

RESOLUTION NO. _____

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING DEVELOPMENT PERMIT DP-2017-01 TO ALLOW
ADDITIONS AND RENOVATIONS TO THE EXISTING FACILITIES AT
23500 CRISTO REY DRIVE, CERTIFYING THE FINAL ENVIRONMENTAL
IMPACT REPORT PURSUANT TO THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT, AND ADOPTING A MITIGATION MONITORING AND
REPORTING PROGRAM**

SECTION I: PROJECT DESCRIPTION

Application No.: ASA-2017-03
Applicant: Mary Elizabeth O'Connor
Property Owner: Rancho San Antonio Retirement Housing Corporation
Location: 23500 Cristo Rey Drive (APN: 342-54-999)
Proposal: Additions to the existing facilities at The Forum at Rancho San Antonio, as well as new buildings resulting in 23 new independent living units, 10 new beds and ~46,026 square feet of renovations and additions to the skilled nursing facility, ~10,500 square feet of renovations to the assisted living facility, 26 new beds in a ~39,000-square-foot new memory care building, and ~27,000 square feet of renovations and additions to the commons facilities (dining, fitness and multi-purpose room).

SECTION II: FINDINGS FOR DEVELOPMENT PERMIT:

WHEREAS, the City of Cupertino received an application for an Architectural and Site Approval as described in Section I. of this Resolution; and

WHEREAS, the Environmental Review Committee has reviewed the Environmental Impact Report (EIR) on January 18, 2018 and recommends certification of the EIR and adoption of the Mitigation Monitoring and Reporting Program; and

WHEREAS, the Planning Commission held a public hearing on March 27, 2018 and recommended that the City Council approve the application, subject to conditions; and

WHEREAS, on April 9, 2018, the City of Cupertino received a revised plan for 23 living units, reflecting a private negotiation between the Forum owners and neighboring property owners; and

WHEREAS, the reduction of living units from 25 to 23 is a de minimus revision, which does not result in any change to the necessary findings for approval; 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) The proposed development, 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;

General Plan policies seek to support the community quality of life, including planning for changing demographics, integrating community health into land use planning, and economic vitality and fiscal stability as follows:

- *The growing need for services for seniors are addressed through combined residential and community facilities;*
- *Onsite facilities within walking distance, proximity to open space, and vanpools reduce reliance on auto usage and increases community health;*
- *As Cupertino's population grows and ages, demands on community resources will increase. In order to maintain and enhance the community's quality of life, the City will ensure that existing businesses are encouraged to reinvest and grow in Cupertino, and that the city continues to attract new businesses and investment. The Forum is a cooperatively-owned non-profit corporation; the issues of economic vitality, attracting new investors, and long-term viability of the community to provide services to the senior community applies and is accomplished by the proposed development.*

- b) The proposed development will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan and the purpose of the City's zoning ordinances.

The General Plan land use designation for the property is quasi-public/institutional. The existing and proposed use that provides independent living, assisted living and skilled nursing including memory care for seniors, is consistent with the General Plan. The subject property is zoned Planned Development District – Institutional ("P (I)"). Therefore, as an institutional development, the proposal is an allowed use consistent with the P zoning district. The proposed development will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan and the purpose of the City's zoning ordinances as follows:

- *Building layouts, placement and design are compatible with the surrounding environment. Careful attention is paid to transitions and building locations. Living units adjacent to the Oak Valley neighborhood are located closer to Cristo Rey for increased setbacks to property line within the range of 29-52 feet, resulting in structure separation ranging between 49-72 feet.*
- *There is a buffer area between resident/visitor traffic on Cristo Rey and the proposed living units that multi-tasks as a back-out area and visitor parking spaces.*
- *Proposed colors, materials, and forms are consistent with the existing development.*
- *Scale and interrelationships of old and new development complement each other. Buildings are grouped to create spatial unity. For example, the independent living units maintain a one-story and/or low density profile in acknowledgment of adjacent existing units on site and nearby single family homes off site. Taller duplex units are located within the interior of the site, shown as proposed on Sereno Court, and adjacent to similarly scaled units. The larger community and service facilities are also located within the interior of the site, meet the height limits as defined within Community Form Diagram Figure LU-2, and maintain similar scale to existing buildings such that they are not perceived from off site.*

