

RESOLUTION NO.
A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING A TREE REMOVAL PERMIT TO REMOVE, AND REPLACE TEN (10)
DEVELOPMENT TREES TO ACCOMMODATE
A PROPOSED SEVEN (7) UNIT TOWNHOME DEVELOPMENT
LOCATED AT 10046 BIANCHI WAY (APN: 359-07-021)

SECTION I: PROJECT DESCRIPTION

Application No.: TR-2023-008
Applicant: Leon Hu of Top Mission Realty & Investment, Inc.
Location: 10046 Bianchi Way
APN: 359-07-021)

SECTION II: FINDINGS FOR TREE REMOVAL:

WHEREAS, the City of Cupertino received an application for a Tree Removal Permit (Application No. TR-2023-008) 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") and the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) ("CEQA Guidelines"), the project has been determined exempt under Class 32 CEQA Exemption pursuant to CEQA Guideline Sections 15332 (Infill Development Projects); and

WHEREAS, on December 12, 2023, the Planning Commission recommended on a 3-1-1 vote (Madhhipatla: No. Mistry: Absent) that the City Council approve the Development Permit (DP-2023-001) in substantially similar form to the Resolution presented (Resolution No.20), approve the Architectural and Site Approval Permit (ASA-2023-002) in substantially similar form to the Resolution presented(Resolution No.21), approve the Tentative Final Map (TM-2023-001) in substantially similar form the Resolution presented (Resolution No.22) and approve the Tree Removal Permit (TR-2023-008) in substantially similar form to the Resolution presented (Resolution No.23) except as may be further amended by conditions in this resolution; and

WHEREAS, all necessary public notices having been given as required by the Procedural Ordinance of the City of Cupertino and the Government Code, and on January 17th, 2024, the City Council held a public hearing to consider the Tree Removal Permit; and

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

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WHEREAS, the applicant has met the burden of proof required to support the application for Tree Removal Permit.

WHEREAS, the City Council finds:

- 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 residential development buildings, walkways and emergency and vehicle access onto the site, the existing trees cannot be preserved in their locations. The applicant proposes replacement trees throughout the site and proposes to locate the replacements where tree coverage is needed. Due to the physical restraints of the site the applicant cannot accommodate all 18 24"-box replacement trees on site. Therefore, the applicant has proposed to replant 10 24"-box trees on site and pay an in-lieu tree replacement fee per CMC 14.18.160(B)(3) of \$27,450.00 for the remaining 8 trees not planted on site. Additionally, the applicant has proposed 3 street trees in the public right-of-way.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and 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 application for a Tree Removal Permit, Application No. TR-2023-008, is hereby approved, and 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-2023-008 as set forth in the Minutes of the City Council Special Meeting of January 17th, 2024 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 "Leon Townhouse, 10046 Bianchi Way Cupertino, CA 95014" consisting of thirty-five sheets labeled A0.0 – A10.0, L1-L1

and C3.1-C7.1 drawn by Tectonic Builders Corp., 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-2022-001, ASA-2023-002, and TM-2023-001 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 REPLACEMENT & IN-LIEU TREE REPLACEMENT FEE

Seven (7) trees (#1, 5, 6, 7, 8, 9 & 10) identified in the Arborist Report prepared by Davey Resource Group July 2023 are approved for removal with trunk diameter breast height (DBH) ranging from 14" to 38.5". Ten (10) 24-inch box replacement trees shall be planted on site – five (5) Jerusalem Thorn and five (5) Blue Oak. In addition, an in-lieu tree replacement fee for the remaining 8 trees that cannot be accommodated on site and in addition valuation for the removal of Tree #9 (38.5-inch Coast Live Oak, in good condition) has been calculated using the guidelines outlined in the *10th Edition Guide for Plant Appraisal* by the Council of Tree and Landscape Appraisers. The property owner shall pay an ISA calculated value in the amount of \$3,200 (\$400/tree - 8 trees) and \$24,250 per the valuation for the removal of Tree #9, as required by Municipal Code 14.18.160.B.3; for a combined in-lieu tree replacement fee of \$27,450.

6. TREE RETENTION

Tree #11 (14" Monterey Cypress) located on the property directly to the south of the subject property shall require tree protection as well as a monitoring schedule during construction. A monitoring schedule prepared by an ISA Certified Arborist will be provided to planning **prior to building permit issuance**.

Monitoring of the tree protection specifications by an ISA Certified Arborist is required at monthly intervals. The applicant shall retain an ISA certified arborist to prepare Monitoring letters to be provided to the project planner or Planning

Department via planning@cupertino.gov confirming the results of the project monitoring.

- a. Arborist monitoring shall be performed when removal of the existing driveway occurs, as well as during excavation and compaction for the new driveway.
- b. All excavation within the CRZ must be hand-dug or performed by air spade with the project arborist on site, and the arborist must approve the pruning of roots over 2 inches. Any roots uncovered or pruned must be wrapped in damp burlap that will be kept moist until the roots are able to be covered over with soil.
- c. Tree #11 Tree Protection Zone (TPZ) fencing should be installed prior to the start of any demolition or construction and must remain in place for the entirety of the project. Fencing shall encompass as much of the TPZ that overhangs the subject property. If the neighbors agree, it is recommended that TPZ fencing fully encompass the tree and extend onto the property where the tree is located. TPZ fencing should be 6 feet in height and constructed of chain link fencing. Signs must be posted stating: "TREE PROTECTION FENCE - DO NOT MOVE OR REMOVE WITHOUT APPROVAL FROM CITY/PROJECT ARBORIST. NO STORING OF MATERIALS OR MACHINERY." The fence may not be moved without authorization from the ISA certified project arborist.

7. ARBORIST REVIEW

Prior to building permit issuance, the number, location and species of replacement trees, if modified, 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 planning 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 applicant's 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 an ISA certified arborist hired by the project applicant 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 review proposed plans, at applicant cost, 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 applicant arborist shall inspect the trees to be retained and shall provide reviews prior to issuance of demolition, grading or building permits.
- d. A report as prepared by the applicant arborist ascertaining the good health of the trees mentioned above shall be provided prior to issuance of final occupancy.

9. 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.

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. 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 special meeting of the City Council of the City of Cupertino this 17th day of January 2024, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Sheila Mohan, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date