



OFFICE OF THE CITY CLERK

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366
CUPERTINO.ORG

August 27, 2020

Subject: Consider approving a development proposal to demolish a 71,250 square foot retail center (The Oaks), remove and replace 74 protected trees, and construct a mixed-used development consisting of 267 housing units (88 Rowhouse/Townhouses, 179 senior apartments of which 131 are senior licensed assisted living units and 48 are affordable or below market rate (“BMR”) senior independent living units), 27 memory care licensed assisted living residences (“memory care residences”), and 20,000 square feet of commercial space. The applicant is requesting a Heart of the City Exception for retail frontage along Stevens Creek Boulevard. The applicant is also requesting a density bonus, including associated density bonus parking reduction and density bonus waivers for height, slope line setback, and dispersion of BMR housing units, as well as an incentive/concession for the consolidation of BMR housing units in a single, senior building. City approvals would be certification of the Final Environmental Impact Report, Development Permit (including findings regarding density bonus, parking reduction, concession, and waivers), Architectural and Site Approval Permit, Tree Removal Permit, Use Permit, Heart of the City Exception, and Vesting Tentative Map; (Application No(s): DP-2018-05, ASA-2018-05, TM-2018-03, TR-2018-22, U-2019-03, EXC-2019-03, EA-2018-04; Applicant(s): KT Urban (Mark Tersini); Location: 21267 Stevens Creek Boulevard; APN #326-27-042, -043.

At its August 18, 2020 regular meeting, the Cupertino City Council took the following action:

Adopted the following resolutions as amended:

- a. Resolution No. 20-105 certifying the Final Environmental Impact Report and adopting the mitigation measures and Mitigation and Monitoring Reporting Program (EA-2018-04); and
- b. Resolution No. 20-106 approving the Development Permit (DP-2018-05); EA-2018-04, DP-2018-05, Westport Cupertino August 18, 2020 with the following amendments:

1. ASA-2018-05, U-2019-03, 21267 Stevens Creek Boulevard TM-2018-03, EXC-2019-03, TR-2018-22.

Finding 4(b) was amended to expand the density bonus law concession to allow the applicant to consolidate all BMR units in Building 2 instead of dispersing them throughout Building 1 and the Townhouse/Rowhouse portion of the project.

2. Finding 4(g) was amended to deny the requested waiver for the BMR unit dispersion requirement and to note the City Council would have preferred to grant a concession, rather than a waiver, for the height and slope line setback requirements.
3. Condition 2 of Section III (“Accuracy of Project Plans”) was amended to clarify that any misrepresentation on the Vesting Tentative Map related to the statement that the Townhouses/Rowhouses would be for-sale could result in invalidation of the permit and additional review. (This change was made in the “Accuracy of Project Plans” condition in each of the approved resolutions.)
4. Condition 6 of Section III (“Development Allocation”) was amended to state that, by requesting only one density bonus concession, the applicant waived any future claim to a second concession.
5. Condition 11 of Section III (“Concurrent Development of BMR and Market-Rate Housing”) was amended to delete subsection 11(b).
6. Condition 3 of Section IV (“Pedestrian and Bicycle Improvements”) was amended to require the applicant to work with staff to design and build bicycle access through the property.

c. Resolution No. 20-107 approving the Architectural and Site Approval Permit (ASA2018-05); and

d. Resolution No. 20-108 approving the Use Permit (U-2019-03); and

e. Resolution No. 20-109 approving the Vesting Tentative Map (TM-2018-03); and

f. Resolution No. 20-110 approving the Heart of the City Exception (EXC-2019-03) with the following amendments:

1. Condition 2 of Section III (“Accuracy of Project Plans”) was amended to clarify that any misrepresentation on the Vesting Tentative Map related to the statement that the Townhouses/Rowhouses would be for-sale could result in invalidation of the permit and additional review. (This change was made in the “Accuracy of Project Plans” condition in each of the approved resolutions.)
2. Condition 6 of Section III (“Public Accessibility to Retail Space”) was added to require that all retail space be open to the public for consumption of goods and services; and

g. Resolution No. 20-111 approving the Tree Removal Permit (TR-2018-22).

The amended motion as carried unanimously.

Also included are the resolutions that Council adopted at the meeting.

Any interested person, including the applicant, prior to seeking judicial review of any adjudicatory decision of the City Council, must first file a petition for reconsideration with the city clerk within ten days after the date of mailing of this notice. Any petition filed must comply with Municipal Code §2.08.096. Due to the deadline falling on a weekend and a federal holiday, the last day to file a petition for reconsideration is Tuesday, September 8, 2020.

Sincerely,



Lauren Sapudar
Deputy City Clerk

cc: Community Development
City Attorney

RESOLUTION NO. 20-105

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
CERTIFYING AN ENVIRONMENTAL IMPACT REPORT AND ADOPTING
MITIGATION MEASURES AND A MITIGATION MONITORING AND
REPORTING PROGRAM FOR THE DEVELOPMENT OF A MIXED-USE
DEVELOPMENT CONSISTING OF 267 HOUSING UNITS, 27 MEMORY CARE
LICENSED ASSISTED LIVING RESIDENCES (“MEMORY CARE RESIDENCES”),
20,000 SQUARE FEET OF RETAIL SPACE, AND ~44,900 SQUARE FEET OF
COMMON OPEN SPACE ON AN 8-ACRE PARCEL LOCATED AT 21267 STEVENS
CREEK BOULEVARD (APN: 326-27-042, -043)**

SECTION I: PROJECT DESCRIPTION

Application No.: EA-2018-04
Applicant: KT Urban (Mark Tersini)
Property Owner: 190 West St. James, LLC
Location: 21267 Stevens Creek Blvd. (APN #326-27-042, -043)

SECTION II: ENVIRONMENTAL REVIEW PROCESS

WHEREAS, the City of Cupertino received an application on May 17, 2018 for a Development Permit (including findings regarding density bonus and waivers), Architectural and Site Approval Permit, Tentative Map, and Tree Removal Permit, to allow the construction of a mixed-use development consisting of 242 housing units, 20,000 square feet of retail space, and ~35,000 square feet of common open space on an 8-acre parcel and associated environmental review (“Westport Mixed-Use Project” or “Project”); and

WHEREAS, the City of Cupertino received an application on April 29, 2019 from the Project applicant for a Use Permit, and Heart of the City Exception for the Project; 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 Environmental Impact Report (State Clearinghouse No. 2019070377) (“EIR”) for the Project, which consists of the November 2019 Public Review Draft Project Environmental Impact Report (the “Draft EIR”), the

April 2020 Response to Comments Document, and the May 2020 Response to Comments on the Final EIR memorandum (together, the “Final EIR”); and

WHEREAS, on July 11, 2019 the City issued a Notice of Preparation of a Draft EIR for the Westport Mixed-Use Project; and

WHEREAS, on July 11, 2019 the Draft Initial Study for the project was distributed to responsible agencies and the public for review and comment for a 30-day period that ended August 9, 2019; and

WHEREAS, on July 18, 2019 a public EIR Scoping Meeting was held to receive comments regarding the scope and content of the EIR; and

WHEREAS, on November 6, 2019 the City issued a Notice of Availability (NOA) of the Draft EIR for the Westport Mixed-Use Project; and

WHEREAS, on November 6, 2019 the Draft EIR for the project was distributed to responsible agencies and the public for review and comment for a 45-day period that ended August 9, 2019; and

WHEREAS, the Draft EIR concluded that significant environmental effects on Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Greenhouse Gas Emissions, Noise, Tribal Cultural Resources, and Utilities and Service Systems would be avoided or reduced to less-than-significant levels by mitigation measures (“MM”) identified in the EIR; and

WHEREAS, on March 17, 2020 the applicant requested that an Increased Senior Housing Alternative be considered and analyzed in the EIR; and

WHEREAS, the Increased Senior Housing Alternative was analyzed in the Final EIR as a feasible alternative, and the analysis concluded that the Increased Senior Housing Alternative would not result in any new or substantially more severe significant impacts than were analyzed in the Draft EIR; therefore, recirculation of the Draft EIR was not required; and

WHEREAS, on April 16, 2020, 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 EIR and Response to Comments, and voted 5-0 to recommend that the City Council certify the EIR for Project; and

WHEREAS, on April 23, 2020, the applicant formally requested that the City consider the Increased Senior Housing Alternative analyzed in the Final EIR, which is a proposed mixed-use development consisting of 267 housing units, 27 memory care licensed assisted living residences, 20,000 square feet of retail space, and approximately 44,900

square feet of common open space on an 8.1-acre parcel with 7.9 net developable acres, to be the proposed Project; and

WHEREAS, the proposed Project (Increased Senior Enhanced Alternative) was referred to in the May 12, 2020 Planning Commission staff report as the “Senior Enhanced Alternative;” and

WHEREAS, text revisions made after publication of the Draft EIR, which are found in the May, 2020 Westport Mixed-Use Project Final EIR, merely clarify, amplify or make insignificant modifications to the EIR, and recirculation of the EIR is not required.

WHEREAS, on May 12, 2020, 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 EIR 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 5-0 vote, based on substantial evidence in the record, that the City Council certify the EIR, 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 EIR, and adopt the Mitigation Monitoring and Reporting Program for the Project; and

WHEREAS, on May 12, 2020 the Planning Commission recommended on a 5-0 vote that the City Council approve the Vesting Tentative Map (TM-2018-03), in substantially similar form to the Resolution presented (Resolution No. 6904), approve the Development Permit (DP-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6901), approve the Architectural and Site Approval Permit (ASA-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6902), approve the Use Permit (U-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6903), approve the Tree Removal Permit (TR-2018-22) in substantially similar form to the Resolution presented (Resolution No. 6906), approve the Heart of the City Exception (EXC-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6905) for the Senior Enhanced Alternative; and

WHEREAS, on June 4, 2020, as updated on June 25 and 26, 2020, the applicant submitted and requested the City to consider revisions to the Project (“Revised Senior Enhanced Project”) recommended for approval by the Planning Commission on May 12, 2020 , which include relocating nine Below Market Rate (“BMR”) units from Building 1 to an additional top story on Building 2, altering the unit mix in Buildings 1 and 2 to provide additional space for terraces on the tops of those buildings, and changing the unit mix in Buildings 2 to include two-bedroom units in addition to studios and one-bedroom units; and

WHEREAS, because these proposed revisions to the Project affect building height and dispersion of BMR units, the Revised Senior Enhanced Project was reviewed by the Planning Commission on July 14, 2020 for recommendation to the City Council; and

WHEREAS, the Planning Commission independently reviewed and considered the EIR together with the comments and the responses to those comments prior to taking action on the Revised Senior Enhanced Project; and

WHEREAS, the comments received by the Planning Commission do not require major revisions to the EIR due to new or substantially more severe significant effects on the environment; and

WHEREAS, on July 14, 2020, the Planning Commission recommended on a 3-2 vote that the City Council deny the project in accordance with Resolution No. 6908; and

WHEREAS, the City Council has independently reviewed and considered the EIR together with the comments and the responses to those comments prior to taking action on the Project; and

WHEREAS, the comments received by the City Council do not require major revisions to the EIR due to new or substantially more severe significant effects on the environment; and

WHEREAS, the revisions to the Project after the May 12, 2020 Planning Commission meeting do not require major revisions to the EIR due to new or substantially more severe significant effects on the environment because the number of residential units and square footage of retail use have not changed, and the amount of ground level open space has increased; and

WHEREAS, on August 18, 2020 prior to taking action on the Project, the City Council held a duly noticed public hearing to receive staff's presentation and public testimony, and to further consider the information contained in the EIR, along with all staff reports, other pertinent documents, and all written and oral statements received prior to and at the public hearing.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the EIR, comments on the EIR, maps, facts, exhibits, testimony, staff reports, public comments, and other evidence submitted in this matter, the City Council does:

1. Certify that the EIR for the Project has been completed in compliance with CEQA and reflects the independent judgment and analysis of the City.
2. Find that the text revisions to the EIR merely clarify, amplify or make insignificant

modifications to the EIR, and the revisions to the Project do not require major revisions to the EIR due to new or substantially more severe significant effects on the environment; therefore, recirculation of the EIR is not required.

3. Adopt the Findings for the Project, attached hereto as “Exhibit EA-1,” and incorporated herein by reference
4. Adopt and make required conditions of approval of the Project all of the mitigation measures identified in the EIR that are within the responsibility and jurisdiction of the City.

a. AIR QUALITY

Mitigation Measure AQ-2: Prior to any grading activities, the applicant shall prepare a Construction Management Plan to be reviewed and approved by the Director of Public Works/City Engineer. The Construction Management Plan shall include the Bay Area Air Quality Management District (BAAQMD) Basic Construction Mitigation Measures listed below to minimize construction-related emissions. The project applicant shall require the construction contractor to implement the approved Construction Management Plan. The BAAQMD Basic Construction Mitigation Measures are:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- 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.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- 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.
- 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.
- 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.

- 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 BAAQMD phone number shall also be visible to ensure compliance with applicable regulations.
- Vegetative ground cover shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.

Mitigation Measure AQ-4: Implement Mitigation Measure AQ-2.

b. BIOLOGICAL RESOURCES

Mitigation Measure BIO-1: Nests of raptors and other birds shall be protected when in active use, as required by the federal Migratory Bird Treaty Act and the California Fish and Game Code. The construction contractor shall indicate the following on all construction plans, if construction activities and any required tree removal occur during the breeding season (February 1 and August 31). Preconstruction surveys shall:

- Be conducted by a qualified biologist prior to tree removal or grading, demolition, or construction activities. Note that preconstruction surveys are not required for tree removal or construction, grading, or demolition activities outside the nesting period.
- Be conducted no more than 14 days prior to the start of tree removal or construction.
- Be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped.
- Document locations of active nests containing viable eggs or young birds.
- Protective measures for active nests containing viable eggs or young birds shall be implemented under the direction of the qualified biologist until the nests no longer contain eggs or young birds. Protective measures shall include:
- Establishment of clearly delineated exclusion zones (i.e., demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by the qualified biologist, taking into account the species of birds nesting, their tolerance for disturbance and

proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds.

- Monitoring active nests within an exclusion zone on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status.
- An increase in the radius of an exclusion zone by the qualified biologist if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified biologist only in consultation with California Department of Fish and Wildlife.
- The protection measures shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.

Mitigation Measure BIO-2: The proposed project shall comply with the City of Cupertino's Protected Trees Ordinance (Cupertino Municipal Code Section 14.18). A tree removal permit shall be obtained for the removal of any "protected tree," and replacement plantings shall be provided as approved by the City. If permitted, an appropriate in-lieu tree replacement fee may be paid to the City of Cupertino's Tree Fund as compensation for "protected trees" removed by the proposed project, where sufficient land area is not available on-site for adequate replacement and when approved by the City.

In addition, a Tree Protection and Replacement Program (Program) shall be developed by a Certified Arborist prior to project approval and implemented during project construction to provide for adequate protection and replacement of "protected trees," as defined by the City's Municipal Code. The Program shall include the following provisions:

- Adequate measures shall be defined to protect all trees to be preserved. These measures should include the establishment of a tree protection zone (TPZ) around each tree to be preserved, in which no disturbance is permitted. For design purposes, the TPZ shall be located at the dripline of the tree or 10 feet, whichever is greater. If necessary, the TPZ for construction-tolerant species (i.e., coast live oaks) may be reduced to 7 feet.
- Temporary construction fencing shall be installed at the perimeter of TPZs prior to demolition, grubbing, or grading. Fences shall be 6-foot chain link or equivalent, as approved by the City of Cupertino. Fences shall remain until all construction is completed. Fences shall not be relocated or removed without permission from the consulting arborist.
- No grading, excavation, or storage of materials shall be permitted within TPZs. Construction trailers, traffic, and storage areas shall remain outside

fenced areas at all times. No excess soil, chemicals, debris, equipment, or other materials shall be dumped or stored within the TPZ.

