

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

DRAFT RESOLUTION

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO  
RECOMMENDING APPROVAL OF A DEVELOPMENT PERMIT TO CONSTRUCT A  
MIXED-USED DEVELOPMENT CONSISTING OF 294 HOUSING UNITS (88  
ROWHOUSE/TOWNHOMES, 206 SENIOR APARTMENTS, OF WHICH INCLUDE 48  
SENIOR AFFORDABLE APARTMENTS AND 27 MEMORY CARE UNITS) AND  
20,000 SQUARE FEET OF COMMERCIAL SPACE, DENSITY BONUS AND DENSITY  
BONUS WAIVERS FOR HEIGHT, BUILDING PLANE, AND BELOW MARKET RATE  
HOUSING DISPERSION. LOCATED AT 21267 STEVENS CREEK BOULEVARD (APN:  
326-27-042, -043)

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The Planning Commission recommends that the City Council approve the Development Permit, in substantially similar form to the Draft Resolution attached hereto as Exhibit DP.

PASSED AND ADOPTED at a Regular Meeting of the Planning Commission of the City of Cupertino the 12<sup>th</sup> day of May 2020, by the following roll call vote:

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AYES: COMMISSIONERS:  
NOES: COMMISSIONERS:  
ABSTAIN: COMMISSIONERS:  
ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

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Piu Ghosh  
Planning Manager

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Kitty Moore  
Chair, Planning Commission

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

A RESOLUTION OF THE CUPERTINO CITY COUNCIL  
APPROVING A DEVELOPMENT PERMIT TO CONSTRUCT A MIXED-USED  
DEVELOPMENT CONSISTING OF 294 HOUSING UNITS (88  
ROWHOUSE/TOWNHOMES, 206 SENIOR APARTMENTS, OF WHICH INCLUDE 48  
SENIOR AFFORDABLE APARTMENTS AND 27 MEMORY CARE UNITS) AND  
20,000 SQUARE FEET OF COMMERCIAL SPACE, DENSITY BONUS AND DENSITY  
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SECTION I: PROJECT DESCRIPTION

Application No.: DP-2018-05  
Applicant: KT Urban (Mark Tersini)  
Property Owner: 190 West St. James, LLC  
Location: 21267 Stevens Creek Blvd. (APN #326-27-042, -043)

SECTION II: FINDINGS FOR DEVELOPMENT PERMIT:

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

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

WHEREAS, the City of Cupertino's Environmental Review Committee at its April 16, 2020 meeting reviewed the Final EIR consisting of the April 7, 2020 Public Review Draft EIR and Response to Comments, received public comments, and voted 5-0 that the project may have significant impacts to the environment requiring the preparation of an EIR for the City Council to consider approving; and

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

jurisdiction of the City that are identified in the EIR, and adopt the Mitigation Monitoring and Reporting Program for the Project (EA-2018-04); and

WHEREAS, on May 12, 2020 the Planning Commission recommended on a X-X vote that the City Council approve the Vesting Tentative Map (TM-2018-03), in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_\_), approve the Development Permit (DP-2018-05) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_\_), approve the Architectural and Site Approval Permit (ASA-2018-05) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_\_), approve the Use Permit (U-2019-03) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_\_), approve the Tree Removal Permit (TR-2018-22) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_\_), approve the Heart of the City Exception (EXC-2019-03) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_\_); and

WHEREAS, all necessary public notices having been given as required by the Procedural Ordinance of the City of Cupertino and the Government Code, and the Planning Commission held at least one public hearing in regard to this application, and on June 2, 2020, the City Council held a public hearing to consider the Development Permit; and

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

WHEREAS, on June 2, 2020, after consideration of substantial evidence contained in the entire administrative record, and prior to consideration of the Development Permit, the City Council adopted Resolution No. [####] certifying the EIR, adopting Findings, adopting and requiring as conditions of approval all of the mitigation measures for the Project which are within the responsibility and jurisdiction of the City that are identified in the EIR, and adopting the Mitigation Monitoring and Reporting Program for the Project; and

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

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

1. The proposed development, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

*The project is consistent with the General Plan and Zoning Ordinance and has been designed to be compatible with and respectful of adjoining land uses. Additionally, all mitigation measures that are within the responsibility and jurisdiction of the City have been adopted and will be made conditions of approval in order to mitigate potential impacts to a less than significant level. Therefore, the project will not be detrimental or injurious to properties or*

*improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.*

2. The proposed development will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan and the purpose of the City's zoning ordinances.

