

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

DRAFT RESOLUTION

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO  
APPROVING A TREE REMOVAL PERMIT TO ALLOW FOR THE REMOVAL  
AND THE REPLACEMENT OF 43 PROTECTED DEVELOPMENT TREES,  
LOCATED AT 20745 STEVENS CREEK BLVD. (APN 326-32-005)

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SECTION I: PROJECT DESCRIPTION

Application No.: TR-2018-04  
Applicant: Jennifer Kirby (Kimley-Horn)  
Location: 20745 Stevens Creek Blvd.

SECTION II: FINDINGS FOR TREE REMOVAL PERMIT:

WHEREAS, the Planning Commission of the City of Cupertino received an application for a Tree Removal Permit to consider allowing the removal and replacement of 43 Protected Trees, 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 Planning Commission has held at least one public hearing in regard to the application; and

WHEREAS, the project is determined to be exempt from the California Environmental Quality Act (CEQA); and

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

WHEREAS, the Planning Commission finds as follows with regard to this application:

1. 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 proposal is an update of an existing commercial retail building with no increase of the square footage. In order to accommodate for the new pedestrian-oriented entry plaza located*

*under the new winged canopy, walkways to public portal plazas, bioretention basins between parking spaces, and the subsequent restriping the existing trees cannot be prereserved in their location. 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.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the maps, facts, exhibits, testimony, staff's report and presentation, 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-2018-04 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-2018-04 as set forth in the Minutes of Planning Commission Meeting of August 14, 2018 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 drawn by Kimley-Horn entitled "Target Cupertino Store Remodel" consisting of twenty-five (25) sheets labeled as T1.1, C0.0, C0.1, C0.2, C1.0, C2.0, L1.0, L1.1, L1.2, L1.3, L1.4, L2.0, L2.1, L2.2, L3.0, L3.1, L3.2, A201, LP-103, and four renderings 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. ASA-2018-01 shall be applicable to this approval.

## 2. TREE REPLACEMENT SIZE

The applicant shall provide adequate tree replacements for trees proposed to be removed in conformance to 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.

## 3. 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.

## 4. 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.

5. 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 replacements trees on site upon sale of the property.

5. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is responsible to consult with other departments and/or agencies with regard to the proposed project for additional conditions and requirements. Any misrepresentation of any submitted data may invalidate an approval by the Community Development Department.

6. INDEMNIFICATION

Except as otherwise prohibited by law, the applicant shall indemnify and hold harmless the City, its City Council, and its officers, employees and agents (collectively, the "indemnified parties") from and against any claim, action, or 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 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 shall pay such attorneys' fees and costs within 30 days following receipt of invoices from City. Such attorneys' fees and costs shall include amounts 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.

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

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

PASSED AND ADOPTED this 14th day of August, 2018, at the Regular Meeting of the Planning Commission of the City of Cupertino, State of California, by the following roll call vote:

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

ATTEST:

APPROVED:

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Benjamin Fu  
Assist. Dir. of Community Development

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Geoff Paulsen  
Chair, Planning Commission