- Underground services including utilities, sub-drains, water or sewer shall be routed around the TPZ. Where encroachment cannot be avoided, special construction techniques such as hand digging or tunneling under roots shall be employed where necessary to minimize root injury. Irrigation systems must be designed so that no trenching will occur within the TPZ.
- Construction activities associated with structures and underground features to be removed within the TPZ shall use the smallest equipment and operate from outside the TPZ. The consulting arborist shall be on-site during all operations within the TPZ to monitor demolition activity.
- All grading, improvement plans, and construction plans shall clearly indicate trees proposed to be removed, altered, or otherwise affected by development construction. The tree information on grading and development plans should indicate the number, size, species, assigned tree number, and location of the dripline of all trees that are to be retained/preserved. All plans shall also include tree preservation guidelines prepared by the consulting arborist.
- The demolition contractor shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection. Prior to beginning work, the contractor(s) working in the vicinity of trees to be preserved shall be required to meet with the consulting arborist at the site to review all work procedures, access routes, storage areas, and tree protection measures.
- All contractors shall conduct operations in a manner that will prevent damage to trees to be preserved. Any grading, construction, demolition or other work that is expected to encounter tree roots shall be monitored by the consulting arborist. If injury should occur to any tree during construction, it should be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
- Any plan changes affecting trees shall be reviewed by the consulting arborist with regard to tree impacts. These include, but are not limited to, site improvement plans, utility and drainage plans, grading plans, landscape and irrigation plans, and demolition plans.
- Trees to be preserved may require pruning to provide construction clearance. All pruning shall be completed by a State of California Licensed Tree Contractor (C61/D49). All pruning shall be done by Certified Arborist or Certified Tree Worker in accordance with the 2002 Best Management Practices for Pruning published by the International Society of

Arboriculture, and adhere to the most recent editions of the American National Standard for Tree Care Operations (Section Z133.1) and Pruning (Section A300).

- Any root pruning required for construction purposes shall receive the prior approval of and be supervised by the consulting arborist.
- Any demolition or excavation, such as grading, pad preparation, excavation, and trenching, within the dripline or other work that is expected to encounter tree roots should be approved and monitored by the consulting arborist. Any root pruning required for construction purposes shall receive prior approval of, and by supervised by, the consulting arborist. Roots shall be cut by manually digging a trench and cutting exposed roots with a sharp saw.
- Tree(s) to be removed that have branches extending into the canopy of tree(s) to remain must be removed by a qualified arborist and not by construction contractors. The qualified arborist shall remove the tree in a manner that causes no damage to the tree(s) and understory to remain. Tree stumps shall be ground 12 inches below ground surface.
- All tree work shall comply with the Migratory Bird Treaty Act as well as California Fish and Game Code Sections 3503 through 3513 to not disturb nesting birds. To the extent feasible, tree pruning, and removal shall be scheduled outside of the breeding season. Breeding bird surveys shall be conducted prior to tree work. Qualified biologists shall be involved in establishing work buffers for active nests. (see Mitigation Measure BIO-1)
- The vertical and horizontal locations of all the trees identified for preservation shall be established and plotted on all plans. These plans shall be forwards to the consulting arborist for review and comment.
- Foundations, footings, and pavements on expansive soils near trees shall be designed to withstand differential displacement to protect the soil surrounding the tree roots.
- Any liming within 50 feet of any tree shall be prohibited, as lime is toxic to tree roots. Any herbicides placed under paving materials shall be safe for use under trees and labeled for that use.
- Brush from pruning and trees removal operations shall be chipped and spread beneath the trees within the TPZ. Mulch shall be between 2 inches and 4 inches in depth and kept at a minimum of 3 feet from the base of the trees.
- All recommendations for tree preservation made by the applicant's consulting arborist shall be followed.

Mitigation Measure BIO-3: Implement Mitigation Measures BIO-1 and BIO-2.

c. CULTURAL RESOURCES

Mitigation Measure CULT-1: If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing (including grading, demolition and/or construction) activities:

- All work within 50 feet of the resources shall be halted, the City shall be notified and a qualified archaeologist shall be consulted. The contractor shall cooperate in the recovery of the materials. Work may proceed on other parts of the project site while mitigation for tribal cultural resources, historical resources or unique archaeological resources is being carried out.
- The qualified archaeologist shall prepare a report for the evaluation of the resource to the California Register of Historical Places and the City Building Department. The report shall also include appropriate recommendations regarding the significance of the find and appropriate mitigations as follows:
 - If the resource is a non-tribal resource, the archaeologist shall assess the significance of the find according to CEQA Guidelines Section 15064.5.
 - If the resource is a tribal resource – whether historic or prehistoric – the consulting archaeologist shall consult with the appropriate tribe(s) to evaluate the significance of the resource and to recommend appropriate and feasible avoidance, testing, preservation or mitigation measures, in light of factors such as the significance of the find, proposed project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) may be implemented.
- All significant non-tribal cultural materials recovered shall be, as necessary, and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards.

Mitigation Measure CULT-3: Implement Mitigation Measure CULT-1.

d. GEOLOGY AND SOILS

Mitigation Measure GEO-1: The construction contractor shall incorporate the following in all grading, demolition, and construction plans:

- In the event that fossils or fossil-bearing deposits are discovered during grading, demolition, or building, excavations within 50 feet of the find shall be temporarily halted or diverted.
- The contractor shall notify the City of Cupertino Building Department and a City-approved qualified paleontologist to examine the discovery.

- The paleontologist shall document the discovery as needed, in accordance with Society of Vertebrate Paleontology standards (Society of Vertebrate Paleontology 1995), evaluate the potential resource, and assess the significance of the finding under the criteria set forth in CEQA Guidelines Section 15064.5.
- The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find.
- If the project applicant determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project based on the qualities that make the resource important. The excavation plan shall be submitted to the City for review and approval prior to implementation.

e. NOISE

Mitigation Measure NOISE-1: Prior to Grading Permit issuance or the start of demolition activities, the project applicant shall demonstrate, to the satisfaction of the City of Cupertino Public Works Director and/or Community Development Director, that the proposed project complies with the following:

- Pursuant to Cupertino Municipal Code (CMC) Section 10.48.053 the construction activities shall be limited to daytime hours as defined in CMC Section 10.48.010 (i.e., daytime hours are from 7:00 a.m. to 8:00 p.m. on weekdays).
- At least 90 days prior to the start of construction activities, all offsite businesses and residents within 300 feet of the project site shall be notified of the planned construction activities. The notification shall include a brief description of the proposed project, the activities that would occur, the hours when construction would occur, and the construction period's overall duration. The notification should include the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint.
- At least 10 days prior to the start of construction activities, a sign shall be posted at the entrance(s) to the job site, clearly visible to the public, which includes permitted construction days and hours, as well as the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. If the authorized contractor's representative receives a complaint, he/she shall investigate, take appropriate corrective action, and report the action to the City.

- During the entire active construction period, equipment and trucks used for project construction will utilize the best available noise control techniques (e.g., improved mufflers, equipment re-design, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds), wherever feasible.
- During the entire active construction period, stationary noise sources shall be located as far from sensitive receptors as possible, and they shall be muffled and enclosed within temporary sheds, or insulation barriers or other measures shall be incorporated to the extent feasible.
- Haul routes shall be selected to avoid the greatest amount of sensitive use areas.
- Signs will be posted at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment will be turned off if not in use for more than 5 minutes.
- During the entire active construction period and to the extent feasible, the use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. The construction manager will use smart back-up alarms, which automatically adjust the alarm level based on the background noise level or switch off back-up alarms and replace with human spotters in compliance with all safety requirements and laws.

f. UTILITIES AND SERVICES MITIGATION MEASURE

Mitigation Measure UTIL-1: No building permits shall be issued by the City for the proposed Westport Mixed-Use Project that would result in exceeding the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system. The project applicant shall demonstrate, to the satisfaction of the City of Cupertino and Cupertino Sanitary District (CSD), that the proposed project would not exceed the peak wet weather flow capacity of the Santa Clara sanitary sewer system by implementing one or more of the following methods:

1. Reduce inflow and infiltration in the CSD system to reduce peak wet weather flows; or
2. Increase on-site water reuse, such as increased grey water use, or reduce water consumption of the fixtures used within the proposed project, or other methods that are measurable and reduce sewer generation rates to acceptable levels, to the satisfaction of the CSD.

The proposed project's estimated wastewater generation shall be calculated using the generation rates used by the CSD in the *Flow Modeling Analysis for the Homestead Flume Outfall to the City of Santa Clara*, prepared by Mark Thomas & Co. Inc., dated December 6, 2019, unless alternative (i.e., lower) generation rates achieved by the

proposed project are substantiated by the project applicant based on evidence to the satisfaction of the CSD.

If the prior agreement between CSD and the City of Santa Clara that currently limits the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system were to be updated to increase the permitted peak wet weather flow sufficiently to accommodate, this would also change the impacts of the project to less than significant. If this were to occur prior to the City's approval of building permits, then Mitigation Measure UTIL-1 would no longer be required to be implemented.

6. Adopt the Mitigation Monitoring and Reporting Program for the Project, as amended, attached hereto as "Exhibit EA-2," and incorporated herein by reference, which includes all of the mitigation measures identified in the Final EIR.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 18th day of August, 2020, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
AYES:	Scharf, Paul, Chao, Sinks, Willey
NOES:	None
ABSENT:	None
ABSTAIN:	None

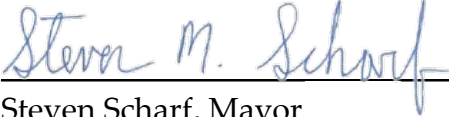

SIGNED:  Steven Scharf, Mayor City of Cupertino	<u>8/28/2020</u> Date
ATTEST:  Kirsten Squarcia, City Clerk	<u>8/28/2020</u> Date

EXHIBIT EA-1

CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS FOR THE WESTPORT MIXED-USE PROJECT

INTRODUCTION

The City of Cupertino (City), as lead agency under the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 *et seq.*, has prepared the Final Environmental Impact Report for The Westport Mixed-Use Project (the “Project”) (State Clearinghouse No. 2019070377) (the “Final EIR” or “EIR”). The Final EIR is a project-level EIR pursuant to Section 15168 of the State CEQA Guidelines.¹ The Final EIR consists of the November 2019 Public Review Draft Project Environmental Impact Report (the “Draft EIR”); the April 2020 Response to Comments Document; and the May 2020 Response to Comments on the Final EIR memorandum,² which provides responses to comments made at the April 15, 2020 Environmental Review Committee meeting and contains a typographical correction to the Response to Comments Document.

In determining to approve the Project, which is described in more detail in Section II, below, the City makes and adopts the following findings of fact and adopts and makes conditions of project approval the all of the mitigation measures identified in the Final EIR, all based on substantial evidence in the whole record of this proceeding (administrative record). Pursuant to Section 15090(a) of the State CEQA Guidelines, the Final EIR was presented to the City Council, the City Council reviewed and considered the information contained in the Final EIR prior to making the findings in Sections II through XII, below, and the City Council determined that the Final EIR reflects the independent judgment of the City. The conclusions presented in these findings are based on the Final EIR and other evidence in the administrative record.

PROJECT DESCRIPTION (“Revised Senior Enhanced Project”)

Project Described in EIR. As described in Draft EIR, the project as originally proposed involved the construction and operation of a mixed-use project on an 8.1-acre project site assigned Assessor’s Parcel Numbers (APNs) 326-27-042 and 326-27-043. The site is

¹ The State CEQA Guidelines are found at California Code of Regulations, Title 14, Section 15000 *et seq.*

² PlaceWorks, *Response to Comments on the Westport Mixed-Use Project Final Environmental Impact Report (EIR)* (May 5, 2020).

identified as Priority Housing Element Site A3 (The Oaks Shopping Center) in the City of Cupertino General Plan (Community Vision 2015-2040). The project as originally proposed included 242 housing units consisting of 88 rowhouse and townhouse units (attached homes) in 16 buildings, and two mixed-use (residential and retail buildings). One of the mixed-use buildings (Building 1) would have contained 115 market-rate condominiums, and the other (Building 2) would have contained 39 BMR senior units. The project as originally proposed also included 20,000 square feet of ground floor retail uses, below and at-grade parking, and associated landscape and hardscape areas.

As explained below, the Final EIR analyzed an additional alternative, the Increased Senior Housing Alternative,³ which the applicant requested the City to consider to be the proposed project. Like the project as originally proposed, the Increased Senior Housing Alternative would demolish the existing buildings on the site and construct 18 new buildings; however, the mix of units would change. While the proposed number and configuration of the 88 rowhouse and townhouse units would not change, in the Senior Housing Alternative Building 1 would have 131 senior licensed assisted living units, 27 memory care licensed assisted living residences, and Building 2 would have 48 BMR senior independent living units. The following aspects of the project as originally proposed would remain the same: 20,000 square feet of retail space, below and at-grade parking, and associated landscape and hardscape areas. Like the project as originally proposed, the proposed retail component would be located on the ground level of the two mixed-use residential buildings; Residential-Retail Building 1 would have 17,600 square feet of retail space located at the corner of Stevens Creek Boulevard and Mary Avenue; Residential-Retail Building 2 would have 2,400 square feet of retail space on the ground level fronting Stevens Creek Boulevard. The proposed project would include one access point off of Stevens Creek Boulevard and three access points off of Mary Avenue. The below-grade parking would be located under Retail-Residential Building 1, and would be accessed from the central access point on Mary Avenue. Off-site improvements include the installation of a Class IV separated bikeway and a signal control to be activated by bicyclists and pedestrians for the westbound right-turn movement from the northbound SR-85 on-ramp, as well as a bus stop on the section of Stevens Creek Boulevard west of Mary Avenue and east of the SR-85 northbound ramp.

Senior Enhanced Alternative. The EIR analyzed five alternatives, including, the original project described in Chapter 3 of the Draft EIR as the proposed project (“Original Project”), the No Project Alternative, No Retail Development Alternative, and Reduced Retail Development Alternative, which are described in Chapter 5 of the Draft EIR. and

³ Also referred to in the May 12, 2020 Planning Commission agenda documents as the Senior Enhanced Alternative.

the Increased Senior Housing Project, which is the proposed Project, and is described in Chapter 3 of the Response to Comments Document, which the applicant submitted for consideration by the City in February 2020 as a Senior Enhanced Alternative. This alternative was evaluated as a feasible alternative in the Responses to Comments volume of the Final EIR as the Increased Senior Housing Alternative. On April 22, 2020, the applicant requested that Increased Senior Housing Alternative be considered the proposed Project.

On May 12, 2020, the Planning Commission recommended certification of the Final EIR and approval of the Increased Senior Housing Alternative, which is referred to in the May 12, 2020 staff report as the Senior Enhanced Alternative.

Revised Senior Enhanced Project. On June 4, 2020, the applicant submitted and requested the City to consider revisions to the Increased Senior Housing Alternative (the “Revised Senior Enhanced Project”), as updated on June 25 and 26, 2020, which include relocating nine BMR units from Building 1 to an additional top story on Building 2, decreasing the height of Building 1 by 12.25 feet, moving the nine BMR units from Building 1 to a new top story on Building 2 and increasing the height of Building 2 by 0.75 feet, altering the unit mix in Buildings 1 and 2 to provide additional space for terraces on the tops of those buildings, and changing the unit mix in Buildings 2 to include two-bedroom units in addition to studios and one-bedroom units, increasing the amount of ground level common open space by 294 square feet, and adding eight parking spaces.

The Revised Senior Enhanced Project is the proposed Project for purposes of these Findings.

The project objectives for the proposed Project, listed below, remain the same.

Project Objectives

The project objectives are as follows:

- Redevelop an existing retail center on Mary Avenue and Stevens Creek Boulevard with desirable amenities and housing.
- Meet the City’s Regional Housing Needs Allocation (RHNA) for 2014-2022.
- Enhance the vibrancy of Cupertino’s Heart of the City as a key mixed-use, commercial corridor by providing a pedestrian-friendly community that includes housing, open space and greenery, and neighborhood retail.

- Provide senior housing in close proximity to the Cupertino Senior Citizen Center.
- Create a prominent gateway development that incorporates quality architectural design and materials, open space, and artwork to announce entry into Cupertino's Heart of the City.
- Create a mixed-use development that places residential and commercial uses in close proximity to each other, and close to transit options.
- Help the City to achieve its affordable housing goals through the inclusion of senior housing units within a residential and mixed-use development project.

ENVIRONMENTAL REVIEW PROCESS

Environmental Impact Report

On July 11, 2019, the City circulated a Notice of Preparation (NOP) of the Draft EIR to the Office of Planning and Research (OPR) State Clearinghouse and interested agencies and the public. The NOP was circulated for comment by responsible and trustee agencies and the public for a total of 30 days, from July 11, 2019 through August 12, 2019, during which time the City held a public scoping meeting on July 18, 2019. Comments on the NOP were received by the City and considered during preparation of the Draft EIR.

The Draft EIR was made available for review by the public and interested parties, agencies, and organizations for a 46-day comment period starting on November 6, 2019 and ending December 20, 2019. The Draft EIR was distributed to local, regional and State agencies, and the public. Copies of the Draft EIR in paper or electronic format were available to the public for purchase or review at Cupertino City Hall. The Draft EIR was also available for review at the Cupertino Library at 10800 Torre Avenue in the City and an electronic version of the Draft EIR and all appendices were posted on a website the City created for the project at www.cupertino.org/westport. The City continues to make these documents available on this website. The public was also invited to submit written comments on the Draft EIR to the City of Cupertino Community Development Department by mail or e-mail to Gian Martire, Senior Planner at GianM@cupertino.org.

