



COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: January 13, 2021

Subject

Consider a development proposal to demolish an existing commercial building and residential unit, remove and replace four (4) protected trees, and construct a mixed-use development consistent of 18 units (five apartments, five single-family homes, and eight townhomes), and 4,500 square feet of commercial space. (Application No(s): EA-2018-06, Z-2018-02, DP-2018-07, TM-2018-04, U-2018-04, ASA-2018-09, TR-2018-39; Applicant(s): Dan Shaw (SCR Enterprises); Location 10625 South Foothill Boulevard; APN#s 342-16-087, -088)

Recommended Actions

The Planning Commission recommends that the City Council:

- A. Adopt Resolution No. 22-XXX, adopting the Mitigated Negative Declaration and associated mitigations as conditions of approval (EA-2018-06);
- B. Introduce and Conduct the first reading of Ordinance No. 21-XXXX "An Ordinance of the City Council of the City of Cupertino approving the Rezoning of two parcels from Planned Development with General Commercial Uses (P(CG)) to Planned Development with General Commercial and Residential Uses (P(CG, Res))" (Z-2018-02);
- C. Adopt Resolution No. 22-XXX approving the Development Permit (DP-2018-07);
- D. Adopt Resolution No. 22-XXX approving the Architectural and Site Approval Permit (ASA-2018-09);
- E. Adopt Resolution No. 22-XXX approving the Conditional Use Permit (U-2018-04);
- F. Adopt Resolution No. 22-XXX approving the Tree Removal Permit (TR-2018-39); and
- G. Adopt Resolution No. 22-XXX approving the Tentative Map Permit (TM-2018-04)

Discussion**Project Data:**

General Plan Land Use Designation	Commercial/Residential	
Neighborhood Area	Inspiration Heights	
Zoning Designation	P (CG) Planned Development Zoning with General Commercial Uses	
Net/Gross Lot Area	1.378 acres/1.546 acres	
	Allowed/Required	Proposed
Residential Density	15 du/acre	12.98 du/acre
Height of Structures	Up to 30 feet	30 feet
Rowhomes/Townhomes		8
Single Family Homes		5
Apartments		5
Commercial Sq. Ft.		4,500 sq. ft.
Setbacks		
<i>Front*</i>	N/A	0'
<i>Side*</i>	N/A	13'2"
<i>Side*</i>	N/A	10'
<i>Rear*</i>	N/A	6'
Parking Auto		
<i>Residential (Townhomes/Single Fam.)</i>	37	37
<i>Residential (Apartments)</i>	10	10
<i>Commercial</i>	18	18
<i>Total</i>	65	65
Bicycle Parking		
<i>Class I</i>	3	5
<i>Class II</i>	5	18
<i>Total</i>	8	23
Project Consistency		
General Plan Land Use Designation	Yes	
Zoning:	Yes, with Zone Map Amendment	
Environmental Assessment	Initial Study with a Mitigated Negative Declaration	

* The site is located in a Planned Development (P) zoning district. Chapter 19.80 of the Municipal Code allows the establishment of specific development standards and regulations with the approval of definitive plans for a site.

Background:

Application Requests

The applicant, Dan Shaw of SCR Enterprises, is requesting permits to allow the construction of a mixed-use development on a 1.378 net acre site currently occupied by a commercial shopping building and a residential unit. The project would demolish an existing commercial building and residential unit, remove and replace four (4) protected trees, and construct a mixed-use development consistent of 18 units (five apartments, five single family homes, and eight townhomes), and 4,500 square feet of commercial space.

The following City permits would be required: Zone Map Amendment, Development Permit, Architectural and Site Approval, Tree Removal, and Use Permit. A Vesting Tentative Map is proposed to divide the property from two parcels to 15 parcels for 13 homes, on mixed-use parcel, and a common parcel. Prior to approval of permits, the City has to also adopt a Negative Declaration as the appropriate environmental review for the project pursuant to state law.

