



## COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL

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## CITY COUNCIL STAFF REPORT

Meeting: August 1, 2017

### Subject

A proposal to demolish an existing ~71,254 sq.ft. commercial shopping center and construct one of the two alternative mixed-use developments at the Oaks Shopping Center site that requires City Council authorization for formal submission of one of the alternatives for formal submission of General Plan Amendment applications. (Application No.(s): GPA Auth-2017-02; Applicant: KT Urban (Mark Tersini); Location: 21267 Stevens Creek Boulevard; APN: 326-27-039, -040 and -041)

### Recommended Action

Determine if the proposal is authorized to move forward to apply for General Plan Amendments.

### Discussion

### Background

On September 1, 2015, the City Council adopted procedures for considering future General Plan Amendment (GPA) applications. Additional details on this process is available in the cover staff report for this item. The Analysis section below reviews the project based on the evaluation criteria set forth in the procedures adopted by the Council.

Pursuant to adoption of the procedures, the current applicant made an application for this property in 2015 which was heard at a public hearing in 2016. Authorization for that project was denied on a 4-1 vote on February 2, 2016. There are similarities in the project components for the currently proposed "mixed-use gateway" or Alternative 2 and the project proposed in 2015. The most noteworthy differences between the two alternatives currently proposed and the 2015 application are addition of these community amenities: transit center, the inclusion of a community room and theater, increased contributions toward city transportation and frontage improvements. Alternative 1 is an entirely different proposal, which replaces the office and hotel buildings with additional housing. The applicant estimates the dollar value of these community benefits higher than the

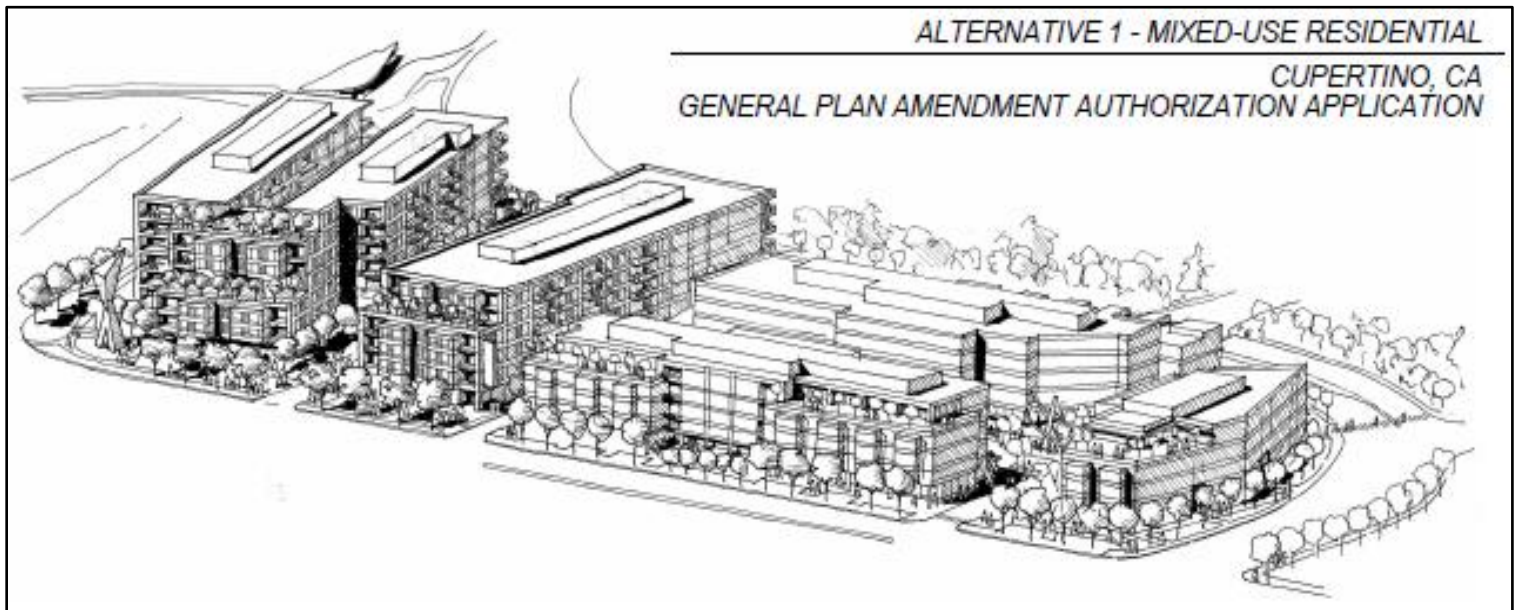
previous proposal by approximately \$4.6 million. While there is additional narrative about changes from the prior submittal in the application materials, it should be noted that applications are not compared to their own previous submittals, but rather to the City Council's evaluation criteria for GPA authorization.