*The General Plan land use designation for the property is Commercial/Residential. The proposed use is consistent with the General Plan. The subject property is zoned as Planned General Commercial/Residential with a further designation as a Priority Housing Element Site. Projects that propose a density above the allocation provided in the Housing Element are required to obtain a Conditional Use Permit (CUP), which the project is seeking and subject to approval, see Condition of Approval (COA) #3 in Section III. The proposed development has met the applicable development standards of the Heart of the City Specific Plan and is requesting a density bonus and density bonus waivers for certain general plan development standards as permitted in the City of Cupertino's Municipal Code Chapter 19.56 Density Bonus. Therefore, the proposed development is consistent with the purpose of the City's zoning ordinance.*

3. The applicant has requested a density bonus. Pursuant to Cupertino Municipal Code Section 19.56.070, before approving an application that includes a request for density bonus, incentive, parking reduction and/or waiver, the decision-making body shall make the following findings, as applicable:

- a) A finding that the residential project is eligible for the density bonus and any incentives, parking reductions or waivers requested.

*The application is for a density bonus project that provides for approximately 20% of its base density as Below Market Rate Housing for seniors. As 12% of the units on-site will be limited to Very Low Income seniors, it is eligible for a 35% density bonus.*

- b) A finding that any requested incentive will result in identifiable, financially sufficient, and actual cost based on the financial analysis and documentation provided.

*No incentives are requested as part of the project, so the finding is not applicable.*

- c) If the density bonus is based all or in part on donation of land, a finding that all requirements included Section 19.56.030C have been met.

*The density bonus is not based on the donation of land, so the finding is not applicable.*

- d) If the density bonus is based all or in part on the inclusion of a childcare facility, a finding that all requirements included in Section 19.56.030 (D) have been met.

*The density bonus is not based on the inclusion of a child care facility, so the finding is not applicable.*

- e) If the density bonus or incentive is based on a condominium conversion, a finding that all the requirements included in Section 19.56.030 (E) have been met.

*The density bonus is not based on a condominium conversion, so the finding is not applicable.*

- f) If the incentive includes mixed-use development, a finding that all requirements including in Section 19.56.40 (B) (2) have been met.

*While the project is a mixed-use development, the density bonus is not based on the mixed-used development as an incentive, so the finding is not applicable.*

- g) If a waiver is requested, a finding that that the development standards for which the waivers are requested would have the effect of physically precluding the construction of the housing development with the density bonus and incentives or concessions permitted.

*The development standards for the slope line setback, height, and BMR dispersion would physically preclude the development. Age restricted senior housing has special needs and are governed by specific health codes that would require them to be consolidated in the same building(s). Height and slope setback limitations could affect the project by requiring a waiver for the common space requirement as well as a reduction in the size of the units. The elimination of the tower elements would not affect the density nor would physically preclude its development as those are purely architectural elements.*

- h) If a reduction in off-street parking standards for an eligible housing development is requested, a finding that all the applicable requirements in Section 19.56.040.C have been met [at least 11% very low income or 20% low income units; within one-half mile of a Major Transit Stop; and unobstructed Access to the Major Transit Stop.

*The project proposes that 12% of the units on-site will be limited to Very Low Income seniors; it is within ½ mile of a Major Transit Stop at the intersection of N. Stelling Road and Stevens Creek Boulevard, defined, as relevant for this project, as the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods; and residents will have unobstructed access to this major transit stop because they will be able to access it without encountering natural or constructed impediments.*

4. Since the applicable findings required above can be made, the decision-making body may deny an application for a waiver only if one of the following written findings as applicable to each type of application, supported by substantial evidence:
  - a) That the incentive or concession, or waiver would have an adverse impact on real property listed in the California Register of Historic Resources; or  
*There are no affected Historic Resources in the vicinity.*
  - b) That the incentive or concession, or waiver would have a specific, adverse impact upon public health or safety or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the residential project unaffordable to low- and moderate-income households. For the purpose of this subsection, "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the residential project was deemed complete; or  
*As evidenced by the findings and conclusions of the Environmental Impact Report, there exists no significant, quantifiable, direct, and unavoidable impacts, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the residential Project was deemed complete.*
  - c) That the incentive or concession, or waiver is contrary to state or federal law.  
*The requested waivers are not contrary to state or federal law.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the EIR and the Mitigation Monitoring and Reporting Program for the Project (EA-2018-04), subject to the conditions which are enumerated in this Resolution beginning on PAGE 3 thereof, and those contained in all other Resolutions approved for this Project,

The application for a Development Permit, Application No. DP-2018-05, is hereby approved, and that the subconclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application no. DP-2018-05 as set forth in the Minutes of the City Council Meeting of June 2, 2020, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPARTMENT.

1. **APPROVED EXHIBITS**

Approval is based on the plan set dated April 20, 2020 consisting of 34 sheets labeled as Westport Cupertino, G200 – G206C, A001-A222, VTM-1-VTM-6, and L100-L300, drawn by C2K, and Kimley Horn except as may be amended by conditions in this resolution.

2. **ACCURACY OF PROJECT PLANS**

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

3. **CONCURRENT APPROVAL CONDITIONS**

The conditions of approval contained in file nos. TR-2018-03, EXC-2019-03, TM-2018-03, ASA-2018-05, U-2019-03 and EA-2018-04 shall be applicable to this approval.

