

RESOLUTION NO. ____

A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING AN ARCHITECTURAL AND SITE APPROVAL PERMIT TO
CONSTRUCT A MIXED-USED DEVELOPMENT CONSISTING OF
EIGHTEEN (18) RESIDENTIAL UNITS AND 4,500 SQUARE FEET OF
COMMERCIAL SPACE LOCATED AT 10625 SOUTH FOOTHILL BOULEVARD
(APN: 342-16-087 & 088)

SECTION I: PROJECT DESCRIPTION

Application No.: ASA-2018-09
Applicant: Dan Shaw (SCR Enterprises)
Location: 10625 South Foothill Boulevard (APN#s 342-16-087 & 088)

SECTION II: FINDINGS FOR ARCHITECTURAL AND SITE APPROVAL:

WHEREAS, the Planning Commission of the City of Cupertino received an application for an Architectural and Site Approval Permit 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 City prepared an Initial Study and proposed Mitigated Negative Declaration ("Project"); and

WHEREAS, on October 28, 2021, the City of Cupertino's Environmental Review Committee held a duly noticed public hearing to receive public testimony and reviewed and considered the information contained in the Draft IS/MND, and voted 5-0-0 to recommend that the City Council adopt the Draft IS/MND (EA-2018-06) and mitigation measures; and

WHEREAS, on November 23, 2021, 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 IS/MND along with all staff reports, other pertinent documents, and all written and oral statements received prior to and at the public hearing, and recommended on a 5-0 vote, based on substantial evidence in the record, that the City Council adopt the MND, adopt and incorporate into the Project and implement as conditions of approval all of the mitigation measures for the project that are identified in the IS/MND, and adopt the Mitigation Monitoring and Reporting Program for the Project (EA-2018-06); and

WHEREAS, on November 23, 2021 the Planning Commission recommended on a 5-0 vote that the City Council approve Zone Map Amendment (Z-2018-02), in substantially similar form to the Resolution presented (Resolution No. 6938) approve the Vesting Tentative Map (TM-2018-04), in substantially similar form to the Resolution presented (Resolution No. 6940), approve the Development Permit (DP-2018-07) in substantially similar form to the Resolution presented (Resolution No. 6939), approve the Architectural and Site Approval Permit (ASA-2018-09) in substantially similar form to the Resolution presented (Resolution No. 6941), approve the Use Permit (U-2018-04) in substantially similar form to the Resolution presented (Resolution No. 6942), approve the Tree Removal Permit (TR-2018-39) in substantially similar form to the Resolution presented (Resolution No. 6943); 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 the Planning Commission held at least one public hearing in regard to this application, and on December 21, 2021, the City Council held a public hearing to consider the Development Permit; and

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

WHEREAS, on January 13, 2022, after consideration of substantial evidence contained in the entire administrative record, and prior to consideration of the Development Permit, the City Council adopted Resolution No. [####] adopting and requiring as conditions of approval all of the mitigation measures for the Project which are within the responsibility and jurisdiction of the City that are identified in the IS/MND, and adopting the Mitigation Monitoring and Reporting Program for the Project; and

WHEREAS, the applicant has met the burden of proof required to support the application for an Architectural and Site Approval Permit; and

WHEREAS, the City Council finds as follows with regard to this application:

1. The proposal, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

Given that the project is consistent with the General Plan and applicable portions of the Municipal Code; all mitigation measures identified in the Initial Study/Mitigated Negative Declaration that are within the responsibility and jurisdiction of the City have been adopted and incorporated into the project to mitigate potential impacts to a less than significant level, the project will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.

2. The proposal is consistent with the purposes of Chapter 19.168, the General Plan, any specific plan, zoning ordinances, applicable planned development permit, conditional use permits, variances, subdivision maps or other entitlements to use which regulate the subject property including, but not limited to, adherence to the following specific criteria:

- a) Abrupt changes in building scale should be avoided. A gradual transition related to height and bulk should be achieved between new and existing buildings.

The proposed project is a redevelopment of a commercial site with a residential unit to allow for a new multi-story mixed use development. The commercial component of the project has been located away from the adjoining single-family building. Additionally, the proposed small-lot single family homes have been located along the perimeter, and the project has incorporated various landscape elements to buffer the proposed project from the residential units. Further, the project uses similar design and material throughout to transition between structures.

