

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

A RESOLUTION OF THE CUPERTINO CITY COUNCIL  
CERTIFYING AN ENVIRONMENTAL IMPACT REPORT AND ADOPTING  
MITIGATION MEASURES AND A MITIGATION MONITORING AND  
REPORTING PROGRAM FOR THE DEVELOPMENT OF A MIXED-USE  
DEVELOPMENT CONSISTING OF 267 HOUSING UNITS, 27 MEMORY CARE  
LICENSED ASSISTED LIVING RESIDENCES (“MEMORY CARE  
RESIDENCES”), 20,000 SQUARE FEET OF RETAIL SPACE, AND ~44,900  
SQUARE FEET OF COMMON OPEN SPACE ON AN 8-ACRE PARCEL  
LOCATED AT 21267 STEVENS CREEK BOULEVARD (APN: 326-27-042, -043)

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SECTION I: PROJECT DESCRIPTION

Application No.: EA-2018-04  
Applicant: KT Urban (Mark Tersini)  
Property Owner: 190 West St. James, LLC  
Location: 21267 Stevens Creek Blvd. (APN #326-27-042, -043)

SECTION II: ENVIRONMENTAL REVIEW PROCESS

WHEREAS, the City of Cupertino received an application on May 17, 2018 for a Development Permit (including findings regarding density bonus and waivers), Architectural and Site Approval Permit, Tentative Map, and Tree Removal Permit, to allow the construction of a mixed-use development consisting of 242 housing units, 20,000 square feet of retail space, and ~35,000 square feet of common open space on an 8-acre parcel and associated environmental review (“Westport Mixed-Use Project” or “Project”); and

WHEREAS, the City of Cupertino received an application on April 29, 2019 from the Project applicant for a Use Permit, and Heart of the City Exception for the Project; 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 City prepared an Initial Study and Environmental Impact Report (State Clearinghouse No. 2019070377) (“EIR”) for the Project, which consists of the November 2019 Public Review Draft Project Environmental Impact Report (the “Draft EIR”), the April 2020 Response to Comments Document, and the May 2020 Response to Comments on the Final EIR memorandum (together, the “Final EIR”); and

WHEREAS, on July 11, 2019 the City issued a Notice of Preparation of a Draft EIR for the Westport Mixed-Use Project; and

WHEREAS, on July 11, 2019 the Draft Initial Study for the project was distributed to responsible agencies and the public for review and comment for a 30-day period that ended August 9, 2019; and

WHEREAS, on July 18, 2019 a public EIR Scoping Meeting was held to receive comments regarding the scope and content of the EIR; and

WHEREAS, on November 6, 2019 the City issued a Notice of Availability (NOA) of the Draft EIR for the Westport Mixed-Use Project; and

WHEREAS, on November 6, 2019 the Draft EIR for the project was distributed to responsible agencies and the public for review and comment for a 45-day period that ended August 9, 2019; and

WHEREAS, the Draft EIR concluded that significant environmental effects on Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Greenhouse Gas Emissions, Noise, Tribal Cultural Resources, and Utilities and Service Systems would be avoided or reduced to less-than-significant levels by mitigation measures (“MM”) identified in the EIR; and

WHEREAS, on March 17, 2020 the applicant requested that an Increased Senior Housing Alternative be considered and analyzed in the EIR; and

WHEREAS, the Increased Senior Housing Alternative was analyzed in the Final EIR as a feasible alternative, and the analysis concluded that the Increased Senior Housing Alternative would not result in any new or substantially more severe significant impacts than were analyzed in the Draft EIR; therefore, recirculation of the Draft EIR was not required; and

WHEREAS, on April 16, 2020, the City of Cupertino’s Environmental Review Committee held a duly noticed public hearing to receive public testimony and reviewed and considered the information contained in the Draft EIR and Response to Comments, and voted 5-0 to recommend that the City Council certify the EIR for Project; and

WHEREAS, on April 23, 2020, the applicant formally requested that the City consider the Increased Senior Housing Alternative analyzed in the Final EIR, which is a proposed mixed-use development consisting of 267 housing units, 27 memory care licensed assisted living residences, 20,000 square feet of retail space, and approximately 44,900 square feet of common open space on an 8.1-acre parcel with 7.9 net developable acres, to be the proposed Project; and

WHEREAS, the proposed Project (Increased Senior Enhanced Alternative) was referred to in the May 12, 2020 Planning Commission staff report as the “Senior Enhanced Alternative;” and

WHEREAS, text revisions made after publication of the Draft EIR, which are found in the May, 2020 Westport Mixed-Use Project Final EIR, merely clarify, amplify or make insignificant modifications to the EIR, and recirculation of the EIR is not required.

WHEREAS, on May 12, 2020, 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 EIR along with all staff reports, other pertinent documents, and all written and oral statements received prior to and at the public hearing, and recommended on a 5-0 vote, based on substantial evidence in the record, that the City Council certify the EIR, adopt and incorporate into the Project and implement as conditions of approval all of the mitigation measures for the project that are identified in the EIR, and adopt the Mitigation Monitoring and Reporting Program for the Project; 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 Senior Enhanced Project”) recommended for approval by the Planning Commission on May 12, 2020 , which include relocating nine Below Market Rate (“BMR”) 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 these proposed revisions to the Project affect building height and dispersion of BMR units, the Revised Senior Enhanced Project was reviewed by the Planning Commission on July 14, 2020 for recommendation to the City Council; and

WHEREAS, the Planning Commission independently reviewed and considered the EIR together with the comments and the responses to those comments prior to taking action on the Revised Senior Enhanced Project; and

WHEREAS, the comments received by the Planning Commission do not require major revisions to the EIR due to new or substantially more severe significant effects on the environment; 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, the City Council has independently reviewed and considered the EIR together with the comments and the responses to those comments prior to taking action on the Project; and

WHEREAS, the comments received by the City Council do not require major revisions to the EIR due to new or substantially more severe significant effects on the environment; and

WHEREAS, the revisions to the Project after the May 12, 2020 Planning Commission meeting do not require major revisions to the EIR due to new or substantially more severe significant effects on the environment because the number of residential units and square footage of retail use have not changed, and the amount of ground level open space has increased; and

WHEREAS, on August 18, 2020 prior to taking action on the Project, the City Council held a duly noticed public hearing to receive staff's presentation and public testimony, and to further consider the information contained in the EIR, along with all staff reports, other pertinent documents, and all written and oral statements received prior to and at the public hearing.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the EIR, comments on the EIR, maps, facts, exhibits, testimony, staff reports, public comments, and other evidence submitted in this matter, the City Council does:

1. Certify that the EIR for the Project has been completed in compliance with CEQA and reflects the independent judgment and analysis of the City.
2. Find that the text revisions to the EIR merely clarify, amplify or make insignificant modifications to the EIR, and the revisions to the Project do not require major revisions to the EIR due to new or substantially more severe significant effects on the environment; therefore, recirculation of the EIR is not required.
3. Adopt the Findings for the Project, attached hereto as "Exhibit EA-1," and

incorporated herein by reference

4. Adopt and make required conditions of approval of the Project all of the mitigation measures identified in the EIR that are within the responsibility and jurisdiction of the City.

- a. AIR QUALITY

**Mitigation Measure AQ-2:** Prior to any grading activities, the applicant shall prepare a Construction Management Plan to be reviewed and approved by the Director of Public Works/City Engineer. The Construction Management Plan shall include the Bay Area Air Quality Management District (BAAQMD) Basic Construction Mitigation Measures listed below to minimize construction-related emissions. The project applicant shall require the construction contractor to implement the approved Construction Management Plan. The BAAQMD Basic Construction Mitigation Measures are:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- 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.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- 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.
- 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.
- 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.
- 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 BAAQMD phone number shall also be visible to ensure compliance with applicable regulations.

- Vegetative ground cover shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.

**Mitigation Measure AQ-4:** Implement Mitigation Measure AQ-2.

b. BIOLOGICAL RESOURCES

**Mitigation Measure BIO-1:** 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 Fish and Game Code. The construction contractor shall indicate the following on all construction plans, if construction activities and any required tree removal occur during the breeding season (February 1 and August 31). Preconstruction surveys shall:

- Be conducted by a qualified biologist prior to tree removal or grading, demolition, or construction activities. Note that preconstruction surveys are not required for tree removal or construction, grading, or demolition activities outside the nesting period.
- Be conducted no more than 14 days prior to the start of tree removal or construction.
- Be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped.
- Document locations of active nests containing viable eggs or young birds.
- Protective measures for active nests containing viable eggs or young birds shall be implemented under the direction of the qualified biologist until the nests no longer contain eggs or young birds. 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 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.
  - Monitoring active nests within an exclusion zone on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status.
  - An increase in the radius of an exclusion zone 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 shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.

**Mitigation Measure BIO-2:** The proposed project shall comply with the City of Cupertino's Protected Trees Ordinance (Cupertino Municipal Code Section 14.18). A tree removal permit shall be obtained for the removal of any "protected tree," and replacement plantings shall be provided as approved by the City. If permitted, an appropriate in-lieu tree replacement fee may be paid to the City of Cupertino's Tree Fund as compensation for "protected trees" removed by the proposed project, where sufficient land area is not available on-site for adequate replacement and when approved by the City.

In addition, a Tree Protection and Replacement Program (Program) shall be developed by a Certified Arborist prior to project approval and implemented during project construction to provide for adequate protection and replacement of "protected trees," as defined by the City's Municipal Code. The Program shall include the following provisions:

- Adequate measures shall be defined to protect all trees to be preserved. These measures should include the establishment of a tree protection zone (TPZ) around each tree to be preserved, in which no disturbance is permitted. For design purposes, the TPZ shall be located at the dripline of the tree or 10 feet, whichever is greater. If necessary, the TPZ for construction-tolerant species (i.e., coast live oaks) may be reduced to 7 feet.
- Temporary construction fencing shall be installed at the perimeter of TPZs prior to demolition, grubbing, or grading. Fences shall be 6-foot chain link or equivalent, as approved by the City of Cupertino. Fences shall remain until all construction is completed. Fences shall not be relocated or removed without permission from the consulting arborist.
- No grading, excavation, or storage of materials shall be permitted within TPZs. Construction trailers, traffic, and storage areas shall remain outside fenced areas at all times. No excess soil, chemicals, debris, equipment, or other materials shall be dumped or stored within the TPZ.
- Underground services including utilities, sub-drains, water or sewer shall be routed around the TPZ. Where encroachment cannot be avoided, special construction techniques such as hand digging or tunneling under roots shall be employed where necessary to minimize root injury. Irrigation systems must be designed so that no trenching will occur within the TPZ.