Notice of availability of the Draft EIR was made in several ways. The City sent a letter announcing the availability of the Draft EIR and inviting attendance at the Draft EIR comment meeting to all postal addresses within a 3,000-foot radius of the project site. In addition, in accordance with CEQA, the City posted the Notice of Availability (NOA) in

the newspaper. The City also sent emails providing notice of the Draft EIR's availability to all persons who had indicated an interest in the Project.

The City held an EIR Comment Meeting during the comment period on December 11, 2019. At that meeting, the City solicited comments on the adequacy of the Draft EIR.

The 46-day comment period on the Draft EIR ended on December 20, 2019 at 5:00 p.m. Agencies, organizations, and members of the public submitted written comments on the Draft EIR. The Responses to Comments Document, was issued for public review and sent to public agencies who had commented on the Draft EIR on April 7, 2020. Chapter 5 of the Response to Comments Document provides responses to the comments received during the comment period on the Draft EIR. Additional comments received after the close of the public comment period that were provided at the Environmental Review Committee meeting have been addressed in memoranda to the City.

On April 15, 2020, the Environmental Review Committee determined that the EIR was the appropriate document.

On May 12, 2020, the Planning Commission held a public hearing on the Final EIR and Senior Enhanced Alternative and took public comments. At this hearing, The Planning Commission recommended that the City Council certify the Final EIR.

On July 14, 2020, the Planning Commission held a public hearing on the Revised Senior Enhanced Project and recommended on a 3-2 vote that the City Council deny the project in accordance with Resolution No. 6908.

FINDINGS

The findings set forth below (the "Findings") are made and adopted by the Cupertino City Council as the City's findings under CEQA and the State CEQA Guidelines relating to the Project. The Findings provide the written analysis and conclusions of this City Council regarding the Project's environmental impacts, mitigation measures, alternatives to the Project.

These findings summarize the environmental determinations of the Final EIR with regard to project impacts before and after mitigation, and do not attempt to repeat the full analysis of each environmental impact contained in the Final EIR. Instead, these findings provide a summary description of and basis for each impact conclusion identified in the Final EIR, describe the applicable mitigation measures identified in the Final EIR, and state the City's findings and rationale about the significance of each impact following the

adoption of mitigation measures. A full explanation of these environmental findings and conclusions can be found in the Final EIR, and these findings hereby incorporate by reference the discussion and analysis in the Final EIR supporting the Final EIR's determinations regarding mitigation measures and the Project's impacts.

When evaluating cumulative impacts, CEQA allows the use of either a list of past, present, and probable future projects, including projects outside the control of the lead agency, or a summary of projections in an adopted planning document. The cumulative impacts analysis in the Final EIR uses the projections approach and takes into account growth from the Project within the Cupertino city boundary and Sphere of Influence (SOI), in combination with impacts from the list of projects reasonably foreseeable projects in the city, when considered with the effects of the proposed project, may result in cumulative effects.

In adopting mitigation measures, below, the City intends to adopt each of the mitigation measures identified in the Final EIR. Accordingly, in the event a mitigation measure identified in the Final EIR has been inadvertently omitted from these findings, such mitigation measure is hereby adopted and made a condition of approval of the Project in the findings below by reference. In addition, in the event the language of a mitigation measure set forth below fails to accurately reflect the mitigation measure in the Final EIR due to a clerical error, the language of the mitigation measure as set forth in the Final EIR shall control unless the language of the mitigation measure has been specifically and expressly modified by these findings.

Section V, below, provide brief descriptions of the impacts that the Final EIR identified as less than significant with adopted mitigation. These descriptions also reproduce the full text of the mitigation measures identified in the Final EIR for each significant impact.

SIGNIFICANT ADVERSE IMPACTS IDENTIFIED IN THE FINAL EIR THAT ARE REDUCED TO A LESS-THAN-SIGNIFICANT LEVEL BY MITIGATION MEASURES ADOPTED AND MADE CONDITIONS OF APPROVAL OF THE PROJECT

The Final EIR identifies the following significant impacts associated with the Project. It is hereby determined that the impacts addressed by these mitigation measures will be mitigated to a less than significant level or avoided by adopting and incorporating these mitigation measures as conditions into the Project. Public Resources Code § 21081(a)(1). As explained in Section VIII, below, the findings in this Section V are based on the Final EIR, the discussion and analysis in which is hereby incorporated in full by this reference.

The Final EIR identifies the following significant impacts associated with the Project. It is hereby determined that the impacts addressed by these mitigation measures will be mitigated to a less than significant level or avoided by adopting and incorporating these mitigation measures conditions into the Project. Public Resources Code § 21081(a)(1). As explained in Section VIII, below, the findings in this Section V are based on the Final EIR, the discussion and analysis in which is hereby incorporated in full by this reference.

Impact AQ-2: Uncontrolled fugitive dust (PM₁₀ and PM_{2.5}) could expose the areas that are downwind of construction sites to air pollution from construction activities without the implementation of BAAQMD's best management practices.

The Final EIR finds that the Project could result in air pollutants traveling downwind from the Project to off-site sensitive receptors site due to construction activities. Such particulate matter without the implementation of fugitive dust control best management practices would be considered a potentially significant impact.

Implementation of Mitigation Measure AQ-2 set forth below, which is hereby adopted made a condition of approval of the Project, would reduce this impact to a less-than-significant level.

Mitigation Measure AQ-2:

Prior to any grading activities, the applicant shall prepare a Construction Management Plan to be reviewed and approved by the Director of Public Works/City Engineer. The Construction Management Plan shall include the Bay Area Air Quality Management District (BAAQMD) Basic Construction Mitigation Measures listed below to minimize construction-related emissions. The project applicant shall require the construction contractor to implement the approved Construction Management Plan. The BAAQMD Basic Construction Mitigation Measures are:

- *All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.*
- *All haul trucks transporting soil, sand, or other loose material off-site shall be covered.*
- *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.*
- *All vehicle speeds on unpaved roads shall be limited to 15 mph.*
- *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.*

- *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.*
- *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.*
- *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 BAAQMD phone number shall also be visible to ensure compliance with applicable regulations.*
- *Vegetative ground cover shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.*
- *All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.*

Impact AQ-4: Implementation of the Project would cumulatively contribute to air quality impacts in the San Francisco Bay Area Air Basin.

The Final EIR finds that the project would contribute to air quality impacts in the San Francisco Bay Area Air Basin when considered in combination with cumulative development in the region. Without the implementation of construction and operation best management practices, the Project would be considered to have a potentially significant impact.

Implementation of the Mitigation Measure AQ-2 set forth above, which is hereby adopted and made a condition of approval of the Project, would reduce this impact to a less-than-significant level.

Mitigation Measure AQ-4:

Implement Mitigation Measure AQ-2.

Impact BIO-1: Tree removal and demolition activities during site clearance could destroy active nests, and/or otherwise interfere with nesting of birds protected under federal and State law.

The Final EIR finds that some special-status bird could utilize on-site trees for nesting. More common birds protected under Migratory Bird Treaty Act (MBTA) may nest in trees and other landscaping on the Project site. Given the remote potential for occurrence

of nesting birds at the Project site and possibility that nests could be inadvertently destroyed, or nests abandoned as a result of construction activities, this would be considered a potentially significant impact.

Implementation of Mitigation Measure BIO-1 set forth below, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

Mitigation Measure BIO-1:

Nests of raptors and other birds shall be protected when in active use, as required by the federal Migratory Bird Treaty Act and the California Fish and Game Code. The construction contractor shall indicate the following on all construction plans, if construction activities and any required tree removal occur during the breeding season (February 1 and August 31). Preconstruction surveys shall:

- *Be conducted by a qualified biologist prior to tree removal or grading, demolition, or construction activities. Note that preconstruction surveys are not required for tree removal or construction, grading, or demolition activities outside the nesting period.*
- *Be conducted no more than 14 days prior to the start of tree removal or construction.*
- *Be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped.*
- *Document locations of active nests containing viable eggs or young birds.*

Protective measures for active nests containing viable eggs or young birds shall be implemented under the direction of the qualified biologist until the nests no longer contain eggs or young birds. Protective measures shall include:

- *Establishment of clearly delineated exclusion zones (i.e., demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by the qualified biologist, taking into account the species of birds nesting, their tolerance for disturbance and proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds.*
- *Monitoring active nests within an exclusion zone on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status.*
- *An increase in the radius of an exclusion zone by the qualified biologist if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified biologist only in consultation with California Department of Fish and Wildlife.*
- *The protection measures shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.*

Impact BIO-2: Proposed development would result in removal of trees protected under City ordinance.

The Final EIR finds that the Project would result in the removal of trees and could therefore be out of compliance with the City's Protected Trees Ordinance if those trees happen to be protected. Given the potential for removal of a protected tree, the Project would be considered to have a potentially significant impact.

Implementation of Mitigation Measure BIO-2 set forth below, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

Mitigation Measure BIO-2:

The proposed project shall comply with the City of Cupertino's Protected Trees Ordinance (Cupertino Municipal Code Section 14.18). A tree removal permit shall be obtained for the removal of any "protected tree," and replacement plantings shall be provided as approved by the City. If permitted, an appropriate in-lieu tree replacement fee may be paid to the City of Cupertino's Tree Fund as compensation for "protected trees" removed by the proposed project, where sufficient land area is not available on-site for adequate replacement and when approved by the City.

In addition, a Tree Protection and Replacement Program (Program) shall be developed by a Certified Arborist prior to project approval and implemented during project construction to provide for adequate protection and replacement of "protected trees," as defined by the City's Municipal Code. The Program shall include the following provisions:

- *Adequate measures shall be defined to protect all trees to be preserved. These measures should include the establishment of a tree protection zone (TPZ) around each tree to be preserved, in which no disturbance is permitted. For design purposes, the TPZ shall be located at the dripline of the tree or 10 feet, whichever is greater. If necessary, the TPZ for construction-tolerant species (i.e., coast live oaks) may be reduced to 7 feet.*
- *Temporary construction fencing shall be installed at the perimeter of TPZs prior to demolition, grubbing, or grading. Fences shall be 6-foot chain link or equivalent, as approved by the City of Cupertino. Fences shall remain until all construction is completed. Fences shall not be relocated or removed without permission from the consulting arborist.*
- *No grading, excavation, or storage of materials shall be permitted within TPZs. Construction trailers, traffic, and storage areas shall remain outside fenced areas at all times. No excess soil, chemicals, debris, equipment, or other materials shall be dumped or stored within the TPZ.*

- *Underground services including utilities, sub-drains, water or sewer shall be routed around the TPZ. Where encroachment cannot be avoided, special construction techniques such as hand digging or tunneling under roots shall be employed where necessary to minimize root injury. Irrigation systems must be designed so that no trenching will occur within the TPZ.*
- *Construction activities associated with structures and underground features to be removed within the TPZ shall use the smallest equipment and operate from outside the TPZ. The consulting arborist shall be on-site during all operations within the TPZ to monitor demolition activity.*
- *All grading, improvement plans, and construction plans shall clearly indicate trees proposed to be removed, altered, or otherwise affected by development construction. The tree information on grading and development plans should indicate the number, size, species, assigned tree number, and location of the dripline of all trees that are to be retained/preserved. All plans shall also include tree preservation guidelines prepared by the consulting arborist.*
- *The demolition contractor shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection. Prior to beginning work, the contractor(s) working in the vicinity of trees to be preserved shall be required to meet with the consulting arborist at the site to review all work procedures, access routes, storage areas, and tree protection measures.*
- *All contractors shall conduct operations in a manner that will prevent damage to trees to be preserved. Any grading, construction, demolition or other work that is expected to encounter tree roots shall be monitored by the consulting arborist. If injury should occur to any tree during construction, it should be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.*
- *Any plan changes affecting trees shall be reviewed by the consulting arborist with regard to tree impacts. These include, but are not limited to, site improvement plans, utility and drainage plans, grading plans, landscape and irrigation plans, and demolition plans.*
- *Trees to be preserved may require pruning to provide construction clearance. All pruning shall be completed by a State of California Licensed Tree Contractor (C61/D49). All pruning shall be done by Certified Arborist or Certified Tree Worker in accordance with the 2002 Best Management Practices for Pruning published by the International Society of Arboriculture, and adhere to the most recent editions of the American National Standard for Tree Care Operations (Section Z133.1) and Pruning (Section A300).*
- *Any root pruning required for construction purposes shall receive the prior approval of and be supervised by the consulting arborist.*
- *Any demolition or excavation, such as grading, pad preparation, excavation, and trenching, within the dripline or other work that is expected to encounter tree roots should be approved and monitored by the consulting arborist. Any root pruning required for construction*

- *purposes shall receive prior approval of, and be supervised by, the consulting arborist. Roots shall be cut by manually digging a trench and cutting exposed roots with a sharp saw.*
- *Tree(s) to be removed that have branches extending into the canopy of tree(s) to remain must be removed by a qualified arborist and not by construction contractors. The qualified arborist shall remove the tree in a manner that causes no damage to the tree(s) and understory to remain. Tree stumps shall be ground 12 inches below ground surface.*
- *All tree work shall comply with the Migratory Bird Treaty Act as well as California Fish and Game Code Sections 3503 through 3513 to not disturb nesting birds. To the extent feasible, tree pruning, and removal shall be scheduled outside of the breeding season. Breeding bird surveys shall be conducted prior to tree work. Qualified biologists shall be involved in establishing work buffers for active nests. (see Mitigation Measure BIO-1)*
- *The vertical and horizontal locations of all the trees identified for preservation shall be established and plotted on all plans. These plans shall be forwarded to the consulting arborist for review and comment.*
- *Foundations, footings, and pavements on expansive soils near trees shall be designed to withstand differential displacement to protect the soil surrounding the tree roots.*
- *Any liming within 50 feet of any tree shall be prohibited, as lime is toxic to tree roots. Any herbicides placed under paving materials shall be safe for use under trees and labeled for that use.*
- *Brush from pruning and trees removal operations shall be chipped and spread beneath the trees within the TPZ. Mulch shall be between 2 inches and 4 inches in depth and kept at a minimum of 3 feet from the base of the trees.*
- *All recommendations for tree preservation made by the applicant's consulting arborist shall be followed.*

Impact BIO-3: The proposed Project, in combination with past, present, and reasonably foreseeable projects, would result in significant cumulative impacts with respect to biological resources.

The Final EIR finds that the Project could contribute to biological impacts when considered in combination with cumulative development in the region. Without the implementation of preservation best management practices, the Project would be considered to have a potentially significant impact.

With implementation of Mitigation Measures BIO-1 and BIO-2, set forth and incorporated above, the Project would not make a cumulatively considerable contribution to this cumulative impact, and the impact would be less than significant.

Mitigation Measure BIO-3:

Implement Mitigation Measure BIO-1 and BIO-2.

Impact CULT-1: Construction of the proposed project would have the potential to cause a significant impact to an unknown archaeological resource pursuant to CEQA Guidelines Section 15064.5.

The Final EIR finds that the Project would have the potential to unearth a previously unrecorded archaeological resource. In the event that an unknown archaeological resource is unearthed, the handling of the archaeological resource could result in a loss of cultural significance, which would be considered a potentially significant impact.

Implementation of Mitigation Measure CULT-1 set forth below, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

Mitigation Measure CULT-1:

If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing (including grading, demolition and/or construction) activities:

- *All work within 50 feet of the resources shall be halted, the City shall be notified, and a qualified archaeologist shall be consulted. The contractor shall cooperate in the recovery of the materials. Work may proceed on other parts of the project site while mitigation for tribal cultural resources, historical resources or unique archaeological resources is being carried out.*
- *The qualified archaeologist shall prepare a report for the evaluation of the resource to the California Register of Historical Places and the City Building Department. The report shall also include appropriate recommendations regarding the significance of the find and appropriate mitigations as follows:*
- *If the resource is a non-tribal resource, the archaeologist shall assess the significance of the find according to CEQA Guidelines Section 15064.5.*
- *If the resource is a tribal resource – whether historic or prehistoric – the consulting archaeologist shall consult with the appropriate tribe(s) to evaluate the significance of the resource and to recommend appropriate and feasible avoidance, testing, preservation or mitigation measures, in light of factors such as the significance of the find, proposed project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) may be implemented.*
- *All significant non-tribal cultural materials recovered shall be, as necessary, and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards.*

Impact CULT-3: Construction of the proposed project would have the potential to cause a significant impact to an unknown tribal cultural resource as defined in Public Resources Code 21074.

The Final EIR finds that the Project would have the potential to unearth a previously unrecorded tribal cultural resource. In the event that an unknown tribal cultural resource is unearthed, the handling of the resource could result in a loss of cultural significance, which would be considered a potentially significant impact.

Implementation of Mitigation Measure CULT-1 set forth above, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

Mitigation Measure CULT-2:

Implement Mitigation Measure CULT-1.

