December 2022 | Addendum to the Initial Study and Mitigated Negative Declaration
State Clearinghouse Number 2016052006

Marina Plaza Project Initial Study and Mitigated Negative Declaration Addendum No. 1

City of Cupertino

Prepared for:

City of Cupertino
Contact: Gian Martire, Senior Planner
City of Cupertino | Planning Division
10300 Torre Avenue | Cupertino, CA 95014
(408) 777-3205
GianM@cupertino.org

Prepared by:

PlaceWorks
Contact: Terri McCracken, Associate Principal
2040 Bancroft Way, Suite 400
Berkeley, California 94704
(510) 848-3815
info@placeworks.com
www.placeworks.com

This page intentionally left blank.

Table of Contents

TABLE OF CONTENTS

LIST OF FIGURES

LIST OF TABLES

1. Introduction and Purpose

On September 6, 2016, the City of Cupertino adopted the Initial Study and Mitigated Negative Declaration (2016 MND), State Clearinghouse (SCH) Number 2016052006, and approved the Marina Plaza Project (2016 Project). This document is an Addendum 2016 MND for the 2016 Project. For the purposes of this Addendum, the 2016 MND is considered the "Adopted MND" and the 2016 Project is considered the "Approved Project." This document is the first Addendum to the Adopted MND.

Prior to the Adopted MND and Approved Project, the future buildout potential for the project site was evaluated at a program level in the *General Plan Amendment, Housing Element Update, and Associated Rezoning Environmental Impact Report* (EIR), State Clearinghouse Number 2014032007, that was certified by the Cupertino City Council in December 2014, and the subsequent addendum to the EIR that was approved by the City Council in October 2015 (General Plan EIR).[1] Accordingly, pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15152, *Tiering*, the Adopted MND tiered from the City's General Plan EIR.

Since the time of the Adopted MND and Approved Project, the Approved Project has been "modified" from what was evaluated in the Adopted MND. For the purposes of this Addendum, the proposed modifications to the Approved Project are considered the "Modified Project." The purpose of this Addendum is to analyze the impacts of the construction and operation of the proposed Modified Project.

Based on the information provided in this Addendum, construction and operation of the Modified Project would not result in any new impacts or increase the severity of previously identified significant impacts analyzed in the Adopted MND. The proposed modifications to the Approved Project would not result in a substantial change to the project and, therefore, additional environmental review is not necessary. Detailed discussions of the standards for the preparation of an addendum, the proposed modifications, and the environmental analysis of the proposed modifications are provided in Chapter 2, *Standard for Preparation of an Addendum*, Chapter 3, *Project Description,* and Chapter 4, *Environmental Analysis,* of this Addendum, respectively.

Pursuant to the provisions of CEQA and the CEQA Guidelines, the City of Cupertino is the lead agency charged with the responsibility of deciding whether or not to approve the proposed action.

[1] City of Cupertino, certified *General Plan Amendment, Housing Element Update, and Associated Rezoning EIR*, (December 2014) State Clearinghouse Number 2014032007, and approved addendum (October 2015). Note that at the time of the Approved Project, only the October 2015 General Plan EIR addendum was completed. Since this time, the City had prepared other addenda to the General Plan EIR in July 2019, August 2019, twice in December 2019, and October 2021, for a total of five addenda.

INTRODUCTION AND PURPOSE

Table 1-1 General Plan EIR and Project Comparisons

	General Plan EIR [a]	Approved Project	Modified Project	Approved Project and Modified Project Difference
Project Components				
Residential	232 units	188 units	206 units	+18 units
Commercial	793,270 sf in the HOC Special Area	22,593 sf	41,589 sf	+18,996 sf
Hotel	122-rooms in the HOC Special Area	122 rooms	0	-122 hotel rooms
Vehicular Parking	--	369 residential 121 hotel 190 commercial (680 total spaces)	338 residential 0 hotel 269 commercial (608 total spaces)	-31 residential -121 hotel +79 commercial (-72 total spaces)
Density	40 du/ac [b]	37 du/ac [c]	40 du/ac [d]	+3 du/ac
Building Height [e]				
Building A	60 feet, or 75 feet with retail development	55 feet (4 stories)	64 feet (5 stories)	+10 feet
Building B		55 feet (4 stories)	50 feet (4 stories)	-5 feet
Building C		58 feet (4 stories)	61 feet (5 stories)	+3 feet
Population and Employees				
Residential Population [f]	682	541	591	+50
Commercial Employees [g]	1,763 in the HOC Special Area	51	92	+41
Hotel Employees	13 for the HOC Special Area	13	0	-13
Total Employees		64	92	+28

Notes: sf = square feet; HOC = Heart of the City; du/ac = dwelling units per acre.
a. Certified *General Plan Amendment, Housing Element Update, and Associated Rezoning EIR* and Addenda, State Clearinghouse Number 2014032007. December 2014, October 2015, August 2019, December 2019, and October 2021.
b. Chapter 2, *Planning Areas*, page PA-22 and PA-23; Chapter 3, *Land Use and Community Design Element*, page LU-16 and LU-17.
c. 188 dwelling units / 5.12 acres = 36.79 du/ac
d. 206 dwelling units / 5.12 acres = 40.23 du/ac. While the project site's General Plan land use designation permits 35 dwelling units per acre, the Approved Project included a 35 percent density bonus of 49 units for a total of 188 units (139 units permitted on 3.98 acres + 49 units density bonus = 188 units).
e. Building height is rounded and is measured at the tallest architectural point. See Section 3.1.1.3, *Density Bonus Elements,* for roofline heights.
f. Estimates are based on the Association of Bay Area Governments projections that show an average household size of 2.88 and 2.87 persons for Cupertino in 2020 for the Approved Project and 2025 for the Modified Project, respectively. This is the standard approach for population estimates in Cupertino. Note that the 2.94 persons per household rate for year 2040 was applied in the General Plan EIR.
g. The General Plan EIR applied a generation rate of 450 square feet of commercial space and the applicant estimated 13 employees for the hotel.
Source: City of Cupertino and PlaceWorks, 2022.

2. Standard for Preparation of an Addendum

Pursuant to Section 21166, *Subsequent or Supplement Impact Report; Conditions,* of CEQA and Section 15162, *Subsequent EIRs and Negative Declarations*, of the State CEQA Guidelines, when an Environmental Impact Report (EIR) has been certified for a project, no subsequent EIR shall be prepared for the project unless the lead agency determines that one or more of the following conditions are met:

- Substantial project changes are proposed that will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- Substantial changes would occur with respect to the circumstances under which the project is undertaken that require major revisions to the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- New information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified was adopted shows any of the following:
    - The project will have one or more significant effects not discussed in the previous EIR or negative declaration.
    - Significant effects previously examined will be substantially more severe than identified in the previous EIR or negative declaration.
    - Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponent declines to adopt the mitigation measures or alternatives.
    - Mitigation measures or alternatives that are considerably different from those analyzed in the previous EIR or negative declaration would substantially reduce one or more significant effects on the environment, but the project proponent declines to adopt the mitigation measures or alternatives.

Where none of the conditions specified in Section 15162 are present,[2] the lead agency must determine whether to prepare an Addendum or whether no further CEQA documentation is required (CEQA Guidelines Section 15162[b]). An Addendum is appropriate where some minor technical changes or additions to the previously certified EIR or adopted negative declaration are necessary, but there are no

[2] See also Section 15163 of the State CEQA Guidelines, which applies the requirements of Section 15162 to supplemental EIRs.

STANDARD FOR PREPARATION OF AN ADDENDUM

new or substantially more severe significant impacts (CEQA Guidelines Section 15164, *Addendum to an EIR or Negative Declaration*).

In accordance with the CEQA Guidelines, the City has determined that an Addendum to the Adopted MND is the appropriate environmental document for the Modified Project. This Addendum reviews the changes proposed by the Modified Project and examines whether, as a result of any changes or new information, a subsequent EIR may be required. This Addendum documents that none of the conditions described in CEQA Section 21166 or CEQA Guidelines Sections 15162 or 15163 calling for preparation of a subsequent or supplemental negative declaration have occurred.

3. Project Description

3.1 REGIONAL SETTING

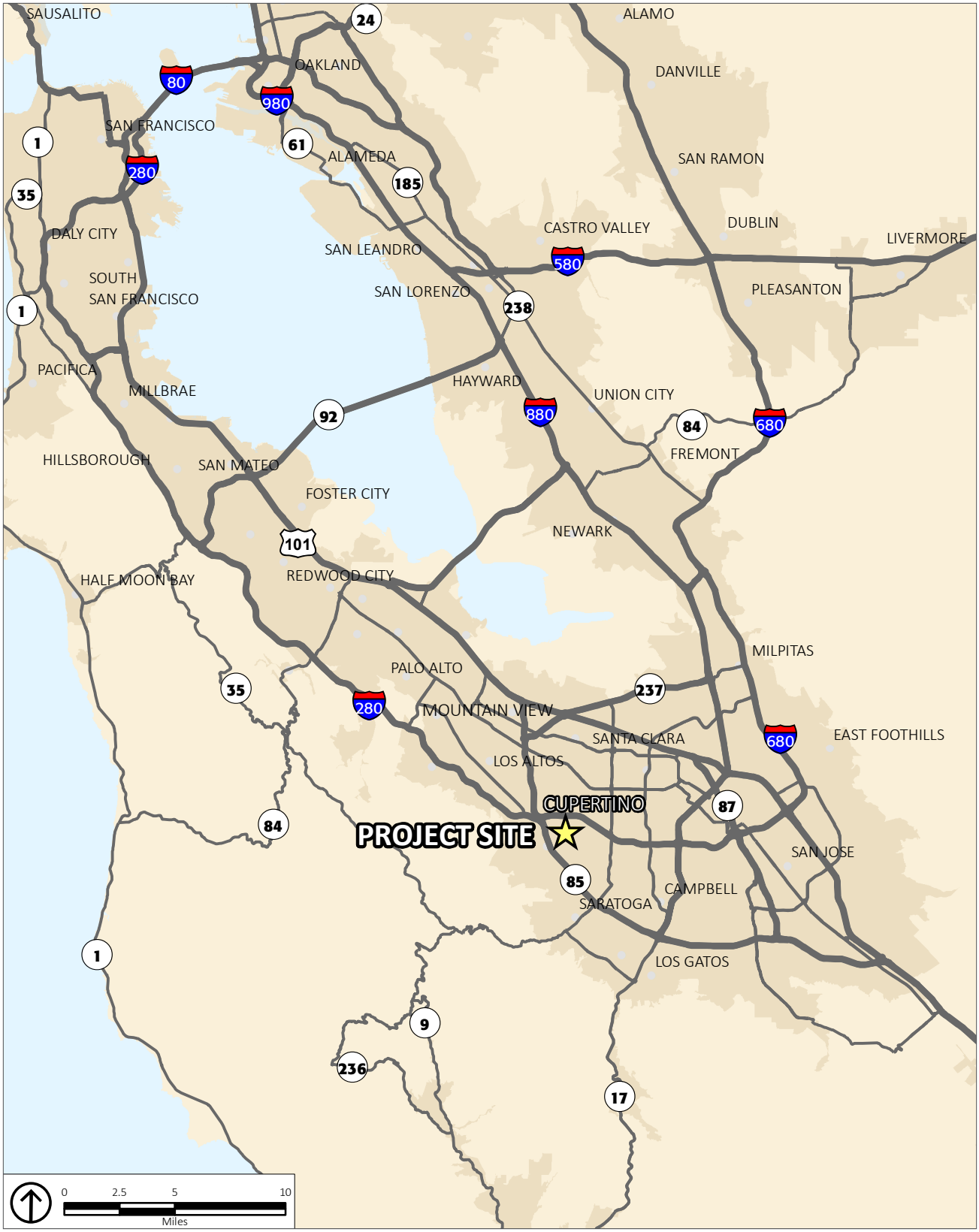
Cupertino is a suburban city of 10.9 square miles on the southern portion of the San Francisco peninsula in Santa Clara County. The city is approximately 36 miles southeast of downtown San Francisco and 8 miles west of downtown San Jose. The cities of Los Altos and Sunnyvale are adjacent to the northern city boundaries, the cities of Santa Clara and San Jose lie to the east, and Saratoga lies to the south. Unincorporated areas of Santa Clara County form the western boundary of Cupertino and portions of the southern boundary. The city is accessed by Interstate 280 (I-280), which functions as a major east/west regional connector, and State Route 85, which functions as the main north/south regional connector. Regional access to the project site is provided by I-280 via North De Anza Boulevard to the north, and by Highway 85 via Stevens Creek Boulevard to the west. See Figure 3-1, *Regional and Vicinity Map*.

3.2 LOCAL SETTING

The project site is located within a Santa Clara Valley Transportation Authority (VTA) Mixed-Use Corridor Priority Development Area (PDA) and is in close proximity to VTA bus routes along Alves Drive, Stevens Creek Boulevard, and De Anza Boulevard. The project site is bounded by North De Anza Boulevard, Stevens Creek Boulevard, Alves Drive, and Bandley Drive. As shown on Figure 3-2, *Aerial View of Project Site and Surroundings*, the 5.12-acre project site is bounded by commercial land uses to the north, south, east, and west, recreational, office, and commercial land uses to the southeast, and residential land uses to the northeast and northwest. Sensitive receptors include places with people that have an increased sensitivity to air pollution, noise, or environmental contaminants. These sites can include schools, parks and playgrounds, day care centers, hotels, senior housing, nursing homes, hospitals, and residential dwelling units. Sensitive receptors within 0.25 miles (1,320 feet)[3] of the project site include:

- Aloft Hotel roughly 0.11 miles (60 feet) to the north across Alves Drive;
- Apartments roughly 0.25 miles (130 feet) to the northwest, across Alves Drive and Bandley Drive;
- St. Joseph of Cupertino School roughly 0.07 miles (390 feet) to the east;
- Cali Mill Plaza Park roughly 0.10 miles (528 feet) to the southeast; and
- Happy Days Child Development Center roughly 0.16 miles (850 feet) to the west.

[3] This distance is consistent with criterion (c) in Section 4.8, *Hazards and Hazardous Materials*, which asks "Would the project emit hazardous emissions or handle hazardous materials, substances or waste within 0.25 miles of an existing or proposed school?"



Source: PlaceWorks, 2022.

Figure 3-1
Regional and Vicinity Map

Source: PlaceWorks, 2022.

Project Site

Figure 3-2
Aerial View of the Project Site

3.3 EXISTING SITE SETTING

Site Character

The project site consists of two parcels, Assessor's Parcel Numbers (APN) 326-34-066 (10118 to 10122 Bandley Drive), which is 4.35 acres in size, and APN 326-34-043 (10145 De Anza Boulevard), which is 0.77 acres in size. The project site is currently developed with two single-story commercial buildings and associated surface parking. The Bandley Drive parcel includes the Marina Plaza Shopping Center, a commercial building occupied by various uses, including a specialty grocery store as an anchor and other uses such medical offices, smaller retail tenants, and restaurants, totaling 43,870 square feet in tenant space. The De Anza Boulevard parcel currently includes a free-standing building occupied by a 4,854 square-foot restaurant. The existing Bandley Drive parcel has an area of 189,522 square feet and the existing De Anza Boulevard parcel has an area of 33,522 square feet, for a combined development area of 223,044 square feet (5.12 acres).

According to available historical sources, the subject property was formerly developed with agriculture land and/or residential/farmstead from as early as 1897 through the late-1960s. The De Anza Boulevard parcel was developed with the current building in 1973, while the Bandley Drive parcel was developed with the current building in 1979.[4] According to the Department of Toxic Substance Control, organic pesticides warrant further testing for orchards or other agricultural uses that were active after 1950.[5] Due to the age of the existing buildings, they may contain asbestos-containing materials or lead-based paint, which were not regulated in construction until the early 1970s.

Because the building on the De Anza Boulevard parcel was developed in 1973, it has the potential to be considered a historic building. However, neither building is currently listed on the National Register of Historic Places or the list of California Historical resources,[6] nor are the existing buildings associated with significant cultural events, persons in California's past. Further, the project site does not have any distinctive historical characteristics, and as such does not have any qualifying historical value.

[4] Partner Engineering and Science, Inc., 2022. *Phase I Environmental Site Assessment Report, 10145 N De Anza Boulevard and 10118-10122 Bandley Drive, Cupertino, California 95014*, March 21.

[5] California Department of Toxic Substances Control California Environmental Protection Agency, *Interim Guidance for Sampling Agricultural Properties,* page 3, August 7, 2008.

[6] California Office of Historic Preservation, 2022. California Historical Resources, http://ohp.parks.ca.gov/ListedResources/?view=county&criteria=43, accessed on June 1, 2022.

Vegetation and Landcover

According to the Vegetation Map shown in the Environmental Resources and Sustainability Element of the General Plan, the project site is within the urban forest (i.e., trees in the city).[7] The City recognizes that every tree on both public and private property is an important part of Cupertino's urban forest and contributes significant economic, environmental, and aesthetic benefits of the community.[8] The Arborist Report prepared by HortScience, Inc., dated September 2021, and revised March 2022, determined that 98 trees are currently located on the project site, including three street trees on North De Anza Boulevard and Alves Drive. Landscaping is made up of mostly trees, consisting of Carob, Camphor, Carrotwood, River red gum, Sweetgum, Tulip poplar, Southern magnolia, Flaxleaf paperbark, Canary Island pine, Chinese Pistache, Carolina cherry laurel, Evergreen pear, African sumac, Coast redwood, and Mexican fan palm.[9]

The California Natural Diversity Database (CNDDB) has no record of special-status plant and animal species on the project site or urbanized areas within a roughly 1-mile area surrounding the project site. There are no natural lands within a roughly 1-mile area of the project site.

The project site is generally flat with a slight eastward slope and has an elevation of around 240 feet above mean sea level.[10] The surficial geology consists of late Pleistocene older surficial sediments, which is described as older alluvial terrace gravel, sand, and clay, undeformed.[11] No paleontological resources have been identified on the project site; however, the presence of Pleistocene deposits that are known to contain fossils indicates that the overall city, including the project site, could contain paleontological resources.[12] Unique geological features are not common in Cupertino. The geologic processes are generally the same as those in other parts of the state, country, and even the world. The geology and soils on the project site are common throughout the city and region and are not considered to be unique.

The existing impervious surface totals 209,783 square feet. Stormwater from the site drains to a network of City-maintained storm drains at the intersection of Alves Drive and North De Anza Boulevard that

---

[7] City of Cupertino, *General Plan (Community Vision 2015-2040)*, Chapter 6, *Environmental Resources and Sustainability Element*, Figure ES-1, *Vegetation*, https://www.cupertino.org/our-city/departments/community-development/planning/general-plan/general-plan, accessed June 1, 2022.

[8] City of Cupertino, 2022. Tree Protection & Tree Removal. https://www.cupertino.org/our-city/departments/community-development/planning/residential-development/tree-protection-tree-removal, accessed June 1, 2022.

[9] HortScience, Inc., 2022. *Arborist Report*. Revised March.

[10] Partner Engineering and Science, Inc., 2022. *Phase I Environmental Site Assessment Report, 10145 N De Anza Boulevard and 10118-10122 Bandley Drive, Cupertino, California 95014*, March 21.

[11] United States Geological Survey and Association of American State Geologists, modified May 2022. *Geologic map of the Cupertino and San Jose West quadrangles, Santa Clara and Santa Cruz Counties, California*, https://ngmdb.usgs.gov/Prodesc/prodfFidesc_83442.htm, accessed June 1, 2022.

[12] City of Cupertino, certified *General Plan Amendment, Housing Element Update, and Associated Rezoning EIR*, (December 2014) State Clearinghouse Number 2014032007 (October 2015), and approved Addenda (October 2015, July 2019, August 2019, December 2019, and October 2021).

collect runoff from city streets and carry it to the creeks that run through Cupertino to the San Francisco Bay.

3.4 LAND USE AND ZONING DESIGNATIONS

3.4.1 General Plan

The project site is located in the Heart of the City Special Area's Crossroads subarea and more specifically in the North Crossroads Node of this subarea.[13] The Marina Plaza Shopping Center is listed as a Priority Housing Element Site in the current Housing Element. The project site has a General Plan land use designation of Commercial/Office/Residential.[14] In addition, the General Plan identifies the site as being within a regional priority development area or "PDA." These designations are described below.

3.4.1.1 HEART OF THE CITY SPECIAL AREA AND NORTH CROSSROAD NODE

The City has designated Special Areas along one of the four major mixed-use corridors in the city, which represent key areas within Cupertino where future development and reinvestment is generally focused. The Heart of the City Special Area is a key mixed-use, commercial corridor intended to create a greater sense of place, more community identity, and a positive and memorable experience for residents, workers, and visitors of Cupertino.[15] The Heart of the City Special Area includes five specific subareas, each with unique characteristics, land uses, and streetscape elements: West Stevens Creek Boulevard, Crossroads, Central Stevens Creek Boulevard, City Center, and East Stevens Creek Boulevard.

