



## COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL

10300 TORRE AVENUE • CUPERTINO, CA 95014-3255

(408) 777-3308 • FAX (408) 777-3333

### CITY COUNCIL STAFF REPORT

**Meeting:** September 6, 2016

#### SUBJECT

Redevelopment of Marina Foods with associated site and off-site improvements

#### RECOMMENDATION

The Planning Commission recommends that the City Council approve, in accordance with the draft resolutions:

1. Development Permit (DP-2015-05) and Environmental Analysis (Negative Declaration) (EA-2015-05) per attached resolution (*Attachment CC-1*).
2. Architectural and Site Approval (ASA-2015-22) per attached resolution (*Attachment CC-2*).
3. Use Permit (U-2015-06) per attached resolution (*Attachment CC-3*).
4. Heart of the City Exception (EXC-2016-03) per attached resolution (*Attachment CC-4*).
5. Fence Exception (EXC-2016-05) per attached resolution (*Attachment CC-5*).
6. Tree Removal Permit (TR-2016-14) per attached resolution (*Attachment CC-6*).
7. Development Agreement (DA-2016-01) per attached ordinance (*Attachment CC-7*).

#### DESCRIPTION

##### A. Application Summary

Applications: DP-2015-05, ASA-2015-22, U-2015-06, DA-2016-01, EXC-2016-03, EXC-2016-05, TR-2016-14, and EA-2015-05

Applicant: Amy Chan, De Anza Venture, LLC

Property owner: Marina Plaza, LLC and Cupertino 10145, LLC

Property Location: 10122 Bandlely Drive and 10145 De Anza Boulevard (Marina Plaza)  
APN# 326-34-043, 326-34-066

##### B. Project Description

1. Development Permit (DP-2015-05) to allow the demolition of approximately 44,000 square feet of commercial space, and the construction of a 122-room hotel, two mixed-use buildings with approximately 22,600 square feet of commercial space and 188 apartments with associated underground and surface parking. The project proposes 16 units as very low income, below market rate units, making the project eligible for density bonus in a Planned General Commercial/Residential Zoning District.

2. Architectural and Site Approval (ASA-2015-22) to allow the construction of a 122-room hotel, two mixed-use buildings with 188 apartment units, and approximately 22,600 square feet of commercial space and associated site and off-site improvements.
3. Use Permit (U-2015-06) to allow 24-hour operations for a 122-room hotel including a restaurant with a separate bar.
4. Development Agreement (DA-2016-01) for a 122-room hotel, two mixed-use buildings with 188 apartments, and approximately 26,000 square feet of commercial space in a Planned General Commercial and Residential Zoning District
5. Heart of the City Exception (EXC-2016-03) for Building A to allow rear and side setbacks of 10 feet where 22.5 feet are required, and allow a 16-foot setback for an architectural feature where 31 feet is allowed.
6. Fence Exception (EXC-2016-05) to allow interior electronic vehicle gates.
7. Tree Removal Permit (TR-2015-14) to allow the removal and replacement of 90 trees.
8. Environmental analysis (EA-2015-05). A Mitigated Negative Declaration is recommended.

**C. Project Data Summary**

<b><u>Requirement/Standard</u></b>	<b><u>Allowed/Required</u></b>	<b><u>Proposed</u></b>
General Plan designation	Commercial/Office/Residential (35 units/acre); HE 35 units/acre	Consistent - Commercial/Office/Residential (35 units/acre with an additional 35% through Density Bonus that yields approximately 47 units/acre)
Zoning designation	P (CG, Res) – Planned development with General Commercial and Residential Intent	Consistent
Environmental Assessment		Initial Study/Mitigated Negative Declaration
Height limit	45 feet and maintain the primary building bulk below a 1:1 slope line drawn from arterial/boulevard curb line	Consistent - 45 feet and maintain the primary building bulk below a 1:1 slope line drawn from arterial/boulevard curb line
Setbacks:		

