

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

RESOLUTION NO. 2023-05

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO
RECOMMENDING APPROVAL OF A TREE REMOVAL PERMIT TO
REMOVE, AND REPLACE ONE HUNDERED AND THIRTEEN (113)
DEVELOPMENT TREES TO ACCOMMODATE THE PROPOSED
DEVELOPMENT OF A BUILDING WITH 280,020- SQUARE- FOOT OFFICE
SPACE AND 2,300 SQUARE FEET OF RETAIL SPACE, WITH A DETACHED
PARKING STRUCTURE LOCATED AT 19191 VALLCO PARKWAY (APN:
316-20-117)

The Planning Commission recommends that the City Council approve the Tree Removal Permit, in substantially similar form to the Draft Resolution attached hereto as Exhibit TR.

PASSED AND ADOPTED at a Regular Meeting of the Planning Commission of the City of Cupertino the 28th day of March 2023, by the following roll call vote:

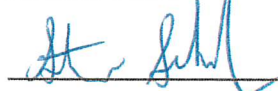
| | |
|-------------------------|-----------------------------|
| AYES: COMMISSIONERS: | Scharf, Madhhipatla, Mistry |
| NOES: COMMISSIONERS: | None |
| ABSTAIN: COMMISSIONERS: | None |
| ABSENT: COMMISSIONERS: | None |
| RECUSED: COMMISSIONERS: | Fung, Lindskog |

ATTEST:



Piu Ghosh
Planning Manager

APPROVED:



Steven Scharf
Chair, Planning Commission

RESOLUTION NO. ____

A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING A TREE REMOVAL PERMIT TO REMOVE, AND REPLACE ONE
HUNDERED AND THIRTEEN (113) DEVELOPMENT TREES TO
ACCOMMODATE THE PROPOSED DEVELOPMENT OF A BUILDING WITH
280,020- SQUARE- FOOT OFFICE SPACE AND 2,300 SQUARE FEET OF RETAIL
SPACE, WITH A DETACHED PARKING STRUCTURE LOCATED AT 19191
VALLCO PARKWAY (APN: 316-20-117)

SECTION I: PROJECT DESCRIPTION

Application No.: TR-2021-020
Applicant: Apple, Inc
Property Owner: Apple, Inc
Location: 19191 Vallco Parkway (APN: 316-20-117)

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, pursuant to the provisions of the California Environmental Quality Act of 1970 (Public Resources Code section 21000 et seq.) ("CEQA"), together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"), the City staff has independently studied the proposed Project and has determined that the Project is exempt from environmental review pursuant to the categorical exemption in CEQA Guidelines section 15183 for the reasons set forth in the staff report dated April 13, 2023 and incorporated herein; and

WHEREAS, on March 28, 2023 the Planning Commission recommended on a X-X vote that the City Council approve the Development Permit (DP-2021-001) in substantially similar form to the Resolution presented (Resolution No. XXXX), approve the Architectural and Site Approval Permit (ASA-2021-003) in substantially similar form to the Resolution presented (Resolution No. XXXX), and approve the Tree Removal Permit (TR-2021-020) in substantially similar form to the Resolution presented (Resolution No. XXXX); and

WHEREAS, all necessary public notices having been given as required by the City of Cupertino Municipal Code and the Government Code, and the Planning Commission held at least one public hearing in regard to this application, and

WHEREAS, on April 13, 2023, the City Council held a public hearing to consider the Project; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Resolution; 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 office and parking structures, 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 conformance with the Municipal Code Ordinance requirements and proposes to locate the replacements where tree coverage is needed, while preserving virtually all of the trees that are not within the development area of the project site.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on PAGE 2 thereof, and those contained in all other Resolutions approved for this Project, the City Council hereby:

1. Finds the project categorically exempt in CEQA Guidelines section 15183 for the reasons set forth in the staff report dated April 13, 2023; and
2. Approves the application for a Tree Removal Permit No. TR-2021-020

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-2021-020 as set forth in the Minutes of the City Council Meeting of April 13, 2023 and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

2. Approval is based on the plan set dated May 23, 2022 consisting of 61 sheets labeled as Apple VP01: 19191 Vallco Parkway, Cupertino, CA 95014, A01.0 – A11.0, C1.0 – C8.1, and L01.0 – L06.0, drawn by Studio Architects, Kier & Wright, and The Guzzardo Partnership, except as may be amended by conditions in this resolution.

3. 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.

4. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. ASA-2021-003, and DP-2021-001 shall be applicable to this approval.

5. 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.

6. 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 replacements trees, the Applicant may pay in-lieu fees determined to be appropriate by the Community Development Director.

7. 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.

8. TREE PROTECTION

a. 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.

b. The tree protection measures shall be inspected and approved by the certified arborist prior to issuance of building permits.

c. 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.

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

9. NESTING BIRDS

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 Department of Fish and Game Code.

- a) Construction and tree removal/pruning activities shall be scheduled to avoid the nesting season to the extent feasible. If feasible, tree removal and/or pruning shall be completed before the start of the nesting season to help preclude nesting. The nesting season for most birds and raptors in the San Francisco Bay area extends from February 1 through August 31. Preconstruction surveys (described below) are not required for tree removal or construction activities outside the nesting period.
- b) If construction activities and any required tree removal occur during the nesting season (February 1 and August 31), a qualified ornithologist shall be required to conduct surveys prior to tree removal or construction activities. Preconstruction surveys shall be conducted no more than 14 days prior to the start of tree removal, pruning or construction. Preconstruction surveys shall be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped. During this survey, the ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests.
- c) If the survey does not identify any nesting birds that would be affected by construction activities, no further mitigation is required. If an active nest containing viable eggs or young birds is found sufficiently close to work areas to be disturbed by these activities, their locations shall be documented and protective measures implemented under the direction of the qualified ornithologist until the nests no longer contain eggs or young birds.
- d) 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 ornithologist, 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. The active nest within an exclusion zone shall be monitored on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status. The radius of an exclusion zone may be increased 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 and buffers shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.

- e) A final report on nesting birds and raptors, including survey methodology, survey date(s), map of identified active nests (if any), and protection measures (if required), shall be submitted to the Planning Manager, through the building permit review process, and be completed to the satisfaction of the Community Development Director prior to the start of grading.

10. 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.

11. 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.

12. INDEMNIFICATION

As part of the application, to the fullest extent permitted by law, the applicant shall agree to indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, or proceeding (collectively referred to as "proceeding") brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant related to any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized for the project. The indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. Such attorneys' fees and costs shall include amounts paid to the City's outside counsel and shall

include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City. The applicant shall likewise agree to indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties. The Applicant shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review, if the applicant desires to continue to pursue the project.

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

13. NOTICE OF FEES, DEDICATIONS, RESERVATIONS, OR OTHER EXACTIONS

The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d) (1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 13th day of April, 2023, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

Resolution No. _____

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| SIGNED: _____ Hung Wei, Mayor City of Cupertino | _____ Date |
| ATTEST: _____ Kirsten Squarcia, City Clerk | _____ Date |