Impact CULT-1: The proposed Project, in combination with past, present, and reasonably foreseeable projects, would result in cumulative impacts with respect to cultural resources.

The Final EIR finds that the Project would contribute to cultural resource impacts when considered in combination with cumulative development in the region. Without the implementation of construction best management practices, the Project would be considered to have a potentially significant impact.

Implementation of Mitigation Measure CULT-1 set forth above, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

Mitigation Measure CULT-4:

Implement Mitigation Measure CULT-1.

Impact GEO-1: Construction of the proposed project would have the potential to directly or indirectly affect an unknown unique paleontological resource.

The Final EIR finds that the Project would have the potential to unearth a previously unrecorded paleontological resource. In the event that an unknown paleontological

resource is unearthed, the handling of the paleontological resource could result in a loss of the resource's significance, which would be considered a potentially significant impact.

Implementation of Mitigation Measure GEO-1 set forth below, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

Mitigation Measure GEO-1:

The construction contractor shall incorporate the following in all grading, demolition, and construction plans:

- *In the event that fossils or fossil-bearing deposits are discovered during grading, demolition, or building, excavations within 50 feet of the find shall be temporarily halted or diverted.*
- *The contractor shall notify the City of Cupertino Building Department and a City-approved qualified paleontologist to examine the discovery.*
- *The paleontologist shall document the discovery as needed, in accordance with Society of Vertebrate Paleontology standards (Society of Vertebrate Paleontology 1995), evaluate the potential resource, and assess the significance of the finding under the criteria set forth in CEQA Guidelines Section 15064.5.*
- *The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find.*
- *If the project applicant determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the proposed project based on the qualities that make the resource important. The excavation plan shall be submitted to the City for review and approval prior to implementation.*

Impact GEO-2: The proposed Project, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to geology and soils.

The Final EIR finds that the Project would contribute to impacts to paleontological resources when considered in combination with cumulative development in the region. Without the implementation of construction best management practices, the Project would be considered to have a potentially significant impact.

Implementation Measure GEO-1, set forth above, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

Mitigation Measure GEO-2:

Implement Mitigation Measure GEO-1.

Impact NOISE-1: The proposed Project could generate a substantial temporary increase in ambient noise levels in the vicinity of the proposed project during the construction phase that could exceed the standards established in the local noise ordinance.

The Final EIR finds that the Project could result in ambient noise levels to off-site sensitive receptors due to construction activities. Such an increase in ambient noise levels without the implementation of best management practices would be considered a potentially significant impact.

Implementation of Mitigation Measure NOISE-1 set forth below, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

Mitigation Measure NOISE-1:

Prior to Grading Permit issuance or the start of demolition activities, the project applicant shall demonstrate, to the satisfaction of the City of Cupertino Public Works Director and/or Community Development Director, that the proposed project complies with the following:

- *Pursuant to Cupertino Municipal Code (CMC) Section 10.48.053 the construction activities shall be limited to daytime hours as defined in CMC Section 10.48.010 (i.e., daytime hours are from 7:00 a.m. to 8:00 p.m. on weekdays).*
- *At least 90 days prior to the start of construction activities, all offsite businesses and residents within 300 feet of the project site shall be notified of the planned construction activities. The notification shall include a brief description of the proposed project, the activities that would occur, the hours when construction would occur, and the construction period's overall duration. The notification should include the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint.*
- *At least 10 days prior to the start of construction activities, a sign shall be posted at the entrance(s) to the job site, clearly visible to the public, which includes permitted construction days and hours, as well as the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. If the authorized contractor's representative receives a complaint, he/she shall investigate, take appropriate corrective action, and report the action to the City.*
- *During the entire active construction period, equipment and trucks used for project construction will utilize the best available noise control techniques (e.g., improved mufflers,*

- *equipment re-design, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds), wherever feasible.*
- *During the entire active construction period, stationary noise sources shall be located as far from sensitive receptors as possible, and they shall be muffled and enclosed within temporary sheds, or insulation barriers or other measures shall be incorporated to the extent feasible.*
- *Haul routes shall be selected to avoid the greatest amount of sensitive use areas.*
- *Signs will be posted at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment will be turned off if not in use for more than 5 minutes.*
- *During the entire active construction period and to the extent feasible, the use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. The construction manager will use smart back-up alarms, which automatically adjust the alarm level based on the background noise level or switch off back-up alarms and replace with human spotters in compliance with all safety requirements and laws.*

Impact NOISE-3: The proposed project, in combination with past, present, and reasonably foreseeable projects, would not result in significant cumulative impacts with respect to noise.

The Final EIR finds that the Project would contribute to noise impacts when considered in combination with cumulative development in the region. Without the implementation of construction noise level best management practices, the Project would be considered to have a potentially significant impact.

Implementation of Mitigation Measure NOISE-1 set forth above, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

Mitigation Measure NOISE-3:

Implement Mitigation Measure NOISE-1.

Impact UTIL-1: Implementation of the proposed project may result in a determination by the wastewater treatment provider, which serves or may serve the proposed project, that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments.

Buildout of the Project would have a significant impact if future projected demand exceeds wastewater service capacity of the Santa Clara sanitary sewer system. Without

the implementation of best management practices, the Project would be considered to have a potentially significant impact.

Implementation of Mitigation Measure UTIL-1 set forth below, which is hereby adopted and made a condition of approval of the Project, would avoid or reduce this impact to a less-than-significant level.

Mitigation Measure UTIL-1:

No building permits shall be issued by the City for the proposed Westport Mixed-Use Project that would result in exceeding the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system. The project applicant shall demonstrate, to the satisfaction of the City of Cupertino and Cupertino Sanitary District (CSD), that the proposed project would not exceed the peak wet weather flow capacity of the Santa Clara sanitary sewer system by implementing one or more of the following methods:

- 1) Reduce inflow and infiltration in the CSD system to reduce peak wet weather flows; or*
- 2) Increase on-site water reuse, such as increased grey water use, or reduce water consumption of the fixtures used within the proposed project, or other methods that are measurable and reduce sewer generation rates to acceptable levels, to the satisfaction of the CSD.*

The proposed project's estimated wastewater generation shall be calculated using the generation rates used by the CSD in the Flow Modeling Analysis for the Homestead Flume Outfall to the City of Santa Clara, prepared by Mark Thomas & Co. Inc., dated December 6, 2019, unless alternative (i.e., lower) generation rates achieved by the proposed project are substantiated by the project applicant based on evidence to the satisfaction of the CSD. To calculate the peak wet weather flow for a 10-year storm event, the average daily flow rate shall be multiplied by a factor of 2.95 as required by CSD pursuant to their December 2019 flow modeling analysis.

If the prior agreement between CSD and the City of Santa Clara that currently limits the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system were to be updated to increase the permitted peak wet weather flow sufficiently to accommodate, this would also change the impacts of the project to less than significant. If this were to occur prior to the City's approval of building permits, then Mitigation Measure UTIL-1 would no longer be required to be implemented.

Impact UTIL-7: The proposed project, in combination with past, present, and reasonably foreseeable projects, would not result in significant cumulative impacts with respect to wastewater treatment.

The Final EIR finds that the Project would contribute to impacts to wastewater treatment facilities when considered in combination with cumulative development in the region. Without the implementation of sanitary wastewater best management practices, the Project would be considered to have a potentially significant impact.

With implementation of Mitigation Measure UTIL-1, set forth and incorporated above, cumulative development combined with the Project would not exceed wastewater treatment requirements. Therefore, the Project would not make a cumulatively considerable contribution to this cumulative impact, and the impact would be less than significant.

Mitigation Measure UTIL-7:

Implement Mitigation Measure UTIL-1.

GROWTH INDUCING IMPACTS

An EIR is required to discuss growth inducing impacts, which consist of the ways in which the project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. State CEQA Guidelines § 15126.2(d); Public Resources Code § 21100(b)(5). Direct growth inducement would result, for example, if a project involves the construction of substantial new housing that would support increased population in a community or establishes substantial new permanent employment opportunities. This additional population could, in turn, increase demands for public utilities, public services, roads, and other infrastructure. Indirect growth inducement would result if a project stimulates economic activity that requires physical development or removes an obstacle to growth and development (e.g., increasing infrastructure capacity that would enable new or additional development). It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment. State CEQA Guidelines § 15126.2(d). Section 6.3 of the Draft EIR analyzes the growth inducing impacts of the Project. As explained in Section VIII, below, the findings in this Section VI are based on the Final EIR, the discussion and analysis in which is hereby incorporated in full by this reference.

Implementation of the Project would directly induce population, employment and economic growth by redeveloping the Oaks Shopping Center site. The project would demolish the existing buildings on the site and construct 18 new buildings, that would have 294 residential units and 20,000 square feet of retail space, as well as below and at-grade parking, and associated landscape and hardscape areas..

Development on the site would consist of infill, mixed-use redevelopment on an underutilized site that currently contains a one-story shopping center and surface parking. However, because the infrastructure needed to serve the proposed project is in

place, and new growth would be required to comply with the City's General Plan, zoning regulations, and standards for public services and utilities; secondary or indirect effects associated with this growth do not represent a new significant environmental impact which has not already been addressed in the individual resource chapters of this EIR.

ALTERNATIVES

The Final EIR analyzed five alternatives, examining the environmental impacts and feasibility of each alternative, as well as the ability of the alternatives to meet project objectives. The project objectives as presented in Chapter 3 (Project Description) and Chapter 5 (Alternatives to the Proposed Project) of the Draft EIR are listed above in Section II.A of these Findings; the potentially significant environmental effects of the Project, including feasible mitigation measures identified to avoid these impacts, are analyzed in Chapter 4 (Environmental Evaluation) of the Draft EIR; and the alternatives are described in detail in Chapter 5 (Alternatives to the Proposed Project) of the Draft EIR and Chapter 3 (Revisions to the Draft EIR) of the Response to Comments Document).

All of the alternative projects except for the No Project Alternative would provide a Bike Path on the project site, public access easements on the northwest and southwest corners of the project site to accommodate the bridge over SR-85 connecting Mary Avenue to Alhambra Avenue, and off-site improvements including the installation of a Class IV separated bikeway and a signal control to be activated by bicyclists and pedestrians for the westbound right-turn movement northbound SR-85 on-ramp consistent with the 2016 *Bicycle Transportation Plan*, as well as a bus stop on the section of Stevens Creek Boulevard west of Mary Avenue and east of the SR-85 northbound ramp. Each alternative would include one access point off of Stevens Creek Boulevard and three additional access points off of Mary Avenue. Each alternative would demolish the existing buildings and would retain some existing trees and plant approximately 400 additional trees. The maximum heights of six stories tall (70 feet at the roofline) for Residential-Retail Building 1 and five stories tall (55 feet at the roofline) for Residential-Retail Building 2 would be the same in each alternative.

Brief summaries of the alternatives are provided below. A brief discussion of the Environmentally Superior Alternative follows the summaries of the alternatives. As explained in Section VIII, below, the findings in this Section VI are based on the Final EIR, the discussion and analysis in which is hereby incorporated in full by this reference.

The Original Project Alternative

The Original Project Alternative would construct 18 new buildings, that would have 242 residential units and 20,000 square feet of retail space, as well as below and at-grade parking, and associated landscape and hardscape areas. This alternative would be developed with the 242 residential units, consisting of three rowhouse buildings (19 units), 13 townhouse buildings (69 units), Residential-Retail Building 1 (115 units), Residential-Retail Building 2 (39 BMR senior housing units). This alternative has fewer market-rate units (203 units compared to 219 units), fewer senior units (39 units compared to 179 units, plus 27 memory care licensed assisted living residences), and fewer BMR units (39 compared to 48) than the proposed Project (Revised Senior Enhanced Project).

This alternative would include 17,600 square feet of retail space in Residential-Retail Building 1 and 2,400 square feet of retail space on would have. Residential-Retail Building 2. The below-grade parking would be located under Retail-Residential Building 1 and accessed from the central access point on Mary Avenue.

The Original Project Alternative would meet all of the project objectives, including redeveloping an existing retail and office complex with desirable amenities and housing; helping the City meet the RHNA allocation for 2014-2022; enhancing the vibrancy of Cupertino's Heart of the City as a key mixed-use corridor by providing a pedestrian-friendly community that includes housing, open space and greenery, and neighborhood retail; providing senior housing in close proximity to the Cupertino Senior Citizen Center; creating a prominent gateway development that incorporates quality architectural design and materials, open space, and artwork to announce entry into Cupertino's Heart of the City; creating a mixed-use development that places residential and commercial uses in close proximity to each other, and close to transit options; and helping the City to achieve its affordable housing goals through the inclusion of senior housing units within a residential and mixed-use development project.

The Original Project Alternative would include fewer market-rate units (203 units compared to 219 units), fewer senior units (39 units compared to 179 units, plus 27 memory care licensed assisted living residences), and fewer BMR units (39 units compared to 48 units) than the proposed Project (Revised Senior Enhanced Project). Therefore, while the Original Project Alternative would meet all of the project objectives, it would not provide as many senior housing units in close proximity to the Cupertino Senior Center as the proposed Project (Revised Senior Enhanced Project).

For the foregoing reasons, the Original Project Alternative is hereby rejected as infeasible.

The No Project Alternative

CEQA requires evaluation of the “no project” alternative. State CEQA Guidelines § 15126.6(e). Consistent with State CEQA Guidelines section 15126.6(e)(3)(A), the No Project Alternative assumes the proposed project would not be constructed, and the project site would remain in its current condition. Thus, the proposed mixed-use project would not occur.

The No Project Alternative would not achieve any of the project objectives (see Section II.A above for a list of objectives).

For the foregoing reasons, the No Project Alternative is hereby rejected as infeasible.

No Retail Development Alternative

The No Retail Development Alternative would not include any neighborhood-serving retail in Residential-Retail Building 1 and Residential-Retail Building 2. The subterranean parking level would not be constructed. Rather, parking would be located on the ground floor because there would be no retail component in Residential Building 1. This alternative would be developed with the 242 residential units, consisting of three rowhouse buildings (19 units), 13 townhouse buildings (69 units), Residential-Retail Building 1 (115 units), Residential-Retail Building 2 (39 senior housing units). This alternative has fewer market-rate units (203 units compared to 219 units), fewer senior units (39 units compared to 179 units plus 27 memory care licensed assisted living residences) than the proposed Project (Revised Senior Enhanced Project).

The No Retail Development Alternative would meet most of the project objectives, including redeveloping an existing site with housing, helping the City to meet RHNA allocations for 2014-2022, providing senior housing in close proximity to the Cupertino Senior Center, creating a prominent gateway development at the entry to Cupertino’s Heart of the City, and helping the City to achieve its affordable housing goals through the inclusion of senior housing units.

The No Retail Development Alternative fails to meet project objectives associated with a mixed-use development. This alternative would not redevelop the project site with desirable amenities in proximity to housing, enhance the vibrancy of Cupertino’s Heart of the City as a key mixed-use corridor by providing a pedestrian-friendly community that includes neighborhood retail, create a mixed-use development that places residential and commercial uses in close proximity to each other and transit options, or place affordable senior housing in a mixed-use development project. In addition, No Retail

Development Alternative would not provide as many market rate units (39 units compared to 179 units plus 27 memory care licensed assisted living residences) or senior units (39 units compared to 179 units) on the project site as the proposed Project (Revised Senior Enhanced Project).

For the foregoing reasons, No Retail Development Alternative is hereby rejected as infeasible.

Reduced Retail Development Alternative

The Reduced Retail Development Alternative would provide 50 percent less retail. No subterranean parking would be constructed, because the reduced parking needs could be accommodated on the first floor. This alternative would be developed with the 242 residential units, consisting of three rowhouse buildings (19 units), 13 townhouse buildings (69 units), Residential-Retail Building 1 (115 units), Residential-Retail Building 2 (39 senior housing units). This alternative has fewer market-rate units (203 units compared to 219 units) and fewer senior units (39 units compared to 179 units plus 27 memory care licensed assisted living residences) than the proposed Project (Revised Senior Enhanced Project).

Even though this alternative includes a 50 percent reduction in retail space, this alternative would: redevelop an existing retail and office complex with desirable amenities and housing; help the City meet the RHNA allocation for 2014-2022; enhance the vibrancy of Cupertino's Heart of the City as a key mixed-use corridor by providing a pedestrian-friendly community that includes housing, open space and greenery, and neighborhood retail; provide senior housing in close proximity to the Cupertino Senior Citizen Center; create a prominent gateway development that incorporates quality architectural design and materials, open space, and artwork to announce entry into Cupertino's Heart of the City; create a mixed-use development that places residential and commercial uses in close proximity to each other, and close to transit options; and help the City to achieve its affordable housing goals through the inclusion of senior housing units within a residential and mixed-use development project.