### Analysis

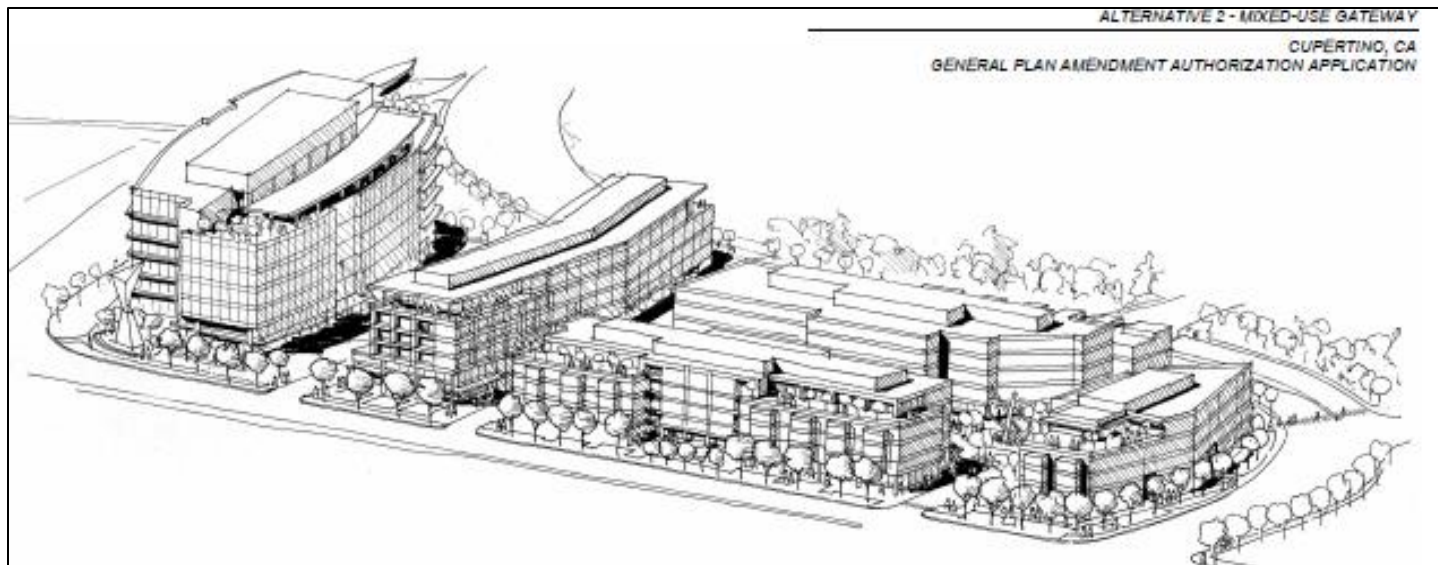
#### *Introduction*

The applicant proposes two development alternatives, identified as "mixed-used residential" (Alternative 1) (see Attachment 16C.1) and "mixed-use gateway" (Alternative 2) (see Attachment 16C.2). Both alternatives include 69,500 sq.ft. of commercial space (see Attachment 16C.3). In addition to the commercial space, Alternative 1 includes 605 residential units while Alternative 2 includes 270 residential units, a 170-room hotel, and 280,000 sq.ft. of office space. The site plan components common to both alternatives include a 27,500 sq.ft. movie theater, 42,000 sq.ft. ground floor retail-commercial space, a 4,000 sq.ft. community center, transit center, three levels of underground parking, and below-market rate housing units.

