

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

RESOLUTION

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO  
APPROVING A SIGN EXCEPTION TO ALLOW A GROUND SIGN WITH LED  
LIGHTING AND THREE WALL SIGNS EXCEEDING 200 SQUARE FEET IN AN  
AREA WHERE ONLY ONE IS ALLOWED AT AN EXISTING SERVICE STATION  
LOCATED AT 10490 S DE ANZA BOULEVARD

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SECTION I: PROJECT DESCRIPTION

Application No.: EXC-2023-010  
Applicant: Steve Locke  
Location: 10490 S De Anza Boulevard; APN: 369 39 042

SECTION II: FINDINGS FOR A SIGN EXCEPTION:

WHEREAS, the Planning Commission of the City of Cupertino received an application for a Sign Exception (EXC-2023-010) to allow a ground sign with led lighting and three wall signs exceeding 200 square feet in an area where only one is allowed at an existing service station;

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, 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 15301: Existing Facilities for the reasons set forth in the staff report dated May 28, 2024 and incorporated herein; and

WHEREAS, the applicant has met the burden of proof required to support said application with the modification of the scope to only allow for an additional non-

illuminated wall sign above the entrance along the east façade, as detailed in the Staff report; and

1. That the literal enforcement of the provisions of the Sign Ordinance will result in restrictions inconsistent with the spirit and intent of the ordinance.

*The project is consistent with the intent of the Sign Ordinance in that it provides architectural and aesthetic harmony with the building/canopy design and provides good visibility for the public and the needs of the business while minimizing distraction to the pedestrian, bicyclist, and motorist. The LED numerals function similar to the existing plastic numerals in that they change depending on fluctuations in fuel pricing. Additionally, the City's Municipal Code Chapter 19.104 Signs has allowances for multiple wall signs on the different facades. Allowing an exception for additional illuminated wall signs on a canopy on a corner lot is consistent with the spirit and intent of the Ordinance.*

2. That the granting of an exception will not result in a condition which is materially detrimental to the public health, safety, or welfare.

*The proposed signs will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, or welfare. The project includes automatic dimming technology to reduce glare and will not include animated messages.*

3. That the exception to be granted is one that will require the least modification of the prescribed design regulations and the minimum variance that will accomplish the purpose.

*The strict application of the ordinance standards would not allow the new industry-standard of using LED technology similar to other service stations in the City and throughout the region. The proposed additional signs comply with the previous sign exception approvals for gas stations. The illumination intensity, appearance and location, relative to the public right-of-way, of the proposed signs would not create distractions for pedestrians, bicyclists and vehicles nor would it negatively impact the City's aesthetic appearance.*

WHEREAS, the Planning Commission is the approval authority for this project and is granted the authority by the Municipal Code to exercise its independent judgment, based on the record before it, for purposes of the California Environmental Quality Act; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission takes the following actions:

1. Exercises its independent judgment and determines that the Project is exempt from CEQA pursuant to CEQA Guidelines section 15301. The Class 1 exemption applies to existing facilities that involve negligible or no expansion of existing or former use.

Therefore, the proposed project would not involve the expansion of the former use (Section 15301, Class 1), will not significantly expand the use beyond the current use that already exists or previously existed, and will not have a significant effect on the environment.

2. Approves the application for a Sign Exception, Application no. EXC-2023-010 subject to the conditions which are enumerated in this Resolution beginning on PAGE 3 thereof. The conclusions and sub conclusions upon which the findings and conditions specified in this resolution are based, including those contained in the Public Hearing record concerning Application no. EXC-2023-010 as set forth in the Minutes of Planning Commission Meeting of May 28, 2024, are hereby 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 March 26, 2024 entitled, "76 Sign Program 10490 South De Anza Boulevard, Cupertino California 95014" drawn by Sign Designs, Inc., consisting of 5 sheets labeled 1 through 4 and 6; 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. BUILDING PERMITS REQUIRED

The applicant shall consult with the City's Building Division to obtain the necessary sign permits for this project.

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 APPROVAL

A Sign Exception is hereby granted to allow LED gasoline price signage to the proposed fuel price ground sign and three canopy signs. No downlit LED bars are

approved as part of this proposal. The color of the LED numerals of the fuel price sign shall be white and the background shall be black.

6. ILLUMINATION INTENSITY

The intensity of each sign shall not exceed 250 foot-lamberts. A note acknowledging this condition of approval shall be incorporated in the building permit plans.

7. LED SIGN REQUIREMENTS

The following requirements shall apply to the LED fuel price signs:

- a. The signs shall not display animated messages, including flashing, blinking, fading, rolling, shading, dissolving, or any other effect that gives the appearance of movement.
- b. The signs shall not include any audio messages.
- c. The signs shall utilize automatic dimming technology to adjust the brightness of the signs relative to ambient light so that at no time shall a sign exceed a brightness level of three-tenths foot candles above ambient light, as measured using a foot candle (Lux) meter aimed directly at the sign face at a distance of 100 feet from the sign.
- d. An ambient light measurement shall be taken using a foot candle meter at some point between the period of time between 30 minutes past sunset and 30 minutes before sunrise with the sign turned off to a black screen.
- e. Immediately following the ambient light measurement taken in the manner required above, an operating sign light measurement shall be taken with the sign turned on.
- f. The difference between the ambient light measurement and the operating sign light measurement shall be three tenths foot candles or less.
- g. The signs shall contain a default mechanism that will cause the sign to revert immediately to a black screen if the sign malfunctions.
- h. The LED copy may only contain fuel price numerals.
- i. The signs shall comply with Section 13532 of the State of California Business and Professions Code and all other State regulations regarding LED signage.