The Reduced Retail Development Alternative would meet all of the proposed project objectives; however, it would not provide as many market rate units (203 units compared to 219 units) or senior units on the project site as the proposed Project (Revised Senior Enhanced Project) (39 units compared to 179 units plus 27 memory care licensed assisted living residences).

For the foregoing reasons, Reduced Retail Alternative is hereby rejected as infeasible.

Environmentally Superior Alternative

In addition to the discussion and comparison of impacts of the proposed Project (Revised Senior Enhanced Project) and the five Alternatives listed above, Section 15126.6(e)(2) of the State CEQA Guidelines requires that an “environmentally superior” alternative be selected and the reasons for such a selection be disclosed. The environmentally superior alternative is the alternative that would be expected to create the least significant environmental effects. Identification of the environmentally superior alternative is an informational procedure and the alternative selected may not be the alternative that best meets the goals or needs of Cupertino.

In the Final EIR, the alternatives to the proposed project are compared to the Original Project. The impacts of the proposed Project ([NAME OF MRV OF PROJECT]) would be the same as the Increased Senior Housing Alternative because the revisions to the Increased Housing Alternative, described above in the Project Description, do not involve changes in the proposed Project’s (Revised Senior Enhanced Project) physical effects on the environment. As shown in Table 5-1, Comparison of Impacts from Project Alternatives in Chapter 3, Revisions to the Proposed Project, of the Response to Comment Document, the Reduced Retail Development Alternative would not result in any impacts that are greater than the Original Project, and would reduce impacts related to cultural resources, geology and soils, and utilities and services systems compared to the Original Project because no excavation for the subterranean parking would be required. When considering the new proposed Project (Revised Senior Enhanced Project), , this conclusion would be the same because the proposed Project, like the Original Project and the Increased Senior Housing Alternative, would include the subterranean parking component.

As described in Chapter 3, Revisions to the Draft EIR, when compared to the Original Project, the proposed Project (Revised Senior Enhanced Project), which is substantially physically similar to the Increased Senior Housing, would have less vehicle miles traveled (VMT) (2,663,868 total annual VMT compared to 2,352,587 total annual VMT – or - 7,298 total daily VMT compared to 6,445 total daily VMT) and would subsequently result in fewer air quality, greenhouse gas (GHG), and noise emissions from automobiles, which are the greatest sources of emissions. Water demand and wastewater generation, and subsequent GHG emissions from these sources, would be greater under the proposed Project (Revised Senior Enhanced Project) when compared to the Original Project because senior housing (179 units compared to 39 units) creates a greater demand for water and generates more wastewater than non-senior housing.

All impacts under any of the alternatives would be less than significant or less than significant with implementation of the mitigation measures identified in the Final EIR. This is because the recommended mitigation measures would apply to all of the alternatives. None of the alternatives would exceed any thresholds of significance in any environmental category.

For the foregoing reasons, the Reduced Retail Development Alternative is considered the environmentally superior alternative when compared to the proposed Project (Revised Senior Enhanced Project).

INCORPORATION BY REFERENCE

These findings incorporate the text of the Final EIR for the Project (Revised Senior Enhanced Project), the Mitigation Monitoring and Reporting Program, City staff reports relating to the Project and other documents relating to public hearings on the Project, by reference, in their entirety. Without limitation, this incorporation is intended to elaborate on the scope and nature of mitigation measures, project and cumulative impacts, the basis for determining the significance of impacts, the comparison of the alternatives to the Project, the determination of the environmentally superior alternative, and the reasons for approving the Project.

RECORD OF PROCEEDINGS

Various documents and other materials related to the Project constitute the record of proceedings upon which the City bases its findings and decisions contained herein. Those documents and materials are located in the offices of the custodian for the documents and materials, which is the City of Cupertino Community Development Department, Cupertino City Hall, 10300 Torre Avenue, Cupertino, CA 95014-3202.

NO RECIRCULATION REQUIRED

State CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when “significant new information” is added to the EIR after public notice is given of the availability of the Draft EIR but before certification. No significant new information was added to the Draft EIR as a result of the public comment process. The Final EIR responds to comments, and clarifies, amplifies and makes insignificant modifications to the Draft EIR. The Final EIR does not identify any new significant effects on the environment or a substantial increase in the severity of an environmental impact.

The proposed Project (Revised Senior Enhanced Project) consists of the same overall developed area that was analyzed in the EIR for Original Project and Increased Senior Housing Alternative, and would have the same number of residential units as the Increased Senior Housing Alternative. Accordingly, all portions of the proposed Project (Revised Senior Enhanced Project) were analyzed in the EIR. There are no new significant effects on the environment or a substantial increase in the severity of an environmental impact associated with proposed Project (Revised Senior Enhanced Project) that is the subject of these Findings.

For the foregoing reasons, recirculation of the Final EIR is not required.

SUMMARY

Based on the foregoing Findings and the information contained in the record, the City determines that all significant effects on the environment due to the approval of the Project have been eliminated or substantially lessened where feasible.

Mitigation Monitoring and Reporting Program

Westport Mixed- Use Project

21267 Stevens Creek Boulevard

APN: 326-27-042, -043

June 2020

<ul style="list-style-type: none"> • All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. • All haul trucks transporting soil, sand, or other loose material off-site shall be covered. • 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. • All vehicle speeds on unpaved roads shall be limited to 15 mph. • 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. • 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. • 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. • 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 BAAQMD phone number shall also be visible to ensure compliance with applicable regulations. 	<p>Project Applicant/Construction Contractor</p>	<p>Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities</p>	<p>City of Cupertino Public Works Department</p>	<p>Review Construction Plans and Specifications/ Conduct Site Inspections</p>	<p>During Scheduled Construction Site Inspections</p>
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- Vegetative ground cover shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.

Mitigation Measure AQ-4: Implement Mitigation Measure AQ-2.	Project Applicant/Construction Contractor	Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities	City of Cupertino Public Works Department	Review Construction Plans and Specifications/ Conduct Site Inspections	During Scheduled Construction Site Inspections
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BIOLOGICAL RESOURCES

<p>Mitigation Measure BIO-1: Nests of raptors and other birds shall be protected when in active use, as required by the federal Migratory Bird Treaty Act and the California Fish and Game Code. The construction contractor shall indicate the following on all construction plans, if construction activities and any required tree removal occur during the breeding season (February 1 and August 31). Preconstruction surveys shall:</p> <ul style="list-style-type: none"> • Be conducted by a qualified biologist prior to tree removal or grading, demolition, or construction activities. Note that preconstruction surveys are not required for tree removal or construction, grading, or demolition activities outside the nesting period. • Be conducted no more than 14 days prior to the start of tree removal or construction. • Be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped. • Document locations of active nests containing viable eggs or young birds. <p>Protective measures for active nests containing viable eggs or young birds shall be implemented under the direction of the qualified biologist</p>	Project Applicant	Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities	Qualifying Biologist	Preconstruction Survey	Once for Survey; Ongoing if nesting birds identified and until they have left the nest
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until the nests no longer contain eggs or young birds. Protective measures shall include:

- Establishment of clearly delineated exclusion zones (i.e., demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by the qualified biologist, taking into account the species of birds nesting, their tolerance for disturbance and proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds.
- Monitoring active nests within an exclusion zone on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status.
- An increase in the radius of an exclusion zone by the qualified biologist if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified biologist only in consultation with California Department of Fish and Wildlife.
- The protection measures shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.

Mitigation Measure BIO-2: The proposed project shall comply with the City of Cupertino’s Protected Trees Ordinance (Cupertino Municipal Code Section 14.18). A tree removal permit shall be obtained for the removal of any “protected tree,” and replacement plantings shall be provided as approved by the City. If permitted, an appropriate in-lieu tree replacement fee may be paid to the City of Cupertino’s Tree Fund as compensation for “protected trees” removed by the proposed project, where sufficient land area is not available on-site for adequate replacement and when approved by the City.

In addition, a Tree Protection and Replacement Program (Program) shall be developed by a Certified Arborist prior to project approval and implemented during project construction to provide for adequate protection and replacement of “protected trees,” as defined by the City’s Municipal Code. The Program shall include the following provisions:

Project Applicant	Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities	City of Cupertino Public Works Department	Plan Review and Approval	Once During the Preconstruction Phase and Ongoing During Construction
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- Adequate measures shall be defined to protect all trees to be preserved. These measures should include the establishment of a tree protection zone (TPZ) around each tree to be preserved, in which no disturbance is permitted. For design purposes, the TPZ shall be located at the dripline of the tree or 10 feet, whichever is greater. If necessary, the TPZ for construction-tolerant species (i.e., coast live oaks) may be reduced to 7 feet.
 - Temporary construction fencing shall be installed at the perimeter of TPZs prior to demolition, grubbing, or grading. Fences shall be 6-foot chain link or equivalent, as approved by the City of Cupertino. Fences shall remain until all construction is completed. Fences shall not be relocated or removed without permission from the consulting arborist.
 - No grading, excavation, or storage of materials shall be permitted within TPZs. Construction trailers, traffic, and storage areas shall remain outside fenced areas at all times. No excess soil, chemicals, debris, equipment, or other materials shall be dumped or stored within the TPZ.
 - Underground services including utilities, sub-drains, water or sewer shall be routed around the TPZ. Where encroachment cannot be avoided, special construction techniques such as hand digging or tunneling under roots shall be employed where necessary to minimize root injury. Irrigation systems must be designed so that no trenching will occur within the TPZ.
 - Construction activities associated with structures and underground features to be removed within the TPZ shall use the smallest equipment and operate from outside the TPZ. The consulting arborist shall be on-site during all operations within the TPZ to monitor demolition activity.
 - All grading, improvement plans, and construction plans shall clearly indicate trees proposed to be removed, altered, or otherwise affected by development construction. The tree information on grading and development plans should indicate the number, size, species, assigned tree number, and location of the dripline of all trees that are to be retained/preserved. All plans shall also include tree preservation guidelines prepared by the consulting arborist.
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- The demolition contractor shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection. Prior to beginning work, the contractor(s) working in the vicinity of trees to be preserved shall be required to meet with the consulting arborist at the site to review all work procedures, access routes, storage areas, and tree protection measures.
 - All contractors shall conduct operations in a manner that will prevent damage to trees to be preserved. Any grading, construction, demolition or other work that is expected to encounter tree roots shall be monitored by the consulting arborist. If injury should occur to any tree during construction, it should be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
 - Any plan changes affecting trees shall be reviewed by the consulting arborist with regard to tree impacts. These include, but are not limited to, site improvement plans, utility and drainage plans, grading plans, landscape and irrigation plans, and demolition plans.
 - Trees to be preserved may require pruning to provide construction clearance. All pruning shall be completed by a State of California Licensed Tree Contractor (C61/D49). All pruning shall be done by Certified Arborist or Certified Tree Worker in accordance with the 2002 Best Management Practices for Pruning published by the International Society of Arboriculture, and adhere to the most recent editions of the American National Standard for Tree Care Operations (Section Z133.1) and Pruning (Section A300).
 - Any root pruning required for construction purposes shall receive the prior approval of and be supervised by the consulting arborist.
 - Any demolition or excavation, such as grading, pad preparation, excavation, and trenching, within the dripline or other work that is expected to encounter tree roots should be approved and monitored by the consulting arborist. Any root pruning required for construction purposes shall receive prior approval of, and be supervised by, the consulting
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arborist. Roots shall be cut by manually digging a trench and cutting exposed roots with a sharp saw.

- Tree(s) to be removed that have branches extending into the canopy of tree(s) to remain must be removed by a qualified arborist and not by construction contractors. The qualified arborist shall remove the tree in a manner that causes no damage to the tree(s) and understory to remain. Tree stumps shall be ground 12 inches below ground surface.
- All tree work shall comply with the Migratory Bird Treaty Act as well as California Fish and Game Code Sections 3503 through 3513 to not disturb nesting birds. To the extent feasible, tree pruning, and removal shall be scheduled outside of the breeding season. Breeding bird surveys shall be conducted prior to tree work. Qualified biologists shall be involved in establishing work buffers for active nests. (see Mitigation Measure BIO-1)
- The vertical and horizontal locations of all the trees identified for preservation shall be established and plotted on all plans. These plans shall be forwards to the consulting arborist for review and comment.
- Foundations, footings, and pavements on expansive soils near trees shall be designed to withstand differential displacement to protect the soil surrounding the tree roots.
- Any liming within 50 feet of any tree shall be prohibited, as lime is toxic to tree roots. Any herbicides placed under paving materials shall be safe for use under trees and labeled for that use.
- Brush from pruning and trees removal operations shall be chipped and spread beneath the trees within the TPZ. Mulch shall be between 2 inches and 4 inches in depth and kept at a minimum of 3 feet from the base of the trees.
- All recommendations for tree preservation made by the applicant's consulting arborist shall be followed.

Mitigation Measure BIO-3: Implement Mitigation Measures BIO-1 and BIO-2. Project Applicant

Prior to Issuance of Building Permits Authorizing Grading

Qualifying Biologist/City of Cupertino Public Works Department

Preconstruction Survey/ Plan Review and Approval

Once for Survey; Ongoing if nesting birds identified and until they have left

or Other Construction
Activities

the nest/ Once
during the
preconstruction
phase and ongoing
during construction

CULTURAL RESOURCES

Mitigation Measure CULT-1: If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing (including grading, demolition and/or construction) activities:

- All work within 50 feet of the resources shall be halted, the City shall be notified, and a qualified archaeologist shall be consulted. The contractor shall cooperate in the recovery of the materials. Work may proceed on other parts of the project site while mitigation for tribal cultural resources, historical resources or unique archaeological resources is being carried out.
- The qualified archaeologist shall prepare a report for the evaluation of the resource to the California Register of Historical Places and the City Building Department. The report shall also include appropriate recommendations regarding the significance of the find and appropriate mitigations as follows:
 - If the resource is a non-tribal resource, the archaeologist shall assess the significance of the find according to CEQA Guidelines Section 15064.5.
 - If the resource is a tribal resource – whether historic or prehistoric – the consulting archaeologist shall consult with the appropriate tribe(s) to evaluate the significance of the resource and to recommend appropriate and feasible avoidance, testing, preservation or mitigation measures, in light of factors such as the significance of the find, proposed project design, costs, and other considerations. If avoidance is infeasible,

Project
Applicant/Construction
Contractor

During Construction

Consulting
Archeologist and
City of Cupertino
Public Works
Department

Plan Review and
Approval

As needed if
resources are
unearthed

-
- other appropriate measures (e.g., data recovery) may be implemented.
- All significant non-tribal cultural materials recovered shall be, as necessary, and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards.

Mitigation Measure CULT-3: Implement Mitigation Measure CULT-1.	Project Applicant/Construction Contractor	During Construction	Consulting Archeologist and City of Cupertino Public Works Department	Plan Review and Approval	As needed if resources are unearthed
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GEOLOGY AND SOILS

Mitigation Measure GEO-1: The construction contractor shall incorporate the following in all grading, demolition, and construction plans:	Project Applicant/ Construction Contractor	During Construction	Consulting Paleontologist and City of Cupertino Public Works Department	Plan Review and Approval	As needed if resources are unearthed
<ul style="list-style-type: none"> • In the event that fossils or fossil-bearing deposits are discovered during grading, demolition, or building, excavations within 50 feet of the find shall be temporarily halted or diverted. • The contractor shall notify the City of Cupertino Building Department and a City-approved qualified paleontologist to examine the discovery. • The paleontologist shall document the discovery as needed, in accordance with Society of Vertebrate Paleontology standards (Society of Vertebrate Paleontology 1995), evaluate the potential resource, and assess the significance of the finding under the criteria set forth in CEQA Guidelines Section 15064.5. • The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. • If the project applicant determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the proposed project based on the 					

qualities that make the resource important. The excavation plan shall be submitted to the City for review and approval prior to implementation.

Noise

<p>Mitigation Measure NOISE-1: Prior to Grading Permit issuance or the start of demolition activities, the project applicant shall demonstrate, to the satisfaction of the City of Cupertino Public Works Director and/or Community Development Director, that the proposed project complies with the following:</p>	<p>Project Applicant/Construction Contractor</p>	<p>Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities</p>	<p>City of Cupertino Public Works Department</p>	<p>Plan Review and Approval/Site Inspections</p>	<p>Once for Plan Review/ During Scheduled Constructions Site Inspections</p>
<ul style="list-style-type: none"> ▪ Pursuant to Cupertino Municipal Code (CMC) Section 10.48.053 the construction activities shall be limited to daytime hours as defined in CMC Section 10.48.010 (i.e., daytime hours are from 7:00 a.m. to 8:00 p.m. on weekdays). ▪ At least 90 days prior to the start of construction activities, all offsite businesses and residents within 300 feet of the project site shall be notified of the planned construction activities. The notification shall include a brief description of the proposed project, the activities that would occur, the hours when construction would occur, and the construction period’s overall duration. The notification should include the telephone numbers of the City’s and contractor’s authorized representatives that are assigned to respond in the event of a noise or vibration complaint. ▪ At least 10 days prior to the start of construction activities, a sign shall be posted at the entrance(s) to the job site, clearly visible to the public, which includes permitted construction days and hours, as well as the telephone numbers of the City’s and contractor’s authorized representatives that are assigned to respond in the event of a noise or vibration complaint. If the authorized contractor’s representative receives a complaint, he/she shall investigate, take appropriate corrective action, and report the action to the City. ▪ During the entire active construction period, equipment and trucks used for project construction will utilize the best available noise control techniques (e.g., improved mufflers, equipment re-design, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds), wherever feasible. 					