Site and Location Description

The project known as Canyon Crossings (on the former Foothill Market site) is located in the Inspiration Heights neighborhood area of the General Plan. The shopping center is on approximately 1.546 gross acres located on South Foothill Boulevard/Stevens Canyon Road. The surrounding land uses include a townhome development to the north,

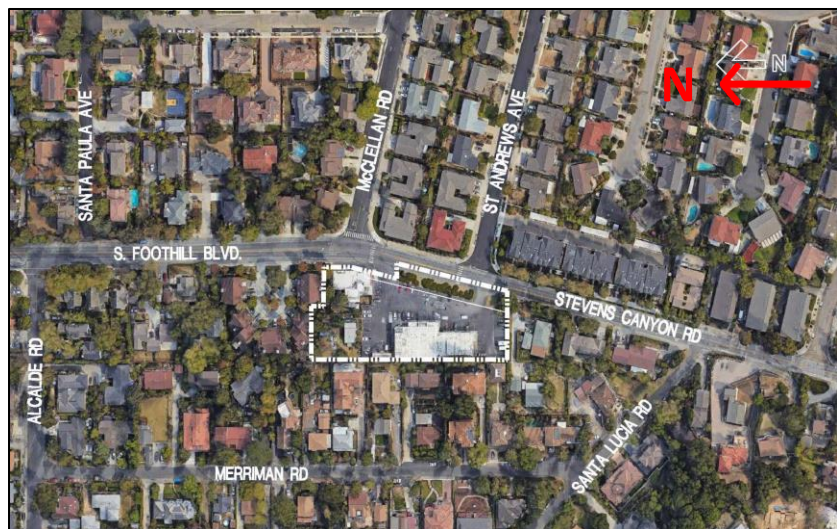


Figure 1: Project Vicinity

duplexes and rowhomes to the east and single family homes to the south and west (see Figure 1). The existing commercial and residential buildings (13,225 square feet) are currently vacant.

Analysis:

General Plan and Zoning Compliance

The proposed use is consistent with the General Plan Land Use Designation of Commercial/Residential. The applicant has applied for a Zone Map Amendment (Z-2018-02) to allow for a mixed-use development. The City's General Plan and Planned Development zoning designation allows flexible development standards in developing projects and site-specific regulations when reviewing projects. Additionally, because the project was not listed as a Priority Housing Site in the City's *General Plan: Community Vision 2015-2040* (General Plan), the project is required to obtain a Use Permit (U-2019-04) as part of the entitlement process.

The General Plan's Community Form Diagram establishes several development standards in the City, including height and density. The site has a maximum height of 30 feet and a maximum density of 15 dwelling units per acre. The project proposes a density of 12.98 dwelling units per acre.

Staff has evaluated the project's consistency with the General Plan and concludes that based on the conformance with the General Plan Land Use Designation, the proposed Zone Map Amendment, and the Initial Study Mitigated Negative Declaration (further discussed in detail in the Environmental Review section of this Staff Report), the proposed project supports several of the City's other General Plan goals including:

- **Policy LU-1.3: Land Use in All City-wide Mixed-Use Districts** - *Encourage land uses that support the activity and character of mixed-use districts and economic goals.*
- **Policy LU-5.2: Mixed-Use Villages** - *Where housing is allowed along major corridors or neighborhood commercial areas, development should promote mixed-use villages with active ground floor uses and public space. The development should help create an inviting pedestrian environment and activity center that can serve adjoining neighborhoods and businesses.*
- **Goal LU-26 – Retain commercial areas adjacent to neighborhoods and retrofit or encourage redevelopment as neighborhood centers in a pedestrian-oriented and bike-friendly environment.**
- **HE-1.3.4: Flexible Development Standards** - *The City recognizes the need to encourage a range of housing options in the community. The City will continue to:*
 - *Offer flexible residential development standards in planned residential zoning districts, such as smaller lot sizes, lot widths, floor area ratios and setbacks, particularly for higher density and attached housing developments.*
 - *Consider granting reductions in off-street parking on a case-by-case basis for senior housing.*

Should the proposed project be approved, 17 units would be allocated from the neighborhood development allocation. No commercial space will be allocated because of the existing commercial buildings.

