

**RESOLUTION NO.**  
**A RESOLUTION OF THE CUPERTINO CITY COUNCIL**  
**APPROVING A TENTATIVE FINAL MAP TO ALLOW SUBDIVISION FOR**  
**CONDOMINIUM PURPOSES ONLY, FOR A SEVEN UNIT TOWNHOME**  
**DEVELOPMENT LOCATED AT 10046 BIANCHI WAY**

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SECTION I: PROJECT DESCRIPTION

Application No.: TM-2023-001  
Applicant: Leon Hu of Top Mission Realty & Investment, Inc.  
Location: 10046 Bianchi Way  
APN#s: 359-07-021

SECTION II: FINDINGS FOR A TENTATIVE MAP:

WHEREAS, the City of Cupertino received an application for a Tentative Final Map (Application No. TM-2023-001) as described in Section I of this resolution; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act of 1970 (Public Resources Code Section 21000 et seq.) ("CEQA") and the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) ("CEQA Guidelines"), the project has been determined exempt under Class 32 CEQA Exemption pursuant to CEQA Guideline Sections 15332 (Infill Development Projects); and

WHEREAS, on December 12, 2023, the Planning Commission recommended on a 3-1-1 vote (Noes: Madhhipatla, Absent: Mistry) that the City Council approve the Development Permit (DP-2023-001) in substantially similar form to the Resolution presented (Resolution No.20), approve the Architectural and Site Approval Permit (ASA-2023-002) in substantially similar form to the Resolution presented(Resolution No.21), approve the Tentative Final Map (TM-2023-001) in substantially similar form the Resolution presented (Resolution No.22) and approve the Tree Removal Permit (TR-2023-008) in substantially similar form to the Resolution presented (Resolution No.23) except as may be further amended by conditions in this resolution; and

WHEREAS, all necessary public notices having been given as required by the Procedural Ordinance of the City of Cupertino and the Government Code, and on January 17<sup>th</sup>, 2024, the City Council held a public hearing to consider the Tentative Map Permit; and

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

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

WHEREAS, the City Council finds:

- 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 25 dwelling units an acre and the project qualifies for a density bonus. The proposed project complies with General Plan policies that include density, maximum building height, building design, site planning, and frontage improvements.*

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

*The off-site improvements are consistent with the City's General Plan policies related to pedestrian safety by providing a parkway between the sidewalk and street, minimizing curb-cuts, and requiring an urban 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 side setbacks, common open space, and service access.*

- c. That the site is physically suitable for the type development contemplated under the approved subdivision.

*The proposed subdivision 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 intensity of development contemplated under the approved subdivision.

*The subject property is physically suitable in size and shape in conformance to development standards and is appropriately configured to accommodate a multi-unit residential development.*

- e. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish and wildlife or their habitat.

*The proposed subdivision design and improvements are not likely to cause serious public health problems nor 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. The proposed development is consistent with the density and intent of the policies of the General Plan for a residential development on this site. The on-site and off-site improvements improve neighborhood walkability through improved sidewalk construction with size-appropriate driveway cuts and street and private tree plantings.*

- 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.

*There is an existing eight-foot public right-of-way dedication that runs from north to south along the entire width of the front property line. The development is set back nine feet from the right-of-way dedication, with no encroach from the proposed structure. The development will pay for and construct a new public sidewalk with proposed hardscape and softscape improvements. Furthermore, the developer has proposed a Public Art easement at the north-west corner of the lot, within the developments nine-foot front setback, adjoining the public right-of-way dedication.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and 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 application for a Tentative Final Map, Application No. TM-2023-001, is hereby approved, and that the subconclusions upon which the findings and conditions specified in this Resolution are based and contained in the Public Hearing record concerning Application no. TM-2023-001 as set forth in the Minutes of the City Council Special Meeting of January 17<sup>th</sup>, 2024 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 entitled "Leon Townhouse, 10046 Bianchi Way Cupertino, CA 95014" consisting of thirty-five sheets labeled A0.0 – A10.0, L1-L1 and

C3.1-C7.1 drawn by Tectonic Builders Corp., 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. DP-2023-001, ASA-2023-002, TM-2023-001 & TR-2023-008 apply concurrently to this project.

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. EXISTING PG&E AND AT&T EASEMENT

Developer shall work directly with PG&E and PT&T to obtain approval from each respective utility company for the proposed vacation of the existing 20' PG&E and AT&T easement. The easement may be vacated with the final map or quitclaimed by a separate instrument. The quitclaim shall be approved and recorded by PG&E and AT&T, **prior to Final Map recordation or issuance of building permits.**

7. CALIFORNIA WATER SERVICE COMPANY CLEARANCE

A letter of clearance shall be obtained from California Water Service Company **prior to Final Map approval.** The letter shall include their review and approval of the water connection, service capability, location and layout of water lines and backflow preventers, and any additional public service easements necessary to service the project.

8. 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.**

9. UTILITY EASEMENTS

Clearance approval letters from the agencies with easements on the property (including PG&E, AT&T, and California Water Company, and/or equivalent agencies) will be required **prior to Final Map approval**. Their letters shall include their review and approval of any easement(s) to be vacated and/or quitclaimed, which include proposed private structures and utilities within the existing easement(s).

10. 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.

11. 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. Pursuant to Government Code Section 66020(d) (1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

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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.

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

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PASSED AND ADOPTED at a special meeting of the City Council of the City of Cupertino this 17<sup>th</sup> day of January 2024 by the following vote:

Vote            Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

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