4. **ANNOTATION OF THE CONDITIONS OF APPROVAL**

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

5. **CONSULTATION WITH OTHER DEPARTMENTS**

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

6. **DEVELOPMENT ALLOCATION**

The applicant shall receive an allocation of 237 of the residential unit allocations for the Heart of the City Special Area.

7. **BICYCLE PARKING**

The applicant shall provide bicycle parking and bike racks for the proposed project in accordance with the City's Parking Regulations under Chapter 19.124 of the Cupertino Municipal Code.

## 8. **BMR UNIT DESIGN REQUIREMENTS**

The Applicant shall detail how the following requirements shall be met prior to building permit issuance:

- a) Senior BMR units shall be comparable to senior market-rate units in terms of unit type, number of bedrooms per unit, quality of exterior appearance and overall quality of construction.
- b) Senior BMR unit size should generally be representative of the unit sizes within the senior market-rate portion of the residential project.
- c) Interior features and finishes in the affordable units shall be durable, of good quality and consistent with the contemporary standards of new housing.
- d) Senior BMR units in Building 1 shall be dispersed throughout Building 1. Building 2 is comprised entirely of senior BMR units.

## 9. **BMR AGREEMENT**

Prior to the recordation of a final map or issuance of any building permit, an affordable housing agreement shall be recorded against the property. The affordable housing agreement shall include, but not be limited to the following:

- a) Total number of BMR units, type, location (site map), square footage, number of bedrooms, and construction scheduling of market-rate and BMR units;
- b) Provisions to ensure concurrent construction and completion of BMR units and market-rate units;
- c) Affordability levels for each BMR unit;
- d) Provisions for income certification and screening of potential occupants of BMR units;
- e) Restriction control mechanisms;
- f) Financing of ongoing administrative and monitoring costs;
- g) Other reasonably required provisions to implement the Affordable Housing Plan.

## 10. **BMR UNIT TERMS OF AFFORDABILITY:**

Prior to occupancy, the proposed project shall record covenants that require the units to be occupied at rents that are affordable to very low-income households for a period not less than 99 years from the date of first occupancy of the unit.

## 11. **PUBLIC ART REQUIREMENT**

Public art shall be provided for the project in accordance with General Plan Policy 2-66 and the City's Public Art Ordinance (Chapter 19.148 of the Cupertino Municipal Code). The minimum expenditure for the artwork, including, but not limited to design, fabrication, and installation is one (1) percent of the construction valuation for the first \$100 million on construction valuation, or 0.9% of



construction valuation for valuation in excess of \$100 million. The project pro forma shall be provided to the City to confirm the project budget. The public art plans (including location and design) shall be reviewed by the Fine Arts Commission during the building permit stage, in advance of final occupancy. Once approved by the Fine Arts Commission, the public artwork shall be installed to the satisfaction of the City prior to final occupancy. In the event the developer or property owner determines that the placement of artwork on a particular property may not be feasible, the developer or property owner may apply to the Fine Arts Commission for an in-lieu payment alternative as indicated in Chapter 19.148 of the Cupertino Municipal Code. The in lieu payment shall be 1.25% of the construction valuation.

## **12. DEMOLITION REQUIREMENTS**

All demolished building and site materials shall be recycled to the maximum extent feasible subject to the Building Official. The applicant shall provide evidence that materials were recycled prior to occupancy.

## **13. PRE-CONSTRUCTION MEETING AND CONSTRUCTION MANAGEMENT PLAN**

A demolition and construction management plan shall be submitted and reviewed prior to building permit issuance. Prior to commencement of construction activities, the applicant shall arrange for a pre-construction meeting with the pertinent departments (Building, Planning, and Public Works) to review the prepared construction management plan, to ensure that construction complies with the conditions of approval, staging of construction equipment is appropriate, tree protection measures are in place, public access routes are identified, and noise and dust control measures are established. The plan shall include but not be limited to the following:

- a. Compliance with CEQA Mitigation Measures
- b. Appropriate construction staging area
- c. Hours of construction
- d. Compliance with the City noise ordinance
- e. Best management practices
- f. Staging of construction equipment shall not occur within 150 feet of any residential property.
- g. Any other measures as determined to be appropriate by the Director of Community Development

**14. GRADING AND CONSTRUCTION HOURS AND NOISE LIMITS**

The applicant shall indicate compliance with the following grading and construction hours and noise limit requirements on all demolition, construction and grading permits, and in the construction management plan(s), unless otherwise indicated.

