



## COMMUNITY DEVELOPMENT DEPARTMENT

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### CITY COUNCIL STAFF REPORT

Meeting: December 6, 2022

#### Subject

Consider approval of a proposed development that will include approximately 41,268 sq. ft. of commercial space and 206 residential condominium units. (Application No(s): DP-2022-001, ASA-2022-002, TR-2022-026, TM-2022-003; Applicant(s): Larry Wang (Tectonic Builders Corp.); Location: 10145 N. De Anza Blvd, 10118 Bandley Dr., APN(s): 326-34-066, 326-34-043.)

#### Recommended Actions

Staff recommends that the City Council:

1. Adopt Resolution No. 22-146 adopting an addendum to a previously adopted Mitigated Negative Declaration and approving the Development Permit (DP-2022-001) (Attachment A);
2. Adopt Resolution No. 22-147 approving the Architectural and Site Approval Permit (ASA-2022-002) (Attachment B);
3. Adopt Resolution No. 22-148 approving the Vesting Tentative Map (TM-2022-003) (Attachment C); and
4. Adopt Resolution No. 22-149 approving the Tree Removal Permit (TR-2022-026) (Attachment D)

#### **Project Data:**

<b>General Plan Land Use Designation</b>	Commercial/Office/Residential
<b>Special Planning Area</b>	Heart of the City Specific Plan (Crossroads subarea)
<b>Zoning Designation</b>	P (CG, Res)
<b>Lot Area</b>	5.1 Acres

	Allowed/Required	Proposed
Maximum units based on Housing Element	179 <sup>1</sup>	206 (15% density bonus)
Height of Structures	Up to 45 feet	Building A – 58 feet 6-inches at the roofline <b>(Density Bonus Law Waiver Requested that exceeds the height limit)</b>
		Building B– 44 feet
		Building C – 55 feet at the roofline <b>(Density Bonus Law Waiver Requested that exceeds the height limit)</b>
Setbacks		
Front	35 feet from the face of curb	35 feet from the face of curb
Side (Minimum One-half (1/2) the height of the Building or ten (10) feet, whichever is greater)	Building A - 28 feet 6-inches required	Building A – 10 feet <b>(Density Bonus Law Waiver Requested for side setback reduction)</b>
	Building B – 22 feet required	Building B– 102 feet
	Building C - 27 feet 6-inches required	Building C – 22 feet 6-inches <b>(Density Bonus Law Waiver Requested for side setback reduction)</b>
Parking		
Residential	305 Spaces <sup>2</sup>	338 Spaces
Retail	166 spaces	269 spaces
Total on-site	471 Spaces	607 Spaces
Private Open Space (s.f. per unit)	60 s.f.	Between 70 s.f. – 214 s.f.

<sup>1</sup> The Housing Element identified that 200 dwelling units would be constructed with a project developed on the Marina Priority Housing Element site. Therefore, there would be 200 units developed on the block with a maximum density of 35 du/acre for APN 326-34-066 (primary Marina Foods Plaza site).

<sup>2</sup> Parking required for the Residential units per the Municipal Code is 2 spaces per unit for a total of 412 spaces. However, Density Bonus law (Govt. Code Section 65915(p)) allows applicants to propose different parking standards built into state law by number of bedrooms per unit, ranging between 0.5 space for studio/one-bedroom units to 2.5 spaces for units with 4 or more bedrooms. Thus, the applicant's minimum parking requirement is 305 spaces.

<b>Common Open Space per Heart of the City</b>		
Residential (150 s.f. per unit)	30,900 s.f.	30,266 s.f. <b>(Waiver Requested)</b>
Commercial (Retail) (2.5% of gross floor area of buildings ≥ 20,000 sq. ft., or restaurants ≥ 10,000 sq. ft.)	1,040 s.f.	13,275 s.f.
Tree removal and replacement <sup>3</sup>	Eighty-three 24-inch box and Twenty 36-inch box replacements	One hundred and twenty 24-inch box and twenty 36-inch box replacements
<b>Project Consistency with:</b>		
General Plan:	Requested density bonus waivers for height (Figure LU-2 Community Form Diagram)	
Zoning:	Requested density bonus, parking reduction, and waivers for height, setback, (Heart of the City Specific Plan, Standard 1.01.030 - <i>Building Height, Setbacks and Orientation</i> ) and residential common open space (Heart of the City Specific Plan, Standard 1.01.040 - <i>Site Development and Parking</i> )	

