

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

DRAFT RESOLUTION NO. 16-_____

OF THE CITY COUNCIL OF THE CITY OF CUPERTINO ADOPTING A MITIGATED NEGATIVE DECLARATION AND THE APPROVAL OF A DEVELOPMENT PERMIT 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 APARTMENT UNITS WITH ASSOCIATED SITE AND OFF-SITE IMPROVEMENTS IN A PLANNED DEVELOPMENT ZONE AT 10122 BANDLEY DRIVE AND 10145 NORTH DE ANZA BOULEVARD

SECTION I: PROJECT DESCRIPTION

Application No.: DP-2015-05 and EA-2015-05
Applicant: Amy Chan, De Anza Venture, LLC
Property Owner: Marina Plaza, LLC (APN 326-34-066), and Cupertino 10145, LLC (APN 326-32-043)
Location: 10122 Bandley Drive (APN 326-34-066) and 10145 North De Anza Boulevard (APN 326-32-043)

SECTION II: FINDINGS FOR DEVELOPMENT PERMIT:

WHEREAS, the City Council of the City of Cupertino received an application for a Development Permit as described in Section I. of this Resolution; and

WHEREAS, the Environmental Review Committee has reviewed an Initial Study and Mitigated Negative Declaration and recommended approval; and

WHEREAS, the Planning Commission held a public hearing on July 26, 2016 and recommended that the City Council approve the application, subject to conditions, and adopt the Mitigated Negative Declaration; and

WHEREAS, the necessary public notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the City Council has held at least one public hearing in regard to the application; and

WHEREAS, the applicant has met the burden of proof required to support said application; and

WHEREAS, the City Council finds as follows with regard to this application:

1. The proposed development, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

The project is consistent with the General Plan, Zoning Ordinance, and the Heart of the City Specific Plan and has been designed to be compatible with and respectful of adjoining land uses. Additionally, the relevant mitigation measures will be incorporated as part of the CEQA review process to mitigate potential impacts to a less than significant level. Therefore, the project will not be detrimental or injurious to properties or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.

2. The proposed development will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan and the purpose of the City's zoning ordinances.

The proposed development is in conformance with the Cupertino General Plan as part of the Crossroads Area within the Heart of the City Special Area. The Heart of the City area is envisioned as a well-planned and designed commercial, office, residential development, with enhanced activity nodes, and safe and efficient circulation and access for all modes of transportation between activity centers that help focus and support activity centers. The Project provides housing units consistent with the Housing Element within the General Plan. The Project has met the development standards as defined by the Heart of the City Specific Plan and the City Municipal Code such as heights, setbacks, and parking requirements.

The site is within a Planned Development Zoning District that allows General Commercial and Residential ("P (CG, Res)"). Therefore, the proposed development is consistent with the purpose of the City's zoning ordinance.

3. The applicant has requested a density bonus. Pursuant to Cupertino Municipal Code Section 19.56.070, before approving an application that includes a request for density bonus, incentive, parking reduction and/or waiver, the decision-making body shall make the following findings, as applicable:

- a) A finding that the residential project is eligible for the density bonus and any incentives, parking reductions or waivers requested.

Eleven percent of the units will be affordable to Very Low Income households at affordable rent or affordable housing cost, which entitles the project to a Density Bonus rate of 35 percent consistent Cupertino Municipal Code Section 19.56.030 (A).

- b) A finding that any requested incentive will result in identifiable, financially sufficient, and actual cost based on the financial analysis and documentation provided.

No incentives are requested as part of the project, so the finding is not applicable.

- c) If the density bonus is based all or in part on donation of land, a finding that all requirements included Section 19.56.030C have been met.

The density bonus is not based on the donation of land, so the finding is not applicable.

- d) If the density bonus is based all or in part on the inclusion of a child care facility, a finding that all requirements included in Section 19.56.030 (D) have been met.

The density bonus is not based on the inclusion of a child care facility, so the finding is not applicable. .

- e) If the density bonus or incentive is based on a condominium conversion, a finding that all the requirements included in Section 19.56.030 (E) have been met.

The density bonus is not based on a condominium conversion, so the finding is not applicable.

- f) If the incentive includes mixed-use development, a finding that all requirements including in Section 19.56.40 (B) (2) have been met.

While the project is a mixed-use development, the density bonus is not based on the mixed-used development as an incentive, so the finding is not applicable.

- g) If a waiver is requested, a finding that the development standards for which the waiver is requested would have the effect of physically precluding the construction of the housing development with the density bonus incentives permitted.

No waiver is requested, so the finding is not applicable.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the initial study, maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on PAGE 2 thereof,

1. The application for a Development Permit, Application no. DP-2015-05 is hereby approved contingent upon the effectiveness of the Development Agreement Ordinance. In the even that the Development Agreement Ordinance does not become effective, this Development Permit shall not be deemed adopted; and
2. A mitigated negative declaration with a mitigation monirting report (file no. EA-2015-05) is hereby adopted; and

That the subconclusions upon which the findings and conditions specified in this Resolution are based and contained in the Public Hearing record concerning Application no.(s) **EA-2015-05 and DP-2015-05** as set forth in the Minutes of the City Council Meeting of **September 6, 2016** and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval recommendation is based on the plan set received on June 2, 2016 consisting 134 sheets labeled as "Marina Plaza the urban village" consisting of 134 sheets labeled as T.1 to T.9, C1.0 to C5.2, R-1 to R-2, JT-1 to JT-3, A.0 to A.65, PM-1 to PM-3, SL-1 to SL-3, E-1 to E-2, and L0.02 to L5.02, drawn by Dahlin Group, VER Consultants, RGA, Bruce Jett Associates, Coffman Engineers. Inc, Emerald City Engineer, Inc. Beyond Efficiency Inc, and RGD Acoustic, Inc., except as may be amended by conditions in this resolution.

