

RESOLUTION NO. ____

A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING SIX TWO STORY PERMITS TO ALLOW SIX NEW
TWO-STORY HOMES WITH ATTACHED ADUS LOCATED
AT 20860 MCCLELLAN ROAD

SECTION I: PROJECT DESCRIPTION

Application No.: R-2021-040 to R-2021-045
Applicant: District McClellan LLC, c/o Alok Damireddy
Location: 20860 McClellan Road; APN#359-20-030

SECTION II: FINDINGS FOR A TWO-STORY PERMIT:

WHEREAS, the City of Cupertino received applications for six Two Story Permits to allow the construction of a six new two story homes ranging from 3,385 to 4,025 square feet with an attached accessory dwelling unit ranging from 557 to 600 square feet; and

WHEREAS, the project is determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 of CEQA Guidelines; and

WHEREAS, on September 13, 2022, the Planning Commission held a duly noticed public hearing to receive staff's presentation and public testimony, and to consider the information contained in the Infill Exemption Memorandum along with all staff reports, other pertinent documents, and all written and oral statements received prior to and at the public hearing; and

WHEREAS, on September 13, 2022 the Planning Commission recommended on a 3-2 vote that the City Council find the project exempt from CEQA, approve Tentative Tract Map (TM-2021-006 in substantially similar form to the Resolution presented (Resolution No. 6957); and

WHEREAS, all necessary public notices having been given as required by the Cupertino Municipal Code and the Government Code, and the City Council held at least one public hearing in regard to this application on October 18, 2022; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Resolution; and

WHEREAS, the applicant has met the burden of proof required to support the application for six Two Story Permits; and

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

1. The project is consistent with the Cupertino General Plan, any applicable specific plans, zoning ordinance, and the purposes of the R-1 Ordinance; and

The proposed project is consistent with the General Plan as the project is within the Low Density land use area. There are no applicable specific plans that affect the project. The project has been found

to be consistent with the requirements of Cupertino Municipal Code Chapter 19.28 Single Family (R-1) Residential.

2. The granting of the permit will not result in a condition that is detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, or welfare; and

The granting of the permit will not result in a condition that is detrimental or injurious to property improvements in the vicinity, and will not be detrimental to the public health, safety or welfare as the project is located within the R1-10 (Single Family Residential) zoning district, and will be compatible with the surrounding uses of the neighborhood. The project meets the building development regulations of the R-1 Ordinance and complies with the privacy protection measures to ensure that visual impacts to adjacent neighbors are mitigated.

3. The project is harmonious in scale and design with the general neighborhood; and

The proposed project is located in a residential area consisting of single-family homes. The subject neighborhood contains a mix of single-story and two-story homes, making the proposed project compatible with the neighborhood. The proposed six two-story residences are comparable in size to the existing residences in the surrounding area and complies with the R-1 Ordinance regulations for floor area ratio. Additionally, the project complies with all other development regulations for R1-7.5 zoned properties regarding mass and bulk, including, but not limited to, first floor building envelope, minimum setback regulations, and building height limitations.

4. Adverse visual impacts on adjoining properties have been reasonably mitigated.

Any potential adverse visual impacts on adjoining properties have been reasonably mitigated through adherence to the setback requirements and privacy protection measures of the R-1 Ordinance.

The R-1 Ordinance allows property owners the ability to construct second-story windows and balconies as long as privacy protection trees and/or shrubs are planted as required by the ordinance. The project complies with the privacy screening requirements of the R-1 Ordinance by providing privacy screening plantings for the second-story balcony and second-story windows with a sill height below 5 feet along the property lines for each lot that proposes these window sizes. Per the R-1 Ordinance, the objective of privacy protection plantings is to provide substantial screening within three years of planting. Privacy protection plantings are considered Protected Trees under the City's Municipal Code (Chapter 14.18) and are recorded as such with a covenant against the property to inform current and future property owners about their protected status. Protected trees are not permitted to be removed without obtaining a tree removal permit and providing replacement plantings.