- During the entire active construction period, stationary noise sources shall be located as far from sensitive receptors as possible, and they shall be muffled and enclosed within temporary sheds, or insulation barriers or other measures shall be incorporated to the extent feasible.
- Haul routes shall be selected to avoid the greatest amount of sensitive use areas.
- Signs will be posted at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment will be turned off if not in use for more than 5 minutes.
- During the entire active construction period and to the extent feasible, the use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. The construction manager will use smart back-up alarms, which automatically adjust the alarm level based on the background noise level or switch off back-up alarms and replace with human spotters in compliance with all safety requirements and laws.

Utilities and Service Systems

<p>Mitigation Measure UTIL-1: No building permits shall be issued by the City for the proposed Westport Mixed-Use Project that would result in exceeding the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system. The project applicant shall demonstrate, to the satisfaction of the City of Cupertino and Cupertino Sanitary District (CSD), that the proposed project would not exceed the peak wet weather flow capacity of the Santa Clara sanitary sewer system by implementing one or more of the following methods:</p> <ol style="list-style-type: none"> 3. Reduce inflow and infiltration in the CSD system to reduce peak wet weather flows; or 4. Increase on-site water reuse, such as increased grey water use, or reduce water consumption of the fixtures used within the proposed project, or other methods that are measurable and reduce sewer generation rates to acceptable levels, to the satisfaction of the CSD. 	<p>Project Applicant</p>	<p>Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities</p>	<p>City of Cupertino Sanitary District</p>	<p>Plan Review and Approval</p>	<p>Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities</p>
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The proposed project's estimated wastewater generation shall be calculated using the generation rates used by the CSD in the *Flow Modeling Analysis for the Homestead Flume Outfall to the City of Santa Clara*, prepared by Mark Thomas & Co. Inc., dated December 6, 2019, unless alternative (i.e., lower) generation rates achieved by the proposed project are substantiated by the project applicant based on evidence to the satisfaction of the CSD.

If the prior agreement between CSD and the City of Santa Clara that currently limits the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system were to be updated to increase the permitted peak wet weather flow sufficiently to accommodate, this would also change the impacts of the project to less than significant. If this were to occur prior to the City's approval of building permits, then Mitigation Measure UTIL-1 would no longer be required to be implemented.

RESOLUTION NO. 20-106

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING A DEVELOPMENT PERMIT TO CONSTRUCT A MIXED-USED
DEVELOPMENT CONSISTING OF 267 HOUSING UNITS (88
ROWHOUSES/TOWNHOUSES, 179 SENIOR APARTMENTS OF WHICH 48 ARE
SENIOR AFFORDABLE APARTMENTS), 27 MEMORY CARE LICENSED
ASSISTED LIVING RESIDENCES (“MEMORY CARE RESIDENCES”), AND 20,000
SQUARE FEET OF COMMERCIAL SPACE; DENSITY BONUS; DENSITY BONUS
PARKING REDUCTION; DENSITY BONUS WAIVERS FOR HEIGHT, BUILDING
PLANE, AND BELOW MARKET RATE HOUSING DISPERSION; AND AN
INCENTIVE/CONCESSION FOR THE CONSOLIDATION OF BMR HOUSING
UNITS IN A SINGLE SENIOR BUILDING. LOCATED AT 21267 STEVENS CREEK
BOULEVARD (APN: 326-27-042, -043)**

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 (including a density bonus and associated parking reduction and waivers) 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 to recommend that the City Council certify the EIR for the project; and

WHEREAS, based on substantial evidence in the record, on May 12, 2020, the Planning Commission recommended on a 5-0 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 5-0 vote that the City Council approve the Vesting Tentative Map (TM-2018-03), in substantially similar form to the Resolution presented (Resolution No. 6904), approve the Development Permit (DP-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6901), approve the Architectural and Site Approval Permit (ASA-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6902), approve the Use Permit (U-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6903), approve the Tree Removal Permit (TR-2018-22) in substantially similar form to the Resolution presented (Resolution No. 6906), approve the Heart of the City Exception (EXC-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6905) for the Senior Enhanced Alternative; and

WHEREAS, on June 4, 2020, as updated on June 25 and 26, 2020, the applicant submitted and requested the City to consider revisions to the Project (“Revised Senior Enhanced Project”) that include relocating nine Below Market Rate units from Building 1 to an additional top story on Building 2, altering the unit mix in Buildings 1 and 2 to provide additional space for terraces on the tops of those buildings, and changing the unit mix in Building 2 to include two-bedroom units in addition to studios and one-bedrooms; and

WHEREAS, because these revisions in the Project affect building height and dispersion of BMR units, the Revised Senior Enhanced Project was reviewed by the Planning Commission on July 14, 2020 for recommendation to the City Council; and

WHEREAS, on July 14, 2020, the Planning Commission recommended on a 3-2 vote that the City Council deny the project in accordance with Resolution No. 6908; and

WHEREAS, on July 31, 2020, the applicant submitted a request for an incentive/concession to consolidate all 48 of the senior BMR units in Building 2; 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 August 18, 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 August 18, 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. 20-105 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;

With the conditions of approval and the approved density bonus, parking reduction, waivers, and incentive/concession, 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. With the conditions of approval and the granting of the requested exception, the proposed development has met the applicable development standards of the Heart of the City Specific Plan and qualifies for a density bonus, density bonus parking reduction, and certain density bonus waivers and incentives/concessions for certain general plan and zoning 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 remaining sites identified in the Housing Element are adequate to meet the requirements of Section 65583.2 and to accommodate the City's share of the regional housing need. (Findings required by Government Code Section 65863(b)(2).)

The remaining sites in the housing element inventory are adequate to meet the requirements of Section 65583.2 and to accommodate the City's share of the regional lower income housing need. The proposed project does not reduce the density of the site below what was projected in the City's housing element; the housing element shows a site capacity of 200 units, whereas 267 units are proposed. However, the proposed project includes only 48 lower income units, whereas the site was projected to contain 200 lower income units. Nonetheless, the remaining sites in the inventory are adequate to accommodate the City's share of the regional lower income housing need, in that 1,242¹ lower income units have been approved by the City at the remaining housing element sites (Vallco Shopping District, Marina Plaza, the Hamptons, and the Barry Swenson site), well in excess of the 563 units that must be accommodated to meet the City's share of the regional lower income housing need. The City has approved a total of 3,209² units on these four sites, also well in excess of the City's allocation of 1,064 units to meet its total share of the regional housing need.

4. 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 a for a density bonus project that provides for approximately 20% of its base density as Below Market Rate Housing. Because 12% of the units on-site will be limited to Very Low Income seniors, the project is eligible for a 35% density bonus, parking reduction, waivers, and up to two (2) incentives/concessions. The site is eligible for a density bonus parking reduction under Government Code section 65915(p)(2) and Municipal Code Section 19.56.040(C) (0.5 space per bedroom), in that it includes the maximum number of very low income units and is located within one-half mile of a major transit stop, with unobstructed access, as described in the staff report and Final EIR.

¹ Consisting of the following lower income units in approved projects: Vallco Shopping District, 1,201 units; Veranda affordable housing (Barry Swenson site), 18 units; Marina Plaza, 16 units; Hamptons, 7 units net.

² Consisting of the following total units in approved projects: Vallco Shopping District, 2,402 units; Veranda (Barry Swenson site), 19 units; Marina Plaza, 188 units; Hamptons, 600 net new units.

- b) A finding that the requested incentive(s) or concession(s) will result in identifiable and actual cost reductions based upon the documentation provided by the applicant and the findings of the peer reviewer, if incentive(s) or concession(s) are requested (other than mixed use development).

The applicant has requested as a concession that all senior BMR units be consolidated in Building 2, rather than dispersed between Building 1 and Building 2. The City proposes to expand this concession to allow the applicant to consolidate all BMR units in Building 2, rather than dispersing them throughout Building 1 and the Townhouse/Rowhouse portion. The expanded concession would result in actual cost reductions to the project. First, the age restricted Buildings 1 and 2 are required to be constructed using different methods and materials. As a state-licensed assisted living facility, Building 1 would be required to be built as a Type I building per the State of California due to the nature of the proposed residents. Building 2 is under no such restriction, however, and can be constructed as a Type IIIA Sprinklered SM building for the top five levels and Type IA Sprinklered SM for the ground floor and connected parking garage to Building 1 (Type IA). Therefore, the total cost savings by consolidating the BMR units in Building 2 would be approximately \$200,000 per BMR unit in construction costs. Second, there is a substantial on-going operating cost to provide the services associated with a state-licensed assisted living facility. These costs far exceed the BMR housing allowance for rent and utilities and represent substantial cost savings if the units were relocated to Building 2 as senior independent living units. Third, a significant source of funding for affordable housing, which is from the sale of tax credits, would not be available for the nine BMR units if they were developed in Building 1 as state-licensed assisted living units. Higher total financing cost plus the additional time and cost of delay would be incurred to fill this gap. These costs are saved by consolidating the BMR units in Building 2 as senior independent living units. Fourth, providing BMR townhouse/rowhouse units would be more expensive than providing senior BMR units in Building 1 for a number of reasons, including that the townhouse/rowhouse units are proposed to be much larger than the senior units in Building 1 and the applicant would have easier access to affordable financing if all BMR units are consolidated in a single building.

- 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 childcare 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 included 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.

BMR Unit Dispersion Waiver: *The project applicant requested a waiver of the requirement that "[t]he BMR units shall be dispersed throughout the residential project," (CMC § 19.56.050.G 1 and BMR Mitigation Manual Section 2.3.4(D)), insofar as it would have required BMR units to be dispersed in the Townhouse/Rowhouse component of the project. However, this waiver is not justified. There is no evidence that this requirement—which requires dispersion of BMR units, but does not require the BMR units to be senior BMR units—would “physically preclude” the project. Rather, enforcing this requirement would simply require the applicant to convert some of the existing townhouses/rowhouses from market rate units to BMR units. While that conversion may have financial impacts, those financial impacts are not a basis for granting a waiver under State Density Bonus Law. No change is required in the physical design of the project to disperse the BMR units. The City has proposed an expanded concession that would allow the applicant to consolidate all BMR units in Building 2, rather than dispersing them in the Townhouse/Rowhouse portion of the Project.*

***Height and Slope Setback Waivers:** According to analysis prepared by the architectural firm RRM, applying the height and slope setback limitations would physically preclude the project by: (a) decreasing the amount of proposed open space and landscaped areas below what is otherwise required by the City; (b) reducing the average size of senior units; (c) reducing commercial ceiling heights; (d) decreasing above-ground parking and increasing underground parking. Therefore, the development standards for the slope line setback and height would physically preclude the development.*

While the evidence in the record supports these waivers, there is also evidence suggesting these waivers could have been supported as concessions, and City Council's preference would have been to approve these modifications as concessions.

- 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. (The project is eligible to provide 0.5 space per bedroom, which requires 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. At a ratio of 0.5 spaces per bedroom, 243 spaces could be provided for the residences, but the project proponent has elected to provide 320 spaces.

- 5. 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 conclusions 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 August 18, 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 June 4, 2020, as updated June 25, 2020, consisting of 39 sheets labeled as Westport Cupertino, G200 – G213, 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, including any misrepresentation related to the note on the Vesting Tentative Map that the Townhouse/Rowhouse units will be for-sale.

3. **CONCURRENT APPROVAL CONDITIONS**

The conditions of approval contained in file nos. TR-2018-22, 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. By requesting only one concession prior to City Council approval of these first development permits, the applicant has waived any future claim to a second concession.

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 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.

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 36 of the senior BMR units to be occupied at rents that are affordable to very low or low-income households at a ratio of 60% very low-income (22 units) to 40% low-income (14 units) for a period not less than 99 years from the date of first occupancy of the unit pursuant to CMC Section 19.56.050.B and the City's Below Market Rate Housing Program. Also prior to occupancy, for the remaining 12 senior BMR units, the proposed project shall record covenants that require the units to be occupied

at rents that are affordable to very low or low-income households at a ratio of 60% very low-income (7 units) to 40% low-income (5 units) for a period of not less than 55 years from the date of first occupancy of the unit pursuant to CMC Section 19.56.050.A.

Pursuant to Government Code Section 66020(d)(1), this Condition 10 constitutes written notice of a description of any exactions imposed by this Condition. You are hereby further notified that the 90-day approval period in which you may protest any exactions imposed by this Condition, 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 any exactions imposed by this Condition.

11. CONCURRENT DEVELOPMENT OF BMR AND MARKET-RATE HOUSING

a. The senior BMR units shall be constructed concurrently with the Rowhouse/Townhouse Units. "Concurrent construction," shall mean the following:

i. All senior BMR units must have received a certificate of occupancy or final inspection or the Project shall have reached the Affordable Senior Housing Milestone before the City will issue a certificate of occupancy or undertake final inspections of the sixty-sixth (66th) Rowhouse/Townhouse Units. The "Affordable Senior Housing Milestone" means the time at which the following conditions (a) plus (b) have occurred, or condition (c) has occurred: (a) Developer has transferred the parcel on which the senior BMR housing will be constructed to an affordable housing developer or its affiliate; (b) the affordable housing developer has closed on its construction financing; (c) the Developer has provided evidence of a completion guaranty (which may be a performance bond) to the City, in a form and amount reasonably acceptable to the City.

ii. City will not issue a certificate of occupancy or undertake final inspections for the senior BMR units until it has issued a certificate of occupancy or completed final inspections for ten (10) Rowhouse/Townhouse Units.

12. 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.

13. 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.

14. 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 ___ feet of any residential property.
- g. Any other measures as determined to be appropriate by the Director of Community Development

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. RESTAURANT ODOR ABATEMENT

All 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.

24. 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.

25. SITE IMPROVEMENTS

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

26. 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, an acoustical

engineer may be required to submit noise attenuation measures to the satisfaction of the Director of Community Development at the applicant's expense.

27. ONGOING OBLIGATIONS

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

28. INDEMNIFICATION

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.

29. 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, for 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.

Pursuant to Government Code Section 66020(d) (1), these Conditions constitute written notice of a description of such dedication. You are hereby further notified that

the 90-day approval period in which you may protest this dedication, 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 dedication.

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, 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. The Developer will design and build an alignment for the bicycle access through the property, including at the southwest corner, that ensures a safe and efficient movement for bicycle traffic, to the satisfaction of the City Engineer.

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 and shall be substantially consistent with those shown on the Vesting Tentative Map. 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. Final alignment of the public paths and easements shall be approved by the City Engineer.