#### **Alternative 1: Mixed-use Residential**



## Alternative 2: Mixed-use Gateway



### *Project Location and Surrounding Uses*

The project is located at the northeast intersection of Stevens Creek Boulevard and State Route 85 and at the western end of the Heart of the City Special Area, known as the Oaks Gateway Node. The site is currently developed with a ~71,254 sq.ft. commercial shopping center, accessed from Stevens Creek Boulevard and Mary Avenue. Mary Avenue begins along the eastern border and wraps around to form the northern border of the site. The Heart of the City Special area is identified in the General Plan and specific plan as a significant commercial corridor. The Heart of the City Specific Plan ("HOC") identifies this corridor as accommodating "a variety of land use opportunities of well-planned and designed commercial, office, residential development, enhanced activity nodes, safe and efficient circulation, and access for all modes of transportation between activity centers that help focus and support activity in the centers." The Oaks Gateway node is envisioned as a gateway retail and shopping node with new residential, if allowed, designed on the "mixed-use village" concept described in the General Plan.

Surrounding uses include a 517-unit (two-story) apartment complex to the north, Highway 85 to the west, De Anza College and Flint Center (three-story; 109 feet) to the south across Stevens Creek Boulevard, and the Senior Center (one-story) and Memorial Park to the east. The tallest structures in this area which exceed the City's 45-foot height restrictions are located at the De Anza College campus.

### *Project Data*

Table 1 indicates the proposed project data for the two Alternatives along with General Plan amendments, or variance/exceptions, requested and/or required.

**Table 1: Project Data**

<u>Standard</u>	<u>Allowed/Required/ Existing</u>	<u>Alternative 1</u> <u>“mixed-use residential”</u>	<u>Alternative 2</u> <u>“mixed-use gateway”</u>
<b>General Plan designation:</b>	Commercial/Residential	Commercial/Residential	Commercial/Office/ Residential <b>(GPA required)</b>
<b>Zoning designation:</b>	Planned Development with general commercial and residential uses – P(CG, Res)	No change	Planned Development with general commercial, professional office and residential uses <b>(Rezoning required)</b>
Lot Area	7.9 acres (after dedication)	7.9 acres (after dedication)	7.9 acres (after dedication)
Lot coverage:	~21% existing (no maximum)	40%	42%
Floor Area Ratio:	~21% existing (no maximum)	210.5%	215.7%
<b>Development allocation:</b>			
Office:	-	-	280,000 sq. ft. <b>(GPA required)</b>
Commercial:	~71,254 sq. ft. (e)	69,500 sq. ft.	69,500 sq. ft.
Hotel:	-	-	170 rooms <b>(GPA required)</b>
Residential:	197 units	448 units <b>(GPA required)</b>	200 units
<b>Density</b>	25 du/acre	56.70 du/acre <b>(GPA required)</b>	25.31 du/acre <b>(GPA required)</b>
Number of very low income units needed for 35% Density Bonus (11%)	22 units	50 units	22 units
Density Bonus (Market-rate) Units	69 units	157 units	70 units
<b>Total Residential Units</b>	266 units	605 units	270 units
Market rate units	244 units	535 units	200 units
Age-restricted Senior Units	-	70 units	70 units
Below Market Rate (senior) units	-	67 units	40 units
Very low income units (senior)	-	49 units (10%)	22 units (11%)
Low income units (senior)	-	18 units (4%)	18 units (4%)
Market rate senior units	-	3 units	30 units