## Background:

### *Application Requests*

On February 21, 2022, the City received an application for a preliminary application under SB 330 <sup>4</sup> for the proposed Marina redevelopment. SB 330 allows applicants to submit their project application within 180 days of their preliminary application, with certain vested rights (i.e. development regulations). Subsequently on March 29, 2022, the City received the project application for the proposed project to allow construction of a mixed-use development on a combined 5.1 gross-acre development area, currently occupied by the Marina Shopping Center and the Mandarin Gourmet Restaurant. The preliminary application and formal application for submittal have been consistent in scope, pending minor design adjustments subject to comments from Santa Clara County Fire, Public Works, Sustainability, and the Environmental Services.

<sup>3</sup> Removal and replacement standards explained in the staff report.

<sup>4</sup> Under SB 330, a housing development project is generally subject only to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted. (Gov. Code, § 65589.5(o).)

The primary components of the project are listed below and are consistent with the plans subject to staff's recommendation. Refer to Attachment M to view the development plans.

- Construct three mixed-use residential and commercial buildings:

	No. Of Story	Total condo units	Ground floor retail space
Building A	5	56	9347
Building B	4	86	22802
Building C	5	64	9440

- Construct a one-level, below-ground garage under each building with 419 parking spaces, totaling 607 for the entire site.
- 30,266 square feet of Residential Common Open Space
- 13,275 square feet of Commercial Common Open Space
- 171 onsite and offsite tree replacements, for the 92 protected development trees proposed to be removed and/or relocated.
- A vesting tentative map that would merge the two properties into a single parcel.

The approximate square footage of the project is 87% residential.

Based on the State Density Bonus Law, the applicant is requesting a density bonus parking reduction, and density bonus waivers for height, side setback, and common open space. The following City permits would be required: Development, Architectural and Site Approval, Tree Removal, and a Vesting Tentative Map.

#### *Prior Approval*

On September 9, 2016, the City Council approved an application to demolish the existing shopping center (Marina Foods and Mandarin Gourmet) and construct a new mixed-use development with 188 apartments, approximately 22,600 square feet of commercial space, and a 122-room hotel within three buildings in a Planned General Commercial and Residential Zoning District. The following table indicates the primary differences between the prior approval and the currently proposed project.

	Approved	Proposed
<b>Commercial</b>	22,600 s.f.	41,589 s.f.
<b>Hotel</b>	122 Rooms	-
<b>Residences</b>	188 Apartments	206 Condominiums
<b>BMR Units</b>	16 Very Low-Income Units <sup>5</sup>	36 units (18 Median-Income Units <sup>6</sup> ;

<sup>5</sup> Very Low-Income units serve households making < 50% of the Area Median Income (AMI)

<sup>6</sup> Median Income units serve households making between 80 – 99.99% of AMI

		18 Moderate-Income <sup>7</sup> )
<b>Building Height</b>	45 feet	44 – 58.5 feet
<b>Building Area</b>	389,019 s.f.	570,572 s.f.

A Development Agreement (DA) was approved by the Council that included public benefits in exchange for a longer approval length for the project (5 years as opposed to 2 years). Public benefits (voluntary contributions beyond required fees) included agreements with the school districts, payments to a Transportation Management Association, complementary use of hotel facilities, and financial contributions towards various transportation improvements. The five-year DA, and project approval, commenced on September 20, 2016, and expired on September 20, 2022. The applicant was unable to apply for Building Permits during the term of the DA.