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval recommendation is based on the architectural, civil, and landscape plan set dated April 3, 2018, Submittal #4 Alt. 23 Villas, consisting of 162 sheets labeled "The Forum Senior Community Update," prepared by SmithGroupJJR, RHAA Landscape Architecture and BKF Engineers; arborist report dated April 20, 2017, prepared by HortScience; Environmental Impact Report and technical appendices dated circulated on December 15, 2017, prepared by Placeworks and Response to Comments dated February 8, 2018, prepared by Placeworks; except as may be amended by conditions in this resolution.

2. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. DP-2017-01, EA-2017-01, ASA-2017-03 and TR-2018-06 are concurrently enacted, and shall be applicable to this approval.

3. DEVELOPMENT APPROVAL AND PROJECT AMENDMENTS

Development Permit approval is granted for additions and renovations for the Forum Senior Community Update. The Planning Commission shall review amendments to the project considered major by the Director of Community Development.

4. **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.

5. **ODOR ABATEMENT SYSTEMS**

Odor abatement systems shall be installed for all new eating and common food preparation areas. The design of the odor abatement system will be finalized at the building permit stage. Equipment associated with the odor abatement systems shall be appropriately screened if visible from the public right-of-way.

6. **PUBLIC ART REQUIREMENT**

Public art shall be provided for the project in accordance with General Plan Policy 2-66 and the City's Public Art Ordinance (Chapter 19.148 of the Cupertino Municipal Code). The minimum expenditure for the artwork, including, but not limited to design, fabrication, and installation is .25 percent of the total project budget, with an expenditure cap of \$100,000. The project pro forma shall be provided to the City to confirm the project budget. The final public art plans (including location and design) shall be reviewed by the Fine Arts Commission during the building permit stage, in advance of final occupancy. Once approved by the Fine Arts Commission, the public artwork shall be installed to the satisfaction of the City prior to final occupancy.

7. **CONDOMINIUMIZATION**

Parcelization/condominiumization of units is not approved as part of this project. Any proposed changes to the map shall require further City review and approval.

8. **CIRCULATION AND PARKING REQUIREMENTS**

The project shall maintain the total amount of proposed parking, consistent with the approved exhibits and Cupertino Municipal Code Chapter 19.124. Changes to the number of provided parking stalls will require further City review and approval.

9. **SITE LIGHTING**

All new lighting must conform to the standards in the Parking Regulations Ordinance, and the final lighting plan (including a detailed photometric plan) shall be reviewed and approved by the Director of Community Development prior to building permit issuance. A report from a licensed lighting engineer may be required to confirm all exterior lighting throughout the site complies with the City's Ordinance.

10. **ROOFTOP EQUIPMENT SCREENING**

All mechanical and other equipment on the building or on the site shall be screened so they are not visible from public street areas or adjoining developments. The height of the screening shall be taller than the height of the mechanical equipment that it is designed to screen. A line of sight plan may be required to demonstrate that the equipment will not be visible from any public right-of-way. The location of the equipment and necessary screening shall be reviewed and approved by the Director of Community Development prior to issuance of building permits.

11. **SCREENING OF UTILITY STRUCTURES**

All new utility structures shall be located underground or screened from public view to the satisfaction of the Director of Community Development and the Public Works Department.

12. **NOISE LEVELS AND ABATEMENT**

Project construction and use shall comply with the City's Community Noise Control Ordinance at all times. Should the project exceed any of the stipulated maximum noise levels outlined in the City's Community Noise Control Ordinance, an acoustical engineer may be required to submit noise attenuation measures to the satisfaction of the Director of Community Development at the applicant's expense.

13. **PRE-CONSTRUCTION MEETING AND CONSTRUCTION MANAGEMENT PLAN**

A demolition and construction management plan shall be submitted and reviewed prior to building permit issuance. Prior to commencement of construction activities, the applicant shall arrange for a pre-construction meeting with the pertinent departments (Building, Planning, and Public Works) to review the prepared construction management plan, to ensure that construction complies with the conditions of approval, staging of construction equipment is appropriate, tree protection measures are in place, public access routes are identified is defined, and noise and dust control measures are established.