2. 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.

3. **CONCURRENT APPROVAL CONDITIONS**

The conditions of approval contained in file nos. ASA-2015-22, U-2015-06, DA-2016-01, TR-2016-14, EXC 2016-03, and EXC-2016-05 shall be applicable to this approval.

4. **DEVELOPMENT APPROVAL AND PROJECT AMENDMENTS**

Development Permit approval is granted for a 122-room hotel, and two mixed-use buildings with 188 apartment units with approximately 22,600 square feet of commercial space through the demolition of existing commercial buildings.

The Planning Commission shall review amendments to the project considered major by the Director of Community Development.

5. **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.

4. **ODOR ABATEMENT SYSTEMS**

Odor abatement systems shall be installed for all new eating establishments and common food preparation areas. The design of the odor abatement system will be finalized at the building permit stage. Equipment associated with the odor abatement systems shall be appropriately screened if visible from the public right-of-way.

5. **SIGN PROGRAM**

Signage is not approved with this application. A separate sign program and building permit shall be required to be submitted to the City and approved prior to final occupancy. Signage shall conform to the regulations stipulated in the City's Sign Ordinance, unless otherwise approved with a sign program.

6. **PUBLIC ART REQUIREMENT**

Public art shall be provided in accordance with the City's Public Art Ordinance (Chapter 19.148 of the Cupertino Municipal Code). Per the ordinance, the minimum expenditure for the artwork, including, but not limited to design, fabrication, and installation is 0.25 percent of the total project budget, with an expenditure cap of one hundred thousand dollars (\$100,000). The project pro-forma shall be provided to the City to confirm the project budget.

The final design, display, and location of the public art shall be brought before the Fine Arts Commission for review and approval. The minimum expenditure for the artwork, including but not limited to design, fabrication, and installation, is one-quarter of one percent, with an expenditure cap of one hundred thousand dollars (\$100,000).

7. **HOUSING MITIGATION FEES**

The applicant shall participate in the City's Below Market Rate (BMR) Housing Program by paying housing mitigation fees prior to issuance of building permits as per the Housing Mitigation Manual; except as may be otherwise set forth in the Development Agreement (DA) between the City and the applicant.

10. SCHOOL IMPACT FEES

The applicant shall pay the applicable school impact fees assessed by the school districts prior to issuance of building permits.

11. RECIPROCAL ACCESS EASEMENTS

Prior to building permit issuance, the applicant shall update and record necessary reciprocal ingress and egress easements between the adjoining properties to run in perpetuity, consistent with prior conditions of approval in Resolutions 1750 and 2376. The easement shall contain a provision that it may not be modified without the prior express written approval of the City. The easement language shall be reviewed and approved by the City prior to recordation with the County Recorder's Office. A financial deposit will be required for the City Attorney's Office review time.

12. CONDOMINIUMIZATION

Parcelization/condominiumization of units is not approved as part of this project. Any proposed changes to the map shall require further City review and approval.

13. AFFORDABLE HOUSING PLAN

The applicant shall submit an "Affordable Housing Plan" prior to building permit issuance. The Affordable Housing Plan shall identify the Below Market Rate (BMR) units in the development. The applicant shall submit a site plan showing and documenting the total number of BMR units on-site, location of BMR units within the development, bedroom size, unit size (square footage), unit type, and income level.

The applicant shall describe how the proposed BMR units will be phased within the proposed development (Example: how many BMR units will be constructed in Phase 1, 2, etc....).

14. BMR UNIT DESIGN REQUIREMENTS

The applicant shall detail how the following requirements shall be met prior to building permit issuance:

- a) 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.
- b) BMR unit size should generally be representative of the unit sizes within the market-rate portion of the residential project.
- c) Interior features and finishes in the affordable units shall be durable, of good quality and consistent with the contemporary standards of new housing.
- d) BMR units shall be dispersed throughout the residential project.

15. BMR AGREEMENT

Prior to the recordation of a final map or issuance of any building permit, an affordable housing agreement shall be recorded against the property. The affordable housing agreement shall include, but not be limited to the following:

- a) Total number of BMR units, type, location (site map), square footage, number of bedrooms, and construction scheduling of market-rate and BMR units;
- b) Provisions to ensure concurrent construction and completion of BMR units and market-rate units;
- c) Affordability levels for each BMR unit;

- d) Provisions for income certification and screening of potential occupants of BMR units;
- e) Restriction control mechanisms;
- f) Financing of ongoing administrative and monitoring costs;
- g) Other reasonably required provisions to implement the Affordable Housing Plan.

16. **BMR Unit Terms of Affordability:**

Prior to occupancy, the proposed project shall record covenants that require the units to be occupied at rents that are affordable to very low-income households for for a term of (i) fifty five (55) years from the issuance of the final certificate of occupancy for the Project or (ii) the date the Project buildings are either (a) demolished or (b) converted to a non-residential use by applicant, its successors or assigns, with any City-issued approvals and permits that may be required, whichever is longer.

17. **GREEN BUILDING**

The project shall be constructed in accordance with the City's Green Building Ordinance (Chapter 16.58 of the Cupertino Municipal Code). The applicant shall obtain LEED Silver certification or an alternative reference standard in accordance with the ordinance since the building size is over 50,000 square feet. Third party LEED certification or alternative reference standard is required per the ordinance criteria.