The Crossroads subarea is located between Stelling Road and De Anza Boulevard. This area consists of specialty shops, grocery stores, and restaurants. The primary use in this area is commercial/retail, with commercial office above the ground level allowed as a secondary use. Limited residential is also allowed as a supporting use pursuant to the Housing Element.[16] The North Crossroads Node encompasses the northern half of the subarea.[17]

The General Plan policies that guide development in this area are intended to ensure that the Heart of the City Special Area will continue being a focus of commerce, community identity, social gathering, and pride for Cupertino. The area is envisioned as a tree-lined boulevard that forms a major route for automobiles, but also supports walking, biking, and transit that links adjacent neighborhoods.

---

[13] City of Cupertino, *General Plan (Community Vision 2015-2040)*, Chapter 2, *Planning Areas*.

[14] City of Cupertino, Land Use Map adopted December 4, 2014, and amended August 20, 2019.

[15] City of Cupertino, *General Plan (Community Vision 2015-2040)*, Chapter 2, *Planning Areas*.

[16] City of Cupertino, *General Plan (Community Vision 2015-2040)*, Chapter 4, *Housing*.

[17] City of Cupertino, *General Plan (Community Vision 2015-2040)*, Chapter 3, *Land Use*, Figure LU-2, Community Form Diagram, pages LU-16 and LU-17.

3.4.1.2 PRIORITY HOUSING ELEMENT SITE

The Marina Plaza Shopping Center was identified as Priority Housing Element Site A4 (Marina Plaza) in the General Plan Housing Element. As described in the General Plan, many of the City's Housing Element sites, including the project site, are located in major corridors to reduce traffic and environmental impacts and preserve neighborhoods.[18] As a Priority Housing Element Site, it is allocated 200 units in the Housing Element, with the Marina Plaza Shopping Center site at a maximum density of 35 dwelling units per acre (du/ac). The maximum allowable height for development on the project site is 45 feet.[19]

Housing Element Strategy HE-2.3.7 (Density Bonus Ordinance) states that for projects that are consistent with the Density Bonus Ordinance (Cupertino Municipal Code [CMC] Chapter 19.56), density bonuses, incentives, or concession that result in identifiable cost reductions needed to make the housing affordable, would apply.[20] See Section 3.5.1, *Density Bonus Standards*, for additional details Density Bonus law, and Section 3.1.1.3 *Density Bonus Elements* for a description of the proposed project's Density Bonus application. Commercial/Office/Residential Land Use Designation

The Commercial/Office/Residential land use designation allows primarily commercial and office uses, secondarily residential uses, or a compatible combination of the two uses.[21] Allowed commercial uses include retail sales, businesses, limited professional offices, and service establishments with direct contact with customers. Retail stores that would be a nuisance for adjoining neighborhoods or harmful to the community identity would be regulated by CMC Chapter 19.60, *General Commercial Zones*, and the associated commercial zoning ordinance use permit procedures.

3.4.1.3 PRIORITY DEVELOPMENT AREA

Plan Bay Area is the Bay Area's Regional Transportation Plan (RTP)/Sustainable Community Strategy (SCS) adopted jointly by the Association of Bay Area Government's (ABAG) and Metropolitan Transportation Commission (MTC). As part of the implementing framework for *Plan Bay Area*, local governments, including Cupertino, have identified PDAs to focus growth.[22] A PDA is a transit-oriented, infill development opportunity areas within existing communities. In addition to PDAs, *Plan Bay Area* identifies Transit Priority Areas (TPAs), which are areas within 0.25 miles of a major transit stop (that have 15 minute or less

[18] City of Cupertino*, General Plan (Community Vision 2015-2040)*, Chapter 3, *Land Use and Community Design Element*, page LU-18.

[19] *Heart of the City Specific Plan* (2014) page 15 (height), and *City of Cupertino General Plan (Community Vision 2015-2040),* Chapter 4, *Housing Element*, Table HE-5: Summary of Priority Housing Element Sites to Meet the RHNA - Scenario A, page HE-17 (density).

[20] City of Cupertino Municipal Code, Title 19, *Zoning*, Chapter 19.56, *Density Bonus*, Sections 19.56.030, *Density Bonus*, and 19.56.040, *Incentives or Concessions, Waivers and Reduction of Parking Standards.*

[21] City of Cupertino, *General Plan (Community Vision 2015-2040)*, Appendix A: Land Use Definitions, *i*, page A-6.

[22] City of Cupertino, *General Plan (Community Vision 2015-2040)*, Chapter 3, *Land Use and Community Design Element*, page LU-7.

service level frequency) that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Sections 450.216 or 450.322 of Title 23 of the Code of Federal Regulations.

An overarching goal of the regional *Plan Bay Area* is to concentrate development in areas where there are existing services and infrastructure, rather than locating new growth in outlying areas where substantial transportation investments would be necessary, to maximize energy conservation and achieve the per capita passenger vehicle, vehicle miles traveled (also referred to as "VMT"), and associated greenhouse gas (GHG) emissions reductions.

The project site is located in a Santa Clara Valley Transportation Authority City Cores, Corridors & Station Areas PDA. Because the proposed project is in close proximity to existing employment centers, roadways, transit, and bicycle and pedestrian routes, it is also a designated TPA.

3.4.2 Zoning District

The project site is within the Planned Development with General Commercial (P(CG, RES)) zoning district.[23] As described in CMC Section 19.80.010, *Purpose*, the Planned Development zoning district is intended to provide a means of guiding land development or redevelopment of the city that is uniquely suited for planned coordination of land uses. Development in this zoning district provides for a greater flexibility of land use intensity and design because of accessibility, ownership patterns, topographical considerations, and community design objectives.[24] CMC Chapter 19.80, *Planned Development*, also allows a project proponent to propose development standards for their specific project.

All Planned Development districts are identified on the zoning map with the letter coding "P" followed by a specific reference to the general type of use allowed in the particular planning development zoning district. The type of use allowed on the project site is General Commercial with Residential uses (CG, Res), consistent with the General Plan land use designation for the site, and is within a district in which uses are intended to be a mix of general commercial and residential.[25] General Commercial allows uses such as retail food, drug, apparel, or hardware stores, full-service restaurants, professional and commercial office services, laundry facilities, non-auto related repair services, and personal services, along with several other specialty uses.[26]

[23] City of Cupertino, updated May 2015. Zoning Map & Ordinance, https://www.cupertino.org/our-city/departments/community-development/planning/zoning, accessed June 1, 2022.
[24] City of Cupertino Municipal Code, Title 19, *Zoning*, Chapter 19.80, *Planned Development*, Section 19.80.010, *Purpose*.
[25] City of Cupertino Municipal Code, Title 19, *Zoning*, Chapter 19.80, *Planned Development,* Section 19.80.030, *Establishment of Districts- Permitted and Conditional Uses*.
[26] City of Cupertino Municipal Code, Title 19, *Zoning*, Chapter 19.60, *General Commercial*, Section 19.60.030, *Permitted, Conditional and Excluded Uses in General Commercial Zoning Districts.*

3.5 CUPERTINO MUNICIPAL CODE REQUIREMENTS

3.5.1 Density Bonus Standards

Title 19, *Zoning*, Chapter 19.56, *Density Bonus*, is intended to comply with the State Density Bonus Law, Government Code Section 65915,[27] which provides that a local agency shall adopt an ordinance specifying how the agency will comply with that section. CMC Section 19.56.020, *Eligibility for Density Bonus,* states that housing developments resulting in a net increase of at least five units (excluding density bonus units) are eligible for a density bonus when the applicant proposes at least one of the listed requirements and the requirements of CMC Section 19.56.020(C), if applicable. One of the criteria for eligibility for a density bonus is construction of affordable housing (CMC Section 19.56.020(A)(1)(a) and (b)). Section 19.56.040, *Incentives or Concessions, Waivers and Reduction of Parking Standards*, states that changes to development standards or zoning code requirements may be allowed under certain conditions.[28] The granting of a density bonus, incentive or concession, in and of itself, shall not require a general plan amendment, zone change, or other discretionary approval and shall be reviewed concurrently with the review of the housing development.[29]

3.5.2 Setback Standards

Pursuant to CMC Chapter 19.80, *Planned Development,* the Planned Development Zoning District allows a project proponent to propose zoning setbacks different from those required in the underlying Zoning District to allow flexibility in the project, as long as these are approved by the City Council. In any case, the setbacks in the Zoning District or the setbacks proposed by the project, the project site must adhere to the General Plan requirement of maintaining sufficient space for adequate light, requirement for air and visibility at intersections, and the requirement for general conformity to yard requirements of adjacent or nearby zones, lot or parcels.

3.5.3 Landscaping

CMC Chapter 14.15, *Landscape Ordinance*, implements the California Water Conservation in Landscaping Act of 2006 by establishing new water-efficient landscaping and irrigation requirements. Any building or landscape project that involves more than 2,500 square feet of landscape area is required to submit a Landscape Project Submittal to the Director of Community Development for approval. Existing and

---

[27] Government Code, Title 7, *Planning and Land Use*, Division 1, *Planning and Zoning Sections*, Chapter 4.3, *Density Bonuses and Other Incentives*, Section 65915.

[28] City of Cupertino Municipal Code, Title 19, *Zoning*, Chapter 19.56 *Density Bonus*, Sections 19.56.030, *Density Bonus*, and 19.56.040, *Incentives or Concessions, Waivers and Reduction of Parking Standards*.

[29] City of Cupertino Municipal Code, Title 19, *Zoning*, Chapter 19.56 *Density Bonus*, Section 19.56.020, *Eligibility for Density Bonus*.

established landscaped areas greater than 1 acre in size are required to submit water budget calculations and audits of established landscapes.[30]

3.5.4 Tree Requirements

CMC Chapter 14.12, *Trees*, establishes regulations for the planting, care, and maintenance of public trees, and provides for the continuous maintenance of the public trees, with the goal of encouraging tree preservation. The City funds the planting and maintenance of public trees through payment of reimbursement costs as a condition of building permit issuance.[31]

CMC Chapter 14.18, *Protected Tree Ordinance*, provides regulations for the protection, preservation, and maintenance of trees of certain species and sizes. Removal of a protected tree requires a permit from the City. "Protected" trees include trees of a certain species and size on private property in all zoning districts; heritage trees whether on private or public property in all zoning districts; any tree required to be planted or retained as part of an approved development application, building permit, tree removal permit, or code enforcement action in all zoning districts; and approved privacy protection planting in single-family residential zoning districts. Since the existing development is on property that requires a development application, all existing trees on the site are considered protected.[32]

3.5.5 Bird Safe Design Ordinance

The City of Cupertino Bird Safe Design Ordinance in CMC Chapter 19.102, *Glass and Lighting Standards*, contains specific building and site design measures to reduce bird mortality from windows or other specific glass features known to increase the risk of bird collisions, and to reduce light pollution known to contribute to bird mortality and reduced visibility of the night sky, and cause adverse impacts to human health. These guidelines are applicable to any project that is required to obtain a building permit or a permit pursuant to CMC Title 19, *Zoning*, including the proposed project. CMC Section 19.102.030, *Bird-safe Development Requirements*, includes:[33]

- Glass requirements for new or replacement windows of twelve square feet or more and facades requiring no more than 10 percent of the surface area of the façade be untreated glass between the ground and 60 feet above ground. Treatments can include opaque glass, window muntins, exterior insect screens, exterior netting, or special glass treatments such as fritting to provide visual cues and reduce the likelihood of bird collisions.

[30] City of Cupertino Municipal Code, Title 14, *Streets, Sidewalks and Landscaping*, Chapter 14.15, *Landscape Ordinance*.
[31] City of Cupertino Municipal Code, Title 14, *Streets, Sidewalks and Landscaping*, Chapter 14.12, *Trees*.
[32] City of Cupertino Municipal Code, Title 14, *Streets, Sidewalks and Landscaping*, Chapter 14.18, *Protected Trees*.
[33] City of Cupertino Municipal Code, Title 19, *Zoning*, Chapter 19.102, *Glass and Lighting Standards.*

- Indoor lighting requirements to program automatic sensors and timer to turn off at 11:00 p.m., within two hours after business closes, or the addition of filtering with the use of interior or exterior blinds.
- Design requirements to avoid funneling of flight paths along buildings or trees to building facades; avoid use of highly reflective glass or highly transparent glass; and avoid glass skyways or walkways, freestanding glass walls, transparent building corners, or other design elements where trees, landscaping, water features, or the sky is visible form the exterior.

3.5.6 Outdoor Lighting Requirements

CMC Section 19.102.040, *Outdoor Lighting Requirements*, includes requirements to reduce light pollution throughout the city. These requirements prohibit outdoor lighting that blinks, flashes, or rotates; outdoor lighting that projects above the horizontal plan; lighting that unnecessarily illuminates other lots or interferes with the enjoyment of that lot; high-intensity discharge lighting for recreation courts or private property; and spotlights. Outdoor lighting that is not prohibited, must abide by the following:[34]

- All outdoor light much be fully shielded fixtures directed downward to meet the particular need and away from adjacent properties.
- Illumination levels cannot exceed one foot-candle onto an adjacent property and maximum light intensity cannot exceed a maintained value of ten foot-candles when measured at finished grade.
- All light sources must have a maintained correlated color temperature of 3,000 Kelvin or less.
- All outdoor lighting must be turned off by 11:00 p.m. or when people are no longer present in exterior areas, except for security lighting required and designed according to the California Building Code.
- Automated control systems should be used to meet lighting requirements.
- Lighting design must compliment building and landscaping, and fixtures must be appropriate in height, intensity, and scale to the use.

3.5.7 Standard Environmental Protection Requirements

CMC Section 17.04, *Standard Environmental Protection Requirements*, identifies environmental protection standards that all construction projects must meet, including but not limited to environmental mitigation measures identified in any environmental documents required as part of a General Plan update. These requirements apply to every project within the city and are demonstrated through the submittal of construction management or permit plans prior to issuance of permits. Development projects must submit technical reports for air quality, hazardous materials, vehicle miles traveled, and construction

[34] City of Cupertino Municipal Code, Title 19, *Zoning*, Chapter 19.102, *Glass and Lighting Standards.*

vibrations. This section also includes nine distinct permit submittal requirements for each topic area, including the following:

1. Air Quality
2. Hazardous Materials
3. Greenhouse Gas Emissions and Energy
4. Biologic Resources
5. Cultural Resources
6. Hydrology and Water Quality
7. Noise and Vibration
8. Paleontological Resources
9. Utilities and Service Systems

3.5.8 Utilities and Energy

3.5.8.1 ENERGY CONSERVATION

The California Green Building Standards Code (Part 11, Title 24, known as "CALGreen") was adopted as part of the California Building Standards Code (Title 24, California Code of Regulations) to apply to the planning, design, operation, construction, use, and occupancy of every newly constructed building or structure, unless otherwise indicated in the California Building Standards Code, throughout the State of California.[35] CALGreen established planning and design standards for sustainable site development, energy efficiency (in excess of the California Energy Code requirements), water conservation requiring new buildings to reduce water consumption by 20 percent, material conservation, and internal air contaminants. The local building permit process enforces the building efficiency standards. CMC Chapter 16.58, *Green Building Standards Code*, adopts the CALGreen requirements and makes it part of the CMC along with local amendments for projects in the city. The City's Green Building Ordinance contains mandatory, minimum required green building techniques, including measures affecting water use efficiency and water conservation.

CMC Sections 16.58.100 through 16.58.220 set forth the standards for green building requirements by type of building. As shown on Table 101.10 in CMC Section 16.58.220, mixed-use projects with residential and non-residential components shall comply by either: (1) meeting the applicable requirements for each use; or (2) meeting the applicable requirements for the use that comprises the majority of the project's square footage where uses are attached and/or combined in a building. For the residential component, new construction greater than nine homes is required to be Green Points Rated certified at minimum 50 points, Silver in Leadership in Energy & Environmental Design (LEED), or Alternate Reference Standard per

[35] California Code of Regulations, Title 24, Part 11, January 1, 2020, *California Green Buildings Standards Code,* https://codes.iccsafe.org/content/CAGBSC2019/copyright.

CMC Section 101.10.2.[36] For the non-residential component, development from 25,000 square feet to 50,000 square feet is required to be LEED Certified or Alternate Reference Standard pursuant to CMC Section 101.10.2. CMC Section 16.58.230 permits applicants to apply an alternate green building standard for a project in lieu of the minimum standards outlined in CMC Section 16.58.220 that meet the same intent of conserving resources and reducing solid waste.

The California Energy Code (Part 6, Title 24) was adopted as part of the California Building Standards Code (Title 24) to reduce wasteful and unnecessary energy consumption in newly constructed and existing buildings. The City of Cupertino has adopted the California Energy Code, with local amendments into, as CMC Chapter 16.54, *Energy Code*. CMC Section 16.54.100(2), *Scope for Newly Construction Building*, requires all newly constructed buildings to be All-Electric Buildings. All-Electric Buildings are defined as a building that has no natural gas or propane plumbing installed within the building, and that uses electricity as the sole source of energy for its space and water heating.[37] The City approved reach codes in February 2020,[38] which go above California Energy Code requirements to reduce energy, water, and associated GHG emissions. The City includes five exemptions to CMC Section 16.54.100(2) in CMC Section 16.54.100(2)(A) that would permit using natural gas under limited circumstances approved by the City. A summary of exemptions includes nonresidential occupancies (i.e., factory, high-hazard, and laboratories), or other similar research and development uses; essential facilities; nonresidential buildings containing a for-profit restaurant open to the public or an employee kitchen; projects that demonstrate that all-electric buildings are not attainable; and accessory dwelling units.

3.5.8.2 SOLID WASTE REDUCTION

Consistent with CALGreen, CMC Chapter 16.72, *Recycling and Division of Construction and Demolition Waste*, requires that a minimum of 65 percent of all non-hazardous construction and demolition debris must be recycled or salvaged, and that all applicants have a waste management plan for on-site sorting of construction debris. Additionally, in December 2017, the City adopted a Zero Waste Policy.[39] According to the Zero Waste Policy, the City will require, through the City's waste hauling franchise agreement,

[36] Leadership in Energy & Environmental Design (LEED) is a green building certification program that recognizes best-in-class building strategies and practices that reduce consumption energy, and water, and reduce solid waste directly diverted to landfills. LEED certified buildings are ranked in order of efficiency from Certified, Silver, Gold and Platinum being the highest ranking with the greatest efficiency standard. LEED Silver certified buildings typically reduce is the third highest ranking out of the four, with just being certified being the lowest and Gold and Platinum being the second highest.

[37] City of Cupertino Municipal Code, Title 16, *Building and Construction*, Section 16.54.110, *Definitions and Rules of Construction.*

[38] Cities may adopt more stringent building codes for energy use than those required by the California Building Standards Code (Title 24 of the California Code of Regulations) , which are known as "reach codes."

[39] City of Cupertino. 2017. Zero Waste Policy.
https://www.cupertino.org/home/showpublisheddocument/19101/636505857999300000. Accessed July 26, 2021.

steadfast and ongoing efforts by the City's franchisee to maintain a minimum residential and commercial waste diversion rate of 75 percent with a goal of reaching and maintaining 80 percent by 2025.

3.5.8.3 WATER QUALITY

CMC Chapter 9.18, *Storm Water Pollution Prevention and Watershed Protection*, provides regulations and gives legal effect to the Municipal Regional Storm Water National Pollutant Discharge Elimination System (NPDES) Permit (MRP) issued to the City. This chapter also ensures ongoing compliance with the most recent version of the City's MRP regarding municipal storm water and urban runoff requirements. This chapter applies to all water entering the storm drain system generated on any private, public, developed, and undeveloped lands within the city. The CMC contains permit requirements for construction projects and new development or redevelopment projects to minimize the discharge of storm water runoff.

3.6 PROJECT COMPONENTS

As described in Chapter 1, *Introduction and Purpose*, since the time of the Approved Project and the Adopted MND, the Approved Project has been "modified." Table 3-1, *Comparison of Approved and Modified Projects*, compares the project components of the Approved and Modified Projects.

