



**COMMUNITY DEVELOPMENT DEPARTMENT**

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**CITY COUNCIL STAFF REPORT**

Meeting: April 3, 2024

Subject

Amendment to a Development Agreement for the Cupertino Village Boutique Hotel Project from five to eight years and associated environmental review. (Application No(s): DA-2023-002; Applicant(s): KIMCO (Sunil Plaha); Location: 10801 and 10805 N. Wolfe Rd.; APN: 316 45 017, 316 05 056)

Recommended Actions

That the City Council conduct the public hearing and conduct the first reading of Ordinance No. 24-\_\_\_\_ (Attachment A):

1. Find the amendment to the existing development agreement consistent with the project's Mitigated Negative Declaration (State Clearinghouse No. 2018112025) and
2. Adopt the ordinance to amend the existing Development Agreement (DA-2023-002).

Reasons for Recommendation

**Project Data:**

<b>General Plan Designation:</b>	Commercial/Residential
<b>Special Area:</b>	North Vallco Park Special Area
<b>Zoning Designation:</b>	P (CG, Res) Planned Development Zoning with General Commercial and Residential Uses
<b>Project Consistency with</b>	
General Plan:	Yes
Zoning:	Yes
Environmental Assessment:	Mitigated Negative Declaration (State Clearinghouse No. 2018112025)

## Background

The project site is located on the west side of N. Wolfe Rd. between Interstate 280 and Homestead Road, in the North Vallco Park Special Area. The land uses allowed along N. Wolfe Rd., between Interstate 280 and the shared city boundary with Sunnyvale, include residential, Office, and commercial (which allow hotel uses with a Conditional Use Permit).



Figure 1 Site aerial

The site is currently developed with two commercial buildings: a 3,385-sq.-ft. building currently occupied by the Duke of Edinburgh Pub and Restaurant, and a vacant 10,044-sq.-ft. commercial building (former bank). Land uses surrounding the project include the Cupertino Village Shopping Center to the north, residential apartments (Arioso Apartments) to the west, a hotel to the south (Hilton Garden Inn), and office (Apple Park) and residential apartments (Hamptons Apartments) to the west.

## Application Request

On July 16, 2019, the City Council approved a General Plan Amendment (GPA-2017-05, Resolution No. 19-091), a Development Permit (DP-2018-04, Resolution No. 19-092) an Architectural and Site Approval Permit (ASA-2017-09, Resolution No. 19-093), a Use Permit (U-2018-03, Resolution No. 19-095), Mitigated Negative Declaration (EA-2017-06, Resolution No. 19-090), Tree Removal Permit (TR-2017-46, Resolution No. 19-094), and subsequently on August 20, 2019, conducted the second reading to adopt a Development Agreement (Attachment 2 – DA-2017-01, Ordinance No. 19-2186) to allow construction of the following development and site improvements:

- A new five-story, 185-room upscale hotel;
- New restaurant with separate bar on the ground floor;
- Rooftop lounge with separate bar;
- Conference Meeting Rooms; and
- Updated landscaping along the perimeter of the property, including updated frontage improvements to provide pedestrian accessibility.

The applicant, Sunil Plaha of KIMCO, applied to amend the approved Development Agreement (DA-2023-002) to extend the total term three years, from five years to eight. If the amendment is not approved, the project approval entitlement would expire on November 19, 2024.

#### *Planning Commission Recommendation*

The Planning Commission convened at a regular scheduled hearing on March 12, 2024, to consider the proposed amendment to a Development Agreement. The Planning Commission recommended (4-0, Madhhipatla absent) that City Council adopt the proposed amendments to the Development Agreement as indicated in Exhibit A of Planning Commission Resolution No. 2024-02 (Attachment B), with the following modification:

- Development Agreement to require that the project comply with the bird safe and dark sky ordinance, Cupertino Municipal Code Chapter 19.102: *Glass and Lighting Standards*.

The Planning Commission's recommended modifications have been incorporated into the Draft Ordinance (Attachment A).