NOW, THEREFORE, BE IT RESOLVED that after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on PAGE 3 thereof, and those contained in all other Resolutions approved for this Project, the City Council does hereby:

1. Exercises its independent judgment and determines that the Project is exempt from CEQA pursuant to CEQA Guidelines section 15332. Section 15332 exemption applies projects characterized as in-fill development meeting the following criteria:
 - (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
 - (b) The proposed development occurs within the city limits on a project site of no more than five acres substantially surrounded by urban uses.
 - (c) The project site has no value as habitat for endangered, rare or threatened species.
 - (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
 - (e) The site can be adequately served by all required utilities and public services.

Therefore, the proposed project is consistent with the criteria stated above (Section 15332) and as discussed in the Infill Exemption Memorandum prepared for the project, will not have a significant effect on the environment.

2. Approve, the application for six Two Story Permits, Application No.'s R-2021-040, -041, -042, -043, -044, and -045.
3. Find that the subconclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application no.'s R-2021-040, -041, -042, -043, -044, and -045 as set forth in the Minutes of the City Council Meeting of MONTH DAY, YEAR and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPARTMENT

1. APPROVED EXHIBITS

The approval is based on a plan set entitled "District McClellan ", consisting of one hundred and twenty-nine (129) sheets except as may be amended by conditions in this resolution. In the event there are conflicts between the floor plan, cross sections and elevation drawings, the elevation drawings take precedence.

2. UNITS APPROVED

A total of six single family homes with six attached Accessory Dwelling Units are approved. A covenant shall be recorded prior to final occupancy to ensure that there shall be no internal connection between the accessory dwelling unit and the principal dwelling unit throughout the lifetime of the home, nor shall the accessory dwelling unit ever be allowed to converted to be part of the principal dwelling unit.

3. PARKING REQUIREMENTS

The project shall provide five on-site parking spaces and one off-site parking space for each lot. Two on-site parking spaces shall be located within an enclosed garage and three on-site

parking spaces are to be open and proposed on the driveway. The one off-site parking space shall be provided along the west side of Cherryland Drive.

4. ANNOTATION OF THE CONDITIONS OF APPROVAL

The conditions of approval set forth shall be incorporated into and annotated on the building plans.

5. ACCURACY OF PROJECT PLANS

The applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or construction records. Any misrepresentation of property data may invalidate this approval and may require additional review.

6. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is responsible to consult with other departments and/or agencies with regard to the proposed project for additional conditions and requirements. Any misrepresentation of any submitted data may invalidate an approval by the Community Development Department.

7. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file no. TM-2021-006 and RM-2022-015 to -016, -022, -023, -024, and -025.

8. PRIVACY PLANTING

The final privacy planting plan shall be reviewed and approved by the Planning Division prior to issuance of building permits. The variety, size, and planting distance shall be consistent with the City's requirements.

9. PRIVACY PROTECTION COVENANT

The property owner shall record a covenant on this property to inform future property owners of the privacy protection measures and tree protection requirements consistent with the R-1 Ordinance, for all windows with views into neighboring yards and a sill height that is 5 feet or less from the second story finished floor. The precise language will be subject to approval by the Director of Community Development. Proof of recordation must be submitted to the Community Development Department prior to final occupancy of the residence.

10. FRONT YARD TREE

The applicant shall indicate on site and landscape plans the location of a front yard tree to be located within the front yard setback area in order to screen the massing of the second story. The front yard tree shall be a minimum 24-inch box and 6 feet planted height and otherwise be consistent with the City's requirements.

11. FRONT YARD TREE COVENANT

The property owner shall record a covenant on this property with the Santa Clara County Recorder's Office that requires the retention and maintenance of the required front yard tree. The precise language will be subject to approval by the Director of Community Development. Proof of recordation must be submitted to the Community Development Department prior to final occupancy of the residence.

12. LANDSCAPE PROJECT SUBMITTAL

Prior to issuance of building permits, the applicant shall submit a full Landscape Documentation Package, per sections 14.15.050 A, B, C, and D of the Landscape Ordinance, for projects with landscape area 500 square feet or more or elect to submit a Prescriptive Compliance Application per sections 14.15.040 A, B, and C for projects with landscape area between 500 square feet and 2,500 square feet. The Landscape Documentation Package or Prescriptive Compliance Application shall be reviewed and approved to the satisfaction of the Director of Community Development prior to issuance of building permits, and additional requirements per sections 14.15.040 D, E, F, and G or 14.15.050 E, F, G, H, and I will be required to be reviewed and approved prior to final inspections.

