

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  
RESIDENTIAL DEVELOPMENT OF ONE COMMON PARCEL AND NINE  
INDIVIDUAL PARCELS LOCATED AT  
22690 STEVENS CREEK BOULEVARD (APN: 341-14-066, 342-14-104 & 105)

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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, with the following modification:

PASSED AND ADOPTED at a Regular Meeting of the Planning Commission of the City of Cupertino the 23<sup>rd</sup> day of November 2021, by the following roll call vote:

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

ATTEST:

APPROVED:

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Benjamin Fu

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R "Ray" Wang

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

A RESOLUTION OF THE CUPERTINO CITY COUNCIL APPROVING A VESTING  
TENTATIVE MAP TO ALLOW A RESIDENTIAL DEVELOPMENT OF ONE  
COMMON PARCEL AND NINE INDIVIDUAL PARCELS LOCATED  
22690 STEVENS CREEK BOULEVARD (APN: 341-14-066, 342-14-104 & 105)

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SECTION I: PROJECT DESCRIPTION

Application No.: TM-2020-001  
 Applicant: Alan Enterprises LLC  
 Location: 22690 Stevens Creek Boulevard;  
 APN#s 341-14-066, 342-14-104 & 105

SECTION II: FINDINGS FOR A TENTATIVE MAP:

WHEREAS, the City of Cupertino received an application for a Vesting Tentative Map (Application No. TM-2020-001) as described in Section I of this resolution; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act of 1970 (Public Resources Code Section 21000 *et seq.*) ("CEQA") and the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 *et seq.*) ("CEQA Guidelines"), the City prepared an Initial Study and proposed Mitigated Negative Declaration ("Project"); and

WHEREAS, on October 28, 2021, the City of Cupertino's Environmental Review Committee held a duly noticed public hearing to receive public testimony and reviewed and considered the information contained in the Draft IS/MND, and voted 5-0-0 to recommend that the City Council adopt the Draft IS/MND (EA-2020-001) and mitigation measures; and

WHEREAS, on November 23, 2021, the Planning Commission held a duly noticed public hearing to receive staff's presentation and public testimony, and to consider the information contained in the IS/MND along with all staff reports, other pertinent documents, and all written and oral statements received prior to and at the public hearing, and recommended on a xx-xx vote, based on substantial evidence in the record, that the City Council adopt the MND, adopt and incorporate into the Project and implement as conditions of approval all of the mitigation measures for the project that are identified in the IS/MND, and adopt the Mitigation Monitoring and Reporting Program for the Project (EA-2020-001); and

WHEREAS, on November 23, 2021 the Planning Commission recommended on a X-X vote that the City Council approve Zone Map Amendment (Z-2020-001 in substantially

similar form to the Resolution presented (Resolution No. \_\_\_\_\_), approve the Development Permit (DP-2020-001) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_\_), approve the Architectural and Site Approval Permit (ASA-2020-001) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_\_), approve the Vesting Tentative Map (TM-2020-001) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_\_) AND approve the Use Permit (U-2020-001) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_\_):

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 December 21, 2021, 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 December 21, 2021, 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. [####] 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 IS/MND, 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 has been determined to be consistent with the General Plan. The proposed project complies with General Plan policies that include density, maximum building height, building design, site planning, and frontage improvements.*

- 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 the street frontage, and minimizing curb-cuts.*

- 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 designed to meet development standards and applicable codes and regulations. Any potential environmental impacts associated with the project are to be mitigated as part of the project approval. Therefore, the design of the subdivision and necessary improvements are not likely to cause serious public health concerns.*

- 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 IS/MND and the Mitigation Monitoring and Reporting Program for the Project (EA-2020-001), 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 Vesting Tentative Map, Application No. TM-2020-001, 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-2020-001 as set forth in the Minutes of the City Council Meeting of December 21, 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 dated January 29, 2021 consisting of 47 sheets labeled as 22690 Stevens Creek Blvd, Cover Sheet, A1.01-A1.20, L1-L4, C0.0-C7.2, JT1-JT5, SL1-SL3, Photometric Plan, prepared by Dahlin Group, BKF, Tarrar Utility Consultants, Thomas Baak & Associates, LLP, and CREE Lighting, 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. DP-2020-001, Z-2020-001, U-2020-001, ASA-2020-001, EA-2020-001

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. INDEMNIFICATION

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.

#### 7. 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.

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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.

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

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 21<sup>st</sup> day of December, 2021 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:  _____ Darcy Paul, Mayor City of Cupertino	  _____ Date
ATTEST:  _____ Kirsten Squarcia, City Clerk	  _____ Date

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