#### **Discussion**

##### *Development Agreement*

In May 2015, the City Council adopted a process by which the Council would authorize projects proposing General Plan Amendments, taking into consideration voluntary community amenities in four categories (School Resources, Public Open Space, Public Facilities, Transportation Facilities) offered with a proposal to request the City consider changing its General Plan. The Development Agreement approved with the Village project includes voluntary community amenities offered by the project applicant through this General Plan Amendment Authorization process. These voluntary community amenities were incorporated as terms of the Development Agreement, which also included terms that offered the conventional certainty regarding regulations, standards, and conditions that would apply to the project during the life of the Development Agreement. The Development Agreement has a five-year term, ending on November 19, 2024.

Impact fees that are standard or required, such as housing and school fees, are not included in the consideration of voluntary community amenities. Voluntary community amenities are characterized as voluntary contributions rather than required fees or requirements. The voluntary community amenities included in the Development

Agreement are outlined below. Key provisions from the 2019 Development Agreement include:

1. *Community Amenity Funding*: The Developer agreed to pay the City \$1,850,000 (\$10,000 per room) that may be used to benefit residents, businesses, and visitors, including on projects that will enhance and enrich the experience of the most proximate City residents, retail and restaurant customers, and hotel guests. Candidates to receive these funds include local transportation facilities, Transportation Management Association start-up costs, local public art, and landscaping beautification improvements in public parks, parkways, or roadway medians. **To date, the applicant has made \$300,000 in payments as obligated.**
2. *Transportation Demand Management (TDM) Program*: The Developer agreed to fund and fully implement a TDM program including transit passes, rideshare facilitation, and bicycle facilities.
3. *Transportation Management Association (TMA)*: In the event a TMA is formed, The developer agreed to pay an annual participation fee, which initially shall not exceed \$10,000 and may be increased annually by the Consumer Price Index.
4. *Shuttle Service*: The Developer agreed to provide access to a shuttle service to hotel guests, people traveling to or from the hotel that use the hotel's meeting rooms for functions, and, subject to availability, nearby residents, businesses, and the general public to travel between the hotel and airports and major employment centers.
5. *Meeting Rooms*: The Developer agreed to allow the City to use the hotel's meeting rooms for official City business purposes, subject to availability.
6. *Reduced Rates*: All people visiting Cupertino for official City business, and dignitaries visiting for City purposes and events, the Developer agreed reduced room rates by at least 10% lower than the hotel's lowest rates.
7. *Internships*: The Developer agreed to offer non-paid educational internships to students from the Fremont High School District, De Anza College or other local colleges interested careers in the hospitality industry.
8. *Minimum Hotel Standard*: The Developer committed to maintaining the project as an upscale boutique hotel, which means that the hotel will charge higher rates and provide superior amenities to most hotels.

The applicant is requesting to extend the total term from five years to eight. As described in the applicant's justification letter (Attachment 3), various factors have contributed to the delay in applying for Building Permits to construct the entitled hotel. Per the justification letter, the lingering effects of the COVID pandemic, which include prices of goods and materials, as well as the business travel industry (which is generally a significant portion of the hotel guests in Cupertino) being slow to recover from

employees not required to return in-person fulltime have affected the hospitality industry. Other extenuating circumstances, such as the increased cost in financing have escalated costs of development.

Once operational, the project is expected to generate net positive fiscal impacts to the City's annual budget due to the collection of Transient Occupancy Taxes (TOT) and property tax increases is estimated to be \$1.2 million a year. As such, City staff has negotiated with the applicant the following amendments to the development agreement to ensure development of the project as approved by City Council:

- The term of the agreement of the agreement extended to the (8th) anniversary of the Effective Date (November 19, 2027).
- In the event the Developer submits for a Building Permit for the core and shell of the hotel within three years of the Effective Date of the 1st Amendment, the Term of the agreement is automatically extended for two additional years, for a total of five years, i.e., until November 19, 2029.
- If Certificate of Occupancy for the Project is issued within five years of the Effective Date of the First Amendment (April 16, 2029) Developer shall be relieved of its obligations to make further Community Amenity Funding payments.
- Any proposed revisions to the amount of parking and/or parking layout, are treated as an Administrative Project Amendment and not subject to an amendment to this agreement.