<u>Requirement/Standard</u>	<u>Allowed/Required</u>	<u>Proposed</u>
<i>Front –</i>	35 feet from edge of curb	Consistent: <i>De Anza Lot:</i> 43.5 feet from edge of curb <i>Bandley Lot:</i> 35 feet from edge of curb
<i>Side</i>	One half (1/2) the height of the building (22.5 feet), or ten feet. When adjacent properties are jointly developed. Setbacks between buildings may be reduced to zero.	Consistent: <i>De Anza Lot (Building A):</i> 10 feet from adjacent property, Heart of the City Exception 14 feet 11 inches from interior, and 37 feet (De Anza Blvd.) <i>Bandley Lot:</i> Building B: 35 feet Building C: 22.5 feet
<i>Rear</i>	One-half (1/2) the height of the building (22.5 feet), or ten (10) feet, whichever is greater. Setbacks between buildings may be reduced	<i>De Anza Lot:</i> Building A: 10 feet (requires Heart of the City Exception) <i>Bandley Lot: Consistent</i> Building B: 18 feet 11 inches Building C: 48 feet
Building area	n/a	389,019 sq. ft.
Lot area	n/a	De Anza Lot: 1.045 acres Bandley Lot: 3.975 acres
Lot coverage	n/a	De Anza Lot: 57.8% Bandley Lot: 51.2%
Vehicle Parking		
<i>See discussion below</i>	667	669 - Consistent
Common Open Space		
Commercial	2,830 sq. ft.	40,733 sq. ft. - Consistent
Residential	28,200 sq. ft.	28,650 sq. ft. - Consistent

## **BACKGROUND**

The applicant, De Anza Ventures, LLC, is proposing to demolish an 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 in a Planned General Commercial and Residential Zoning District. Project Plans are included as Attachment CC-15. Surrounding land uses currently consists of a mix of commercial, office, and residential which include the following:

- To the north is Aloft Hotel, office space, and Apple Cafeteria
- To the west is the mix of commercial, restaurant, and office uses
- To the south are a mixture of office buildings, and three banks
- To the east, across De Anza Boulevard, is Saint Joseph of Cupertino Parish and Comerica Bank

The application was originally submitted on September 3, 2015. Following the formal application, the applicant worked with Staff and the City's consultants to further refine the plans. The applicant proposes to begin the construction phase in late 2016, with a completion date of late 2019.

### **Planning Commission Meeting**

The Planning Commission reviewed the subject application on June 14, 2016 and July 26, 2016 on regular scheduled meetings. The June 14<sup>th</sup> meeting was continued to July 26<sup>th</sup> to provide an opportunity for the applicant and adjacent properties more time to discuss existing easements. The Commission discussed several issues including the private easements, retail, traffic, bicycle infrastructure, and below market housing.

On July 26, 2016, the Planning Commission recommended approval on a 3-1-1 vote (Lee voting no, Sun recused) to recommend that the City Council approve the application, subject to conditions. The Planning Commission staff reports, and final Planning Commission resolutions are in Attachments CC-8, CC-9, and CC-10.

## **DISCUSSION**

### **General Plan and Zoning**

*North Crossroads Node.* The parcels are identified within the General plan as part of the North Crossroads Node, located within the Heart of the City Special Area. The Heart of the City (HOC) area is intended to function as the City's main mixed-use, commercial, and retail corridor. Residential uses as identified in the City's Housing Element, should be developed in the "mixed-use village" format. The "mixed-use village" format includes:

- **Parcel assembly:** Parcelization is discouraged in the “mixed-use village.” The project avoids further parcelization by maintaining the existing amount of parcels, two.
- **Plan for complete redevelopment:** The Project proposes a complete redevelopment of the site. The complete redevelopment of the site allows for the development to be consistent with development standards, and provide appropriate buffers to adjacent uses.
- **Mixed-use village layout:** By incorporating the concepts of “transect planning” (appropriate street and building types of each area), designed at pedestrian scale and suitability, connection to existing streets, and developing a project that helps create a walkable urban block, the Project has utilized the concept of the Mixed-Use Village Layout.
- **Uses:** A mix of uses is intended in the “mixed-use village.” The project incorporates retail and active uses such as restaurants, outdoor dining areas, and ground floor entries along primary frontages. By providing a mixture of apartment unit types, the Project provides active “mixed-use” village environment that is suitable for young professions, couples, and/or active seniors who prefer an active environment.
- **Open space:** The project provides open space throughout the site including a centralized plaza, and an active open space between Building A and Building B that serve as community gathering spaces and provide an opportunity for community events. Art will be provided in the Project that activates the frontages at key focal points.
- **Architecture and urban design:** Through the incorporation of development standards within the Heart of the City, and comments from the City’s consulting architect, the Project has been designed to be of high-quality buildings with pedestrian-oriented architecture that emphasizes aesthetics, human scale, and the creation of a sense of place.
- **Parking:** Parking for the project is largely provided through underground parking consistent with the “mixed-use village” concept. Where parking above ground is provided, parking is located away from street frontages.
- **Neighborhood buffers:** While neighborhood buffers are normally needed when a development is abutting to single-family residences, the Project provides buffers to adjacent uses by incorporating setbacks consistent with the City’s development standards.