14. **CONSTRUCTION HOURS**

Construction activities shall be limited to Monday through Friday, 7 am to 8 pm and Saturday and Sunday, 9 am to 6 pm. Construction activities are not allowed on holidays. Maximum noise levels are delineated in the City's Community Noise Control Ordinance. The developer shall be responsible for educating all contractors and subcontractors of said construction restrictions. Rules and regulations pertaining to all construction activities and limitations identified in this permit, along with the name and telephone number of a developer appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.

15. **DEMOLITION REQUIREMENTS**

All demolished building and site materials shall be recycled to the maximum extent feasible subject to the Building Official. The applicant shall provide evidence that materials were recycled prior to occupancy.

16. **DUST CONTROL**

The following construction practices shall be implemented during all phases of construction for the proposed project to prevent visible dust emissions from leaving the site:

- Water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;
- Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- Sweep streets daily, or more often if necessary (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
- The applicant shall incorporate the City's construction best management practices into the building permit plan set.

17. **ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES**

Per the mitigation measures outlined in the Mitigation Monitoring and Reporting Program based on the EIR dated December 15, 2017 titled "The Forum Senior Community Update," prepared by Placeworks (EA-2017-01), the following is an outline of mitigation measures that apply:

Mitigation Measure AQ-2: The project applicant shall require their construction contractor to comply with the following BAAQMD best management practices for reducing construction emissions of uncontrolled fugitive dust (coarse inhalable particulate matter [PM₁₀] and fine inhalable particulate matter [PM_{2.5}]):

- Water all active construction areas at least twice daily or as often as needed to control dust emissions. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
- Pave, apply water twice daily or as often as necessary to control dust, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.

- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- Sweep daily (with water sweepers using reclaimed water if possible) or as often as needed all paved access roads, parking areas, and staging areas at the construction site to control dust.
- Sweep public streets daily (with water sweepers using reclaimed water if possible) in the vicinity of the project site, or as often as needed, to keep streets free of visible soil material.
- Hydro-seed or apply non-toxic soil stabilizers to inactive construction areas.
- Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (e.g., dirt, sand).
- Limit vehicle traffic speeds on unpaved roads to 15 miles per hour.
- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff from public roadways.
- The City of Cupertino Building Division official or his/her designee shall verify compliance that these measures have been implemented during normal construction site inspections.

Mitigation Measure AQ-4: During construction, the construction contractor(s) shall use construction equipment fitted with Level 3 Diesel Particulate Filters for all equipment of 50 horsepower or more.

The construction contractor shall maintain a list of all operating equipment in use on the project site for verification by the City of Cupertino Building Division official or his/her designee. The construction equipment list shall state the makes, models, and number of construction equipment on-site. Equipment shall be properly serviced and maintained in accordance with manufacturer recommendations. The construction contractor shall ensure that all non-essential idling of construction equipment is restricted to five minutes or less in compliance with Section 2449 of the California Code of Regulations, Title 13, Article 4.8, Chapter 9. Prior to issuance of any construction permit, the construction contractor shall ensure that all construction plans submitted to the City of Cupertino Planning Division and/or Building Division clearly show the requirement for Level 3 Diesel Particulate Filters for construction equipment over 50 horsepower.

Mitigation Measure BIO-1a: For construction activities occurring within the proposed areas of development, one pre-construction survey no more than 14 days prior to initial ground disturbance shall be performed in accordance with the California Department of Fish and Wildlife (CDFW) *Staff Report on Burrowing Owl Mitigation*. The pre-construction survey shall include suitable habitat and surrounding

accessible areas up to 200 feet of proposed construction activities and be conducted prior to the start of initial ground disturbance, regardless of time of year. If burrowing owls are documented during the nesting period (March 1 through August 31), an appropriate no-disturbance buffer per the CDFW *Staff Report on Burrowing Owl Mitigation* shall be placed around active burrows until young have fledged the nest. If burrowing owl is detected during the non-nesting season or following the determination the nest is no longer active and the occupied burrow(s) cannot be avoided, a burrowing owl exclusion plan shall be prepared and implemented. A qualified biologist shall determine if visual barriers or other measures are suitable for occupied burrows which can be avoided.

