

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CUPERTINO CITY COUNCIL  
APPROVING A VESTING TENTATIVE MAP TO ALLOW A MIXED  
USE DEVELOPMENT ON TWO CREATED PARCELS AND 88  
TOWNHOME AND ROWHOUSE CONDOMINIUMS LOCATED AT  
21267 STEVENS CREEK BOULEVARD (APN: 326-27-042, -043)

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SECTION I: PROJECT DESCRIPTION

Application No.: TM-2018-03  
Applicant: KT Urban (Mark Tersini)  
Property Owner: 190 West St. James, LLC  
Location: 21267 Stevens Creek Blvd. (APN #326-27-042, -043)

SECTION II: FINDINGS FOR A TENTATIVE MAP:

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

WHEREAS, The Westport Cupertino Mixed-Use Project ("Project"), including the Vesting Tentative Map, is fully described and analyzed in the Initial Study and proposed Final Environmental Impact Report (State Clearinghouse No. 2019070377) ("EIR" or "Final EIR") for the Project; and

WHEREAS, the City of Cupertino's Environmental Review Committee at its April 16, 2020 meeting reviewed the Final EIR consisting of the April 7, 2020 Public Review Draft EIR and Response to Comments, received public comments, and voted 5-0 to recommend that the City Council certify the EIR for the project; and

WHEREAS, based on substantial evidence in the record, on May 12, 2020, the Planning Commission recommended on a 5-0 vote that the City Council certify that the EIR has been completed in compliance with the California Environmental Quality Act, Public Resources Code Section 21000 et seq. ("CEQA") and reflects the independent judgment and analysis of the City, adopt Findings, adopt and require as conditions of approval all of the mitigation measures for the Project which are within the responsibility and jurisdiction of the City that are identified in the EIR, and adopt the Mitigation Monitoring and Reporting Program for the Project (EA-2018-04); and

WHEREAS, on May 12, 2020 the Planning Commission recommended on a 5-0 vote that the City Council approve the Vesting Tentative Map (TM-2018-03), in substantially similar form to the Resolution presented (Resolution No. 6904), approve the

Development Permit (DP-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6901), approve the Architectural and Site Approval Permit (ASA-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6902), approve the Use Permit (U-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6903), approve the Tree Removal Permit (TR-2018-22) in substantially similar form to the Resolution presented (Resolution No. 6906), approve the Heart of the City Exception (EXC-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6905) for the Senior Enhanced Alternative; and

WHEREAS, on June 4, 2020, as updated on June 25 and 26, 2020, the applicant submitted and requested the City to consider revisions to the Project (“Revised Enhanced Senior Project”) that include relocating nine Below Market Rate units from Building 1 to an additional top story on Building 2, altering the unit mix in Buildings 1 and 2 to provide additional space for terraces on the tops of those buildings, and changing the unit mix in Buildings 2 to include two-bedroom units in addition to studios and one-bedroom units; and

WHEREAS, because the revisions in the Project affect building height and dispersion of BMR units, the project was reviewed by the Planning Commission on July 14, 2020 for recommendation to the City Council; and

WHEREAS, on July 14, 2020, the Planning Commission recommended on a 3-2 vote that the City Council deny the project in accordance with Resolution No. 6908; and

WHEREAS, on July 31, 2020, the applicant submitted a request for an incentive/concession to consolidate all 48 of the senior BMR units in Building 2; and

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

WHEREAS, on August 18, 2020, after consideration of substantial evidence contained in the entire administrative record, and prior to consideration of the Vesting Tentative Map, the City Council adopted Resolution No. [####] certifying the EIR, adopting and requiring as conditions of approval all of the mitigation measures for the Project which are within the responsibility and jurisdiction of the City that are identified in the EIR, and adopting the Mitigation Monitoring and Reporting Program for the Project; and

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

WHEREAS, the Planning Commission 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 30 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.

*The off-site improvements are consistent with the City's General Plan policies related to pedestrian and bicycle safety etc. by improving Stevens Creek Boulevard, 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 height and slope setback.*

- c. That the site is physically suitable for the type of 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 mixed-used 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 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. The EIR concluded that all potential environmental impacts will be mitigated to a level of insignificance.*

- 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 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 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 exists currently 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 EIR and the Mitigation Monitoring and Reporting Program for the Project (EA-2018-04), subject to the conditions which are enumerated in this Resolution beginning on PAGE 2 thereof, and those contained in all other Resolutions approved for this Project,

The application for a Vesting Tentative Map, Application No. TM-2018-03, 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-2018-03 as set forth in the Minutes of the City Council Meeting of August 18, 2020 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 June 4, 2020, as updated June 25, 2020, consisting of 39 sheets labeled as Westport Cupertino, G200 – G213, A001-A222, VTM-1-VTM-6, and L100-L300, drawn by C2K, and Kimley Horn 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. TR-2018-22, EXC-2019-03, U-2019-03, ASA-2018-05, DP-2018-05 and EA-2018-04 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. RESIDENTIAL CONDOMINIUM MAP REQUIRED

Prior to the issuance of building permits, the applicant must record a Final Condominium Map with the County of Santa Clara after approval by the Director of Public Works.

6. BUS STOP DUCKOUT

The applicant will work with the Public Works staff to relocate the bus stop to a location along Stevens Creek Boulevard that will not conflict with the intersection of Mary Avenue and Stevens Creek Boulevard.

7. RECIPROCAL INGRESS/EGRESS EASEMENT

The applicant shall record a private reciprocal ingress and egress easement for vehicular and pedestrian access over the drive aisles and sidewalks onsite to facilitate movement between the parcels. Easements shall be reserved on the Final Map or sequentially with the map at the time of Final Map recordation.

8. 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.

9. INDEMNIFICATION

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.

10. 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.

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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, Assistant Director of Public Works  
City Engineer CA License 66077

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 18<sup>th</sup> day of August, 2020, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:  _____ Steven Scharf, Mayor City of Cupertino	_____ Date
ATTEST:  _____ Kirsten Squarcia, City Clerk	_____ Date