### *Staff Analysis*

The proposed amendments to the Development Agreement as listed above allow for the developer to submit for building permits at a time that is economically feasible. General Plan Strategy LU-9.1.3: *Economic Development and Business Retention* encourages the City to attract new businesses and retain existing businesses that add to municipal revenues, and contribute to economic vitality to the community. Adding incentives to the Development Agreement for the completion and occupancy of the hotel will add much needed TOT and sales tax revenue to the City's general fund.

Lastly, by streamlining a process for parking modifications by not requiring further amendments to the Development Agreement, the developer is able to save on costs, and timing to encourage the development of the Hotel.

The amendments to the Development Agreement do not revise the scope of the project. The developer will continue to be obligated to meet all other agreements for voluntary community amenities, as well as compliance with all approved aspects of applicable General Plan standards and other development regulations. The developers of the project have further indicated that they have no objections to the Planning Commission's

recommended modification requiring that the project comply with the bird safe and dark sky ordinance.

Cupertino Municipal Code Findings

The Cupertino Municipal Code includes 'findings' for approval of various permits necessary to approve the proposed project. These provide a framework for making decisions and facilitating an orderly analysis of the review of a project. Listed below are the findings for the Development Agreement sought by the applicant that the City must make in rendering a decision whether to grant an exception on this project.

*Development Agreement (CMC 19.144.110)*

A. Is consistent with the objectives, policies, general land uses and programs specified in the General plan and any applicable specific plan;

*General Plan Strategy LU-9.1.3: Economic Development and Business Retention – Encourages the City attract new businesses and retain existing businesses that provide local shopping and services, add to municipal revenues, contribute to economic vitality, and enhance the City's physical environment. Approving the requested amendment supports and facilitates a potential revenue generating use for the City, with added community benefits that include restaurant and community shuttle services. Nothing in the Development Agreement Amendment revises the scope of the project as approved by the City Council on July 16, 2019 and August 20, 2019, in which the project was found to be in conformance with the General Plan and Zoning standards applicable to this site, as well as those standards that were amended as part of General Plan Amendment (GPA-2017-05, Resolution No. 19-091).*

B. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is or will be located;

*Nothing in the Development Agreement Amendment revises the scope of the project as approved by the City Council on July 16, 2019 and August 20, 2019, in which the project was found to be in conformance with the General Plan and Zoning standards applicable to this site, as well as those standards that were amended as part of General Plan Amendment (GPA-2017-05, Resolution No. 19-091).*

C. Is in conformity with and will promote public convenience, general welfare and good land use practice;

*Nothing in the Development Agreement Amendment revises the scope of the project as approved by the City Council on July 16, 2019 and August 20, 2019, in which the project was found to be in conformance with the General Plan and Zoning standards applicable to this site, as well as those standards that were amended as part of General Plan Amendment (GPA-2017-05, Resolution No. 19-091). Extending the expiration of the Development Agreement, or future revisions to the amount of parking and/or parking layout, to be treated as an*

*Administrative Project Amendment will not be at odds with promoting public convenience, general welfare and good land use practice.*

D. Will not be detrimental to the health, safety and general welfare;

*Nothing in the Development Agreement Amendment revises the scope of the project as approved by the City Council on July 16, 2019 and August 20, 2019, in which the project was found to be in conformance with the General Plan and Zoning standards applicable to this site, as well as those standards that were amended as part of General Plan Amendment (GPA-2017-05, Resolution No. 19-091). Further, on July 16, 2019, the City of Cupertino adopted the Initial Study and Mitigated Negative Declaration, State Clearinghouse (SCH) Number 2018112025, and approved the project. The Development Agreement extends the term of the entitlement up to eight years from the original entitlement, with no changes to the development scope.*

E. Will not adversely affect the orderly development of property or the preservation of property values; and

*Nothing in the Development Agreement Amendment revises the scope of the project as approved by the City Council on July 16, 2019 and August 20, 2019, in which the project was found to be in conformance with the General Plan and Zoning standards applicable to this site, as well as those standards that were amended as part of General Plan Amendment (GPA-2017-05, Resolution No. 19-091). The treatment of the amount of parking or revisions to the parking layout as an Administrative Amendment would not affect the orderly development of the property or the preservation of property values.*

F. Will promote and encourage the development of the proposed project by providing a greater degree of requisite certainty.