13. EXTERIOR BUILDING MATERIALS/TREATMENTS

The final building exterior plan shall closely resemble the details shown on the original approved plans. Final building exterior treatment plan (including but not limited to details on exterior color, materials, architectural treatments, doors, windows, lighting fixtures, and/or embellishments) shall be reviewed and approved by the Director of Community Development prior to issuance of building permits to ensure quality and consistency. Any exterior changes determined to be substantial by the Director of Community Development shall either require a modification to this permit or a new permit based on the extent of the change.

14. DUST CONTROL

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

- a. Water all exposed surfaces areas (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- b. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- e. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

- f. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- g. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- h. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

The applicant shall incorporate the City's construction best management practices into the building permit plan set prior to any grading, excavation, foundation or building permit issuance.

15. GRADING AND CONSTRUCTION HOURS AND NOISE LIMITS

- a. All grading activities shall be limited to the dry season (April 15 to October 1), unless permitted otherwise by the Director of Public works.
- b. Construction hours and noise limits shall be compliant with all requirements of Chapter 10.48 of the Cupertino Municipal Code.
- c. Grading, street construction, underground utility and demolition hours for work done more than 750 feet away from residential areas shall be limited to Monday through Friday, 7 a.m. to 8 p.m. and Saturday and Sunday, 9 a.m. to 6 p.m. Grading, street construction, demolition or underground utility work within 750 feet of residential areas shall not occur on Saturdays, Sundays, holidays, and during the nighttime period as defined in Section 10.48.053(b) of the Municipal Code.
- d. Construction activities shall be limited to Monday through Friday, 7 a.m. to 8 p.m. and Saturday and Sunday, 9 a.m. to 6 p.m. Construction activities are not allowed on holidays as defined in Chapter 10.48 of the Municipal Code. Night time construction is allowed if compliant with nighttime standards of Section 10.48 of the Cupertino Municipal Code.
- e. Rules and regulations pertaining to all construction activities and limitations identified in this permit, along with the name and telephone number of an applicant appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
- f. The applicant shall be responsible for educating all contractors and subcontractors of said construction restrictions.

The applicant shall comply with the above grading and construction hours and noise limit requirements unless otherwise indicated.

16. DEMOLITION REQUIREMENTS

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

17. DARK SKY ORDINANCE COMPLIANCE

The applicant shall comply with Dark Sky Ordinance regulations, as applicable, prior to issuance of the building permit.

18. BIRD SAFE ORDINANCE COMPLIANCE

The applicant shall comply with the Bird Safe Ordinance regulations, as applicable, prior to issuance of the building permit.

19. NESTING BIRDS

Nests of raptors and other birds shall be protected when in active use, as required by the federal Migratory Bird Treaty Act and the California Department of Fish and Game Code.

- a. Construction and tree removal/pruning activities shall be scheduled to avoid the nesting season to the extent feasible. If feasible, tree removal and/or pruning 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 tree removal or construction activities outside the nesting period. If construction activities and any required tree removal occur during the nesting season (February 1 and August 31), a qualified ornithologist shall be required to conduct surveys prior to tree removal or construction activities. Preconstruction surveys shall be conducted no more than 14 days prior to the start of tree removal, pruning or construction. Preconstruction surveys shall be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped. During this survey, the ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests.
- b. If the survey does not identify any nesting birds that would be affected by construction activities, no further mitigation is required. If an active nest containing viable eggs or young birds is found sufficiently close to work areas to be disturbed by these activities, their locations shall be documented and protective measures implemented under the direction of the qualified ornithologist until the nests no longer contain eggs or young birds.
- c. Protective measures shall include establishment of clearly delineated exclusion zones (i.e. demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by the qualified ornithologist, taking into account the species of birds nesting, their tolerance for disturbance and proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds. The active nest within an exclusion zone shall be monitored on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status. The radius of an exclusion zone may be increased by the qualified biologist, if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified biologist only in consultation with California Department of Fish and Wildlife. The protection measures and buffers shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.

- d. 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 submitted to the Planning Manager, through the building permit review process, and be completed to the satisfaction of the Community Development Director prior to the start of grading.