- Construction activities associated with structures and underground features to be removed within the TPZ shall use the smallest equipment and operate from outside the TPZ. The consulting arborist shall be on-site during all operations within the TPZ to monitor demolition activity.
- All grading, improvement plans, and construction plans shall clearly indicate trees proposed to be removed, altered, or otherwise affected by development construction. The tree information on grading and development plans should indicate the number, size, species, assigned tree number, and location of the dripline of all trees that are to be retained/preserved. All plans shall also include tree preservation guidelines prepared by the consulting arborist.
- The demolition contractor shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection. Prior to beginning work, the contractor(s) working in the vicinity of trees to be preserved shall be required to meet with the consulting arborist at the site to review all work procedures, access routes, storage areas, and tree protection measures.
- All contractors shall conduct operations in a manner that will prevent damage to trees to be preserved. Any grading, construction, demolition or other work that is expected to encounter tree roots shall be monitored by the consulting arborist. If injury should occur to any tree during construction, it should be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
- Any plan changes affecting trees shall be reviewed by the consulting arborist with regard to tree impacts. These include, but are not limited to, site improvement plans, utility and drainage plans, grading plans, landscape and irrigation plans, and demolition plans.
- Trees to be preserved may require pruning to provide construction clearance. All pruning shall be completed by a State of California Licensed Tree Contractor (C61/D49). All pruning shall be done by Certified Arborist or Certified Tree Worker in accordance with the 2002 Best Management Practices for Pruning published by the International Society of Arboriculture, and adhere to the most recent editions of the American National Standard for Tree Care Operations (Section Z133.1) and Pruning (Section A300).
- Any root pruning required for construction purposes shall receive the prior approval of and be supervised by the consulting arborist.
- Any demolition or excavation, such as grading, pad preparation, excavation, and trenching, within the dripline or other work that is expected to encounter tree roots should be approved and monitored by the



consulting arborist. Any root pruning required for construction purposes shall receive prior approval of, and be supervised by, the consulting arborist. Roots shall be cut by manually digging a trench and cutting exposed roots with a sharp saw.

- Tree(s) to be removed that have branches extending into the canopy of tree(s) to remain must be removed by a qualified arborist and not by construction contractors. The qualified arborist shall remove the tree in a manner that causes no damage to the tree(s) and understory to remain. Tree stumps shall be ground 12 inches below ground surface.
- All tree work shall comply with the Migratory Bird Treaty Act as well as California Fish and Game Code Sections 3503 through 3513 to not disturb nesting birds. To the extent feasible, tree pruning, and removal shall be scheduled outside of the breeding season. Breeding bird surveys shall be conducted prior to tree work. Qualified biologists shall be involved in establishing work buffers for active nests. (see Mitigation Measure BIO-1)
- The vertical and horizontal locations of all the trees identified for preservation shall be established and plotted on all plans. These plans shall be forwarded to the consulting arborist for review and comment.
- Foundations, footings, and pavements on expansive soils near trees shall be designed to withstand differential displacement to protect the soil surrounding the tree roots.
- Any liming within 50 feet of any tree shall be prohibited, as lime is toxic to tree roots. Any herbicides placed under paving materials shall be safe for use under trees and labeled for that use.
- Brush from pruning and trees removal operations shall be chipped and spread beneath the trees within the TPZ. Mulch shall be between 2 inches and 4 inches in depth and kept at a minimum of 3 feet from the base of the trees.
- All recommendations for tree preservation made by the applicant's consulting arborist shall be followed.

**Mitigation Measure BIO-3:** Implement Mitigation Measures BIO-1 and BIO-2.

c. CULTURAL RESOURCES

**Mitigation Measure CULT-1:** If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing (including grading, demolition and/or construction) activities:

- All work within 50 feet of the resources shall be halted, the City shall be notified and a qualified archaeologist shall be consulted. The contractor shall cooperate in the recovery of the materials. Work may proceed on other parts of the project

site while mitigation for tribal cultural resources, historical resources or unique archaeological resources is being carried out.

- The qualified archaeologist shall prepare a report for the evaluation of the resource to the California Register of Historical Places and the City Building Department. The report shall also include appropriate recommendations regarding the significance of the find and appropriate mitigations as follows:
  - If the resource is a non-tribal resource, the archaeologist shall assess the significance of the find according to CEQA Guidelines Section 15064.5.
  - If the resource is a tribal resource – whether historic or prehistoric – the consulting archaeologist shall consult with the appropriate tribe(s) 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. If avoidance is infeasible, other appropriate measures (e.g., data recovery) may be implemented.
- All significant non-tribal cultural materials recovered shall be, as necessary, and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards.

**Mitigation Measure CULT-3:** Implement Mitigation Measure CULT-1.

d. GEOLOGY AND SOILS

**Mitigation Measure GEO-1:** The construction contractor shall incorporate the following in all grading, demolition, and construction plans:

- In the event that fossils or fossil-bearing deposits are discovered during grading, demolition, or building, excavations within 50 feet of the find shall be temporarily halted or diverted.
- The contractor shall notify the City of Cupertino Building Department and a City-approved qualified paleontologist to examine the discovery.
- The paleontologist shall document the discovery as needed, in accordance with Society of Vertebrate Paleontology standards (Society of Vertebrate Paleontology 1995), evaluate the potential resource, and assess the significance of the finding under the criteria set forth in CEQA Guidelines Section 15064.5.
- The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find.
- If the project applicant determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project based on the qualities that make the resource important. The excavation

plan shall be submitted to the City for review and approval prior to implementation.

e. NOISE

**Mitigation Measure NOISE-1:** Prior to Grading Permit issuance or the start of demolition activities, the project applicant shall demonstrate, to the satisfaction of the City of Cupertino Public Works Director and/or Community Development Director, that the proposed project complies with the following:

- Pursuant to Cupertino Municipal Code (CMC) Section 10.48.053 the construction activities shall be limited to daytime hours as defined in CMC Section 10.48.010 (i.e., daytime hours are from 7:00 a.m. to 8:00 p.m. on weekdays).
- At least 90 days prior to the start of construction activities, all offsite businesses and residents within 300 feet of the project site shall be notified of the planned construction activities. The notification shall include a brief description of the proposed project, the activities that would occur, the hours when construction would occur, and the construction period's overall duration. The notification should include 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.
- 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, he/she shall investigate, take appropriate corrective action, and report the action to the City.
- During the entire active construction period, equipment and trucks used for project construction will utilize the best available noise control techniques (e.g., improved mufflers, equipment re-design, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds), wherever feasible.
- During the entire active construction period, stationary noise sources shall be located as far from sensitive receptors as possible, and they shall be muffled and enclosed within temporary sheds, or insulation barriers or other measures shall be incorporated to the extent feasible.
- Haul routes shall be selected to avoid the greatest amount of sensitive use areas.
- 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 laws.

f. UTILITIES AND SERVICES MITIGATION MEASURE

**Mitigation Measure UTIL-1:** No building permits shall be issued by the City for the proposed Westport Mixed-Use Project that would result in exceeding the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system. The project applicant shall demonstrate, to the satisfaction of the City of Cupertino and Cupertino Sanitary District (CSD), that the proposed project would not exceed the peak wet weather flow capacity of the Santa Clara sanitary sewer system by implementing one or more of the following methods:

1. Reduce inflow and infiltration in the CSD system to reduce peak wet weather flows; or
2. Increase on-site water reuse, such as increased grey water use, or reduce water consumption of the fixtures used within the proposed project, or other methods that are measurable and reduce sewer generation rates to acceptable levels, to the satisfaction of the CSD.

The proposed project's estimated wastewater generation shall be calculated using the generation rates used by the CSD in the *Flow Modeling Analysis for the Homestead Flume Outfall to the City of Santa Clara*, prepared by Mark Thomas & Co. Inc., dated December 6, 2019, unless alternative (i.e., lower) generation rates achieved by the proposed project are substantiated by the project applicant based on evidence to the satisfaction of the CSD.

If the prior agreement between CSD and the City of Santa Clara that currently limits the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system were to be updated to increase the permitted peak wet weather flow sufficiently to accommodate, this would also change the impacts of the project to less than significant. If this were to occur prior to the City's approval of building permits, then Mitigation Measure UTIL-1 would no longer be required to be implemented.

6. Adopt the Mitigation Monitoring and Reporting Program for the Project, as amended, attached hereto as "Exhibit EA-2," and incorporated herein by reference, which includes all of the mitigation measures identified in the Final EIR.

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 18th 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

## EXHIBIT EA-1

### CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS FOR THE WESTPORT MIXED-USE PROJECT

#### INTRODUCTION

The City of Cupertino (City), as lead agency under the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 *et seq.*, has prepared the Final Environmental Impact Report for The Westport Mixed-Use Project (the “Project”) (State Clearinghouse No. 2019070377) (the “Final EIR” or “EIR”). The Final EIR is a project-level EIR pursuant to Section 15168 of the State CEQA Guidelines.<sup>1</sup> The Final EIR consists of the November 2019 Public Review Draft Project Environmental Impact Report (the “Draft EIR”); the April 2020 Response to Comments Document; and the May 2020 Response to Comments on the Final EIR memorandum,<sup>2</sup> which provides responses to comments made at the April 15, 2020 Environmental Review Committee meeting and contains a typographical correction to the Response to Comments Document.

