



COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: December 7, 2021

Subject

Consider modifications to the approved Westport Development project which include adjusting unit mix in the assisted living facility (Building 1) to 123 assisted living units and 35 memory care rooms, reclassification of approximately 8,000 square feet of public dining area to private dining, reducing the underground parking to reflect adjustments in uses, and reduction of massing on the top floor to accommodate a sixth floor aqua therapy pool; (Application No(s): M-2021-002, ASA-2021-007, EXC-2021-003; Applicant(s): Related California (Cascade Zak); Location: 21267 Stevens Creek Boulevard; APN #326-27-043)

Recommended Actions

Consider the evidence presented and determine whether to adopt the following resolutions approving the proposed project modifications (Attachments A-C):

1. Resolution No. 21-XX approving the Heart of the City Exception (EXC-2021-003);
2. Resolution No. 21-XX approving the Modified Development Permit (M-2021-002); and
3. Resolution No. 21-XX approving the Architectural and Site Approval Permit (ASA-2021-007)

If the City Council wishes to deny the project, adopt the following resolution (Attachment D):

1. Resolution No. 20-XX denying Development Permit (M-2021-002), Architectural and Site Approval Permit (ASA-2021-002), and Heart of the City Exception (EXC-2021-003).

Discussion

Project Data:

General Plan Land Use Designation	Commercial/Residential	
Special Planning Area	Heart of the City Specific Plan (West Stevens Creek subarea)	
Zoning Designation	P(CG, Res)	
Net/gross lot area	7.9 acres/8.1 acres ¹	
	Approved on August 18, 2020	Current Proposal
Units within Building 1	131	123
Total number of units within the Westport Development	267	259
Residential Density	33.79 du/acre	32.78 du/acre
Height of Structures	Building 1 – 79.5 feet	No Change
Memory Care Rooms	27	35
Building 1 Parking		
Residential	81	80
Residential Care	27	28
Retail	103	41
Total Building 1	211	149
Building 1 Retail		
Stevens Creek Boulevard frontage	60%	
Rear of building	26%	
Retail Square Footage	17,600	10,000

¹ The net acreage is a result of the subtraction of an existing Public Roadway Easement along the property's Mary Avenue frontage.

Background:

Site and Location Description

The project site was known as the Oaks Shopping Center and is located in the Heart of the City Specific Plan Special Area within the Oaks Gateway of the West Stevens Creek subarea. The shopping center is on an approximately 8.1 gross-acre site bounded by Stevens Creek Boulevard to the south, Mary Avenue to the east and north, and Highway 85 to the west. The surrounding uses are the Glenbrook Apartments to the north, De Anza College to the south (across Stevens Creek Boulevard), and the Cupertino Senior Center to the east (See Figure 1).



Figure 1 Location of The Oaks Shopping Center and the proposed Westport Cupertino redevelopment.

Westport Cupertino Development

The Cupertino City Council, on August 18, 2020, approved permits to allow construction of a mixed-use development on an 8.1 gross-acre site currently occupied by the Oaks Shopping Center. The primary components of the project are listed below.

- Two residential/commercial buildings:
 - Building 1 is a six-story building with 131 senior licensed assisted living units, 27 memory care residences, and 17,600 square-feet of ground-floor retail/commercial space.
 - Building 2 is a six-story building with 48 BMR senior independent living units and 2,400 square feet of ground-floor retail/commercial.
- 70 single-family residential townhouses and 18 single-family residential rowhouse condominiums.
- A one-level, below-ground garage with 191 parking spaces.
- 44,945 square feet of Residential Common Open Space
- 2,915 square feet of Commercial Common Open Space
- 386 onsite and offsite tree replacements, for the 73 protected development trees proposed to be removed and/or relocated.
- Height waivers of the 45 ft. height limit in the General Plan's Community Form Diagram for Building 1 and Building 2 to allow the following heights:

- Building 1 would be 70' 0" to the eave line, and 79' 6" to the roof ridge.
 - Building 2 would be 65' to the eave line, and 74' 6" to the roof ridge.
- Slope line setback waivers of the 1:1 slope line setback from the curb line in the General Plan's Community Form Diagram to a slope line setback of 1:1.70 for Building 1 and a slope line setback of 1:1.48 for Building 2.
- Incentive/concession allowing all BMR units to be consolidated in one of the two senior housing buildings (Building 2) rather than dispersed between the two senior housing buildings and townhouses/rowhouses.