The project has been designed to be consistent with the “mixed-use village” format.

Furthermore, the General Plan identifies the area with a land use designation of Commercial, Office, and Residential. Figure LU-1 of the General Plan identifies development standards with a

maximum height of 45 feet, and to maintain the primary building bulk below a 1:1 slope line drawn from arterial curb lines. The proposed is consistent with these requirements.

***Planned development (P) zoning district.*** The site is within a planned development zoning district for general commercial and multi-family residential (“P (CG, Res)”). Therefore, as a project with commercial and residential components, it is an allowed use within the P zoning district.

### **Housing Element**

The site is identified as a “Priority Housing Element Site” in the Housing Element, with an allocation of 200 dwelling units. The project proposes 188 units, and provides a unit mixture of one (83) and two-bedroom (105) units. Of the 188 units, 16 units will be below market rate (BMR) units. The proposed project is consistent with the Housing Element.

### ***Density Bonus***

The proposed residential parcel has an area of 3.975 acres. Because the project has a density of 35 dwelling units per acre (du/ac), the parcel is permitted to have 139 units. However, the project proposes to incorporate 11 percent very low income (VLI) BMR units. State density bonus law and the City’s density bonus ordinance allow for the project to have a density bonus of 35 percent.

By utilizing the density bonus, the project has a residential yield of 188 units at a density of approximately 47 du/ac.

### ***Below Market Rate Units Agreement***

By incorporating BMR units into the project, the Applicant shall enter into an Affordable Housing Agreement as shown in Exhibit C of the Development Agreement (DA), and further referenced in the Conditions of Approval of the Development Permit.

The agreement provides provisions for the 16 the BMR units including a term of fifty-five years from the issuance of final occupancy for the Project, or the date the Project buildings are either demolished or converted to a non-residential use by the Developer with any City-issued approvals and permits that may be required.

The BMR Agreement shall be recorded prior to the recordation of a final map or issuance of any building permit.

### **Site Plan**

The mixed-use development consists of three building consisting of two mixed-use commercial/residential buildings and one hotel building.



General vehicle access through the site will be provided with driveways on Stevens Creek Boulevard and Bandley Drive. A portion of the required commercial parking is available in the driveway connecting Stevens Creek Boulevard and Bandley Drive. The access for Building A (hotel) will be provided from Alves Drive, while building B will have two driveways along Alves Drive. One driveway for Building B will provide parking access at the ground level, and the other driveway will provide access to the basement parking. Parking access for Building C will be provided at the driveway that transects the property.

A major pedestrian thoroughfare is provided along Alves Drive between Building A and Building B. This “paseo” serves to activate the space between the two buildings, and continues to provide emergency vehicle access for both buildings. Additionally, the access for the project from Stevens Creek Boulevard has been designed to be more pedestrian friendly by providing a sidewalk, street trees, and different paving materials that aid in the slowing of vehicles.

*Driveway Gates.* The applicant proposes the use of driveway gates to the residential parking areas in Building B and Building C, as shown in sheet A.13. Driveway gates may be approved through a fence exception in a mixed-use development, where the parking for different uses needs to be separated to assure availability of parking for each use. In this instance, the gates serve to separate the residential and commercial parking areas to ensure adequate parking for each use, making the fence consistent with the City’s requirements.

*Setbacks.* The project seeks a reduction of the required setbacks for Building A (De Anza lot).

The Heart of the City (HOC) requires a setback of one-half the building height, or ten feet; whichever is more restrictive. In this instance, one-half the building height would be 22 feet 6 inches, making the 22'-6" the required setback. The applicant proposes a setback of ten feet. Staff supports the reduced setback because Building A is located approximately 125 feet away from the adjacent building. Additionally, the HOC allows reduced minimum side and rear setbacks between on-site buildings within a common master plan in accordance with an approved development plan.