18. **TRANSPORTATION DEMAND MEASURES (TDM)**

The Director of Community Development has the ability to require additional transportation demand measures (TDM) to address any future parking concerns. Examples of TDM may include, but are not limited to:

- a. Employing a transportation coordinator who will be assigned to the Marina Plaza project with the authority to implement the TDM programs. The Transportation Coordinator shall provide the City annual reports on January 31st on the implementation of the TDM programs and strategies; except as may be otherwise set forth in the Development Agreement (DA) between the City and the applicant.
- b. Making fair-share contributions if and when a Transportation Management Association (TMA) is formed. If a TMA is formed within the coverage and/or a shuttle stop is within walking distance of the development, the applicant shall make a one-time contribution to the City in the amount of fifty thousand dollars (\$50,000) to fund a portion of the start-up costs of the TMA. The applicant shall make an annual maximum fair-share contribution of twenty thousand dollars (\$20,000) on January 31st following the the formation of a TMA. The applicant shall make an additional fair-share contribution each January 31 thereafter. After the first payment, the amount of the fair-share contribution will increase annually by a percentage equivalent to the increase of the Consumer Price Index over the prior one-year period. The annual fair-share contribution will be based on the Project's proportionate share of estimated ridership for the TMA; except as may be otherwise set forth in the Development Agreement (DA) between the City and the Applicant..
- c. Bicycle hub
- d. Secured bicycle storage facilities
- e. Fix it bicycle repair station(s)
- f. Carpool and clean-fuel parking spaces

- g. Unbundled parking
- h. Shuttle service for hotel guests

19. **BICYCLE PARKING CLASS**

The applicant shall provide bicycle parking consistent with the City's Parking Regulations under Chapter 19.124 of the Cupertino Municipal Code, and to the satisfaction of the Director of Community Development.

20. **SITE LIGHTING**

All new lighting must conform to the standards in the Parking Regulations Ordinance, and the final lighting plan (including a detailed photometric plan) shall be reviewed and approved by the Director of Community Development prior to building permit issuance. Prior to final occupancy, a licensed lighting consultant shall confirm that the lighting is in compliance with the City's standards.

21. **ROOFTOP EQUIPMENT SCREENING**

All mechanical and other equipment on the building or on the site shall be screened so they are not visible from public street areas or adjoining developments. The height of the screening shall be taller than the height of the mechanical equipment that it is designed to screen. A line of sight plan may be required to demonstrate that the equipment will not be visible from any public right-of-way. The location of the equipment and necessary screening shall be reviewed and approved by the Director of Community Development prior to issuance of building permits.

22. **UTILITY STRUCTURE PLAN**

Prior to issuance of building permits, the applicant shall work with staff to provide a detailed utility plan to demonstrate screening or undergrounding of all new utility structures, including, but not limited to backflow preventers (BFP), fire department connections (FDC), post-indicator valves (PIV), and gas meters, to the satisfaction of the Director of Community Development, Public Works, Fire Department, and applicable utility agencies.

23. **NOISE LEVELS AND ABATEMENT**

Project construction and use shall comply with the City's Community Noise Control Ordinance at all times. Should the project exceed any of the stipulated maximum noise levels outlined in the City's Community Noise Control Ordinance, an acoustical engineer may be required to submit noise attenuation measures to the satisfaction of the Director of Community Development at the applicant's expense.

24. **LANDSCAPE PROJECT SUBMITTAL**

Prior to issuance of building permits, the applicant shall submit a full landscape project submittal per section 14.15.040 of the Landscaping Ordinance. The Water-Efficient Design Checklist (Appendix A of Chapter 14.15), Landscape and Irrigation Design Plans, and Water Budget Calculations shall be reviewed and approved to the satisfaction of the Director of Community Development prior to issuance of building permits.

25. **LANDSCAPE INSTALLATION REPORT**

A landscape installation audit shall be conducted by a certified landscape professional after the landscaping and irrigation system have been installed and prior to final occupancy. The findings of the assessment shall be consolidated into a landscape installation report.

The landscape installation report shall include, but is not limited to: inspection to confirm that the landscaping and irrigation system are installed as specified in the landscape and irrigation design plan, system tune-up, system test with distribution uniformity, reporting overspray or run-off that causes overland flow, and preparation of an irrigation schedule.

The landscape installation report shall include the following statement: "The landscape and irrigation system have been installed as specified in the landscape and irrigation design plan and complies with the criteria of the ordinance and the permit."

26. LANDSCAPE AND IRRIGATION MAINTENANCE

A maintenance schedule shall be established and submitted to the Director of Community Development or his/her designee, either with the landscape application package, with the landscape installation report prior to issuance of final occupancy, or any time before the landscape installation report is submitted prior to issuance of building permits.

- a) Schedules should take into account water requirements for the plant establishment period and water requirements for established landscapes.
- b) Maintenance shall include, but not be limited to the following: routine inspection; pressure testing, adjustment and repair of the irrigation system; aerating and de-thatching turf areas; replenishing mulch; fertilizing; pruning; replanting of failed plants; weeding; pest control; and removing obstructions to emission devices.
- c) Failed plants shall be replaced with the same or functionally equivalent plants that may be size-adjusted as appropriate for the stage of growth of the overall installation. Failing plants shall either be replaced or be revived through appropriate adjustments in water, nutrients, pest control or other factors as recommended by a landscaping professional.