Pursuant to Government Code Section 66020(d) (1), these Conditions constitute written notice of a description of such dedication. You are hereby further notified that the 90-day approval period in which you may protest this dedication, 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 dedication

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 Senior - \$30,000/DU 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)
h. Street Tree	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, 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 . 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

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 18th day of August, 2020, by the following vote:

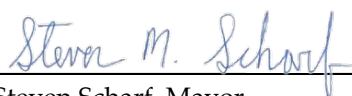

Vote Members of the City Council

AYES: Scharf, Paul, Chao, Sinks, Willey

NOES: None

ABSENT: None

ABSTAIN: None

<p>SIGNED:</p> <p> _____</p> <p>Steven Scharf, Mayor City of Cupertino</p>	<p><u>8/28/2020</u> _____</p> <p>Date</p>
<p>ATTEST:</p> <p> _____</p> <p>Kirsten Squarcia, City Clerk</p>	<p><u>8/28/2020</u> _____</p> <p>Date</p>

RESOLUTION NO. 20-107

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING AN ARCHITECTURAL AND SITE APPROVAL PERMIT TO
CONSTRUCT MIXED-USED DEVELOPMENT CONSISTING OF 267 HOUSING
UNITS (88 ROWHOUSE/TOWNHOMES, 179 SENIOR APARTMENTS, OF WHICH
INCLUDE 48 SENIOR AFFORDABLE APARTMENTS), 27 MEMORY CARE
LICENSED ASSISTED LIVING RESIDENCES (“MEMORY CARE RESIDENCES”),
AND 20,000 SQUARE FEET OF COMMERCIAL SPACE LOCATED AT
21267 STEVENS CREEK BOULEVARD (APN: 326-27-042, -043)**

SECTION I: PROJECT DESCRIPTION

Application No.: ASA-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 ARCHITECTURAL AND SITE APPROVAL:

WHEREAS, the Planning Commission of the City of Cupertino received an application for an Architectural and Site Approval Permit as described in Section I of this resolution; and

WHEREAS, The Westport Cupertino Mixed-Use Project (“Project”), including the Architectural and Site Approval 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 to recommend that the City Council certify the EIR for the project; and

WHEREAS, based on substantial evidence in the record, on May 12, 2020, the Planning Commission recommended on a 5-0 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 5-0 vote that the City Council approve the Vesting Tentative Map (TM-2018-03), in substantially similar form to the Resolution presented (Resolution No. 6904), approve the Development Permit (DP-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6901), approve the Architectural and Site Approval Permit (ASA-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6902), approve the Use Permit (U-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6903), approve the Tree Removal Permit (TR-2018-22) in substantially similar form to the Resolution presented (Resolution No. 6906), approve the Heart of the City Exception (EXC-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6905) for the Senior Enhanced Alternative; and

WHEREAS, on June 4, 2020, as updated on June 25 and 26, 2020, the applicant submitted and requested the City to consider revisions to the Project (“Revised Senior Enhanced Project”) that include relocating nine Below Market Rate units from Building 1 to an additional top story on Building 2, altering the unit mix in Buildings 1 and 2 to provide additional space for terraces on the tops of those buildings, and changing the unit mix in Buildings 2 to include two-bedroom units in addition to studios and one-bedroom units; and

WHEREAS, because the revisions in the Project affect building height and dispersion of BMR units, the project was reviewed by the Planning Commission on July 14, 2020 for recommendation to the City Council; and

WHEREAS, on July 14, 2020, the Planning Commission recommended on a 3-2 vote that the City Council deny the project in accordance with Resolution No. 6908; and

WHEREAS, on July 31, 2020, the applicant submitted a request for an incentive/concession to consolidate all 48 of the senior BMR units in Building 2; 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 August 18, 2020, the City Council held a public hearing to consider the Architectural and Site Approval; and

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

WHEREAS, on August 18, 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. 20-105 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 an Architectural and Site Approval Permit; and

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

1. The proposal, 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;

With the conditions of approval and the approved density bonus, parking reduction, waivers, and incentive/concession the project is consistent with the General Plan and Zoning Ordinance,. All mitigation measures identified in the Initial Study/Mitigated Negative Declaration that are within the responsibility and jurisdiction of the City have been adopted and incorporated into the project to mitigate potential impacts to a less than significant level. As a result, 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.

2. The proposal is consistent with the purposes of Chapter 19.168, the General Plan, any specific plan, zoning ordinances, applicable planned development permit, conditional use permits, variances, subdivision maps or other entitlements to use which regulate the subject property including, but not limited to, adherence to the following specific criteria:

- a) Abrupt changes in building scale should be avoided. A gradual transition related to height and bulk should be achieved between new and existing buildings.

The proposed project is a redevelopment of a commercial site with mix of housing types that include two multistory high-density structures, as well as lower density townhome/rowhouse condominiums. The site is bordered by high density residential to the north and De Anza College to the South, across Stevens Creek Boulevard. The development is designed to concentrate the taller structures on the northwest corner of Mary Avenue and Stevens Creek Boulevard intersection while the shorter townhome/rowhouse structures are placed closer to the smaller apartment and single-family developments along Mary Avenue. This design provides a gradual transition between buildings of different height and bulk.

- b) In order to preserve design harmony between new and existing building and in order to preserve and enhance property values, the materials, textures and colors of new building should harmonize with adjacent development by being consistent or compatible with design and color schemes with the future character of the neighborhoods and purposes of the zone in which they are situated. The location, height and materials of walls, fencing, hedges and screen planting should harmonize with adjacent development. Unsightly storage areas, utility installations and unsightly elements of parking lots should be concealed. The planting of ground cover or various types of pavements should be used to prevent dust and erosion, and the unnecessary destruction of existing healthy trees should be avoided. Lighting for development should be adequate to meet safety requirements as specified by the engineering and building departments, and provide shielding to prevent spill-over light to adjoining property owners.

The design quality of the development is consistent with the high-quality standards encouraged by City Staff. Both the high-density structures and townhome/rowhouse buildings meet the design qualities of a Mediterranean design development. The architectural style is consistent throughout the development. Further, the planting plan is consistent with the intent of the Heart of the City Specific Plan guidelines. Unsightly uses such as loading and trash pickup have been placed within the buildings away from view of neighboring uses. Utility installation has been designed to be screened by landscaping and or incorporated into the building design. The final lighting for the development will be reviewed as part of the review of the project construction documents to ensure that they meet safety requirements while avoiding spill-over light to adjacent properties.

- c) The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures shall minimize traffic hazards and shall positively affect the general appearance of the neighborhood and harmonize with adjacent development; and

Signage approval is not included in this application.

- d) With respect to new projects within existing residential neighborhoods, new development should be designed to protect residents from noise, traffic, light and visually intrusive effects by use of buffering, setbacks, landscaping, walls and other appropriate design measures.

The project does not abut any existing residential development. The multi-family development across Mary Avenue (Glenbrook Apartments) will be buffered from any impacts because the project has been designed to maintain trees along the frontage and has been designed with adequate parking on-site. The buildings have been designed with

setbacks from the curb line that what is required within the General Plan and Heart of the City Specific Plan.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the Environmental Impact Report 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 herein, and subject to the conditions contained in all other Resolutions approved for this Project,

The application for an Architectural and Site Approval, Application No. ASA-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. ASA-2018-05 as set forth in the Minutes of the City Council Meeting of August 18, 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 June 4, 2020, as updated June 25, 2020, consisting of 39 sheets labeled as Westport Cupertino, G200 – G213, 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, including any misrepresentation related to the note on the Vesting Tentative Map that the Townhouse/Rowhouse units will be for-sale.

3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. TR-2018-22, EXC-2019-03, TM-2018-03, DP-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. FINAL ARCHITECTURAL DETAILS AND EXTERIOR BUILDING MATERIALS

The final building exterior plan shall closely resemble the details shown on the original approved plans. The final building design and exterior treatment plans (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 and through an in-field mock-up of colors prior to application 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.

6. LANDSCAPE INSTALLATION REPORT

The project is subject to all provisions delineated in the Landscape Ordinance (CMC, Chapter 14.15). A landscape installation audit shall be conducted by a certified landscape professional after the landscaping and irrigation system have been installed. The findings of the assessment shall be consolidated into a landscape installation report.

The landscape installation report shall include, but is not limited to: inspection to confirm that the landscaping and irrigation system are installed as specified in the landscape and irrigation design plan, system tune-up, system test with distribution uniformity, reporting overspray or run-off that causes overland flow, and preparation of an irrigation schedule.

The landscape installation report shall include the following statement: "The landscape and irrigation system have been installed as specified in the landscape and irrigation design plan and complies with the criteria of the ordinance and the permit."

7. LANDSCAPE AND IRRIGATION MAINTENANCE

Per the Landscape Ordinance (CMC, Chapter 14.15), a maintenance schedule shall be established and submitted to the Director of Community Development or his/her designee, either with the landscape application package, with the landscape installation report, or any time before the landscape installation report is submitted.

- a. Schedules should take into account water requirements for the plant establishment period and water requirements for established landscapes.
- b. Maintenance shall include, but not be limited to the following: routine inspection; pressure testing, adjustment and repair of the irrigation system; aerating and de-

thatching turf areas; replenishing mulch; fertilizing; pruning; replanting of failed plants; weeding; pest control; and removing obstructions to emission devices.

- c. Failed plants shall be replaced with the same or functionally equivalent plants that may be size-adjusted as appropriate for the stage of growth of the overall installation. Failing plants shall either be replaced or be revived through appropriate adjustments in water, nutrients, pest control or other factors as recommended by a landscaping professional.

8. LANDSCAPE PROJECT SUBMITTAL

Prior to issuance of building permits, the applicant shall submit a full Landscape Documentation Package, per sections 14.15.050 A, B, C, and D of the Landscape Ordinance, **for projects with landscape area 500 square feet or more** or elect to submit a Prescriptive Compliance Application per sections 14.15.040 A, B, and C **for projects with landscape area between 500 square feet and 2,500 square feet**. The Landscape Documentation Package or Prescriptive Compliance Application shall be reviewed and approved to the satisfaction of the Director of Community Development prior to issuance of building permits, and additional requirements per sections 14.15.040 D, E, F, and G or 14.15.050 E, F, G, H, and I will be required to be reviewed and approved prior to final inspections.

9. SOIL ANALYSIS REPORT

A soils analysis report shall document the various characteristics of the soil (e.g. texture, infiltration rate, pH, soluble salt content, percent organic matter, etc) and provide recommendations for amendments as appropriate to optimize the productivity and water efficiency of the soil.

The soil analysis report shall be made available to the professionals preparing the landscape and irrigation design plans in a timely manner either before or during the design process. A copy of the soils analysis report shall be submitted to the Director of Community Development as part of the landscape documentation package.

10. LANDSCAPE AND IRRIGATION PLANS

The applicant shall submit detailed landscape and irrigation plans to be reviewed and approved by Community Development prior to issuance of building permits. The landscape plan shall include water conservation and pesticide reduction measures in conformance with Chapter 14.15, Landscape Ordinance, and the pesticide control measures referenced in Chapter 9.18, Stormwater Pollution Prevention and Watershed Protection, of the Cupertino Municipal Code.

11. 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.

12. SITE IMPROVEMENTS

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

13. 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.

14. TREE PROTECTION

As part of the demolition or building permit drawings, a tree protection plan shall be prepared by a certified arborist for the trees to be retained. In addition, the following measures shall be added to the protection plan:

- For trees to be retained, chain link fencing and other root protection shall be installed around the dripline of the tree prior to any project site work.
- No parking or vehicle traffic shall be allowed under root zones, unless using buffers approved by the Project Arborist.
- No trenching within the critical root zone area is allowed. If trenching is needed in the vicinity of trees to be retained, the City's consulting arborist shall be consulted before any trenching or root cutting beneath the dripline of the tree.
- Wood chip mulch shall be evenly spread inside the tree projection fence to a four-inch depth.
- Tree protection conditions shall be posted on the tree protection barriers.
- Retained trees shall be watered to maintain them in good health.
- A covenant on the property shall be recorded that identifies all the protected trees, prior to final occupancy.

The tree protection measures shall be inspected and approved by the certified arborist prior to issuance of building permits. The City's consulting arborist shall inspect the trees to be retained and shall provide reviews prior to issuance of demolition, grading

or building permits. A report ascertaining the good health of the trees mentioned above shall be provided prior to issuance of final occupancy.

15. UTILITY STRUCTURE PLAN

Prior to issuance of building permits, the applicant shall work with staff to provide a detailed utility plan to demonstrate screening or undergrounding of all new utility structures [including, but not limited to backflow preventers (BFP), fire department connections (FDC), post-indicator valves (PIV), and gas meters] to the satisfaction of the Director of Community Development, Public Works, Fire Department, and applicable utility agencies.

16. 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.

17. INDEMNIFICATION

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.

18. 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 18th day of August, 2020, by the following vote:

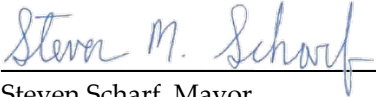

Vote Members of the City Council

AYES: Scharf, Paul, Chao, Sinks, Willey

NOES: None

ABSENT: None

ABSTAIN: None

SIGNED:  Steven Scharf, Mayor City of Cupertino	<u>8/28/2020</u> Date
ATTEST:  Kirsten Squarcia, City Clerk	<u>8/28/2020</u> Date

RESOLUTION NO. 20-108

**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 to recommend that the City Council certify the EIR for the Project; and

WHEREAS, based on substantial evidence in the record, on May 12, 2020, the Planning Commission recommended on a 5-0 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 5-0 vote that the City Council approve the Vesting Tentative Map (TM-2018-03), in substantially similar form to the Resolution presented (Resolution No. 6904), approve the Development Permit (DP-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6901), approve the Architectural and Site Approval Permit (ASA-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6902), approve the Use Permit (U-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6903), approve the Tree Removal Permit (TR-2018-22) in substantially similar form to the Resolution presented (Resolution No. 6906), approve the Heart of the City Exception (EXC-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6905) for the Senior Enhanced Alternative; and

WHEREAS, on June 4, 2020, as updated on June 25 and 26, 2020, the applicant submitted and requested the City to consider revisions to the Project ("Revised Senior Enhanced Project") that include relocating nine Below Market Rate ("BMR") units from Building 1 to an additional top story on Building 2, altering the unit mix in Buildings 1 and 2 to provide additional space for terraces on the tops of those buildings, and changing the unit mix in Buildings 2 to include two-bedroom units in addition to studios and one-bedroom units; and

WHEREAS, because the revisions in the Project affect building height and dispersion of BMR units, the Revised Senior Enhanced Project was reviewed by the Planning Commission on July 14, 2020 for recommendation to the City Council; and

WHEREAS, on July 14, 2020, the Planning Commission recommended on a 3-2 vote that the City Council deny the project in accordance with Resolution No. 6908; and

WHEREAS, on July 31, 2020, the applicant submitted a request for an incentive/concession to consolidate all 48 of the senior BMR units in Building 2; 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 August 18, 2020, the City Council held a public hearing to consider the Architectural and Site Approval; 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 August 18, 2020, the City Council held a public hearing to consider the Heart of the City Exception; and

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

WHEREAS, on August 18, 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. 20-105 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;

With the conditions of approval, approved Specific Plan exception, and approved density bonus, parking reduction, waivers, and incentive/concession, 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, and 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. The EIR also concludes that, with mitigation, the Project will have no significant environmental impacts.

- 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.

With the conditions of approval, approved Specific Plan exception, and the approved density bonus, parking reduction, and waivers the proposed development is in conformance with the Cupertino General Plan, Municipal Code, and Heart of the City Specific Plan Requirements. The Project is also consistent with the existing land use designations (Commercial, Residential), Municipal Code and with other code requirements as demonstrated in the staff report.. 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 August 18, 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 June 4, 2020, as updated June 25, 2020, consisting of 39 sheets labeled as Westport Cupertino, G200 – G213, 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, including any misrepresentation related to the note on the Vesting Tentative Map that the Townhouse/Rowhouse units will be for-sale.

3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. TR-2018-22, EXC-2019-03, TM-2018-03, ASA-2018-05, DP-2018-05 and EA-2018-04 shall 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.

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

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.

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 18th day of August, 2020, by the following vote:

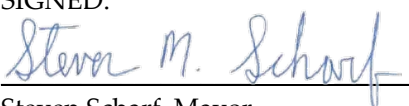

Vote Members of the City Council

AYES: Scharf, Paul, Chao, Sinks, Willey

NOES: None

ABSENT: None

ABSTAIN: None

SIGNED:  _____ Steven Scharf, Mayor City of Cupertino	<u>8/28/2020</u> _____ Date
ATTEST:  _____ Kirsten Squarcia, City Clerk	<u>8/28/2020</u> _____ Date

RESOLUTION NO. 20-109

**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 to recommend that the City Council certify the EIR for the project; and

WHEREAS, based on substantial evidence in the record, on May 12, 2020, the Planning Commission recommended on a 5-0 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 5-0 vote that the City Council approve the Vesting Tentative Map (TM-2018-03), in substantially

similar form to the Resolution presented (Resolution No. 6904), approve the Development Permit (DP-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6901), approve the Architectural and Site Approval Permit (ASA-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6902), approve the Use Permit (U-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6903), approve the Tree Removal Permit (TR-2018-22) in substantially similar form to the Resolution presented (Resolution No. 6906), approve the Heart of the City Exception (EXC-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6905) for the Senior Enhanced Alternative; and

WHEREAS, on June 4, 2020, as updated on June 25 and 26, 2020, the applicant submitted and requested the City to consider revisions to the Project (“Revised Enhanced Senior Project”) that include relocating nine Below Market Rate units from Building 1 to an additional top story on Building 2, altering the unit mix in Buildings 1 and 2 to provide additional space for terraces on the tops of those buildings, and changing the unit mix in Buildings 2 to include two-bedroom units in addition to studios and one-bedroom units; and

WHEREAS, because the revisions in the Project affect building height and dispersion of BMR units, the project was reviewed by the Planning Commission on July 14, 2020 for recommendation to the City Council; and

WHEREAS, on July 14, 2020, the Planning Commission recommended on a 3-2 vote that the City Council deny the project in accordance with Resolution No. 6908; and

WHEREAS, on July 31, 2020, the applicant submitted a request for an incentive/concession to consolidate all 48 of the senior BMR units in Building 2; and

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

WHEREAS, on August 18, 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. 20-105 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 Tentative Map; 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 and the project qualifies for a density bonus. 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. The project is also consistent with the General Plan's design requirements, since the project qualifies for waivers for height and slope setback.