Mitigation Measure BIO-1b: The construction contractor shall install orange construction fencing to limit construction crews from entering the habitats of the San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*) adjacent to the work area.

Mitigation Measure BIO-1c: Nests of special-status and other native birds shall be protected when in active use, as required by the federal Migratory Bird Treaty Act and the California Fish and Game Code. If ground disturbance from construction activities and any required tree removal occur during the nesting season (February 15 and August 15), a qualified biologist shall be required to conduct surveys prior to tree removal or ground disturbance from construction activities. Surveys shall encompass the entire construction area and the surrounding 500 feet. Preconstruction surveys are not required for tree removal or construction activities outside the nesting period. If construction or tree removal would occur during the nesting season (February 15 to August 15), preconstruction surveys shall be conducted no more than 14 days prior to the start of tree removal or ground disturbance from construction activities. Preconstruction surveys shall be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped. Locations of active nests containing viable eggs or young birds shall be documented and protective measures implemented under the direction of the qualified biologist until the nests no longer contain eggs or young birds. Protective measures shall include establishment of clearly delineated exclusion zones (i.e., demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by a qualified biologist, taking into account the species of birds nesting, their tolerance for disturbance and proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds. The active nest within an exclusion zone shall be monitored on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status. The radius of an exclusion zone may be increased by the qualified biologist if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified biologist and in consultation with California Department of Fish and Wildlife, if necessary. The protection measures shall remain

in effect until the young have left the nest and are foraging independently or the nest is no longer active.

Mitigation Measure BIO-3: The proposed project shall comply with the City of Cupertino's Protected Trees Ordinance (CMC Section 14.18). A tree removal permit shall be obtained for the removal of any "protected tree," and replacement plantings shall be provided as approved by the City. If permitted, an appropriate in-lieu fee may be paid to the City of Cupertino as compensation for "protected trees" removed by the proposed project, where sufficient land area is not available on-site for adequate replacement and when approved by the City.

In addition, a Tree Protection and Replacement Program (Program) shall be developed by a Certified Arborist prior to project approval and implemented during project construction to provide for adequate protection and replacement of "protected trees," as defined by the City's Municipal Code. The Program shall include the following provisions:

- Adequate measures shall be defined to protect all trees to be preserved. These measures should include the establishment of a tree protection zone (TPZ) around each tree to be preserved. For design purposes, the TPZ shall be located at the dripline of the tree or 10 feet, whichever is greater. If necessary, the TPZ for construction-tolerant species (i.e., London planes, coast live oaks, and coast redwoods) may be reduced to 7 feet.
- Temporary construction fencing shall be installed at the perimeter of TPZs prior to demolition, grubbing, or grading. Fences shall be 6-foot chain link or equivalent, as approved by the City of Cupertino. Fences shall remain until all construction is completed. Fences shall not be relocated or removed without permission from the consulting arborist.
- No grading, excavation, or storage of materials shall be permitted within TPZs. Construction trailers, traffic, and storage areas shall remain outside fenced areas at all times.
- Underground services including utilities, sub-drains, water or sewer shall be routed around the TPZ. Where encroachment cannot be avoided, special construction techniques such as hand digging or tunneling under roots shall be employed where necessary to minimize root injury. Irrigation systems must be designed so that no trenching will occur within the TPZ.
- Construction activities associated with structures and underground features to be removed within the TPZ shall use the smallest equipment, and operate from outside the TPZ. The consulting arborist shall be on-site during all operations within the TPZ to monitor demolition activity.
- All grading, improvement plans, and construction plans shall clearly indicate trees proposed to be removed, altered, or otherwise affected by development construction. The tree information on grading and development plans should indicate the number, size, species, assigned tree number and location of the dripline of all trees

that are to be retained/preserved. All plans shall also include tree preservation guidelines prepared by the consulting arborist.