The Project also incorporates an HOC exception for a reduced setback for the architectural feature (*porte-cochere*) along the frontage of Building A adjacent to Alves Drive. The setback would be reduced from 31 feet from the edge of curb to 16 feet. The architectural feature has been designed to be pedestrian scaled, and providing frontage improvements to blend into the development.

### **Hotel Operation**

A use permit is required for the project since the City's General Commercial classifies hotels and restaurants with separate bars as conditional uses.

### **Architecture**

The design concept and intent is as follows:

- Integrate with the adjacent offices and bank/commercial neighbors, and to be interconnected to the neighboring retail centers for creating a unique Urban Village.
- Central plaza that forms the hub, the meeting, and event area for the entire block.
- Corners accented by significant plazas, urban landscape at the retail components, and a layered softer landscape at the residences.
- Central Plaza as a multipurpose community place not only for Marina's residents and guests, but also for surrounding neighborhoods.
- Tall floor heights for commercial spaces with the use of expansive glass to enhance the quality of interior spaces and increase the possibilities of indoor/outdoor connectivity.
- Bold corners exemplifying the architecture and character of the community with corners composed of interwoven vertical and horizontal elements that create drama, varied massing, and texture.





The project incorporates recommendations and design elements from the City's consulting architect to increase the quality of various design elements, such as the promotion of pedestrian scale and activity, defining tower elements, activation of the building's ground floor, and refinement of colors and materials. The perception of massing is reduced through design elements such as:

- Articulated walls with varying colors and materials;
- Large building setbacks along primary frontages that allow for greater pedestrian activity as well as varied landscaping;
- Ground floor commercial space with large glass walls that allow for activity between the interior and the exterior;
- Outdoor patio areas throughout the commercial space;
- Common open space that includes a paseo between Building A and Building B, and a plaza at the center of the project.

### **Landscaping and Tree Removal**

The proposed landscape plans seeks to utilize low to moderate plantings that will be consistent with the City's Water Efficiency Landscape Ordinance. The demolition and reconstruction of the site will result in the removal of all 90 trees on site. The majority of the trees to be removed are Southern Magnolia and Canary Island Pine.

While the trees slated for removal are not a protected species as defined by Cupertino Municipal Code (CMC) Chapter 14.18: Protected Trees, these trees are protected under the category of "approved development tree," because the trees were planted as part of the originally approved development. Therefore, replacement plantings are required for the proposed removal. The required replacement plantings are 107 24-inch box trees; however, the applicant proposes the

planting of 172 trees within a range of 24"-48" boxes as shown on plan sheet L4.01. Tree replacements will be of species that require low to moderate water needs, and include trees such as Crape Myrtle, Chinese Pistache, and London Plane. A conditions of approval has been added, so that prior to issuance of building permits the City's consulting arborist shall review the final planning. Staff recommends a peer review prior to building final to confirm that replacements have been planted in accordance with the City's Protected Trees Ordinance, and require a replacement bond in the amount to be determined by the City's arborist to ensure that the required tree replacements have been planted and verified by the City Arborist.

### **Transportation/Parking**

*Traffic Impact Analysis.* The 2015 General Plan EIR as updated by the 2015 Addendum (together, the "General Plan EIR") assumed development of the project site with 232 residential units on 6.86 acres for a density of 35 du/ac, and also analyzed the HOC Special Area, which includes the project site, with permitted development of up to 469 units, 122 hotel rooms, 793,270 square feet of commercial space, and 17,113 of office space.

As analyzed in the project-level Traffic Impact Analysis (TIA), the proposed project would be consistent with the scope of development analyzed in the General Plan EIR. The project site is assigned a maximum density of 35 du/ac in the General Plan, but by providing an adequate number and type of BMR units the project is entitled to increase the number of housing units consistent with the State's density bonus law and the City's density bonus ordinance. With the incorporation of density bonus units, the mixed-use parcel will have a residential density of approximately 47 du/ac; however, since the site was analyzed with a higher unit count and still within the permitted development of the HOC Special Area, the proposed project would be consistent with the General Plan.