**Table 1: Project Data**

<u>Standard</u>	<u>Allowed/Required/ Existing</u>	<u>Alternative 1</u> <u>“mixed-use residential”</u>	<u>Alternative 2</u> <u>“mixed-use gateway”</u>
<b>Height</b>			
Office Building	45 feet	-	88 feet <b>(GPA required)</b>
Hotel Building	45 feet	-	70 feet <b>(GPA required)</b>
Residential Buildings	45 feet	35 – 75 feet <b>(GPA required)</b>	35 – 60 feet <b>(GPA required)</b>
<b>Slope line from Stevens Creek Boulevard (setback : height)</b>			
Office		-	3:1 <b>(GPA required)</b>
Hotel		-	2:1 <b>(GPA required)</b>
Residential	1:1	1:1	1:1
<b>Setbacks</b>			
Front (Stevens Creek Blvd.):	9 foot setback from property line + 26 feet landscape easement = 35 foot total	35 feet	35 feet
Side – Interior (along State Route 85):	1/2 height of building or 10 feet whichever is greater	0 feet <b>(HOC exception required)</b>	10 feet <b>(HOC exception required)</b>
Side– Street side (Mary Ave):	9 feet	9 feet	9 feet
<b>Parking</b>	<i>Parking study required to determine number of vehicular and bike parking spaces required for project.</i>		
Vehicular Parking	Residential – 2 per unit BMR units – based on size Office – 1/285 sq.ft. Hotel – 1/room + 1/employee	1,480 spaces plus shared parking	1,480 spaces plus shared parking
<b>Bike Parking</b>	Residential – 2 spaces/unit Office – 1/1,250 sq.ft. or 1/15 employees Hotel – 1/20,000 sq.ft. General Commercial – varies	412 spaces	440 spaces

**Table 1: Project Data**

<u>Standard</u>	<u>Allowed/Required/ Existing</u>	<u>Alternative 1</u> <u>“mixed-use residential”</u>	<u>Alternative 2</u> <u>“mixed-use gateway”</u>
<b>Open space</b>			
Private Open Space – Residential	60 sq. ft./unit	60 sq. ft./unit	60 sq. ft./unit
Common Open Space			
Residential Common Open Space – Total	150 sq.ft./unit	70 sq. ft./unit or 42,350 sq. ft. total <b>(HOC exception required)</b>	80 sq. ft./unit or 21,600 sq. ft. total <b>(HOC exception required)</b>
Residential Landscape	70-80% of total common open space	70% of total common open space or 29,675 sq. ft.	70% of total common open space or 15,120 sq. ft.
Residential Hardscape	20-30% of total common open space	30% of total common open space or 12,675 sq. ft.	30% of total common open space or 6,480 sq. ft.
Retail Common Open Space	2.5% of gross floor area	1,750 sq. ft.	1,750 sq. ft.

### Evaluation Criteria Discussion

The following is a discussion of the project relative to the evaluation criteria established by the City Council procedure for General Plan Amendment authorization requests. For details on the criteria, please see the Cover Report.

#### ***General Plan Goals achieved by the Proposal***

##### *Site and Architectural Design and Neighborhood Compatibility*

- In both alternatives, the tallest building heights along Stevens Creek Boulevard are taller than adjacent buildings, except for the 109-foot tall Flint Center at the De Anza College, which is set back considerably from the street. In order to be more in scale with the Glenbrook apartment buildings across the street, heights for portions of the residential buildings closest to Mary Avenue are reduced.
- The proposal envisions retaining general commercial/retail uses within the project, which is required in the General Plan.
- In both Alternatives 1 and 2, access to the site is in the same location. If authorized, additional revisions would be required to refine the site plan to accommodate city policies such as minimizing driveway cuts on Stevens Creek and near busy intersections (85 on-ramp); identifying locations for trash enclosures, deliveries, staging areas for move-ins/move-outs and truck parking (preferably away from public view and/or underground); EV charging stations, and ADA requirements.
- Architectural review will be required to ensure that the project meets high quality expectations in terms of massing, building articulation and materials. The plans may need to be modified to reduce the sizes of the units and/or the buildings may need to have upper floors reduced or set back along the street to ensure neighborhood compatibility. The proposed buildings must consider distinctive entry features, roof forms and variety of facades as encouraged by the Heart of the City Specific Plan.

##### *Net Fiscal Impacts*

The policy adopted by the City Council for processing General Plan amendment authorization requires the evaluation of whether a project would have positive or negative impacts to the fiscal base. While the applicant has provided a fiscal impact analysis (see Attachment 16C.3), the City does not rely on this report for this analysis. The City relies on the fiscal impact report prepared by the city's third-party consultant, Economics and Planning Systems (EPS), which is included in Attachment 17C.4 and summarized in this section.