27. PRE-CONSTRUCTION MEETING AND CONSTRUCTION MANAGEMENT PLAN

Prior to commencement of construction activities, the applicant shall arrange for a pre-construction meeting with the pertinent departments (including, but not limited to, Building, Planning, Public Works, Santa Clara County Fire Department) to review an applicant-prepared construction management plan including, but not limited to:

- a. Plan for compliance with conditions of approval
- b. Plan for public access during work in the public right-of-way
- c. Construction staging area
- d. Construction schedule and hours
- e. Construction phasing plan, if any
- f. Contractor parking area
- g. Tree preservation/protection plan
- h. Site dust, noise and storm run-off management plan
- i. Emergency/complaint and construction site manager contacts

28. CONSTRUCTION HOURS

Construction activities shall be limited to Monday through Friday, 7 am to 8 pm and Saturday and Sunday, 9 am to 6 pm. Construction activities are not allowed on holidays. Maximum noise levels are delineated in the City's Community Noise Control Ordinance.

The applicant shall be responsible for educating all contractors and subcontractors of said construction restrictions. Rules and regulations pertaining to all construction activities and

limitations identified in this permit, along with the name and telephone number of a applicant appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.

29. **DEMOLITION REQUIREMENTS**

All demolished building and site materials shall be recycled to the maximum extent feasible subject to the discretion of the Building Official. The applicant shall provide evidence that materials were recycled prior to issuance of final demolition permits.

30. **DUST CONTROL**

The following construction practices shall be implemented during all phases of construction for the proposed project to prevent visible dust emissions from leaving the site:

- a) Water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- b) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;
- c) Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- d) Sweep streets daily, or more often if necessary (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
- e) The applicant shall incorporate the City's construction best management practices into the building permit plan set.

31. **ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES**

Per the mitigation measures outlined in the Mitigation Monitoring and Reporting Program based on the Initial Study dated April 29, 2016, titled "Initial Study and Mitigated Negative Declaration, The Marina Plaza Project," prepared by PlaceWorks and adopted as Mitigated Negative Declaration EA-2015-05, the following is an outline of mitigation measures that apply:

- a. Mitigation Measure AIR-1: The project's construction contractor shall comply with the following Bay Area Air Quality Management District (BAAQMD) Best Management Practices (BMPs) for reducing construction emissions of fugitive dust (PM10 and PM2.5):
 - Water all active construction areas at least twice daily, or as often as needed to control dust emissions. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
 - Pave, apply water twice daily or as often as necessary to control dust, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
 - Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
 - Sweep daily (with water sweepers using reclaimed water if possible) or as often as needed all paved access roads, parking areas and staging areas at the construction site to control dust.
 - Sweep public streets daily (with water sweepers using reclaimed water if possible) in the vicinity of the project site, or as often as needed, to keep streets free of visible soil material.

- Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
 - Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
 - Limit vehicle traffic speeds on unpaved roads to 15 miles per hour (mph).
 - Replant vegetation in disturbed areas as quickly as possible.
 - Install sandbags or other erosion control measures to prevent silt runoff from public roadways
- b. Mitigation Measure AIR-2: During construction, the construction contractor(s) shall use construction equipment fitted with engines that meet the United States Environmental Protection Agency (US EPA)-Certified Tier 3 emissions standards for equipment of 50 horsepower or more. The construction contractor shall maintain a list of all operating equipment in use on the project site for verification by the City of Cupertino Building Division official or their designee. The construction equipment list shall state the makes, models, and number of construction equipment onsite. Equipment shall properly service and maintain construction equipment in accordance with the manufacturer's recommendations. The construction contractor shall also ensure that all nonessential idling of construction equipment is restricted to five minutes or less in compliance with CARB Rule 2449. Prior to issuance of any construction permit, the construction contractor shall ensure that all construction plans submitted to the City of Cupertino Planning Department and/or Building Division clearly show the requirement for US EPA Tier 3 or higher emissions standards for construction equipment over 50 horsepower.
- c. Mitigation Measure BIO-1: Nests of raptors and other birds shall be protected when in active use, as required by the federal Migratory Bird Treaty Act and the California Department of Fish and Game Code. If construction activities and any required tree removal occur during the breeding season (February 1 and August 31), a qualified biologist shall be required to conduct surveys prior to tree removal or construction activities. Preconstruction surveys are not required for tree removal or construction activities outside the nesting period. If construction would occur during the nesting season (February 1 to August 31), preconstruction surveys shall be conducted no more than 14 days prior to the start of tree removal or construction. Preconstruction surveys shall be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped. Locations of active nests containing viable eggs or young birds shall be documented and protective measures implemented under the direction of the qualified biologist until the nests no longer contain eggs or young birds. Protective measures shall include establishment of clearly delineated exclusion zones (i.e., demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by a qualified biologist, taking into account the species of birds nesting, their tolerance for disturbance and proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds. The active nest within an exclusion zone shall be monitored on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status. The radius of an exclusion zone may be increased by the qualified biologist if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified biologist only in consultation with

California Department of Fish and Wildlife. The protection measures shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.