- The demolition contractor shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection. Prior to beginning work, the contractor(s) working in the vicinity of trees to be preserved shall be required to meet with the consulting arborist at the site to review all work procedures, access routes, storage areas, and tree protection measures.
- All contractors shall conduct operations in a manner that will prevent damage to trees to be preserved. Any grading, construction, demolition or other work that is expected to encounter tree roots shall be monitored by the consulting arborist. If injury should occur to any tree during construction, it should be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
- Any plan changes affecting trees shall be reviewed by the consulting arborist with regard to tree impacts. These include, but are not limited to, site improvement plans, utility and drainage plans, grading plans, landscape and irrigation plans, and demolition plans.
- Trees to be preserved may require pruning to provide construction clearance. All pruning shall be completed by a Certified Arborist or Tree Worker. Pruning shall adhere to the latest edition of the ANSI Z133 and A300 standards as well as the *Best Management Practices -- Tree Pruning* published by the International Society of Arboriculture.
- Any root pruning required for construction purposes shall receive the prior approval of and be supervised by the consulting arborist.
- Any demolition or excavation within the dripline or other work that is expected to encounter tree roots should be approved and monitored by the consulting arborist. Roots shall be cut by manually digging a trench and cutting exposed roots with a sharp saw.
- Tree(s) to be removed that have branches extending into the canopy of tree(s) to remain must be removed by a qualified arborist and not by construction contractors. The qualified arborist shall remove the tree in a manner that causes no damage to the tree(s) and understory to remain. Tree stumps shall be ground 12 inches below ground surface.
- All tree work shall comply with the Migratory Bird Treaty Act as well as California Fish and Game Code Sections 3503 through 3513 to not disturb nesting birds. To the extent feasible, tree pruning and removal shall be scheduled outside of the breeding season. Breeding bird surveys shall be conducted prior to tree work. Qualified biologists shall be involved in establishing work buffers for active nests. All recommendations for tree preservation made by the applicant's consulting arborist shall be followed.

Mitigation Measure CULT-1: If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing activities, all work within 50 feet of the resources shall be halted and a qualified archaeologist shall be consulted. If the resource is a tribal resource – whether historic or prehistoric – the City shall make a good faith effort to contact the appropriate tribe(s) through outreach to the Native American Heritage Commission to evaluate the resource and determine appropriate avoidance, preservation, or mitigation measures. If the resource is non-tribal and if tribal where no affiliated tribes respond to the City’s outreach efforts, the archaeologist shall assess the significance of the find according to CEQA Guidelines Section 15064.5. If any find is determined to be significant, representatives from the City and the archaeologist would meet to determine the appropriate avoidance measures or other appropriate mitigation. All significant cultural materials recovered shall be, as necessary and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards. In considering any suggested mitigation proposed by the consulting archaeologist or tribes to mitigate impacts to tribal and non-tribal cultural resources, historical resources or unique archaeological resources, the City, in response to tribe(s) recommendations where appropriate, shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, proposed project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) may be instituted. Work may proceed on other parts of the project site while mitigation for tribal cultural resources, historical resources or unique archaeological resources is being carried out.

Mitigation Measure CULT-2: In the event that fossils or fossil-bearing deposits are discovered during construction, excavations within 50 feet of the find shall be temporarily halted or diverted. The contractor shall notify a qualified paleontologist to examine the discovery. The paleontologist shall document the discovery as needed, in accordance with Society of Vertebrate Paleontology standards (Society of Vertebrate Paleontology 1995), evaluate the potential resource, and assess the significance of the finding under the criteria set forth in CEQA Guidelines Section 15064.5. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the project proponent determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project based on the qualities that make the resource important. The excavation plan shall be submitted to the City for review and approval prior to implementation.

Mitigation Measure CULT-4: Implement Mitigation Measure CULT-1.

Mitigation Measure GEO-1a: The project contractor shall attempt to cut the excavation as close to neat lines as possible. Where voids are created, they must be backfilled as soon as possible with sand, gravel, or grout.

