

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

DRAFT RESOLUTION

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO  
RECOMMENDING APPROVING A TENTATIVE MAP APPLICATION TO  
ALLOW THE SUBDIVISION OF THREE PARCELS INTO FIVE PARCELS –  
FOUR RESIDENTIAL AND ONE COMMON (PRIVATE ROAD) LOCATED AT  
10234 SCENIC BOULEVARD, APN#357-08-014 AND 357-08-047

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SECTION I: PROJECT DESCRIPTION

Application No.: TM-2015-01  
Applicant: Welkin International (Cai Xing Xie)  
Location: 10234 Scenic Boulevard (APN 357-08-014, 357-08-047)

SECTION II: FINDINGS FOR DEVELOPMENT PERMIT:

WHEREAS, the Planning Commission of the City of Cupertino received an application for a Tentative Map to allow the subdivision of three parcels into five parcels – four residential and one common (private road) located at 10234 Scenic Boulevard, APN#357-08-014 and 357-08-047, as identified in Section I of this Resolution; and

WHEREAS, the necessary public notices were given as required by the Procedural Ordinance 19.08 of the City of Cupertino, and the Planning Commission held a public hearing on November 14, 2017 to consider the application and hear public testimony; and

WHEREAS, the applicant has met the burden of proof required to support said application; and

WHEREAS, prior to the Planning Commission meeting the Environmental Review Committee heard the item on October 19, 2017 during which it reviewed the Draft Mitigated Negative Declaration, received public comments, and recommended adoption of a Mitigated Negative Declaration on a 4-0 vote, with minor modifications; and

WHEREAS, on November 14, 2017 the Planning Commission adopted the Initial Study/Draft MND as the Final Initial Study/Mitigated Negative Declaration for the project after adopting all the identified mitigation measures as conditions of approval for the project; and

WHEREAS, the Planning Commission finds as follows with regard to this application:

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

*The proposed map is consistent with the General Plan since the project is intended to have single-family homes consistent with the Low Residential (1-5 DU/ac) land use designation, and the four (4) residential lots proposed with the project is consistent with the density permitted per the General Plan. Additionally, the proposed lots are sized to be consistent with applicable zoning regulations and are comparable to adjacent residential development, and compatible with existing neighborhood orientation including homes face public streets and flag lots.*

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

*The proposed project has a General Plan designation and zoning designation that allows the development of single-family homes. The proposed project is in compliance with these designation and contemplates the future redevelopment of the site into single-family residential homes. In addition, the project will be required to make all the necessary improvements to the site to ensure that the site is suitable for development. This will include new retaining walls, slope stabilization and improvements to the right-of way.*

3. That the site is physically suitable for the intensity of development contemplated under the approved subdivision.

*The proposed lots are sized to be consistent with applicable regulations such as minimum lot size, and are consistent with the City's General Plan Low Residential (1-5 DU/ac) land use designation. The proposed four (4) residential lots is consistent with the density permitted per the General Plan. Additionally, the project will be required to make all necessary improvements to the site to ensure that site is physically suitable for the intensity of development. This includes new retaining walls, slope stabilization and improvements to the right-of-way.*

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

*With implementation of the adopted mitigation measures identified in the Initial Study, the subdivisions and proposed improvements will likely not cause substantial environmental damage nor substantially and avoidable injure fish or wildlife or their habitat.*

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

*The proposed design of the subdivision and improvements do not cause serious public health problems. With implementation of the adopted mitigation measures identified in the Initial Study there are no anticipated public health problems.*

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

*The design of the subdivision or the type of improvements do not conflict with any existing or proposed easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. Independent access is being provided for two of the proposed lots and shared access is being provided for the other two lots.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the initial study, maps, facts, exhibits, testimony and other evidence submitted in this matter, and subject to the conditions which are enumerated in this Resolution beginning on PAGE 3 thereof:

The application for a Tentative Map, Application no. TM-2015-01, is hereby approved and the conclusions and subconclusion upon which the findings and conditions specified in the resolution are based and contained in the Public Hearing record concerning Application no. TM-2015-01 as set forth in the Minutes of Planning Commission Meeting of November 14, 2017, are hereby incorporated by reference as though fully set forth herein.

### SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

#### 1. APPROVED EXHIBITS

Approval is based on the set plans dated February 12, 2015 consisting of 10 sheets, labeled as Sheet TM-1 – TM-6 and A3.1 – A3.3 entitled, “Tentative Parcel Map 10234 Scenic Boulevard Cupertino, CA 95014”, drawn and submitted by E.J. Hahamian, except as may be amended by conditions in this resolution.

2. ANNOTATION OF THE CONDITIONS OF APPROVAL

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

3. ACCURACY OF PROJECT PLANS

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

4. DEVELOPMENT APPROVAL AND ALLOCATION

The applicant shall receive an allocation of one (1) unit of the General Plan residential allocation from "Other Residential Neighborhoods."

5. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file no. EA-2015-01, and the conditions of approval for application no. TR-2016-28 shall be applicable upon Planning Commission review and approval.

6. HOUSING MITIGATION FEES

The applicant shall participate in the City's Below Market Rate (BMR) Housing Program by paying the housing mitigation fees as per the Housing Mitigation Manual **at building permit issuance**. A credit for one lot is allowed for these lots since there is one existing home on the site. The estimated mitigation fee for this project is based on the 2017-2018 fiscal year rate of \$16.01 per square foot of residential area.

7. DEMOLITION REQUIREMENTS

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

8. PRE-CONSTRUCTION MEETING AND CONSTRUCTION MANAGEMENT PLAN

Prior to commencement of construction activities, the applicant shall arrange for a pre-construction meeting with the pertinent departments (including, but not limited to, Building, Planning, Public Works, Santa Clara County Fire Department), **prior to issuance of grading and/or building permits**, to review an applicant-prepared construction management plan including, but not limited to:

- a. Plan for compliance with conditions of approval

- b. Plan for public access during work in the public right-of-way
- c. Construction staging area
- d. Construction schedule and hours
- e. Construction phasing plan, if any
- f. Contractor parking area
- g. Tree preservation/protection plan
- h. Site dust, noise and storm run-off management plan
- i. Emergency/complaint and construction site manager contacts

9. CONSTRUCTION HOURS

Construction activities shall be limited to Monday through Friday, 7 a.m. to 8 p.m. and Saturday and Sunday, 9 a.m. to 6 p.m. Construction activities are not allowed on holidays. The developer shall be responsible for educating all contractors and subcontractors of said construction restrictions. Rules and regulation pertaining to all construction activities and limitations identified in this permit, along with the name and telephone number of a developer appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.

10. UPDATED CIVIL PLANS AND DETAILS

The Civil Plans shall be modified to include the final layout, easements, and details of the proposed rock catchment fence, shear pin wall, and drainage mitigation measures **prior to issuance of encroachment and grading permits**. The updated plans shall indicate the accurate location of the proposed drilled piers at the bottom of the slope and ensure they are located on the project site.

11. GEOTECHNICAL PLAN REVIEW

The Updated Civil Plan and Details should be reviewed by the Project Geotechnical Consultant to assure conformance with their recommendations **prior to grading and building permit issuance**.

- a. The geotechnical consultant should evaluate the drainage discharge locations, infiltration trenches/drywells, and v-ditch locations to assure that these are appropriate for this site from a geotechnical standpoint.
- b. The rockfall catchment fence location and construction details should be reviewed and field verified to assure it is appropriate from a geotechnical standpoint.

12. RETAINING WALL SCREENING

Retaining walls shall be screened with landscape materials and/or faced with decorative materials subject to the approval of the Director of Community Development **prior to grading permit issuance**.