- d. Mitigation Measure CULT-1: If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing activities, all work within 50 feet of the resources shall be halted and a qualified archaeologist shall be consulted to assess the significance of the find according to CEQA Guidelines Section 15064.5. If any find is determined to be significant, representatives from the City and the archaeologist would meet to determine the appropriate avoidance measures or other appropriate mitigation. All significant cultural materials recovered shall be, as necessary and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards. In considering any suggested mitigation proposed by the consulting archaeologist to mitigate impacts to historical resources or unique archaeological resources, the City shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, proposed project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) would be instituted. Work may proceed on other parts of the project site while mitigation for historical resources or unique archaeological resources is being carried out.
- e. Mitigation Measure CULT-2: In the event that fossils or fossil-bearing deposits are discovered during construction, excavations within 50 feet of the find shall be temporarily halted or diverted. The contractor shall notify a qualified paleontologist to examine the discovery. The paleontologist shall document the discovery as needed, in accordance with Society of Vertebrate Paleontology standards (Society of Vertebrate Paleontology 1995), evaluate the potential resource, and assess the significance of the finding under the criteria set forth in CEQA Guidelines Section 15064.5. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the project proponent determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project based on the qualities that make the resource important. The excavation plan shall be submitted to the City for review and approval prior to implementation.
- f. Mitigation Measure HAZ-1a: The applicant shall hire the services of a Cal OSHA-certified qualified asbestos abatement consultant to conduct a pre-construction assessment for asbestos containing materials (ACMs). Prior to the issuance of the demolition permit, the Applicant shall provide a letter to the City of Cupertino Planning Department from a qualified asbestos abatement consultant that no ACMs are present in the buildings. If ACMs are found to be present, the hazardous materials shall be properly removed and disposed of prior to demolition of buildings on the project site in compliance with applicable federal, State, and local regulations, such as the EPA's Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) regulation, BAAQMD Regulation 11, Title 8 of the California Codes of Regulations, the Unified Program, and the City's General Plan policies.
- g. Mitigation Measure HAZ-1b: The applicant shall hire the services of a qualified lead paint abatement consultant to conduct a pre-construction assessment of lead based paints. Prior to

the issuance of the demolition permit, the applicant shall provide a letter to the City of Cupertino Planning Department from a qualified lead paint abatement consultant that no lead paint is present in on-site buildings. If lead paint is found to be present on the buildings to be demolished, the hazardous materials shall be properly removed and disposed of in compliance with applicable federal, State, and local regulations, including EPA's NESHAP regulation, Title 40 of the Code of Federal Regulations, Title 8 of the California Codes of Regulations, the Unified Program, and the City's General Plan policies.

32. 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.

33. INDEMNIFICATION

To the extent permitted by law, the applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void this Resolution or any permit or approval authorized hereby for the project, including (without limitation) reimbursing the City its actual attorneys' fees and costs incurred in defense of the litigation. The applicant and City shall use best efforts to select mutually agreeable legal counsel to defend such action, and the applicant shall pay all compensation for such legal counsel, following the applicant's receipt of invoices from City, together with reasonable supporting documentation. Such compensation shall include reasonable compensation paid to counsel not otherwise employed as City staff 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. If the applicant and the City cannot in good faith agree on joint counsel, the City shall have the right to retain counsel of its own choosing, separate from the applicant's litigation counsel.

34. 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.

SECTION IV: CONDITIONS ADMINISTERED BY THE PUBLIC WORKS DEPARTMENT

35. STREET IMPROVEMENTS

Public street dedications and improvements shall be provided in accordance with City Standards and specifications and as required by the City Engineer for all four street frontages.

- 1) Street dedications will be required to achieve a 16' wide right of way on Alves Drive fronting the hotel and the driveway along De Anza Blvd and a 10' right of way along Bandley Drive and on Alves Drive fronting Building B

- 2) Curbs and gutters, sidewalks, driveways, and related structures shall be installed in accordance with grades and standards as specified by the City Engineer.
- 3) If tie backs are proposed to encroach into the public right-of-way for shoring purpose, locations must be shown on the street improvement plans. Structural design must incorporate de-tensioning of tie backs upon completion of construction support. A tie-back encroachment fee in the amount of \$150 per tie back will be required.

36. **TRAFFIC IMPACT FEE**

Policy M-10.2 of the Mobility Element of the City's General Plan and Mitigation Measure TRAF-1 of the 2014 General Plan EIR require the City to enact a transportation impact fee for new development, following preparation of a nexus study. The purpose of the fee is to ensure sustainable funding levels for the City's transportation improvement plan necessary to mitigate the impacts of buildout of the General Plan. If the City adopts a transportation impact fee prior to the issuance of building permits, the applicant shall pay the amount of the fee applicable to the project prior to building permit issuance.

If City has not adopted a Citywide Transportation Impact Fee within one (1) year of the Effective Date, applicant shall pay to the City an amount of Four Hundred Thirteen Thousand Nine Hundred Fifty Two Dollars (\$413,952.00) as a negotiated transportation infrastructure contribution ("Negotiated Transportation Infrastructure Contribution"). The Negotiated Transportation Impact fee incorporates the credit from the commercial transportation impact fee due to the net loss of commercial area as a result of the project, and is subject to change if applicant modifies the project as stated in the Development Agreement. The Negotiated Transportation Infrastructure Contribution shall be payable at the time of the first building permit for the Project.

If City adopts a Citywide Transportation Impact Fee within one (1) year of the Effective Date, applicant shall pay the lesser of (i) the Negotiated Transportation Infrastructure Contribution or (ii) the Citywide Transportation Impact Fee at the rate in effect at the time of payment. In the event that City adopts a Citywide Transportation Impact Fee within one (1) year of the Effective Date, applicant has paid the Negotiated Transportation Infrastructure Contribution, and the amount of such Citywide Transportation Impact Fee is less than the amount of the Negotiated Transportation Infrastructure Contribution, City shall credit applicant the difference by (1) first applying the credit to any fees or payments owed to City no later than the date of issuance of the final certificate of occupancy; then (2) after application of all applicable credits, up to the date that is one (1) year from the issuance of the final certificate of occupancy, refunding the remainder of the difference.

