

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

DRAFT RESOLUTION

OF THE ADMINISTRATIVE HEARING OFFICER OF THE CITY OF CUPERTINO  
TO ALLOW THE SUBDIVISION OF AN EXISTING 32,316 SQ. FT. (0.74 ACRE)  
RESIDENTIAL LOT INTO THREE RESIDENTIAL LOTS RANGING BETWEEN 9,699  
SQ. FT. AND 11,928 SQ. FT. LOCATED AT 11226 BUBB ROAD (APN 342-29-036)

---

SECTION I: PROJECT DESCRIPTION

Application No.: TM-2018-01  
Applicant: Ray Chen (Lands of Qi)  
Location: 11226 Bubb Road (APN 362-06-036)

SECTION II: FINDINGS

WHEREAS, the City of Cupertino received an application to subdivide an approximately 0.74-acre lot into three parcels of approximately 9,746 square feet, 9,699 square feet, and 11,928 square feet; and

WHEREAS, prior to the Administrative Hearing the Environmental Review Committee heard the item on January 21, 2021 during which it reviewed the Draft Mitigated Negative Declaration, received public comments, and recommended adoption of a Mitigated Negative Declaration on a 4-0-1 (Fung absent) vote; and

WHEREAS, on February 11, 2021 the Administrative Hearing Officer adopted the Initial Study/Draft MND as the Final Initial Study/Mitigated Negative Declaration for the project and adopted all the identified mitigation measures as conditions of approval for the project; and

WHEREAS, the necessary notices have been given in accordance with the Procedural Ordinance of the City of Cupertino, and the Administrative Hearing Officer has held one or more Public Hearings on this matter; and

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

WHEREAS, the Administrative Hearing Officer finds:

- 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 three dwelling units based on its land use designation of Low Density (1-5 DU/Ac.). The lot acreage will be consistent with the underlying single family residential standards proposed with a minimum lot square footage of 7,500 square feet. Adjacent land uses include similar developments. The proposed subdivision is compatible with the adjoining land uses and no physical constraints are present that would conflict with anticipated land use development.*

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

*The off-site improvements proposed with the project are identical to the existing improvements adjacent to the subject site. These are consistent with the City's General Plan policies related to pedestrian safety etc. by separating sidewalks from the street, 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 and the proposed three lot subdivision is typical of properties in the neighborhood.*

- 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 single-family dwelling units that comply with development standards in Chapter 19.28.*

- e. 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.

*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, not in an ecologically sensitive area or the hillsides, but in an urbanized suburban 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 existing adjacent residential development, and the on-site and off-site improvements improve neighborhood walkability through new detached 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, subject to the conditions which are enumerated in this Resolution beginning on Page 2 thereof, the application for a Tentative Map, Application no. TM-2018-01, is hereby approved; and

That the subconclusions upon which the findings and conditions specified in this Resolution are based and contained in the Public Hearing record concerning Application no. TM-2018-01 as set forth in the Minutes of Administrative Hearing Meeting of February 11, 2021, 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 entitled, "Tentative Map Three New Single Family Lot Subdivision and Street Dedication In Fee, 11226 Bubba Rd., Cupertino, CA 95014," drawn by SMP Engineers, dated May 21, 2020, including six sheets labeled T-1, and C-1 through C-5; 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 EA-2018-02 shall be applicable to this approval.

4. DEVELOPMENT ALLOCATION

The project is granted a development allocation of two units from the Citywide allocation.

5. BELOW MARKET RATE HOUSING PROGRAM

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. These fees will be assessed at the time of Building permit issuance for the net new residential unit and any proposed accessory dwelling units.

6. GRADING AND CONSTRUCTION HOURS AND NOISE LIMITS

- 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 the nighttime period as defined in 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. Night time 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.

The applicant shall **annotate all permit plans** with the above requirements and shall comply with the above grading and construction hours and noise limit requirements unless otherwise indicated.

7. DUST CONTROL

The following construction practices shall be implemented during all phases of construction for the proposed project to prevent visible dust emissions from leaving the site:

- a. Water all exposed surfaces areas (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- b. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- e. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- f. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- g. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- h. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

The applicant shall incorporate the City's construction best management practices into the building permit plan set prior to any grading, excavation, foundation or building permit issuance.

8. CONSTRUCTION MANAGEMENT PLAN

Final map improvement plans shall include a construction management plan detailing how construction activities will be conducted. The plan shall address, but not be limited to the following activities:

- a. Construction staging area (shall not occur within 15 feet of neighboring residential property lines)
- b. Construction schedule and hours
- c. Construction phasing plan, if any
- d. Contractor parking area

- e. Tree preservation/protection plan
- f. Site dust, noise and storm run-off management plan
- g. Emergency/complaint and construction site manager contacts

9. DEMOLITION OF STRUCTURES

**Prior to recordation of the final map**, the applicant shall demolish and remove all structures on the property. All demolished buildings and site materials shall be recycled to the maximum extent feasible subject to the Building Official. The applicant shall provide evidence that materials will be recycled prior to issuance of demolition permit.

10. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is responsible for consulting 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.

