

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

The Planning Commission recommends that the City Council approve the Vesting Tentative Map, in substantially similar form to the Draft Resolution attached hereto as Exhibit TM.

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

SECTION I: PROJECT DESCRIPTION

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

SECTION II: FINDINGS FOR A TENTATIVE MAP:

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

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

WHEREAS, the City of Cupertino's Environmental Review Committee at its April 16, 2020 meeting reviewed the Final EIR consisting of the April 7, 2020 Public Review Draft EIR and Response to Comments, received public comments, and voted 5-0 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 Vesting Tentative Map, the City Council adopted Resolution No. [####] certifying the EIR, adopting and requiring as conditions of approval all of the mitigation measures for the Project which are within the responsibility and jurisdiction of the City that are identified in the EIR, and adopting the Mitigation Monitoring and Reporting Program for the Project; and

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

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

- a. That the proposed subdivision map is consistent with the City of Cupertino General Plan.

The subject property is consistent with the General Plan since the property is permitted to have up to 30 dwelling units an acre. The proposed development is consistent with the intent of the policies of the General Plan for a high density mixed-use development on this site.

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

The off-site improvements are consistent with the City's General Plan policies related to pedestrian and bicycle safety etc. by improving Stevens Creek Boulevard, minimizing curb-cuts, and requiring an urban canopy within the public right-of-way.

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

The proposed subdivision is compatible with the adjoining land uses and no physical constraints are present that would conflict with anticipated land use development. There are no topographical anomalies that differentiate this property from adjacent properties. The site is located on the valley floor, as well as not listed within any environmentally sensitive zone.

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

The subject property is physically suitable in size and shape in conformance to development standards and is appropriately configured to accommodate a multi-unit mixed-used development.

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

The proposed subdivision design and improvements are not likely to cause serious public health problems nor substantially injure fish and wildlife or their habitat because the property is a developed site and located in an urbanized area where residential land use is allowed.

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

The proposed development is consistent with the intent of the policies of the General Plan for a high density mixed-use development on this site, and the on-site and off-site improvements improve neighborhood walkability through improved sidewalk construction with size-appropriate driveway cuts and street and private trees planting.

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

No easement or right-of-way exists currently that would be impeded or conflict with the proposed subdivision.

NOW, THEREFORE, BE IT RESOLVED:

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

The application for a Vesting Tentative Map, Application No. TM-2018-03, is hereby approved, and that the subconclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application No. TM-2018-03 as set forth in the Minutes of the City Council Meeting of 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.

No commercial condominiums are approved.

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, U-2019-03, ASA-2018-05, DP-2018-05 and EA-2018-04 shall be applicable to this approval.

4. ANNOTATION OF THE CONDITIONS OF APPROVAL

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

5. RESIDENTIAL CONDOMINIUM MAP REQUIRED

Prior to the issuance of building permits, the applicant must record a Final Condominium Map indicating no more than 88 residential condominiums with the County of Santa Clara after approval by the Director of Public Works.

6. 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.

7. 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.

8. 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.

CITY ENGINEER'S CERTIFICATE OF
ACCEPTANCE OF ENGINEERING/SURVEYING CONDITIONS
(Section 66474.18 California Government Code)

I hereby certify that the engineering and surveying conditions specified in Section IV. of this Resolution conform to generally accepted engineering practices.

Chad Mosley, Assistant Director of Public Works
City Engineer CA License 66077

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:

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