### *Site and Location Description*

The project sites known as the Marina Plaza shopping center and Madarin Gourmet Restaurant are located in the Heart of the City Specific Plan Special Area within the North Crossroads Node of the Crossroads subarea. The shopping center and restaurant combined are on an approximately 5.1 gross-acre site bounded by Stevens Creek Boulevard to the south, De Anza Boulevard to the east, Alves Drive to the north, and Bandlely Drive to the west. (see Figure 1)



**Figure 1 Project area**

The surrounding uses are:

- North: Aloft Hotel, office space, and Apple Cafeteria
- West: mix of commercial, restaurant, and office uses
- South: mix of office buildings, and three banks

<sup>7</sup> Moderate Income units serve households making between 100 – 120% of AMI

- East (across De Anza Boulevard): Single Family Residential in a Planned Development, Saint Joseph of Cupertino Parish and other commercial uses

The existing 44,000 square foot leaseable area includes a mix of retail, restaurant, specialty food, and grocery tenants.

#### *Planning Commission Recommendation*

The Planning Commission conducted a special public hearing on November 10, 2022, to consider the proposed project. Five number of members of the public spoke with almost all in support of the proposed project. Members of the public raised the following topics:

- Possibility of lowering the height of each floor for the buildings to be conforming to the 45-foot height limit.
- That the landscaping and tree selection for the development be California native.
- Increase the commercial parking onsite.

The Planning Commission recommended (5-0) that City Council adopt the first amendment to the mitigated negative declaration and adopt resolutions approving the Marina Development application with added conditions of approval to the Development Permit resolution as follows (see Attachment A):

1. That the applicant shall present to City Council a landscape palette that utilizes native trees, shrubs, and/or ground cover, consistent with the City's Water Efficient Landscape Ordinance (WELO), CMC 14.15: Landscape Ordinance.<sup>8</sup>
2. Amend Planning Condition 21, *Homeowners Association*, memorializing the applicant's proposal for the community room located on the ground floor of Building B to be open to 501(c)(3) organizations registered in the City of Cupertino.
3. That prior to issuance of Building Permits, the applicant shall implement best practices to manage indoor air pollution which include, but not limited to, installing air filters rated at a MERV 13 in all units located within the "Implement Best Practices" area as identified in the Bay Area Air Quality Management District (BAAQMD) Planning Healthy Places Map.

While not a condition of approval, the Planning Commission requested that the applicant consider applying for a General Plan amendment to allow an added floor on Building B to allow for additional affordable units. The applicant has not been responsive to this request from the Planning Commission.

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<sup>8</sup> This will be presented to City Council at the hearing for consideration.

## **Analysis:**

### *General Plan and Housing Element Compliance*

The proposed use is consistent with the General Plan Land Use Designation of Commercial/Residential. The City's General Plan uses a development allocation system when evaluating development projects and allows the City flexibility in developing project and site-specific mitigation measures when reviewing projects. The Housing Element of the City of Cupertino's *General Plan: Community Vision 2015 – 2040* (General Plan) identifies The Marina Shopping Center as a Priority Housing Site. As a Priority Housing Site, it is allocated 200 units in the seventh Housing Element cycle, with the Marina Shopping Center site at a maximum density of 35 dwelling units per acre. The proposed number of units, with the state-mandated density bonus, is consistent with what is allowed in the General Plan.

The General Plan's Community Form Diagram establishes heights and setbacks for development on sites within each of the Special Areas. The proposed development in the North Crossroads Node within the Heart of the City Specific Plan Special Area has a height limit of 45 feet. The applicant has requested density bonus waivers of the height and side setback standards for Buildings A and C. The waiver requests will be discussed in further detail in the Density Bonus Section of this Staff Report.

