

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 SEVEN (7) PROTECTED TREES
LOCATED AT 10234 SCENIC BOULEVARD, APN#357-08-014 AND 357-08-047

SECTION I: PROJECT DESCRIPTION

Application No.: TR-2016-28
Applicant: Welkin International (Cai Xing Xie)
Location: 10234 Scenic Boulevard (APN 357-08-014, 357-08-047)

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 necessary public notices were given as required by the Procedural Ordinance 19.08 of the City of Cupertino, and the Planning Commission held a public hearing on November 14, 2017 to consider the application and hear public testimony; and

WHEREAS, the applicant has met the burden of proof required to support said application; and

WHEREAS, prior to the Planning Commission meeting the Environmental Review Committee heard the item on October 19, 2017 during which it reviewed the Draft Mitigated Negative Declaration, received public comments, and recommended adoption of a Mitigated Negative Declaration on a 4-0 vote, with minor modifications; and

WHEREAS, on November 14, 2017 the Planning Commission adopted the Initial Study/Draft MND as the Final Initial Study/Mitigated Negative Declaration for the project after adopting all the identified mitigation measures as conditions of approval for the project; and

WHEREAS, the Planning Commission 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 improvements site would result in the removal of seven (7) protected. The seven (7) protected trees are considered protected based on the size of the tree and species. Therefore, replacement plantings are required for the proposed removal. The required replacements are 11 24-inch box trees.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the initial study, 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:

The application for a Tree Removal Permit, Application no. TR-2016-28, is hereby approved and the conclusions and subconclusion upon which the findings and conditions specified in the resolution are based and contained in the Public Hearing record concerning Application no: TR-2016-28 as set forth in the Minutes of Planning Commission Meeting of November 14, 2017, are hereby 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 set plans dated February 12, 2015 consisting of 10 sheets, labeled as Sheet TM-1 – TM-6 and A3.1 – A3.3 entitled, “Tentative Parcel Map 10234 Scenic Boulevard Cupertino, CA 95014”, drawn and submitted by E.J. Hahamian, except as may be amended by conditions in this resolution.

2. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file no. EA-2015-01, and the conditions of approval for application no. TM-2015-01 shall be applicable upon Planning Commission review and 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 replacements shall be eleven (11) 24-inch box Coat Live Oak trees, unless an in-lieu fee is allowed if it can be verified by the City's Consulting Arborist that adequate room is not available on-site to accommodate the replacements. 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. 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.

5. 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.

6. 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 14th day of November, 2017, Regular Meeting of the Planning Commission of the City of Cupertino, State of California, by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Benjamin Fu
Assist. Director of Community Development

Don Sun
Chair, Planning Commission