

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

DRAFT RESOLUTION NO. \_\_\_\_\_

OF THE CITY COUNCIL OF THE CITY OF CUPERTINO APPROVING TREE REMOVAL PERMIT  
TO ALLOW THE REMOVAL AND REPLACEMENT OF 277 TREES IN CONJUNCTION WITH  
THE CONSTRUCTION OF A 942-UNIT APARTMENT COMPLEX  
LOCATED AT 19500 PRUNERIDGE AVENUE

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SECTION I: PROJECT DESCRIPTION

Application No.: TR-2015-21  
Applicant: Carlene Matchniff  
Property Owner: Irvine Company  
Location: 19500 Pruneridge Ave (APN: 369-06-032, 316-06-037)

SECTION II: FINDINGS FOR TREE REMOVAL PERMIT:

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

WHEREAS, the necessary public notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the City Council has held at least one public hearing in regard to the application; and

WHEREAS, the Environmental Review Committee has reviewed the Mitigated Negative Declaration;

WHEREAS, the Planning Commission held a public hearing on May 10, 2016 and recommended that the City Council approve the application, subject to conditions, and adopt the Mitigated Negative Declaration; and

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

*The trees proposed for removal are all in conflict with the proposed new building and site improvements. The demolition of the existing complex would result in the removal of 276 of the 433 existing trees from the center of the site, where new buildings and landscape are proposed. The majority of redwood trees along the property*

*line perimeter would be preserved to maintain both the character of the site and the buffer between the buildings and city streets. Trees proposed for removal along the perimeter are limited to those not suitable for preservation and/or those in poor condition. The majority of the species of the trees proposed for removal are Fern pine, Southern magnolia, London plane, Purpleleaf plum, Callery pear, Evergreen pear, Coast redwood, and Chinese elm. While not protected by species as defined by Cupertino Municipal Code Chapter 14.18, these trees are protected under the category of "approved development tree," because they were part of a development plan for the originally-approved Hamptons. Therefore, replacement plantings are required for those proposed for removal. 396 additional trees, within the range of 36"-60" box sizes, are proposed to be planted as part of the new landscape plan as shown on plan sheet L2.00. The schedule of species, number, size and locations are additionally detailed in the tree survey within the IS/MND's technical appendix and plan sheets L5.00 and L6.00-L6.11.*

NOW, THEREFORE, BE IT RESOLVED that after careful consideration of the initial study, maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on PAGE 2 thereof:

The application for a Tree Removal Permit, application no. TR-2015-21 is hereby approved and that the subconclusions upon which the findings and conditions specified in this resolution are based and contained in the public hearing record concerning application no. TR-2015-21 as set forth in the Minutes of the City Council Meeting of June 21, 2016 and are incorporated by reference as though fully set forth herein.

### SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

#### 1. APPROVED EXHIBITS

Approval recommendation is based on (1) the architectural, civil, landscape and signage plan set dated received January 29, 2016 consisting of ninety (90) sheets labeled "The Hamptons Redevelopment" and prepared by Arquitectonica, BKF, Olin and RSM Design; (2) colors and materials board dated October 13, 2015 and prepared by Arquitectonica; (3) perspective exhibits labeled "Amenity Deck Views" dated July 29, 2015 prepared by Arquitectonica; and (4) Tree Survey dated May 2015 prepared by HortScience, except as may be amended by conditions in this resolution.

#### 2. ACCURACY OF PROJECT PLANS

The applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or construction records. Any misrepresentation of any property data may invalidate this approval and may require additional review.

#### 3. 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.

4. **CONCURRENT APPROVAL CONDITIONS**

The conditions of approval contained in file no. DP-2015-04, EA-2015-03, ASA-2015-13, U-2015-05, TR-2015-21, DA-2015-01, and shall be applicable to this approval.

5. **TREE PROTECTION**

The existing trees to remain or transplanted shall be protected during construction per the City's Protected Tree Ordinance (Chapter 14.18 of the Municipal Code). The City's standard tree protection measures shall be listed on the plans, and protective fencing shall be installed around the trees to remain prior to issuance of building permits. A bond or letter of credit shall be posted based on the value of the trees prior to issuance of the demolition permit. A report ascertaining the good health of these trees shall be provided prior to issuance of final occupancy.

6. **REPLACEMENT PLANTING PLAN**

The final replacement planting plan shall be reviewed and approved by the Planning Division prior to issuance of building permits. The variety, size, planting distance shall be consistent with the City's requirements. The Director of Community Development shall have the discretion to require additional tree replacements as deemed necessary. An ISA Certified Arborist shall confirm that the replacement trees were planted properly and according to plan prior to final occupancy.

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 extent permitted by law, the applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void this Resolution or any permit or approval authorized hereby for the project, including (without limitation) reimbursing the City its actual attorneys' fees and costs incurred in defense of the litigation. The applicant and City shall use best efforts to select mutually agreeable legal counsel to defend such action, and the applicant shall pay all compensation for such legal counsel, following the applicant's receipt of invoices from City, together with reasonable supporting documentation. Such compensation shall include reasonable compensation paid to counsel not otherwise employed as City staff 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. If the applicant and the City cannot in good faith agree on joint counsel, the City shall have the right to retain counsel of its own choosing, separate from the applicant's litigation counsel.

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. Pursuant to Government Code Section 66020(d) (1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified

that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

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PASSED AND ADOPTED at a Regular Meeting of the City Council of the City of Cupertino the 21<sup>st</sup> day of June 2016, by the following roll call vote:

Vote:           Members of the City Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

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Grace Schmidt  
City Clerk

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Barry Chang  
Mayor, City of Cupertino