13. GUARDRAIL

The Applicant shall install a parking guard rail along the eastern property line of Parcel 5. The guard rail is to be reviewed and approved by the Director of Community Development **prior to grading and/or building permit issuance.**

14. INGRESS/EGRESS EASEMENT

The applicant shall record an appropriate deed restriction and covenant running with the land, subject to approval of the City Attorney, for all parcels that share a common private drive or private roadway or parking access with one or more other parcels. The deed restriction shall provide for necessary reciprocal ingress and egress to and from the affected parcels and shall include appropriate parking easements.

15. ROAD MAINTENANCE AGREEMENT

A reciprocal maintenance agreement shall be required for all parcels that share a common private drive or private roadway or parking access with one or more other parcels within the tract. The agreement shall be recorded in conjunction with recordation of the final map, and shall be subject to prior approval as to form and content by the City Attorney. The maintenance agreement shall include language to ensure that it may not be dissolved without the prior approval of the city.

16. LANDSCAPE PROJECT SUBMITTAL

**Prior to issuance of building permits for any structures on the site,** the applicant shall submit a landscape project submittal per sections 14.15.040 or 14.15.050 of the Landscaping Ordinance if more than 500 square feet of landscaping area is proposed. The Water-Efficient Design Checklist (Appendix A of Chapter 14.15), Landscape and Irrigation Design Plans, and Water Budget Calculations shall be reviewed and approved to the satisfaction of the Director of Community Development prior to issuance of building permits.

17. LANDSCAPE INSTALLATION REPORT

The project is subject to all provisions delineated in the Landscape Ordinance (CMC, Chapter 14.15). A landscape installation audit shall be conducted by a certified landscape professional after the landscaping and irrigation system have been installed. The findings of the assessment shall be consolidated into a landscape installation report.

The landscape installation report shall include, but is not limited to: inspection to confirm that the landscaping and irrigation system are installed as specified in the landscape and irrigation design plan, system tune-up, system test with distribution

uniformity, reporting overspray or run-off that causes overland flow, and preparation of an irrigation schedule.

The landscape installation report shall include the following statement: "The landscape and irrigation system have been installed as specified in the landscape and irrigation design plan and complies with the criteria of the ordinance and the permit."

#### 18. LANDSCAPE AND IRRIGATION MAINTENANCE

Per the Landscape Ordinance (CMC, Chapter 14.15), a maintenance schedule shall be established and submitted to the Director of Community Development or his/her designee, either with the landscape application package, with the landscape installation report, or any time before the landscape installation report is submitted.

- a. Schedules should take into account water requirements for the plant establishment period and water requirements for established landscapes.
- b. Maintenance shall include, but not be limited to the following: routine inspection; pressure testing, adjustment and repair of the irrigation system; aerating and de-thatching turf areas; replenishing mulch; fertilizing; pruning; replanting of failed plants; weeding; pest control; and removing obstructions to emission devices.
- c. Failed plants shall be replaced with the same or functionally equivalent plants that may be size-adjusted as appropriate for the stage of growth of the overall installation. Failing plants shall either be replaced or be revived through appropriate adjustments in water, nutrients, pest control or other factors as recommended by a landscaping professional.

#### 19. CONSULTATION WITH OTHER DEPARTMENTS

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

#### 20. INDEMNIFICATION

Except as otherwise prohibited by law, the applicant shall indemnify and hold harmless the City, its City Council, and its officers, employees and agents (collectively, the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant to attack, set aside, or void this Resolution or any permit or approval authorized hereby for the project, including (without limitation) reimbursing the City its actual attorneys' fees and costs incurred in defense of the litigation. The applicant shall pay such

attorneys' fees and costs within 30 days following receipt of invoices from City. Such attorneys' fees and costs shall include amounts paid to counsel not otherwise employed as City staff and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City.

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

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

SECTION IV: CONDITIONS ADMINISTERED BY THE PUBLIC WORKS DEPARTMENT

1. STREET WIDENING

Public street widening and dedications shall be provided in accordance with City Standards and specifications and as required by the City Engineer.