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 for the site and the minimal environmental impacts of the project as analyzed in the Mitigated Negative Declaration Addendum (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.*
- **Strategy LU-15.1.1: Uses** - *Include in this subarea primary uses such as retail, office and commercial. Ground floor uses shall have active retail uses with storefronts. Commercial office and office uses may be allowed on upper levels. In the case of deep lots, buildings along the street should provide retail and buildings in the back may be developed with allowed uses.*

- **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.*
- **HE-2.3.7: Density Bonus Ordinance** - *The City will encourage use of density bonuses and incentives, as applicable, for housing developments which include one of the following:*
  - *At least 5 percent of the housing units are restricted to very low-income residents.*
  - *At least 10 percent of the housing units are restricted to lower income residents.*
  - *At least 10 percent of the housing units in a for-sale common interest development are restricted to moderate income residents.*
  - *The project donates at least one acre of land to the city or county large enough for 40 very low-income units; the land has the appropriate general plan designation, zoning, permits, approvals, and access to public facilities needed for such housing; funding has been identified; and other requirements are met. A density bonus of up to 20 percent must be granted to projects that contain one of the following:*
    - *The project is a senior citizen housing development (no affordable units required).*
    - *The project is a mobile home park age restricted to senior citizens (no affordable units required). For projects that contain on-site affordable housing, developers may request one to three regulatory concessions, which must result in identifiable cost reductions and be needed to make the housing affordable.*

### *Density Bonus Ordinance*

#### *Density Bonus*

The project includes requests for a density bonus, parking reduction, and three waivers, for height, slope setback line, and dispersion of BMR units.

Section 19.56.070 of the City's Density Bonus Ordinance ("Findings") requires that, before approving an application which includes a request for a density bonus, waiver or reduction in parking standards, the decision-making body must determine that the proposal is consistent with State Density Bonus Law by making the following findings, as applicable:

- That the housing development is eligible for the density bonus requested and any incentives or concessions, waivers or reductions in parking standards requested.
- That the development standard(s) for which the waiver(s) are requested would have the effect of physically precluding the construction of the housing



development with the density bonus and incentives or concessions permitted if a waiver is requested.

The City may not deny a waiver of a development standard that would physically preclude the construction of the project as it is designed unless the waiver or reduction would have a specific, adverse impact upon health or safety, for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact or would have an adverse impact on any real property that is listed in the California Register of Historical Resources. Under State Density Bonus Law, the City may not deny a proposed project based on the theory that another project, with a similar number of units, might be designed differently and accommodated without waivers of development standards. Based on the analysis above in the subsequent sections, as well on the planning Commission recommendation, it is recommended that the City Council approve the density bonus.

1. *Density Bonus BMR units breakdown*

The project is eligible for density bonuses, a parking reduction, and waivers consistent with the City of Cupertino Municipal Code Chapter (CMC) 19.56 *Density Bonus* and State Density Bonus Law. Table 1 below provides a breakdown of the housing affordability types and percentage of development:

**Table 1: Below Market Rate Units as a Percentage of the Development**

Income Level	Below Market Rate Units	% of Development Units <sup>9</sup>
Moderate Income <sup>10</sup>	18 units (50% of affordable units)	10%
Median Income	18 units (50% of affordable units)	10%

The proposed project is providing 36 moderate and median-income units, or 20% of the development, which entitles the project to a Density Bonus (15%) under State Law. Therefore, 27 market-rate units are allowed in addition to the base residential yield of 179 units, for a total of 206 units.

Please refer to Attachment J for a full description of the Below Market Rate programming of the Marina development. A condition of approval would require that, prior to occupancy, the applicant shall record a regulatory agreement with the City requiring the

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<sup>9</sup> Percentages are based on the base density of 35 DU/acre or 179 units, as required by the Density Bonus Law and are consistent with the 20% requirement in the City's BMR Manual.

<sup>10</sup> HCD sets the maximum moderate-income limit to equal 120 percent of the county's AMI, adjusted for family size.

