

MEMORANDUM

DATE July 22, 2016
TO Erick Serrano, Associate Planner, City of Cupertino
FROM Alexis Mena, Associate, PlaceWorks
SUBJECT Marina Plaza Project Revisions

Overview

The Initial Study and Mitigated Negative Declaration (IS/MND) was prepared for the proposed Marina Plaza Project (proposed project) and circulated for a 30-day public comment period from Friday, April 29, 2016 through Tuesday, May 31, 2016. Two comment letters were submitted on the IS/MND during this time and were addressed in a Response to Comments Memorandum dated June 8, 2016. A public hearing on the proposed project and IS/MND was held at the June 14, 2016 Planning Commission meeting. After June 14, 2016, the project developer proposed a Development Agreement for the proposed project. This memorandum describes the aspects of the proposed Development Agreement that were not described in the IS/MND and that constitute changes to the project description. This memorandum, together with the IS/MND dated April 29, 2016 and the Response to Comments Memorandum dated June 8, 2016, constitutes the Final IS/MND for the proposed project.

Revised Project Description

As part of the project approval process, the project developer would enter into a Development Agreement with the City. The following are proposed terms of the Development Agreement.

AFFORDABLE HOUSING AGREEMENT

Pursuant to the proposed Development Agreement, an Affordable Housing Agreement between the developer and the City is required. The Affordable Housing Agreement requires that the project include 16 affordable units, which, as described in the IS/MND, are to be exclusively occupied by, and rented to, households of very low income. The Development Agreement also requires that the 16 affordable units be available for either (1) 55 years from the issuance of the final certificate of occupancy for the project, or (2) the date the project buildings are either (a) demolished or (b) converted to a non-residential use by the developer following issuance of any City-issued approvals and permits that may be required. Under the Development Agreement, priority of the Affordable Housing Agreement over any liens or deeds of trust recorded against the property, other than a lien for current unpaid property taxes, is required. The Development Agreement requires that the developer acknowledges that it has agreed to limit rents in the affordable units in consideration for the City's agreements to enter into a

Development Agreement for the project under Civil Code Sections 1954.52(b) and 1954.53(a)(2). Under the Development Agreement, the developer agrees that any affordable units provided pursuant to the Development Agreement are not subject to Civil Code Section 1954.52(a) or any other provision of the Costa-Hawkins Act inconsistent with controls on rents, and further agrees that any limitations on rents imposed on the affordable units are in conformance with the Costa-Hawkins Act.

CITYWIDE TRANSPORTATION IMPACT FEE

As described in the IS/MND, the traffic impacts from General Plan buildout were found to be significant and unavoidable in the General Plan EIR. Implementation of 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. Because the preparation of the TMFP is currently underway but the fee program has not yet been adopted, under the proposed Development Agreement the developer would be required to pay the City a one-time fee as a negotiated transportation infrastructure contribution at the time of the first building permit for the project based on the total number of approved residential units and hotel rooms.

PUBLIC IMPROVEMENTS AGREEMENT

Pursuant to the proposed Development Agreement, a Public Improvements Agreement between the developer and the City is required prior to the issuance of the first building permit. Under the Public Improvements Agreement, the project developer is required to contribute to a traffic signal, two street lights, a bus shelter and benches, and bicycle and pedestrian improvements (including shared lane markings and signs, bicycle racks, bicycle parking wayfinding signs, bulbouts, and bike share program area and equipment).

Environmental Evaluation

California Environmental Quality Act (CEQA) Guidelines Section 15073.5(c)(4) states that recirculation of a Negative Declaration is not required if “[n]ew information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.” As described below, none of the project description changes described above would result in new or substantially more severe significant effects on the environment:

- » **Affordable Housing Agreement.** The requirement for 16 out of the 188 proposed housing units to be affordable was described in the IS/MND and would not result in a new physical impact to the environment beyond what was evaluated in the IS/MND. The Development Agreement does not increase or otherwise physically change the number of proposed housing units that were considered in the IS/MND.
- » **Citywide Transportation Impact Fee.** As discussed in the IS/MND in Section XIV, Transportation and Circulation, the proposed project would not result in any significant impacts requiring mitigation

measures. The requirement in the proposed Development Agreement to pay transportation-related fees is intended to further reduce traffic-related impacts by helping to fund improvements that would reduce congestion and create safe access to bicycle and pedestrian facilities. Payment of the citywide transportation impact fee, whether pursuant to the future TMFP or the proposed Development Agreement, would not physically change the traffic improvements that would be funded under the General Plan and are considered in the General Plan EIR.

- » **Public Improvements Agreement.** For the same reasons explained above with regard to payment of a citywide transportation impact fee, monetary contributions towards improvements to support vehicular, bicycle, and pedestrian travel are intended to further reduce traffic-related impacts by reducing congestion and creating safe access to bicycle and pedestrian facilities. The physical construction associated with implementation of these features would occur in highly urbanized areas, would be temporary in nature, and would not change the construction-related impact findings in the General Plan EIR.

The project description changes in the proposed Development Agreement clarify, amplify, or make insignificant modifications to the IS/MND, but do not result in new or more severe environmental impacts. Therefore, recirculation of the IS/MND is not required pursuant to CEQA Guidelines Section 15073.5(c)(4).

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