Mitigation Measure GEO-1b: The project contractor shall follow all recommendations in *Geotechnical and Geologic Hazard Investigation*, dated April 14, 2017 and prepared by Cornerstone Earth Group (or any updated versions) and submit final grading plans to Cornerstone Earth Group (or another geotechnical consultant as approved by the City) for review and recommendations.

Mitigation Measure GEO-2: The project contractor shall implement the following subgrade stabilization recommendations in *Geotechnical and Geologic Hazard Investigation*, dated April 14, 2017 and prepared by Cornerstone Earth Group (or any updated versions):

Scarification and Drying. The subgrade shall be scarified to a depth of 6 to 9 inches and allowed to dry to near optimum conditions, if sufficient dry weather is anticipated to allow sufficient drying. More than one round of scarification shall be conducted if needed to break up the soil clods.

Chemical Treatment. Where the unstable area exceeds about 5,000 to 10,000 square feet and/or site winterization is desired, chemical treatment with quicklime, kiln-dust, or cement may be more cost-effective than removal and replacement. Recommended chemical treatment depths will typically range from 12 to 18 inches, depending on the magnitude of the instability.

Mitigation Measure GEO-3: Slabs-on-grade shall have sufficient reinforcement and shall be supported on a layer of non-expansive fill. Foundations shall extend below the zone of seasonal moisture fluctuation. Moisture changes in the surficial soils shall be limited by using positive drainage away from buildings as well as by limiting landscaping watering. The project contractor shall follow all grading and foundation recommendations in *Geotechnical and Geologic Hazard Investigation*, dated April 14, 2017 and prepared by Cornerstone Earth Group (or any updated versions).

Mitigation Measure UTIL-3: Prior to issuing grading and building permits the City shall require the project applicant to fund a fair-share contribution toward planned improvements to the Homestead Pump Station, as mutually agreed between the project applicant and Cupertino Sanitary District, to the satisfaction of the City of Cupertino Community Development Director.

18. **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.

19. 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.

20. CITY ARBORIST REVIEW

Prior to issuance of a demolition permit, a peer review of the tree management plan shall be conducted to confirm condition of trees slated for preservation or transplant, review replacement plantings, verify installation of tree protection measures prior to demolition, grading or other site work. The project arborist shall provide an installation report prior to final sign-off of the building permit by the Planning Division.

21. PRIVACY PLANTING

Trees planted along the property line west of the proposed independent living units are considered privacy plantings and require a permit for removal. The property owner shall preserve the trees or otherwise provide replacement plantings consistent with Cupertino Municipal Code Chapter 14.18 regarding protected trees.

22. TREE PROTECTION

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.

The tree protection measures shall be inspected and approved by the certified arborist prior to issuance of building permits. 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. A report ascertaining the good health of the trees mentioned above shall be provided prior to issuance of final occupancy.

23. **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."

24. **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.

25. **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.

SECTION IV: CONDITIONS ADMINISTERED BY THE PUBLIC WORKS DEPARTMENT

26. **GRADING**

Grading shall be as approved and required by the City Engineer in accordance with Chapter 16.08 of the Cupertino Municipal Code. 401 Certifications and 404 permits maybe required. Please contact Army Corp of Engineers and/or Regional Water Quality Control Board as appropriate.

27. **DRAINAGE**

Drainage shall be provided to the satisfaction of the City Engineer. Hydrology and pre- and post-development hydraulic calculations must be provided to indicate whether additional storm water control measures are to be constructed or renovated. The storm drain system may include, but is not limited to, subsurface storage of peak stormwater flows (as needed), bioretention basins, vegetated swales, and hydrodynamic separators to reduce the amount of runoff from the site and improve water quality. The storm drain system shall be designed to detain water on-site (e.g., via buried pipes, retention systems or other approved systems and improvements) as necessary to avoid an increase of the ten percent flood water surface elevation to the satisfaction of the City Engineer. Any storm water overflows or surface sheeting should be directed away from neighboring private properties and to the public right of way as much as reasonably possible.

All storm drain inlets shall be clearly marked with the words "No Dumping – Flows to Creek" using permanently affixed metal medallions or equivalent, as approved by the Environmental Programs Division.