- a. All grading activities shall be limited to the dry season (April 15 to October 1), unless permitted otherwise by the Director of Public works.
- b. Construction hours and noise limits shall be compliant with all requirements of Chapter 10.48 of the Cupertino Municipal Code.
- c. Grading, street construction, underground utility and demolition hours for work done more than 750 feet away from residential areas 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. Grading, street construction, demolition or underground utility work within 750 feet of residential areas shall not occur on Saturdays, Sundays, holidays, and during nighttime period as defined in Section 10.48.053(b) of the Municipal Code.
- d. 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 as defined in Chapter 10.48 of the Municipal Code. Nighttime construction is allowed if compliant with nighttime standards of Section 10.48 of the Cupertino Municipal Code.
- e. Rules and regulations pertaining to all construction activities and limitations identified in this permit, along with the name and telephone number of an applicant appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
- f. The applicant shall be responsible for educating all contractors and subcontractors of said construction restrictions.

**15. GREEN BUILDING**

The project shall be constructed in accordance with the City's Green Building Ordinance (Chapter 16.58 of the Cupertino Municipal Code). The applicant shall obtain LEED Silver certification or an alternative reference standard in accordance with the ordinance since the building size is over 50,000 square feet. Third party LEED certification or alternative reference standard is required per the ordinance criteria.

**16. BUILDING AND FIRE CODE**

The applicant shall apply for and obtain building permits to allow the construction of the approved project. The applicant shall provide information and plans to allow the Building Official and the Fire Marshall or their designee that the

proposed plans comply with Building and Fire Codes in effect at the time of application for a building permit.

**17. HOMEOWNERS' ASSOCIATION**

The Homeowners Association documents shall be approved by the Director of Community Development and the City Attorney prior to recordation. A Home Owner's Association shall be formed to maintain the common areas of the property. The Conditions, Covenants and Restrictions (CC&Rs) shall be reviewed and approved by the City Attorney prior to recordation. The following terms shall be incorporated in to the Association's Conditions, Covenants and Restrictions:

- The members/board shall meet at a minimum of once/year
- The Association dues shall cover:
  - Maintenance of common area on the property including hardscaping, parking areas, landscaping and accessory items, such as trash bins/areas, tree grates, outside trash bins, fences, etc.
  - Site repair on a regular schedule, or as otherwise necessary, and hardscape/landscape renovation and replacement as necessary.
- Any changes to the CC&R's must be reviewed and approved by the City
- Disbanding of the Association shall require an amendment to the Development Permit.

**18. TRASH AND DELIVERY ACTIVITIES**

A detailed refuse and truck delivery plan shall be prepared by the applicant. The plan shall specify locations of trash facilities, refuse pick up schedules and truck delivery schedules and routes. All trash facilities must be screened and enclosed to the satisfaction of the Public Works Department. The final plan shall be submitted to the City for review and approval prior to issuance of building permits.

**19. EXTERIOR BUILDING MATERIALS/TREATMENTS**

The final building exterior plan shall closely resemble the details shown on the original approved plans. Final building exterior treatment plan (including but not limited to details on exterior color, materials, architectural treatments, doors, windows, lighting fixtures, and/or embellishments) shall be reviewed and approved by the Director of Community Development prior to issuance of building permits to ensure quality and consistency. Any exterior changes determined to be substantial by the Director of Community Development shall either require a modification to this permit or a new permit based on the extent of the change.

**20. SITE LIGHTING**

All new lighting must conform to the standards in the Parking Regulations Ordinance, and the final lighting plan (including a detailed photometric plan) shall be reviewed and approved by the Director of Community Development prior to building permit issuance. A report from a licensed lighting engineer may be required to confirm all exterior lighting throughout the site complies with the City's Ordinance.

**21. ROOFTOP EQUIPMENT SCREENING**

All mechanical and other equipment on the building or on the site shall be screened so they are not visible from public street areas or adjoining developments. The height of the screening shall be taller than the height of the mechanical equipment that it is designed to screen. A line of sight plan may be required to demonstrate that the equipment will not be visible from any public right-of-way. The location of the equipment and necessary screening shall be reviewed and approved by the Director of Community Development prior to issuance of building permits.

**22. RESTAURANT ODOR ABATEMENT**

Buildings 1 and 2 (mixed-use buildings) shall be designed to ensure that future restaurants can install odor abatement systems without major building modifications. This shall be demonstrated on the plans prior to issuance of building permits.

All future new restaurants shall install odor abatement systems to reduce odor impacts from the restaurants to the adjacent community. The odor abatement systems shall be installed prior to final occupancy of the associated restaurant(s). Detailed plans shall be reviewed and approved by the Director of Community Development prior to issuance of building permits.

**23. SIGN PROGRAM**

A sign program is required for this project. The sign program shall be approved by the Director of Community Development prior to issuance of sign permits.

**24. SITE IMPROVEMENTS**

All proposed site improvements shall be completed prior to final occupancy of any structures approved in conjunction with the project.

**25. NOISE LEVELS AND ABATEMENT**

Project use shall comply with the City's Community Noise Control Ordinance at all times. Should the project exceed any of the stipulated maximum noise levels

outlined in the City's Community Noise Control Ordinance, a report identifying noise attenuation measures by a certified acoustical engineer may be required to be submitted at the applicant's expense, all or some of which may have to be implemented by the applicant, to the satisfaction of the Director of Community Development.