In determining to approve the Project, which is described in more detail in Section II, below, the City makes and adopts the following findings of fact and adopts and makes conditions of project approval the all of the mitigation measures identified in the Final EIR, all based on substantial evidence in the whole record of this proceeding (administrative record). Pursuant to Section 15090(a) of the State CEQA Guidelines, the Final EIR was presented to the City Council, the City Council reviewed and considered the information contained in the Final EIR prior to making the findings in Sections II through XII, below, and the City Council determined that the Final EIR reflects the independent judgment of the City. The conclusions presented in these findings are based on the Final EIR and other evidence in the administrative record.

#### PROJECT DESCRIPTION (“Revised Senior Enhanced Project”)

*Project Described in EIR.* As described in Draft EIR, the project as originally proposed involved the construction and operation of a mixed-use project on an 8.1-acre project site assigned Assessor’s Parcel Numbers (APNs) 326-27-042 and 326-27-043. The site is

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<sup>1</sup> The State CEQA Guidelines are found at California Code of Regulations, Title 14, Section 15000 *et seq.*

<sup>2</sup> PlaceWorks, *Response to Comments on the Westport Mixed-Use Project Final Environmental Impact Report (EIR)* (May 5, 2020).

identified as Priority Housing Element Site A3 (The Oaks Shopping Center) in the City of Cupertino General Plan (Community Vision 2015-2040). The project as originally proposed included 242 housing units consisting of 88 rowhouse and townhouse units (attached homes) in 16 buildings, and two mixed-use (residential and retail buildings). One of the mixed-use buildings (Building 1) would have contained 115 market-rate condominiums, and the other (Building 2) would have contained 39 BMR senior units. The project as originally proposed also included 20,000 square feet of ground floor retail uses, below and at-grade parking, and associated landscape and hardscape areas.

As explained below, the Final EIR analyzed an additional alternative, the Increased Senior Housing Alternative,<sup>3</sup> which the applicant requested the City to consider to be the proposed project. Like the project as originally proposed, the Increased Senior Housing Alternative would demolish the existing buildings on the site and construct 18 new buildings; however, the mix of units would change. While the proposed number and configuration of the 88 rowhouse and townhouse units would not change, in the Senior Housing Alternative Building 1 would have 131 senior licensed assisted living units, 27 memory care licensed assisted living residences, and Building 2 would have 48 BMR senior independent living units. The following aspects of the project as originally proposed would remain the same: 20,000 square feet of retail space, below and at-grade parking, and associated landscape and hardscape areas. Like the project as originally proposed, the proposed retail component would be located on the ground level of the two mixed-use residential buildings; Residential-Retail Building 1 would have 17,600 square feet of retail space located at the corner of Stevens Creek Boulevard and Mary Avenue; Residential-Retail Building 2 would have 2,400 square feet of retail space on the ground level fronting Stevens Creek Boulevard. The proposed project would include one access point off of Stevens Creek Boulevard and three access points off of Mary Avenue. The below-grade parking would be located under Retail-Residential Building 1, and would be accessed from the central access point on Mary Avenue. Off-site improvements include the installation of a Class IV separated bikeway and a signal control to be activated by bicyclists and pedestrians for the westbound right-turn movement from the northbound SR-85 on-ramp, as well as a bus stop on the section of Stevens Creek Boulevard west of Mary Avenue and east of the SR-85 northbound ramp.

***Senior Enhanced Alternative.*** The EIR analyzed five alternatives, including, the original project described in Chapter 3 of the Draft EIR as the proposed project (“Original Project”), the No Project Alternative, No Retail Development Alternative, and Reduced Retail Development Alternative, which are described in Chapter 5 of the Draft EIR. and

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<sup>3</sup> Also referred to in the May 12, 2020 Planning Commission agenda documents as the Senior Enhanced Alternative.

the Increased Senior Housing Project, which is the proposed Project, and is described in Chapter 3 of the Response to Comments Document, which the applicant submitted for consideration by the City in February 2020 as a Senior Enhanced Alternative. This alternative was evaluated as a feasible alternative in the Responses to Comments volume of the Final EIR as the Increased Senior Housing Alternative. On April 22, 2020, the applicant requested that Increased Senior Housing Alternative be considered the proposed Project.

On May 12, 2020, the Planning Commission recommended certification of the Final EIR and approval of the Increased Senior Housing Alternative, which is referred to in the May 12, 2020 staff report as the Senior Enhanced Alternative.

***Revised Senior Enhanced Project.*** On June 4, 2020, the applicant submitted and requested the City to consider revisions to the Increased Senior Housing Alternative (the “Revised Senior Enhanced Project”), as updated on June 25 and 26, 2020, which include relocating nine BMR units from Building 1 to an additional top story on Building 2, decreasing the height of Building 1 by 12.25 feet, moving the nine BMR units from Building 1 to a new top story on Building 2 and increasing the height of Building 2 by 0.75 feet, 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, increasing the amount of ground level common open space by 294 square feet, and adding eight parking spaces.

The Revised Senior Enhanced Project is the proposed Project for purposes of these Findings.

The project objectives for the proposed Project, listed below, remain the same.

### **Project Objectives**

The project objectives are as follows:

- Redevelop an existing retail center on Mary Avenue and Stevens Creek Boulevard with desirable amenities and housing.
- Meet the City’s Regional Housing Needs Allocation (RHNA) for 2014-2022.
- Enhance the vibrancy of Cupertino’s Heart of the City as a key mixed-use, commercial corridor by providing a pedestrian-friendly community that includes housing, open space and greenery, and neighborhood retail.



- Provide senior housing in close proximity to the Cupertino Senior Citizen Center.
- Create a prominent gateway development that incorporates quality architectural design and materials, open space, and artwork to announce entry into Cupertino's Heart of the City.
- Create a mixed-use development that places residential and commercial uses in close proximity to each other, and close to transit options.
- Help the City to achieve its affordable housing goals through the inclusion of senior housing units within a residential and mixed-use development project.

## **ENVIRONMENTAL REVIEW PROCESS**

### **Environmental Impact Report**

On July 11, 2019, the City circulated a Notice of Preparation (NOP) of the Draft EIR to the Office of Planning and Research (OPR) State Clearinghouse and interested agencies and the public. The NOP was circulated for comment by responsible and trustee agencies and the public for a total of 30 days, from July 11, 2019 through August 12, 2019, during which time the City held a public scoping meeting on July 18, 2019. Comments on the NOP were received by the City and considered during preparation of the Draft EIR.

The Draft EIR was made available for review by the public and interested parties, agencies, and organizations for a 46-day comment period starting on November 6, 2019 and ending December 20, 2019. The Draft EIR was distributed to local, regional and State agencies, and the public. Copies of the Draft EIR in paper or electronic format were available to the public for purchase or review at Cupertino City Hall. The Draft EIR was also available for review at the Cupertino Library at 10800 Torre Avenue in the City and an electronic version of the Draft EIR and all appendices were posted on a website the City created for the project at [www.cupertino.org/westport](http://www.cupertino.org/westport). The City continues to make these documents available on this website. The public was also invited to submit written comments on the Draft EIR to the City of Cupertino Community Development Department by mail or e-mail to Gian Martire, Senior Planner at [GianM@cupertino.org](mailto:GianM@cupertino.org).

Notice of availability of the Draft EIR was made in several ways. The City sent a letter announcing the availability of the Draft EIR and inviting attendance at the Draft EIR comment meeting to all postal addresses within a 3,000-foot radius of the project site. In addition, in accordance with CEQA, the City posted the Notice of Availability (NOA) in

the newspaper. The City also sent emails providing notice of the Draft EIR's availability to all persons who had indicated an interest in the Project.

The City held an EIR Comment Meeting during the comment period on December 11, 2019. At that meeting, the City solicited comments on the adequacy of the Draft EIR.

The 46-day comment period on the Draft EIR ended on December 20, 2019 at 5:00 p.m. Agencies, organizations, and members of the public submitted written comments on the Draft EIR. The Responses to Comments Document, was issued for public review and sent to public agencies who had commented on the Draft EIR on April 7, 2020. Chapter 5 of the Response to Comments Document provides responses to the comments received during the comment period on the Draft EIR. Additional comments received after the close of the public comment period that were provided at the Environmental Review Committee meeting have been addressed in memoranda to the City.

On April 15, 2020, the Environmental Review Committee determined that the EIR was the appropriate document.

On May 12, 2020, the Planning Commission held a public hearing on the Final EIR and Senior Enhanced Alternative and took public comments. At this hearing, The Planning Commission recommended that the City Council certify the Final EIR.

On July 14, 2020, the Planning Commission held a public hearing on the Revised Senior Enhanced Project and recommended on a 3-2 vote that the City Council deny the project in accordance with Resolution No. 6908.

## **FINDINGS**

The findings set forth below (the "Findings") are made and adopted by the Cupertino City Council as the City's findings under CEQA and the State CEQA Guidelines relating to the Project. The Findings provide the written analysis and conclusions of this City Council regarding the Project's environmental impacts, mitigation measures, alternatives to the Project.

These findings summarize the environmental determinations of the Final EIR with regard to project impacts before and after mitigation, and do not attempt to repeat the full analysis of each environmental impact contained in the Final EIR. Instead, these findings provide a summary description of and basis for each impact conclusion identified in the Final EIR, describe the applicable mitigation measures identified in the Final EIR, and state the City's findings and rationale about the significance of each impact following the

adoption of mitigation measures. A full explanation of these environmental findings and conclusions can be found in the Final EIR, and these findings hereby incorporate by reference the discussion and analysis in the Final EIR supporting the Final EIR's determinations regarding mitigation measures and the Project's impacts.

When evaluating cumulative impacts, CEQA allows the use of either a list of past, present, and probable future projects, including projects outside the control of the lead agency, or a summary of projections in an adopted planning document. The cumulative impacts analysis in the Final EIR uses the projections approach and takes into account growth from the Project within the Cupertino city boundary and Sphere of Influence (SOI), in combination with impacts from the list of projects reasonably foreseeable projects in the city, when considered with the effects of the proposed project, may result in cumulative effects.