- c. That the site is physically suitable for the type of 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 design of the subdivision and proposed improvements are not likely to 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. The EIR concluded that all potential environmental impacts will be mitigated to a level of insignificance.

- 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 subdivision design and improvements 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 August 18, 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 June 4, 2020, as updated June 25, 2020, consisting of 39 sheets labeled as Westport Cupertino, G200 – G213, 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, including any misrepresentation related to the note on the Vesting Tentative Map that the Townhouse/Rowhouse units will be for-sale.

3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. TR-2018-22, 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 with the County of Santa Clara after approval by the Director of Public Works.

6. BUS STOP DUCKOUT

The applicant will work with the Public Works staff to relocate the bus stop to a location along Stevens Creek Boulevard that will not conflict with the intersection of Mary Avenue and Stevens Creek Boulevard.

7. RECIPROCAL INGRESS/EGRESS EASEMENT

The applicant shall record a private reciprocal ingress and egress easement for vehicular and pedestrian access over the drive aisles and sidewalks onsite to facilitate movement between the parcels. Easements shall be reserved on the Final Map or sequentially with the map at the time of Final Map recordation.

8. 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.

9. INDEMNIFICATION

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.

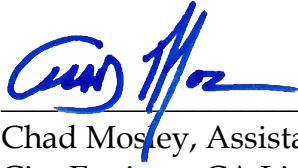
The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

10. 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 18th day of August, 2020, by the following vote:

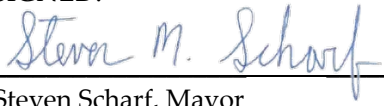
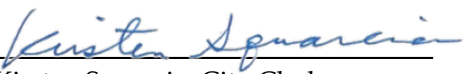
Vote Members of the City Council

AYES: Scharf, Paul, Chao, Sinks, Willey

NOES: None

ABSENT: None

ABSTAIN: None

SIGNED:  Steven Scharf, Mayor City of Cupertino	<u>8/28/2020</u> Date
ATTEST:  Kirsten Squarcia, City Clerk	<u>8/28/2020</u> Date

RESOLUTION NO. 20-110

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING A HEART OF THE CITY EXCEPTION TO ALLOW A REDUCTION
OF THE RETAIL REQUIREMENT FOR BUILDINGS FRONTING STEVENS CREEK
BOULEVARD TO ACCOMMODATE A MIXED-USED DEVELOPMENT
CONSISTING OF 267 HOUSING UNITS (88 ROWHOUSE/TOWNHOMES, 179
SENIOR APARTMENTS, OF WHICH INCLUDE 48 SENIOR AFFORDABLE
APARTMENTS), 27 MEMORY CARE LICENSED ASSISTED LIVING RESIDENCES
("MEMORY CARE RESIDENCES"), AND 20,000 SQUARE FEET OF COMMERCIAL
SPACE LOCATED AT 21267 STEVENS CREEK BOULEVARD
(APN: 326-27-042, -043)**

SECTION I: PROJECT DESCRIPTION

Application No.: EXC-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 HEART OF THE CITY EXCEPTION:

WHEREAS, the Planning Commission of the City of Cupertino received an application for a Heart of the City Exception as described in Section I of this resolution; and

WHEREAS, The Westport Cupertino Mixed-Use Project ("Project"), including the Heart of the City Exception, 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 to recommend that the City Council certify the EIR for the project; and

WHEREAS, based on substantial evidence in the record, on May 12, 2020, the Planning Commission recommended on a 5-0 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 5-0 vote that the City Council approve the Vesting Tentative Map (TM-2018-03), in substantially similar form to the Resolution presented (Resolution No. 6904), approve the Development Permit (DP-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6901), approve the Architectural and Site Approval Permit (ASA-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6902), approve the Use Permit (U-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6903), approve the Tree Removal Permit (TR-2018-22) in substantially similar form to the Resolution presented (Resolution No. 6906), approve the Heart of the City Exception (EXC-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6905) for the Senior Enhanced Alternative; and

WHEREAS, on June 4, 2020, as updated on June 25 and 26, 2020, the applicant submitted and requested the City to consider revisions to the Project (“Revised Senior Enhanced Project”) that include relocating nine Below Market Rate units from Building 1 to an additional top story on Building 2, altering the unit mix in Buildings 1 and 2 to provide additional space for terraces on the tops of those buildings, and changing the unit mix in Buildings 2 to include two-bedroom units in addition to studios and one-bedroom units; and

WHEREAS, because the revisions in the Project affect building height and dispersion of BMR units, the project was reviewed by the Planning Commission on July 14, 2020 for recommendation to the City Council; and

WHEREAS, on July 14, 2020, the Planning Commission recommended on a 3-2 vote that the City Council deny the project in accordance with Resolution No. 6908; and

WHEREAS, on July 31, 2020, the applicant submitted a request for an incentive/concession to consolidate all 48 of the senior BMR units in Building 2; 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 August 18, 2020, the City Council held a public hearing to consider the Architectural and Site Approval; and

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

WHEREAS, on August 18, 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. 20-105 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 Heart of the City Exception; and

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

1. The proposed development is otherwise consistent with the City's General Plan and with the goals of this specific plan and meets one or more of the criteria for an exception for reasons to provide design flexibility in situations when small lot size, unusually shaped parcels, or unique surrounding land uses make it difficult to adhere to the development standards and where all efforts to meet the standards have been exhausted.

The project site is located along Stevens Creek Boulevard (identified Priority Development Area), surrounded by a mix of uses, proximity to services, and access to public transportation makes it conducive to a residential development. However, the location of the project site is constrained by the fact that the Stevens Creek Boulevard frontage is adjacent to the onramp for Highway 85. This would discourage pedestrian traffic and reduce the visibility of future retail tenants significantly limiting the viability for commercial use. With the approved density bonus and associated waivers, the project is consistent with the General Plan. Other than this requested exception, the project is consistent with the Heart of the City Specific Plan.

2. The proposed development will not be injurious to property or improvements in the area nor be detrimental to the public health and safety.

The project site is designated as a Priority Housing Site in the City's Housing Element. The location is surrounded by similar urban uses and, with the approved density bonus and associated waivers and incentive/concession, the project is consistent with the General Plan for density, landscaping, private outdoor space, access, streetscape, setbacks, and design. The existing shopping center will be developed with a mix of residential housing stock including affordable, age-restricted apartment complexes and market rate townhome/rowhouse condominiums built to the current building and fire safety codes. 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.

3. The proposed exception will not result in a hazardous condition for pedestrian and vehicular traffic.

The exception requested for the proposed project does not relate to the creation of a hazardous condition for pedestrian and vehicular traffic.

4. The proposed development has legal access to public streets and public services are available to serve the development.

The proposed project proposes the installation of a two-way driveway to allow access to Stevens Creek Boulevard and Mary Avenue, public streets, that the property has frontages along. Additionally, all services necessary for development are available to serve the development. The proposed project will provide the appropriate hook-ups for access.

5. The proposed development requires an exception, which involves the least modification of, or deviation from, the development regulations prescribed in this chapter necessary to accomplish a reasonable use of the parcel.

The proposed development has met all other development standards for height, parking, landscaping, density, and building placement as mandated by the General Plan, Heart of the City Specific Plan, and Zoning Ordinance, with the exception of those the applicant has requested density bonus waivers and incentive /concession for. The only regulation it does not meet is the provision of at least 75% of the building frontage along Stevens Creek Boulevard and 50% of the rear of the building be occupied by uses that allow direct retailing of goods. The development is providing retail frontage along Mary Avenue where it is not required by the Heart of the City Specific Plan, in an equivalent size and scope that would have been needed to meet the retail frontage requirement along Stevens Creek Boulevard.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the Environmental Impact Report 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 herein, and subject to the conditions contained in all other Resolutions approved for this Project,

The application for Heart of the City Exception, Application No. EXC-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. EXC-2019-03 as set forth in the Minutes of the City Council Meeting of August 18, 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 June 4, 2020, as updated June 25, 2020, consisting of 39 sheets labeled as Westport Cupertino, G200 – G213, 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, including any misrepresentation related to the note on the Vesting Tentative Map that the Townhouse/Rowhouse units will be for-sale.

3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. TR-2018-22, TM-2018-03, TM-2018-03, DP-2018-05, U-2019-03 and EA-2018-04 shall 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. EXCEPTION

A Heart of the City Exception is granted to allow the construction of the proposed project with a maximum of 40% of the building frontage along Stevens Creek Boulevard and 75% of the rear of the building to be occupied by non-retail uses.

6. PUBLIC ACCESSIBILITY TO RETAIL SPACES

All proposed retail space shall be open to the public for the consumption of any goods or services offered in the mixed-use buildings.

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

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.

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 18th day of August, 2020, by the following vote:

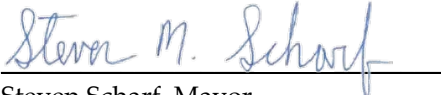

Vote Members of the City Council

AYES: Scharf, Paul, Chao, Sinks, Willey

NOES: None

ABSENT: None

ABSTAIN: None

SIGNED:  Steven Scharf, Mayor City of Cupertino	<u>8/28/2020</u> Date
ATTEST:  Kirsten Squarcia, City Clerk	<u>8/28/2020</u> Date

RESOLUTION NO. 20-111

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING A TREE REMOVAL PERMIT TO REMOVE, RELOCATE, AND
REPLACE SEVENTY-THREE (73) DEVELOPMENT TREES AT THE OAKS
SHOPPING CENTER TO ACCOMMODATE A MIXED-USED DEVELOPMENT
CONSISTING OF 267 HOUSING UNITS (88 ROWHOUSE/TOWNHOMES, 179
SENIOR APARTMENTS, OF WHICH INCLUDE 48 SENIOR AFFORDABLE
APARTMENTS), 27 MEMORY CARE LICENSED ASSISTED LIVING RESIDENCES
("MEMORY CARE RESIDENCES"), AND 20,000 SQUARE FEET OF COMMERCIAL
SPACE LOCATED AT 21267 STEVENS CREEK BOULEVARD
(APN: 326-27-042, -043)**

SECTION I: PROJECT DESCRIPTION

Application No.: TR-2018-22
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 TREE REMOVAL:

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

WHEREAS, the Westport Cupertino Mixed-Use Project ("Project"), including the Tree Removal 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 to recommend that the City Council certify the EIR for the project; and

WHEREAS, based on substantial evidence in the record, on May 12, 2020, the Planning Commission recommended on a 5-0 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 5-0 vote that the City Council approve the Vesting Tentative Map (TM-2018-03), in substantially similar form to the Resolution presented (Resolution No. 6904), approve the Development Permit (DP-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6901), approve the Architectural and Site Approval Permit (ASA-2018-05) in substantially similar form to the Resolution presented (Resolution No. 6902), approve the Use Permit (U-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6903), approve the Tree Removal Permit (TR-2018-22) in substantially similar form to the Resolution presented (Resolution No. 6906), approve the Heart of the City Exception (EXC-2019-03) in substantially similar form to the Resolution presented (Resolution No. 6905) for the Senior Enhanced Alternative; and

WHEREAS, on June 4, 2020, as updated on June 25 and 26, 2020, the applicant submitted and requested the City to consider revisions to the Project ("Revised Senior Enhanced Project") that include relocating nine Below Market Rate units from Building 1 to an additional top story on Building 2, altering the unit mix in Buildings 1 and 2 to provide additional space for terraces on the tops of those buildings, and changing the unit mix in Buildings 2 to include two-bedroom units in addition to studios and one-bedroom units; and

WHEREAS, because the revisions in the Project affect building height and dispersion of BMR units, the project was reviewed by the Planning Commission on July 14, 2020 for recommendation to the City Council; and

WHEREAS, on July 14, 2020, the Planning Commission recommended on a 3-2 vote that the City Council deny the project in accordance with Resolution No. 6908; and

WHEREAS, on July 31, 2020, the applicant submitted a request for an incentive/concession to consolidate all 48 of the senior BMR units in Building 2; 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 August 18, 2020, the City Council held a public hearing to consider the Tree Removal Permit; and

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

WHEREAS, on August 18, 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. 20-105 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 Tree Removal Permit; and

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

- a) That the location of the trees restricts the economic enjoyment of the property by severely limiting the use of property in a manner not typically experienced by owners of similarly zoned and situated property, and the applicant has demonstrated to the satisfaction of the approval authority that there are no reasonable alternatives to preserve the tree(s).

In order to accommodate for the new development's residential and mixed-use buildings, underground garage, walkways and internal street network to public open spaces, the existing trees cannot be preserved in their locations. The applicant proposes replacement trees throughout the site in excess of the conformance with the Municipal Code Ordinance requirements and proposes to locate the replacements where tree coverage is needed, while also proposing to relocate four of the Coast Live Oak Trees.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the Environmental Impact Report 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 herein, and subject to the conditions contained in all other Resolutions approved for this Project,

The application for a Tree Removal Permit, Application No. TR-2018-22, 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. TR-2018-22 as set forth in the Minutes of the City Council Meeting of August 18, 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 June 4, 2020, as updated June 25, 2020, consisting of 39 sheets labeled as Westport Cupertino, G200 – G213, 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, including any misrepresentation related to the note on the Vesting Tentative Map that the Townhouse/Rowhouse units will be for-sale.

3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. ASA-2018-05, EXC-2019-03, TM-2018-03, DP-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. TREE REPLACEMENT SIZE

The applicant shall provide adequate tree replacements for trees proposed to be removed in conformance with the replacement guidelines per Cupertino Municipal Code Section 14.18.160. The size of the proposed replacement trees shall be modified as follows to be consistent with the City's Protected Tree Ordinance unless deemed infeasible by the City's Consulting Arborist:

- a. Diameter of trunk size of removed tree up to 12 inches shall be replaced with one 24-inch box tree;
- b. Over 12 inches and up to 36 inches shall be replaced by two 24-inch box tree or one 36-inch box tree; and
- c. Over 36 inches shall be replaced with one 36-inch box tree.

If it is determined that it is physically not feasible to plant the required replacement trees, the Applicant may pay in-lieu fees determined to be appropriate by the Community Development Director.

6. ARBORIST REVIEW

Prior to building permit issuance, the number, location and species of trees shall be reviewed and approved by the City in consultation with the City's Consulting Arborist.

The replacement trees shall be planted prior to building permit final. The Applicant shall provide the Department of Community Development adequate documentation, including, but not limited to, photographs, receipts or invoices, to verify that replacements have been planted. The City's consulting arborist shall inspect the trees after planting and a report ascertaining the good health of the trees mentioned above shall be provided prior to issuance of final occupancy.

7. TREE PROTECTION

As part of the demolition or building permit drawings, a tree protection plan shall be prepared by a certified arborist for the trees to be retained. In addition, the following measures shall be added to the protection plan:

- For trees to be retained, chain link fencing and other root protection shall be installed around the dripline of the tree prior to any project site work.
- No parking or vehicle traffic shall be allowed under root zones, unless using buffers approved by the Project Arborist.
- No trenching within the critical root zone area is allowed. If trenching is needed in the vicinity of trees to be retained, the City's consulting arborist shall be consulted before any trenching or root cutting beneath the dripline of the tree.
- Wood chip mulch shall be evenly spread inside the tree projection fence to a four-inch depth.
- Tree protection conditions shall be posted on the tree protection barriers.
- Retained trees shall be watered to maintain them in good health.
- A covenant on the property shall be recorded that identifies all the protected trees, prior to final occupancy.

The tree protection measures shall be inspected and approved by the certified arborist prior to issuance of building permits. The City's consulting arborist shall inspect the trees to be retained and shall provide reviews prior to issuance of demolition, grading or building permits. A report ascertaining the good health of the trees mentioned above shall be provided prior to issuance of final occupancy.

8. PROTECTED TREES

The applicant understands that the replacement trees may not be removed without a Tree Removal Permit and that they shall be responsible for ensuring the proper

maintenance and care of the trees. The applicant shall also disclose the location and species of all replacement trees on site upon sale of the property.

9. 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.

10. INDEMNIFICATION

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.

11. 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 18th day of August, 2020, by the following vote:



Vote Members of the City Council

AYES: Scharf, Paul, Chao, Sinks, Willey

NOES: None

ABSENT: None

ABSTAIN: None

SIGNED:  _____ Steven Scharf, Mayor City of Cupertino	<u>8/28/2020</u> _____ Date
ATTEST:  _____ Kirsten Squarcia, City Clerk	<u>8/28/2020</u> _____ Date