The approval also included a vesting tentative map (VTM) (TM-2018-03) that would divide the property into two separate parcels [one 4.7 acre and one 3.1-acre parcel]. A revised VTM (TM-2021-002) to divide the property into three parcels, separating the BMR building (Building 2) in its own individual parcel was approved by City Council on September 7, 2021.

On October 15, 2021, Cascade Zak, representing Related California (future operators of the assisted living facility in Building 1), applied to modify Building 1 of the Westport Development project. The applicant is requesting the following revisions to the original project:

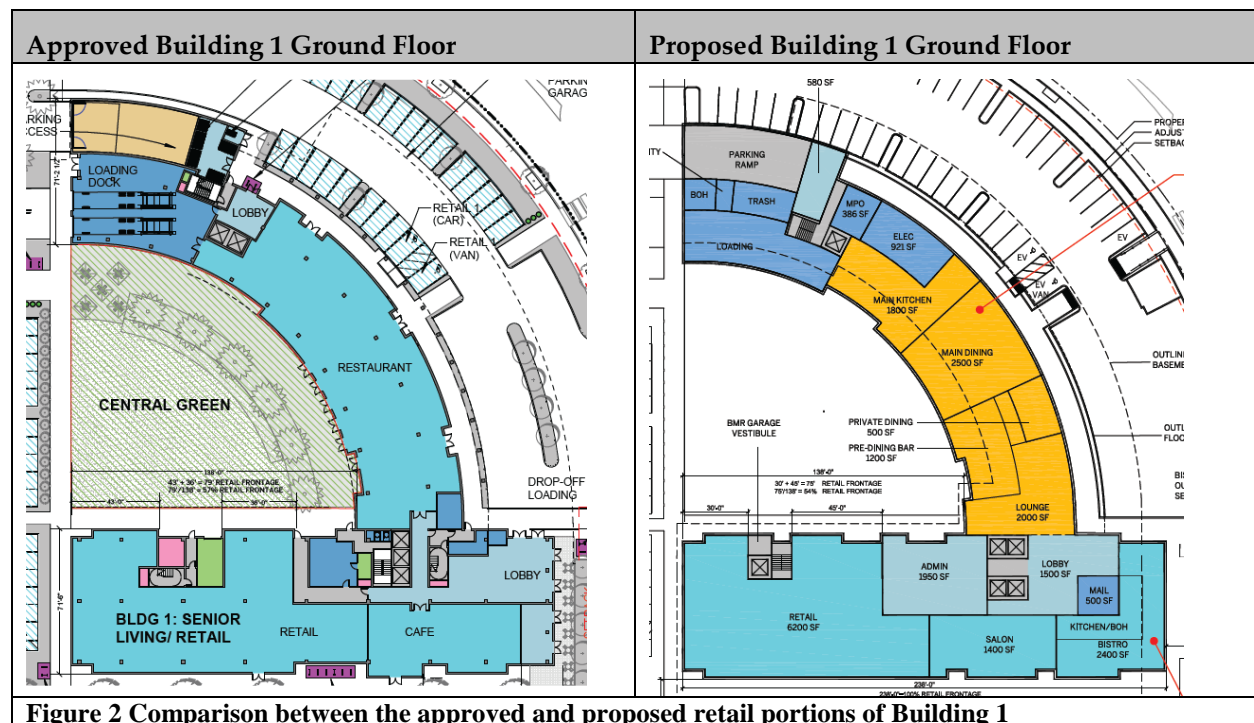
- That the 8,000 square foot ground floor dining facility be limited to residents of Building 1 and their guests only, rather than open to the public.
- Adjusting the unit mix adding more two-bedroom units while reducing the studio units, and adding 8 memory care rooms, decreasing the unit count by that same number.
- Reducing the parking space count by 63 spaces to account for the dining facility being open only to residents and their guests, not to the "general" public, and other minor changes to retail and unit mix programming.
- Reduction of massing on the top floor to accommodate a sixth-floor aqua therapy pool.
- Minor changes to the building that include lowering the retail ceiling height from 20 feet to approximately 16 feet, relocating the memory care terrace, and increasing the depth of the sickle portion of the building along Mary Avenue by 5.5 feet from the entitled plan.