In adopting mitigation measures, below, the City intends to adopt each of the mitigation measures identified in the Final EIR. Accordingly, in the event a mitigation measure identified in the Final EIR has been inadvertently omitted from these findings, such mitigation measure is hereby adopted and made a condition of approval of the Project in the findings below by reference. In addition, in the event the language of a mitigation measure set forth below fails to accurately reflect the mitigation measure in the Final EIR due to a clerical error, the language of the mitigation measure as set forth in the Final EIR shall control unless the language of the mitigation measure has been specifically and expressly modified by these findings.

Section V, below, provide brief descriptions of the impacts that the Final EIR identified as less than significant with adopted mitigation. These descriptions also reproduce the full text of the mitigation measures identified in the Final EIR for each significant impact.

**SIGNIFICANT ADVERSE IMPACTS IDENTIFIED IN THE FINAL EIR THAT ARE REDUCED TO A LESS-THAN-SIGNIFICANT LEVEL BY MITIGATION MEASURES ADOPTED AND MADE CONDITIONS OF APPROVAL OF THE PROJECT**

The Final EIR identifies the following significant impacts associated with the Project. It is hereby determined that the impacts addressed by these mitigation measures will be mitigated to a less than significant level or avoided by adopting and incorporating these mitigation measures as conditions into the Project. Public Resources Code § 21081(a)(1). As explained in Section VIII, below, the findings in this Section V are based on the Final EIR, the discussion and analysis in which is hereby incorporated in full by this reference.

The Final EIR identifies the following significant impacts associated with the Project. It is hereby determined that the impacts addressed by these mitigation measures will be mitigated to a less than significant level or avoided by adopting and incorporating these mitigation measures conditions into the Project. Public Resources Code § 21081(a)(1). As explained in Section VIII, below, the findings in this Section V are based on the Final EIR, the discussion and analysis in which is hereby incorporated in full by this reference.

**Impact AQ-2: Uncontrolled fugitive dust (PM<sub>10</sub> and PM<sub>2.5</sub>) could expose the areas that are downwind of construction sites to air pollution from construction activities without the implementation of BAAQMD's best management practices.**

The Final EIR finds that the Project could result in air pollutants traveling downwind from the Project to off-site sensitive receptors site due to construction activities. Such particulate matter without the implementation of fugitive dust control best management practices would be considered a potentially significant impact.

Implementation of Mitigation Measure AQ-2 set forth below, which is hereby adopted made a condition of approval of the Project, would reduce this impact to a less-than-significant level.

**Mitigation Measure AQ-2:**

*Prior to any grading activities, the applicant shall prepare a Construction Management Plan to be reviewed and approved by the Director of Public Works/City Engineer. The Construction Management Plan shall include the Bay Area Air Quality Management District (BAAQMD) Basic Construction Mitigation Measures listed below to minimize construction-related emissions. The project applicant shall require the construction contractor to implement the approved Construction Management Plan. The BAAQMD Basic Construction Mitigation Measures are:*

- *All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.*
- *All haul trucks transporting soil, sand, or other loose material off-site shall be covered.*
- *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.*
- *All vehicle speeds on unpaved roads shall be limited to 15 mph.*
- *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.*

- *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.*
- *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.*
- *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 BAAQMD phone number shall also be visible to ensure compliance with applicable regulations.*
- *Vegetative ground cover shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.*
- *All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.*

**Impact AQ-4: Implementation of the Project would cumulatively contribute to air quality impacts in the San Francisco Bay Area Air Basin.**

The Final EIR finds that the project would contribute to air quality impacts in the San Francisco Bay Area Air Basin when considered in combination with cumulative development in the region. Without the implementation of construction and operation best management practices, the Project would be considered to have a potentially significant impact.

Implementation of the Mitigation Measure AQ-2 set forth above, which is hereby adopted and made a condition of approval of the Project, would reduce this impact to a less-than-significant level.

**Mitigation Measure AQ-4:**

*Implement Mitigation Measure AQ-2.*

**Impact BIO-1: Tree removal and demolition activities during site clearance could destroy active nests, and/or otherwise interfere with nesting of birds protected under federal and State law.**

The Final EIR finds that some special-status bird could utilize on-site trees for nesting. More common birds protected under Migratory Bird Treaty Act (MBTA) may nest in trees and other landscaping on the Project site. Given the remote potential for occurrence

of nesting birds at the Project site and possibility that nests could be inadvertently destroyed, or nests abandoned as a result of construction activities, this would be considered a potentially significant impact.

Implementation of Mitigation Measure BIO-1 set forth below, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

### **Mitigation Measure BIO-1:**

*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 Fish and Game Code. The construction contractor shall indicate the following on all construction plans, if construction activities and any required tree removal occur during the breeding season (February 1 and August 31). Preconstruction surveys shall:*

- *Be conducted by a qualified biologist prior to tree removal or grading, demolition, or construction activities. Note that preconstruction surveys are not required for tree removal or construction, grading, or demolition activities outside the nesting period.*
- *Be conducted no more than 14 days prior to the start of tree removal or construction.*
- *Be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped.*
- *Document locations of active nests containing viable eggs or young birds.*

*Protective measures for active nests containing viable eggs or young birds shall be implemented under the direction of the qualified biologist until the nests no longer contain eggs or young birds. 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 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.*
- *Monitoring active nests within an exclusion zone on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status.*
- *An increase in the radius of an exclusion zone 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 shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.*

**Impact BIO-2: Proposed development would result in removal of trees protected under City ordinance.**

The Final EIR finds that the Project would result in the removal of trees and could therefore be out of compliance with the City's Protected Trees Ordinance if those trees happen to be protected. Given the potential for removal of a protected tree, the Project would be considered to have a potentially significant impact.

Implementation of Mitigation Measure BIO-2 set forth below, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

**Mitigation Measure BIO-2:**

*The proposed project shall comply with the City of Cupertino's Protected Trees Ordinance (Cupertino Municipal Code Section 14.18). A tree removal permit shall be obtained for the removal of any "protected tree," and replacement plantings shall be provided as approved by the City. If permitted, an appropriate in-lieu tree replacement fee may be paid to the City of Cupertino's Tree Fund as compensation for "protected trees" removed by the proposed project, where sufficient land area is not available on-site for adequate replacement and when approved by the City.*

*In addition, a Tree Protection and Replacement Program (Program) shall be developed by a Certified Arborist prior to project approval and implemented during project construction to provide for adequate protection and replacement of "protected trees," as defined by the City's Municipal Code. The Program shall include the following provisions:*

- *Adequate measures shall be defined to protect all trees to be preserved. These measures should include the establishment of a tree protection zone (TPZ) around each tree to be preserved, in which no disturbance is permitted. For design purposes, the TPZ shall be located at the dripline of the tree or 10 feet, whichever is greater. If necessary, the TPZ for construction-tolerant species (i.e., coast live oaks) may be reduced to 7 feet.*
- *Temporary construction fencing shall be installed at the perimeter of TPZs prior to demolition, grubbing, or grading. Fences shall be 6-foot chain link or equivalent, as approved by the City of Cupertino. Fences shall remain until all construction is completed. Fences shall not be relocated or removed without permission from the consulting arborist.*
- *No grading, excavation, or storage of materials shall be permitted within TPZs. Construction trailers, traffic, and storage areas shall remain outside fenced areas at all times. No excess soil, chemicals, debris, equipment, or other materials shall be dumped or stored within the TPZ.*

- *Underground services including utilities, sub-drains, water or sewer shall be routed around the TPZ. Where encroachment cannot be avoided, special construction techniques such as hand digging or tunneling under roots shall be employed where necessary to minimize root injury. Irrigation systems must be designed so that no trenching will occur within the TPZ.*
- *Construction activities associated with structures and underground features to be removed within the TPZ shall use the smallest equipment and operate from outside the TPZ. The consulting arborist shall be on-site during all operations within the TPZ to monitor demolition activity.*
- *All grading, improvement plans, and construction plans shall clearly indicate trees proposed to be removed, altered, or otherwise affected by development construction. The tree information on grading and development plans should indicate the number, size, species, assigned tree number, and location of the dripline of all trees that are to be retained/preserved. All plans shall also include tree preservation guidelines prepared by the consulting arborist.*
- *The demolition contractor shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection. Prior to beginning work, the contractor(s) working in the vicinity of trees to be preserved shall be required to meet with the consulting arborist at the site to review all work procedures, access routes, storage areas, and tree protection measures.*
- *All contractors shall conduct operations in a manner that will prevent damage to trees to be preserved. Any grading, construction, demolition or other work that is expected to encounter tree roots shall be monitored by the consulting arborist. If injury should occur to any tree during construction, it should be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.*
- *Any plan changes affecting trees shall be reviewed by the consulting arborist with regard to tree impacts. These include, but are not limited to, site improvement plans, utility and drainage plans, grading plans, landscape and irrigation plans, and demolition plans.*
- *Trees to be preserved may require pruning to provide construction clearance. All pruning shall be completed by a State of California Licensed Tree Contractor (C61/D49). All pruning shall be done by Certified Arborist or Certified Tree Worker in accordance with the 2002 Best Management Practices for Pruning published by the International Society of Arboriculture, and adhere to the most recent editions of the American National Standard for Tree Care Operations (Section Z133.1) and Pruning (Section A300).*
- *Any root pruning required for construction purposes shall receive the prior approval of and be supervised by the consulting arborist.*
- *Any demolition or excavation, such as grading, pad preparation, excavation, and trenching, within the dripline or other work that is expected to encounter tree roots should be approved and monitored by the consulting arborist. Any root pruning required for construction purposes shall receive prior approval of, and be supervised by, the consulting arborist. Roots shall be cut by manually digging a trench and cutting exposed roots with a sharp saw.*