*Nothing in the Development Agreement Amendment revises the scope of the project as approved by the City Council on July 16, 2019 and August 20, 2019, in which the project was found to be in conformance with the General Plan and Zoning standards applicable to this site, as well as those standards that were amended as part of General Plan Amendment (GPA-2017-05, Resolution No. 19-091). An extension in the number of years for which the project entitlement is valid for and a reduction in the voluntary community amenity payments would promote and encourage the development of the proposed project by providing a greater degree of requisite certainty.*

Public Outreach and Noticing

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

Notice of Public Hearing and Intent, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none"> <li>▪ Site Signage (<i>10 days prior to the hearing</i>)</li> <li>▪ Legal ad placed in newspaper (<i>at least 10 days prior to the hearing</i>)</li> <li>▪ Public hearing notices were mailed to property owners within 300 feet (<i>10 days prior to the hearing</i>)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Posted on the City’s official notice bulletin board (<i>one week prior to the hearing</i>)</li> <li>▪ Posted on the City of Cupertino’s website (<i>one week prior to the hearing</i>)</li> </ul>

Public Comments

Please refer to Attachment E for public comments.

**Fiscal Impacts**

The project will generate net positive fiscal impacts to the City’s annual budget due to the collection of Transient Occupancy Taxes (TOT) and property tax increases. This is estimated to be \$1.2 million a year. As previously mentioned, to ensure collection of the TOT, a condition on the project is that reservations may not be made that exceed 29 consecutive nights of stay. Further, onetime payments in the form of impact and permit fees, as well as construction tax are estimated to be \$2.8 million, of which \$1.8 million would be allocated to the City’s BMR fund.

However, if Certificate of Occupancy for the Project is issued within five years of the Effective Date of the First Amendment, the Developer will be relieved of its obligations to make further Community Amenity Funding payments, or approximately up to \$1.3 million.

**Sustainability Impacts**

The project will incorporate a green roof on the second floor and is designed to achieve LEED silver. Further, via the City’s Zero Waste Policy will require that the project recover and divert at least 65 percent of the construction waste generated by the project. Further, complying with the bird safe and dark sky ordinance, Cupertino Municipal Code Chapter 19.102: *Glass and Lighting Standards*, will ensure that lighting will be energy efficient.

**California Environmental Quality Act**

On July 16, 2019, the City of Cupertino adopted the Initial Study and Mitigated Negative Declaration, State Clearinghouse (SCH) Number 2018112025, and approved the project. The Development Agreement extends the term of the entitlement up to eight years from the original entitlement, with no changes to the development scope. Therefore, the



amended Development Agreement is in conformance with the previously adopted Mitigated Negative Declaration.

Under CEQA guidelines Section 15162, no further environmental review is necessary since there are (1) no substantial changes to the project requiring major revisions to the MND because of new or substantially increased significant environmental effects of the project; (2) no substantial changes in circumstances requiring major revisions to the MND because of new or substantially increased significant environmental effects of the project; and (3) no new, previously unknown or unknowable, information of substantial importance showing: (a) new or substantially more severe significant effects than were discussed or shown in the MND; (b) that previously infeasible mitigation measures/alternatives are now feasible and would substantially reduce significant effects; or (c) that considerably different mitigation measures than analyzed in the MND would substantially reduce significant effects.

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Benjamin Fu, Director of Community Development

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A – Draft Ordinance

B – Planning Commission Resolution No. 2024-03

C- Ordinance No. 19-2186

D- Justification Letter

E – Public Comments