36 BMR units to be for sale to median income households and remain affordable for 99 years.

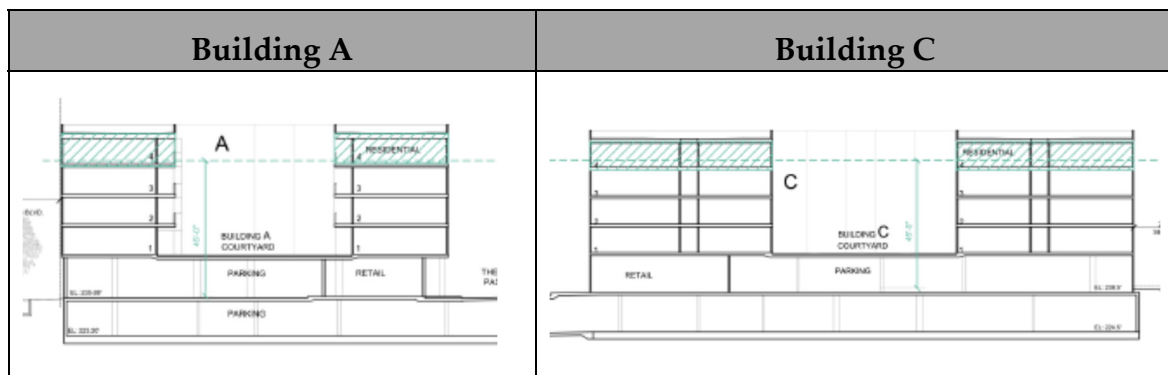
## 2. Density Bonus Parking Reduction

While the Municipal Code requires the project to provide 2 parking spaces per unit for a total of 412 spaces, the proposed project is eligible for a State density bonus parking reduction. In this case, while the applicant is allowed to provide only 305 residential parking spaces under the provisions of state law, the project includes 338 residential spaces. (Please see detailed discussion under *Parking Analysis*.)

## 3. Density Bonus Waivers Requested

As a density bonus project, the applicant may submit to the City a proposal for an unlimited number of waivers, or reduction of development standards, that would have the effect of physically precluding the construction of the proposed project (Government Code Section 65915(e)). The applicant has requested three (3) waivers as follows:

1. Height: The General Plan's Community Form Diagram requires that development on these sites be limited to 45 feet. The applicant is requesting waivers to allow Building A and Building C to exceed this height (see Figure 2 on next page) as follows:
  - Building A would be 58 feet 6-inches at the roofline
  - Building C would be 55 feet at the roofline

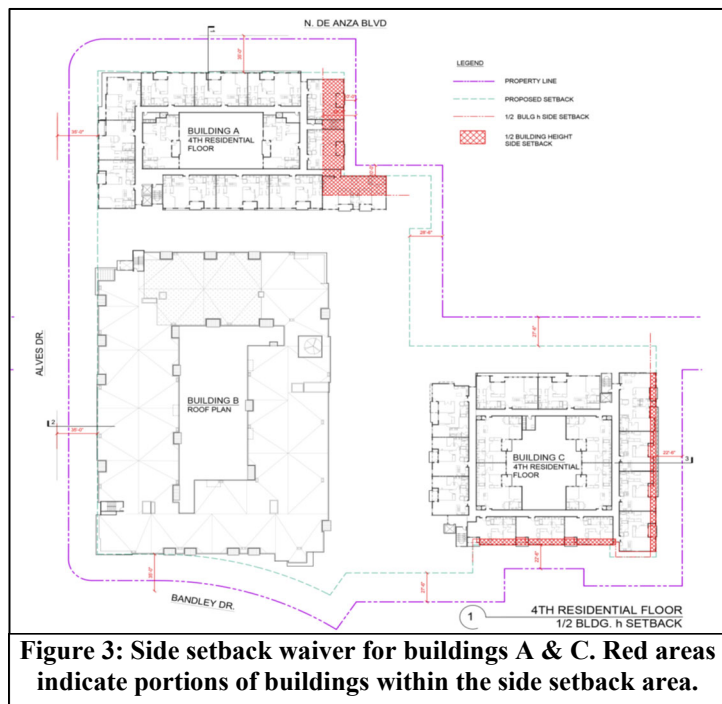


**Figure 2: Illustration of height waiver for Buildings A & C. Green hatched areas are the portions of the building over 45 feet.**

2. Side setback: The Heart of the City Specific Plan requires a minimum side setback of one-half (1/2) the height of the building (or ten (10) feet, whichever is greater). The applicant is requesting that this standard be waived as follows:
  - Building A would have a side setback of 10 feet where 28 feet 6-inches is required.
  - Building C would have a side setback of 22 feet 6-inches where 27 feet 6-inches is required.
3. Common Open Space: The Heart of the City Specific Plan requires residential common open space at 150 s.f. per unit. For this project, this translates to 30,900 sq.ft. of residential common open space. The applicant is requesting that this standard be waived and a reduced residential common open space of 30,266 s.f. be included in the project.