If City adopts a Citywide Transportation Impact Fee more than one (1) year from the Effective Date, applicant shall have no right to any refund of the difference between the amount of the Negotiated Transportation Infrastructure Contribution and the amount of such Citywide Transportation Impact Fee.

37. **TRAFFIC SIGNAL**

The applicant shall contribute up to \$150,000 to the City for traffic signal modification at Stevens Creek Blvd and Bandley Drive intersection which may include replacing traffic standards, restriping of the lanes, installing of loop detectors, and related concreting and asphalt work.

38. LOT LINE ADJUSTMENT

Prior to approval of the Building permit, a lot line adjustment shall be submitted to the Public Works Department for review and approval. The requirements for a lot line adjustment submittal can be obtained from the Public Works Department.

39. PEDESTRIAN AND BICYCLE IMPROVEMENTS

The applicant shall provide pedestrian and bicycle related improvements consistent with the Updated Cupertino Bicycle Transportation Plan and the Pedestrian Transportation Guidelines, and as required by the City Engineer.

- 1) The applicant shall contribute \$35,000 for the installation of shared lane markings and signs consistent with the California Manual for Uniform Traffic Control Devices along Bandley Drive fronting the property and on Alves Drive between Anton Way and Bandley Drive to the satisfaction of the City Engineer.
- 2) The applicant shall install bicycle racks near the entrance of commercial and retail areas with good visibility and bicycle parking way finding signs as recommended in the 2016 Cupertino Bicycle Transportation Plan.
- 3) The applicant shall make street improvements to the satisfaction of the City Engineer, including the installation of bulbouts at the southwesterly and southeasterly corner of Bandley Drive and Alves Drive.
- 4) The applicant shall reserve an area on the property for a potential citywide bike share program and shall purchase, install, operate, and maintain equipment that is compatible with the future City bike share program or as approved by the City Engineer.

40. STREET LIGHTING INSTALLATION

The applicant shall install one new city standard street light at the southeasterly corner of Alves Drive and Bandley Drive facing Alves Drive, and one new street light on De Anza Blvd. approximately 200' south of Alves Drive. Street lighting shall be installed per the Caltrans Standard Plans and Specification (2015) and shall be as approved by the City Engineer. Lighting fixtures shall be positioned so as to preclude glare and other forms of visual interference to adjoining properties, and shall be no higher than the maximum height permitted by the zone in which the site is located.

41. GRADING

Grading shall be as approved and required by the City Engineer in accordance with Chapter 16.08 of the Cupertino Municipal Code. 401 Certifications and 404 permits maybe required. Please contact Army Corp of Engineers and/or Regional Water Quality Control Board as appropriate.

42. DRAINAGE

Drainage shall be provided to the satisfaction of the City Engineer. Hydrology and pre- and post-development hydraulic calculations must be provided to indicate whether additional storm water

control measures are to be constructed or renovated. The storm drain system may include, but is not limited to, subsurface storage of peak stormwater flows (as needed), bioretention basins, vegetated swales, and hydrodynamic separators to reduce the amount of runoff from the site and improve water quality. The storm drain system shall be designed to detain water on-site (e.g., via buried pipes, detention systems or other approved systems and improvements) as necessary to avoid an increase of the ten percent flood water surface elevation to the satisfaction of the City Engineer. Any storm water overflows or surface sheeting should be directed away from neighboring private properties and to the public right of way as much as reasonably possible.

All on-site and off-site storm drain inlets shall be clearly marked with the words “No Dumping – Flows to Creek” using permanently affixed metal medallions or equivalent, as approved by the Environmental Programs Division.

43. **IMPROVEMENT AGREEMENT**

The applicant shall enter into a public improvement agreement with the City of Cupertino providing for payment of fees, including but not limited to checking and inspection fees, storm drain fees, park dedication fees and fees for under grounding of utilities. Said agreement shall be executed prior to issuance of construction permits

Fees:

a. Checking & Inspection Fees:	Per current fee schedule (\$4,498.00 or 6% of improvement costs)
b. Grading Permit:	Per current fee schedule (\$2,618.00 or 6% of improvement costs)
c. Development Maintenance Deposit:	\$ 1,000.00
d. Storm Drainage Fee:	Per current fee schedule (\$8,518.00 per AC)
e. Power Cost:	**
f. Parcel Map Review Fees:	Per current fee schedule (4,254.00)
g. Park Fees:	Per current fee schedule (\$21,600 per unit)
h. Street Tree	By applicant
i. Encroachment Permit Fee:	Per current fee schedule (\$1,703.00 or 5% of Project Costs and/or \$50.00 per inspection.
j. Lot Line Adjustment	Per current fee schedule (\$3,012.00)
j. Storm Management Plan Fee	Per current fee schedule (\$715.00)

** Based on the latest effective PG&E rate schedule approved by the PUC

Bonds:

- Faithful Performance Bond: 100% of Off-site and On-site Improvements
- Labor & Material Bond: 100% of Off-site and On-site Improvement
- On-site Grading Bond: 100% of site improvements.

The fees described above are imposed based upon the current fee schedule adopted by the City Council. However, the fees imposed herein may be modified at the time of recordation of a final map or issuance of a building permit in the event of said change or changes, the fees changed at that time will reflect the then current fee schedule.