Table 3-1 Comparison of the Approved Project and Modified Project

	Approved Project	Modified Project
Building A		
Use	Hotel	Retail/Residential
Stories (Height) [a]	4 stories (55 feet) + two levels underground parking	5 stories (64 feet) + one level underground parking
Residential or Hotel Units	122 (Hotel)	56 (Residential)
Building B		
Use	Retail/Residential	Retail/Residential
Stories (Height) [a]	4 stories (55 feet) + two levels underground parking	4 stories (50 feet) + one level underground parking
Residential Units	108	86
Building C		
Use	Retail/Residential	Retail/Residential
Stories (Height) [a]	4 stories (58 feet) + one level underground parking	5 stories (61 feet) + one level underground parking
Residential Units	80	64
Population	541 [b]	591 [c]
Employees	64 [d]	92 [e]

Notes:
a. Building height is rounded and is measured at the tallest architectural point. See Section 3.1.1.3, *Density Bonus Elements,* for roofline heights.
b. 2.88 persons per household x 188 units = 541.44
c. 2.87 persons per household x 206 units = 591.22 residents
d. 22,593 square feet of commercial land use / 450 square feet per employee = 50.21 employees) + 13 hotel employees) = 63.21 total employees.
e. 41,589 square feet of commercial land use / 450 square feet per employee = 92.42 employees
Sources: City of Cupertino and PlaceWorks, 2022.

The Approved Project and the proposed Modified Project would involve demolishing the two existing commercial buildings totaling approximately 49,140 square feet and redeveloping the project site. Under the Approved Project, Building A would include the hotel with meeting rooms and a fitness area, lounge, café and bar, restaurant, and swimming pool amenities.

Commercial development would be located at the ground level of both Buildings B and C and residential development would be located in the stories above. Building B and Building C would contain apartments. Buildings B and C would be oriented around a central courtyard. Amenities for Building B would include a community room, exercise room, bike lounge, and swimming pool. Amenities for Building C would include a community room.

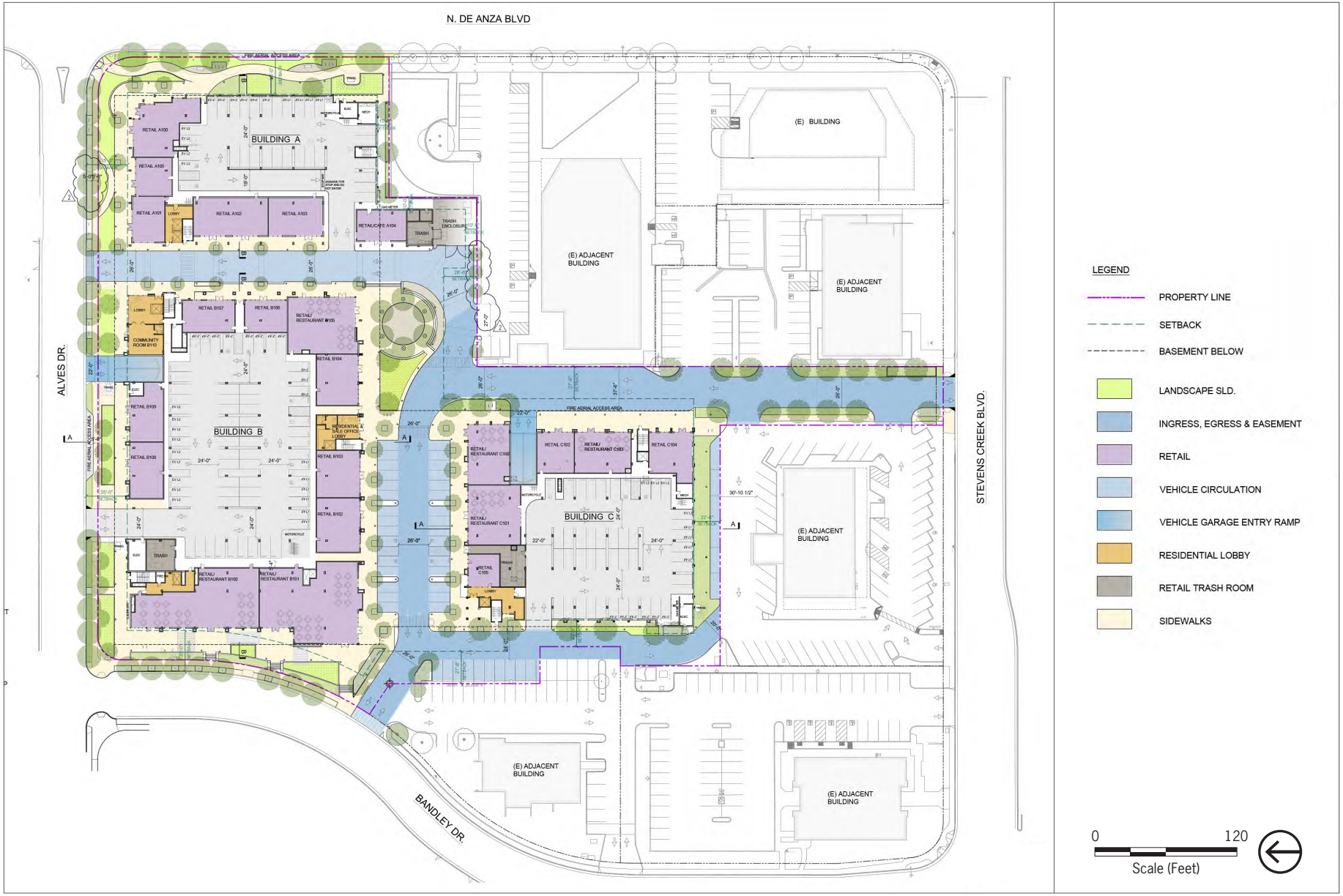
The Approved Project would have residential common open space in the form of rooftop gardens, balconies, and an open courtyard. Each building would have two levels of underground parking. Under the proposed Modified Project, the project applicant proposes to redevelop the project site with three mixed-use buildings, consisting of commercial uses at ground floor and residential units on the floors above. The second level of each building would have a center courtyard with greenery, searing, and gathering areas, fireplaces, and general recreational areas. Buildings A and C would offer a roof deck garden with seating and open space.

The mechanical equipment and heating, ventilation, and air conditioning (HVAC) unit would be located on the roof of each building. Each building would have one levels of underground parking. The following describes the proposed Modified Project as a whole rather than compared to the Approved Project. The conceptual site plan for the proposed Modified Project is shown on Figure 3-3, *Conceptual Site Plan*.

3.6.1 Land Use Components

3.1.1.1 RESIDENTIAL

The proposed Modified Project's mixed-use buildings include 206 apartment units. Apartments would be comprised of a mix of one- to three-bedroom units, some with a den, with an overall size average of approximately 1,350 square feet. Table 3-2, *Residential Unit Types per Building*, lists the number of each unit type in each building. The residential areas total approximately 268,723 square feet.



Source: Tectonic Builders Corporation, 2022.

Figure 3-3
Conceptual Site Plan

Table 3-2 Residential Unit Types per Building

Building A						
1 Bedroom		0	0	0	0	0
2 Bedroom		4	4	4	4	16
2 Bedroom + Den		2	2	2	2	8
3 Bedroom		7	7	7	7	28
3 Bedroom + Den		1	1	1	1	4
	Sum	**14**	**14**	**14**	**14**	**56**
Building B						
1 Bedroom		4	3	2	-	9
2 Bedroom		11	12	12	-	35
2 Bedroom + Den		3	3	3	-	9
3 Bedroom		6	6	6	-	18
3 Bedroom + Den		5	5	5	-	15
	Sum	**29**	**29**	**28**	**-**	**86**
Building C						
1 Bedroom		0	0	0	0	0
2 Bedroom		8	8	8	8	32
2 Bedroom + Den		1	1	1	1	4
3 Bedroom		6	6	6	6	24
3 Bedroom + Den		1	1	1	1	4
	Sum	**16**	**16**	**16**	**16**	**64**

Source: City of Cupertino and PlaceWorks, 2022.

Trash would be collected in three streams: waste, recycling, and compost. Residential trash enclosures would be in the basement level parking garage on the southwest corner of Buildings A and B and in the center of Building C. Residential bins and carts would be moved by staff to and from the central trash staging enclosure, located on the ground floor near Building A. The enclosure would be accessed by the waste management company on trash day from the internal roadway network.

The Modified Project would provide 338 parking spaces for residents in the parking garage, with 208spaces designated for electric vehicles (EV). Vehicular parking would meet the standards of the Americans with Disabilities Act (ADA). The Modified Project would provide 116 Class 1 and 30 Class 2 bicycle parking spaces for the residential uses.[40]

[40] Class 1 facilities protect the entire bicycle from theft, vandalism, and inclement weather and are appropriate for long-term storage. Class 2 facilities include bicycle racks to which the frame and at least one wheel can be secured with a user-provided lock.

3.1.1.2 COMMERCIAL

The proposed Modified Project would include a total of 41,589 square-foot of commercial space. Commercial development would be located at the ground level of all three buildings.

Retail trash enclosures would be located on the ground floor on the southeast corner of Building A and on the southwest corner of Buildings B and C. Retail bins and carts would be moved by staff to and from the central trash staging enclosure, located on the ground floor near Building A. The enclosure would be accessed by the waste management company on trash day from the internal roadway network.

The Modified Project would provide 269 retail parking stalls made up of 188 surface parking spots and 81 underground garage parking stalls. Retail parking would include 54 EV stalls. Vehicular parking would meet the standards of the Americans with Disabilities Act (ADA). The Modified Project would provide 48 Class 2 bicycle parking spaces for the retail uses.

3.1.1.3 DENSITY BONUS ELEMENTS

In accordance with CMC Section 19.56.040, *Incentives or Concessions, Waivers and Reduction of Parking Standards*, the proposed Modified Project would include 206 residential units, with a base density of 179 units. Of the total 206 units, the proposed Modified Project will provide 36 Below Market Rate (BMR) units, or 20 percent of base density, rounded up to the nearest whole number. Of these 36 BMR units, 18 BMR-units would be available to moderate-income households at a moderate-income sales price, and 18-BMR units will be available to median-income households at a median-income sales price.

Providing 20 percent of base units as Moderate Units in a for-sale development entitles the project to a 15 percent density bonus, pursuant to Government Code Section 65915(f)(4). Fifteen percent of the base density of 179 units is 26.85 units. Pursuant to Government Code Section 65915(f)(5), this number should round up to 27 bonus units, to yield a total of 206 units[41] for the proposed Modified Project.

The proposed project would also apply a density bonus waiver to reduce the side setbacks required for the proposed buildings, and to allow for a greater building height. If the side setback requirements were enforced, the proposed Modified Project would potentially lose a combined total of approximately eight units per floor in Buildings A and C, for an overall total of at least 30 units as designed. If the height limits were imposed, the proposed Modified Project would potentially lose 30 units as designed, which includes the entire fourth floors of Buildings A and C. The proposed building heights would be as follows:

- Building A. 58 feet and 8 inches at the roofline, and 64 feet and 8 inches at the stair tower
- Building B. 43 feet and 9 inches at the roofline and 49 feet and 9 inches at the stair tower
- Building C. 55 feet roofline and 61 feet at the stair tower

[41] 179 base density units + 27 density bonus units = 206 total units proposed.

3.6.2 Population and Employee Estimates

Based on an average household size of 2.87 persons,[42] the proposed Modified Project would generate 591 residents.[43] Applying the generation rate of one job for every 450 square feet of commercial uses, the proposed Modified Project would generate 92 employees.[44] It is anticipated that future residents and employees would be drawn largely from Cupertino and other communities in the San Francisco Bay Area.

3.6.3 Circulation and Access

3.1.1.4 VEHICULAR ACCESS

As shown on Figure 3-3, the proposed Modified Project would have two-lane entrance/exit circulation pattern with access points at Alves Drive, Bandley Drive, and Stevens Creek Boulevard. The proposed Modified Projects provides access via five driveways in total: three on Alves Drive, one on Bandley Drive, and one on Stevens Creek Boulevard. The Alves Drive and Bandley Drive driveways would provide full access while the Stevens Creek Boulevard driveway would be right-turn only inbound and outbound. An internal "Main Paseo" would be created to connect Alves Drive, Bandley Drive, and Stevens Creek Boulevard between all three buildings. The proposed emergency access route would be the same as the proposed vehicle access routes. Waste management vehicles would follow the same vehicle route as well.

3.1.1.5 PEDESTRIAN AND BICYCLE ACCESS

Pedestrian access to the building would be available from one access point along Stevens Creek Boulevard; one access point at the intersection of North De Anza Boulevard and Alves Drive; six access points along Alves Drive; one access point at the intersection of Alves Drive and Bandley Drive; and one access point along Bandley Drive. The proposed Modified Project also proposes a plaza, which provides interior pedestrian circulation throughout the site and between the three buildings. While the proposed Modified Project does not propose any new bicycle lanes or routes, the site is accessible via the existing Class II Bike Lane on North De Anza Boulevard, the Enhanced Bike Lane on Stevens Creek Boulevard, and Class III Bike Route along Bandley Drive.[45]

[42] This analysis is based on the Association of Bay Area Governments (ABAG) 2040 projections of the average household size of 2.87 persons for Cupertino in 2025. This is the standard approach for population and housing analysis in Cupertino.

[43] 206 units times 2.87 persons per household equals 591.22 residents.

[44] 41,589 square feet of commercial land use divided by 450 square feet per employee equals 92.42 employees.

[45] City of Cupertino, June 2016. *2016 Bicycle Transportation Plan*, https://www.cupertino.org/home/showpublisheddocument/3479/636443578340030000, accessed June 1, 2022.

3.6.4 Landscaping

Figure 3-4, *Proposed Landscape Plan*, illustrates the proposed landscaping plan at ground level. A total of 168 trees, including street trees, would be planted throughout the site. The tree types proposed on site include the Japanese maple, eastern redbud, maidenhair tree, fastigiate beech, coast live oak, crape myrtle, Chinese pistache, and London plane. On Alves Drive, the silver linden would be provided to match the tree type across the street. On North De Anza Boulevard, an oak tree type (*quercus engelmannii, quercus gravesii, or quercus cambyi*) would be provided and on Bandley Avenue, the Brisbane box. The proposed Modified Project's landscape planting plan also includes planting of shrubs, bamboo, stormwater landscape, and other groundcover. Landscaping on the second and third floor, as well as the rooftop would also be provided in the form of potted vegetation.

3.6.5 Light, Glare, and Mechanical

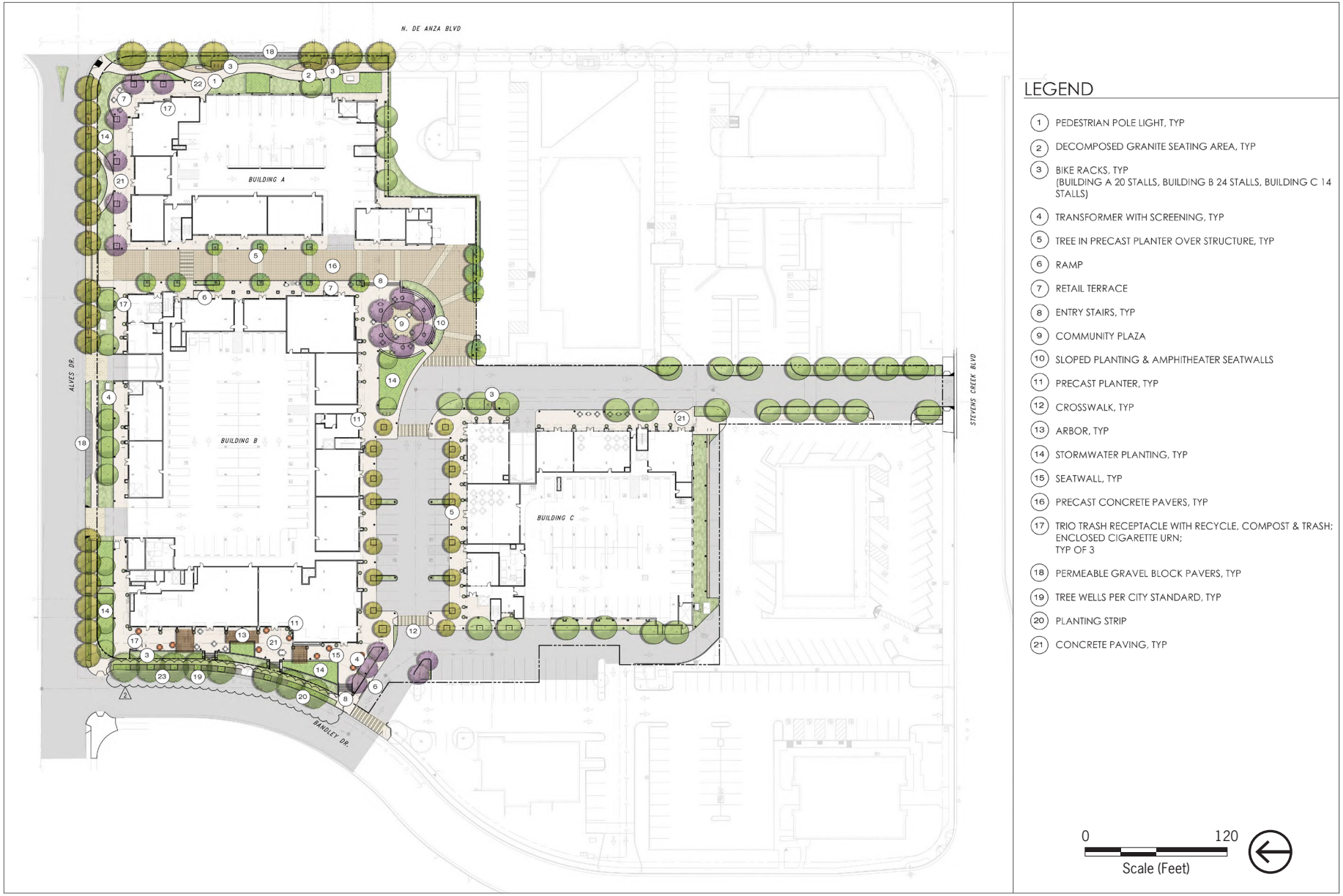
The source, intensity, and type of exterior lighting for the project site would generally be provided for the purpose of orienting site users and for safety needs. In accordance with CMC Section 19.102, *Glass and Lighting Standards*, all permanent on-site lighting would be low-level illumination, downward directed, and shielded to reduce light spill or glare into surrounding residential homes. There would be no up-lighting on the mixed-use building exterior. Except where used for safety, all outside lighting would be turned off by 11:00 p.m. All exterior surface and above-ground mounted fixtures would be complementary to the architectural theme. High efficiency lighting would be located throughout the buildings in accordance with Title 24. The proposed project would not include reflective glass. Where glass features such as windows and doors are proposed, glazing treatments would vary; however, the exterior glass would be designed to reduce reflection and glare in accordance with CMC Section 19.102 as described above in Section 3.1.5, *Cupertino Municipal Code Requirements*.

The HVAC system would be located on the rooftop for each mixed-use building. The rooftop HVAC system would be shielded from view by a mechanical screening facing all sides of the building, which would also serve as a noise attenuation feature.

3.6.6 Utilities and Energy

The proposed utility infrastructure would connect to the existing water, sewer, storm drain system, electricity network in the area, and would be served by an existing solid waste landfill.

PROJECT DESCRIPTION



Source: Jett Landscape Architecture + Design, 2022. Tectonic Builders Corporation, 2022.

Figure 3-4
Proposed Landscape Plan

3.1.1.6 WATER SUPPLY AND IRRIGATION

As shown in Figure 3-5, *Utility Plan*, a 3-inch and 6-inch domestic water line and one 8-inch fire service water line would connect to the existing water line in Alves Drive. All landscape zones would be irrigated as required by the Cupertino Landscape Ordinance, and water uses would be tailored to meet CALGreen Building Standards, which as described above in Section 3.5.8.1, *Energy Conservation,* requires water conservation and requires new buildings to reduce water consumption by 20 percent. Water would be provided by Santa Clara Valley Water District (SCVWD). Any new connections or replaced water lines would not encroach on undisturbed areas.

3.1.1.7 SANITARY SEWER SERVICE

As shown on Figure 3-5, *Utility Plan,* the proposed project would connect to the existing 10-inch sanitary sewer line on Bandley Drive. Sanitary sewer service would be provided by Cupertino Sanitary District.