The General Plan EIR analyzed buildout of the proposed General Plan. The General Plan EIR concluded that the cumulative traffic impacts of General Plan buildout would be significant. The General Plan EIR further concluded that Mitigation Measure TRAF-1 would reduce these impacts, but not to a less-than-significant level. Therefore, the General Plan EIR concluded that cumulative traffic impacts due to General Plan buildout, of which the proposed project is a part, would be significant and unavoidable. The City Council, accordingly, adopted Mitigation Measure TRAF-1 and incorporated it into the General Plan, and adopted a statement of overriding consideration as part of the required CEQA findings before certifying the EIR and approving Community Vision 2015-2040.

General Plan Policy M-10.2 requires the City to enact a transportation impact fee for new development to ensure sustainable funding levels for the Transportation Improvement Plan (see General Plan Policy M-10.1), and General Plan EIR Mitigation Measure TRAF-1 requires the City to commit to preparing and implementing a Transportation Mitigation Fee Program (TMFP) to

guarantee funding for roadway and infrastructure improvements that are necessary to mitigate impacts from future projects based on the then current City standards. As part of the preparation of the TMFP, the City is required to prepare a nexus study.

Because the project is part of the General Plan development contributing to the need for funding a transportation improvement plan to meet the City's needs, the project is required to contribute its fair share. The TMFP has not yet been adopted; therefore, as a condition of project approval, and included on the development agreement, the project will contribute to its fair share of the cost to accommodate cumulative traffic improvement needs due to build out of the General Plan. The amount is currently estimated to be \$3,000 per residential unit and \$2,000 per hotel room. No contribution for commercial uses is required because the project will reduce the commercial square footage on the site. Through the development agreement, the applicant will be allowed to pay the proposed fair share agreement for one year. If a traffic fee is adopted that is more than this estimate and building permits have not been issued, the applicant will be required to pay the new traffic impact fee.

A detailed discussion of methodology and intersection analysis for transportation is within the IS/MND, page 5-81 and technical appendix.

*Transportation alternatives.* The City has added a condition of approval to incorporate a Transportation Demand Management (TDM) program that seeks to reduce travel demand by encouraging other modes of transportation through requirements or incentives. The TDM Program may include, but is not limited to:

- Transportation coordinator;
- Bicycle hub;
- Secured bicycle storage facilities;
- Fix it bicycle repair station(s);
- Carpool and clean-fuel parking spaces;
- Unbundled parking;
- Participate in fair-share contribution if` and when a Transportation Management Association (TMA) is formed;

*Parking.* The project proposes to have parking (vehicle and bicycle) consistent with the City's requirements as shown in the Project Data Summary and reiterated below.

	Required	Proposed
<b>Vehicle Parking</b>		
Hotel – 1/unit + 1/employee	135	135
Retail Parking	164	164

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Residential – 2 per parking spaces per market rate unit and BMR units 1 parking space for 1 bedroom and 2 parking spaces for 2 bedroom	368	370
<b>Bicycle Parking</b>		
Commercial – 5% of auto parking Class II	16	16
Residential (High Density Multiple-Family) – 40% of units Class I	148	148

The City's parking requirement for multi-family developments is to have two parking spaces per unit, regardless of bedroom count. Through the use of the State's and City's density bonus regulations, the applicant seeks approval of a parking reduction for the one bedroom BMR units. In this case, the applicant will have one parking space for a one-bedroom unit, and two parking spaces for a two-bedroom unit, consistent with the State and City's regulations.

*Site Circulation.* The Applicant has designed the project to continue to provide circulation from adjacent properties throughout the site. However, the location of the buildings will result in the modification of some of the reciprocal access. Staff has reviewed and determined that circulation will continue to be provided adequately throughout the site and to adjacent properties. Because the project proposes the relocation and closure of access easements, a condition of approval has been added to for the Applicant to update and record necessary easements between the properties.

#### **Private Easements**

During the Planning Commission meetings, comments were received regarding the private easements between adjacent property owners.

The recommendation for approval of the project is based on the proposed project's consistency with applicable regulations. Since it is not within the purview of the City to negotiate private agreements between the parties, the proposed Resolutions include standard conditions (that are typically applied) to require private easements to be resolved prior to the issuance of building permits.