20. GEOLOGY AND SOILS

All grading and foundation plans for the proposed project shall be designed by a Civil and Structural Engineer, peer-reviewed by a third-party qualified Geotechnical Engineer, paid for by the applicant, and reviewed and approved by the City Engineer, and Chief Building Official, prior to issuance of building permit or grading permit, whichever comes first, to ensure that all geotechnical recommendations specified in the Geotechnical Investigation prepared for the proposed project by GeoEngineering Consultants are properly incorporated and utilized in the project design.

21. HAZARDS AND HAZARDOUS MATERIALS PHASE II RECOMMENDATIONS

Prior to initiation of demolition or construction activities, the project applicant shall comply with all applicable recommendations within the Limited Phase II ESA prepared for the proposed project by ReDevelop Inc. including the excavation and proper disposal of OCP impacted soils, the development of a Health and Safety Plan to protect workers during grading and construction activities, and the installation of vapor barrier protection for residences. OCP-impacted soils located within the project site shall be removed to a depth of one foot and off-hauled by a licensed hazardous waste contractor (Class A) and contractor personnel that have completed 40-hour OSHA hazardous training. The soil shall be disposed of appropriately in accordance with applicable federal, State, and local regulations associated with hazardous waste. That the applicant has complied with the recommendations shall be verified by the City of Cupertino Community Development Department and the Santa Clara County Environmental Health Department through their Voluntary Cleanup Program, prior to the issuance of the first grading and/or building permit.

22. HAZARDS AND HAZARDOUS MATERIALS ASBESTOS AND/OR LEAD ASSESSOR CONSULTATION

Prior to issuance of a demolition permit for on-site structures, the project applicant shall consult with certified Asbestos and/or Lead Risk Assessors to complete and submit for review to the Building Department an asbestos and lead survey. If asbestos containing materials or lead-containing materials are not discovered during the survey, further mitigation related to asbestos-containing materials or lead containing materials shall not be required. If asbestos containing materials and/or lead-containing materials are discovered by the survey, the project applicant shall prepare a work plan to demonstrate how the on-site asbestos-containing materials and/or lead-containing materials shall be removed in accordance with current California Occupational Health and Safety (Cal-OSHA) Administration regulations and disposed of in accordance with all CalEPA regulations, prior to the demolition and/or removal of the on-site structures. The plan shall include the requirement that work shall be

conducted by a Cal-OSHA registered asbestos and lead abatement contractor in accordance with Title 8 CCR 1529 and Title 8 CCR 1532.1 regarding asbestos and lead training, engineering controls, and certifications. The applicant shall submit the work plan to the City of Cupertino for review and approval. The City has the right to defer the work plan to the Santa Clara County Department of Environmental Health for additional review. Materials containing more than one (1) percent asbestos that is friable are also subject to BAAQMD regulations. Removal of materials containing more than one (1) percent friable asbestos shall be completed in accordance with BAAQMD Section 11-2-303.

23. NOISE AND VIBRATION NOTICE AND SIGNAGE REQUIREMENTS

a. At least 10 days prior to the start of any demolition, ground disturbing, or construction activities, the project applicant shall send notices of the planned activity by first class mail as follows:

- i. For projects on sites that are more than 0.5 acres or four or more residential units the notices shall be sent to off-site businesses and residents within 500 feet of the project site;
- ii. For projects on sites between 0.25 to 0.5 acres, or two or three residential units (not including Accessory Dwelling Units) notices shall be sent to off-site businesses and residents within 250 feet of the project site; or
- iii. For projects on sites less than 0.25 acres or one residential unit, the notices shall be sent to off-site businesses and residents within 100 feet of the project site.

The notification shall include a brief description of the project, the activities that would occur, the hours when activity would occur, and the construction period's overall duration. The notification should include the telephone numbers of the contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. The project applicant shall provide the City with evidence of mailing of the notice, upon request.

b. At least 10 days prior to the start of construction activities, a sign shall be posted at the entrance(s) to the job site, clearly visible to the public, which includes permitted construction days and hours, as well as the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. If the authorized contractor's representative receives a complaint, they shall investigate, take appropriate corrective action, and report the action to the City within three business days of receiving the complaint.