**26. ONGOING OBLIGATIONS**

The applicant shall be responsible to implement the ongoing obligation as described in the Environmental Impact Report.

**27. INDEMNIFICATION**

The applicant agrees that, to the fullest extent permitted by law, the applicant shall indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, or proceeding brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant related to any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized for the project, 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 (thirty) days following receipt of invoices from City. Such attorneys' fees and costs shall include amounts paid to the City's outside counsel and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City. The applicant shall likewise indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties.

The Applicant further agrees to defend, indemnify and hold harmless the indemnified parties for all cost incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review if the applicant desires to continue to pursue the project.

**28. 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.

#### SECTION IV: CONDITIONS ADMINISTERED BY THE PUBLIC WORKS DEPARTMENT

##### **1. STREET IMPROVEMENTS & DEDICATION**

Provide street dedication in fee title and frontage improvements along the project frontage to the satisfaction of the Director of Public Works. The street improvement plans must be submitted and approved prior to the Final Map approval.

Street improvements may include, but are not limited to, sidewalk, curb & gutter, ADA ramps, city standard driveways, storm drain and sanitary sewer system, street tree installations, street lights (new and/or relocate), bus stop, concrete bus pad, bus shelter and other related bus improvements, upgrade the existing pedestrian warning device at the mid-block crossing on Mary Avenue to rectangular rapid flashing beacons (RRFB), pavement, signs and pavement markings. And, installation of a Class IV Separated Bikeway between Mary Ave and Hwy 85 NB on-ramp per the approved Cupertino Bicycle Transportation Plan Implementation along project frontage on Stevens Creek Blvd. The installation will require traffic signal modifications at the intersections of Stevens Creek Blvd & Mary Ave and Stevens Creek Blvd & Hwy 85. The Applicant will be required to coordinate with Caltrans, all work located within Caltrans' jurisdiction.

At the street improvement plan stage, the proposed bus stop design (shown on VTM-6) on Stevens Creek Blvd., west of Mary Ave. shall be further reviewed and the final design must be approved by both VTA and City of Cupertino prior to issuance of Final Map. The City may require a bus duckout. As result, an additional easement may be required for proposed bus shelter.

##### **2. TRANSPORTATION**

Prior to the Final Map approval, the Applicant shall mitigate any traffic impacts as the result of the environmental impact study. And, the project shall implement additional Bicycle Transportation Plan improvements in the vicinity of the property. The value of the improvements shall be equivalent to the Transportation Impact Fee required of the project and shall be provided in-lieu of the fee. The improvements shall include construction of a portion of the separated bicycle lanes along the south side of Stevens Creek Blvd. between Hwy 85 & Mary Ave, or other related work as determined by the Director of Public Works.

**3. PEDESTRIAN AND BICYCLE IMPROVEMENTS**

The Applicant shall provide pedestrian and bicycle related improvements, including but not limited to, Class I pedestrian and bike paths and bicycle racks throughout the project site, and RRFB consistent with the Cupertino Bicycle Transportation Plan and the Pedestrian Transportation Guidelines, and as approved by the Director of Public Works.

**4. FINAL MAP**

Prior to recordation of final map, all building(s) that straddle the new property line must be removed.

Project is required to dedicate Public Access Easements to facilitate on-site bike and pedestrian paths as identified in the Cupertino Bicycle Transportation Plan and Pedestrian Transportation Plan. Public Access Easements will be required at the northwestern and southwestern property corners, along the west side of the project site connecting north to south between Stevens Creek Boulevard and Mary Avenue.

**5. GATEWAY MONUMENT SIGN**

At street improvement plan stage, the Applicant shall fabricate and install a gateway monument sign in the median of Stevens Creek Boulevard, east of Hwy 85. The precise location, design and size of the gateway monument sign shall be to the satisfaction of the Director of Public Works.

**6. STREET LIGHTING INSTALLATION**

At street improvement plan stage, street lighting shall be designed and installed as approved by the Director of Public Works. 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.

**7. GRADING**

Grading shall be performed to the satisfaction of the Director of Public Works 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.

**8. STORM DRAINAGE**

Prior to the Final Map approval, the Applicant shall address and mitigate the storm drainage impact as the result of the environmental impact study.

Drainage shall be provided to the satisfaction of the Director of Public Works. 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, and Low Impact Development measures to reduce the amount of runoff from the site and improve water quality.

All storm drain inlets shall be clearly marked with the words “No Dumping – Flows to Creek” using permanently affixed metal medallions or equivalent, as approved by the Environmental Programs Division.

Project will be required to install stormwater trash capture facilities that meet the requirements established by Municipal Regional Permit. Trash capture devices shall be located onsite and shall be situated so as to ensure trash carried by storm water is collected onsite and does not flow directly to the City storm drain system. Applicant’s engineer shall design and size the trash capture devices to ensure that in the event the devices cause an obstruction to onsite stormwater flow, onsite flooding does not occur.