#### **Environmental Review**

Pursuant to the requirements of the California Environmental Quality Act (CEQA), an Initial Study/Mitigated Negative Declaration (IS/MND) has been prepared and is included as Attachment 12. The IS/MND is tiered from the General Plan Environmental Impact Report (EIR) in accordance with Sections 15152 and 15168 of the CEQA Guidelines and Public Resources Code Section 21094. The General Plan EIR analyzes full implementation of uses and physical

development proposed under the General Plan, and it identifies measures to mitigate the significant adverse program-level and cumulative impacts associated with that growth. The proposed project is an element of the growth that was anticipated in the General Plan and evaluated in the General Plan EIR.

As discussed in greater detail of the IS/MND Chapter 1.2, the CEQA concept of "tiering" refers to the evaluation of general environmental matters in a broad program-level EIR, with subsequent focused environmental documents for individual projects that implement the program. CEQA and the CEQA Guidelines encourage the use of tiered environmental documents to reduce delays and excessive paperwork in the environmental review process. This is accomplished in tiered documents by eliminating repetitive analyses of issues that were adequately addressed in the program EIR and by incorporating those analyses by reference.

The proposal is consistent with the General Plan and General Plan EIR because:

- The proposed project was included in the scope of the development projected in the General Plan and analyzed in the General Plan EIR, which also identified and analyzed project scenarios with a higher number of residential units and height limits.
- The Heart of the City Special Area allocated development consistent with the project.
- The project site is located in an area designated for commercial, office, and residential land uses within the General Plan.
- Changes to the population and employment projections are included within the scope of the General Plan EIR and the General Plan.
- The proposed project is within the scope of the cumulative impacts analyzed in the General Plan EIR

A more detailed discussion is provided within the IS/MND, Chapter 4 under the topic "General Plan EIR Consistency Analysis."

On May 26, 2016, the Environmental Review Committee held a public meeting and recommended approval of the Initial Study/MND (See attachment 11).

### **Development Agreement**

The applicant is proposing a development agreement (DA) as part of the project. The DA includes public benefits in exchange for certainty regarding standards and conditions that will apply to the project during the life of the DA.

Standard and required impact fees such as housing, parks and schools are not included in the consideration of public benefits. Public benefits are characterized as those voluntary

contributions beyond required fees, outlined as follows and included in the DA. The term of the DA is five years. Key contributions in the DA include:

1. **School District Agreement:** The Developer will enter into an agreement with Fremont Union High School (FUHSD) and Cupertino Union School District (CUSD) to provide annual contribution of \$18,000 and \$46,000 respectively, use of Hotel Room five (5) days a year by each district, and the use of the community room in the Hotel. The agreement is based on the letter sent by De Anza Ventures to the school districts (see attachment CC-7B and CC-7C). The term of the agreement is 20 years from the issuance of the first temporary certificate of occupancy or until the property is transferred to an unaffiliated third party following the issuance of the last final certificate of occupancy. It can be extended through mutual agreement by the school districts and the property owner. As written, if the project is sold to an unaffiliated third party, the agreement with CUSD and FUHSD could be voided even within the 20-year period. While the agreement would allow the unaffiliated third party to enter into a new agreement with FUHSD and CUSD, it would not require them to do so.
2. **Transportation Management Association (TMA):** The Developer will pay a one-time payment to the City in the amount of \$50,000 to fund startup costs, and an annual maximum contribution of \$20,000 per year increased annually based on increase in the Consumer Price Index.
3. **Public Improvements:** The Developer shall provide \$150,000 for certain public improvements including traffic and signal modification, \$35,000 for bicycle and pedestrian improvements, and a \$40,000 for bus shelter and benches.
4. **Sales Tax Point of Sale Designation:** The Developer shall instruct its general contractor(s) for the Project to, and direct such general contractor(s) to instruct its/their subcontractors to, cooperate with the City to ensure the local sales/use tax from the construction of the Project is allocated to the City to the fullest extent possible.
5. **Use of Hotel Conference Rooms:** The City is entitled to use the conference rooms at the Hotel subject to certain terms and conditions.

Other exhibits within the development agreement include these terms and conditions:

1. *Impact Fees*

While providing community benefits, development agreements also provide certainty for the applicant for certain items, including fees. With respect to housing mitigation, park impact, and transportation impact fees, the applicant's liability is capped for one year after the effective date of the agreement as defined within section 4.1 of the development agreement.