- *Tree(s) to be removed that have branches extending into the canopy of tree(s) to remain must be removed by a qualified arborist and not by construction contractors. The qualified arborist shall remove the tree in a manner that causes no damage to the tree(s) and understory to remain. Tree stumps shall be ground 12 inches below ground surface.*
- *All tree work shall comply with the Migratory Bird Treaty Act as well as California Fish and Game Code Sections 3503 through 3513 to not disturb nesting birds. To the extent feasible, tree pruning, and removal shall be scheduled outside of the breeding season. Breeding bird surveys shall be conducted prior to tree work. Qualified biologists shall be involved in establishing work buffers for active nests. (see Mitigation Measure BIO-1)*
- *The vertical and horizontal locations of all the trees identified for preservation shall be established and plotted on all plans. These plans shall be forwards to the consulting arborist for review and comment.*
- *Foundations, footings, and pavements on expansive soils near trees shall be designed to withstand differential displacement to protect the soil surrounding the tree roots.*
- *Any liming within 50 feet of any tree shall be prohibited, as lime is toxic to tree roots. Any herbicides placed under paving materials shall be safe for use under trees and labeled for that use.*
- *Brush from pruning and trees removal operations shall be chipped and spread beneath the trees within the TPZ. Mulch shall be between 2 inches and 4 inches in depth and kept at a minimum of 3 feet from the base of the trees.*
- *All recommendations for tree preservation made by the applicant's consulting arborist shall be followed.*

**Impact BIO-3: The proposed Project, in combination with past, present, and reasonably foreseeable projects, would result in significant cumulative impacts with respect to biological resources.**

The Final EIR finds that the Project could contribute to biological impacts when considered in combination with cumulative development in the region. Without the implementation of preservation best management practices, the Project would be considered to have a potentially significant impact.

With implementation of Mitigation Measures BIO-1 and BIO-2, set forth and incorporated above, the Project would not make a cumulatively considerable contribution to this cumulative impact, and the impact would be less than significant.

**Mitigation Measure BIO-3:**

*Implement Mitigation Measure BIO-1 and BIO-2.*

**Impact CULT-1: Construction of the proposed project would have the potential to cause a significant impact to an unknown archaeological resource pursuant to CEQA Guidelines Section 15064.5.**

The Final EIR finds that the Project would have the potential to unearth a previously unrecorded archaeological resource. In the event that an unknown archaeological resource is unearthed, the handling of the archaeological resource could result in a loss of cultural significance, which would be considered a potentially significant impact.

Implementation of Mitigation Measure CULT-1 set forth below, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

**Mitigation Measure CULT-1:**

*If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing (including grading, demolition and/or construction) activities:*

- *All work within 50 feet of the resources shall be halted, the City shall be notified, and a qualified archaeologist shall be consulted. The contractor shall cooperate in the recovery of the materials. Work may proceed on other parts of the project site while mitigation for tribal cultural resources, historical resources or unique archaeological resources is being carried out.*
- *The qualified archaeologist shall prepare a report for the evaluation of the resource to the California Register of Historical Places and the City Building Department. The report shall also include appropriate recommendations regarding the significance of the find and appropriate mitigations as follows:*
- *If the resource is a non-tribal resource, the archaeologist shall assess the significance of the find according to CEQA Guidelines Section 15064.5.*
- *If the resource is a tribal resource – whether historic or prehistoric – the consulting archaeologist shall consult with the appropriate tribe(s) 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. If avoidance is infeasible, other appropriate measures (e.g., data recovery) may be implemented.*
- *All significant non-tribal cultural materials recovered shall be, as necessary, and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards.*

**Impact CULT-3: Construction of the proposed project would have the potential to cause a significant impact to an unknown tribal cultural resource as defined in Public Resources Code 21074.**

The Final EIR finds that the Project would have the potential to unearth a previously unrecorded tribal cultural resource. In the event that an unknown tribal cultural resource is unearthed, the handling of the resource could result in a loss of cultural significance, which would be considered a potentially significant impact.

Implementation of Mitigation Measure CULT-1 set forth above, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

**Mitigation Measure CULT-2:**

*Implement Mitigation Measure CULT-1.*

**Impact CULT-1: The proposed Project, in combination with past, present, and reasonably foreseeable projects, would result in cumulative impacts with respect to cultural resources.**

The Final EIR finds that the Project would contribute to cultural resource impacts when considered in combination with cumulative development in the region. Without the implementation of construction best management practices, the Project would be considered to have a potentially significant impact.

Implementation of Mitigation Measure CULT-1 set forth above, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

**Mitigation Measure CULT-4:**

*Implement Mitigation Measure CULT-1.*

**Impact GEO-1: Construction of the proposed project would have the potential to directly or indirectly affect an unknown unique paleontological resource.**

The Final EIR finds that the Project would have the potential to unearth a previously unrecorded paleontological resource. In the event that an unknown paleontological

resource is unearthed, the handling of the paleontological resource could result in a loss of the resource's significance, which would be considered a potentially significant impact.

Implementation of Mitigation Measure GEO-1 set forth below, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

**Mitigation Measure GEO-1:**

*The construction contractor shall incorporate the following in all grading, demolition, and construction plans:*

- *In the event that fossils or fossil-bearing deposits are discovered during grading, demolition, or building, excavations within 50 feet of the find shall be temporarily halted or diverted.*
- *The contractor shall notify the City of Cupertino Building Department and a City-approved qualified paleontologist to examine the discovery.*
- *The paleontologist shall document the discovery as needed, in accordance with Society of Vertebrate Paleontology standards (Society of Vertebrate Paleontology 1995), evaluate the potential resource, and assess the significance of the finding under the criteria set forth in CEQA Guidelines Section 15064.5.*
- *The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find.*
- *If the project applicant determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the proposed project based on the qualities that make the resource important. The excavation plan shall be submitted to the City for review and approval prior to implementation.*

**Impact GEO-2: The proposed Project, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to geology and soils.**

The Final EIR finds that the Project would contribute to impacts to paleontological resources when considered in combination with cumulative development in the region. Without the implementation of construction best management practices, the Project would be considered to have a potentially significant impact.

Implementation Measure GEO-1, set forth above, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

**Mitigation Measure GEO-2:**

*Implement Mitigation Measure GEO-1.*

**Impact NOISE-1: The proposed Project could generate a substantial temporary increase in ambient noise levels in the vicinity of the proposed project during the construction phase that could exceed the standards established in the local noise ordinance.**

The Final EIR finds that the Project could result in ambient noise levels to off-site sensitive receptors due to construction activities. Such an increase in ambient noise levels without the implementation of best management practices would be considered a potentially significant impact.

Implementation of Mitigation Measure NOISE-1 set forth below, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

**Mitigation Measure NOISE-1:**

*Prior to Grading Permit issuance or the start of demolition activities, the project applicant shall demonstrate, to the satisfaction of the City of Cupertino Public Works Director and/or Community Development Director, that the proposed project complies with the following:*

- *Pursuant to Cupertino Municipal Code (CMC) Section 10.48.053 the construction activities shall be limited to daytime hours as defined in CMC Section 10.48.010 (i.e., daytime hours are from 7:00 a.m. to 8:00 p.m. on weekdays).*
- *At least 90 days prior to the start of construction activities, all offsite businesses and residents within 300 feet of the project site shall be notified of the planned construction activities. The notification shall include a brief description of the proposed project, the activities that would occur, the hours when construction would occur, and the construction period's overall duration. The notification should include 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.*
- *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, he/she shall investigate, take appropriate corrective action, and report the action to the City.*
- *During the entire active construction period, equipment and trucks used for project construction will utilize the best available noise control techniques (e.g., improved mufflers,*

*equipment re-design, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds), wherever feasible.*

- *During the entire active construction period, stationary noise sources shall be located as far from sensitive receptors as possible, and they shall be muffled and enclosed within temporary sheds, or insulation barriers or other measures shall be incorporated to the extent feasible.*
- *Haul routes shall be selected to avoid the greatest amount of sensitive use areas.*
- *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 laws.*

**Impact NOISE-3: The proposed project, in combination with past, present, and reasonably foreseeable projects, would not result in significant cumulative impacts with respect to noise.**

The Final EIR finds that the Project would contribute to noise impacts when considered in combination with cumulative development in the region. Without the implementation of construction noise level best management practices, the Project would be considered to have a potentially significant impact.

Implementation of Mitigation Measure NOISE-1 set forth above, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

### **Mitigation Measure NOISE-3:**

*Implement Mitigation Measure NOISE-1.*

**Impact UTIL-1: Implementation of the proposed project may result in a determination by the wastewater treatment provider, which serves or may serve the proposed project, that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments.**

Buildout of the Project would have a significant impact if future projected demand exceeds wastewater service capacity of the Santa Clara sanitary sewer system. Without

the implementation of best management practices, the Project would be considered to have a potentially significant impact.

Implementation of Mitigation Measure UTIL-1 set forth below, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

**Mitigation Measure UTIL-1:**

*No building permits shall be issued by the City for the proposed Westport Mixed-Use Project that would result in exceeding the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system. The project applicant shall demonstrate, to the satisfaction of the City of Cupertino and Cupertino Sanitary District (CSD), that the proposed project would not exceed the peak wet weather flow capacity of the Santa Clara sanitary sewer system by implementing one or more of the following methods:*

- 1) Reduce inflow and infiltration in the CSD system to reduce peak wet weather flows; or*
- 2) Increase on-site water reuse, such as increased grey water use, or reduce water consumption of the fixtures used within the proposed project, or other methods that are measurable and reduce sewer generation rates to acceptable levels, to the satisfaction of the CSD.*

*The proposed project's estimated wastewater generation shall be calculated using the generation rates used by the CSD in the Flow Modeling Analysis for the Homestead Flume Outfall to the City of Santa Clara, prepared by Mark Thomas & Co. Inc., dated December 6, 2019, unless alternative (i.e., lower) generation rates achieved by the proposed project are substantiated by the project applicant based on evidence to the satisfaction of the CSD. To calculate the peak wet weather flow for a 10-year storm event, the average daily flow rate shall be multiplied by a factor of 2.95 as required by CSD pursuant to their December 2019 flow modeling analysis.*

*If the prior agreement between CSD and the City of Santa Clara that currently limits the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system were to be updated to increase the permitted peak wet weather flow sufficiently to accommodate, this would also change the impacts of the project to less than significant. If this were to occur prior to the City's approval of building permits, then Mitigation Measure UTIL-1 would no longer be required to be implemented.*

**Impact UTIL-7: The proposed project, in combination with past, present, and reasonably foreseeable projects, would not result in significant cumulative impacts with respect to wastewater treatment.**

The Final EIR finds that the Project would contribute to impacts to wastewater treatment facilities when considered in combination with cumulative development in the region. Without the implementation of sanitary wastewater best management practices, the Project would be considered to have a potentially significant impact.