#### **9. C.3 REQUIREMENTS**

C.3 regulated improvements are required for all projects creating and/or replacing 10,000 S.F. or more of impervious surface (collectively over the entire project site). The developer shall reserve a minimum of 4% of developable surface area for the placement of low impact development measures, for storm water treatment, unless an alternative storm water treatment plan, that satisfies C.3 requirements, is approved by the Director of Public Works.

The Applicant must include the use and maintenance of site design, source control and storm water treatment Best Management Practices (BMPs), which must be designed per approved numeric sizing criteria. 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.

All storm water management plans are required to obtain certification from a City approved third party reviewer.



**10. SUBDIVISION AGREEMENT**

The project developer shall enter into a subdivision 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 under grounding of utilities. Said agreement shall be executed prior to recordation of Final Map.

**Fees:**

- |                                |   |
|--------------------------------|---|
| a. Checking & Inspection Fees: | Per current fee schedule (\$7,389.00 or 6% of improvement costs)  |
| b. Grading Permit:             | Per current fee schedule (\$3,059.00 or 6% of improvement costs)  |
| c. Traffic Impact Fee          | Per current fee schedule (Multi-Family - \$3,868/unit, Single-Family - \$6,238/unit, and Commercial -\$10.04/sf)                    |
| d. Storm Drainage Fee:         | Per current fee schedule (\$9,566 per AC)   |
| e. Park Fee:                   | Per current fee schedule<br>Senior - \$30,000/DU<br>Other Residential – \$105,000, \$60,000 and/or \$54,000/DU depending on density |
| f. Map Review Fee:             | Per current fee schedule (\$9,826)  |
| g. Storm Management Plan Fee:  | Per current fee schedule (\$1,396)<br>By Developer  |

**Bonds:**

Faithful Performance Bond: 115% 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.

**11. TRASH, RECYCLING AND COMPOST ENCLOSURES**

Trash enclosure plans must be designed in accordance with the City's "Public Works Guidelines" posted at [www.cupertino.org/nowaste](http://www.cupertino.org/nowaste), and to the satisfaction of the Environmental Programs Manager. Clearance by the Public Works Department is required prior to obtaining a building permit. (CMC 9.18.210 H & K)

Applicant shall enter into an agreement with the City that indemnifies and holds harmless both the City and the refuse and recycling collection company (Recology) from and against any harm, damage or maintenance that may occur or become necessary to onsite paving stone driveway surfaces.

**12. 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.

**13. 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 Director of Public Works.

**14. TRANSFORMERS & CABINETS**

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.

**15. 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.

**16. 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.

**17. 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.

**18. EROSION CONTROL PLAN**

Developer 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.

**19. 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.

**20. TRAFFIC CONTROL PLAN**

The developer must submit a traffic control plan by a Registered Traffic Engineer to be approved by the City. The plan shall include a temporary traffic control plan for work in the right of way as well as a routing plan for all vehicles used during construction. All traffic control signs must be reviewed and approved by the City prior to commencement of work. The City has adopted Manual on Uniform Traffic Control Devices (MUTCD) standards for all signage and striping work throughout the City.

**21. STREET TREES**

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

**22. FIRE PROTECTION**

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

**23. 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).

**24. FIRE HYDRANT**

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

**25. 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.

**26. 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.

**27. SANITARY DISTRICT**

A letter of clearance for the project shall be obtained from the Cupertino Sanitary District prior to recordation of Final Map or issuance of building permits, whichever comes first issuance of building permits.

**28. UTILITY EASEMENTS**

Clearance approvals from the agencies with easements on the property (including PG&E, AT&T, and California Water Company, and/or equivalent agencies) will be required prior to recordation of Final Map or issuance of building permits, whichever comes first. Provide letters from PG&E and AT&T to state their concurrence with the proposed easement relocation.

**SECTION V: CONDITIONS ADMINISTERED BY THE SANTA CLARA COUNTY FIRE DEPARTMENT**

**1. FIRE SPRINKLERS REQUIRED:**

Approved automatic sprinkler systems in new and existing buildings and structures shall be provided in the locations described in this Section or in Sections 903.2.1 through 903.2.18 whichever is the more restrictive. For the purposes of this section, firewalls used to separate building areas shall be constructed in accordance with the California Building Code and shall be without openings or penetrations. NOTE: The owner(s), occupant(s) and any contractor(s) or

subcontractor(s) are responsible for consulting with the water purveyor of record in order to determine if any modification or upgrade of the existing water service is required. A State of California licensed (C-16) Fire Protection Contractor shall submit plans, calculations, a completed permit application and appropriate fees to this department for review and approval prior to beginning their work. CFC Sec. 903.2 as adopted and amended by CMC.