44. C.3 REQUIREMENTS

C.3 regulated improvements are required for all projects creating and/or replacing 10,000 S.F. or more of impervious surface (collectively over the entire project site). The applicant shall reserve a minimum of 4% of developable surface area for the placement of low impact development measures, for storm water treatment, unless an alternative storm water treatment plan, that satisfies C.3 requirements, is approved by the City Engineer.

The applicant must include the use and maintenance of site design, source control and storm water treatment Best Management Practices (BMPs), which must be designed per approved numeric sizing criteria. A Storm Water Management Plan, Storm Water Facilities Easement Agreement, Storm Water Facilities Operation and Maintenance Agreement, certification of ongoing operation and maintenance of treatment BMPs, and access easements are each required.

All storm water management plans are required to obtain certification from a City approved third party reviewer.

45. TRASH, RECYCLING AND COMPOST ENCLOSURES

Trash enclosure plans must be designed in accordance with the City's "Public Works Guidelines" posted at www.cupertino.org/nowaste, and to the satisfaction of the Environmental Programs Manager. Clearance by the Public Works Department is required prior to obtaining a building permit. (CMC 9.18.210 H & K)

46. OPERATIONS & MAINTENANCE AGREEMENT

The applicant shall enter into an Operations & Maintenance Agreement with the City prior to final occupancy. The Agreement shall include the operation and maintenance for non-standard appurtenances in the public road right-of-way that may include, but is not limited to, landscaping in parkstrip, trees, street furniture, and/or street lights.

47. UNDERGROUND UTILITIES

The applicant shall comply with the requirements of the Underground Utilities Ordinance No. 331 and other related ordinances and regulations of the City of Cupertino, and shall coordinate with affected utility providers for installation of underground utility devices. The applicant shall submit detailed plans showing utility underground provisions. Said plans shall be subject to prior approval of the affected utility provider and the City Engineer.

48. TRANSFORMERS

Electrical transformers, telephone cabinets and similar equipment shall be placed in underground vaults. The applicant must receive written approval from both the Public Works Department and the Community Development Department prior to installation of any above ground equipment. Should above ground equipment be permitted by the City, equipment and enclosures shall be screened with fencing and landscaping such that said equipment is not visible from public street areas, as determined by the Community Development Department. Transformers shall not be located in the front or side building setback area.

49. WATER BACKFLOW PREVENTERS

Domestic and Fire Water Backflow preventers and similar above ground equipment shall be screened and placed away from the public right of way and site driveways to a location approved by the Cupertino Planning Department, Santa Clara County Fire Department and the water company.

50. **BEST MANAGEMENT PRACTICES**

The applicant shall utilize Best Management Practices (BMPs), as required by the State Water Resources Control Board, for construction activity, which disturbs soil. BMP plans shall be included in grading and street improvement plans.

51. **NPDES CONSTRUCTION GENERAL PERMIT**

When and where it is required by the State Water Resources Control Board (SWRCB), the applicant must obtain a Notice of Intent (NOI) from the SWRCB, which encompasses preparation of a Storm Water Pollution Prevention Plan (SWPPP), use of construction Best Management Practices (BMPs) to control storm water runoff quality, and BMP inspection and maintenance.

52. **EROSION & SEDIMENT CONTROL PLAN**

The applicant must provide an approved erosion sediment control plan by a Registered Civil Engineer. This plan should include all erosion and sediment control measures used to retain materials on site. Erosion and sediment control notes shall be stated on the plans.

53. **WORK SCHEDULE**

Every six months, the applicant shall submit a work schedule to the City to show the timetable for all grading/erosion and sediment control work in conjunction with this project.

54. **TRAFFIC CONTROL PLAN**

The applicant must submit a traffic control plan by a registered traffic engineer to be approved by the City. The plan shall include a temporary traffic control plan for work in the right of way as well as a routing plan for all vehicles used during construction. All traffic control signs must be reviewed and approved by the City prior to commencement of work. The applicant must comply with the City's Manual on Uniform Traffic Control Devices (MUTCD) standards for all signage and striping work throughout the City.

55. **CONSTRUCTION MANAGEMENT PLAN**

The applicant must submit a Construction Management Plan to be approved by the City. The plan shall include proposed haul routes, dust and noise management approach, anticipated grading schedule, contractor's contact information, on-site circulation, construction fencing, and phasing (if necessary) on the plan.

56. **STREET TREES AND TREE GRATES**

Street trees within the Public Right of Way shall be planted to the satisfaction of the City Engineer; shall be maintained by the applicant; and shall be of a type approved by the City in accordance with Ordinance No. 125. Tree grates within the Public Right of Way shall be the size and type approved by the City Engineer.

57. **FIRE PROTECTION**

Fire sprinklers shall be installed in any new construction to the approval of the City.

58. SANTA CLARA COUNTY FIRE DEPARTMENT

A letter of clearance for the project shall be obtained from the Santa Clara County Fire Department prior to issuance of building permits. Clearance should include written approval of the location of any proposed Fire Backflow Preventers, Fire Department Connections and Fire Hydrants (typically Backflow Preventers should be located on private property adjacent to the public right of way, and fire department connections must be located within 100' of a Fire Hydrant).

59. FIRE HYDRANT

Fire hydrants shall be located as required by the City and Santa Clara County Fire Department as needed.

