previously disclosed in the previously adopted IS/MND (see Exhibit 2 of Attachment 6), nor would it result in a substantial increase in the severity or magnitude of any significant environmental impacts previously identified.

Vehicle Miles Traveled

On June 30, 2020, the City adopted a new transportation policy, in accordance with Senate Bill (SB) 743 establishing VMT as the methodology for evaluating potential transportation impacts of new developments for the purposes of CEQA. The policy included VMT screening criteria for projects. Projects are presumed to have a "less-than-significant" transportation impact if they meet the screening criteria, and further VMT analysis is not necessary. If a project does not meet the screening criteria, a VMT analysis is conducted concurrently with an MTA.

This project meets the screening criteria based on its proximity to transit as it is located within one-half mile of the San Antonio Caltrain Station, has an FAR greater than 0.75, is consistent with Plan Bay Area 2040 and the Bay Area's Sustainable Communities Strategy, and provides parking that does not exceed code requirements. Therefore, the project is determined to be consistent with the City's VMT Policy and have a less-than-significant VMT impact.

FISCAL IMPACT

The City's current share of the County of Santa Clara property taxes from the project site is approximately \$9,000 per fiscal year for the General Operating Fund (GOF). If the site were redeveloped with the proposed project, the City would receive a net additional property tax of approximately \$88,000 for a total of approximately \$97,000 in property tax revenue per fiscal 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 \$250 from a party, participant, or agent of a party or participant in the proceeding within the last 12 months. A city official is similarly prohibited from accepting, soliciting, or directing a campaign contribution exceeding \$250 from a party, participant, or agent of a party or participant to any proceeding involving a license, permit, or other entitlement for use for 12 months after a final decision is rendered in said proceeding.

Please refer to the "X" in the checklist 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
- Other permit, license, or entitlement for use
- Contract or franchise

EXEMPT FROM THE LEVINE ACT

- Competitively bid contract
- Labor or personal employment contract
- General policy and legislative actions

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 applicable 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 Regional Housing Needs Allocation (RHNA) requirements. City staff and the Environmental Planning Commission 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 Environmental Planning Commission 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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203983

- Attachments:
1. Draft Project Resolution
 2. Draft Tentative Map Resolution
 3. Project Plans
 4. EPC Staff Report dated October 16, 2024
 5. Public Comments
 6. Addendum to the Initial Study/Mitigated Negative Declaration