- *Alternative 1 (commercial/residential)*

The summary of findings from the EPS report indicates that, as proposed, the commercial/residential project would generate a net negative fiscal impact to the City's General Fund of approximately \$146,000. Property tax revenue will account for the largest revenue source to the city from this project.

- *Alternative 2 (commercial/residential/office)*

The fiscal impact analysis prepared by EPS indicates that, as proposed, the project would generate a net positive fiscal revenue of \$1.13 million. A sensitivity analysis indicates that the hotel provides the most fiscal benefits in the project through transient occupancy tax.

### *Provision of Affordable Housing*

The project site is included in the City's 2014-2022 Housing Element with a 200-unit capacity, an allowed density of 25 units/acre, acreage of ~8 acres, with a net acreage shown on the applicant's civil plans as ~7.9 acres after required dedications. At the time of adoption of the Housing Element, the net acreage of the site after dedications was not known. The maximum residential yield for the site (at 25 units/acre) is estimated at ~197 units.

### *Below Market Rate (BMR) Housing Program*

The project proposes to provide 11% of the total number of allowable units, as very low income units and an additional 4% of the total number of allowable units, as low income units, for a total of 15% affordable units in both alternatives. With the provision of 15% of the total units as affordable units, the applicant will not be required to pay any Below Market Rate Housing Mitigation Fees.

### *State Density Bonus Law Provisions*

Since both alternatives provide affordable housing, the projects are eligible to receive a density bonus to allow the development of additional market-rate units and a reduction in parking standards for the entire project as allowed by State Law. In addition, the projects may apply to receive incentives/concessions and waivers. These have been discussed below.

- *Density Bonus –*

- *Alternative 1 (commercial/residential):* In this Alternative, the applicant is proposing to provide 49 senior units affordable to the very low income category. However, this is only 10% of the 448 units proposed. Therefore, the project would be eligible for a 32.5% Density Bonus. As proposed, the project does not comply with the



Chapter 19.56 of the Cupertino Municipal Code. While, the City's local density bonus ordinance (Section 19.56.030F(6)) allows the City to grant bonuses greater than 35%, solely at the City's discretion, when a 100% affordable project is proposed. While the applicant is required to apply for a General Plan Amendment to increase the density on the site in this Alternative, in order to comply with Chapter 19.56, the applicant has the following options:

1. Increase the proposed number very low income level units by one unit; or
  2. Reduce the total number of units by 11 units, since project would be eligible for only a 32.5% density bonus with 10% very low income units.  
 $((605 \text{ units} - (448 \text{ units} * 1.325)) = (605 \text{ units} - 594 \text{ units}) = 11 \text{ units};$  or
  3. Propose a 100% affordable project.
- *Alternative 2 (commercial/residential/office):* Density Bonus Law would allow 266 units total (197 allowed units + 69 bonus units) to be built on the site. The proposed number of units is 270 units, or 4 more units than the project is entitled to, with a 35% density bonus. Therefore, the applicant has the following options:
    1. Reduce the proposed number of units in Alternative 1 by four units in order to avoid a General Plan Amendment for density or
    2. Apply for a General Plan Amendment to increase the density on the site or
    3. Propose a 100% affordable project.
  - *Parking Reductions* – While a parking study, on-site and off-site, would be required to analyze the proposal (due to frontage improvements and revisions to on-street parking spaces) for the entire project, State Density Bonus Law restricts the City from requiring projects with affordable units to provide more than one parking space for studio and one-bedroom units; two parking spaces for two- and three-bedroom units; and 2.5 parking spaces for 4-bedroom units and larger. Additional restrictions on parking requirements are applicable if the project is within ¼ mile of a transit stop.
  - *Alternative 1 (commercial/residential):* The unit type mix is 505 studio and one-bedroom units, and 100 two-bedroom units. The applicant is proposing to provide 1,160 spaces (without density bonus, the parking requirement would be 1,210 spaces). Therefore, the residential parking appears to exceed the required 705 spaces for Alternative 1.
  - *Alternative 2 (commercial/residential/office):* The unit type mix is 229 studio and one-bedroom units, and 41 two-bedroom units. The project does not propose any 4-bedroom units or larger. For Alternative 2, the residential parking conforms to the city standard of two spaces per unit. If authorized, the final parking count will be confirmed during project review.