8. LIGHTING INTENSITY VERIFICATION

Prior to final inspections of sign permits, a licensed lighting engineer shall confirm that the lighting intensity is in compliance with the conditions of approval in this resolution and the requirements of Municipal Code Chapter 19.104.

#### 9. SIGN EXCEPTION REVIEW/ADDITIONAL RESTRICTIONS

If complaints are received related to the intensity of the LED signage under this Sign Exception, and the complaints are not addressed immediately by the property management, then the Planning Commission shall conduct a public hearing on the Sign Exception at which time, the approval for LED signage may be modified or revoked.

The City reserves the right to require additional measures to reduce lighting intensity if deemed necessary.

#### 10. 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.

#### 11. GRADING AND CONSTRUCTION HOURS AND NOISE LIMITS

- 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 the 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. Night time 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.

The applicant shall comply with the above grading and construction hours and noise limit requirements unless otherwise indicated.

#### 12. NOISE AND VIBRATION NOTICE

At least 10 days prior to the start of any demolition, ground disturbing, or construction activities, the project applicant/contractor shall send notices of the planned activity by first class mail to off-site businesses and residents within 500 feet of the project site. The City will provide a template notice and mailing addresses for the Applicant's use. The notice must be approved by City staff prior to sending. The project applicant shall provide the City with evidence of mailing of the notice, upon request.

Please note that, if pile driving, the requirements for noticing and monitoring outlined in City Code Section 17.04.050 G (3) shall apply.

#### 13. NOISE AND VIBRATION SIGNAGE

At least 10 days prior to the start of any demolition, ground disturbing, or construction activities, the project applicant/contractor shall ensure that a sign measuring at least four feet by six feet shall be posted on construction fencing at the entrance(s) to the job site, clearly visible to the public, and include the following:

- a. Permitted construction days and hours;
- b. A description of proposed construction activities;
- c. 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; and
- d. Contact information for City's and contractor's authorized representatives that are assigned to respond in the event of a complaint related to fugitive dust, pursuant to the requirements for compliance with [BAAQMD's CEQA Air Quality Guidelines](#).

If the authorized contractor's representative receives a complaint, they shall investigate, take appropriate corrective action, and report the complaint and the action taken to the City within three business days of receiving the complaint.

#### 14. NOISE DURING CONSTRUCTION

Prior to issuance of any demolition, grading or building permit, include on plans a note that, during project construction, the project applicant shall incorporate the following measures to reduce noise during construction and demolition activity:

- a. The project applicant and contractors shall prepare and submit a Construction Noise Control Plan to the City's Planning Department for review and approval prior to issuance of the first permit. The Construction Noise Plan shall demonstrate compliance with daytime and nighttime decibel limits pursuant to Chapter 10.48 (Community Noise Control) of Cupertino Municipal Code. The details of the Construction Noise Control Plan shall be included in the applicable construction documents and implemented by the on-site Construction Manager. Noise reduction measures selected and implemented shall be based on the type of construction equipment used on the site, distance of construction activities from sensitive receptor(s), site terrain, and other features on and surrounding the site (e.g., trees, built environment) and may include, but not be limited to, temporary construction noise attenuation walls, high quality mufflers. During the entire active construction period, the Construction Noise Control Plan shall demonstrate that compliance with the specified noise control requirements for construction equipment and tools will reduce construction noise in compliance with the City's daytime and nighttime decibel limits.
- b. Select haul routes that avoid the greatest amount of sensitive use areas and submit to the City of Cupertino Public Works Department for approval prior to the start of the construction phase.
- c. 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.
- d. 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 law.

#### 15. DARK SKY COMPLIANCE

Prior to issuance of Building Permits, the applicant/property owner shall submit final plans in compliance with the approved lighting plans to comply with development standards of Cupertino Municipal Code Section 19.102.040 Outdoor Lighting Requirements. In the event changes are proposed from the approved plans, said changes must be reviewed and approved by the Director of Community Development or their designee. The applicant shall provide all documentation required to determine compliance with the Municipal Code.

#### 16. FUGITIVE DUST CONTROL

Prior to issuance of the any demolition, grading, or building permit, include on all permit plans, the full text of each of the Bay Area Air Quality Management District's Basic Control Measures from the latest version of [BAAQMD's CEQA Air Quality Guidelines](#), as subsequently revised, supplemented, or replaced, to control fugitive dust (i.e., particulate matter PM2.5 and PM10) during demolition, ground disturbing activities and/or construction.

#### 17. 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

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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.

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PASSED AND ADOPTED this 28<sup>th</sup> day of May, 2024, at a regular Meeting of the Planning Commission Committee 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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Piu Ghosh  
Planning Manager

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David Fung  
Chair, Planning Commission