With implementation of Mitigation Measure UTIL-1, set forth and incorporated above, cumulative development combined with the Project would not exceed wastewater treatment requirements. Therefore, the Project would not make a cumulatively considerable contribution to this cumulative impact, and the impact would be less than significant.

**Mitigation Measure UTIL-7:**

*Implement Mitigation Measure UTIL-1.*

**GROWTH INDUCING IMPACTS**

An EIR is required to discuss growth inducing impacts, which consist of the ways in which the project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. State CEQA Guidelines § 15126.2(d); Public Resources Code § 21100(b)(5). Direct growth inducement would result, for example, if a project involves the construction of substantial new housing that would support increased population in a community or establishes substantial new permanent employment opportunities. This additional population could, in turn, increase demands for public utilities, public services, roads, and other infrastructure. Indirect growth inducement would result if a project stimulates economic activity that requires physical development or removes an obstacle to growth and development (e.g., increasing infrastructure capacity that would enable new or additional development). It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment. State CEQA Guidelines § 15126.2(d). Section 6.3 of the Draft EIR analyzes the growth inducing impacts of the Project. As explained in Section VIII, below, the findings in this Section VI are based on the Final EIR, the discussion and analysis in which is hereby incorporated in full by this reference.

Implementation of the Project would directly induce population, employment and economic growth by redeveloping the Oaks Shopping Center site. The project would demolish the existing buildings on the site and construct 18 new buildings, that would have 294 residential units and 20,000 square feet of retail space, as well as below and at-grade parking, and associated landscape and hardscape areas..

Development on the site would consist of infill, mixed-use redevelopment on an underutilized site that currently contains a one-story shopping center and surface parking. However, because the infrastructure needed to serve the proposed project is in



place, and new growth would be required to comply with the City's General Plan, zoning regulations, and standards for public services and utilities; secondary or indirect effects associated with this growth do not represent a new significant environmental impact which has not already been addressed in the individual resource chapters of this EIR.

## **ALTERNATIVES**

The Final EIR analyzed five alternatives, examining the environmental impacts and feasibility of each alternative, as well as the ability of the alternatives to meet project objectives. The project objectives as presented in Chapter 3 (Project Description) and Chapter 5 (Alternatives to the Proposed Project) of the Draft EIR are listed above in Section II.A of these Findings; the potentially significant environmental effects of the Project, including feasible mitigation measures identified to avoid these impacts, are analyzed in Chapter 4 (Environmental Evaluation) of the Draft EIR; and the alternatives are described in detail in Chapter 5 (Alternatives to the Proposed Project) of the Draft EIR and Chapter 3 (Revisions to the Draft EIR) of the Response to Comments Document).

All of the alternative projects except for the No Project Alternative would provide a Bike Path on the project site, public access easements on the northwest and southwest corners of the project site to accommodate the bridge over SR-85 connecting Mary Avenue to Alhambra Avenue, and off-site improvements including the installation of a Class IV separated bikeway and a signal control to be activated by bicyclists and pedestrians for the westbound right-turn movement northbound SR-85 on-ramp consistent with the 2016 *Bicycle Transportation Plan*, as well as a bus stop on the section of Stevens Creek Boulevard west of Mary Avenue and east of the SR-85 northbound ramp. Each alternative would include one access point off of Stevens Creek Boulevard and three additional access points off of Mary Avenue. Each alternative would demolish the existing buildings and would retain some existing trees and plant approximately 400 additional trees. The maximum heights of six stories tall (70 feet at the roofline) for Residential-Retail Building 1 and five stories tall (55 feet at the roofline) for Residential-Retail Building 2 would be the same in each alternative.

Brief summaries of the alternatives are provided below. A brief discussion of the Environmentally Superior Alternative follows the summaries of the alternatives. As explained in Section VIII, below, the findings in this Section VI are based on the Final EIR, the discussion and analysis in which is hereby incorporated in full by this reference.

### **The Original Project Alternative**

The Original Project Alternative would construct 18 new buildings, that would have 242 residential units and 20,000 square feet of retail space, as well as below and at-grade parking, and associated landscape and hardscape areas. This alternative would be developed with the 242 residential units, consisting of three rowhouse buildings (19 units), 13 townhouse buildings (69 units), Residential-Retail Building 1 (115 units), Residential-Retail Building 2 (39 BMR senior housing units). This alternative has fewer market-rate units (203 units compared to 219 units), fewer senior units (39 units compared to 179 units, plus 27 memory care licensed assisted living residences), and fewer BMR units (39 compared to 48) than the proposed Project (Revised Senior Enhanced Project).

This alternative would include 17,600 square feet of retail space in Residential-Retail Building 1 and 2,400 square feet of retail space on would have. Residential-Retail Building 2. The below-grade parking would be located under Retail-Residential Building 1 and accessed from the central access point on Mary Avenue.

The Original Project Alternative would meet all of the project objectives, including redeveloping an existing retail and office complex with desirable amenities and housing; helping the City meet the RHNA allocation for 2014-2022; enhancing the vibrancy of Cupertino's Heart of the City as a key mixed-use corridor by providing a pedestrian-friendly community that includes housing, open space and greenery, and neighborhood retail; providing senior housing in close proximity to the Cupertino Senior Citizen Center; creating a prominent gateway development that incorporates quality architectural design and materials, open space, and artwork to announce entry into Cupertino's Heart of the City; creating a mixed-use development that places residential and commercial uses in close proximity to each other, and close to transit options; and helping the City to achieve its affordable housing goals through the inclusion of senior housing units within a residential and mixed-use development project.

The Original Project Alternative would include fewer market-rate units (203 units compared to 219 units), fewer senior units (39 units compared to 179 units, plus 27 memory care licensed assisted living residences), and fewer BMR units (39 units compared to 48 units) than the proposed Project (Revised Senior Enhanced Project). Therefore, while the Original Project Alternative would meet all of the project objectives, it would not provide as many senior housing units in close proximity to the Cupertino Senior Center as the proposed Project (Revised Senior Enhanced Project).

For the foregoing reasons, the Original Project Alternative is hereby rejected as infeasible.

### **The No Project Alternative**

CEQA requires evaluation of the “no project” alternative. State CEQA Guidelines § 15126.6(e). Consistent with State CEQA Guidelines section 15126.6(e)(3)(A), the No Project Alternative assumes the proposed project would not be constructed, and the project site would remain in its current condition. Thus, the proposed mixed-use project would not occur.

The No Project Alternative would not achieve any of the project objectives (see Section II.A above for a list of objectives).

For the foregoing reasons, the No Project Alternative is hereby rejected as infeasible.

### **No Retail Development Alternative**

The No Retail Development Alternative would not include any neighborhood-serving retail in Residential-Retail Building 1 and Residential-Retail Building 2. The subterranean parking level would not be constructed. Rather, parking would be located on the ground floor because there would be no retail component in Residential Building 1. This alternative would be developed with the 242 residential units, consisting of three rowhouse buildings (19 units), 13 townhouse buildings (69 units), Residential-Retail Building 1 (115 units), Residential-Retail Building 2 (39 senior housing units). This alternative has fewer market-rate units (203 units compared to 219 units), fewer senior units (39 units compared to 179 units plus 27 memory care licensed assisted living residences) than the proposed Project (Revised Senior Enhanced Project).

The No Retail Development Alternative would meet most of the project objectives, including redeveloping an existing site with housing, helping the City to meet RHNA allocations for 2014-2022, providing senior housing in close proximity to the Cupertino Senior Center, creating a prominent gateway development at the entry to Cupertino’s Heart of the City, and helping the City to achieve its affordable housing goals through the inclusion of senior housing units.

The No Retail Development Alternative fails to meet project objectives associated with a mixed-use development. This alternative would not redevelop the project site with desirable amenities in proximity to housing, enhance the vibrancy of Cupertino’s Heart of the City as a key mixed-use corridor by providing a pedestrian-friendly community that includes neighborhood retail, create a mixed-use development that places residential and commercial uses in close proximity to each other and transit options, or place affordable senior housing in a mixed-use development project. In addition, No Retail

Development Alternative would not provide as many market rate units (39 units compared to 179 units plus 27 memory care licensed assisted living residences) or senior units (39 units compared to 179 units) on the project site as the proposed Project (Revised Senior Enhanced Project).

For the foregoing reasons, No Retail Development Alternative is hereby rejected as infeasible.

### **Reduced Retail Development Alternative**

The Reduced Retail Development Alternative would provide 50 percent less retail. No subterranean parking would be constructed, because the reduced parking needs could be accommodated on the first floor. This alternative would be developed with the 242 residential units, consisting of three rowhouse buildings (19 units), 13 townhouse buildings (69 units), Residential-Retail Building 1 (115 units), Residential-Retail Building 2 (39 senior housing units). This alternative has fewer market-rate units (203 units compared to 219 units) and fewer senior units (39 units compared to 179 units plus 27 memory care licensed assisted living residences) than the proposed Project (Revised Senior Enhanced Project).