3.1.1.8 STORMWATER MANAGEMENT

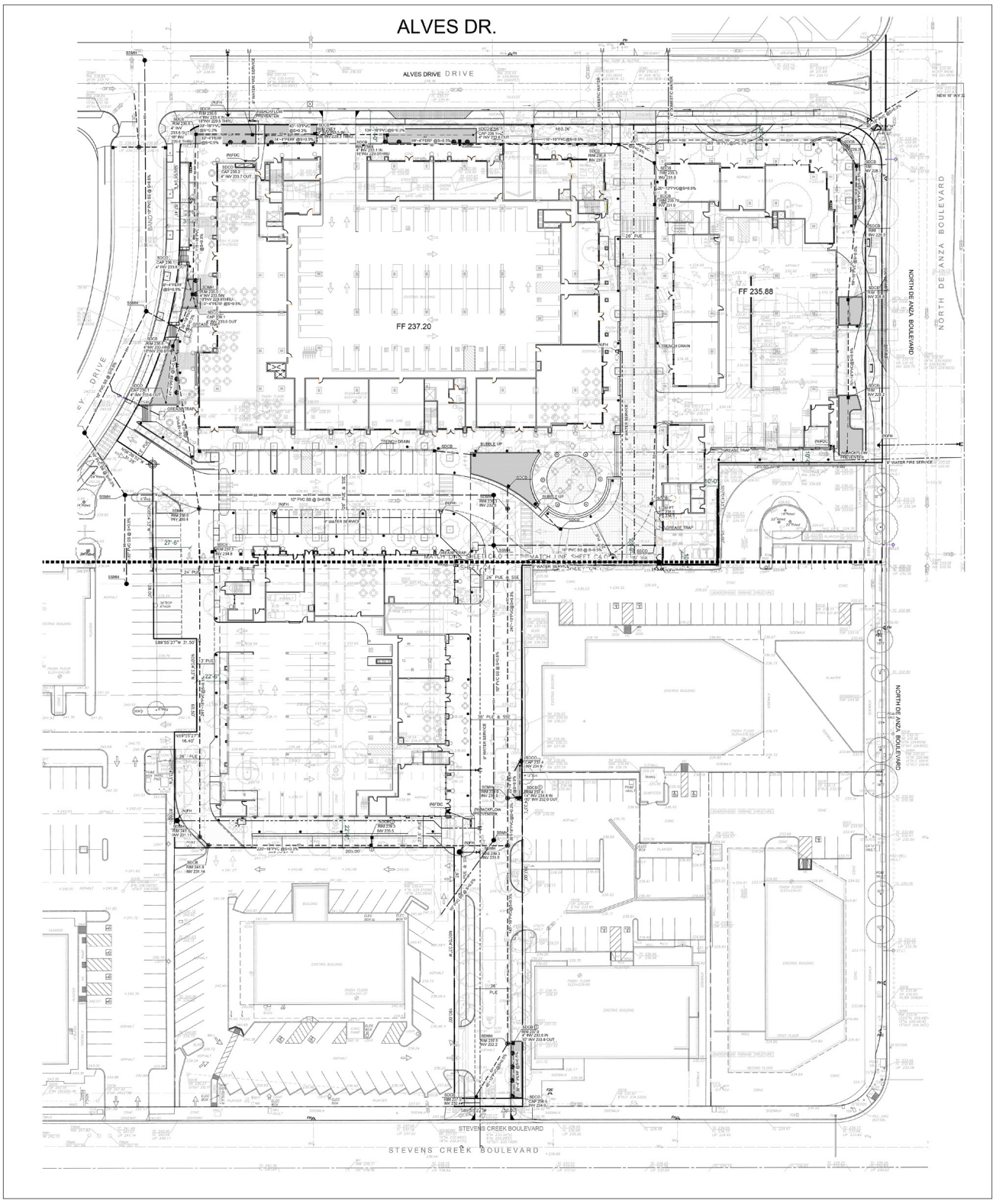
The proposed Modified Project would result in 166,445 square feet of impervious surfaces coverage and 56,410 square feet of pervious surfaces coverage. The existing site includes 209,783 square feet of existing impervious surfaces; therefore, the proposed project would reduce impervious surfaces by 43,338 square feet. The proposed Modified Project would replace more than 50 percent of the existing imperious area and therefore is required to provide stormwater treatment for the entire site. The proposed Modified Project would do so through pervious pavements, flow-through planters, and green roof. The proposed Modified Project is required to comply with the Santa Clara Valley Urban Runoff Pollution Prevention Program C.3 requirements, which include minimization of impervious surfaces, measures to detain or infiltrate runoff from peak flows to match pre-development conditions, and agreements to ensure that the stormwater treatment and flow control facilities are maintained in perpetuity. The project also must comply with CMC Chapter 9.18 described above in Section 3.5.8.3, *Water Quality,* which is intended to provide regulations and give legal effect to certain requirements of the NPDES permit issued to the City.

3.1.1.9 SOLID WASTE SERVICES

Recology would provide curbside recycling, garbage, and compost and landscaping waste service to the project.[46] All non-hazardous solid waste collected under the Recology franchise agreement is taken to Newby Island Sanitary Landfill for processing. Under the agreement between the City and Recology, Recology also handles recyclable materials.

[46] Recology, 2020. Recology Courtesy Notice, https://www.cupertino.org/Home/ShowDocument?id=28669, accessed June 2, 2022.

PROJECT DESCRIPTION



Source: Ver Consultants, 2022.

Figure 3-5
Utility Plan

3.1.1.10 OTHER UTILITIES (ELECTRIC AND TELECOMMUNICATIONS)

Pacific Gas & Electric (PG&E) would supply electricity infrastructure to the project site.[47] The source of electricity would be provided through a partnership of Silicon Valley Clean Energy (SVCE), which provides a standard electricity offering from a 50 percent renewable portfolio,[48] and PG&E. SVCE also offers a 100 percent renewable option that electricity customers can opt into.

Telephone service would be provided by AT&T and other providers. Cable television service would be available from a number of providers, including Comcast.

3.6.7 Sustainability Features

The proposed Modified Project would include several features that reduce GHG emissions and help the City meet sustainability goals. These include the following:

- Green Building. The proposed residential development would achieve at a minimum GreenPoint Rated or LEED Silver green building designation, and the proposed commercial development would achieve at a minimum LEED Certified, consistent with the City's requirements.[49, 50]
- Photovoltaic Solar. The rooftops of the mixed-used buildings of proposed project would include a photovoltaic solar arrays. Each building rooftop would have a photovoltaic system that is tied into the house meter, lowering overall energy costs for the residents and reducing GHG emissions.
- Landscaping and Tree Cover. The proposed project would increase landscaping on-site and increase the number of trees. This would increase tree canopy cover on-site and provide shade cover for both buildings and hardscaped areas, reducing energy needed to cool the buildings.
- Landscaping Water Use. All landscape zones would be irrigated with sub-surface drip irrigation and tree bubblers to maximize irrigation efficiency and comply with the Cupertino Landscape Ordinance, and water uses would be tailored to meet CALGreen Building Standards, which as described above, requires water conservation and new buildings to reduce water consumption by 20 percent. Irrigation controls would use smart weather sensing technology to minimize irrigation water use.
- Stormwater. Pervious pavements, flow-through planters, and green roof would provide stormwater treatment and reduce the amount of stormwater released into the City's off-site

[47] City of Cupertino, 2022. Other Service Providers, https://www.cupertino.org/our-city/departments/other-service-providers, accessed June 2, 2022.
[48] Silicon Valley Clean Energy, 2022. It's All About Choice, https://www.svcleanenergy.org/choices/, accessed June 2, 2022.
[49] Leadership in Energy & Environmental Design is a green building program that recognizes building strategies that reduce consumption energy, and water, and reduce solid waste directly diverted to landfills. Silver is the third highest ranking, with Certified being the lowest, Gold the second highest, and Platinum the highest rating.
[50] City of Cupertino. 2020. Staff Report, June 25, 2020. https://www.cupertino.org/home/showpublisheddocument/27933/637286788947170000. Accessed July 25, 2021.

storm drain infrastructure to ensure no expansion of existing stormwater facilities or the construction of new facilities, the construction of which could otherwise have significant impacts would occur from development of the proposed project.

- Bicycle Parking. The proposed project would include both Class 1 lockers and Class 2 bike parking facilities. The project would include 30 Class 1 and 116 Class 2 bicycle parking spaces for residences and 48 Class 2 bicycle parking spaces.
- Electric Vehicle or EV Charging Stations. The proposed project would include the installation of EV charging stations. The proposed project would meet the number of EV charging stations required under the CMC Chapter 16.58, *Green Building Standards Code*, requirements as shown in Table 3-3, *Electric Vehicle Parking*.

TABLE 3-3 ELECTRIC VEHICLE PARKING SPACES

	Required Pursuant to Cupertino Municipal Code Standards [a]	Total Provided
Multi-family [b]		
EV Ready Circuit Level 1	161	161
EV Ready Circuit Level 2	47	47
	Total	*208*
Commercial space		
EV Capable	23	23
EV Ready Circuit Level 1	14	14
EVCS Level 2	17	17
	Total	*54*
	Grand Total of EV Parking Spaces	**262**

Notes: EV = electric vehicle; EVCS = electric vehicle charging station
a. Cupertino Municipal Code Chapter 16.58. *Green Building Standards Code.*
b. Include parking standards for market-rate and below-market-rate housing.
Source: City of Cupertino, PlaceWorks, 2022.

3.6.8 Demolition, Site Preparation, and Construction

Demolition and construction would be subject to regulatory approval.[51] The project applicant proposes to demolish the existing buildings and remove most of the existing on-site vegetation, except for select trees that would remain. The proposed project would be constructed over an approximately 3-year (38-month) period. Demolition and construction work would be conducted between 7:00 a.m. to 8:00 p.m. on weekdays, as provided for in CMC Section 10.48.053, *Grading, Construction and Demolition.* Demolition and construction is not permitted on weekends or holidays for sites within 750 feet of other residential

[51] New buildings would be constructed to the California 2022 Building Energy Efficiency Standards (effective January 1, 2023).

properties.[52] Demolition debris, including soil, would be off-hauled for disposal in accordance with the City of Cupertino's Recycling and Diversion of Construction and Demolition Waste Ordinance.[53] Typical equipment to be used for demolition and site preparation would include excavators, a skid steer loader, a grader, a rubber-tired dozer, scrapers, and an off-highway truck.

No pile driving, rock blasting, or crushing would occur during the construction phase. Typical equipment to be used during construction of the project would include a backhoe, a crane, aerial lifts, a generator, a diesel pump, dumpers, rollers, and a paver.

During demolition and construction, vehicles, equipment, and materials would be staged and stored on a centrally located portion of the project site when practical. No long-term staging of equipment would occur around the perimeter of the site where adjacent to existing residential uses. No staging would occur in the public right-of-way. The construction site and staging areas would be clearly marked, and construction fencing would be installed to prevent disturbance and safety hazards. A combination of on- and off-site parking facilities for construction workers would be identified during demolition, grading, and construction.

3.7 REQUIRED PERMITS AND APPROVALS

Following approval of this Addendum, the following discretionary permits and approvals from the City would be required for the proposed Modified Project:

- Development Permit
- Architectural and Site Approval Permit
- Tree Removal Permit
- Tentative Map/Final Map

In addition, permits for demolition, grading and building, and the certificate of occupancy would be required from the City. Encroachment permits from the City would also be required for any work performed in the public right-of-way. As part of the Development Permit, the proposed Modified Project is requesting a Density Bonus of 27 units pursuant to State Law as incorporated into the City's Housing Element[54] and CMC.[55] Pursuant to Density Bonus law, the applicant is also requesting waivers of development standards for height and setbacks, that the developer states would have the effect of physically precluding the development of the proposed Modified Project at the density proposed.

---

[52] Cupertino Municipal Code, Title 10, *Public Peace, Safety and Morals,* Chapter 10.48, *Community Noise Control,* Section 10.48.053, *Grading, Construction and Demolition*.

[53] Cupertino Municipal Code, Title 16, *Building and Construction*, Chapter 16.72, *Recycling and Diversion of Construction and Demolition Waste.*

[54] City of Cupertino, amended March 2020. *General Plan (Community Vision 2015-2040), Chapter 4, Housing*, *Strategy HE-2.3.7: Density Bonus Ordinance*.

[55] City of Cupertino Municipal Code, Title 19, *Zoning*, Chapter 19.56, *Density Bonus*, Sections 19.56.030, *Density Bonus*, and 19.56.040, *Incentives or Concessions, Waivers and Reduction of Parking Standards.*

4. Environmental Analysis

As previously described in Chapter 2, *Standard for Preparation of an Addendum*, this Addendum has been prepared pursuant to CEQA Guidelines Sections 15162 and 15164 to determine whether implementation of the proposed Modified Project would result in any new impacts or substantially more severe significant environmental impacts than were previously analyzed in the Adopted MND. Accordingly, this Addendum only considers the extent to which the proposed changes could result in new or substantially more severe significant impacts; it does not reevaluate impacts that would remain consistent with the analysis in the Adopted MND. The environmental topic areas analyzed in the Adopted MND includes:[56]

- Aesthetics
- Air Quality
- Biological Resources
- Cultural and Tribal Cultural Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Noise
- Population and Housing
- Public Services
- Parks and Recreation
- Transportation
- Utilities and Service Systems
- Wildfire

4.1 AESTHETICS

Except as provided in Public Resources Code Section 21099 (transit priority area/major transit stop), would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
a) Have a substantial adverse effect on a scenic vista?	LTS	Yes	No	No	No

[56] Note that Wildfire and Energy as standalone topics are requirements of CEQA updates that took place in December 2018. These topics were addressed in the Adopted MND in the Hazards and Hazardous Materials section and the Utilities and Service Systems section, respectively.

Except as provided in Public Resources Code Section 21099 (transit priority area/major transit stop), would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	LTS	Yes	No	No	No
c) In non-urbanized areas, substantially degrade the existing visual character or quality of the site and its surroundings, or in an urbanized area, conflict with applicable zoning and other regulations governing scenic quality?	LTS	Yes	No	No	No
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	LTS	Yes	No	No	No

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable

Adopted MND

Section I, *Aesthetics*, of the Adopted MND, addressed the impacts to visual resources associated with the Approved Project. The impacts were found to be less than significant, and no mitigation measures were required.

Applicable Mitigation Measures from the Adopted MND

No mitigation measures were required as part of the Adopted MND.

Discussion

Senate Bill (SB) 743 became effective on January 1, 2014, and, among other provisions, SB 743 amended CEQA by adding Public Resources Code Section 21099 regarding analysis of aesthetics, parking, and traffic impacts for urban infill projects. CEQA Section 21099(d)(1) states: "Aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site located within a transit priority area (TPA) shall not be considered significant impacts on the environment." Accordingly, aesthetics and parking are no longer to be considered in determining if a project has the potential to result in significant environmental effects for projects that meet all of the following three criteria: 1) The project is in a TPA; 2) The project is on an infill site; and 3) The project is residential, mixed-use residential, or an employment center.

As described below, the proposed project is exempt from an aesthetics evaluation because it is located on a site that meets the definition of an infill site and a TPA, and is a qualified mixed-use residential project pursuant to CEQA Section 21099:

- Transit Priority Area: A TPA is defined as an area within 0.25 miles (1,320 feet) of a major transit stop or major transit corridor that exists or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program or applicable regional transportation plan. The project is located and connected to Stevens Creek Boulevard, which is considered a high-quality transit corridor (VTA 23 bus operates). The center of the project site is located approximately 500 feet from Stevens Creek Boulevard along a pedestrian pathway. The northern most edge of the project site is approximately 750 feet from Stevens Creek Boulevard. In addition, the westbound transit stop (on the north side of Stevens Creek Boulevard) is approximately 1,150 feet from the center of the project site and the eastbound stop is 1,020 feet.

- Infill Site: An infill site is defined as "a lot located within an urban area that has been previously developed or on a vacant site where at least 75 percent of the perimeter of the site adjoins or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses." The project site is currently developed with two single-story commercial buildings and associated surface parking. The project site is bounded by North De Anza Boulevard, Stevens Creek Boulevard, Alves Drive, and Bandley Drive. Surrounding land uses include commercial land uses to the north, south, east, and west, recreational, office, and commercial land uses to the southeast, and residential land uses to the northeast and northwest.

- Mixed-Use Residential: The proposed project is a mixed-use project that primarily includes residential uses. The proposed project includes 41,589 square feet of commercial space and 268,723 sf of total residential space.

While the proposed Modified Project would increase the heights for each of the three proposed buildings, both projects meet the standard for CEQA Section 21099 and therefore, aesthetic impacts shall not be considered significant impacts on the environment. Accordingly, the proposed Modified Project would not result in a new impact or a substantial increase in magnitude of the impacts with respect to aesthetics.

4.2 AIR QUALITY

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
a) Conflict with or obstruct implementation of the applicable air quality plan?	LTS	Yes	No	No	No
b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?	LTS	Yes	No	No	No
c) Expose sensitive receptors to substantial pollutant concentrations?	LTS	Yes	No	No	No
d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?	LTS	Yes	No	No	No

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable

Adopted MND

Section II, *Air Quality*, of the Adopted MND, addressed the air quality impacts associated with the construction and operation of the Approved Project. Air quality impacts were found to be less than significant with implementation of Mitigation Measures AIR-1 and AIR-2 to reduce construction-related air quality impacts. Mitigation Measure AIR-1 required the project applicant to comply with the current Bay Area Air Quality Management District (BAAQMD) basic control measures for reducing fugitive dust emissions (PM_{10} and $PM_{2.5}$) during construction, and Mitigation Measure AIR-2 required the project applicant to use of construction equipment with Level 3 diesel particulate filters (DPFs) and U.S. Environmental Protection Agency (USEPA)-rated Tier 3 engines to reduce the project's localized construction emissions below the BAAQMD localized construction thresholds.

Applicable Mitigation Measures from the Adopted MND

Since the time of the Adopted MND, the City has codified regulations equivalent to the Adopted MND mitigation measures to reduce construction-related air quality impacts in CMC Chapter 17.04, *Standard Environmental Protection Requirements*. CMC Section 17.04.050(A)(1) requires the project applicant to control fugitive dust during construction and implement the Bay Area Air Quality Management District

(BAAQMD) Basic Control Measures included in the latest version of BAAQMD's CEQA Air Quality Guidelines, as subsequently revised, supplemented, or replaced, to control fugitive dust (i.e., particulate matter $PM_{2.5}$ and PM_{10}) during demolition, ground disturbing activities and/or construction. The project applicant shall include these measures in the applicable construction documents, prior to issuance of the first permit. Additionally, CMC Section 17.04.050(A)(2) requires the project applicant to control construction exhaust and describes the procedures to be implemented. The CMC requirements include:

1. Control Fugitive Dust During Construction. Projects shall implement the Bay Area Air Quality Management District Basic Control Measures included in the latest version of BAAQMD's CEQA Air Quality Guidelines, as subsequently revised, supplemented, or replaced, to control fugitive dust (i.e., particulate matter $PM_{2.5}$ and PM_{10}) during demolition, ground disturbing activities and/or construction. The project applicant shall include these measures in the applicable construction documents, prior to issuance of the first permit.

2. Control Construction Exhaust. Projects that disturb more than one-acre and are more than two months in duration, shall implement the following measures and the project applicant shall include them in the applicable construction document, prior to issuance of the first permit:

    a. Utilize off-road diesel-powered construction equipment that is rated by the U.S. Environmental Protection Agency (EPA) as Tier 4 or higher for equipment more than 25 horsepower. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Tier 4 interim emissions standard for a similarly sized engine, as defined by the California Air Resources Board's (CARB) regulations. Applicable construction documents shall clearly show the selected emission reduction strategy for construction equipment over 25 horsepower.

    b. Ensure that the construction contractor shall maintain a list of all operating equipment in use on the project site for verification by the City. The construction equipment list shall state the makes, models, and number of construction equipment on-site.

    c. Ensure that all equipment shall be properly serviced and maintained in accordance with the manufacturer's recommendations.

3. Control Volatile Organic Compound Emissions from Paint. Projects shall use low-VOC paint (i.e., 50 grams per liter [g/L] or less) for interior and exterior wall architectural coatings. The project applicant shall include the use of low-VOC paint in the applicable construction documents prior to issuance of the first permit.

Development of the proposed Modified Project is required to comply with CMC Section 17.04.050(A)(1), *Control Fugitive Dust During Construction*, and Section 17.04.050(A)(2), *Control Construction Exhaust*. Accordingly, implementation of Mitigation Measures AIR-1 and AIR-2 as presented in the Adopted MND are no longer warranted. Mitigation Measure AIR-1 as presented in the Adopted MND is no longer applicable because CMC Section 17.04.050(A)(1) includes the same requirements to implement BAAQMD

best management practices for fugitive dust control. Mitigation Measure AIR-2 as presented in the Adopted MND is no longer applicable because CMC Section 17.04.050(A)(2) for controlling construction emission exhaust is more effective at reducing diesel particulate matter (DPM) and $PM_{2.5}$ because it requires USEPA rated Tier 4 offroad construction equipment, which has lower emission rates than Level 3 diesel particulate filters (DPF).