2. STREET IMPROVEMENTS

Curbs and gutters, pavement and related structures shall be installed in accordance with grades and standards as specified by the City Engineer. The proposed street improvements shown on Sheet TM1 are conceptual only subject to further review at the Building Permit stage.

3. TRAFFIC IMPACT FEE

The Project will be subject to the payment of Traffic Impact Fees. The fee is \$6,025 per new AM or PM peak-hour trip generated by the Project.

4. STREET LIGHTING INSTALLATION

Street lighting shall be installed and shall be as approved by the City Engineer. Lighting fixtures shall be positioned so as to preclude glare and other forms of visual interference to adjoining properties, and shall be no higher than the maximum height permitted by the zone in which the site is located.



## 5. GRADING & DRAINAGE

- a. Prior to beginning construction of new facilities, the project will be required to stabilize the slope on the east side of the project. Stabilization shall occur as indicated in the project Geotechnical Investigation and supplemental report, and shall address the potential for future sliding and erosion of the downstream slope.
- b. The Geotechnical consultant will be required to review the proposed site design, including the proposed slope stabilization measures, retaining structures, pervious pavements and stormwater treatment measures (if required). Third party review is required for geotechnical evaluation associated with landslide, stormwater treatments, and retaining structures. The Geotechnical consultant will also be required to review and provide a written response regarding the installation of slope stabilization facilities to ensure they are installed per the consultant's recommendations.
- c. No infiltration or concentrated drainage allowed towards the top of the bank along Parcel 4. In general, any proposed ponding & infiltration for each lot will require further design and evaluation.
- d. Complete Project Impervious Surface Data and LID Feasibility Form and provide a detail plan showing the areas of impervious surface including buildings, driveways, backyard patios, etc.
- e. If project creates more than 10,000SF of impervious surface, a Storm Water Management Plan, Storm Water Facilities Easement Agreement, Storm Water Facilities Operation and Maintenance Agreement, and certification of ongoing operation and maintenance of treatment BMPs are each required.
- f. Grading shall be as approved and required by the City Engineer in accordance with Chapter 16.08 of the Cupertino Municipal Code. 401 Certifications and 404 permits maybe required. Please contact Army Corp of Engineers and/or Regional Water Quality Control Board as appropriate.
- g. Hydrology and pre- and post-development hydraulic calculations must be provided to indicate whether additional storm water control measures are to be constructed or renovated. The storm drain system may include, but is not limited to, subsurface storage of peak stormwater flows (as needed), bioretention basins, vegetated swales, and hydrodynamic separators to reduce the amount of runoff from the site and improve water quality. The storm drain system shall be designed to detain water on-site (e.g., via buried pipes, retention systems or other approved systems and improvements) as necessary to avoid an increase of the ten percent flood water surface elevation to the satisfaction of the City Engineer. Any storm water overflows or surface sheeting should be directed away from neighboring private properties and to the public right of way as much as reasonably possible.

- h. Grading & drainage shall be designed to the satisfaction of the City Engineer. The preliminary grading & drainage plan is very conceptual and will require detailed engineering plans to incorporate City's requirements and Geotechnical report's recommendations.

6. UNDERGROUND UTILITIES

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

7. IMPROVEMENT AGREEMENT

The project developer shall enter into a development agreement with the City of Cupertino providing for payment of fees, including but not limited to checking and inspection fees, storm drain fees, park dedication fees and fees for undergrounding of utilities. Said agreement shall be executed prior to issuance of construction permits

Fees:

a. Checking & Inspection Fees:	\$ Per current fee schedule (\$3,648.00 or 5%)
b. Grading Permit:	\$ Per current fee schedule (\$2,825.00 or 6%)
c. Development Maintenance Deposit:	\$ 1,000.00
d. Storm Drainage Fee:	\$ Per current fee schedule (\$4,550/acre)
e. Power Cost:	**
f. Map Checking Fees:	\$ Per current fee schedule (\$5,527.90)
g. Park Fees:	\$ Per current fee schedule (\$84,000/unit)
h. Geotechnical Review	\$ 3,450.00 minimum
i. Structural Review	\$ 3,450.00 minimum
j. Street Tree	\$ 386.84.00 per tree
k. Traffic Impact Fees:	\$ 6,025 per peak hour trip generated. (3 peak hour trips being generated with current site plan)
l. Storm Management Plan Fee:	\$1,208