Even though this alternative includes a 50 percent reduction in retail space, this alternative would: redevelop an existing retail and office complex with desirable amenities and housing; help the City meet the RHNA allocation for 2014-2022; enhance the vibrancy of Cupertino's Heart of the City as a key mixed-use corridor by providing a pedestrian-friendly community that includes housing, open space and greenery, and neighborhood retail; provide senior housing in close proximity to the Cupertino Senior Citizen Center; create a prominent gateway development that incorporates quality architectural design and materials, open space, and artwork to announce entry into Cupertino's Heart of the City; create a mixed-use development that places residential and commercial uses in close proximity to each other, and close to transit options; and help the City to achieve its affordable housing goals through the inclusion of senior housing units within a residential and mixed-use development project.

The Reduced Retail Development Alternative would meet all of the proposed project objectives; however, it would not provide as many market rate units (203 units compared to 219 units) or senior units on the project site as the proposed Project (Revised Senior Enhanced Project) (39 units compared to 179 units plus 27 memory care licensed assisted living residences).

For the foregoing reasons, Reduced Retail Alternative is hereby rejected as infeasible.

## **Environmentally Superior Alternative**

In addition to the discussion and comparison of impacts of the proposed Project (Revised Senior Enhanced Project) and the five Alternatives listed above, Section 15126.6(e)(2) of the State CEQA Guidelines requires that an “environmentally superior” alternative be selected and the reasons for such a selection be disclosed. The environmentally superior alternative is the alternative that would be expected to create the least significant environmental effects. Identification of the environmentally superior alternative is an informational procedure and the alternative selected may not be the alternative that best meets the goals or needs of Cupertino.

In the Final EIR, the alternatives to the proposed project are compared to the Original Project. The impacts of the proposed Project ([NAME OF MRV OF PROJECT]) would be the same as the Increased Senior Housing Alternative because the revisions to the Increased Housing Alternative, described above in the Project Description, do not involve changes in the proposed Project’s (Revised Senior Enhanced Project) physical effects on the environment. As shown in Table 5-1, Comparison of Impacts from Project Alternatives in Chapter 3, Revisions to the Proposed Project, of the Response to Comment Document, the Reduced Retail Development Alternative would not result in any impacts that are greater than the Original Project, and would reduce impacts related to cultural resources, geology and soils, and utilities and services systems compared to the Original Project because no excavation for the subterranean parking would be required. When considering the new proposed Project (Revised Senior Enhanced Project), , this conclusion would be the same because the proposed Project, like the Original Project and the Increased Senior Housing Alternative, would include the subterranean parking component.

As described in Chapter 3, Revisions to the Draft EIR, when compared to the Original Project, the proposed Project (Revised Senior Enhanced Project), which is substantially physically similar to the Increased Senior Housing, would have less vehicle miles traveled (VMT) (2,663,868 total annual VMT compared to 2,352,587 total annual VMT – or - 7,298 total daily VMT compared to 6,445 total daily VMT) and would subsequently result in fewer air quality, greenhouse gas (GHG), and noise emissions from automobiles, which are the greatest sources of emissions. Water demand and wastewater generation, and subsequent GHG emissions from these sources, would be greater under the proposed Project (Revised Senior Enhanced Project) when compared to the Original Project because senior housing (179 units compared to 39 units) creates a greater demand for water and generates more wastewater than non-senior housing.

All impacts under any of the alternatives would be less than significant or less than significant with implementation of the mitigation measures identified in the Final EIR. This is because the recommended mitigation measures would apply to all of the alternatives. None of the alternatives would exceed any thresholds of significance in any environmental category.

For the foregoing reasons, the Reduced Retail Development Alternative is considered the environmentally superior alternative when compared to the proposed Project (Revised Senior Enhanced Project).

### **INCORPORATION BY REFERENCE**

These findings incorporate the text of the Final EIR for the Project (Revised Senior Enhanced Project), the Mitigation Monitoring and Reporting Program, City staff reports relating to the Project and other documents relating to public hearings on the Project, by reference, in their entirety. Without limitation, this incorporation is intended to elaborate on the scope and nature of mitigation measures, project and cumulative impacts, the basis for determining the significance of impacts, the comparison of the alternatives to the Project, the determination of the environmentally superior alternative, and the reasons for approving the Project.

### **RECORD OF PROCEEDINGS**

Various documents and other materials related to the Project constitute the record of proceedings upon which the City bases its findings and decisions contained herein. Those documents and materials are located in the offices of the custodian for the documents and materials, which is the City of Cupertino Community Development Department, Cupertino City Hall, 10300 Torre Avenue, Cupertino, CA 95014-3202.

### **NO RECIRCULATION REQUIRED**

State CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when “significant new information” is added to the EIR after public notice is given of the availability of the Draft EIR but before certification. No significant new information was added to the Draft EIR as a result of the public comment process. The Final EIR responds to comments, and clarifies, amplifies and makes insignificant modifications to the Draft EIR. The Final EIR does not identify any new significant effects on the environment or a substantial increase in the severity of an environmental impact.

The proposed Project (Revised Senior Enhanced Project) consists of the same overall developed area that was analyzed in the EIR for Original Project and Increased Senior Housing Alternative, and would have the same number of residential units as the Increased Senior Housing Alternative. Accordingly, all portions of the proposed Project (Revised Senior Enhanced Project) were analyzed in the EIR. There are no new significant effects on the environment or a substantial increase in the severity of an environmental impact associated with proposed Project (Revised Senior Enhanced Project) that is the subject of these Findings.

For the foregoing reasons, recirculation of the Final EIR is not required.

## **SUMMARY**

Based on the foregoing Findings and the information contained in the record, the City determines that all significant effects on the environment due to the approval of the Project have been eliminated or substantially lessened where feasible.





Mitigation Monitoring and Reporting Program

# Westport Mixed- Use Project

21267 Stevens Creek Boulevard

APN: 326-27-042, -043

June 2020

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<ul style="list-style-type: none"> <li>• All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.</li> <li>• All haul trucks transporting soil, sand, or other loose material off-site shall be covered.</li> <li>• 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.</li> <li>• All vehicle speeds on unpaved roads shall be limited to 15 mph.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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 BAAQMD phone number shall also be visible to ensure compliance with applicable regulations.</li> </ul>	<p>Project Applicant/Construction Contractor</p>	<p>Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities</p>	<p>City of Cupertino Public Works Department</p>	<p>Review Construction Plans and Specifications/ Conduct Site Inspections</p>	<p>During Scheduled Construction Site Inspections</p>
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- Vegetative ground cover shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.

<b>Mitigation Measure AQ-4:</b> Implement Mitigation Measure AQ-2.	Project Applicant/Construction Contractor	Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities	City of Cupertino Public Works Department	Review Construction Plans and Specifications/ Conduct Site Inspections	During Scheduled Construction Site Inspections
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**BIOLOGICAL RESOURCES**

<p><b>Mitigation Measure BIO-1:</b> 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 Fish and Game Code. The construction contractor shall indicate the following on all construction plans, if construction activities and any required tree removal occur during the breeding season (February 1 and August 31). Preconstruction surveys shall:</p> <ul style="list-style-type: none"> <li>• Be conducted by a qualified biologist prior to tree removal or grading, demolition, or construction activities. Note that preconstruction surveys are not required for tree removal or construction, grading, or demolition activities outside the nesting period.</li> <li>• Be conducted no more than 14 days prior to the start of tree removal or construction.</li> <li>• Be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped.</li> <li>• Document locations of active nests containing viable eggs or young birds.</li> </ul> <p>Protective measures for active nests containing viable eggs or young birds shall be implemented under the direction of the qualified biologist</p>	Project Applicant	Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities	Qualifying Biologist	Preconstruction Survey	Once for Survey; Ongoing if nesting birds identified and until they have left the nest
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until the nests no longer contain eggs or young birds. 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 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.
- Monitoring active nests within an exclusion zone on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status.
- An increase in the radius of an exclusion zone 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 shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.

**Mitigation Measure BIO-2:** The proposed project shall comply with the City of Cupertino’s Protected Trees Ordinance (Cupertino Municipal Code Section 14.18). A tree removal permit shall be obtained for the removal of any “protected tree,” and replacement plantings shall be provided as approved by the City. If permitted, an appropriate in-lieu tree replacement fee may be paid to the City of Cupertino’s Tree Fund as compensation for “protected trees” removed by the proposed project, where sufficient land area is not available on-site for adequate replacement and when approved by the City.

In addition, a Tree Protection and Replacement Program (Program) shall be developed by a Certified Arborist prior to project approval and implemented during project construction to provide for adequate protection and replacement of “protected trees,” as defined by the City’s Municipal Code. The Program shall include the following provisions:

Project Applicant	Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities	City of Cupertino Public Works Department	Plan Review and Approval	Once During the Preconstruction Phase and Ongoing During Construction
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- Adequate measures shall be defined to protect all trees to be preserved. These measures should include the establishment of a tree protection zone (TPZ) around each tree to be preserved, in which no disturbance is permitted. For design purposes, the TPZ shall be located at the dripline of the tree or 10 feet, whichever is greater. If necessary, the TPZ for construction-tolerant species (i.e., coast live oaks) may be reduced to 7 feet.
  - Temporary construction fencing shall be installed at the perimeter of TPZs prior to demolition, grubbing, or grading. Fences shall be 6-foot chain link or equivalent, as approved by the City of Cupertino. Fences shall remain until all construction is completed. Fences shall not be relocated or removed without permission from the consulting arborist.
  - No grading, excavation, or storage of materials shall be permitted within TPZs. Construction trailers, traffic, and storage areas shall remain outside fenced areas at all times. No excess soil, chemicals, debris, equipment, or other materials shall be dumped or stored within the TPZ.
  - Underground services including utilities, sub-drains, water or sewer shall be routed around the TPZ. Where encroachment cannot be avoided, special construction techniques such as hand digging or tunneling under roots shall be employed where necessary to minimize root injury. Irrigation systems must be designed so that no trenching will occur within the TPZ.
  - Construction activities associated with structures and underground features to be removed within the TPZ shall use the smallest equipment and operate from outside the TPZ. The consulting arborist shall be on-site during all operations within the TPZ to monitor demolition activity.
  - All grading, improvement plans, and construction plans shall clearly indicate trees proposed to be removed, altered, or otherwise affected by development construction. The tree information on grading and development plans should indicate the number, size, species, assigned tree number, and location of the dripline of all trees that are to be retained/preserved. All plans shall also include tree preservation guidelines prepared by the consulting arborist.
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- The demolition contractor shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection. Prior to beginning work, the contractor(s) working in the vicinity of trees to be preserved shall be required to meet with the consulting arborist at the site to review all work procedures, access routes, storage areas, and tree protection measures.
  - All contractors shall conduct operations in a manner that will prevent damage to trees to be preserved. Any grading, construction, demolition or other work that is expected to encounter tree roots shall be monitored by the consulting arborist. If injury should occur to any tree during construction, it should be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
  - Any plan changes affecting trees shall be reviewed by the consulting arborist with regard to tree impacts. These include, but are not limited to, site improvement plans, utility and drainage plans, grading plans, landscape and irrigation plans, and demolition plans.
  - Trees to be preserved may require pruning to provide construction clearance. All pruning shall be completed by a State of California Licensed Tree Contractor (C61/D49). All pruning shall be done by Certified Arborist or Certified Tree Worker in accordance with the 2002 Best Management Practices for Pruning published by the International Society of Arboriculture, and adhere to the most recent editions of the American National Standard for Tree Care Operations (Section Z133.1) and Pruning (Section A300).
  - Any root pruning required for construction purposes shall receive the prior approval of and be supervised by the consulting arborist.
  - Any demolition or excavation, such as grading, pad preparation, excavation, and trenching, within the dripline or other work that is expected to encounter tree roots should be approved and monitored by the consulting arborist. Any root pruning required for construction purposes shall receive prior approval of, and be supervised by, the consulting
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arborist. Roots shall be cut by manually digging a trench and cutting exposed roots with a sharp saw.

- Tree(s) to be removed that have branches extending into the canopy of tree(s) to remain must be removed by a qualified arborist and not by construction contractors. The qualified arborist shall remove the tree in a manner that causes no damage to the tree(s) and understory to remain. Tree stumps shall be ground 12 inches below ground surface.
- All tree work shall comply with the Migratory Bird Treaty Act as well as California Fish and Game Code Sections 3503 through 3513 to not disturb nesting birds. To the extent feasible, tree pruning, and removal shall be scheduled outside of the breeding season. Breeding bird surveys shall be conducted prior to tree work. Qualified biologists shall be involved in establishing work buffers for active nests. (see Mitigation Measure BIO-1)
- The vertical and horizontal locations of all the trees identified for preservation shall be established and plotted on all plans. These plans shall be forwards to the consulting arborist for review and comment.
- Foundations, footings, and pavements on expansive soils near trees shall be designed to withstand differential displacement to protect the soil surrounding the tree roots.
- Any liming within 50 feet of any tree shall be prohibited, as lime is toxic to tree roots. Any herbicides placed under paving materials shall be safe for use under trees and labeled for that use.
- Brush from pruning and trees removal operations shall be chipped and spread beneath the trees within the TPZ. Mulch shall be between 2 inches and 4 inches in depth and kept at a minimum of 3 feet from the base of the trees.
- All recommendations for tree preservation made by the applicant's consulting arborist shall be followed.

**Mitigation Measure BIO-3:** Implement Mitigation Measures BIO-1 and BIO-2. Project Applicant

Prior to Issuance of Building Permits Authorizing Grading

Qualifying Biologist/City of Cupertino Public Works Department

Preconstruction Survey/ Plan Review and Approval

Once for Survey; Ongoing if nesting birds identified and until they have left

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or Other Construction  
Activities

the nest/ Once  
during the  
preconstruction  
phase and ongoing  
during construction

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### CULTURAL RESOURCES

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**Mitigation Measure CULT-1:** If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing (including grading, demolition and/or construction) activities:

- All work within 50 feet of the resources shall be halted, the City shall be notified, and a qualified archaeologist shall be consulted. The contractor shall cooperate in the recovery of the materials. Work may proceed on other parts of the project site while mitigation for tribal cultural resources, historical resources or unique archaeological resources is being carried out.
- The qualified archaeologist shall prepare a report for the evaluation of the resource to the California Register of Historical Places and the City Building Department. The report shall also include appropriate recommendations regarding the significance of the find and appropriate mitigations as follows:
  - If the resource is a non-tribal resource, the archaeologist shall assess the significance of the find according to CEQA Guidelines Section 15064.5.
  - If the resource is a tribal resource – whether historic or prehistoric – the consulting archaeologist shall consult with the appropriate tribe(s) 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. If avoidance is infeasible,

Project  
Applicant/Construction  
Contractor

During Construction

Consulting  
Archeologist and  
City of Cupertino  
Public Works  
Department

Plan Review and  
Approval

As needed if  
resources are  
unearthed

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<p>other appropriate measures (e.g., data recovery) may be implemented.</p> <ul style="list-style-type: none"> <li>All significant non-tribal cultural materials recovered shall be, as necessary, and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards.</li> </ul>					
<p><b>Mitigation Measure CULT-3:</b> Implement Mitigation Measure CULT-1.</p>	<p>Project Applicant/Construction Contractor</p>	<p>During Construction</p>	<p>Consulting Archeologist and City of Cupertino Public Works Department</p>	<p>Plan Review and Approval</p>	<p>As needed if resources are unearthed</p>

**GEOLOGY AND SOILS**

<p><b>Mitigation Measure GEO-1:</b> The construction contractor shall incorporate the following in all grading, demolition, and construction plans:</p> <ul style="list-style-type: none"> <li>In the event that fossils or fossil-bearing deposits are discovered during grading, demolition, or building, excavations within 50 feet of the find shall be temporarily halted or diverted.</li> <li>The contractor shall notify the City of Cupertino Building Department and a City-approved qualified paleontologist to examine the discovery.</li> <li>The paleontologist shall document the discovery as needed, in accordance with Society of Vertebrate Paleontology standards (Society of Vertebrate Paleontology 1995), evaluate the potential resource, and assess the significance of the finding under the criteria set forth in CEQA Guidelines Section 15064.5.</li> <li>The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find.</li> <li>If the project applicant determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the proposed project based on the</li> </ul>	<p>Project Applicant/Construction Contractor</p>	<p>During Construction</p>	<p>Consulting Paleontologist and City of Cupertino Public Works Department</p>	<p>Plan Review and Approval</p>	<p>As needed if resources are unearthed</p>
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qualities that make the resource important. The excavation plan shall be submitted to the City for review and approval prior to implementation.

**Noise**

<p><b>Mitigation Measure NOISE-1:</b> Prior to Grading Permit issuance or the start of demolition activities, the project applicant shall demonstrate, to the satisfaction of the City of Cupertino Public Works Director and/or Community Development Director, that the proposed project complies with the following:</p>	<p>Project Applicant/Construction Contractor</p>	<p>Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities</p>	<p>City of Cupertino Public Works Department</p>	<p>Plan Review and Approval/Site Inspections</p>	<p>Once for Plan Review/ During Scheduled Constructions Site Inspections</p>
<ul style="list-style-type: none"> <li>▪ Pursuant to Cupertino Municipal Code (CMC) Section 10.48.053 the construction activities shall be limited to daytime hours as defined in CMC Section 10.48.010 (i.e., daytime hours are from 7:00 a.m. to 8:00 p.m. on weekdays).</li> <li>▪ At least 90 days prior to the start of construction activities, all offsite businesses and residents within 300 feet of the project site shall be notified of the planned construction activities. The notification shall include a brief description of the proposed project, the activities that would occur, the hours when construction would occur, and the construction period’s overall duration. The notification should include 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.</li> <li>▪ 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, he/she shall investigate, take appropriate corrective action, and report the action to the City.</li> <li>▪ During the entire active construction period, equipment and trucks used for project construction will utilize the best available noise control techniques (e.g., improved mufflers, equipment re-design, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds), wherever feasible.</li> </ul>					

- During the entire active construction period, stationary noise sources shall be located as far from sensitive receptors as possible, and they shall be muffled and enclosed within temporary sheds, or insulation barriers or other measures shall be incorporated to the extent feasible.
- Haul routes shall be selected to avoid the greatest amount of sensitive use areas.
- 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 laws.

**Utilities and Service Systems**

<p><b>Mitigation Measure UTIL-1:</b> No building permits shall be issued by the City for the proposed Westport Mixed-Use Project that would result in exceeding the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system. The project applicant shall demonstrate, to the satisfaction of the City of Cupertino and Cupertino Sanitary District (CSD), that the proposed project would not exceed the peak wet weather flow capacity of the Santa Clara sanitary sewer system by implementing one or more of the following methods:</p> <ol style="list-style-type: none"> <li>3. Reduce inflow and infiltration in the CSD system to reduce peak wet weather flows; or</li> <li>4. Increase on-site water reuse, such as increased grey water use, or reduce water consumption of the fixtures used within the proposed project, or other methods that are measurable and reduce sewer generation rates to acceptable levels, to the satisfaction of the CSD.</li> </ol>	<p>Project Applicant</p>	<p>Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities</p>	<p>City of Cupertino Sanitary District</p>	<p>Plan Review and Approval</p>	<p>Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities</p>
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The proposed project's estimated wastewater generation shall be calculated using the generation rates used by the CSD in the *Flow Modeling Analysis for the Homestead Flume Outfall to the City of Santa Clara*, prepared by Mark Thomas & Co. Inc., dated December 6, 2019, unless alternative (i.e., lower) generation rates achieved by the proposed project are substantiated by the project applicant based on evidence to the satisfaction of the CSD.

If the prior agreement between CSD and the City of Santa Clara that currently limits the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system were to be updated to increase the permitted peak wet weather flow sufficiently to accommodate, this would also change the impacts of the project to less than significant. If this were to occur prior to the City's approval of building permits, then Mitigation Measure UTIL-1 would no longer be required to be implemented.

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