28. **FEES**

The fees described below are imposed based upon the current fee schedule adopted by the City Council. However, the fees imposed herein may be modified at the time of recordation of a final map or issuance of a building permit in the event of said

change or changes, the fees changed at that time will reflect the then current fee schedule.

- a. Checking & Inspection Fees: Per current fee schedule
- b. Grading Permit: Per current fee schedule
- c. Storm Drainage Fee: TBD
- d. Park Fees: Per current fee schedule
- e. Street Tree: By Developer

Bonds:

- f. Faithful Performance Bond: 100% of Off-site and On-site Improvements
- g. Labor & Material Bond: 100% of Off-site and On-site Improvement
- h. On-site Grading Bond: 100% of site improvements.

29. **C.3 REQUIREMENTS**

- C.3 regulated improvements are required for all projects creating and/or replacing 10,000 S.F. or more of impervious surface (collectively over the entire project site). The developer shall reserve a minimum of 4% of developable surface area for the placement of low impact development measures, for storm water treatment, unless an alternative storm water treatment plan, that satisfies C.3 requirements, is approved by the City Engineer.
- The project is located in a Hydromodification Management (HM) area and will create and/or replace one acre or more of impervious surface. The project must comply with the Post-Construction Hydromodification Management requirements which entail HM projects to demonstrate that post-project runoff does not exceed estimated pre-project runoff rates and durations.
- The developer must include the use and maintenance of site design, source control and storm water treatment Best Management Practices (BMPs), which must be designed per approved numeric sizing criteria. A Storm Water Management Plan, Storm Water Facilities Easement Agreement, Storm Water Facilities Operation and Maintenance Agreement, and certification of ongoing operation and maintenance of treatment BMPs are each required.
- All storm water management plans are required to obtain certification from a City approved third party reviewer.

30. **TRASH, RECYCLING AND COMPOST ENCLOSURES**

Trash enclosure plans must be designed in accordance with the City's "Public Works Guidelines posted at www.cupertino.org/nowaste, and to the satisfaction of the

Environmental Programs Manager. Clearance by the Public Works Department is required prior to obtaining a building permit. (CMC 9.18.210 H & K)

The following items must be met:

- All trash compactors must be enclosed by a roof. Roof clearance is needed to service compactors without dragging on pavement from enclosure.
- Compression pad in front of compactors must be reinforced concrete to withstand truck wear and prevent pavement damage.
- Compactor trash enclosure must be sufficiently insulated with sound attenuating materials to meet municipal code sound level thresholds during operation (50 dBA day and 60 dBA night). Environmental Programs staff recommends that Planning Division require an acoustical engineering report to demonstrate code compliance.
- Applicant must install sanitary sewer clean out at all locations where fire sprinkler safety tests are conducted since there will be not be sufficient landscaping to discharge test water. Alternatively, discharged test water may be collected in a tank truck for re-use as landscape irrigation water. If the latter is chosen, written agreement by the property owner must be provided and a copy maintained on-site and filed with the Environmental Programs Division.

31. **OPERATIONS & MAINTENANCE AGREEMENT**

Developer shall enter into an Operations & Maintenance Agreement with the City prior to final occupancy. The Agreement shall include the operation and maintenance for non-standard appurtenances in the public road right-of-way that may include, but is not limited to, sidewalk, pavers, and street lights.

32. **UNDERGROUND UTILITIES**

Developer shall comply with the requirements of the Underground Utilities Ordinance No. 331 and other related Ordinances and regulations of the City of Cupertino, and shall coordinate with affected utility providers for installation of underground utility devices. Developer shall submit detailed plans showing utility underground provisions. Said plans shall be subject to prior approval of the affected Utility provider and the City Engineer.

33. **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 side building setback area.

34. **WATER BACKFLOW PREVENTERS**

Domestic and Fire Water Backflow preventers and similar above ground equipment shall be placed away from the public right of way and site driveways to a location approved by the Cupertino Planning Department, Santa Clara County Fire Department and the water company.

35. **BEST MANAGEMENT PRACTICES**

Utilize Best Management Practices (BMPs), as required by the State Water Resources Control Board, for construction activity, which disturbs soil. BMP plans shall be included in grading and street improvement plans.