2. **STANDPIPES REQUIRED**

Standpipe systems shall be provided in new buildings and structures in accordance with this section. Fire hose threads used in connection with standpipe systems shall be approved and shall be compatible with fire department hose threads. The location of fire department hose connections shall be approved. Standpipes shall be manual wet type. In buildings used for high-piled combustible storage, fire hose protection shall be in accordance with Chapter 32. Installation standard. Standpipe systems shall be installed in accordance with this section and NFPA 14 as amended in Chapter 47. CFC Sec. 905

3. **WATER SUPPLY REQUIREMENTS**

Potable water supplies shall be protected from contamination caused by fire protection water supplies. It is the responsibility of the applicant and any contractors and subcontractors to contact the water purveyor supplying the site of such project, and to comply with the requirements of that purveyor. Such requirements shall be incorporated into the design of any water-based fire protection systems, and/or fire suppression water supply systems or storage containers that may be physically connected in any manner to an appliance capable of causing contamination of the potable water supply of the purveyor of record. Final approval of the system(s) under consideration will not be granted by this office until compliance with the requirements of the water purveyor of record are documented by that purveyor as having been met by the applicant(s). 2016 CFC Sec. 903.3.5 and Health and Safety Code 13114.7.

4. **TIMING OF INSTALLATION**

When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when approved alternative methods of protection are provided. Temporary street signs shall be installed at each street intersection when construction of new roadways allows passage by vehicles in accordance with Section 505.2 CFC Sec. 501.4

5. **REQUIRED FIRE DEPT. ACCESS**

Commercial and Industrial Developments

- a. Buildings exceeding three stories or 30 feet in height. Buildings or facilities exceeding 30 feet (9144 mm) or three stories in height shall have a least two means of fire apparatus access for each structure.
- b. Buildings exceeding 62,000 square feet in area. Buildings or facilities having a gross building area of more than 62,000 square feet (5760 mm) shall be provided with two separate and approved fire apparatus access roads.
- c. Exception: Projects having a gross building area of up to 124,000 square feet (11520 mm) that have a single approved fire apparatus access road when all buildings are equipped throughout with approved automatic sprinkler systems. Multi-Family Residential Developments (R-1 & R-2 occupancies) 1. Multi-family residential projects having more than 100 dwelling units shall be equipped throughout with two separate and approved fire apparatus access roads. CFC Sec. Chp. 5 as adopted and amended by CUPMC.

**6. REQUIRED AERIAL ACCESS**

- a. Where required: Buildings or portions of buildings or facilities exceeding 30 feet (9144 mm) in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads capable of accommodating fire department aerial apparatus. Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway.
- b. Width: Fire apparatus access roads shall have a minimum unobstructed width of 26 feet (7925) in the immediate vicinity of any building or portion of building more than 30 feet (9144 mm) in height.
- c. Proximity to building: At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet (4572) and a maximum of 30 feet (9144mm) from the building, and shall be positioned parallel to one entire side of the building, as approved by the fire code official. *Access roadway and fire lane noted on Sheet C4 within proximity of structure exceeding 30-feet in height is located a maximum distance of 30-feet away from one long side.*

**7. FIRE APPARATUS (ENGINE) ACCESS ROADS REQUIRED:**

Provide access roadways with a paved all weather surface, a minimum width of 26 feet, vertical clearance of 13 feet 6 inches, minimum circulating turning radius of 42 feet and 23 feet inside, and a maximum slope of 15%. Installations shall conform to Fire Department Standard Details and Specifications sheet A-1.

**8. FIRE DEPARTMENT (ENGINE) ROADWAY TURNAROUND**

Provide an approved fire department engine roadway turnaround with a minimum radius of 36 feet outside and 23 feet inside. Installation shall conform to Fire Department Standard Details and Specification sheet A-1. Cul-de-sac. CFC

Sec. 503 as adopted and amended by CUPMC. Circulating fire lane shown on Sheet C4 with conforming radii of turns for an aerial apparatus proximal to the structure exceeding 30-feet in height.

9. **GROUND LADDER ACCESS**

Ground-ladder access rescuer from second and third floor rooms shall be made possible for fire department operations. With the climbing angle of seventy-five degrees maintained, an approximate walkway width along either side of the building shall be no less than seven feet clear. Landscaping shall not be allowed to interfere with the required access. CFC Sec. 503 and 1029 NFPA 1932 Sec. 5.1.8 through 5.1.9.2. Required for all residential townhouses/rowhouses and each emergency egress window.

10. **FIRE ALARM REQUIREMENTS**

Refer to CFC Sec. 907 and the currently adopted edition of NFPA 72.

11. **EMERGENCY RADIO RESPONDER COVERAGE:**

Emergency responder radio coverage in new buildings. All new buildings shall have

Approved radio coverage for emergency responders within the building based upon the existing coverage levels of the public safety communication systems of the jurisdiction at the exterior of the building. This section shall not require improvement of the existing public safety communication systems. Refer to CFC Sec. 510 for further requirements.