Discussion

Criterion a). The Bay Area Air Quality Management District (BAAQMD) is responsible for developing the Clean Air Plan for the San Francisco Bay Area.[57] The Adopted MND determined that the Approved Project would not exceed the level of population or housing foreseen in City or regional planning efforts. The Approved Project would not have the potential to substantially affect housing, employment, and population projections within the region, which is the basis of the 2010 Clean Air Plan projections. Since adoption of the MND, BAAQMD has adopted its 2017 Clean Air Plan. Like the Approved Project, implementation of the proposed Modified Project would be consistent with the 2017 Clean Air Plan and would accommodate more infill housing within the city within a PDA and TPA. The proposed Modified Project would result in 18 additional residential units and 50 additional residents, and an increase of 27 employees, compared to the Approved Project. Like the Approved Project, the proposed Modified Project is not considered a regionally significant project under CEQA Guidelines Section 15206 that would warrant intergovernmental review by ABAG and MTC. As discussed in Section 4.12, *Population and Housing*, the proposed Modified Project would not exceed the level of population or housing projected in City or regional planning efforts (*Plan Bay Area*), and it would not have the potential to substantially affect housing, employment, and population projections within the region, which is the basis of the 2017 Clean Air Plan projections. Furthermore, the proposed Modified Project would not exceed the BAAQMD's emissions thresholds (see discussion below). Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to conflicting with or obstructing implementation of the applicable air quality plan.

Criterion b). Like the Approved Project, construction and operation of the proposed Modified Project would result in an increase in short-term and long-term criteria air pollutant emissions over the same length of time. However, the proposed Modified Project would only include one level of underground parking, which would reduce the amount of soil to be excavated; thus, also reducing the amount of excavation equipment and haul trucks to be used. The Modified Project would generate 1,216 fewer daily vehicle trips compared to the Approved Project.[58, 59] As mobile source emissions would generate the

[57] Bay Area Air Quality Management District (BAAQMD). 2017, April. 2017 Clean Air Plan: Spare the Air, Cool the Climate. https://www.baaqmd.gov/~/media/files/planning-and-research/plans/2017-clean-air-plan/attachment-a_-proposed-final-cap-vol-1-pdf.pdf?la=en

[58] Fehr & Peers, 2022. *Marina Plaza Trip Generation Update and VMT Screening Assessment*.

[59] Approved Project 5,205 average daily vehicle trips – Modified Project 3,989 average daily vehicle trips = -1,216 trips.

majority of increase in long-term criteria air pollutants, the decrease in daily vehicle trips would result in a decrease in operation-related emissions as well. As a result, like the Approved Project, the proposed Modified Project would not exceed the BAAQMD regional significance threshold. Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the operational air quality impacts identified in the Approved MND.

The Adopted MND identified that the construction emissions of the Approved Project would be less than significant with implementation of Mitigation Measure AIR-1, which as discussed above is replaced by compliance with CMC Section 17.04.050(A)(1), which requires the project applicant to implement the BAAQMD Basic Control Measures included in the latest version of BAAQMD's CEQA Air Quality Guidelines, as subsequently revised, supplemented, or replaced, to control fugitive dust (i.e., particulate matter $PM_{2.5}$ and PM_{10}) during demolition, ground disturbing activities and/or construction. The project applicant shall include these measures in the applicable construction documents, prior to issuance of the first permit. As a result, the Modified Project must control fugitive dust during construction in accordance with CMC Section 17.04.050(A)(1) and Mitigation Measure AIR-1 as presented in the Adopted MND is no longer warranted. BAAQMD considers all impacts related to fugitive dust emissions from construction to be less than significant with implementation of BAAQMD's best management practices. Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to construction-related fugitive dust.

Criterion c). Average daily construction emissions associated with the Approved Project and the Modified Project would be similar and would be less than the BAAQMD regional construction thresholds. The Adopted MND identified implementation of Mitigation Measure AIR-2, which required use of construction equipment with Level 3 diesel particulate filters (DPFs) and U.S. Environmental Protection Agency (USEPA)-rated Tier 3 engines to reduce the project's localized construction emissions below the BAAQMD localized construction thresholds. However, as discussed above, Mitigation Measure AIR-2 has been replaced with CMC Section 17.04.050(A)(2), which requires construction contractor to utilize USEPA Tier 4 Interim engines for all equipment with more than 25 horsepower. Use of Tier 4 construction equipment has a higher control efficiency and lower emissions than Level 3 PDFs and Tier 3 equipment. As a result, Mitigation Measure AIR-2 as presented in the Adopted MND is no longer warranted. With implementation of CMC Section 17.04.050(A)(2), criteria air pollutant emissions from construction equipment exhaust would not exceed the BAAQMD average daily thresholds and impacts from project-related construction activities would be less than significant. Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to construction-related exhaust emissions.

The Modified Project would be required to comply with these regulations, which would contribute to further reduction of air quality emissions and potential health risk to people. Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts

identified in the Approved MND related to cumulatively considerable net increase of any criteria pollutants.

Criterion d). Neither the Approved Project or the Modified Project would involve the type of development that would generate substantial odors or be subject to odors that would affect a substantial number of people. The type of facilities that are considered to have objectionable odors from their operation include wastewater treatments plants, compost facilities, landfills, solid waste transfer stations, fiberglass manufacturing facilities, paint/coating operations (e.g., auto body shops), dairy farms, petroleum refineries, asphalt batch plants, chemical manufacturing, and food manufacturing facilities. Residential or mixed-use buildings that would be allowed in the city are not associated with foul odors that constitute a public nuisance. Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to odors.

4.3 BIOLOGICAL RESOURCES

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	LTS/M	Yes	No	No	No
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	NI	Yes	No	No	No
c) Have a substantial adverse effect on federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	LTS	Yes	No	No	No
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or	LTS	Yes	No	No	No

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?					
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	LTS	Yes	No	No	No
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	NI	Yes	No	No	No

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable

Adopted MND

Section III, *Biological Resources*, of the Adopted MND addressed the impacts to biological resources associated with the construction and operation of the Approved Project. Impacts to biological resources were found to be less than significant with implementation of Mitigation Measure BIO-1 to reduce potential impacts to birds protected under the Migratory Bird Treaty Act (MBTA). Mitigation Measure BIO-1 required the project applicant to take steps to avoid the breeding season from February 1 to August 31 or to conduct pre-construction surveys to confirm there are no active nests.

Applicable Mitigation Measures from the Adopted MND

Since the time of the Adopted MND, the City has codified regulations equivalent to the Adopted MND Mitigation Measure BIO-1 to reduce impacts to nesting birds in CMC Chapter 17.04, *Standard Environmental Protection Requirements*. CMC Section 17.04.050(D)(1) requires the project applicant to avoid nesting birds during construction and describes the procedures to be implemented to ensure avoidance. The CMC requirements include:

1. Avoid Nesting Birds During Construction. For all projects that involve removal of a tree (either protected or unprotected) or other vegetation suitable for nesting birds, or construction or ground-disturbing activities defined in Section 17.04.020, the project applicant shall comply with, and the construction contractor shall indicate the following on all construction plans, when required to ensure the following measures are performed to avoid inadvertent take of bird nests protected under the

federal Migratory Bird Treaty Act and California Department of Fish and Game Code when in active use:

a. Demolition, construction, ground-disturbing, and tree removal/pruning activities shall be scheduled to avoid the nesting season to the extent feasible. If feasible, construction, ground-disturbing, or tree removal/pruning activities shall be completed before the start of the nesting season to help preclude nesting. The nesting season for most birds and raptors in the San Francisco Bay area extends from February 1 through August 31. Preconstruction surveys (described below) are not required for construction, ground-disturbing, or tree removal/pruning activities outside the nesting period.

b. If demolition, construction, ground-disturbing, or tree removal/pruning activities occur during the nesting season (February 1 and August 31), preconstruction surveys shall be conducted as follows:

    i. No more than 7 days prior to the start of demolition, construction, ground-disturbing, or tree removal/pruning activities, in order to identify any active nests with eggs or young birds on the site and surrounding area within 100 feet of construction or tree removal activities.

    ii. Preconstruction surveys shall be repeated at 14-day intervals until demolition, construction, ground-disturbing, or tree removal/pruning activities have been initiated in the area, after which surveys can be stopped. As part of the preconstruction survey(s), the surveyor shall inspect all trees and other possible nesting habitats in, and immediately adjacent to, the construction areas for active nests, while ensuring that they do not disturb the nests as follows:

        1. For projects that require the demolition or construction one single-family residence, ground disturbing activities affecting areas of up to 500 square feet, or the removal of up to three trees, the property owner or a tree removal contractor, if necessary, is permitted to conduct the preconstruction surveys to identify if there are any active nests. If any active nests with eggs or young birds are identified, the project applicant shall retain a qualified ornithologist or biologist to identify protective measures.

        2. For any other demolition, construction and ground disturbing activity or the removal of four or more trees, a qualified ornithologist or biologist shall be retained by the project applicant to conduct the preconstruction surveys.

c. If the preconstruction survey does not identify any active nests with eggs or young birds that would be affected by demolition, construction, ground-disturbing or tree removal/pruning activities, no further mitigating action is required. If an active nest containing eggs or young birds is found sufficiently close to work areas to be disturbed by these activities, their locations shall be

documented, and the qualified ornithologist or biologist shall identify protective measures to be implemented under their direction until the nests no longer contain eggs or young birds.

d. Protective measures may include, but are not limited to, 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 the qualified ornithologist or 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 ornithologist or biologist, if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified ornithologist or biologist only in consultation with California Department of Fish and Wildlife. The protection measures and buffers shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.

e. A final report on nesting birds and raptors, including survey methodology, survey date(s), map of identified active nests (if any), and protection measures (if required), shall be prepared by the qualified ornithologist or biologist and submitted to the Director of Community Development or his or her designee, through the appropriate permit review process (e.g., demolition, construction, tree removal, etc.), and be completed to the satisfaction of the Community Development Director prior to the start of demolition, construction, ground-disturbing, or tree removal/pruning activities.

In addition, CMC Section 17.04.050(D)(2) requires the project applicant to avoid special-status roosting bats during construction and describes the procedures to be implemented to ensure avoidance. The CMC requirements include:

2. Avoid Special-Status Roosting Bats During Construction Permit Requirements

a. For all projects that involve demolition, renovation, or re-tenanting of an abandoned or vacant building or structure, where the property owner cannot show evidence to the satisfaction of the City of Cupertino Building Inspector that the building or structure was appropriately sealed at the time the building or structure was vacated to prevent bats from roosting, the project applicant shall retain a qualified biologist to conduct preconstruction surveys of the on-site buildings or structures prior to commencing any demolition, renovation, or re-tenanting activities. A building or structure is not appropriately sealed unless seal holes that are more than 0.5 inches in diameter or cracks that are 0.25 by 1.5 inches or larger are filled or closed with suitable material

such as caulking, putty, duct tape, self-expanding polyurethane foam, 0.25-inch mesh hardware cloth, 0.5-inch or smaller welded wire mesh, installing tighter-fitting screen doors, or steel wool.

b. The project applicant shall comply with, and the construction contractor shall include in the applicable construction documents, the following to ensure appropriate preconstruction surveys are performed and adequate avoidance provided for any special-status roosting bats, if encountered on the site. Preconstruction surveys shall:

   i. Be conducted by a qualified biologist prior to tree removal or building demolition, renovation, or re-tenanting. Note that the preconstruction survey for roosting bats is required at any time of year since there is no defined bat roosting season as there is with nesting birds.

   ii. Be conducted no more than 14 days prior to start of tree removal or demolition, renovation, or re-tenanting.

   iii. Be repeated at 14-day intervals until construction has been initiated after which surveys can be stopped, unless construction activities are suspended for more than 7 consecutive days at which point the surveys shall be reinitiated.

   iv. If no special-status bats are found during the survey(s), then no additional measures are warranted.

c. Protective measures shall be included in the applicable construction documents and implemented prior to issuance of permits, if any special-status bat species are encountered or for any roosts detected within the existing structures, where individual bats could be inadvertently trapped and injured or killed during demolition unless passively evicted in advance of construction activities. Protective measures shall include:

   i. If no maternity roosts are detected, adult bats can be flushed out of the structure or tree cavity using a one-way eviction door placed over the exit location for a minimum 48-hour period prior to the time tree removal or building demolition is to commence.

   ii. Confirmation by the qualified biologist that the one-way eviction door was effective, and that all bats have dispersed from the roost location, modifying any exclusion efforts to ensure individual bats have been successfully evicted in advance of initiating tree removal or building demolition.

   iii. If a maternity roost is detected, and young are found roosting in a building identified for demolition, renovation, or re-tenanting, work shall be postponed until the young are flying free and are feeding on their own, as determined by the qualified biologist.

iv. Once the qualified biologist has determined that any young bats can successfully function without the maternity roost, then the adults and young bats can be excluded from the structure to be demolished using the one-way eviction methods described above.

v. Monitoring shall be provided by the qualified biologist as necessary to determine status of any roosting activity, success of any required bat exclusion, and status of any maternity roosting activity by bats, in the remote instance a maternity roost is encountered on the site.

Development of the proposed Modified Project is required to comply with CMC Section 17.04.050(D)(1), *Avoid Nesting Birds During Construction*, and Section 17.04.050(D)(2), *Avoid Special-Status Roosting Bats During Construction Permit Requirements.* Accordingly, implementation of Mitigation Measures BIO-1 as presented in the Adopted MND is no longer applicable because CMC Section 17.04.050(D)(1) includes the same requirements to implement protection of nesting birds pursuant to the MBTA. In addition, implementation of Section 17.04.050(D)(2) requires additional measures not included in the Adopted MND to further protect special-status species.

Discussion

Criteria a) through c). The proposed Modified Project would not change the project site boundaries and would not change the size or extent of disturbed areas that were analyzed in the Adopted MND. The analysis in the Adopted MND found that impacts to special-status species, including nesting birds, would be reduced to less than significant with mitigation. As described above, CMC Section 17.04.050(D)(1) lists biological resources permit requirements in that are necessary to avoid inadvertent take of bird nests protected under the MBTA and California Fish and Game Code, which is equivalent to the Adopted MND Mitigation Measure BIO-1. The proposed project would be required to avoid nesting season to the extent feasible. If not feasible, the proposed project must conduct preconstruction surveys pursuant to CMC Section 17.04.050(D)(1)(b) to ensure nesting birds would be protected. CMC Section 17.04.050(D)(2) would also be required to protect any special-status bats in the event that they should occupy the existing on-site buildings while the building are unoccupied prior to demolition. In addition, as described in Section 3.5.5, *Bird Safe Design Ordinance*, and Section 3.5.6, *Outdoor Lighting Requirements*, of this Addendum, the project applicant would be required to comply with CMC Section 19.102.030, *Bird-safe Development Requirements*, which includes glass, indoor lighting, and design standards to reduce bird collisions. Pursuant to CMC Section 19.102.040, *Outdoor Lighting Requirements*, which includes standards to reduce light pollution of the proposed buildings and landscaping. Both CMC Sections 19.102.303 and 19.102.120 have been adopted since the time of the Adopted MND and their implementation would further protect special-status species by reducing the potential of avian injury and mortality resulting from collisions with the proposed new buildings. Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to special status species.

Criteria d) and e). Because the project site is the same under both projects, impacts related to riparian habitat, sensitive natural communities, wetlands, wildlife corridors, and habitat conservation plans would be the same as the less-than-significant conclusions of the Adopted MND. The proposed Modified Project, like the Approved Project, includes the removal of trees conflicting with design plans and would be required to comply with the CMC Chapter 14.12, *Trees*, and Chapter 14.18, *Protected Tree Ordinance*, to ensure impacts related to the removal of trees would remain consistent with the less-than-significant conclusions in the Adopted MND. Furthermore, as described previously, impacts to migratory birds would be the same as the less-than-significant impact identified in the Adopted MND through compliance with the CMC Section 19.102.030, *Bird-safe Development Requirements*, and CMC Section 19.102.040, *Outdoor Lighting Requirements*. Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to sensitive wildlife and habitat areas or conflicts with any local policies or ordinances protecting biological resources.

Overall, the proposed Modified Project would not result in a new impact or a substantial increase in magnitude of the impacts to biological resources that were analyzed in the Adopted MND.

4.4 CULTURAL AND TRIBAL CULTURAL RESOURCES

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
a) Cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5?	NI	Yes	No	No	No
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?	LTS/M	Yes	No	No	No
c) Disturb any human remains, including those interred outside of formal cemeteries?	LTS	Yes	No	No	No
d) Cause a substantial adverse change in the significance of a Tribal Cultural Resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural	LTS	Yes	No	No	No

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
value to a California Native American Tribe, and that is: • Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or • A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resource Code Section 5024.1. In applying the criteria set forth in subdivision (c) of the Public Resource Code Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance to a California Native American tribe.					

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable

Adopted MND

Section IV, *Cultural Resources,* of the Adopted MND, addressed the cultural impacts associated with the construction and operation of the Approved Project. Cultural impacts were found to be less than significant with implementation of Mitigation Measures CULT-1 to reduce construction-related impacts on prehistoric and historic subsurface (i.e., archaeological) cultural resources, including tribal cultural resources. Mitigation Measure CULT-1 required the project applicant to halt all work within 50 feet of any prehistoric or historic subsurface cultural resources, including tribal cultural resources, if they are discovered during ground-disturbing activities and follow the identified procedures to protect the resources.

Mitigation Measures from the Adopted MND

Since the time of the Adopted MND, the City has codified regulations equivalent to the Adopted MND mitigation measure to reduce construction-related impacts to prehistoric and historic subsurface cultural (i.e., archeological) resources, including tribal cultural resources, in CMC Chapter 17.04, *Standard*

Environmental Protection Requirements. Section 17.04.050(E)(1), *Protect Archaeological Resources and Tribal Cultural Resources*, contains cultural resources permit requirements that are necessary to protect archaeological resources, including tribal cultural resources. Same as Mitigation Measure CULT-1, the CMC requirements include providing written verification to the City that contractors and construction crews have been notified of basic archeological site indicators, the potential for discovery of archaeological resources, laws pertaining to these resources, and procedures for protecting cultural and tribal cultural resources. The project applicant would be required to comply with the protocols to ensure impacts to archeological and tribal cultural resources would be reduced. The CMC requirements include:

3. Protect Archaeological Resources and Tribal Cultural Resources. For all projects requiring ground-disturbing activities on land with no known archaeological or tribal cultural resources that has not been previously disturbed and/or where ground-disturbing activities would occur at a greater depth or affect a greater area than previously disturbed, the following shall be required:

    a. Areas with No Known Cultural Resources. For all projects within areas where there are no known cultural resources, prior to soil disturbance, the project applicant shall provide written verification, including the materials provided to contractors and construction crews, to the City confirming that contractors and construction crews have been notified of basic archaeological site indicators, the potential for discovery of archaeological resources, laws pertaining to these resources, and procedures for protecting these resources as follows:

        i. Basic archaeological site indicators that may include, but are not limited to, darker than surrounding soils of a friable nature; evidence of fires (ash, charcoal, fire affected rock or earth); concentrations of stone, bone, or shellfish; artifacts of stone, bone, or shellfish; evidence of living surfaces (e.g., floors); and burials, either human or animal.

        ii. The potential for undiscovered archaeological resources or tribal cultural resources on site.

        iii. The laws protecting these resources and associated penalties, including, but not limited to, the Native American Graves Protection and Repatriation Act of 1990, Public Resources Code Section 5097, and California Health and Safety Code Section 7050 and Section 7052.

        iv. The protection procedures to follow should construction crews discover cultural resources during project-related earthwork, include the following:

            1. All soil disturbing work within 25 feet of the find shall cease.

            2. The project applicant shall retain a qualified archaeologist to provide and implement a plan for survey, subsurface investigation, as needed, to define the deposit, and assessment of the remainder of the site within the project area to determine whether the resource is significant and would be affected by the project.

            3. Any potential archaeological or tribal cultural resources found during construction activities shall be recorded on appropriate California Department of Parks and Recreation forms by a qualified archaeologist. If the resource is a tribal cultural resource, the consulting

archaeologist shall consult with the appropriate tribe, as determined by the Native American Heritage Commission, to evaluate the significance of the resource and to recommend appropriate and feasible avoidance, testing, preservation or mitigation measures, in light of factors such as the significance of the find, proposed project design, costs, and other considerations. The archeologist shall perform this evaluation in consultation with the tribe.

b. Areas with Known Cultural Resources. For all projects within areas of known cultural resources as documented in the 2015 General Plan EIR Table 4.4-2, *Cultural Resources in the Project Study Area and Vicinity,* as subsequently revised, supplemented, or replaced by the City, and the archaeological or tribal cultural resources cannot be avoided, in addition to the requirements in Section E.1.a for all construction projects with ground-disturbing activities, the following additional actions shall be implemented prior to ground disturbance:

   i. The project applicant shall retain a qualified archaeologist to conduct a subsurface investigation of the project site, and to ascertain the extent of the deposit of any buried archaeological materials relative to the project's area of potential effects, in consultation with a tribal representative as applicable. The archaeologist shall prepare a site record and file it with the California Historical Resource Information System and the City of Cupertino.

   ii. If the resource extends into the project's area of potential effects as determined by the archaeologist, the resource shall be evaluated by a qualified archaeologist to determine if the resource is eligible for listing on the California Register of Historical Resources. If the qualified archaeologist determines that the resource is not eligible, no further action is required unless there is a discovery of additional resources during construction (as required above for all construction projects with ground-disturbing activities). If the qualified archaeologist determines that the resource is eligible, the qualified archaeologist shall identify ways to minimize the effect which the project applicant shall implement. A written report of the results of investigations and mitigations shall be prepared by the qualified archaeologist and filed with the California Historic Resources Information System Northwest Information Center and the City of Cupertino.