Pursuant to CMC Chapter 19.12 (*Administration*) the Director of Community Development referred this application to the City Council for its review and decision.

Analysis:

Heart of the City Exception

Residential development is a permitted use on mixed-use zoning designation sites if the site is identified as a Priority Housing site in the Housing Element, as is this site. However, the Heart of the City Specific Plan limits uses that do not involve the direct retailing of goods or services to the public to no more than 25% of a building frontage along Stevens Creek Boulevard, and no more than 50% of the rear of a building. The project was approved to provide 60% of the frontage along Stevens Creek and approximately 25% of the rear of the buildings as direct retail. As the project did not provide the requisite percentage of retail along Stevens Creek Boulevard, as required by the Heart of the City Specific Plan, an Exception was needed.



The proposed development was approved to provide 20,000 square feet of retail clustered at the corner of Stevens Creek Boulevard and Mary Avenue. The retail square footage was split between Building 1 (17,600 square-feet) and Building 2 (2,400 square feet). In summary, the City Council approved the Exception understanding the following conclusions:

- That retail spaces fronting Stevens Creek Boulevard, facing the busy boulevard would be challenging, if not impossible to lease. Stevens Creek Boulevard with its 6 lanes of traffic does not present an enticing walkable, or safe, retail boulevard.
- The closer to the Highway 85 on-ramp along Stevens Creek Boulevard, the less inviting it is for foot traffic.
- Virtually the same square footage of retail that is provided (20,000 square feet) as what would have been needed to meet the Heart of the City retail standard (20,330 square feet).
- Because of the higher concentration of residential density and better visibility by pedestrians and motorists, retail space clustered on the corner of Mary Avenue and Stevens Creek Boulevard would be more successful.

After the approval, Related/Atria, the proposed developers, and operators of the assisted living facility in Building 1, submitted a letter to staff dated October 4, 2021 (Attachment E). The letter detailed that regulatory requirement pertaining to resident safety and security prohibited the 8,000-square-foot dining facility from serving residents alongside the public. These requirements include:

- As many residents may have some degree of physical and mental limitations, all employees and volunteers at a community must undergo thorough criminal background checks.
- The State places extra protocols and procedures on assisted living communities and their staff for the safety of residents, including but limited to, individuals entering any senior living facility must be fully vaccinated or provide evidence of a negative COVID test within 72 hours.
- The facility will provide three meals per day as part of the monthly fee, as such, it would be impossible for the facility operators to oversee the public dining combined with pre-paid residents.

The applicant explored moving the dining facility elsewhere in the building. However, concerns for resident health and safety of the residents, logistics of preparing and serving the clients, and the fact that relocating the dining facility to another location in the building would require either an increase in the total building square footage or a reduction in the number of units and amenities by an equivalent 8,000 SF would leave the project infeasible. Furthermore, it is believed the ground floor provides for a significantly more enjoyable and inclusive dining experience than the third floor because of the higher floor-to-floor heights, and access to the Central Green that encourages more

intergenerational activity and allows residents to spend more time outside before and after mealtimes.

The resulting square footage of retail in Building 1 would be approximately 10,000 square feet. The applicant did add approximately 400 square feet of retail space on the corner of Stevens Creek Boulevard and Mary Avenue.

Memory Care Rooms and Assisted Living Unit Count

The applicant is proposing to increase the memory care rooms by eight from 27 to 35 rooms. This is in response to the deficiency of supply of memory care rooms within a seven-mile radius of the project site, and the projected increase of demand within the next five years. As the memory care rooms have increased by eight, the number of assisted living units have decreased by the same number. Further, because of a disproportionate supply of studio apartments in comparison to the two-bedroom units in similar developments in the immediate area, the developer is proposing a greater share of the two-bedroom units as previously approved. Please refer to Attachment E for a more detailed explanation.