2. *Annual Review Form*

The compliance report, covering obligations met within the previous calendar year for the development agreement, is due annually to the City on December 1<sup>st</sup>.

3. *Affordable Housing Agreement and Declaration of Restrictive Covenants*

The housing agreement covers the broader terms of the BMR units such as the construction of the project and affordable rent units, rent regulatory provisions, and enforcement.

## PUBLIC NOTICING & OUTREACH

The following is a brief summary of the noticing completed for the project:

Public Notice	Agenda
<ul style="list-style-type: none"><li>▪ Legal ad placed in newspaper at least 10 days prior to the hearing</li><li>▪ Mailed notice of public hearing to property owners within 300 feet radius</li><li>▪ Posted site notice on three property lines abutting street</li><li>▪ Project updates provided to subscribers of e-notices on <a href="http://www.cupertino.org">www.cupertino.org</a></li><li>▪ Community meetings held on April 7, 2016 and April 9, 2016</li></ul>	<ul style="list-style-type: none"><li>▪ Posted on the City's official notice bulletin board at least one week prior to the hearing</li><li>▪ Posted on the City of Cupertino's Web site at least one week prior to the hearing</li></ul>

## PUBLIC COMMENTS

No public comments and questions have been received post Planning Commission hearing and as of the date of this report.

Prior to the Planning Commission and at the Planning Commission meeting, the following topic were referenced:

- Inclusion of Below Market Rate Units was favorable
- Mixed-use nature of the project was favorable
- Concerns over private easements
- Project as being beneficial for the community
- Lack of new allocations for development
- The Project's consistency with development standards was viewed favorably
- Concern over the loss of retail (grocery store)

### **PERMIT STREAMLINING ACT**

This application is not subject to the Permit Streamlining Act (Government Code Section 65920 – 65964) because a development agreement is a legislative act and shall be enacted by ordinance only after a public hearing before the City Council. However, the application is subject to the California Environmental Quality Act (CEQA), Guideline 15107, which states that the IS/MND must be adopted 180 days after the application is accepted as complete. Sixty days after adoption of the IS/MND, the lead agency must approve, disapprove or conditionally approve the project. In this case, the application and IS/MND are being concurrently presented. The application was deemed completed on May 18, 2016. Therefore, final action on the project must be completed by November 11, 2016.

### **NEXT STEPS**

After the first reading of the ordinance for the development agreement, a second reading of the ordinance would be scheduled for September 20, 2016. All approvals granted by the City Council regarding the ordinance and development agreement shall go into effect after 30 days of the second reading of the project.

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Prepared by: Erick Serrano, Associate Planner  
Reviewed by: Aarti Shrivastava, Assistant City Manager  
Approved by: David Brandt, City Manager

### **ATTACHMENTS:**

- CC-1 City Council Resolution for Development Plan DP-2015-05 and Environmental assessment EA-2015-035
- CC-2 City Council Resolution for Architectural and Site Approval, ASA-2015-22
- CC-3 City Council Resolution for Use Permit, U-2015-06
- CC-4 City Council Resolution for Heart of the City Exception, EXC-2016-03
- CC-5 City Council Resolution for Fence Exception, EXC-2016-05
- CC-6 City Council Resolution for Tree Removal Permit, TR-2016-14
- CC-7 ORD DA-2016-1 Draft Ordinance
  - CC-7A Marina DA Draft Agreement
  - CC-7B Letter from Applicant to Cupertino Union School District School District



DP-2015-05, ASA-2015-22  
U-2015-06, DA-2016-01, EXC-2016-03,  
EXC-2016-05, TR-2016-14  
EA-2015-05

Marina Plaza

September 6, 2016

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CC-7C Letter from Applicant to Fremont Union High School District  
CC-8 Planning Commission staff report and draft minutes, June 14, 2016  
CC-9 Planning Commission staff report and draft minutes, July 26, 2016  
CC-10 Final Planning Commission Resolutions (Nos. 6809-6814)  
CC-11 Environmental Review Committee Recommendation  
CC-12 Initial Study/Mitigated Negative Declaration (IS/MND)  
CC-13 Response to Comments Memo for IS/MND  
CC-14 CEQA Memo for Development Agreement  
CC-15 Project plans