12. **CONSTRUCTION SITE FIRE SAFETY**

All construction sites must comply with applicable provisions of the CFC Chapter 33 and our Standard Detail and Specification SI-7. Provide appropriate notations on subsequent plan submittals, as appropriate to the project. CFC Chp. 33.

13. **ADDRESS IDENTIFICATION**

New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Where required by the fire code official, address numbers shall be provided in additional approved locations to facilitate emergency response. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall be a minimum of 4 inches (101.6 mm) high with a minimum stroke width of 0.5 inch (12.7 mm). Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole or other

sign or means shall be used to identify the structure. Address numbers shall be maintained. CFC Sec. 505.1

**14. PUBLIC FIRE HYDRANT(S) REQUIRED**

Provide public fire hydrant(s) at location(s) to be determined jointly by the Fire Department and San Jose Water Company. Maximum hydrant spacing shall be 500 feet, with a minimum single hydrant flow of 6500 GPM at 20 psi, residual. Fire hydrants shall be provided along required fire apparatus access roads and adjacent public streets. CFC Sec. 507, and Appendix B and associated Tables, and Appendix C. *All existing and new required fire hydrants per above spacing and fire flow requirement are identified on Sheet C4 with note indicating the FDC for each building shall be within 100' of a fire hydrant.*

**15. TURN RADIUS (CIRCULATING):**

The minimum outside turning radius is 42 feet for required access roadways. Greater radius up to 60 feet may be required where the Fire Department determines that Ladder Truck access is required. Circulating refers to travel along a roadway without dead ends.

**SECTION VI: CONDITIONS ADMINISTERED BY THE ENVIRONMENTAL SERVICES DEPARTMENT**

**1. COMPREHENSIVE NARRATIVE WASTE MANAGEMENT PLAN**

The comprehensive narrative waste management plan for the project is required. This plan will serve as a companion document to the plan sheets provided to illustrate how garbage, organics, recyclables, and used cooking oil will be moved, stored, and serviced on the property. It will provide support that sufficient space is provided related to future occupant convenience and waste hauler circulation/access. The plan should include at a minimum, the following:

- Identification of each building and their respective trash room.
- How is waste moved from the retail areas that do not have a trash room within their building?
- How is waste collected by the waste hauler from the trash rooms for buildings 1 and 2?
- The Recology will need a minimum of 22 feet of overhead clearance to service containers at any loading dock. If the compactors are roll-off type, a minimum horizontal clearance of 50 feet is required to access containers. Please identify these areas.



- All front end loader compactor bins are required to be placed out in a collection area where Recology trucks can adequately service them. Please identify this area.
- Confirmation that the loading dock and trash room will be shared in the retail space.
- If the space is shared, what is the area (s.f.) designated for all waste containers (see below)?
- Types of containers (bins/compactors) designated for all trash rooms, the size of each, the number of each. Used cooking oil tallow bins will be required in all trash rooms in addition to the garbage, organics, and recycling bins.
- Are all trash rooms and compactor areas at level grade or subterranean?
- In the multi-floor buildings, is there a trash room on each level, will trash chutes be used, other? All three waste streams must be provided for on each floor.
- How is waste from townhouses and rowhouses stored and collected?
- Will the individual townhome/rowhouse occupants individually subscribe for waste service for their carts?
- If wheeled carts, where are they collected, and where do residents store them when not being serviced.
- If carts are intended to be stored in the garage, include the area (s.f) each unit will have in the garage for all three carts. If garage area is yet to be determined, please indicate that sufficient space will be provide to storage three waste carts and adequate interior garage parking.
- Explain how waste is collected from the four townhouse buildings adjacent to Stevens Creek Boulevard. Identify the staging area on the plans if residents will be staging their carts on the trash route.

## 2. **WASTE TRIO**

Nine permanently installed waste trios including cigarette butt urns which are designed for exterior use are required and must be included on the plans. Waste trios are outdoor receptacles positioned side-by-side which are clearly labeled recycling, compost, and landfill and include covers to prevent rainwater intrusion. An example of waste trios may be viewed at the following: [www.cupertino.org/greendev](http://www.cupertino.org/greendev) . The trios must be situated on private property adjacent to the sidewalk for patron and pedestrian use. Trios should be located as follows:

- Central Green (3): west and east ends of the townhouse green and near the parking area adjacent to the triangular central green

### 3. **STORM DRAIN INLETS**

The State Water Boards have updated their list of certified devices since the first comments. Please note that all devices/systems must be selected from the certified full capture system list as follows:

[https://www.waterboards.ca.gov/water\\_issues/programs/stormwater/docs/trash\\_implementation/a1\\_certified\\_fcd\\_rev\\_27jun18.pdf](https://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/trash_implementation/a1_certified_fcd_rev_27jun18.pdf)

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 2nd day of June, 2020, by the following vote:

#### Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

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