As part of the application, the justification of the waivers (height, side setback, and common open space) was provided by the applicant in two letters, both submitted by Erik Ramakrishnan, Esq. of Berliner Cohen, LLP dated March 23, 2022, and July 18, 2022 (Attachment J). These letters state that the waivers are necessary for several reasons:

- Height Waiver: Exhibits indicate that 30 units would be lost if the 45-foot height limit were enforced, which includes the entire fourth floors of Buildings A and C (see Figure 2).
- Side Setback Waiver: Exhibits indicate that if the Side Setback Requirement were enforced, the Project would lose approximately eight units per floor in Buildings A and C, for an overall combined total of at least 30 units (see Figure 3).
- Common Open Space: The justification letters state that the Heart of the City Specific Plan construes the term “common open space” to exclude outdoor areas that provide space for ingress and egress. Under this interpretation, as currently designed the project does not provide adequate common open space and has a shortfall of approximately 634 s.f. This shortfall in open space would require the



applicant to remove a total of five (5) units (150 s.f. \* 5 = 750 s.f.) from the project (Bldg. A– 3 units, Bldg. B - 2 units, and Bldg. C - 1 unit)

To approve the waivers, the City must find that the development standards for which the waivers are requested would have the effect of physically precluding the construction of the proposed housing development with the density permitted by state density bonus law. Under State Density Bonus Law, the City may not deny a proposed project based on the theory that another project, with a similar number of units, might be designed differently and accommodated without waivers of development standards.

In reviewing the justification letters and exhibits, it appears that imposing the City's height, side setback, and common open space requirements would physically preclude development of Buildings A, C, and to a certain extent, Building B as proposed.

#### *Site design analysis and Architectural and Site Approval*

The proposed development sits between Stevens Creek Boulevard, Alves Drive, Bandley Drive, and North De Anza Boulevard. It has frontages on all four rights-of-way, with Stevens Creek Boulevard's limited to solely a driveway entrance. Surface parking is mostly hidden from pedestrian and vehicular view as most of the parking is subterranean and/or podium.

The common open space areas have been designed to foster gathering at various points in the development, particularly a central plaza that is at the intersection of the three internal streets. Active uses (mostly retail) are on the bottom floor along the internal network of streets, as well as Alves and Bandley Drives. major streets.

The proposed design quality of the buildings contains features consistent with a modern style throughout the development. The quality of materials as demonstrated in the project application is superior, which include a mix of durable materials including, but not limited to aluminum paneling, redwood fiber cement siding, stone tile, and smooth exposed concrete. Please refer to sheets A5.3A – A5.3C in Attachment M for the material boards.

#### *Compliance with BMR Unit Comparability & Dispersion Requirements*

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.
- 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 2, below, (as well as sheets A3.2 – A3.5, Attachment M, Project Plan Set) shows the proposed unit mix within the three mixed use buildings by income level, type, location, and size.

**Table 2: Unit Comparability Between Buildings A, B, & C**

	<b>Average Bedroom Count</b>	<b>Average Gross Area</b>
Overall Market Rate Units	2.4 bedrooms	1,304 sq.ft.
Moderate Income BMR Units	2.4 bedrooms	1,307 sq.ft.
Median Income BMR Units	2.4 bedrooms	1,301 sq.ft.

As is seen in Table 2, the BMR units on average are the same size and bedroom count as the market-rate units. There is no indication on the plans that the exterior finishes of the BMR units will be any different from the market rate units. As such, it is expected that they will be of the same quality; however, as allowed in the BMR manual, the affordable units may have different interior finishes.