24. NOISE MANAGEMENT DURING CONSTRUCTION

Projects shall implement the following measures to reduce noise during construction and demolition activity:

- a. The project applicant and contractors shall prepare and submit a Construction Noise Control Plan to the City's Planning Department for review and approval prior to

issuance of the first permit during the Building Permit stage. The Construction Noise Plan shall demonstrate compliance with daytime and nighttime decibel limits pursuant to Chapter 10.48 (Community Noise Control) of Cupertino Municipal Code. The details of the Construction Noise Control Plan shall be included in the applicable construction documents and implemented by the on-site Construction Manager. Noise reduction measures selected and implemented shall be based on the type of construction equipment used on the site, distance of construction activities from sensitive receptor(s), site terrain, and other features on and surrounding the site (e.g., trees, built environment) and may include, but not be limited to, temporary construction noise attenuation walls, high quality mufflers. During the entire active construction period, the Construction Noise Control Plan shall demonstrate that compliance with the specified noise control requirements for construction equipment and tools will reduce construction noise in compliance with the City's daytime and nighttime decibel limits.

- b. Select haul routes that avoid the greatest amount of sensitive use areas and submit to the City of Cupertino Public Works Department for approval prior to the start of the construction phase.
- c. Signs will be posted at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment will be turned off if not in use for more than 5 minutes.

During the entire active construction period and to the extent feasible, the use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. The construction manager will use smart back-up alarms, which automatically adjust the alarm level based on the background noise level or switch off back-up alarms and replace with human spotters in compliance with all safety requirements and law.

25. INDEMNIFICATION AND LIMITATION OF LIABILITY

As part of the application, to the fullest extent permitted by law, the applicant shall agree to indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, or proceeding (collectively referred to as "proceeding") brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant related to any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized for the project. The indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. Such attorneys' fees and costs shall include

amounts paid to the City's outside counsel and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City. The applicant shall likewise agree to indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties. The Applicant shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review, if the applicant desires to continue to pursue the project.

The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

26. NOTICE OF FEES, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS

The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements, and other exactions.

SECTION IV: CONDITIONS ADMINISTERED BY THE PUBLIC WORKS DEPARTMENT

27. CHERRYLAND HOA

The existing Cherryland CC&Rs acknowledges the granting of a reciprocal easement of the private road for a future development of the western lot. Prior to Final Map approval as reviewed and approved by the Public Works Department, the developer/ applicant shall establish an agreement with the Cherryland HOA for ingress/egress and for maintenance that covers the fully widened private roadway Cherryland Drive. The agreement should consider how the private Cherryland Drive would be assessed for tax purposes to the adjacent property owners if the private drive were to be merged into one parcel.

28. LOT LINE ADJUSTMENT

Prior to issuance of Building Permits, the developer/applicant shall work with the Cherryland HOA to obtain consensus for, and to prepare, a lot line adjustment to create one parcel for the fully widened private Cherryland Drive. Developer/applicant shall submit the necessary documentation and fees to the Public Works Department for review and approval during building permit phase. The lot line adjustment would be executed after recordation of the Cherryland HOA Agreement and Final Map recordation.

29. STREET IMPROVEMENTS & DEDICATION

Roadway dedication in fee title and frontage improvements along McClellan Road will be required to the satisfaction of the Director of Public Works. Street improvement plans and

grading and drainage plans must be completed and approved prior to Final Map approval as reviewed and approved by the Public Works Department.

Street improvements may include, but not be limited to, removal of existing driveways, new curb and gutter, new ADA ramp, storm drain system modifications, street tree installations, and joint pole relocation. All improvements must be completed and accepted by the City prior to Building Final Occupancy or Street Improvement Encroachment Permit acceptance whichever comes first.

Additional comments will be provided during review of the plans and shall be incorporated prior to Final Map approval as reviewed by the Public Works Department.

30. ACCEPTANCE OF PROPERTY RIGHTS

The Public Works Director, or his/her designee, shall have the authority to accept all offers of dedications, easements, quitclaims and other property rights and interests on behalf of the City.

31. CURB AND GUTTER IMPROVEMENTS

Curbs and gutters, sidewalks and related structures shall be installed in accordance with grades and standards as specified by the Director of Public Works. All improvements must be completed and accepted by the City prior to Building Final Occupancy or Street Improvement Encroachment Permit acceptance whichever comes first.