Development Regulations

The project site defers to the development standards of the General Plan, and Planned Development “P” zoning designation. The “P” zoning designation is detailed in Cupertino Municipal Code Chapter 19:80 Planned Development Zones. The “P” zoning designation is intended to provide a means of guiding land development or redevelopment of the City that is uniquely suited for planned coordination of land uses and land development. While in the Planned Development zoning district, development has to adhere to Multifamily (R3) zoning regulations, as an alternative, applicants can, in conjunction with rezoning, apply for a discretionary review of the project and propose alternative standards. Once established, the development standards approved as part of the definitive plan for the project become the zoning requirements for the site. The applicant has proposed the alternative standards for the project as indicated in the tables in this section:

	Required	Proposed
Front Setback along Foothill Blvd. and Stevens Canyon Blvd. *	N/A	0
Side Setback (North)*	N/A	13 feet 2 inches
Side Setback (South)*	N/A	10 feet
Rear Setback *	N/A	6 feet
Private Open Space*	N/A	60 square feet unit minimum
Height	30 feet	30 feet

** The site is located in a Planned Development (P) zoning district. Chapter 19.80 of the Municipal Code allows the establishment of specific development standards and regulations with the approval of definitive plans for a site.*

The project proposes several different building types and models with varying sizes, setbacks and heights. The mixed-use commercial and residential building, with ~4,500 sq. ft. and 5 apartments is located at the front property line with a proposed front setback of zero (0) feet. To the rear and sides of the building are two drive aisles providing access to the site and the 8 townhomes and 5 single family residential units. (See Figure 2 below) The following table indicates the setbacks, heights and the private open space for the residential units in the development:

	Front	Rear	Right Side	Left Side	Height	Private Open Space (square footage)
Unit 1	14'10"	13'2"	4'5"	0'	28'8"	555
Unit 2	14'10"	15'4"	0'	0'	28'8"	461
Unit 3	14'10"	15'5"	6'0"	0'	28'8"	591
Unit 4	16'6"	12'6.5"	0'	6'0"	29'4.5"	496
Unit 5	16'6"	12'6.5"	6'0"	0'	29'4.5"	496
Unit 6	15'8"	13'11.5"	0'	6'2"	29'4.75"	377
Unit 7	15'8"	12'11.5"	0'	6'2"	29'4.75"	350
Unit 8	15'8"	11'11.5"	0'	6'2"	29'4.75"	324
Unit 9	15'7"	11'0"	0'	6'2"	29'4.75"	297
Unit 10	15'6"	10'0"	0'	5'7"	29'4.75"	254
Unit 11	14'0"	10'	0'	11'3.5"	28'8.75"	363
Unit 12	14'0"	11'10"	0'	0'	28'8.75"	356
Unit 13	14'0"	11'9"	5'10"	0'	28'8.75"	422
Mixed Use Building	0'	0	0	0	29'11.75"	61 - 147

