

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

DRAFT RESOLUTION

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO RECOMMENDING
APPROVAL OF A TREE REMOVAL PERMIT TO ALLOW THE REMOVAL AND
REPLACEMENT OF SIX COAST LIVE OAK TREES TO FACILITATE THE CONSTRUCTION
OF A NEW RESIDENCE LOCATED AT 22823 SAN JUAN ROAD

SECTION I: PROJECT DESCRIPTION

Application No.: TR-2014-70
Applicant: Amy Cheng
Location: 22823 San Juan Road (APN 342-22-078)

SECTION II: FINDINGS FOR TREE REMOVAL PERMIT:

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, the Environmental Review Committee has recommended adoption of a 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 Planning Commission 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 Planning Commission finds as follows with regard to this application:

- a) That the trees are irreversibly diseased, are in danger of falling, can cause potential damage to existing or proposed essential structures, or interferes with private on-site utility services and cannot be controlled or remedied through reasonable relocation or modification of the structure or utility services;

The City's consulting arborist has determined that the trees proposed for removal are all in conflict with the proposed new buildings and site improvements, and are not suitable for preservation or relocation. The siting of the home on the parcel is the most ideal in order to preserve the hillside without grading or greater loss of trees.

- b) 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).

The neighborhood and surrounding parcels are zoned RHS-21, similar to that of the proposed development. Restricting the applicant's proposal to remove the six (6) Coast Live Oaks would limit the development potential of the site not typically experienced by owners of similarly zoned and situated properties.

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,;

A Mitigated Negative Declaration (Application no. EA-2014-08) is hereby recommended for adoption; and the application for a Tree Removal Permit, Application no. TR-2014-70 is hereby recommended for approval 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-2014-70 as set forth in the Minutes of Planning Commission Meeting of January 17, 2017, 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 March 01, 2016 consisting of 10 sheets, labled A-0.0, A-1.0, A-2.0, A3.0, A3.1, A3.2, Sheet 1, Sheet 2, and Civil Sheet 1 entitled, "Amy Project, 22823 San Juan Rd., Cupertino, CA 95014," drawn and submitted by SC Design Group; except as may be amended by conditions in this resolution.

2. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file no. EXC-2014-15 shall be applicable to this approval.

3. FINAL PLANTING PLAN

The applicant is required to plant twelve (12) 24" box replacement tree in accordance with the Protected Tree Ordinance. All replacement trees shall be Coast Live Oak. 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 prior to issuance of building permits. The Director of Community Development shall have the discretion to require additional or alternative tree replacements as deemed necessary. An ISA Certified Arborist shall confirm that the replacement trees were planted properly and according to plan prior to final occupancy.

4. TREE PROTECTION

The existing trees to remain shall be protected during construction per the City's Protected Tree Ordinance (Chapter 14.18 of the municipal code). The City's standard tree protection measures shall be listed on the plans, and protective fencing shall be installed around the trees to remain prior to issuance of building permits. A report ascertaining the good health of these trees shall be provided prior to issuance of final occupancy.

A qualified arborist be required to inspect the root damage of Tree # 7 (as identified in Nigel Belton's report, dated October 3, 2016) at the time of footing excavation to determine whether or not Tree # 7 could be preserved. All trees to be preserved on the property and all trees adjacent to the property shall be protected against damage during construction operations by constructing a four-foot-high fence around the drip line, and armor as needed. The extent of fencing and armoring shall be determined by the landscape architect. The tree protection shall be placed before any excavation or grading is begun and shall be maintained in repair for the duration of the construction work.

5. 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.

6. INDEMNIFICATION

Except as otherwise prohibited by law, the applicant shall indemnify and hold harmless the City, its City Council, and its officers, employees and agents (collectively, the "indemnified parties") from and against any claim, action, or 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 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 shall pay such attorneys' fees and costs within 30 days following receipt of invoices from City. Such attorneys' fees and costs shall include amounts 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.

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.

PASSED AND ADOPTED this 17th day of January, 2017, Special Meeting of the Planning Commission of the City of Cupertino, State of California, by the following roll call vote:

AYES: COMMISSIONERS: none

NOES: COMMISSIONERS: none

ABSTAIN: COMMISSIONERS: none

ABSENT: COMMISSIONERS: none

ATTEST:

APPROVED:

Benjamin Fu
Assist. Director of Community Development

Allan Takahashi
Chair, Planning Commission