

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CUPERTINO CITY COUNCIL  
APPROVING A VESTING TENTATIVE MAP TO MERGING TWO  
PARCELS TO ALLOW A MIXED USE DEVELOPMENT CONSISTING  
OF 206 CONDOMINIUMS AND 41,268 SQ.FT OF COMMERCIAL SPACE  
LOCATED AT 10145 N. DE ANZA BLVD, 10118 BANDLEY DRIVE  
(APN: 326-34-066, 326-34-043)

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SECTION I: PROJECT DESCRIPTION

Application No.: TM-2022-003  
Applicant: Larry Wang (Tectonic Builders Corp.)  
Property Owner: De Anza Venture, LLC  
Location: 10145 N. De Anza Blvd, 10118 Bandley Drive (APN: 326-34-066, 326-34-043)

SECTION II: FINDINGS FOR A TENTATIVE MAP:

WHEREAS, the City of Cupertino received an application for a Vesting Tentative Map as described in Section I of this resolution; and

WHEREAS, after consideration of evidence contained in the entire administrative record, at the public hearing on September 6, 2016, the City Council adopted Resolution No. 16-091, adopting a Mitigated Negative Declaration for the Marina Development; and

WHEREAS, environmental analysis and peer reviews were conducted by Placeworks, Inc. pursuant to the requirements of CEQA, finding that no new or substantially increased significant environmental effects; and

WHEREAS, on November 10, 2022 the Planning Commission recommended on a 5-0 vote that the City Council adopt the Addendum to the Mitigated Negative Declaration (EA-2015-05) and approve the Development Permit (DP-2022-001) in substantially similar form to the Resolution presented (Resolution No. 6964), approve the Architectural and Site Approval Permit (ASA-2022-002) in substantially similar form to the Resolution presented (Resolution No. 6965), approve the Tree Removal Permit (TR-2022-026) in substantially similar form to the Resolution presented (Resolution No. 6967) and approve the Vesting Tentative Map (TM-2022-003), in substantially similar form to the Resolution presented (Resolution No. 6966); and

WHEREAS, all necessary public notices having been given as required by the Procedural Ordinance of the City of Cupertino and the Government Code, and the Planning Commission held at least one public hearing in regard to this application, and on

December 6, 2022 the City Council held a public hearing to consider the Tentative Map; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Resolution; and

WHEREAS, the applicant has met the burden of proof required to support the application for a Tentative Map; and

WHEREAS, the analysis in the Addendum prepared by Placeworks, Inc. indicates that the proposed project would not require major revisions to the Mitigated Negative Declaration adopted on September 6, 2016, due to new or substantially increased significant environmental effects. Furthermore, there have been no substantial changes with respect to the circumstances under which these minor modifications would be undertaken that would require major revisions of the Adopted Mitigation Negative Declaration due to new or substantially increased significant environmental effects, and there has been no discovery of new information of substantial importance that would trigger or require major revisions to the Mitigated Negative Declaration due to new or substantially increased significant environmental effects.

WHEREAS, the adopted Mitigated Negative Declaration adequately identifies all environmental effects and adequate mitigation measures for the proposed modifications to the previously approved project. Therefore, no subsequent or supplemental Mitigated Negative Declaration is required prior to approval of the proposed project.

WHEREAS, the Planning Commission finds as follows with regard to this application:

- a. That the proposed subdivision map is consistent with the City of Cupertino General Plan.

*The subject property is consistent with the General Plan since the property is permitted to have up to 35 dwelling units an acre and the project qualifies for a density bonus. The proposed development is consistent with the intent of the policies of the General Plan for a high density mixed-use development on this site.*

- b. That the design and improvements of the proposed subdivision are consistent with the General Plan.

*The off-site improvements are consistent with the City's General Plan policies related to pedestrian and bicycle safety etc. by improving Stevens Creek Boulevard, minimizing curb-cuts, and requiring an urban canopy within the public right-of-way. The project is also consistent with the General Plan's design requirements, since the project qualifies for waivers for height, side setback, and common open space.*

- c. That the site is physically suitable for the type of development contemplated under the approved subdivision.