#### *Tree Removal and Replacement*

The development proposes to remove and replace 92 protected development trees. Both the applicant's and the City's consultant arborists evaluated the existing 100 trees on the site. Out of the 100 trees surveyed, 92 trees were identified as being directly impacted by development and would require removal. All those trees that are impacted are non-native species, particularly the abundant Southern Magnolias.

**Table 3 Tree replacement**

<b>Protected Trees Removed</b>	<b>Sizes</b>	<b>Required</b>	<b>Replacements</b>	
			<b>24-inch box</b>	<b>36-inch box or more</b>
62	Up to 12 inches*	One 24" box tree	63	
30	Over 12 inches and up to 36 inches	Two 24" box trees or One 36" box tree	57	20
<b>Totals</b>		122 (24-inch box)	120	20

The applicant proposes to replace the removed trees with 188 trees (140 on-site and 48 off site). In accordance with CMC Chapter 14.18: *Protected Trees*, the applicant is providing 140 on-site replacements when only 122 are required. Chinese Pistache and Crepe Myrtle are the two most common replacement species proposed. The planning Commission had recommended that the applicant proposed to City Council a planting palette that would be more in-line with a native species.

For the offsite replacements, the street trees palette includes the following:

- Twenty-four, 24-inch box Engelmann Oak along Stevens Creek and De Anza Blvd.
- Sixteen, 24-inch box Silver Linden along Alves Drive.
- Eight, 24-inch box Brisbane Box trees along Bandleby Drive.

### *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. Since at least 10% (in this case 20%) of the total base residential units of the housing development would be sold to persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, State Law allows a reduction in parking standards provided that all units in the development are offered to the public for purchase. See Table 3 (on the next page) for a breakdown of the parking within the development.

**Table 4: Parking Requirements**

<b>Building Use</b>	<b>Parking Standards per Density Bonus Law (65915 (p))<sup>11</sup></b>	<b># of Units or S.f.</b>	<b>Required Spaces</b>	<b>Provided Spaces</b>
<b>Residential Condos</b>	One-bedroom units = 1 onsite space/unit	9	9	338
	Two- and three-bedroom units = 1.5 onsite spaces/unit	197	296	
	4+ bedroom units = 2.5 spaces/unit	0	0	
	<i>Sub-total</i>	<b>206</b>	<b>305</b>	<b>338</b>
<b>Retail</b>	1 space per 250 s.f.	41,589 s.f.	166	269
<b>Total</b>			<b>471</b>	<b>607</b>

Because the project site meets the criteria established by the Density Bonus Law, the project is required to provide only 471 spaces. However, the applicant proposes 607 parking spaces, which adequately meet the parking requirements of the proposed project.

### *Vesting Tentative Map*

The project is currently two separate parcels. The application for the Vesting Tentative Map (VTM) merges two separate lots to create one 5.1-acre parcel. The consolidated parcel will include a condominium map for the 206 condominiums. A condition of

<sup>11</sup> Government Code 65915(p) has been updated since the City last updated its Municipal Code as it relates to Density Bonus Law. Therefore, while the City's Municipal Code indicates that 2- and 3-bedroom units must provide 2 spaces per unit, state law only requires the provision of up to 1.5 spaces per unit. The City must adhere to the requirements of state law.

approval has been added to the VTM that would require dedication of reciprocal easements ensuring cross access between the parcels, for emergency vehicles and public.

#### *Housing Accountability Act*

The Housing Accountability Act (HAA) (Gov. Code, § 65589.5) limits the ability of a city to deny or impose certain conditions on a housing development project when the project complies with applicable, objective general plan, zoning, and subdivision standards and criteria. This project is a “housing development project” under the HAA because it is a mixed-use development consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

When a project complies with objective standards, the HAA allows a city to disapprove the project, impose a condition that the project be developed at a lower density, or impose a condition the impacts the feasibility of the project only if the city finds *both* of the following, supported by a preponderance of the evidence in the record:

1. The project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density; and
2. No feasible method to satisfactorily mitigate or avoid the adverse impact exists.

The project meets all applicable objective zoning, General Plan, and subdivision standards. Based on the record, including the findings in the IS/MND and IS/MND Addendum, staff does not believe the above findings for denial of the proposed project can be made.

