

RESOLUTION NO. _____

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING A VESTING TENTATIVE MAP MERGING TWO
PARCELS TO CREATE TWELVE PARCELS ALLOW A PROPOSED
MIXED-USE DEVELOPMENT WITH 34 RESIDENTIAL UNITS, 7,595
SQ. FT. COMMERCIAL SPACE, AND THE REMOVAL AND
REPLACEMENT OF 51 DEVELOPMENT TREES. LOCATED AT 1655 S.
DE ANZA BLVD. (APN: 366-10-061, -126)**

SECTION I: PROJECT DESCRIPTION

Application No.: TM-2021-003
Applicant: Carlson Chan (Prospect Venture LLC)
Property Owner: Prospect Venture, LLC
Location: 1655 S. De Anza Blvd. (APNs 366-10-061, -126)

SECTION II: FINDINGS FOR A TENTATIVE MAP:

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

WHEREAS, the proposed project, including the Development Permit, is fully described and analyzed in the Initial Study and proposed Mitigated Negative Declaration (State Clearinghouse No. 2022100314) ("IS/MND") for the Project; and

WHEREAS, on May 23, 2023 the Planning Commission recommended on a 5-0 vote that the City Council adopt the Mitigated Negative Declaration (EA-2022-005) and approve the Development Permit (DP-2021-002) in substantially similar form to the Resolution presented (Resolution Nos. 2023-08, -09), approve the Architectural and Site Approval Permit (ASA-2021-004) in substantially similar form to the Resolution presented (Resolution No. 2023-10), approve the Tree Removal Permit (TR-2022-006) in substantially similar form to the Resolution presented (Resolution No. 2023-13), approve the Use Permit (U-2021-001) in substantially similar form to the Resolution presented (Resolution No. 2023-012), and approve the Vesting Tentative Map (TM-2021-003), in substantially similar form to the Resolution presented (Resolution No. 2023-011); and

WHEREAS, all necessary public notices having been given as required by the City of Cupertino Municipal Code and the Government Code, and the Planning Commission held at least one public hearing in regard to this application, and

WHEREAS, on June 21, 2023, the City Council held a public hearing to consider the Project; 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 a Tentative Map; and

WHEREAS, the applicant has met the burden of proof required to support the application for a Development Permit.; and

WHEREAS, on _____, 2023, the City Council adopted Resolution No. 23-_____ adopting the Mitigated Negative Declaration for the proposed project, adopting and incorporating into the Project, and implementing as conditions of approval all of the mitigation measures for the project that are identified in the Final Initial Study/Mitigated Negative Declaration, and adopting the Mitigation Monitoring and Reporting Program for the Project, Resolution No. 23-_____ approving the Use Permit; Resolution No. 23-_____ approving the Development Permit and Resolution No. 23-_____ approving the Architectural and Site Approval Permit for the proposed project; and

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

- a. That the proposed subdivision map is consistent with the City of Cupertino General Plan.

The subject property is consistent with the General Plan since the property is permitted to have up to 15 dwelling units an acre and the project qualifies for a density bonus. The proposed development is consistent with the intent of the policies of the General Plan for a high-density, mixed-use development on this site.

- b. That the design and improvements of the proposed subdivision are consistent with the General Plan and specific plans.

The off-site improvements are consistent with the City's General Plan policies related to pedestrian and bicycle safety by improving Prospect Road, minimizing curb-cuts, and requiring an urban tree canopy within the public right-of-way. The project is also consistent with the General Plan's design requirements, since the project qualifies for waivers for height and front setback.

- c. That the site is physically suitable for the type of development.

The proposed tentative map is compatible with the adjoining land uses and no physical constraints are present that would conflict with anticipated land use development. There are no topographical anomalies that differentiate this property from adjacent properties.

The site is located on the valley floor, as well as not listed within any environmentally sensitive zone.

- d. That the site is physically suitable for the proposed density of development.

The subject property is physically suitable in size and shape in conformance to development standards and is appropriately configured to accommodate a multi-unit mixed-used development featuring both rental and owner-occupied housing types.

- e. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish and wildlife or their habitat.

The design of the subdivision and proposed improvements are not likely to substantially injure fish and wildlife or their habitat because the property is a developed site and located in an urbanized area where residential land use is allowed.

- f. That the design of the subdivision or the type of improvements associated therewith are not likely to cause serious public health problems.

The proposed subdivision design and improvements are not likely to cause serious public health problems since the proposed development is consistent with the intent of the policies of the General Plan for a high-density, mixed-use development on this site, and the on-site and off-site improvements required will improve neighborhood walkability through improved sidewalk construction with size-appropriate driveway cuts and street and private trees planting.

- g. That the design of the subdivision and its associated improvements will not conflict with easements acquired by the public at-large for access through or use of property within the proposed subdivision.

No easement or right-of-way currently exists that would be impeded or conflict with the proposed subdivision.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the MND, subject to the conditions which are enumerated in this Resolution beginning on PAGE 4 thereof, and those contained in all other Resolutions approved for this Project

The application for a Vesting Tentative Map, Application No. TM-2021-003, is hereby approved, and 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. TM-2021-003 as set forth in the Minutes of the City Council Meeting of June 21, 2023 meeting, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval is based on the plan set dated July 19, 2022 consisting of 72 sheets labeled as 1655 S De Anza Boulevard, A.1– A.46, C1.0 – C10.0, L1 – L5, and E.000-E.103, drawn by Dahlin Group, Sandis, Ripley Design Group, FTF Engineering, and Emerald City Engineers, except as may be amended by conditions in this resolution.

2. ACCURACY OF PROJECT PLANS

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

3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. EA-2022-005, TR-2022-006, DP-2021-002, U-2021-002, and ASA-2021-004 shall be applicable to this approval.

4. ANNOTATION OF THE CONDITIONS OF APPROVAL

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

5. 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.

6. INDEMNIFICATION

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.

7. 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.

CITY ENGINEER'S CERTIFICATE OF
ACCEPTANCE OF ENGINEERING/SURVEYING CONDITIONS
(Section 66474.18 California Government Code)

I hereby certify that the engineering and surveying conditions specified in Section IV. of this Resolution conform to generally accepted engineering practices.

Chad Mosley, Interim Director of Public Works
City Engineer CA License 66077

PASSED AND ADOPTED at a special meeting of the City Council of the City of Cupertino this 21st day of June, 2023, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Hung Wei, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date