32. PEDESTRIAN AND BICYCLE IMPROVEMENTS

Prior to issuance of Building Permits, the developer shall provide/demonstrate the location of pedestrian and bicycle related improvements including, but not limited to, modifications to the raised island along McClellan Road due to the existing driveway removals and to meet trash collection requirements, consistent with the Cupertino Bicycle Transportation Plan and the Pedestrian Transportation Plan, and as approved by the Director of Public Works. All improvements must be completed and accepted by the City prior to Building Final Occupancy or Street Improvement Encroachment Permit acceptance whichever comes first.

33. STREET LIGHTING INSTALLATION

Prior to issuance of Building Permits, the developer/applicant shall demonstrate on the plans that lighting fixtures are be positioned so as to preclude glare and other forms of visual interference to adjoining properties and shall be no higher than the maximum height permitted by the zone in which the site is located. Street lighting shall be installed and shall be approved by the Director of Public Works prior to Building Final Occupancy.

34. GRADING

Prior to issuance of Building or Grading Permits, the developer/applicant shall demonstrate that grading is in accordance with Chapter 16.08 of the Cupertino Municipal Code and shall be reviewed and approved by the Director of Public Works. 401 Certifications and 404 permits

may also be required. Please contact Army Corp of Engineers and/or Regional Water Quality Control Board as appropriate.

35. DRAINAGE

Prior to issuance of Building Permits, the developer/applicant shall demonstrate drainage designs and proposals to be reviewed and approved to the satisfaction of the Director of Public Works and satisfy any requirements from the environmental analysis. Hydrology and pre- and post-development hydraulic calculations must be provided to indicate whether additional storm water control measures are to be constructed or renovated. The storm drain system may include, but is not limited to, subsurface storage of peak stormwater flows (as needed), bioretention basins, vegetated swales, and hydrodynamic separators to reduce the amount of runoff from the site and improve water quality. The storm drain system shall be designed to detain water on-site (e.g., via buried pipes, retention systems or other approved systems and improvements) as necessary to avoid an increase of the ten percent flood water surface elevation to the satisfaction of the Director of Public Works. Any storm water overflows or surface sheeting should be directed away from neighboring private properties and to the public right of way as much as reasonably possible.

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

Additional comments will be provided and shall be incorporated prior to Final Map approval.

36. C.3 REQUIREMENTS

C.3 regulated improvements are required for all projects creating and/or replacing 10,000 S.F. or more of impervious surface (collectively over the entire project site). The developer/applicant shall submit plans to be reviewed and approved by the Public Works Department that verify a minimum reservation of 4% of developable surface area for the placement of low impact development measures, for storm water treatment, unless an alternative storm water treatment plan, that satisfies C.3 requirements, as reviewed and approved by the Director of Public Works prior to issuance of Building Permits.

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

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

37. SUBDIVISION AGREEMENT

The project developer/applicant shall enter into a subdivision agreement with the City of Cupertino providing for payment of fees, including but not limited to checking and inspection fees, storm drain fees, park dedication fees and fees for under grounding of utilities. Said agreement and fees shall be executed and paid prior to Final Map approval as reviewed and approved by the Public Works Department.

Fees:

- | | |
|--------------------------------|---|
| a. Checking & Inspection Fees: | Per current fee schedule (\$4,947 or 5% of improvement costs) |
| b. Grading Permit: | Per current fee schedule (\$3,683 or 6% of improvement costs) |
| c. Tract Map Fee: | Per current fee schedule (\$12,306) |
| d. Storm Drainage Fee: | Per current fee schedule (\$4,250 per AC + \$322 per unit) |
| e. Transportation Impact Fee: | Per current fee schedule (\$6,797 per unit) |
| f. Encroachment Permit Fee: | Per current fee schedule (\$3,304) |
| g. Park Fees: | Per current fee schedule (\$105,000 per unit) |
| h. Storm Management Plan Fee | Per current fee schedule (\$1,670) |
| i. Street Tree Fee: | By Developer or Per current fee schedule: \$481 per tree |

Bonds:

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

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

38. FINAL MAP

A final map will be subject to City Council approval and shall be recorded prior to issuance of building permits. Existing buildings must be demolished prior to recordation of the final map as building(s) cannot straddle between lot lines and will be reviewed and approved by the Public Works department prior to recordation of final map.

