

RESOLUTION NO. ____

A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING A TREE REMOVAL PERMIT TO REMOVE, AND REPLACE NINETY-
ONE (91) DEVELOPMENT TREES AT THE MARINA SHOPPING CENTER TO
ACCOMMODATE THE CONSTRUCTION OF A MIXED-USED DEVELOPMENT
CONSISTING OF 41,268 SQ. FT. OF COMMERCIAL SPACE AND 206
CONDOMINIUM UNITS LOCATED AT 10145 N. DE ANZA BLVD, 10118 BANDLEY
DRIVE (APN: 326-34-066, 326-34-043)

SECTION I: PROJECT DESCRIPTION

Application No.: TR-2022-026
Applicant: Larry Wang (Tectonic Builders Corp.)
Property Owner: De Anza Venture, LLC
Location: 10145 N. De Anza Blvd, 10118 Bandley Drive (APN: 326-34-066, 326-34-043)

SECTION II: FINDINGS FOR TREE REMOVAL:

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, after consideration of evidence contained in the entire administrative record, at the public hearing on September 6, 2016, the City Council adopted Resolution No. 16-091, adopting a Mitigated Negative Declaration for the Marina Development; and

WHEREAS, environmental analysis and peer reviews were conducted by Placeworks, Inc. pursuant to the requirements of CEQA, finding that no new or substantially increased significant environmental effects; and

WHEREAS, on November 10, 2022 the Planning Commission recommended on a 5-0 vote that the City Council adopt the Addendum to the Mitigated Negative Declaration (EA-2015-05) and approve the Development Permit (DP-2022-001) in substantially similar form to the Resolution presented (Resolution No. 6964), approve the Architectural and Site Approval Permit (ASA-2022-002) in substantially similar form to the Resolution presented (Resolution No. 6965), approve the Tree Removal Permit (TR-2022-026) in substantially similar form to the Resolution presented (Resolution No. 6967) and approve the Vesting Tentative Map (TM-2022-003), in substantially similar form to the Resolution presented (Resolution No. 6966); 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 6, 2022 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, the applicant has met the burden of proof required to support the application for a Tree Removal Permit; and

WHEREAS, the analysis in the Addendum prepared by Placeworks, Inc. indicates that the proposed project would not require major revisions to the Mitigated Negative Declaration adopted on September 6, 2016, due to new or substantially increased significant environmental effects. Furthermore, there have been no substantial changes with respect to the circumstances under which these minor modifications would be undertaken that would require major revisions of the Adopted Mitigation Negative Declaration due to new or substantially increased significant environmental effects, and there has been no discovery of new information of substantial importance that would trigger or require major revisions to the Mitigated Negative Declaration due to new or substantially increased significant environmental effects.

WHEREAS, the adopted Mitigated Negative Declaration adequately identifies all environmental effects and adequate mitigation measures for the proposed modifications to the previously approved project. Therefore, no subsequent or supplemental Mitigated Negative Declaration is required prior to approval of the proposed project.

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).

In order to accommodate for the new development's residential and mixed-use buildings, underground garage, walkways and internal street network to public open spaces, the existing trees cannot be preserved in their locations. The applicant proposes replacement trees throughout the site in excess of the conformance with the Municipal Code Ordinance requirements and proposes to locate the replacements where tree coverage is needed, while also proposing to relocate four of the Coast Live Oak Trees.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the MND Addendum, subject to the conditions which are enumerated in this Resolution beginning on PAGE 3 thereof, and those contained in all other Resolutions approved for this Project.

The application for a Tree Removal Permit, Application No. TR-2022-026, 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-2022-026 as set forth in the Minutes of the City Council Meeting of December 6, 2022 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 dated July 27, 2022 consisting of 91 sheets labeled as Marina Plaza, A0.0 – A11.0, T-01 – T-03, C0.1 – C4.3, JT-1 – JT-3, L1.01 – L3.05, and TR0.1 – TR0.9, drawn by Tectonic Builders, Giuliani & Kull, Vizion Utility, and JETT Landscaping, 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, TM-2022-003, and ASA-2022-002 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 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 size of the proposed replacement trees shall be modified

as follows to be consistent with the City's Protected Tree Ordinance unless deemed infeasible by the City's Consulting Arborist:

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

If it is determined that it is physically not feasible to plant the required replacements trees, the Applicant may pay in-lieu fees determined to be appropriate by the Community Development Director.

6. ARBORIST REVIEW

Prior to building permit issuance, the number, location and species of trees 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 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 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.

7. 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 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 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 shall inspect the trees to be retained 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 prior to issuance of final occupancy.

8. 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.

9. 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.

10. 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.

11. 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 6th day of December, 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