The original development was found consistent with the BMR Manual requiring that the BMR Units in Building 2 and Building 1:

- Shall be comparable to market rate units in terms of unit type, number of bedrooms per unit, quality of exterior appearance and overall quality of construction.
- Unit size should be generally representative of the unit sizes within the market-rate portion of residential project.
- Interior features and finishes in affordable units shall be durable, of good quality and consistent with contemporary standards for new housing.

Table 1 Unit Comparability Between Buildings 1 &2			
Approved Building 1 (131 Units)	Studio	One Bedroom	Two Bedroom
Average Unit Size	537.7 s.f.	691.3 s.f.	1,087 s.f.
Unit Count	26	74	31
Mix Percentage	20%	56%	24%
Proposed Building 1 (123 Units)	Studio	One Bedroom	Two Bedroom
Average Unit Size	530 s.f.	710 s.f.	1,110 s.f.
Unit Count	12	75	36
Mix Percentage	10%	61%	29%
Building 2 (48 Units)	Studio	One Bedroom	Two Bedroom
Average Unit Size	518.6 s.f.	615.7 s.f.	843 s.f.
Unit Count	9	28	11
Mix Percentage	19%	58%	23%

Table 1 shows the proposed unit mix within the BMR Building 2 and the market-rate Building 1. The City Council had found that the original approval met the BMR Manual's standard of "comparability." The BMR Manual requires that the BMR Units:

- Shall be comparable to market rate units in terms of unit type, number of bedrooms per unit, quality of exterior appearance and overall quality of construction.
- Unit size should be generally representative of the unit sizes within the market-rate portion of residential project.
- Interior features and finishes in affordable units shall be durable, of good quality and consistent with contemporary standards for new housing.

The City Council will need to decide that if the revised mix percentages within the modification still conform to the intent of the comparability standard that was envisioned in the City's BMR Manual.

Parking Analysis

The City's Density Bonus Ordinance, in compliance with State Law, allows density bonus projects the option to use alternate parking standards for all residential units (market-rate and affordable) based on bedroom count (0.5 per bedroom). The following standards must be met:

- At least 11% very-low income or 20% low-income units; and
- Within one-half mile of a Major Transit Stop; and
- Unobstructed Access to the Major Transit Stop.

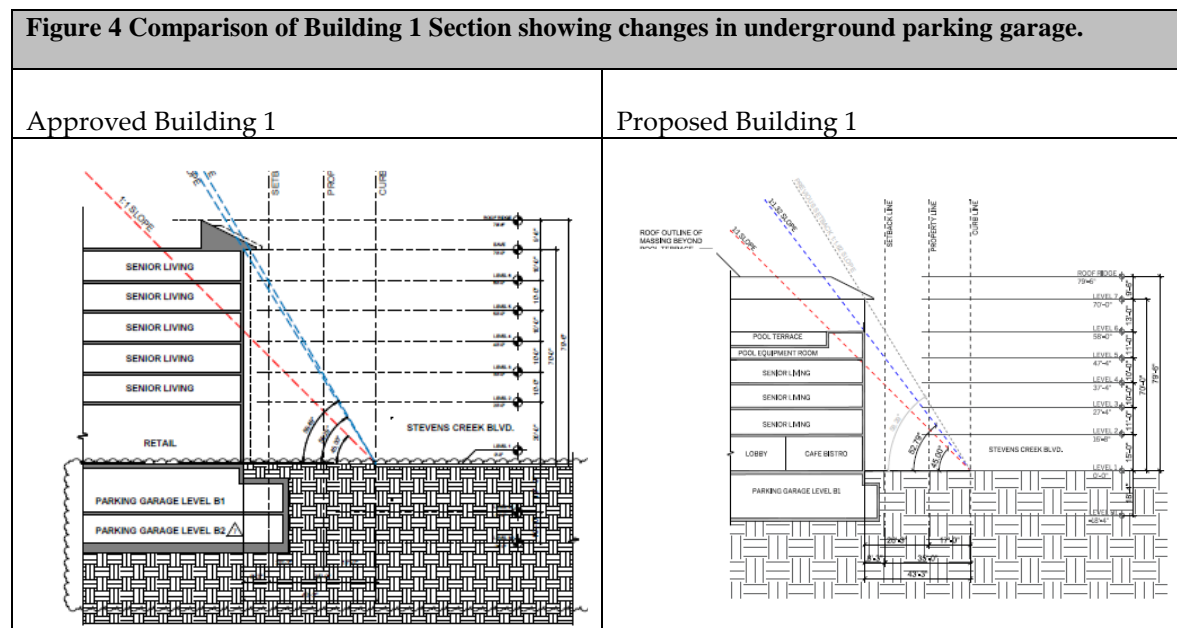
The approved project met the standard above because 12.2% of the development is dedicated to very-low-income residents. Further, the project is within one-half mile of a major transit stop. However, with the proposed revisions to the retail component, as well as the changes to the unit mix, there is less parking demand for the uses within Building 1. See Figure 3 for a breakdown of the parking within the development.