- *Incentives and Concessions* - State Density Bonus Law allows this developer to request two incentives and concessions. Permissible incentives and concessions include, but are not limited to:
  1. *Modifications of Development Standards*: Reducing development standards or a zoning code requirement or architectural design requirement, such as setbacks, square footage, or height, which results in identifiable, financially sufficient, and actual cost reductions;
  2. *Mixed-Use Project*: Approving mixed-use zoning in conjunction with a housing project, if the non-residential land uses will reduce the cost of the housing development, and if the non-residential land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located;
  3. *Other*: Other regulatory incentives or concessions proposed by the developer or the City, which result in identifiable, financially sufficient, and actual cost reductions.

Incentives and concessions are intended to make the affordable housing financially feasible. The City's density bonus ordinance requires the developer to provide a pro forma to demonstrate that the incentives and concessions are actually needed to provide the affordable housing.

- *Waivers of Development Standards* - State Density Bonus Law also allows the developer to request waivers of any city development standards (setback, height, etc.) that will "physically preclude" the project from being built with the density bonus and incentives to which the project is entitled. The formal project review would need to determine what incentives the developer is entitled to and then evaluate any requests for waivers.

#### *Effect of Density Bonus Law on proposals*

Under State Density Bonus law, if a proposed housing development qualifies for a density bonus and a parking reduction, the City must grant them if it approves the project. Therefore, if the City authorizes any alternative, and considers approval of that alternative in the future, the City must grant the 35% density bonus and any parking reductions proposed in conformance with Chapter 19.56 of the Municipal Code. However, requests for incentives and waivers are more discretionary.

An incentive must be necessary to provide for affordable housing costs as previously discussed. If, for instance, the density bonus by itself provides adequate additional profit to provide for affordable housing costs, the City is not required to approve any incentives.

Additionally, as mentioned earlier, any proposed mixed use must: 1) reduce the cost of the housing development; 2) be compatible with the housing development; and 3) be compatible with existing or planned development in the area. The proposed increase in density and building heights may be requested as an incentive under Density Bonus Law and not as a General Plan Amendment. Additionally, an incentive for mixed use zoning may be requested if Alternative 2 is authorized, to eventually approve the project (including the office and hotel uses) under the Density Bonus Law.

Waivers must be granted only if they would “physically preclude” development of the proposed housing with the incentives and density bonus to which the project is entitled. Therefore, if authorized, the applicant may not be required to apply for a Heart of the City Exception for the reduced common landscaped open space and side yard setbacks proposed, if the developer can provide a valid pro forma that demonstrates that the reduction in these standards is required to make the housing financially feasible. Additionally, the reduction in building slope lines may also be requested as a waiver. The developer is requesting for a waiver in park impact fees for the affordable units and the senior units.

#### *Environmental Sustainability*

Some project features are encouraged in the General Plan and is a project bonus. Others are statutory requirements, as noted below, and not a project bonus,

- *Encouraged in the General Plan and is a project bonus:*
  1. Transit center
  2. The proposed project will be built with environmentally preferable products with a high-recycled content, sensitive to the use of natural resources.
- *Statutory requirements and not a project bonus:*
  1. LEED Silver certification for all buildings (CBC)
  2. Low impact development methods such as pervious surfaces (MRP/C3)
  3. Native and drought-tolerant plants (WELO)

#### ***General Plan Amendments Requested***

The general plan amendments requested are as follows:

- *Alternative 1*
  - a. Increase residential density from 25 du/acre to 58 du/acre (*not including density bonus units*);
  - b. Additional residential allocation of 251 units.  
(448 units – (7.9 acres \* 25 du/ac)) = (448 units - 197 units) = 251 units;
  - c. Building height increase up to 75 feet (where 45 feet is allowed).