Discussion

Under CEQA, both prehistoric and historic-period archaeological sites may qualify as historical resources.[60] Archaeological resources, including tribal cultural resources, are addressed in criteria (b) and (c), and human remains are addressed below in criterion (d).

Criterion a). The project site currently includes commercial buildings developed in 1973 and the 1980s. The existing building built in 1973 now falls within the 45-year time period established for historical resources that should be included in the Office of Historic Resources filing system the California Register

[60] California Code of Regulations, Title 14, Chapter 3, Section 15064.5(c), *Determining the Significance of Impacts on Historical and Unique Archeological Resources*.

of Historical Resources, but the building developed in the 1980s does not.[61] The building developed in 1973 is not associated with significant cultural events or persons in California's past and does not have any distinctive historical characteristics, and as such does not have any qualifying historical value. Therefore, demolition of the existing buildings on the project site, same as the Approved Project, would not affect any historic resources. Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to the loss of a historic building.

Criteria b) and c). Same as the Approved Project, construction of the Modified Project could result in the discovery of unearthed historical and pre-contact archaeological deposits, including those that are considered tribal cultural resources, at the project site and could be damaged or destroyed by ground-disturbing construction activities (e.g., site preparation, grading, excavation, and trenching for utilities) associated with development allowed under the proposed Modified Project. Should this occur, the ability of the resources to convey their significance, either as containing information about prehistory or history, or as possessing traditional or cultural significance to Native American or other descendant communities, would be materially impaired. The Adopted MND identified that the impacts to archaeological and tribal cultural resources would be less than significant with implementation of Mitigation Measure CULT-1, which as discussed above is replaced by CMC Section 17.04.050(E)(1). This CMC section requires the project applicant to implement the procedures necessary to protect archaeological resources and tribal cultural resources. Such requirements include providing written verification to the City that contractors and construction crews have been notified of basic archeological site indicators, the potential the potential for discovery of archaeological resources, laws pertaining to these resources, and procedures for protecting cultural and tribal cultural resources. As a result, the Modified Project must comply with the protocols to ensure impacts to archeological and tribal cultural resources would be reduced and Mitigation Measure CULT-1 as presented in the Adopted MND is no longer required. Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to archaeological and tribal cultural resources.

Criterion d). There are no known human remains on the project site; however, the potential to unearth undiscovered human remains during ground-disturbing activities associated with the construction of the project could occur. Any human remains encountered during ground-disturbing activities associated with the proposed project would be subject to federal, State, and local regulations to ensure no adverse impacts to human remains would occur in the unlikely event human remains are found. The Adopted MND found impacts to be less than significant through compliance with mandatory procedures included in Health and Safety Code Section 7050.5 and the CEQA Guidelines Section 15064.5(e), which contain the mandated procedures of conduct following the discovery of human remains.

[61] Office of Historic Preservation, Instructions For Recording Historical Resources, March 1995, page 2.

Since the time of the Adopted MND, the City has codified procedures, including compliance with the Health and Safety Code to protect human remains and Native American burials that the project applicant would have to comply with. CMC Section 17.04.050(E)(1)(a)(iii), listed above, ensures that the applicant would comply with the State's laws and associated penalties that protect Native American and non-Native American human remains including, but not limited to, the Native American Graves Protection and Repatriation Act of 1990, Public Resources Code Section 5097, and California Health and Safety Code Section 7050 and Section 7052. CMC Section 17.04.050(E)(2), *Protect Human Remains and Native American Burials*, requirements include:

2. Protect Human Remains and Native American Burials. The project applicant shall comply with California Health and Safety Code Section 7050.5 and California Public Resources Code Section 5097.98.

    a. In the event of discovering human remains during construction activities, there shall be no further excavation or disturbance of the site within a 100-foot radius of the remains, or any nearby area reasonably suspected to overlie adjacent remains.

    b. The Santa Clara County Coroner shall be notified immediately and shall make a determination as to whether the remains are Native American.

    c. If the Santa Clara County Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission (NAHC) within 24 hours.

    d. The NAHC shall attempt to identify descendants (Most Likely Descendant) of the deceased Native American.

    e. The Most Likely Descendant has 48 hours following access to the project site to make recommendations or preferences regarding the disposition of the remains. If the Most Likely Descendant does not make recommendations within 48 hours after being allowed access to the project site, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance and provide documentation about this determination and the location of the remains to the NAHC and the City of Cupertino. Alternatively, if the owner does not accept the Most Likely Descendant's recommendations, the owner or the descendent may request mediation by the NAHC. Construction shall halt until the mediation has concluded

Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to human remain, including those of Native Americans.

4.5 ENERGY

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?	Post 2016 CEQA Checklist Question	Yes	No	No	No
b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?	Post 2016 CEQA Checklist Question	Yes	No	No	No

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable

Adopted MND

While these standards regarding energy impacts were adopted by the California Natural Resource Agency in December 2018 after the time of the Adopted MND, Section XV, *Utilities and Services Systems*, of the Adopted MND addressed energy impacts associated with Approved Project. Energy impacts were found to be less than significant, and no mitigation measures were required.

Applicable Mitigation Measures from the Adopted MND

No mitigation measures were required as part of the Adopted MND.

Discussion

Development that could under the proposed Modified Project would generate energy use through electricity use and fuel consumption, same as the Approved Project. However, the proposed Modified Project would result in a net decrease of 1,216 daily vehicle trips when compared to the Approved Project, which would reduce operational transportation energy.[62,63]

The proposed Modified Project would demolish the existing commercial buildings and construct a new mixed-use buildings resulting in an estimated 18 additional residential units and 50 additional residents,

[62] Fehr & Peers, 2022. *Marina Plaza Trip Generation Update and VMT Screening Assessment*.

[63] Approved Project 5,205 average daily vehicle trips – Modified Project 3,989 average daily vehicle trips = -1,216 trips.

and an increase of 27 employees when compared to the Approved Project. The proposed utility infrastructure would connect to the existing water, sewer, storm drain system, and electricity network in the area, and would be served by an existing solid waste landfill. The proposed development would achieve LEED Silver (City's preferred method), or equivalent Alternative Reference Standard, consistent with the City's requirement (CMC Section 101.10.2 and Section 16.58.230). Therefore, the construction or installation of new infrastructure and capacity enhancing alterations would not be a wasteful, inefficient, or unnecessary use of energy.

The proposed Modified Project, like the Approved Project, would improve connectivity for pedestrians and bicyclists as it would keep the existing sidewalks and bike facilities along the length of the project site. There will also be sidewalks and pedestrian entrances to the proposed mixed-use buildings, which would connect with the internal sidewalks on the project site. In addition, the proposed Modified Project would provide Class 1 and Class 2 bicycle parking facilities as required, like the Approved Project.[64] As described in Section 4.10, *Land Use and Planning*, and Section 4.12, *Population and Housing*, the proposed Modified Project is consistent with the General Plan land use designation and would not result in new growth potential from what was considered in the General Plan EIR, respectively.

The proposed Modified Project, like the Approved Project, would meet the 2022 Building and Energy Efficiency Standards of the California Public Resources Code, Title 24, Part 6, which applies to any project whose permit applications are applied for on or after January 1, 2023. The 2022 Building Energy Efficiency Standards improve upon the 2019 Standards and build on California's technology innovations, encouraging energy efficient approaches to encourage building decarbonization and to be responsive to climate change. The 2022 Standards require more energy efficiency for residential and non-residential buildings.[65]

The City's Green Building Ordinance contains mandatory, minimum required green building techniques, including measures affecting water use efficiency and water conservation. Thus, new buildings constructed in accordance with the General Plan land use designation and to the standards identified above would not result in wasteful, inefficient, or unnecessary consumption of energy resources. Since the time of the Adopted MND, the City has codified regulations that require energy use to be reduced in CMC Chapter 17.04, *Standard Environmental Protection Requirements*. Specifically, CMC Section 17.04.050(C), *Greenhouse Gas Emissions and Energy Permit Requirements*, requires the project applicant to complete the City of Cupertino Climate Action Plan – Development Project Consistency Checklist, for

[64] Class 1 facilities protect the entire bicycle from theft, vandalism, and inclement weather and are appropriate for long-term storage. Class 2 facilities include bicycle racks to which the frame and at least one wheel can be secured with a user-provided lock.

[65] California Energy Commission, December 2021. 2022 Building Energy Efficiency Standards, https://www.energy.ca.gov/publications/2022/2022-building-energy-efficiency-standards-residential-and-nonresidential, accessed July 21, 2022.

review and approval by the City Environment and Sustainability Department prior to issuance of the first permit, to demonstrate how the project is consistent with the Cupertino Climate Action Plan, as subsequently revised, supplemented, or replaced, in order to reduce greenhouse gas (GHG) emissions and conserve energy.

As described above in Section 3.5.8.1, *Energy Conservation,* the City enforces the CALGreen Building Standards, which establish planning and design standards for sustainable site development, energy efficiency (in excess of the California Energy Code requirements), in CMC Chapter 16.58, *Green Building Standards Code Adopted*. CMC Section 16.54.100(2), *Newly Construction Building,* requires all newly constructed buildings to be All-Electric Buildings. All-Electric Buildings are defined as a building that has no natural gas or propane plumbing installed within the building, and that uses electricity as the sole source of energy for its space heating, water heating.[66] The City approved reach codes in February 2020,[67] which go above California Energy Code requirements to reduce energy, water, and associated GHG emissions. Energy conserving features of the proposed Modified Project would include new landscaping that is native and/or adaptive, and drought resistant plants to conserve water and subsequently save energy.

As discussed below in Section 4.7, *Greenhouse Gas Emissions*, the proposed Modified Project would generate less GHG emissions than the Approved Project due to the reduction of daily vehicle trips, which also includes if the project applicant were to apply for an exemption to CMC Section 16.54.100(2) in CMC Section 16.54.100(2)(A) that would permit using natural gas under limited circumstances approved by the City. Like the Approved Project, the Modified Project would not conflict with plans, policies, or regulations adopted for the purpose of reducing GHG emissions, all which involve planning for use of renewable energy planning and energy efficiency standards.

Overall, the proposed Modified Project would not result in wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation, or conflict with or obstruct a state or local plan for renewable energy or energy efficiency. The proposed Modified Project would not result in a new impact or a substantial increase in magnitude of the energy impacts that were analyzed in the Adopted MND.

[66] CMC Section 16.54.110, *Definitions and Rules of Construction*.

[67] Cities may adopt more stringent building codes for energy use than those required by the California Building Standards Code (Title 24 of the California Code of Regulations), which are known as "reach codes."

4.6 GEOLOGY AND SOILS

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:	--	--	--	--	--
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map, issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	LTS	Yes	No	No	No
ii) Strong seismic ground shaking?	LTS	Yes	No	No	No
iii) Seismic-related ground failure, including liquefaction?	LTS	Yes	No	No	No
iv) Landslides?	LTS	Yes	No	No	No
b) Result in substantial soil erosion or the loss of topsoil?	LTS	Yes	No	No	No
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	LTS	Yes	No	No	No
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	LTS	Yes	No	No	No
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	NI	N/A	No	No	No
f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? *	LTS/M	Yes	No	No	No

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project: Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable
**This criteria is found in the Cultural Resources section of the Adopted MND. It has since been moved from Cultural Resources to Geology and Soils in the CEQA Guidelines Appendix G, Environmental Checklist Form.*

Adopted MND

Section VI, *Geology and Soils*, of the Adopted MND, addressed the impacts to geologic resources associated with the Approved Project. The impacts were found to be less than significant, and no mitigation measures were required. Since the time of the Adopted MND, the CEQA Guidelines have been updated and impacts related to paleontological resources, which were addressed in the cultural resources topic are now addressed in this section. Therefore, Section IV, *Cultural Resources,* of the Adopted MND, addressed impacts related to paleontological and unique geological resources. Impacts were found to be less than significant with implementation of Mitigation Measure CULT-2, which required the project applicant to halt all work within 50 feet of the resources if any fossils or fossil-bearing deposits are discovered during ground-disturbing activities and follow the identified procedures to protect the resources.

Applicable Mitigation Measures from the Adopted MND

Since the time of the Adopted MND, the City has codified regulations equivalent to the Adopted MND mitigation measure to reduce construction-related impacts to paleontological resources in CMC Chapter 17.04, *Standard Environmental Protection Requirements*. CMC Section 17.04.050(H), *Paleontological Resources Permit Requirements,* provides protocols to protect paleontological resources during construction that the project applicant must adhere to in the event that there is a find. The CMC requirements include:

> Protect Paleontological Resources During Construction. If paleontological resources are encountered during ground disturbing and/or other construction activities, all construction shall be temporarily halted or redirected to allow a qualified paleontologist, which shall be retained by the project applicant, to assess the find for significance. If paleontological resources are found to be significant, the paleontological monitor shall determine appropriate actions, in coordination with a qualified paleontologist, City staff, and property owner. Appropriate actions may include, but are not limited to, a mitigation plan formulated pursuant to guidelines developed by the Society of Vertebrate Paleontology and implemented to appropriately protect the significance of the resource by preservation, documentation, and/or removal, prior to recommencing activities. Measures may

include, but are not limited to, salvage of unearthed fossil remains and/or traces (e.g., tracks, trails, burrows); screen washing to recover small specimens; preparation of salvaged fossils to a point of being ready for curation (e.g., removal of enclosing matrix, stabilization and repair of specimens, and construction of reinforced support cradles); and identification, cataloging, curation, and provision for repository storage of prepared fossil specimens.

Discussion

Criteria a) through d). The geologic setting, including soils, groundwater, fault rupture, liquefaction, dry seismic settlement, lateral spreading, and expansive soils of the project site have not changed since the time of the Adopted MND. The proposed Modified Project would introduce revisions that would change the design of the proposed development by adding residential units and eliminating the hotel, and would include one additional floor on two of the building and only have one level of subterranean parking as opposed to two levels when compared to the Approved Project. Accordingly, the proposed Modified Project would not introduce new adverse physical impacts related to seismic ground shaking, ground failure, liquefaction, landslides, soil erosion, or expansive soils compared to the Approved Project. Like the Approved Project, the proposed Modified Project would adhere to the applicable building code, including conformance to California Building Code (CBC) Site Class and Site Seismic Coefficients and the grading erosion control measures, and the City's building permit requirements to ensure that the impacts associated with strong seismic ground shaking, unstable soils, and expansive soils are minimized to the maximum extent practicable. Accordingly, the proposed Modified Project would not result in a new impact or a substantial increase in magnitude of the seismic-related and soil impacts that were analyzed in the Adopted MND.

Criterion e): Like the Approved Project, the Modified Project would not require the construction or use of septic tanks or alternative wastewater disposal systems. Wastewater generated by the proposed project would be conveyed to the existing municipal sanitary sewer system in Cupertino, where multiple connections would be made along Alves Drive, North De Anza Boulevard, and Bandley Drive. Therefore, there would be *no impact* from the Modified Project associated with soils that are inadequate for the use of septic tanks or alternative wastewater disposal systems. No mitigation measures would be required. Accordingly, the proposed Modified Project would not result in a new impact or a substantial increase in magnitude of the impacts related so septic tanks or alternate wastewater disposal systems that were analyzed in the Adopted MND.

Criterion f). Criterion (c) from Section IV, *Cultural Resources*, in the Approved MND identifies Mitigation Measure CULT-2 to add temporary protection measures if fossils or fossil-bearing deposits are discovered during construction. CMC Section 17.04.050(H)Compliance with CMC Section 17.04.050(H) and State regulations would apply under the proposed Modified Project. Unique geological features are not common in Cupertino. The geology and soils on the project site are common throughout the city and region and are not considered to be unique. Therefore, the proposed Modified Project would not result in

a new impact or a substantial increase in magnitude of the existing impacts related to paleontological and unique geological features.

4.7 GREENHOUSE GAS EMISSIONS

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	LTS	Yes	No	No	No
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	LTS	Yes	No	No	No

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable

Adopted MND

Section VII, *Greenhouse Gas Emissions*, of the Adopted MND, addressed the impacts from GHG emissions associated with the Approved Project. GHG emissions impacts were found to be less than significant, and no mitigation measures were required.

Applicable Mitigation Measures from the Adopted MND

No mitigation measures were required as part of the Adopted MND.

Discussion

Criteria a) and b). Similar to the Approved Project, construction and operation of the proposed Modified Project would generate greenhouse gas (GHG) emissions from vehicle trips from the future development (e.g., residents, visitors, employees), energy use (indirectly from purchased electricity use, and directly through fuel consumed for building heating), area sources (e.g., landscaping equipment used on-site, consumer products, coatings), water/wastewater generation, and waste disposal. The proposed Modified Project would not exceed the development potential evaluated in the Approved MND and would generate

1,216 fewer daily vehicle trips compared to the Approved Project.[68,69] As a result, the Modified Project would generate less GHG emissions than the Approved Project. Additionally, the City of Cupertino has adopted the California Energy Code (CMC Chapter 16.54) that requires all newly constructed buildings to be All-Electric Buildings (CMC Section 16.54.100(2)). Therefore, Modified Project would not utilize natural gas use within the building unless the project applicant applies for an exemption to CMC Section 16.54.100(2) in CMC Section 16.54.100(2)(A) that would permit using natural gas under limited circumstances approved by the City. For example, the project applicant could apply to use natural gas in the potential restaurant use spaces up to 41,589 square feet, which assumes all commercial space is used for restaurants. Even with approval of this exception and the unlikely event that all the commercial space is used for restaurants, the Modified Project would use less natural gas (4,175,454 kBTU/year) than the Approved Project (6,597,856 kBTU/year) and would therefore, still generate less GHG emissions than the Approved Project. In addition, the City of Cupertino's Green Building Standards Code requires installation of Level 2 Electric Vehicle (EV) Ready Circuit for new multifamily dwellings (Chapter 16.58.400 and Chapter 16.58.420). The proposed Modified Project would also not result in wasteful or inefficient use of energy (see Section 4.5, *Energy*) or conflict with the City's transportation goals under Senate Bill 743 (see Section 4.15, *Transportation*). Like the Approved Project, the Modified Project would not conflict with plans, policies, or regulations adopted for the purpose of reducing GHG emissions. Furthermore, since the time of the Adopted MND, the City has codified regulations that require energy use to be reduced in CMC Chapter 17.04, *Standard Environmental Protection Requirements*. Specifically, CMC Section 17.04.050(C) requires the project applicant to complete the City of Cupertino Climate Action Plan – Development Project Consistency Checklist, for review and approval by the City Environment and Sustainability Department prior to issuance of the first permit, to demonstrate how the project is consistent with the Cupertino Climate Action Plan, as subsequently revised, supplemented, or replaced, in order to reduce greenhouse gas emissions and conserve energy. Accordingly, the proposed changes from the Modified Project would not result in an increase in magnitude of the existing GHG emissions under the Approved Project.

[68] Fehr & Peers, 2022. *Marina Plaza Trip Generation Update and VMT Screening Assessment*.

[69] Approved Project 5,205 trips – Modified Project 3,989 trips = -1,216 trips.

4.8 HAZARDS AND HAZARDOUS MATERIALS

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	LTS	Yes	No	No	No
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	LTS/M	Yes	No	No	No
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within 0.25 miles of an existing or proposed school?	NI	Yes	No	No	No
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	LTS	Yes	No	No	No
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	NI	Yes	No	No	No
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	NI	Yes	No	No	No
g) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	LTS	Yes	No	No	No

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable

Adopted MND

Section VIII, *Hazards and Hazardous Materials,* of the Adopted MND, addressed the hazards and hazardous materials impacts associated with the construction and operation of the Approved Project. Impacts related to hazardous materials were found to be less than significant with implementation of Mitigation Measures HAZ-1a and HAZ-1b to reduce construction-related impacts from hazardous materials. Mitigation Measure HAZ-1a required the project applicant to assess and properly remove and dispose of asbestos containing materials (ACMs), if found to be present in on-site buildings, and Mitigation Measure HAZ-1b required the project applicant to assess and properly remove and dispose of lead-based paints (LBP), if found to be present in on-site buildings, pursuant to applicable federal, State, and local regulations.

Applicable Mitigation Measures from the Adopted MND

Mitigation Measure HAZ-1a: The project Applicant shall hire the services of a CalOSHA-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.

Mitigation Measure HAZ-1b: The project 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 buildings to be demolished, the hazardous materials shall be properly removed and disposed of in compliance with applicable federal, State, and local regulations, including the 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.