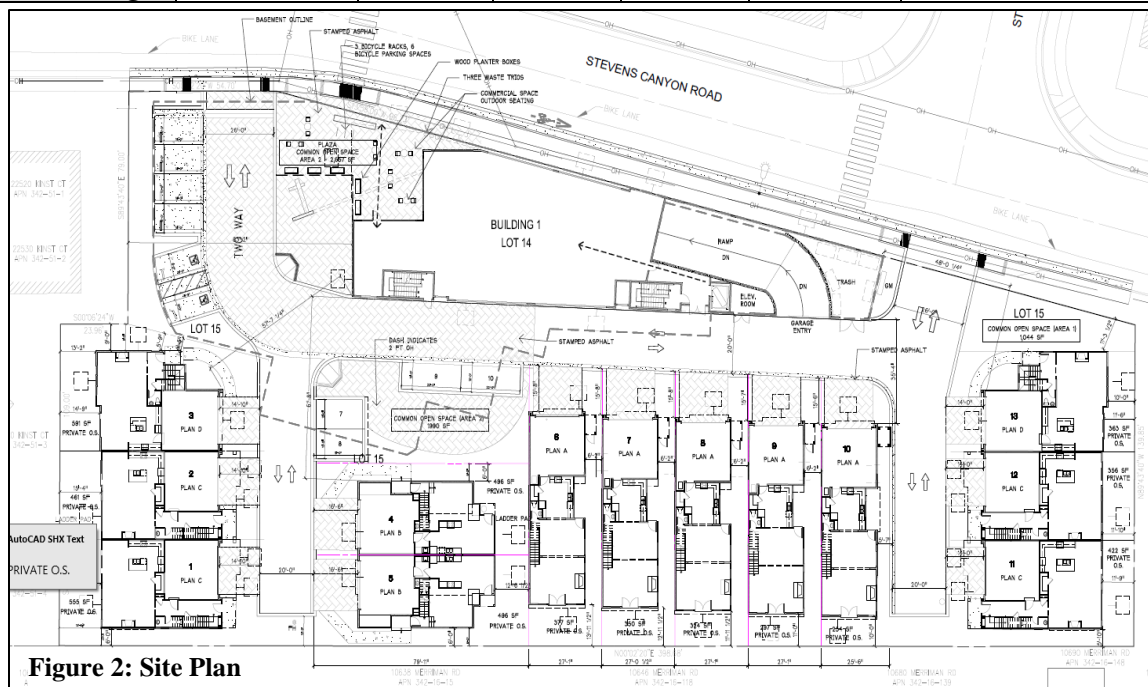


Figure 2: Site Plan

The project has drawn from the open space requirements in the Heart of the City Specific Plan for the proposed project. Therefore, the applicant proposes open space within the project as indicated in the following table:

	Heart of the City Requirements	Proposed
Common Open Space		
<i>Residential</i>	2,700 sq. ft. (150 sq. ft. per unit)	2,990 sq. ft.
<i>Commercial</i>	112.5 sq. ft. (2.5% of 4,500 sq. ft.)	1,657 sq. ft.
Private Open Space	60 sq. ft./unit and no dimension less than 6 feet	Varies by unit (see Table above)

Site Planning and Architectural Design

The proposed development is located where Foothill Boulevard transitions into Stevens Canyon Road. The project has one frontage along Foothill Boulevard/Stevens Canyon, and proposes two driveways – one aligned with McClellan Road and the other with St. Andrews Avenue – for access to the public right of way.

The project proposes to locate the less intensive use, the townhomes closer to the abutting existing residential uses and the mixed-use building closer to Stevens Canyon Road, to create a separation from the exclusively residential uses. A plaza is proposed at the entrance closest to McClellan Road. With the prominent location of the plaza, the project creates an active space for the site and commercial component. The applicant proposes different site furniture such as tables, benches, and planters to enhance the area. The development frontage is bookended by prominent planting areas to help transition the area from residential to commercial, and to partially screen parking facilities from the right of way. Parking toward the public right of way (in addition to underground parking) is provided to ensure ease of access for commercial users. The site also incorporates different paving materials near active pedestrian uses to help users be aware of the active uses.

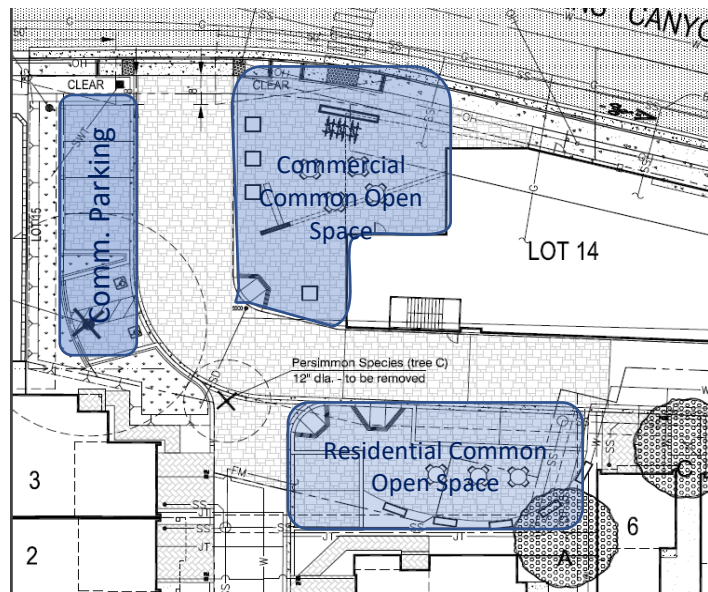


Figure 3: Commercial and Residential Common Open Space

The mixed-use building uses prominent corners, contrasting materials, and a metal cap to help break the massing of the proposed building. While only a portion of the building contains a commercial component at the ground floor (the remaining portion

encompasses the ramp into the underground garage), the continued use of aluminum storefront windows throughout the ground floor frontage aids in developing a pedestrian scaled environment.