\*\* Based on the latest effective PG&E rate schedule approved by the PUC

Bonds:

Faithful Performance Bond: 100% of Off-site and On-site Improvements

Labor & Material Bond: 100% of Off-site and On-site Improvement

On-site Grading Bond: 100% of site improvements.

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

8. TRANSFORMERS

Electrical transformers, telephone cabinets and similar equipment shall be placed in underground vaults. The developer must receive written approval from both the Public Works Department and the Community Development Department prior to installation of any above ground equipment. Should above ground equipment be permitted by the City, equipment and enclosures shall be screened with fencing and landscaping such that said equipment is not visible from public street areas, as determined by the Community Development Department. Transformers shall not be located in the front or side building setback area.

9. WATER BACKFLOW PREVENTERS

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

10. BEST MANAGEMENT PRACTICES

Utilize Best Management Practices (BMPs), as required by the State Water Resources Control Board, for construction activity, which disturbs soil. BMP plans shall be included in grading and street improvement plans.

11. NPDES CONSTRUCTION GENERAL PERMIT

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

12. EROSION CONTROL PLAN

Developer shall must provide an approved erosion control plan by a Registered Civil Engineer. This plan should include all erosion control measures used to retain materials on site. Erosion control notes shall be stated on the plans.

13. WORK SCHEDULE

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

14. OPERATIONS & MAINTENANCE AGREEMENT

Developer shall enter into an Operations & Maintenance Agreement with the City prior to final occupancy. The Agreement shall include the operation and maintenance for non-standard appurtenances in the public road right-of-way that may include, but is not limited to, sidewalk, pavers, and street lights.

15. TRAFFIC SIGNS

Traffic control signs shall be placed at locations specified by the City.

16. REFUSE TRUCK ACCESS

Developer shall must obtain clearance from the Environmental Programs Manager in regards to refuse truck access for the proposed development.

17. STREET TREES

Street trees shall be planted within the Public Right of Way to the satisfaction of the City Engineer and shall be of a type approved by the City in accordance with Ordinance No. 125.

18. FIRE PROTECTION

Fire sprinklers shall be installed in any new construction to the approval of the City.

19. SANTA CLARA COUNTY FIRE DEPARTMENT

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

20. FIRE HYDRANT

Fire hydrants shall be located as required by the City and Santa Clara County Fire Department as needed.

21. SAN JOSE WATER COMPANY CLEARANCE

Provide San Jose Water Company approval for water connection, service capability and location and layout of water lines and backflow preventers before issuance of a building permit approval.

**22. DEDICATION OF WATERLINES**

Developer shall dedicate to the City all waterlines and appurtenances installed to City Standards and shall reach an agreement with San Jose Water Company for water service to the subject development.

**23. DEDICATION OF UNDERGROUND WATER RIGHTS**

Developer shall “quit claim” to the City all rights to pump, take or otherwise extract water from the underground basin or any underground strata in the Santa Clara Valley.

**24. SANITARY DISTRICT**

A letter of clearance for the project shall be obtained from the Cupertino Sanitary District prior to issuance of building permits.

**SECTION V: CONDITIONS ADMINISTERED BY CUPERTINO SANITARY DISTRICT****1. INSTALLER’S AGREEMENT**

Developer/owner shall enter into an installer’s agreement with the District for the common lateral that will run on the common property/private road/PUE.

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PASSED AND ADOPTED this 14th day of November, 2017, Regular Meeting of the Planning Commission of the City of Cupertino, State of California, by the following roll call vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

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Benjamin Fu  
Assist. Director of Community Development

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Don Sun  
Chair, Planning Commission