11. EXPIRATION

The approval or conditional approval of the Tentative Map Subdivision shall expire twenty four (24) months from the date of Administrative Hearing approval. An extension or extensions may be approved as provided in Section 18.20.080.

12. INDEMNIFICATION AND LIMITATION OF LIABILITY

As part of the application, to the fullest extent permitted by law, the applicant shall agree to 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 (collectively referred to as "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. The indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. 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 agree to 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 shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs 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.

The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

### 13. 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 DEPT.

### 1. TRAFFIC IMPACT FEES

The Project is subject to the payment of Transportation Impact Fees under City's Transportation Impact Fee Program (Chapter 14.02 of the Cupertino Municipal Code).

### 2. PARKS

The residential project is subject to the payment of park fees in-lieu of park land dedication under City's Park Land Dedication Fee (Chapter 13.08 of the Cupertino Municipal Code).

3. PARCEL MAP

Prior to approval of the Building permit, a parcel map will be required. Existing building shall be demolished prior to parcel map recordation as it cannot straddle between parcel lines.

4. STREET IMPROVEMENTS & DEDICATION

Provide a street dedication in fee title and frontage improvements along the project to the satisfaction of the Director of Public Works. Street improvement, grading and drainage plans must be completed and approved prior to Parcel map approval.

Street improvements may include, but not be limited to, new sidewalk, ADA ramp, curb & gutter, driveways, sewer laterals, street tree installations, pavement, and underground utilities.

5. PEDESTRIAN AND BICYCLE IMPROVEMENTS

Developer shall provide pedestrian and bicycle related improvements (eg. walkway and bicycle racks, etc.) consistent with the Cupertino Bicycle Transportation Plan and the Pedestrian Transportation Guidelines, and as approved by the Director of Public Works.

6. GRADING & DRAINAGE

Grading and drainage shall be as approved and required by the Director of Public Works in accordance with Chapter 16.08 of the Cupertino Municipal Code. 401 Certifications and 404 permits maybe required.

Additional comments will be provided and shall be incorporated prior to Parcel Map approval.

7. 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 developer 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.

8. SUBDIVISION 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 under grounding of utilities. Said agreement shall be executed prior to Parcel Map approval.

Fees:

- |                                |  |
|--------------------------------|--|
| a. Checking & Inspection Fees: | Per current fee schedule: \$891  |
| b. Grading Permit:             | Per current fee schedule: \$3,059.00 or 6% of improvement costs        |
| c. Parcel Map Fee:             | Per current fee schedule: \$5,985                                      |
| d. Storm Drainage Fee:         | Per current fee schedule: \$3,565 (\$4,951 per AC)                     |
| e. Transportation Impact Fee:  | Per current fee schedule: \$12,476 (\$6,238 per unit X 2 new units)    |
| f. Encroachment Permit Fee:    | Per current fee schedule: \$2,638                                      |
| g. Park Fees:                  | Per current fee schedule: \$210,000 (\$105,000 per unit X 2 new units) |
| h. Storm Management Plan Fee   | Per current fee schedule: \$1,396                                      |
| i. Street Tree                 | Per current fee schedule: \$1,206 (\$402 per tree X 3 new trees)       |

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.

9. SURVEYS

A Boundary Survey and a horizontal control plan will be required for all new construction to ensure the proposed building will be set based on the boundary survey and setback requirements.

10. OPERATIONS & MAINTENANCE AGREEMENT

Developer shall enter into an Operations & Maintenance Agreement with the City prior to Parcel Map recordation.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. STREET TREES

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

19. FIRE PROTECTION

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

20. 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).

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 Parcel Map approval.

22. 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.

23. SANITARY DISTRICT

A letter of clearance for the project shall be obtained from the Cupertino Sanitary District prior to Parcel Map approval.

24. 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 Parcel Map approval.

---

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

---

SECTION V: CONDITIONS ADMINISTERED BY CUPERTINO SANITARY

1. CONNECTION PERMIT FEES

Connection permit fees, lateral disconnection fees, frontage fees, and acreage fees will be required for the proposed lots during the Building Permit Phase.

2. LATERAL & SEWER LINE CLEANOUT

Three existing laterals available for the existing property to be disconnected from the District sewer main line and abandoned per District's standards. Each lot shall have their own newly installed lateral and property line cleanout per District's standards.

3. GRADING & DRAINAGE PLANS

Show existing sanitary sewer laterals on Sheet C-3 and provide callouts stating they will be abandoned. Additionally, show two new laterals for Lots A and B but address the WYE connection at the main that are oriented in the incorrect direction. Finally, show sanitary sewer main on Krzich Place.

4. REGISTERED CONTRACTOR

The contractor performing the work disconnecting and connecting to the District's sewer mains shall be registered with the District.

---

---

PASSED AND ADOPTED this 11th day of February, 2021 at a noticed Public Hearing of the Administrative Hearing Officer of the City of Cupertino, State of California, held by the Director of Community Development, or his or her designee, pursuant to Cupertino Municipal Code Section 19.12.120.

ATTEST:

APPROVED:

---

Jeffrey Tsumura  
Associate Planner

---

Albert Salvador  
Administrative Hearing Officer