

RESOLUTION NO. 2026-XX

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING A TREE REMOVAL PERMIT FOR THE REMOVAL AND
REPLACEMENT OF 25 DEVELOPMENT TREES
LOCATED AT 10268 BANDLEY DRIVE; APN: 326-33-097**

SECTION I: PROJECT DESCRIPTION

Application No.: TR-2025-033
Applicant: SummerHill Homes, LLC
Property Owner: Bandley Center Inc.
Location: 10268 Bandley Drive; APNs: 326-33-097

SECTION II: FINDINGS FOR A TREE REMOVAL PERMIT:

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 project is determined to be statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(1) of the CEQA Guidelines because the proposed project would meet the requirements of the Public Resources Code (PRC) Section 21080.66(a); and

WHEREAS, on May 12, 2026, 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 Exemption Memorandum along with all staff reports, other pertinent documents, and all written and oral statements received prior to and at the public hearing; and

WHEREAS, on May 12, 2026 the Planning Commission recommended on a 4-1 vote (NO: Rao) that the City Council approve the Architectural and Site Approval Permit (ASA-2025-016) in substantially similar form to the Resolution presented (Resolution No. 2026-18), approve the Vesting Tentative Map (TM-2025-008) in substantially similar form to the Resolution presented (Resolution No. 2026-16), and approve the Tree Removal Permit (TR-2025-033), in substantially similar form to the Resolution presented (Resolution No. 2026-17);

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

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

To accommodate for the new development's structures, walkways and internal street network to public open spaces, the existing trees cannot be preserved in their current locations. The applicant proposes replacement trees throughout the site in conformance with the Municipal Code Ordinance requirements. The project proposes to locate the replacement trees where tree coverage is needed, while protecting all off-site trees adjacent to 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 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-2025-033, is hereby approved, and that the sub-conclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application no. TR-2025-033 as set forth in the Minutes of the City Council Meeting of June 2, 2026 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 entitled "10268 Bandley Drive Cupertino" consisting of 75 sheets labeled as, A0.00– A8.1, C1.0 – C7.0, L1.1 – L9.1, INT1 to INT2, PRSL1 to PRSL2, PM, and TM-1, drawn by WHA Architects, Giacalone

Design Services, CBG Civil Engineers Surveyors, and R3 Studios, except as may be amended by conditions in this resolution.

2. ACCURACY OF PROJECT PLANS

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

3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. TM-2025-008 and ASA-2025-016 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 RETENTION

In accordance with the approved, peer-reviewed arborist report for this project, the applicant is required to protect in place neighboring trees located off-site identified as trees #906-#910.

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 required tree replacement for the project is one (1) 36-inch box tree and 34 24-inch box trees, or a combination thereof that meets the minimum requirements of the Municipal Code. If the planting schedule is modified, the size of the proposed replacement trees shall be consistent with the following requirements of the City's Protected Tree Ordinance unless deemed infeasible by the City's Consulting Arborist:

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

Should it be determined that planting of replacement trees in the quantity or a portion of the quantity specified above cannot be accomplished in accordance with best forestry management practices, the applicant shall pay an in-lieu fee for each

tree not replaced on-site in accordance with the in-lieu fee requirements outlined in Municipal Code Section 14.18.160(B).

7. ARBORIST REVIEW

Prior to building permit issuance, any modifications to the approved landscape plan including, but not limited to, the number, location, and species of replacement trees, shall be reviewed and approved by the City in consultation with the City's Consulting Arborist, at the applicant's cost. All replacement trees shall be planted prior to final building inspection. The Applicant shall provide the Department of Community Development adequate documentation, including, but not limited to, photographs, receipts or invoices, to verify that replacement trees 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 for any of the residential units.

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, at a minimum, 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 required 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, retained at the applicant's expense, shall inspect the trees to be retained and the tree protection measures, 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 by the applicant's arborist, to be peer reviewed by the City's Consulting Arborist, prior to issuance of final occupancy.

9. PROTECTED TREES

The applicant and future property owners understand that the replacement trees and all other trees approved with this development may not be removed without the prior approval by the Community Development Department of 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 and development trees on site upon sale of the property.

10. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is responsible for consulting 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.

11. 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.

12. 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 2nd day of June, 2026, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Kitty Moore, Mayor City of Cupertino	_____ Date
ATTEST: _____ Lauren Sapudar, City Clerk	_____ Date