

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

DRAFT RESOLUTION NO. 16-\_\_\_\_

OF THE CITY COUNCIL OF THE CITY OF CUPERTINO APPROVING A TREE REMOVAL PERMIT  
TO ALLOW THE REMOVAL AND REPLACEMENT OF 90 TREES TO FACILITATE THE  
CONSTRUCTION OF A 122-ROOM HOTEL, TWO MIXED-USE BUILDINGS WITH 188 APARTMENT  
UNITS AND APPROXIMATELY 22,600 SQUARE FEET OF COMMERCIAL SPACE AND  
ASSOCIATED SITE AND OFF-SITE IMPROVEMENTS IN A PLANNED DEVELOPMENT ZONE AT  
10122 BANDLEY DRIVE AND 10145 NORTH DE ANZA BOULEVARD

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SECTION I: PROJECT DESCRIPTION

Application No.: TR-2016-14  
Applicant: Amy Chan, De Anza Venture, LLC  
Property Owner: Marina Plaza, LLC (APN 326-34-066), and Cupertino 10145, LLC (APN 326-32-043)  
Location: 10122 Bandlely Drive (APN 326-34-066) and 10145 North De Anza Boulevard (APN 326-32-043)

SECTION II: FINDINGS FOR TREE REMOVAL PERMIT:

WHEREAS, the City Council of the City of Cupertino received an application for a Tree Removal Permit as described in Section I. of this Resolution; and

WHEREAS, the Environmental Review Committee has reviewed an Initial Study and Mitigated Negative Declaration and recommended approval; and

WHEREAS, the Planning Commission held a public hearing on July 26, 2016 and recommended that the City Council approve the application, subject to conditions, and adopt the Mitigated Negative Declaration; 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, 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 all 90 trees on site. The majority of trees to be removed are Southern Magnolia and Canary Island 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 107 24-inch box trees; however the applicant proposes the planting of 172 trees within a range of 24"-48" box sizes as shown on plan sheet L4.01.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the initial study, maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on PAGE 2 thereof.;

The application for a Tree Removal Permit, Application no. TR-2016-14 is hereby approved and that the subconclusions upon which the findings and conditions specified in this resolution are based and contained in the Public Hearing record concerning Application no. TR-2016-14 as set forth in the Minutes of the City Council Meeting of September 6, 2016, 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 received on June 2, 2016 consisting 134 sheets labeled as "Marina Plaza the urban village" consisting of 134 sheets labeled as T.1 to T.9, C1.0 to C5.2, R-1 to R-2, JT-1 to JT-3, A.0 to A.65, PM-1 to PM-3, SL-1 to SL-3, E-1 to E-2, and L0.02 to L5.02, drawn by Dahlin Group, VER Consultants, RGA, Bruce Jett Associates, Coffman Engineers. Inc, Emerald City Engineer, Inc. Beyond Efficiency Inc, and RGD Acoustic, Inc., except as may be amended by conditions in this resolution.

#### 2. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. DP-2015-05, ASA-2015-22, U-2015-06, DA-2016-01, EXC-2016-03, and EXC-2016-05 shall applicable to this approval.

#### 3. 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.

4. TREE REPLACEMENT BOND

The applicant shall provide a tree replacement bond in an amount determined by the City's consulting arborist prior to removals and issuance of demolition and grading permits. The bond shall be returned after the required tree replacements have been planted and verified by the City's consulting arborist.

5. CONULSTATION 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.

6. 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.

7. 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.

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PASSED AND ADOPTED at a Regular Meeting of the city Council of the City of Cupertino the 6<sup>th</sup> day of September 2016, by following roll call vote:

Vote:               Members of the City Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

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Grace Schmidt  
City Clerk

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Barry Chang  
Mayor, City of Cupertino

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