39. TRANSPORTATION IMPACT FEES

The Project is subject to the payment of Transportation Impact Fees under City's Transportation Impact Fee Program (Chapter 14.02 of the Cupertino Municipal Code) and payment shall be provided prior to issuance of Building Permits.

40. PARKS

The residential units are subject to the payment of parkland fees in-lieu of parkland dedication per Chapter 13.08 and Chapter 18.24 of the Cupertino Municipal Code and payment shall be provided prior to issuance of Building Permits.

41. SURVEYS

Prior to issuance of Building Permits, Boundary Survey and a horizontal control plan will be required for all new construction to ensure the proposed building will be set based on the boundary survey and setback requirements.

42. TRASH, RECYCLING AND COMPOST ENCLOSURES

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

If the project requires trash collection along Cherryland Drive, the applicant and the adjacent Cherryland HOA shall enter into an agreement with the City prior to Final Map approval that indemnifies and holds harmless both the City and the refuse and recycling collection company (Recology) from and against any harm, damage or maintenance that may occur or become necessary to onsite paving stone driveway surfaces.

43. OPERATIONS & MAINTENANCE AGREEMENT

Developer shall enter into an Operations & Maintenance Agreement with the City prior to Final Map approval as reviewed and approved by the Public Works Department. The Agreement shall include the operation and maintenance for non-standard appurtenances in the public road right-of-way that may include, but is not limited to, landscaping, street trees, sidewalk, pavers, and streetlights.

44. UNDERGROUND UTILITIES

Developer shall comply with the requirements of the Underground Utilities Ordinance No. 331 and other related Ordinances and regulations of the City of Cupertino and shall coordinate with affected utility providers for installation of underground utility devices. Developer shall submit detailed plans showing utility underground provisions to be reviewed and approved prior to issuance of Building Permits. Said plans shall be subject to prior approval of the affected Utility provider and the Director of Public Works.

45. TRANSFORMERS & CABINETS

Electrical transformers, telephone cabinets and similar equipment shall be placed in underground vaults. The developer must receive written approval from both the Public Works Department and the Community Development Department prior to installation of any above ground equipment and prior to issuance of Building Permits. Should above ground equipment be permitted by the City, equipment and enclosures shall be screened with fencing

and landscaping such that said equipment is not visible from public street areas, as determined by the Community Development Department. Transformers shall not be located in the front or side building setback area.

46. WATER BACKFLOW PREVENTERS

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

47. BEST MANAGEMENT PRACTICES

Utilize Best Management Practices (BMPs), as required by the State Water Resources Control Board, for construction activity, which disturbs soil. BMP plans shall be included in grading and street improvement plans as reviewed and approved by the Public Works Department prior to issuance of Building Permits.

48. NPDES CONSTRUCTION GENERAL PERMIT

When and where it is required by the State Water Resources Control Board (SWRCB), the developer must obtain a Notice of Intent (NOI) from the SWRCB, which encompasses preparation of a Storm Water Pollution Prevention Plan (SWPPP), use of construction Best Management Practices (BMPs) to control storm water runoff quality, and BMP inspection and maintenance. Provide documentation to be reviewed and approved by the Public Works Department, prior to issuance of Buildings Permits.

49. EROSION CONTROL PLAN

Developer must provide an approved erosion control plan by a Registered Civil Engineer prior to issuance of Building, Demolition, or Grading Permits. This plan should include all erosion control measures used to retain materials on site. Erosion control notes shall be stated on the plans.

50. WORK SCHEDULE

Every 6 months, the developer shall submit a work schedule to the City to show the timetable for all grading/erosion control work in conjunction with this project.

51. TRAFFIC CONTROL PLAN

The developer must submit a traffic control plan by a Registered Traffic Engineer to be approved by the City prior to issuance of Building Permits. The plan shall include a temporary traffic control plan for work in the right of way as well as a routing plan for all vehicles used during construction. All traffic control signs must be reviewed and approved by the City prior to commencement of work. The City has adopted Manual on Uniform Traffic Control Devices (MUTCD) standards for all signage and striping work throughout the City.

52. STREET TREES

Street trees shall be planted within the Public Right of Way to the satisfaction of the Director of Public Works and shall be of a type approved by the City in accordance with Ordinance No. 125. Street tree locations shall be reviewed and approved by the Public Works Department prior to issuance of Building Permits.