#### *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.

#### *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*

On September 6, 2016, the City of Cupertino adopted the Initial Study and Mitigated Negative Declaration (2016 MND), State Clearinghouse (SCH) Number 2016052006, and approved the Marina Plaza Project (2016 Project). As described earlier in this staff report,

the project has been modified since the original 2016 approval (i.e., more residential units, no hotel, more commercial, etc.).

The City's consultant conducted a CEQA analysis of changes to the project to determine the appropriate level of subsequent environmental review. Under CEQA Guidelines section 15164, an addendum to an MND should be prepared where 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 efforts than were discussed or shown in the MND; (b) that previously infeasible mitigation measures/alternatives are now feasible and would substantially reduce significant efforts; or (c) that considerably different mitigation measures than analyzed in the MND would substantially reduce significant effects.

The City's consultant's analysis determined that proposed changes to the project meet the criteria for an addendum. The City's consultant concluded that the proposed project is within the same project site parameter and would use the same egress/ingress access points. Further, while the updated project would result in 18 additional residential units and 50 additional residents, and an increase of 27 employees, the project would not include the proposed hotel. The addendum reviews each topic in the CEQA Environmental Checklist and concludes that neither the modifications to the project nor new circumstance or information will result in an environmental impact that is new or more severe than the impacts studied in the Initial Study and MND. Please refer to Attachment K, Marina Plaza Project Initial Study and Mitigated Negative Declaration Addendum No. 1.

Based on the information provided in this Addendum, construction and operation of the modified project would not result in any new impacts or increase the severity of previously identified significant impacts analyzed in the Adopted MND.

#### Public Outreach and Noticing

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

Notice of Public Hearing, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none"><li>▪ Site Signage (<i>10 days prior to the hearing</i>)</li><li>▪ Citywide postcard mailed to each resident (<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></ul>



<ul style="list-style-type: none"><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 of the project site (<i>10 days prior to the hearing</i>)</li></ul>	<ul style="list-style-type: none"><li>▪ Posted on the City of Cupertino's website (<i>one week prior to the hearing</i>)</li></ul>
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The applicant has completed substantial community outreach to residents, organizations, property owners, and businesses. Community outreach summary includes the following in-person meetings:

- January 7, 2022 – meeting with the sister City delegations. Eight guests attended.
- April 2 & 13, 2022 – residential and commercial/office property owners within 2,000 feet of the site invited to the Aloft Hotel. 18 members of the public attended.
- October 5 & 8, 2022 – residential and commercial property owners within 2,000 feet of the site invited to the Aloft Hotel. 23 members of the public attended.

Approximately five comment cards were submitted to the applicant. Feedback was generally supportive and complimentary of the project. Refer to Attachment L for a detailed summary of the outreach efforts.

#### Public Comment Received

Members of the public have commented to staff at the time of this staff report being published. Please refer to Attachment N.

#### 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 Addendum.

#### Conclusion

Staff recommends approval of 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. Concerning the development's height, side setback, and common open space waivers, evidence in the record demonstrated that the project met the standards for granting the waivers under the State Density Bonus Law.

#### 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.

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Prepared by: Gian Paolo Martire, Senior Planner

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Luke Connolly, Acting Director of Community Development

Approved for Submission by: Pamela Wu, City Manager

#### **ATTACHMENTS:**

A– Draft Resolution for DP-2022-001

B – Draft Resolution for ASA-2022-002

C – Draft Resolution for TM-2022-003

D – Draft Resolution for TR-2022-026

E – Planning Commission Resolution 6964

F – Planning Commission Resolution 6965

G – Planning Commission Resolution 6966

H – Planning Commission Resolution 6967

I - Project Description

J– Letter from Erik Ramakrishnan, Esq. of Berliner Cohen, LLP dated March 23, 2022 and July 18, 2022

K – Marina Plaza Project Initial Study and Mitigated Negative Declaration Addendum No. 1

L – Public Outreach Summary, dated October 10, 2022

M – Project Plans

N– Public Comment