- b) In order to preserve design harmony between new and existing building and in order to preserve and enhance property values, the materials, textures and colors of new building should harmonize with adjacent development by being consistent or compatible with design and color schemes with the future character of the neighborhoods and purposes of the zone in which they are situated. The location, height and materials of walls, fencing, hedges and screen planting should harmonize with adjacent development. Unsightly storage areas, utility installations and unsightly elements of parking lots should be concealed. The planting of ground cover or various types of pavements should be used to prevent dust and erosion, and the unnecessary destruction of existing healthy trees should be avoided. Lighting for development should be adequate to meet safety requirements as specified by the engineering and building departments, and provide shielding to prevent spill-over light to adjoining property owners.

The design quality of the development is consistent with the high-quality standards encouraged by City Staff. The architectural style is consistent throughout the development. Further, the planting plan provides extensive ground cover and canopy throughout the project, and provides planting screening for adjacent properties. Utility installation has been designed to be screened by landscaping and or incorporated into the building design. The final lighting for the development will be reviewed as part of the review of the project construction documents to ensure that they meet safety requirements and ensure consistency with the City's lighting regulations.

- c) The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures shall minimize traffic hazards and shall positively

affect the general appearance of the neighborhood and harmonize with adjacent development; and

Signage approval is not included in this application.

- d) With respect to new projects within existing residential neighborhoods, new development should be designed to protect residents from noise, traffic, light and visually intrusive effects by use of buffering, setbacks, landscaping, walls and other appropriate design measures.

The project abuts residential development along the side and rear of the property. The project proposes increased setbacks when abutting single-family homes. Additionally, the project incorporates landscape plantings along the perimeter to help screen the development. Further, the project will be required to meet the City's noise and lighting regulation to avoid any intrusive effects. Finally, the primary vehicle access to the site is located furthest away from the adjacent residential buildings.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the IS/MND and the Mitigation Monitoring and Reporting Program for the Project (EA-2018-06), 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 an Architectural and Site Approval, Application No. ASA-2018-09, 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. ASA-2018-09 as set forth in the Minutes of the City Council Meeting of January 13, 2022, 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 dated September 15, 2020 consisting of 55 sheets labeled as Canyon Crossings Mixed-Use Development, A0-A6, E1.1, L1.0-L3.1, C1-C14, and ST2 prepared by LPMD Architects, TS Civil Engineering, and Reed Associates, 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. Z-2018-02, TM-2018-04, U-2018-04, DP-2018-07, TR-2018-39, and EA-2018-06 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. EXTERIOR BUILDING MATERIALS/TREATMENTS

The final building exterior plan shall closely resemble the details shown on the original approved plans. Final building exterior treatment plan (including but not limited to details on exterior color, materials, architectural treatments, doors, windows, lighting fixtures, and/or embellishments) shall be reviewed and approved by the Director of Community Development prior to issuance of building permits to ensure quality and consistency. Any exterior changes determined to be substantial by the Director of Community Development shall either require a modification to this permit or a new permit based on the extent of the change.

Any future exterior changes must be reviewed and approved by the Property Owner's Association prior to permit application with the City. Substantial changes to materials from previously approved materials must be reviewed and approved for the development as a whole with review and approval of a new Architectural and Site Approval permit.

6. LANDSCAPE INSTALLATION REPORT

The project is subject to all provisions delineated in the Landscape Ordinance (CMC, Chapter 14.15). A landscape installation audit shall be conducted by a certified landscape professional after the landscaping and irrigation system have been installed. The findings of the assessment shall be consolidated into a landscape installation report.

The landscape installation report shall include, but is not limited to: inspection to confirm that the landscaping and irrigation system are installed as specified in the landscape and irrigation design plan, system tune-up, system test with

distribution uniformity, reporting overspray or run-off that causes overland flow, and preparation of an irrigation schedule.

The landscape installation report shall include the following statement: "The landscape and irrigation system have been installed as specified in the landscape and irrigation design plan and complies with the criteria of the ordinance and the permit."

