

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

DRAFT RESOLUTION

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
CUPERTINO RECOMMENDING APPROVAL OF A USE PERMIT TO
ALLOW A MIXED USE DEVELOPMENT ON A PRIORITY HOUSING
SITE THAT EXCEEDS THE NUMBER OF RESIDENTIAL UNITS
DESIGNATED FOR THAT PRIORITY HOUSING SITE AS WELL AS
ALLOWING MEMORY CARE UNITS WITHIN A PORTION OF A
SENIOR HOUSING FACILITY LOCATED AT 21267 STEVENS CREEK
BOULEVARD (APN: 326-27-042, -043)

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

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

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

ATTEST:

APPROVED:

Piu Ghosh
Planning Manager

Kitty Moore
Chair, Planning Commission

RESOLUTION NO. _____

A RESOLUTION OF THE CUPERTINO CITY COUNCIL
 APPROVING A USE PERMIT TO ALLOW A MIXED USE
 DEVELOPMENT ON A PRIORITY HOUSING SITE THAT EXCEEDS
 THE NUMBER OF RESIDENTIAL UNITS DESIGNATED FOR THAT
 PRIORITY HOUSING SITE AS WELL AS ALLOWING MEMORY CARE
 UNITS WITHIN A PORTION OF A SENIOR HOUSING FACILITY
 LOCATED AT 21267 STEVENS CREEK BOULEVARD (APN: 326-27-042, -
 043)

SECTION I: PROJECT DESCRIPTION

Application No.: U-2019-03
 Applicant: KT Urban (Mark Tersini)
 Property Owner: 190 West St. James, LLC
 Location: 21267 Stevens Creek Blvd. (APN #326-27-042, -043)

SECTION II: FINDINGS FOR A USE PERMIT:

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

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

WHEREAS, the City of Cupertino's Environmental Review Committee at its April 16, 2020 meeting reviewed the Final EIR consisting of the April 7, 2020 Public Review Draft EIR and Response to Comments, received public comments, and voted 5-0 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 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 Vesting Tentative Map (TM-2018-03) 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. _____), approve the Tree Removal Permit (TR-2018-22) 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 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 Use Permit; and

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

- a) 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;

Given that the project is consistent with the densities and land uses as allowed in the General Plan, Zoning Ordinance, and Heart of the City Specific Plan, the project 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.

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

The proposed development is in conformance with the Cupertino General Plan, Municipal Code, and Heart of the City Specific Plan Requirements since the Project is consistent with the

existing land use designations (Commercial, Residential), Municipal Code requirements, including but not limited to, parking regulations, open space, density. Further, memory care facilities and similar residential care uses are ancillary to senior housing developments as evident by similar developments in the City such as The Forum and Sunnyview.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the EIR and the Mitigation Monitoring and Reporting Program for the Project (EA-2018-04), subject to the conditions which are enumerated in this Resolution beginning on PAGE 2 thereof, and those contained in all other Resolutions approved for this Project,

The application for a Use Permit, Application No. U-2019-03, is hereby approved, and that the subconclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application no. U-2019-03 as set forth in the Minutes of the City Council Meeting of June 2, 2020 Meeting, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval is based on the plan set dated 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, DP-2018-05 and EA-2018-04 shall be applicable to this approval.

4. ANNOTATION OF THE CONDITIONS OF APPROVAL

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

5. RESIDENTIAL CARE FACILITY

The memory care facility shall remain in operation in accordance with the City of Cupertino's Municipal Code land use restrictions for the Residential Care Use Class, including but limited any required State and County licensing for its operation.

The memory care facility shall be limited to providing twenty-four-hour-a-day nonmedical residential living accommodations, in exchange for payment of money or other consideration, where the duration of tenancy is determined, in whole or in part, by the individual resident's participation in group or individual activities such as counseling, recovery planning, medical or therapeutic assistance.

6. USE APPROVAL AND PROJECT AMENDMENTS

Approval is hereby granted to allow a residential density above the allocation for a Priority Housing Site and for a memory care unit in Building 1 as labeled on the project plans. The Planning Commission shall review amendments to the project considered major by the Director of Community Development.

7. 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.

8. 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.

9. 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.

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