The site uses similar colors, materials, and architectural styles to connect the mixed-use building to those of the single-family residences.

Landscaping of the site incorporates various types of ground cover and plantings. Proposed plantings are to be of low water use. Along the perimeter where the proposed homes abut existing single-family homes, the project incorporates *Pittosporum tenuifolium* as privacy plantings to screen views into adjacent properties.

Tree Removal and Replacement

The development proposes to remove and replace four (4) protected development trees. The trees identified for removal would be directly impacted by development and would require removal. The trees proposed for removal are one persimmon tree (12" DBH), one oak (16" DBH), one palm tree (16" DBH), and one redwood (52" DBH).

The applicant is proposing to replace the removed trees with six (6) 24" box Coast Live Oak and one (1) 36" box Coast Live Oak consistent with the City's requirements. Additionally, the applicant proposes nine (9) additional trees throughout the site as well as various plantings throughout the site. The replacement trees and all vegetation in the development will be protected.

Traffic, Circulation and Parking Analysis

As part of the environmental analysis, traffic impacts of the proposed project were evaluated. These impacts were found to be less than significant based on generating 132 fewer daily vehicle trips, 31 fewer daily Vehicle Miles Traveled (VMT), and 11,209 fewer annual VMT than the existing use. Additionally, the project would not generate a demand for transit that would exceed the capacity of the system. Coupled with the project being consistent with adopted policies, plans, or programs regarding pedestrian and bicycle facilities that project would have a less than significant impact.

The proposed development has been parked to meet the City's automobile parking requirements found in Chapter 19.124: Parking Regulations. There is no required bicycle parking for the townhomes and small lot single-family homes. However, the mixed use building has provided more bicycle parking than required by the Municipal Code.

Vesting Tentative Map

The project proposes 15 separate parcels to be created from the two existing parcels. Lots 1 – 13 would be occupied by the townhomes, Lot 14 would be the mixed-use commercial

residential building, and Lot 15 would be the common parcel to provide access throughout the site. A condition of approval has been added to the Tentative Map to require reciprocal access throughout the site and a formation of a property owner's association.

Below Market Rate Units

The project would provide 15% Below Market Rate (BMR) units consistent with the City's BMR Manual when the project was submitted. To be consistent with the City's 15% BMR program requirements, the applicant would provide a total of three (3) affordable units, two (2) for sale units and one (1) apartment. One (1) for sale unit would be provided to a moderate income household, and the other to a median income household. The apartment must be provided to a very-low income household. The units must be affordable for 99 years. The City would administer the BMR housing units.

Signage

Signage details are not included in this permit application. Staff will review the signage proposal with the property owner at the time the applicant applies for a sign permit through the Building Division.

Project History

On September 14, 2018 the applicant submitted an application that was deemed complete on January 6, 2021. The project was evaluated in the Draft Initial Study and Mitigated Negative Declaration. The Initial was heard before the Environmental Review Committee on October 28, 2021 where the Committee recommended adoption of the Initial Study and Mitigated Negative Declaration with a 5-0-0 vote, see Attachment I.

Other Department/Agency Review

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

Housing Accountability Act

The Housing Accountability Act (HAA), California Government Code Section 65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

1. The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and

2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

Subdivision (j) of the HAA also requires the local agency to identify and provide written documentation of the reasons why a proposed housing development is inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other provision within 30 days of the date that the application for the housing development project is determined to be complete if the housing development project contains 150 or fewer housing units.