7. LANDSCAPE INSTALLATION/REHABILITATION SUBMITTAL

Prior to issuance of building permits, the applicant shall submit a Prescriptive Compliance Application per sections 14.15.040 A, B, and C of the Landscape Ordinance. The Water-Efficient Design Checklist (Appendix A of Chapter 14.15), landscape design plans, and irrigation plans shall be reviewed and approved to the satisfaction of the Director of Community Development prior to issuance of building permits. A full Landscape Documentation Package submittal will be required if more than 500 square feet of landscaping is proposed.

8. LANDSCAPE AND IRRIGATION MAINTENANCE

Per the City's Landscape Ordinance (CMC, Chapter 14.15), a maintenance schedule shall be established and submitted to the Director of Community Development or his/her designee, either with the landscape application package, with the landscape installation report, or any time before the landscape installation report is submitted.

- a) Schedules should take into account water requirements for the plant establishment period and water requirements for established landscapes.
- b) Maintenance shall include, but not be limited to the following: routine inspection; pressure testing, adjustment and repair of the irrigation system; aerating and de-thatching turf areas; replenishing mulch; fertilizing; pruning; replanting of failed plants; weeding; pest control; and removing obstructions to emission devices.
- c) Failed plants shall be replaced with the same or functionally equivalent plants that may be size-adjusted as appropriate for the stage of growth of the overall installation. Failing plants shall either be replaced or be revived through appropriate adjustments in water, nutrients, pest control or other factors as recommended by a landscaping professional.

Note that all landscape and trees planted is considered protected per the City's Protected Trees Ordinance. Tree Removal permits are required prior to removal of any trees.

9. LANDSCAPE PROJECT SUBMITTAL

Prior to issuance of building permits, the applicant shall submit a full Landscape Documentation Package, per sections 14.15.050 A, B, C, and D of the Landscape Ordinance, for projects with landscape area 500 square feet or more or elect to submit a Prescriptive Compliance Application per sections 14.15.040 A, B, and C for projects with landscape area between 500 square feet and 2,500 square feet. The Landscape Documentation Package or Prescriptive Compliance Application shall be reviewed and approved to the satisfaction of the Director of Community Development prior to issuance of building permits, and additional requirements per sections 14.15.040 D, E, F, and G or 14.15.050 E, F, G, H, and I will be required to be reviewed and approved prior to final inspections.

10. SOIL ANALYSIS REPORT

A soils analysis report shall document the various characteristics of the soil (e.g. texture, infiltration rate, pH, soluble salt content, percent organic matter, etc) and provide recommendations for amendments as appropriate to optimize the productivity and water efficiency of the soil.

The soil analysis report shall be made available to the professionals preparing the landscape and irrigation design plans in a timely manner either before or during the design process. A copy of the soils analysis report shall be submitted to the Director of Community Development as part of the landscape documentation package.

11. LANDSCAPE AND IRRIGATION PLANS

The applicant shall submit detailed landscape and irrigation plans to be reviewed and approved by ___ prior to issuance of building permits. The landscape plan shall include water conservation and pesticide reduction measures in conformance with Chapter 14.15, Landscape Ordinance, and the pesticide control measures referenced in Chapter 9.18, Stormwater Pollution Prevention and Watershed Protection, of the Cupertino Municipal Code.

12. DARK SKY COMPLIANCE AND/OR BIRD SAFE 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 19.102.030 Bird-Safe Development Requirements and/or 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.

13. SIGNAGE

Signage is not approved with this use permit application. Signage shall conform to the City Sign Code.

14. TRANSFORMERS

Electrical transformers, telephone cabinets and similar equipment shall be placed in underground vaults. The developer must receive written approval from both the Public Works Department and the Community Development Department prior to installation of any above ground equipment. Should above ground equipment be permitted by the City, equipment and enclosures shall be screened with fencing and landscaping such that said equipment is not visible from public street areas, as determined by the Community Development Department. Transformers shall not be located in the front or street side building setback area.

15. UTILITY STRUCTURE PLAN

Prior to issuance of building permits, the applicant shall work with staff to provide a detailed utility plan to demonstrate screening or undergrounding of all new utility structures [including, but not limited to backflow preventers (BFP), fire department connections (FDC), post-indicator valves (PIV), and gas meters] to the satisfaction of the Director of Community Development, Public Works, Fire Department, and applicable utility agencies.

16. 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.

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 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. 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 13th day of January, 2022, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date