Discussion

Criteria a) and b). The proposed Modified Project would not increase risks related to hazards or hazardous materials relative to the Approved Project by increasing the number of residential units and removing the hotel as these are similar uses that would not would not involve the routine transport or disposal of

hazardous materials. Therefore, operational impacts would be the same less-than-significant impact. Likewise, the construction of the project would demolish the existing buildings that have the potential to expose nearby receptors sensitive to air quality and construction workers to ACMs or LBPs. Accordingly, the Modified Project, like the Approved Project, would be required to implement Mitigation Measures HAZ-1a and HAZ-1b. Pursuant to CMC Section 17.040.04(B), the project applicant had a Phase I Environmental Site Assessment (ESA) prepared in March 2022 and due to the historic dry cleaning use on the project site had a Phase II ESA prepared in May 2022. The results of the Phase II ESA found no additional investigation is recommended since the chemicals of potential concern were not detected above their respective commercial screening levels. The Phase I ESA also recognized that the project site was formerly developed with agriculture land and/or residential/farmstead from as early as 1897 through the late-1960s. The De Anza Boulevard parcel was developed with the current building in 1973, while the Bandley Drive parcel was developed with the current building in 1979.[70] According to the Department of Toxic Substance Control, organic pesticides warrant further testing for orchards or other agricultural uses that were active after 1950.[71] While the project site was historically used for agricultural purposes the site is either paved over or covered by structures that minimize direct contact to any potential remaining contaminants in the soil. Additionally, during previous site development activities, near surface soils (where residual agricultural chemical concentrations would have most likely been present, if at all) were likely mixed with fill material or disturbed during grading. Also, it is common that engineered fill is placed over underlying soils as part of the development activities. These additional variables serve to further reduce the potential for exposure to residual agricultural chemicals (if any). Based on these reasons, the potential former use of agricultural chemicals is not expected to represent a significant environmental concern and impacts would be the same as those for the Approved Project. However, the project applicant would comply with the regulations that the City codified after approval of the 2016 MND (CMC Section 17.04.040(B)(3)(A)). Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to the release of hazardous materials during demolition of existing buildings.

Criterion c). As described in Section 3.2, *Local Setting*, there are two schools within 0.25 miles of the project site (i.e., St. Joseph of Cupertino School roughly 0.07 miles (390 feet) to the east and Happy Days Child Development Center 0.16 miles (850 feet) to the west). There are no known plans of a proposed school in this range. The proposed Modified Project would not involve the storage, handling, or disposal of hazardous materials in sufficient quantities to pose a significant risk to the public. Furthermore, as discussed in Section 4.2, *Air Quality*, criterion (c), implementation of CMC Section 17.04.050(A)(2), *Control*

[70] Partner Engineering and Science, Inc., 2022. *Phase I Environmental Site Assessment Report, 10145 N De Anza Boulevard and 10118-10122 Bandley Drive, Cupertino, California 95014*, March 21. Genesis Engineering & Redevelopment, 2022, letter results of the soil testing (also known as a Phase II ESA), May 18.

[71] California Department of Toxic Substances Control California Environmental Protection Agency, *Interim Guidance for Sampling Agricultural Properties,* page 3, August 7, 2008.

Construction Exhaust, criteria air pollutant emissions from construction equipment exhaust would not exceed the BAAQMD average daily thresholds and impacts from project-related construction activities would not have a potential health risk to people, including the children at St. Joseph of Cupertino or the Happy Days Child Development Center. Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to the release of hazardous materials during construction or operational phases within 0.25 miles of an existing or proposed school.

Criterion d). Based on a recent search of the Department of Toxic Substances Control (DTSC) EnviroStor Database, which is the data management system for tracking our cleanup, permitting, enforcement and investigation efforts at hazardous waste facilities and sites with known contamination or sites where there may be reasons to investigate further, no hazardous materials sites are located on the project site.[72] Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to being located on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

Criterion e). Same as the Approved Project, the project site is not within an airport land use plan or within 2 miles of a public use airport. Thus, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to public airport hazards.

Criterion f). The proposed Modified Project would include the same general egress/ingress (i.e., Alves Drive, Bandley Drive, and Stevens Creek Boulevard) as the Approved Project and would not block roads nor impede emergency access to surrounding properties or neighborhoods during construction or operation. Furthermore, the proposed Modified Project would generate an estimated 1,216 fewer daily vehicle trips compared to the Approved Project, therefore, further reducing potential conflicts with an adopted emergency response plan, or emergency evacuation plan when compared to the Approved Project.[73,74] Thus, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to the implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.

Criterion g). The project site is located within a California Department of Forestry and Fire Protection (CAL FIRE) designated Local Responsibility Area (LRA) and outside of very high fire hazard severity zone

[72] California Department of Toxic Substances Control EnviroStor Database, https://www.envirostor.dtsc.ca.gov/public/map/?myaddress=10118+to+10122+Bandley+Drive+cupertino, accessed August 5, 2022; Partner Engineering and Science, Inc., 2022. *Phase I Environmental Site Assessment Report, 10145 N De Anza Boulevard and 10118-10122 Bandley Drive, Cupertino, California 95014*, March 21.

[73] Fehr & Peers, 2022. *Marina Plaza Trip Generation Update and VMT Screening Assessment*.

[74] Approved Project 5,205 average daily vehicle trips – Modified Project 3,989 average daily vehicle trips = -1,216 trips.

(VHFHSZ). The project site is not near lands designated as a State Responsibility Area (SRA) by CAL FIRE. The project site is approximately 2 miles northeast from the nearest VHFHSZ or land designated by CAL FIRE as a SRA. The project site is not located within the Cupertino or CAL FIRE designated wildland-urban interface (WUI), which is an area of transition between wildland (unoccupied land) and land with human development (occupied land).[75] Thus, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to wildfires.

4.9 HYDROLOGY AND WATER QUALITY

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
a) Violate any water quality standards or waste discharge requirements?	LTS	Yes	No	No	No
b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?	LTS	Yes	No	No	No
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would: i) result in substantial erosion or siltation on- or off-site; ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or of-site; iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial	LTS	Yes	No	No	No

[75] California Department of Forestry and Fire Protection (CAL FIRE). 2018. Wildland-Urban Interface Fire Threat. http://www.arcgis.com/home/item.html?id=d45bf08448354073a26675776f2d09cb, accessed August 5, 2022; California Department of Forestry and Fire Protection. "FHSZ Viewer." https://egis.fire.ca.gov/FHSZ/, accessed August 5, 2022; City of Cupertino Municipal Code, Title 16, *Building and Construction*, Chapter 16.74. *Wildland Urban Interface Fire Area*; City of Cupertino. 2015. General Plan: Community Vision 2015-2040, Health and Safety Chapter, Figure HS-1.

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
additional sources of polluted runoff; or iv) impede or redirect flood flows?					
d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?	Post 2016 CEQA Checklist Question	N/A	No	No	No
e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?	Post 2016 CEQA Checklist Question	N/A	No	No	No

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable

Adopted MND

Section IX, *Hydrology and Water Quality*, of the Adopted MND, addressed the hydrology and water quality impacts associated with the construction and operation of the Approved Project. Hydrology and water quality impacts were found to be less than significant, and no mitigation measures were required.

Applicable Mitigation Measures from the Adopted MND

No mitigation measures were required as part of the Adopted MND.

Discussion

Criteria a) through e). The project setting and regulatory setting is the same for the Approved Project and the Modified Project. The Approved Project, like the proposed Modified Project, would be connected to municipal water supplies and no groundwater wells would be located on the property. The proposed Modified Project would include 166,445 square feet of impervious surfaces, which is a decrease from existing conditions (209,783 square feet) and the Approved Project (209,450 square feet). The project site is not located in close proximity to the San Francisco Bay or the Pacific Ocean, and is not within a mapped tsunami inundation zone. Further, the proposed Modified Project would have less water demand than the Approved Project (see Section 4.16, *Utilities and Service Systems*).

Same as the Approved Project, because the proposed Modified Project would disturb one or more acres during construction, the project applicant would be required to comply with the Municipal Regional Storm Water National Pollutant Discharge Elimination System (NPDES) Permit and submit Permit Registration

Documents to the California State Water Resources Control Board prior to the start of construction. The Permit Registration Documents include a Notice of Intent (NOI) and a site-specific construction Stormwater Pollution Prevention Plan (SWPPP). The SWPPP describes the incorporation of BMPs to control sedimentation, erosion, and hazardous materials contamination of runoff during construction. New requirements by the State Water Resources Control Board would also require the project applicant to prepare a construction SWPPP that includes post-construction treatment measures aimed at minimizing stormwater runoff. With implementation of these measures, water quality impacts during construction would be reduced to a less-than-significant level same as the Approved Project.

In addition, all new development or redevelopment projects that create and/or replace 10,000 square feet or more of impervious surfaces would be required to incorporate source control, site design, and stormwater treatment measures into the project, pursuant to the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) C.3 requirements. The requirements include minimization of impervious surfaces, measures to detain or infiltrate runoff from peak flows to match pre-development conditions, and agreements to ensure that the stormwater treatment and flow control facilities are maintained in perpetuity. The proposed Modified Project would do so through pervious pavements, flow-through planters, and green roof. Because the proposed Modified Project would include less impervious surfaces and less water, and would comply with the same regulatory requirements, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to a violation any water quality standards or waste discharge requirements.

4.10 LAND USE AND PLANNING

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
a) Physically divide an established community?	LTS	Yes	No	No	No
b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?	LTS	Yes	No	No	No

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable

Adopted MND

Section X, *Land Use and Planning*, of the Adopted MND, addressed the land use and planning impacts associated with the operation and construction of the Approved Project. Land use and planning impacts were found to be less than significant, and no mitigation measures were required.

Applicable Mitigation Measures from the Adopted MND

No mitigation measures were required as part of the Adopted MND.

Discussion

Criterion a). Same as the Approved Project, the Modified Project would occur on a site that is currently developed, would retain the existing roadway patterns, and would not introduce any new major roadways or other physical features through existing residential neighborhoods or other communities that would create new barriers, the project would not physically divide an established community. Accordingly, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to the division of an established community.

Criterion b.) Same as the Approved Project, the Modified Project would be consistent with the types of development envisioned in the Heart of the City Special Area and North Crossroads Node, and does not include a request for amendments to the existing General Plan land use designation or zoning district. As described in Section 3.1.1.3, *Density Bonus Elements*, the proposed Modified Project would include the incorporation of BMR units, and is therefore entitled to increase the proposed height and number of housing units consistent with the State's density bonus law and the City's density bonus ordinance. Through the incorporation of density bonus, the proposed Modified Project would have a residential density of approximately 40 du/ac and maximum building heights of58 feet and 8 inches at the roofline, and 64 feet and 8 inches at the stair tower for Building A; 43 feet and 9 inches at the roofline and 49 feet and 9 inches at the stair tower for Building B; and 55 feet roofline and 61 feet at the stair tower for Building C. Accordingly, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to land use policies aimed at reducing environmental impacts.

4.11 NOISE

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
a) Result in the generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	LTS	Yes	No	No	No
b) Result in the generation of excessive groundborne noise levels?	LTS	Yes	No	No	No
c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	NI	Yes	No	No	No

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable

Adopted MND

Section XI, *Noise*, of the Adopted MND, addressed the noise impacts associated with the construction and operation of the Approved Project. Noise impacts were found to be less than significant, and no mitigation measures were required.

Applicable Mitigation Measures from the Adopted MND

No mitigation measures were required as part of the Adopted MND.

Discussion

Criterion a). Like the Approved Project, potential temporary increases in ambient noise levels for the Modified Project would be associated with construction activities. Two types of short-term noise impacts could occur during construction: (1) mobile-source noise from the transport of workers, material deliveries, and debris/soil hauling; and (2) on-site noise from use of construction equipment. Construction

activities under the proposed Modified Project, like the Approved Project, are anticipated to last approximately three years.

The transport of workers and materials to and from the construction site would incrementally increase noise levels along local roadways under both scenarios. Same as the Approved Project, primary access routes for construction vehicles to the project site would be North De Anza Boulevard, Alves Drive, and Bandley Drive. Project-related construction worker vehicles, haul trucks, and vendor trucks could pass by existing hotel and residential uses along Alves Drive, Bandley Drive, and De Anza Boulevard north and east of the project site. Construction-related activities would generate worker, vendor, and soil haul trips. The demolition and grading phases would generate the most trips due to soil haul. The proposed Modified Project would only include one level of underground parking, which would reduce the amount of soil to be excavated when compared to the Approved Project that would have two levels of underground parking; thus, also reducing the amount of excavation equipment and haul trucks to be used. Therefore, noise generated from construction-related truck traffic would be less under the proposed Modified Project and would not result in a new impact or substantial increase in magnitude of the construction noise impacts identified in the Approved MND.

The Modified Project, like the Approved Project, would be required to comply with the construction hours stated in CMC Section 10.48.053, *Grading, Construction and Demolition.* Because the noise-sensitive receptors and construction of the proposed Modified Project is roughly the same as the Approved Project, with less excavation and one additional level on Buildings A and B occurring under the Modified Project, the construction noise levels would be expected to remain an average 78 dBA L_{eq} at nearby offices, 72 dBA L_{eq} at adjacent banks, 72 dBA L_{eq} at the Aloft Hotel, and 70 dBA L_{eq} at the apartments across Alves Drive. Therefore, construction activity would not be expected to exceed the noise ordinance's limit of 80 dBA (L_{max}). Because the noise-sensitive receptors lie within 750 feet of the construction boundary, project construction would not be allowed on weekends pursuant to CMA Section 10.48.053. Due to the distances of the noise-sensitive receptors, the limitation on construction hours to the least noise-sensitive portion of the day (7:00 a.m. to 8:00 p.m.), and the construction activity noise level limit, impacts at off-site receptors from construction equipment for the Modified Project would be the same as the Approved Project. Additionally, the development of either the Approved Project or the Modified Project would be required to comply with CMC Section 17.04.050(G)(2), *Manage Noise During Construction,* which requires the applicant and contractor to submit a Construction Noise Control Plan to the City's Planning Department for review and approval prior to issuance of the first permit. The Construction Noise Control Plan would demonstrate compliance with daytime and nighttime decibel limits based on the type of construction equipment, distance of construction activities from sensitive receptors, site terrain, and other project features. Additional requirements of CMC Section 17.04.050(G)(2) include selecting haul routes that avoid the greatest amount of sensitive uses, posting signs that reinforce the prohibition of unnecessary engine idling, and the use of noise producing signals only for safety warning purposes. Furthermore, 10 days prior to the start of ground disturbing activities, the project applicant would be

required to send out notices to off-site businesses within 500 feet of the project site. Therefore, noise impacts from construction equipment would not result in a new impact or substantial increase in magnitude of the construction noise impacts identified in the Approved MND.

The proposed Modified Project, like the Approved Project, would generate noise associated with additional vehicles traveling to and from the project site on local roadways. However, the proposed Modified Project would generate an estimated 1,216 fewer daily vehicle trips compared to the Approved Project.[76,77] Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the mobile-source noise impacts identified in the Approved MND.

Stationary (non-transportation) noise sources associated with the proposed Modified Project would include heating, ventilation, and air conditioning (HVAC) units on the roofs of the buildings, same as the Approved Project. The nearest noise-sensitive receptors that could potentially be affected by HVAC units are the nearby Aloft Hotel to the north across Bandley Drive and residential uses to the northwest across Alves Drive and Bandley Drive, which is the same setting described in the Adopted MND. However, like the Approved Project, ambient noise levels at the hotel and residences are already elevated under existing conditions due to heavy traffic flows on both Stevens Creek Boulevard and De Anza Boulevard. Therefore, the noise levels due to the proposed Modified Project's HVAC units would be lower than ambient noise levels caused by the traffic-related sources. Additionally, machinery and other stationary sources of noise are regulated by the CMC Section 10.48.040, *Daytime and Nighttime Maximum Noise Levels*, which requires that noise limits of 60 dBA and 50 dBA at residential uses during daytime and nighttime, respectively, and 65 dBA and 55 dBA at non-residential sensitive uses during daytime and nighttime, respectively. Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the stationary-source noise impacts identified in the Approved MND.

Criterion b). Operation of the proposed Modified Project, like that Approved Project, would not include any long-term vibration sources such as industrial machinery or railroad operations. Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the operational vibration impacts identified in the Approved MND.

Lastly, the construction of the Modified Project, like the Approved Project, would require the use of heavy construction equipment that could cause vibration. Because the Modified Project is roughly the same construction timeline and building envelope, with less excavation, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the construction vibration impacts identified in the Approved MND.

[76] Fehr & Peers, 2022. *Marina Plaza Trip Generation Update and VMT Screening Assessment*.

[77] Approved Project 5,205 average daily vehicle trips – Modified Project 3,989 average daily vehicle trips = -1,216 trips.

Criterion c). Same as the Approved Project, the project site is not within an airport land use plan or within 2 miles of a public use airport. Thus, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to airport noise.

4.12 POPULATION AND HOUSING

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
a) Induce substantial unexpected population growth or growth for which inadequate planning has occurred, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	LTS	Yes	No	No	No
b) Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?	NI	Yes	No	No	No

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable

Adopted MND

Section XII, *Population and Housing*, of the Adopted MND, addressed the population and housing impacts associated with the Approved Project. Population and housing impacts were found to be less than significant, and no mitigation measures were required.

Applicable Mitigation Measures from the Adopted MND

No mitigation measures were required as part of the Adopted MND.

Discussion

Criterion a). The proposed project would result in a planned level of growth based on the local growth projections in the General Plan. The proposed project does not include a request amendments to the existing General Plan land use designation or zoning district. As discussed in Section 3.6.2, *Population and Employee Estimates,* the proposed Modified Project would result in 591 total residents and 92 total employees. This represents a net increase of 50 additional residents and 28 additional employees. Conservatively assuming all 591 new residents would move to Cupertino, the new residents would

represent 4.5 percent of the residential growth projected in the General Plan EIR .[78] Conservatively assuming all 92 employees are new employees, they would represent 0.5 percent of the employee growth projected in the General Plan EIR.[79] Therefore, the proposed Modified Project, like the Approved Project, is well within the population projections considered in the General Plan EIR and projected by ABAG. Thus, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to substantial population growth.

Criterion b). Same as the Approved Project, the project site is currently developed with two single-story commercial buildings and associated surface parking. Thus, there is no existing housing or people on the project site and no housing or people would be displaced by the proposed Modified Project. the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to the displacement of housing or people.

4.13 PUBLIC SERVICES

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:					
a) Fire protection?	LTS	Yes	No	No	No
b) Police protection?	LTS	Yes	No	No	No
c) Schools?	LTS	Yes	No	No	No
d) Libraries?	LTS	Yes	No	No	No

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable

[78] 591 new residents divided by 12,988 General Plan EIR projected residents = 4.5 percent.

[79] 92 new employees divided by 16,855 General Plan EIR projected employees = 0.5 percent *(This is a conservative estimate that does not take into consideration the existing employees currently on the site.)*

Adopted MND

Section XII, *Public Services*, of the Adopted MND, addressed the impacts to public service associated with the Approved Project. Public Service impacts were found to be less than significant, and no mitigation measures were required.

Applicable Mitigation Measures from the Adopted MND

No mitigation measures were required as part of the Adopted MND.

Discussion

Criteria a) though d). Public service providers for fire protection, police protection, schools, and library services in the City of Cupertino include the Santa Clara County Fire District, the Santa Clara County Sheriff's Office and West Valley Patrol Division, the Cupertino Union School District and Fremont Union High School District , and the Santa Clara County Library District, respectively, of whom provide public services citywide.

The purpose of the public services impact analysis is to examine the impacts associated with physical improvements to public service facilities required to maintain acceptable service ratios, response times or other performance objectives. Public service facilities may need improvements (i.e., construction, renovation, or expansion) as demand for services increase. Increased demand is typically driven by increases in population. The proposed project would have a significant environmental impact if it would exceed the ability of public service providers to adequately serve residents, thereby requiring construction of new facilities or modification of existing facilities.

As discussed in Section 4.12, *Population and Housing*, the proposed Modified Project would result in 4.5 percent of the General Plan EIR residential growth and 0.5 percent of the employee growth.[80] Accordingly, like the Approved Project, the Modified Project is well within the population projections considered in the General Plan EIR and projected by ABAG. In addition, the applicant for the proposed Modified Project would be required to pay developer impact fees to the Cupertino Union School District and Fremont Union High School District that provide support to schools to offset the project's fair share of impacts to schools. Accordingly, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to public services.