The proposed project has been determined to comply with applicable, objective general plan and zoning standards, including maximum height, density, minimum setbacks, useable common and private open space, and number of parking spaces. Thus, subdivision (j) of the Housing Accountability Act applies. Staff is not aware of any basis to make the findings listed above.

Environmental Review

A Draft Initial Study and Mitigated Negative Declaration (IS/MND) has been prepared for the project (See Attachment H.) The Mitigated Negative Declaration (MND) identifies mitigation measures in the following areas, to reduce the potential environmental impacts of the project to less than significant levels:

- *Air Quality:* Construction shall comply with BAAQMD's recommendations for reducing construction emissions of fugitive dust, and shall ensure construction emissions are reduced.
- *Biological Resources:* The project shall protect nests of raptors and other birds when in active use.
- *Cultural and Tribal Resources:* The project shall incorporate mitigations in the event any cultural resources or archaeological are found on site. This includes consulting with a tribal representative as well as paleontologist.
- *Noise Levels:* Construction shall comply with the Noise Ordinance and best management practices for noise mitigation, and ensure mechanical equipment selected meet the City's noise ordinance.
- *Geology and Soils:* The project shall incorporate mitigation in the event any fossil-bearing deposits are discovered on-site.
- *Utilities:* Demonstrate to the City and Cupertino Sanitary District that the project would not exceed peak wet weather flow capacity of the Santa Clara sanitary sewer system.

As part of the environmental analysis, Staff consulted with the Tamien Nation per the regulations of Assembly Bill 52. The Tamien Nation requested modifications to the

Cultural and Tribal Resources. As a result of the consultation, Staff updated to the Cultural and Tribal Resources mitigation to include tribal consultation. The mitigation now specifically references the Tamien Nation as the tribe to consult, see Attachment H.

The mitigation measures have been added as condition of approval for this project.

The Notice of Intent (NOI) to adopt a MND was placed in the newspaper. In addition, the NOI was mailed to notify neighbors and interested parties that a Draft MND had been prepared which the City intends to adopt. The 20-day Public Review Period for the Draft MND was between March 25, 2021 and April 13, 2021.

The Environmental Review Committee (ERC) heard the item at its October 28, 2021 and after the public hearing, recommended that the City Council adopt a Mitigated Negative Declaration (EA-2018-06) on a 5-0-0 vote with the identified mitigation measures with the identified mitigation measures (Attachment A and I).

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 300' 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

No public comments have been provided.

Planning Commission Meeting:

At the Planning Commission meeting, the following topics were discussed:

- Outreach
- Unit Mix
- Potential commercial tenant(s) in the commercial space
- Circulation (vehicular and bicycle).

Upon discussion, the Planning Commission voted 5-0 to recommend that the City Council approve the project.

Sustainability Impact

No sustainability impacts.

Fiscal Impact

No fiscal impact.

Conclusion

Planning Commission recommends approval of the project since the project and conditions of approval address all concerns related to the proposed development and all of the findings for approval of the proposed project, consistent with Chapters 19.156, 19.168, 19.48, and 14.18 of the Cupertino Municipal Code, may be made.

Next Steps

If Council adopts the Planning Commission recommendation, the project will be approved contingent on the second reading of the Zoning Ordinance amendment (see Resolution Z-2020-001). All approvals granted by the City Council in conjunction with the zoning map amendment will be effective 30 days after the second reading of the ordinance. Council may also choose to deny the project, continue the hearing, or take other action permissible under the Municipal Code.

Prepared by: Erick Serrano, Senior Planner

Piu Ghosh, Planning Manager

Reviewed by: Benjamin Fu, Director of Community Development

Approved for Submission by: Dianne Thompson, Assistant City Manager

ATTACHMENTS:

A – Draft Resolution for EA-2018-06

B – Draft Ordinance for Z-2018-02

C – Draft Resolution for DP-2018-07

D – Draft Resolution for ASA-2018-09

E – Draft Resolution for U-2019-04

F – Draft Resolution for TR-2018-39

G – Draft Resolution for TM-2018-04

H – Initial Study/Mitigated Negative Declaration

I – Environmental Review Committee Recommendation

J – Project Plans