*The proposed tentative map is compatible with the adjoining land uses and no physical constraints are present that would conflict with anticipated land use development. There are no topographical anomalies that differentiate this property from adjacent properties. The site is located on the valley floor, as well as not listed within any environmentally sensitive zone.*

- d. That the site is physically suitable for the intensity of development contemplated under the approved subdivision.

*The subject property is physically suitable in size and shape in conformance to development standards and is appropriately configured to accommodate a multi-unit mixed-used development.*

- e. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish and wildlife or their habitat.

*The design of the subdivision and proposed improvements are not likely to substantially injure fish and wildlife or their habitat because the property is a developed site and located in an urbanized area where residential land use is allowed.*

- f. That the design of the subdivision or the type of improvements associated therewith are not likely to cause serious public health problems.

*The proposed subdivision design and improvements are not likely to cause serious public health problems. The proposed development is consistent with the intent of the policies of the General Plan for a high density mixed-use development on this site, and the on-site and off-site improvements improve neighborhood walkability through improved sidewalk construction with size-appropriate driveway cuts and street and private trees planting.*

- g. That the design of the subdivision and its associated improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision.

*No easement or right-of-way exists currently that would be impeded or conflict with the proposed subdivision.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the MND Addendum, subject to the conditions which are enumerated in this Resolution beginning on PAGE 4 thereof, and those contained in all other Resolutions approved for this Project

The application for a Vesting Tentative Map, Application No. TM-2022-003, is hereby approved, and that the subconclusions upon which the findings and conditions specified

in this Resolution are based are contained in the Public Hearing record concerning Application No. TM-2022-003 as set forth in the Minutes of the City Council Meeting of December 6, 2022 Meeting, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval is based on the plan set dated July 27, 2022 consisting of 91 sheets labeled as Marina Plaza, A0.0 – A11.0, T-01 – T-03, C0.1 – C4.3, JT-1 – JT-3, L1.01 – L3.05, and TR0.1 – TR0.9, drawn by Tectonic Builders, Giuliani & Kull, Vizion Utility, and JETT Landscaping, except as may be amended by conditions in this resolution.

2. ACCURACY OF PROJECT PLANS

The applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or construction records. Any misrepresentation of any property data may invalidate this approval and may require additional review.

3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. TR-2022-026, DP-2022-001, and ASA-2022-002 shall be applicable to this approval.

4. ANNOTATION OF THE CONDITIONS OF APPROVAL

The conditions of approval set forth shall be incorporated into and annotated on the first page of the building plans.

5. CONDOMINIUM MAP REQUIRED

Prior to the issuance of building permits, the applicant must record a Final Condominium Map with the County of Santa Clara after approval by the Director of Public Works, which shall indicate no more than 206 residential condominiums. No more than one commercial condominium per building is approved.

6. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is responsible to consult with other departments and/or agencies with regard to the proposed project for additional conditions and requirements. Any misrepresentation of any submitted data may invalidate an approval by the Community Development Department.

7. INDEMNIFICATION

As part of the application, to the fullest extent permitted by law, the applicant shall agree to indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, or proceeding (collectively referred to as "proceeding") brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant related to any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized for the project. The indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. Such attorneys' fees and costs shall include amounts paid to the City's outside counsel and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City. The applicant shall likewise agree to indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties. The Applicant shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review, if the applicant desires to continue to pursue the project.

The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

8. NOTICE OF FEES, DEDICATIONS, RESERVATIONS, OR OTHER EXACTIONS

The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant

to Government Code Section 66020(d) (1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

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CITY ENGINEER'S CERTIFICATE OF  
ACCEPTANCE OF ENGINEERING/SURVEYING CONDITIONS  
(Section 66474.18 California Government Code)

I hereby certify that the engineering and surveying conditions specified in Section IV. of this Resolution conform to generally accepted engineering practices.

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Chad Mosley, Assistant Director of Public Works  
City Engineer CA License 66077

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 6<sup>th</sup> day of December, 2022, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:  _____ Darcy Paul, Mayor City of Cupertino	  _____ Date
ATTEST:	

<div data-bbox="203 226 589 235"></div> <div data-bbox="203 239 589 275">Kirsten Squarcia, City Clerk</div>	<div data-bbox="781 226 1164 235"></div> <div data-bbox="781 239 847 275">Date</div>
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