Figure 3 Parking

Building	Building Use	Parking Rate	Approved Spaces	Proposed Spaces to be Provided
Building 1	Non-Residential/Memory Care	Retail 1/250 SF	29	31
		Restaurant/café 1 space for every 3 seats + employees	74	10

Building	Building Use	Parking Rate	Approved Spaces	Proposed Spaces to be Provided
	Memory Care 1 space per doctor +1 per 3 employees + 1 space per 6 beds		27	28
	Residential (123 Senior Units)	0.5 per bedroom	131 units = 81	123 units = 80
Building 2	Retail (2,400 SF)	1/250 SF	10	10
	Residential	0.5 per bedroom	48 units = 30	48 units = 30
Total Required			211	149
Total Provided for Buildings 1&2 ²			255	192

Because the use of the dining area³ is proposed to be revised to a private dining area for residents of the assisted living facility, there is a reduction of parking demand. Since the demand is proposed to be reduced, the applicant has revised the underground parking to be a single subterranean floor (See Figure 4). To further save on excavation, the applicant is proposing 'stackers' which could accommodate two cars on a single space. These mechanical units will be maintained and operated by staff of the assisted living facility and will be limited to the residents of Building 1. See this [link](#) for reference to the stacking machines that have been used at other Atria facilities.



² Eleven of the required spaces for Building 2 will be located on its parcel.

³ The dining area was set to accommodate 150 seats.

As described previously, the developer is proposing to modify certain elements of Building 1. These include the following:

- Reduction of massing on the top floor to accommodate a sixth-floor aqua therapy pool. The aqua therapy pool is an amenity offered to the residents as a component of an overall wellness program for seniors who may have physical limitations to other types of activities. The sixth-floor modification will reduce the western building elevation and perceived height of the building along Stevens Creek Boulevard. Please refer to sheets A31 and G14 of Attachment F for an illustration.
- Adjustment of the ground floor height from 20-0' to 16-8' and incremental increases to floors heights above to optimize floor heights for residential occupancy. Note that there is no change to the overall height of the building.
- The sickle portion of the building along Mary Avenue is increased in depth (wider) by 5.5 feet from the entitled plan. This is meant to improve access for seniors' circulation within their residential units and the common corridor, especially those with mobility issues. Minimal decrease in common open space and no changes to setbacks are proposed.
- Memory Care terrace moved to the inside of the building to overlook the Central Green, rather than the parking lot. This change provides for a quieter and sunnier experience for the memory care residents. Please refer to Sheet A22 of Attachment F for an illustration.

All changes listed above do not have an effect on the programming of the site and are all within the standards of the zoning ordinance as well as the Heart of the City Specific Plan.

Other Department/Agency Review

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

Environmental Review

An Initial Study was prepared and a Final EIR (State Clearinghouse 2019070377) was certified for the project. The Final EIR identifies mitigation measures to reduce the potentially significant environmental impacts of the project to less than significant levels. These mitigation measures were adopted and made conditions of project approval. The proposed changes to the project would not have any new or substantially more severe significant environmental impacts, because the physical modifications would not have an adverse physical effect on the environment.

Public Outreach and Noticing

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

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

Public Comment

The city has not received any comments as of the publishing of the Staff Report.