60. CALIFORNIA WATER SERVICE COMPANY CLEARANCE

The applicant shall provide California Water Service Company approval for water connection, service capability and location and layout of water lines and backflow preventers before issuance of a building permit approval.

61. DEDICATION OF WATERLINES

The applicant shall dedicate to the City all waterlines and appurtenances installed to City Standards and shall reach an agreement with California Water Services Company for water service to the subject development.

62. DEDICATION OF UNDERGROUND WATER RIGHTS

The applicant shall "quit claim" to the City all rights to pump, take or otherwise extract water from the underground basin or any underground strata in the Santa Clara Valley.

63. SANITARY DISTRICT

A letter of clearance for the project shall be obtained from the Cupertino Sanitary District prior to issuance of building permits.

64. UTILITY EASEMENTS

Clearance approvals from the agencies with easements on the property (including PG&E, AT&T, and California Water Company, and/or equivalent agencies) will be required prior to issuance of building permits.

The applicant shall provide non-interference letters from agencies for the vacation of any Public Utility Easement on-site and to meet the relocation requirements of these agencies

65. EXISTING ACCESS EASEMENTS

The applicant shall correct and update any existing ingress/egress easements and/or reciprocal access easements that are affected by the Project.

The applicant shall coordinate with adjacent property owners to ensure that access easements are updated appropriately to ensure proper access through the project site and adjacent properties. The applicant shall further coordinate with adjacent property owners regarding landscaping improvements that may affect neighboring property owner's private facilities or site lines.

66. AUTHORIZATION LETTERS

The applicant shall provide letters of authorization from adjacent property owners for the following:

- a) Closure of the existing driveway between building C and the southerly property (APN 326 34 044); and
- b) Encroachment of trash trucks during pick-up onto the property to the south of Building A (APN 326 34 071).

The applicant shall go back to the Planning Commission for any site layout or building modifications that will be required, if permission is not be granted.

SECTION V: CONDITIONS ADMINISTERED BY THE SANTA CLARA COUNTY FIRE DEPARTMENT

1. **REVIEW OF DEVELOPMENT PROPOSAL**

Review of this development proposal is limited to acceptability of site access and water supply as they pertain to Fire Department operations, and shall not be construed as a substitute for formal plan review to determine compliance with adopted model codes. Prior to performing any work the applicant shall make application to, and receive from, the Building Department all applicable construction permits.

2. **DEFERRED SUBMITTALS**

Fire sprinklers, alarms, standpipes systems and required emergency radio communication systems are deferred submittals.

3. **MARKING ALONG ALVES**

The entire section of Alves Drive., between North De Anza Boulevard and Bandley Drive shall be marked as signed as "NO STOPPING-FIRE LANE 22500.1 CVC" and all signs and curbs shall be in compliance with Santa Clara County Fire Standard Detail and Specification A-6, as per Sec. 503.3 of the currently adopted edition of the California Fire Code.

4. **CONSTRUCTION SITE FIRE SAFETY**

All construction sites must comply with applicable provisions of Santa Clara County Fire Standard Detail and Specification SI-7 and Chapter 33 of the currently adopted edition of the California Fire Code. This must be submitted to, and approved by the Santa Clara County Fire Department prior to commencing any demolition / construction activities.

5. **ADDRESS IDENTIFICATION**

New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Where required by the fire code official, address numbers shall be provided in additional approved locations to facilitate emergency response. Address numbers shall be Arabic numbers or alphabetical letters. Numbers be a minimum of 4 inches (101.6 mm) high with a minimum stroke width of 0.5 inch (12.7 mm). Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole or other signs or means shall be used to identify the structure. Address numbers shall be maintained. CFC Sec. 505.1 4.

SECTION VI: CONDITIONS ADMINISTERED BY THE CUPERTINO SANITARY DISTRICT

1. **SANITARY SEWER**

Based on the proposed use, it has been calculated that there would be an increase in sewer flow by 55% over the existing use. This increase will or may have impact on downstream sanitary sewer mains. Sewer mains along a portion of Stevens Creek Blvd. and Wolfe Road have been identified as being at "capacity". Sanitary District will need to perform additional sewer capacity analysis and determine deficiencies along Stevens Creek Boulevard. Apartments and hotel development increases the peak flow significantly more than a commercial property, because commercial properties have a parking period different than the residential/hotel developments. Analyses along Wolfe Road have been completed and determined a need to install a parallel pipe, to which this project would also need to contribute a pro-rata share of the improvements costs. At this time, it is believed that the Vallco Project will be constructing this parallel main.

2. **SANITARY SEWER DESIGN PLANS**

Improvements plans (both onsite and offsite) shall be approved by the Cupertino Sanitary District. Currently, District owns a sewer easement within the project limits. Depending on the final design, this easement may need to be relinquished or new easement provided.

3. **FEES AND PERMITS**

Cupertino Sanitary District fees and permits will be required.

4. **DEVELOPERS AGREEMENT**

The applicant/owner shall be required to enter into an installers' agreement with the District. The installers' agreement could potentially include off-site sewer improvement requirements with reimbursement.

SECTION VII: CONDITIONS ADMINISTERED BY CALIFORNIA WATER SERVICE

1. **WILL SERVE LETTER**

The applicant shall obtain a "Will Serve Letter" from the California Water Service Company prior to building permit issuance.

PASSED AND ADOPTED at a Regular Meeting of the city Council of the City of Cupertino the 6th day of September 2016, by following roll call vote:

Vote: Members of the City Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Grace Schmidt

Barry Chang

City Clerk

Mayor, City of Cupertino