- *Alternative 2*
  - a. Increase residential density from 25 du/acre to 25.31 du/acre (*not including density bonus units*);
  - b. Add office to the General Plan land use designation and zoning (where commercial/residential is allowed);
  - c. Development allocation of 170 hotel rooms (where none are available);
  - d. Development allocation for 280,000 sq. ft. of office allocation - *The applicant proposes to obtain allocation from the “major companies” allocation. However, the city requires that this allocation cannot be utilized under speculation. A major employer must own and occupy the site. Therefore, the request does not qualify for major employer allocation and must request a general plan amendment for office allocation;*
  - e. Building height increase up to 88 feet (where 45 feet is allowed);
  - f. Amend building slopline to 3:1 for office and 2:1 for hotel (where 1:1 is allowed).

### ***Proposed Voluntary Community Amenities***

Within the City Council policy for General Plan amendments, voluntary community amenities are defined as facilities, land and/or funding contributions to ensure that any development with a General Plan amendment application enhances the quality of life in the City with contributions to schools, public open space, public facilities and transportation.

The following table outlines the qualifying proposed community amenities whose value has been quantified.

**Table 2: Community Amenity Summary**

	<b>Description</b>	<b>Beneficiary</b>	<b>Amount</b>	<b>Comments</b>
<b>School Resources</b>	Cash contribution for construction of permanent school room facilities	CUSD	\$1.0 million	This is a qualified community amenity because it benefits a school project.
<b>Public Open Space</b>	Cash contributions to public open space (such as Memorial Park)	City of Cupertino	\$300,000	While not in a current CIP program, the funds would be a placeholder; applicant has indicated that they would support the city’s final decision on where funds are applied.

	Description	Beneficiary	Amount	Comments
<b>Public Facilities</b>	Public Art	City of Cupertino	\$250,000 above City requirement	Applicant has indicated that they would support the city's final decision on where the additional funds are applied.
	4,000 sq.ft. Community Center within project	Residents	\$0	There are no details on use and availability of this space and therefore, cannot be quantified.
<b>Transportation</b>	Mary Avenue Road improvements, safety enhancements and safe routes to schools	City of Cupertino	\$3 million	This is a qualified community amenity.
	Construction of on-site transit center	City of Cupertino	\$3.5 million	This is a qualified community amenity.
	Construction of bike trail along western project boundary	City of Cupertino	\$250,000	This may be a project requirement.
	Cash contribution to future city-wide shuttle program	City of Cupertino	\$400,000	This is a qualified one-time community amenity. The project could be requested to make an on-going annual contribution like other projects, including Marina and the Hamptons.
<b>Total City Estimated Value of Qualified Community Amenities</b>				<b>\$8.7 million</b>
<b>Total value per sq. ft. Alternative 1</b>				<b>\$12.02</b>
<b>Total value per sq. ft. Alternative 2</b>				<b>\$11.73</b>

In Alternative 2, there is a proposed incubator space within the office building. While the incubator space meets General Plan policy LU-9 to “promote a strong local economy that attracts and retains a variety of businesses,” it is not included in the amenities list because the details regarding value cannot currently be quantified. The applicant proposes to enter into a Development Agreement with the City that includes the voluntary community amenities shown in Table 2 and the terms regarding the non-quantified amenities could likewise be added with greater detail.

### *Staff Time and Resources*

The Planning Division will dedicate a project manager, either staff or consultant based on availability, to guide the project through the entitlement process, appropriate environmental and city related reviews. It is estimated that approximately 0.5 FTE hours

will be required to process this proposal. The applicant is responsible for paying staff time and consultant costs.

Public Noticing and Outreach

See Cover Report for details on noticing and outreach. As of publication of this staff report on July 25, 2017, staff has received comments regarding the proposal – some in support and some in opposition of the proposal (see Attachment 16C.5.)

Fiscal Impact

The project net fiscal impact to the City's budget has been discussed previously in the "Net Fiscal Impacts" section above.

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Benjamin Fu, Assistant Director of Community Development

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Approved for Submission by: David Brandt, City Manager

Attachments:

16C.1 - Alternative 1 (mixed-use residential) proposed plans

16C.2 - Alternative 2 (mixed-use gateway) proposed plans

16C.3 - Project narrative and other materials

16C.4 - Fiscal Impact Analysis, prepared by Economics and Planning Systems, Inc., dated July 17, 2017

16C.5 - Public Comments received as of July 25, 2017