Fiscal Impacts

The project will most likely generate a renewed source of property tax increases as well as required mitigation fees for park development and traffic impact fees.

Sustainability Impacts

As an infill redevelopment priority housing development in a designated Priority Development Area and Transportation Planning Area, the proposed project would be consistent with the overall intent of the City's Climate Action Plan (CAP) to support reductions in GHG emissions and the proposed project would not conflict any goals or measures to reduce GHG emissions in the CAP and impacts would be less than significant as analyzed in the EIR.

Conclusion

On August 18, 2020, City Council approved the project because the project and conditions of approval addressed concerns related to the proposed development and all the findings for approval of the proposed project, consistent with Chapters 14.18, 18.28, 19.56, 19.156, and 19.168 of the Cupertino Municipal Code, could be made. To the extent that concerns remained about the development's height and slope line, evidence in the record demonstrated that the project met the standards for granting the waivers under the State Density Bonus Law.

The Building 1 portion of the project is proposed to be modified by the developers of the assisted living facility as described above and summarized below:

- That the 8,000-square-foot ground floor dining facility be limited to residents of Building 1 and their guests only, rather than open to the public.
- Adjusting the unit mix adding more two-bedroom units while reducing the studio units, while adding eight memory care rooms, decreasing the unit count by that same number.
- Reducing the parking space count by 63 spaces to account for the dining facility open only to residents and their guests, not to the “general” public, and other minor changes to retail and unit mix programming.
- Reduction of massing on the top floor to accommodate a sixth-floor aqua therapy pool.
- Minor changes to the building that include lower the retail ceiling height from 20 feet to approximately 16 feet, relocating the memory care terrace, and increasing the depth of the sickle portion of the building along Mary Avenue by 5.5 feet from the entitled plan.

Staff is recommending that the City Council consider the evidence presented and approve or deny the project in accordance with the attached draft resolutions.

Denial of the Proposed Modifications of the Westport Project

If the City Council is inclined to deny the modifications to the project based on the evidence presented, findings could be made that the modifications to the project:

- Are inconsistent with the BMR Manual’s standard of comparability as the Below Market rate units in Building 2 are not comparable to the market rate units in terms of unit type, and number of bedrooms per unit in the assisted living facility of Building 1.
- That the Heart of the City Exception for the original project was approved because the development is providing retail frontage along Mary Avenue, where it is not required by the Heart of the City Specific Plan, in an equivalent size and scope that would have been needed to meet the retail frontage requirement along Stevens Creek Boulevard. Because the restaurant was provided along Mary Avenue, Council found that the exception from the Heart of the City Specific Plan retail standard involved the least modification of, or deviation from, the development regulations prescribed in this chapter necessary to accomplish a reasonable use of the parcel.

Approval of the Proposed Modifications of the Westport Project Project

Alternatively, if the City Council decides to approve the modifications to the project based on the evidence presented, findings could be made that the modifications to the project:

- Are consistent with the BMR Manual's standard of comparability as the Below Market rate units in Building 2 are still comparable to the market rate units in terms of unit type, and number of bedrooms per unit in the assisted living facility of Building 1.
- That the Heart of the City Exception for the original project was approved because the development is constrained by the fact that the Stevens Creek Boulevard frontage is adjacent to the on-ramp for Highway 85. This discourages pedestrian traffic and reduce the visibility of future retail tenants, significantly limiting the viability for commercial use. This alone is enough to allow for the reduction in retail along Stevens Creek Boulevard, as a commercial component is not required to be located along secondary streets such as Mary Avenue.

Next Steps

The City Council's decision will be final unless reconsidered within 10 days of the decision. The applicant may apply for building permits at that time.

Prepared by: Gian Paolo Martire, Senior Planner

Approved by: Benjamin Fu, Director of Community Development

Approved for Submission by: Greg Larson, Interim City Manager

ATTACHMENTS:

- A. Draft Resolution for EXC-2021-003
- B. Draft Resolution for M-2021-002
- C. Draft Resolution for ASA-2021-007
- D. Draft Resolution for Denial
- E. Letter from Matthew Witte and Mark Alexander to Cupertino City Staff & Council dated October 4, 2021
- F. Project Plans