

RESOLUTION NO. _____

A RESOLUTION OF THE CUPERTINO CITY COUNCIL APPROVING A TREE REMOVAL PERMIT TO ALLOW THE REMOVAL AND REPLACEMENT OF 17 TREES TO ALLOW THE DEMOLITION OF AN EXISTING PUBLIC STORAGE FACILITY AND THE CONSTRUCTION OF A NEW PUBLIC STORAGE FACILITY CONSISTING OF TWO (2) FOUR (4)-STORY BUILDINGS WITH BASEMENTS LOCATED AT 20565 VALLEY GREEN DRIVE

SECTION I: PROJECT DESCRIPTION

Application No.: TR-2019-11
Applicant: Andres Friedman
Property Owner: Storage Equities, Inc.
Location: 20565 Valley Green Drive (APN: 326-10-044)

SECTION II: FINDINGS FOR TREE REMOVAL PERMIT:

WHEREAS, the Planning Commission of the City of Cupertino received an application for a Development 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, 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 15332, and the exemption in CEQA Guidelines section 15183, for the reasons set forth in the staff report dated May 28, 2019 and incorporated herein; 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 typically not 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 proposed trees are in conflict with the proposed new building and site improvements. The demolition of the existing structures and new construction would result in the removal of seventeen (17) trees on site. The species of removal include Coast Redwood, Yucca, and Fern Pine. While the trees are not identified as a protected species as defined by Cupertino Municipal Code Chapter 14.18, these trees are protected under the category of "approved development tree," because they were planted as part of the originally approved development. Therefore, replacement plantings are required for the proposed removal. The required replacement plantings are twenty (20) 24-inch box trees, and the applicant proposes thirty-eight (38) 24-inch box trees, more than meeting the requirement.

WHEREAS, on June 18, 2019, the City Council held a duly noticed public hearing to receive public testimony on the Project, including the categorical exemption in CEQA Guidelines section 15332 and the exemption in CEQA Guidelines section 15183 and reviewed and considered the information contained in the staff report pertaining to the Project, all other pertinent documents, and all written and oral statements received by the City Council at or prior to the public hearing; and

NOW, THEREFORE, BE IT RESOLVED that after careful consideration of the CEQA exemption memorandum, 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 thereof,

1. The City Council exercises its independent judgment and determines that the Project is exempt from CEQA pursuant to CEQA Guidelines section 15332 and the exemption in CEQA Guidelines section 15183. The exemption in CEQA Guidelines section 15332 applies to an infill development project which 1) is consistent with the applicable General Plan designation and all applicable General Plan policies, as well as the applicable Zoning designations and regulations; 2) occurs within the City limits on a site of less than 5 acres in size that is substantially surrounded by urban uses; 3) is located on a site that has no value for endangered, rare or threatened species; 4) would not result in any significant effects related to traffic, noise, air quality or water quality; and 5) can be adequately served by all required utilities and public services. The exemption in CEQA Guidelines section 15183 applies to a project that is consistent with General Plan designations and zoning for the site described in the General Plan, the potential impacts of which would be substantially mitigated by the imposition of uniformly applied standard conditions of approval. The General Plan Amendment, Housing Element Update, and Associated Rezoning Final Environmental Impact Report (SCH No. 2014032007), certified by the City Council on December 4, 2014, was prepared consistent with the requirements for

applicability of streamlining under CEQA Guidelines Section 15183(d)(2), and there are no environmental effects that are peculiar to the proposed project or project site that were not analyzed in the General Plan EIR;

2. The application for a Tree Removal Permit, Application no. TR-2019-11 is hereby recommended to be approved; and

The subconclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application no.(s) TR-2019-11 as set forth in the Minutes of the City Council Meeting of June 18, 2019, 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 the plan set dated February 4, 2019 consisting of 26 sheets labeled as, "A Redevelopment for Public Storage" labeled as Sheet 1-26, prepared by KSP Studio and BKF,; 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. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. DP-2018-03, ASA-2018-04, and EXC-2018-01 are concurrently enacted, and 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 REPLACEMENTS AND FINAL PLANTING PLAN

The applicant shall plant replacement trees in accordance with the replacements requirements of the Protected Tree Ordinance. The trees shall be planted prior to final occupancy of site permits.

The final planting plan shall be reviewed and approved by the Director of Community Development with consultation by the City's consulting arborist prior to issuance of building permits. The Director of Community Development shall have the discretion to require additional tree replacements as deemed necessary. The City's consulting arborist shall confirm that the replacement trees were planted properly and according to plan prior to final occupancy.

6. TREE PROTECTION

In accordance with the project arborist recommendations, prior to building permit issuance the Applicant shall complete the following:

- a. All tree maintenance and care shall be performed by a qualified arborist with a C-61/D-49 California Contractors License;
- b. Place tree numbers and any protection schemes on all plans;
- c. Place tree protection fencing for an existing trees to remain;
- d. Place tree protection fencing along the row of fern pines and cork oaks near the adjacent site once the building is demolished;
- e. Include a Tree Preservation Plan into the plan set;
- f. Provide a copy of the arborist report to all contractors and project managers;
- g. Pre-construction meeting with the project arborist and/or landscape architect to verify required tree protection is in place; and,
- h. Arrange for the project arborist to monitor and document initial demolition and gardening activity.

In addition to the above, the applicant shall:

- a. 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.
- b. No parking or vehicle traffic shall be allowed under root zones, unless using buffers approved by the Project Arborist.
- c. 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.
- d. Wood chip mulch shall be evenly spread inside the tree projection fence to a four-inch depth.
- e. Tree protection conditions shall be posted on the tree protection barriers.
- f. Retained trees shall be watered to maintain them in good health.
- g. Any willful action by the applicant, contractor and/or subcontractors that causes damage to the retained trees, without proper review by the City to allow additional tree removals, shall cause the applicant to be non-compliant with the City's Municipal Code and could require payment of the Retroactive Tree Removal penalties and fees pursuant to the most recently adopted fee schedule.
- h. 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 City's consulting 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. TREE PROTECTION BOND

The applicant shall provide a tree protection bond in the amount of \$30,000 to ensure protection of ten (10) trees on the site prior to issuance of grading, demolition or building permits. The bond shall be returned after completion of construction, subject to a letter from the City arborist indicating that the trees are in good condition.

6. TREE REPLACEMENT

The applicant shall provide adequate tree replacements for trees proposed to be removed in conjunction with the proposed project. The number, location and type of trees shall be incorporated into the detailed landscape plan to be reviewed and approved by the Director of Community Development prior to issuance of building permits.

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.

7. 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.

8. 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 18th day of June, 2019, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

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| <p>SIGNED:</p> <p>_____</p> <p>Steven Scharf, Mayor City of Cupertino</p> | <p>_____</p> <p>Date</p> |
| <p>ATTEST:</p> <p>_____</p> <p>Grace Schmidt, City Clerk</p> | <p>_____</p> <p>Date</p> |