[80] 591 new residents divided by 12,988 General Plan EIR projected residents = 4.5 percent.
92 new employees divided by 16,855 General Plan EIR projected employees = 0.5 percent *(This is a conservative estimate that does not take into consideration the existing employees currently on the site.)*

4.14 PARKS AND RECREATION

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	LTS	Yes	No	No	No
b) Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	LTS	Yes	No	No	No

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable

Adopted MND

Section XIII, *Parks and Recreation*, of the Adopted MND, addressed the impacts to parks and recreation services associated with the Approved Project. Parks and recreation impacts were found to be less than significant, and no mitigation measures were required.

Applicable Mitigation Measures from the Adopted MND

No mitigation measures were required as part of the Adopted MND.

Discussion

Criteria a) and b). The City of Cupertino Public Works Department is responsible for the maintenance of the City's 16 parks, five special use sites, nine school sports fields, and four trail corridors,[81] and regional park facilities operated by the Midpeninsula Regional Open Space District (MROSD) and the Santa Clara County Parks could be used by residents and employees of the proposed Modified Project, same as the Approved Project. The proposed Modified Project would result in about 50 additional residents and an increase of 27 employees when compared to the Approved Project. Because the Adopted MND conservatively assumed all the residents would be new to Cupertino and did not factor in that there are existing employees on the site, this change in the number of residents and employees would not cause

[81] City of Cupertino, 2020. *Parks and Recreation System Master Plan, Introduction.*

substantial physical deterioration of City or regional parks. Furthermore, the Modified Project is within the buildout assumptions assumed for the project site in the General Plan EIR (see Table 1-1, *General Plan EIR and Project Comparisons)* which found impacts to parks and recreation to be less than significant. Like the Approved Project, the Modified Project's payment of City-required impact fees would contribute to the City's parks and recreation fund. The proposed Modified Project, like the Approved Project, would be required to comply with CMC Chapter 13.08*, Park Land Dedication Fee*, and Chapter 18.24, *Dedications and Reservations*, which require the payment of impact fees to maintain existing parks and recreation facilities and offset their fair share of impacts to parklands. Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to parks and recreation.

4.15 TRANSPORTATION

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
a) Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities?	LTS	Yes	No	No	No
b) Conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)?	Post 2016 CEQA Checklist Question	N/A	No	No	No
c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	NI	Yes	No	No	No
d) Result in inadequate emergency access?	NI	Yes	No	No	No

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable

Adopted MND

Section XIV, *Transportation*, of the Adopted MND, addressed the transportation impacts associated with the Approved Project. Transportation impacts were found to be less than significant, and no mitigation measures were required.

Applicable Mitigation Measures from the Adopted MND

No mitigation measures were required as part of the Adopted MND.

Discussion

Criteria a) and b). The proposed Modified Project would generate 1,216 fewer daily vehicle trips compared to the Approved Project.[82,83] Therefore, as a general matter, the proposed Modified Project would generate fewer transportation impacts when compared to the Approved Project. The existing bicycle, pedestrian, and transit network is the same for the Approved Project as the Modified Project. Pedestrian walkways are proposed within the Modified Project for safe connections between buildings, particularly between the hotel and nearby retail and restaurants on Stevens Creek Boulevard. The proposed Modified Project does not propose any street network changes, nor any changes to pedestrian and bicycle facilities. The proposed Modified Project would include Class 1 and Class 2 bicycle parking as described in Section 3.6.7, *Sustainability Features*. While the proposed Modified Project does not include the pedestrian paseo between Building A and Building B that was included in the Approved Project, as shown on Figure 3-3, an internal "Main Paseo" would be created to connect Alves Drive, Bandley Drive, and Stevens Creek Boulevard between all three buildings. Accordingly, the proposed Modified Project, like the Approved Project, would have adequate availability of alternative modes of travel including pedestrian, bicycle, and transit. The proposed project would not displace, modify, or interfere with any transit stop, sidewalk, or bicycle lanes. Therefore, the project would not conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities. With respect to construction trips, as described previously, the proposed Modified Project would include less excavation and therefore less haul trucks, therefore, reducing construction transportation when compared to the Approved Project.

Pursuant to CEQA Guidelines Section 15064.3(b)(1), projects within 0.25 miles of either an existing major transit stop or a stop along an existing high quality transit corridor should be presumed to cause a less-than-significant transportation impact. On February 16, 2021, the City adopted CMC Chapter 17.08, *Evaluation of Transportation Impacts Under the California Environmental Quality Act*, which provides screening criteria and vehicle miles traveled (VMT) thresholds for land-use development projects, transportation projects, and other projects pursuant to the CEQA. As discussed in Section 4.1, *Aesthetics*, the location of the project site meets this criteria. Accordingly, no transportation impacts related to VMT from the proposed project are presumed. Therefore, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to conflicts with policies addressing the circulation network.

[82] Fehr & Peers, 2022. *Marina Plaza Trip Generation Update and VMT Screening Assessment*.

[83] Approved Project 5,205 average daily vehicle trips – Modified Project 3,989 average daily vehicle trips = -1,216 trips.

Criteria c) and d). The proposed Modified Project would include the same general egress/ingress (i.e., Alves Drive, Bandley Drive, and Stevens Creek Boulevard) as the Approved Project and would not block roads nor impede emergency access to surrounding properties or neighborhoods during construction or operation. Emergency vehicle access for the project site would be provided from Alves Drive, Bandley Drive, and Stevens Creek Boulevard. As with the Approved Project, all emergency access driveway and on-site roads for the proposed Modified Project, would be designed in accordance with City of Cupertino standards and would have to be reviewed and approved by SCCFD. The SCCFD and City of Cupertino Building Division coordinate the review of building permits. Thus, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to potentially unsafe roadway features that would increase hazards. *No impact* would occur, and no mitigation measures would be required.

4.16 UTILITIES AND SERVICE SYSTEMS

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
a) Require or result in the relocation or construction of water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?	LTS	Yes	No	No	No
b) Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?	LTS	Yes	No	No	No
c) Result in a determination by the wastewater treatment provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	LTS	Yes	No	No	No

Would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
d) Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?	LTS	Yes	No	No	No
e) Comply with federal, State, and local statutes and regulations related to solid waste?	LTS	Yes	No	No	No

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable

Adopted MND

Section XV, *Utilities and Service Systems*, of the Adopted MND, addressed the impacts to utilities and service systems associated with the Approved Project. Utilities and service system impacts were found to be less than significant, and no mitigation measures were required.

Applicable Mitigation Measures from the Adopted MND

No mitigation measures were required as part of the Adopted MND.

Discussion

Criterion a). Like the Approved Project, the proposed Modified Project would be served by the Cupertino Sanitary District (CSD) for sanitary sewer services and wastewater would be treated at the San Jose/Santa Clara Water Pollution Control Plant (SJ/SCWPCP). Municipal storm water discharges in the City of Cupertino are subject to the Waste Discharge Requirements of the new Municipal Regional Permit (MRP; Order Number R2-2022-0018) and NPDES Permit Number CAS612008, which became effective on July 1, 2022. The MRP currently allows dry weather discharges of up to 167 million gallons per day (mgd) with full tertiary treatment, and wet weather discharges of up to 271 mgd with full tertiary treatment. The proposed Modified Project, like the Approved Project, does not involve industrial uses likely to substantially increase pollutant-loading levels in the sanitary sewer system. As discussed below in criterion (c), future demands from the proposed Modified Project, like the Approved Project, would not exceed the design or permitted capacity of the SJ/SCWPCP that serves the project site. Future water treatment demand was assessed in consultation with the City of Cupertino and includes consideration of development in the city through the 2040 buildout horizon of the General Plan.

As previously discussed in Section 4.9, *Hydrology and Water Quality*, the proposed Modified Project would not exceed the capacity of stormwater drainage system that serves the project site. The proposed Modified Project would include 166,445 square feet of impervious surfaces, which is a decrease from existing conditions (209,783 square feet) and the Approved Project (209,450 square feet). The proposed Modified Project would provide pervious pavements, flow-through planters, and green roof that would provide stormwater treatment and reduce the amount of stormwater released into the City's off-site storm drain infrastructure. Consequently, the proposed Modified Project, like the Approved Project, would not require the expansion of existing stormwater facilities or the construction of new facilities, the construction of which could otherwise have significant impacts.

Other utility facilities that serve the project site include electric power and telecommunications facilities. PG&E would supply electricity infrastructure to the project site. Silicon Valley Clean Energy would provide electricity to the project site. AT&T and other providers would provide telephone service. The proposed Modified Project, like the Approved Project, consists of the demolition of existing commercial buildings and development of mixed-use project that would result in no change in land use intensity from what was evaluated in the General Plan EIR in a portion of the city that has access to existing infrastructure and services, which was accounted for in the General Plan EIR. The proposed Modified Project would include appropriate on-site infrastructure to connect to the existing PG&E and telecommunication systems and would not require new off-site facilities and distribution infrastructure or capacity enhancing alterations to any existing facilities.

Therefore, in summary, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to the construction of new utility service facilities.

Criteria b) and c). As shown in the General Plan EIR in Chapter 4.14, the water supply at Modified Project buildout year 2025 would be 14,055 acre feet per year (afy) and at General Plan buildout year 2040 would be 16,984 afy.[84] As discussed in the General Plan EIR, buildout of the General Plan, which accounts for the development potential of the Approved Project, and proposed Modified Project, would not result in insufficient water supplies from Cal Water under normal year conditions or during single-dry year and multiple-dry years, with the proposed and existing water conservation regulations and measures in place. Furthermore, as shown in Table 4-1, *Water Demand Comparison for the Approved and Modified Projects,* applying the same water demand rates as the Adopted MND for comparison, the proposed Modified Project would have less water demand than the Approved Project.

[84] One *acre-foot* equals about 326,000 gallons, or enough water to cover an *acre* of land, about the size of a football field, one *foot* deep.

Table 4-1 Water Demand Comparison for the Approved and Modified Projects

		Approved Project		Modified Project	
Development Type	Water Demand Generation Factor	Size	Water Demand	Size	Water Demand
Residential	137.2 gpd/unit	188 units	25,793 gpd	206 units	28,263 gpd
Hotel	0.50 gpd/sf	52,762	26,381 gpd	0	0
Restaurant [a]	1.10 gpd/sf	17,864 sf	19,650 gpd	32,321 sf	35,553 gpd
Retail [b]	0.11 gpd/sf	4,729 sf	520 gpd	8,592 sf	945 gpd
Total Water Demand			**72,344 gpd or 81.03 afy**		**64,761 gpd or 72.5 afy**

Notes: square foot or feet = sf; gallons per day = gpd; acre feet per year = afy
a. Restaurant = about 79% of total commercial use
b. Retail = about 21% of total commercial use
Source: Water Supply Evaluation (Yarne & Associates), May 20, 2014; prepared with input from the City of Cupertino.

Furthermore, the project applicant of the proposed Modified Project would be required to comply with CMC Chapter 17.04, *Standard Environmental Protection Requirements,* which includes Utilities and Service Systems Permit Requirements to ensure adequate water supply and infrastructure. Thus, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to water supply.

As described in criterion a), while there is physical capacity to accommodate the wastewater discharge of the proposed Modified Project, like the Approved Project, the construction and operation of the proposed Modified project could exceed the 13.8 mgd "contractual" limit through the City of Santa Clara. The contractual agreement between CSD and the City of Santa Clara, for this portion of the Santa Clara sewer system, allows the City 13.8 mgd of capacity in the sewer system during peak wet weather flows. The existing CSD peak wet weather flow into the Santa Clara system is 13.14 mgd.[85] However, the estimated wastewater generation from the proposed Modified Project and from other potential projects in Cupertino, as established by the General Plan, is approximately 14.61 mgd, which is the total capacity needed to serve the General Plan buildout.[86] Therefore, the proposed project, and other approved and potential projects as established by the General Plan buildout, will require a reduction in sewer generation from the CSD system prior to flowing into the City of Santa Clara system, or additional capacity rights will need to be acquired from the City of Santa Clara. The project applicant of the Modified Project would be required to comply with CMC Chapter 17.04, *Standard Environmental Protection Requirements*, which

[85] Mark Thomas & Co. Inc, December 6, 2019, Cupertino Sanitary District Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara.
[86] Mark Thomas & Co. Inc, December 6, 2019, Cupertino Sanitary District Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara.

includes Utilities and Service Systems Permit Requirements in Section 17.04.050(I) to manage wastewater inflow and infiltration to sewer system. Accordingly, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to wastewater treatment provider capacity.

Criteria d) and e). The City contracts with Recology to provide solid waste collection services to residents and businesses in the city. The City has a contract with Newby Island Sanitary Landfill until 2023. In addition to the Newby Island Landfill, solid waste generated in Cupertino can also be disposed of at the Altamont Landfill and Resource Recovery facility, the Corinda Los Trancos Landfill, Forward Landfill Inc., Guadalupe Sanitary Landfill, Kirby Canyon Recycling and Disposal Facility, the Monterey Peninsula Landfill, Recology Hay Road, the Vasco Road Sanitary Landfill, the Zanker Material Processing Facility, and the Zanker Road Class III Landfill.

The proposed waste management for the proposed project would include the management of waste, recycling, and composting. Solid waste generated by construction of the proposed project would largely consist of demolition waste from the existing buildings as well as construction debris. The proposed Modified Project, same as the Approved Project, would be required to comply with CMC Chapter 16.72, *Recycling and Diversion of Construction and Demolition Waste*, and the City's Zero Waste Policy, which requires the recycling or diversion at least 65 percent of all generated construction and demolition (C&D) waste by salvage or by transfer to an approved facility. Prior to the permit issuance, the applicant for the proposed Modified Project would be required to submit a properly completed Waste Management Plan, which includes the estimated maximum amount of C&D waste that can feasibly be diverted, which facility would handle the waste, and the total amount of C&D waste that would be landfilled. Compliance with CMC Chapter 16.72 and the City's Zero Waste Policy would reduce solid waste and construction-related impacts on the landfill capacity.

The City's per capita disposal rate for residents and employees in 2019 was 3.5 PPD and in 2020 was 2.6 PPD, respectively, which is below the 4.3 PPD and 8.1 PPD target rate established by CalRecycle.[87] Applying these disposal rates, the proposed Modified Project would generate approximately 2,308 PPD or 1.2 tons per day (TPD) of new waste.[88] Therefore, like the Approved Project, the Modified Project solid waste generation would be well within the Newby Island Sanitary Landfill permitted daily disposal capacity of 4,000 TPD. Thus, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to solid waste.

[87] CalRecycle, 2019 and 2020. Jurisdiction Diversion/Disposal Rate Summary, https://www2.calrecycle.ca.gov/LGCentral/DiversionProgram/JurisdictionDiversionPost2006, accessed August 5,2022. Note, the years reflect the most recent published data.

[88] (3.5 x 591 residents = 2,069 PPD) + (2.6 PPD x 92 employees = 239 PPD) = 2,308 PPD or 1.2 TPD

4.17 WILDFIRE

If located in or near State responsibility areas or lands classified as very high fire hazard severity zones, would the proposed project:	Level of Impact in the 2016 MND	Environmental Effects of the Modified Project			
		Same or Reduced Impact ?	New or More Severe Impacts?	New Circumstances Involving New or More Severe Impacts?	New Information Requiring New Analysis or Verification?
a) Substantially impair an adopted emergency response plan or emergency evacuation plan?	Post 2016 CEQA Checklist Question	N/A	No	No	No
b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?	Post 2016 CEQA Checklist Question	N/A	No	No	No
c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?	Post 2016 CEQA Checklist Question	N/A	No	No	No
d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?	Post 2016 CEQA Checklist Question	N/A	No	No	No

Key: NI = no impact; LTS = less than significant; LTS/M = less than significant with mitigation; SU = significant and unavoidable

Adopted MND

While these standards regarding wildfire related impacts were adopted by the California Natural Resource Agency in December 2018 after the time of the Adopted MND, Section VIII, *Hazards and Hazardous Materials,* of the Adopted MND, addressed the wildfire impacts associated with the Approved Project. Wildfire impacts were found to be less than significant, and no mitigation measures were required.

Applicable Mitigation Measures from the Adopted MND

No mitigation measures were required as part of the Adopted MND.

Discussion

As described in Section 4.8, *Hazards and Hazardous Materials*, under criterion (g), the project site is located within a CAL FIRE designated LRA and outside of VHFHSZ. The project site is not near lands designated as an SRA by CAL FIRE. The project site is approximately 2 miles northeast from the nearest VHFHSZ or land designated by CAL FIRE as a SRA. The project site is not located within the Cupertino or CAL FIRE designated WUI.[89] Thus, the proposed Modified Project would not result in a new impact or substantial increase in magnitude of the impacts identified in the Approved MND related to wildfires.

[89] California Department of Forestry and Fire Protection (CAL FIRE). 2018. Wildland-Urban Interface Fire Threat. http://www.arcgis.com/home/item.html?id=d45bf08448354073a26675776f2d09cb, accessed August 5, 2022; California Department of Forestry and Fire Protection. "FHSZ Viewer." https://egis.fire.ca.gov/FHSZ/, accessed August 5, 2022; City of Cupertino Municipal Code, Title 16, *Building and Construction*, Chapter 16.74. *Wildland Urban Interface Fire Area*; City of Cupertino. 2015. General Plan: Community Vision 2015-2040, Health and Safety Chapter, Figure HS-1.

This page intentionally left blank.

5. Conclusion

As summarized below, and for the reasons described in Chapter 4, *Environmental Analysis*, of this Addendum, the City of Cupertino has concluded that the proposed Modified Project would not result in any new significant impacts not previously identified in the Adopted MND; nor would it result in a substantial increase in the severity of any significant environmental impact previously identified in the Adopted MND. For these reasons, a subsequent EIR is not required, and an Addendum to the Adopted MND is the appropriate CEQA document to address the proposed Modified Project.

5.1 SUBSTANTIAL CHANGES TO THE PROJECT

The proposed changes to the Approved Project include the mix of land use for the future development of the project site and are not a substantial change to the Approved Project analyzed in the Adopted MND. The proposed Modified Project is within the same project site parameter and would use the same egress/ingress access points. The proposed Modified Project would result in 18 additional residential units and 50 additional residents, and an increase of 28 employees, and would not include the proposed hotel. The proposed maximum height of each of the three buildings under the Approved Project and the Modified Project are roughly the same and would include minimal increases under the Modified Project to Building A and C (10 feet and 3 feet taller at the tallest architectural feature), respectively. Building A under the Modified Project would be reduce by 5 feet at the tallest architectural feature. Otherwise, under both scenarios the three buildings are in the 4 to 5 story range. See Table 1-1, *General Plan EIR and Project Comparisons*. Consequently, there are no substantial changes proposed to the Approved Project that will require major revisions of the previous Adopted MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

5.2 SUBSTANTIAL CHANGES IN CIRCUMSTANCES

As described in Chapter 5, *Environmental Analysis*, of this Addendum, the proposed Modified Project would not result in new significant environmental impacts beyond those identified in the Adopted MND, would not substantially increase the severity of significant environmental effects identified in the Adopted MND, and thus would not require major revisions to the Adopted MND. The proposed Modified Project, therefore, is not substantial and does not require major revisions to the Adopted MND or a subsequent MND. In addition, the physical conditions within the area of the project site or the project site itself have not changed substantially since the time of the Adopted MND.

5.3 NEW INFORMATION

No new information of substantial importance, which was not known and could not have been known at the time of the Adopted MND, has been identified which shows that the proposed Modified Project would be expected to result in: 1) new significant environmental effects not identified in the Adopted MND; 2) substantially more severe environmental effects than shown in the Adopted MND; 3) mitigation measures or alternatives previously determined to be infeasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project sponsor declines to adopt the mitigation or alternative; or 4) mitigation measures or alternatives which are considerably different from those identified in the Adopted MND would substantially reduce one or more significant effects of the project but the project sponsor declines to adopt the mitigation measure or alternative.

6. List of Preparers

LEAD AGENCY

City of Cupertino

Benjamin Fu ..... Director of Community Development
Luke Connolly ..... Acting Director of Community Development
Piu Ghosh ..... Planning Manager
Gian Martire ..... Senior Planner, Project Manager
David Stillman ..... Transportation Manager
Chris Carrao ..... Senior Transit & Transportation Planner
Jennifer Chu ..... Senior Civil Engineer

REPORT PREPARERS

PlaceWorks

Terri McCracken ..... Associate Principal, Principal-in-Charge
Jacqueline Protsman Rohr ..... Associate II, Project Manager
Vivian Kha ..... Project Planner
Nicole Vermilion ..... Principal, Air Quality and Greenhouse Gas Practice Leader
Steve Bush ..... Senior Engineer
Kristie Nguyen ..... Associate, Air Quality and Greenhouse Gas Specialist
Emily Parks ..... Project Planner, Air Quality, Greenhouse Gas, and Energy Specialist
Alejandro Garcia ..... Senior Associate I, Noise Specialist
Grant Reddy ..... Graphics Specialist

LIST OF PREPARERS

This page intentionally left blank.