53. FIRE PROTECTION

Fire sprinklers shall be installed in any new construction to the approval of the City prior to issuance of Buildings Permits.

54. SANTA CLARA COUNTY FIRE DEPARTMENT

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

55. FIRE HYDRANT

Fire hydrants shall be located as required by the City and Santa Clara County Fire Department as needed and shall be reviewed and approved prior to issuance of Building Permits.

56. SAN JOSE WATER SERVICE COMPANY CLEARANCE

Provide San Jose Water Service Company approval for water connection, service capability and location and layout of water lines and backflow preventers prior to Final Map approval as reviewed and approved by the Public Works Department.

57. DEDICATION OF UNDERGROUND WATER RIGHTS

Developer shall "quit claim" to the City all rights to pump, take or otherwise extract water from the underground basin or any underground strata in the Santa Clara Valley. Documentation for quit claim shall be provided to the Public Works Department for review and approval prior to final map approval as reviewed and approved by the Public Works Department.

58. SANITARY DISTRICT

A letter of clearance or sign off of street improvement plans for the project shall be obtained from the Cupertino Sanitary District prior to Final Map approval as reviewed and approved by the Public Works Department.

59. UTILITY EASEMENTS

Clearance approvals from the agencies with easements on the property (including PG&E, AT&T, and San Jose Water Company, and/or equivalent agencies) will be required prior to Final Map approval as reviewed and approved by the Public Works Department.

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

60. FIRE DEPT. APPARATUS ACCESS ROADWAYS

Prior to issuance of final map approval as reviewed and approved by the Public Works Department, all such roadways shall be minimum 20 feet in width, a minimum vertical clearance of 13' 6", maximum grade of 15%, with a minimum circulating outside radius of 42'. Cul-De-Sac diameters shall be no less than 72 feet. CFC Sec. 503. All such roadways shall be capable of supporting a maximum imposed load of 75,000 pounds and where a bridge or an elevated surface is part of a fire apparatus access road, the bridge shall be constructed and maintained in accordance with AASHTO HB-17. The minimum requirements are found in the currently adopted edition of the California Fire Code Sec. 503, as identified in the SCCFD SD&S A-1.

61. FIRE PLANES REQUIRED

Where required by the Fire Code Official and shall be reviewed and approved prior to issuance of Building Permits, fire apparatus access roads shall be designated and marked as a fire lane as set forth in Section 22500.1 of the California Vehicle Code and the SCCFD A-6 Standard.

62. PARKING

Prior to issuance of Building Permits, the developer/applicant shall demonstrate when parking is permitted on streets, in both residential/commercial applications, it shall conform to the following:

- A. Parking is permitted both sides of the street with street widths of 36 feet or more
- B. Parking is permitted on one side of the street with street widths of 28 – 35 feet
- C. No parking is permitted when street widths are less than 28 feet

Prior to issuance of building permits, the applicant shall clearly indicate on the plans all areas where on street parking is proposed. Include widths of the roadway, widths of the parking spaces and how any no-parking sections will be marked as shown on the plans prior to issuance of Building Permits.

63. FIRE HYDRANT SYSTEMS REQUIRED

Prior to issuance of Building Permits, the developer/applicant shall demonstrate that where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, onsite fire hydrants and mains shall be provided where required by the fire code official. Exception: For Group R-3 and Group U occupancies, equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3, the distance

requirement shall be not more than 600 feet [CFC, Section 507.5.1]. Proposed parcels are all located within 600 feet of the existing fire hydrant.

64. REQUIRED FIRE FLOW

Documentation from the local water purveyor confirming the required fire flow @ 20 psi, based upon the SF of the largest proposed residence, shall be provided prior to building permit issuance. Fire flow shall be confirmed at plan review of Building Permits.

SECTION VI: CONDITIONS ADMINISTERED BY THE ENVIRONMENTAL SERVICES DIVISION

65. ENVIRONMENTAL DIVISION STANDARDS

Prior to issuance of Building permits, the applicant shall comply with the additional requirements related to construction and demolition waste recycling and PCB mitigation during the building permit review phase.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 18th day of October, 2022 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>Darcy Paul, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>