36. **NPDES CONSTRUCTION GENERAL PERMIT**

When and where it is required by the State Water Resources Control Board (SWRCB), the developer must obtain a Notice of Intent (NOI) from the SWRCB, which encompasses preparation of a Storm Water Pollution Prevention Plan (SWPPP), use of construction Best Management Practices (BMPs) to control storm water runoff quality, and BMP inspection and maintenance.

37. **EROSION CONTROL PLAN**

Developer must provide an approved erosion control plan by a Registered Civil Engineer. This plan should include all erosion control measures used to retain materials on site. Erosion control notes shall be stated on the plans.

38. **WORK SCHEDULE**

Every 6 months, the developer shall submit a work schedule to the City to show the timetable for all grading/erosion control work in conjunction with this project.

39. **TRAFFIC CONTROL PLAN**

The developer must submit a traffic control plan by a Registered Traffic Engineer to be approved by the City. The plan shall include a temporary traffic control plan for work in the right of way as well as a routing plan for all vehicles used during construction. All traffic control signs must be reviewed and approved by the City prior to commencement of work. The City has adopted Manual on Uniform Traffic Control Devices (MUTCD) standards for all signage and striping work throughout the City.

40. **FIRE PROTECTION**

Fire sprinklers shall be installed in any new construction to the approval of the City.

41. **SANTA CLARA COUNTY FIRE DEPARTMENT**

A letter of clearance for the project shall be obtained from the Santa Clara County Fire Department prior to issuance of building permits. Clearance should include written

approval of the location of any proposed Fire Backflow Preventers, Fire Department Connections and Fire Hydrants (typically Backflow Preventers should be located on private property adjacent to the public right of way, and fire department connections must be located within 100' of a Fire Hydrant).

42. **FIRE HYDRANT**

Fire hydrants shall be located as required by the City and Santa Clara County Fire Department as needed.

43. **SAN JOSE WATER COMPANY CLEARANCE**

Provide San Jose Water Company approval for water connection, service capability and location and layout of water lines and backflow preventers before issuance of a building permit approval.

44. **DEDICATION OF WATERLINES**

Developer shall dedicate to the City all waterlines and appurtenances installed to City Standards and shall reach an agreement with San Jose Water Company for water service to the subject development.

45. **DEDICATION OF UNDERGROUND WATER RIGHTS**

Developer shall "quit claim" to the City all rights to pump, take or otherwise extract water from the underground basin or any underground strata in the Santa Clara Valley.

46. **SANITARY DISTRICT**

A letter of clearance for the project shall be obtained from the Cupertino Sanitary District prior to issuance of building permits.

47. **UTILITY EASEMENTS**

Clearance approvals from the agencies with easements on the property (including PG&E, AT&T, and San Jose Water Company, and/or equivalent agencies) will be required prior to issuance of building permits.

SECTION V: CONDITIONS ADMINISTERED BY THE SANTA CLARA COUNTY FIRE DEPARTMENT

1. **AERIAL FIRE APPARATUS ACCESS ROADS**

1. Where required: Buildings or portions of buildings or facilities exceeding 30 feet (9144 mm) in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads capable of accommodating fire

department aerial apparatus. Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway. 2. Width: Fire apparatus access roads shall have a minimum unobstructed width of 26 feet (7925) in the immediate vicinity of any building or portion of building more than 30 feet (9144 mm) in height. 3. Proximity to building: At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet (4572) and a maximum of 30 feet (9144mm) from the building, and shall be positioned parallel to one entire side of the building, as approved by the fire code official. CFC Sec. 503 and SCCFD SD&S A-1

2. **FIRE ENGINE ACCESS**

1. Minimum clear width: The minimum clear width of fire department access roads shall be 20 feet. Modifications to the design or width of a fire access road, or additional access road(s) may be required when the fire code official determines that access to the site or a portion thereof may become compromised due to emergency operations or nearby natural or manmade hazards (flood prone areas, railway crossings, bridge failures, hazardous material-related incidents, etc.) **2. Access and loading:** Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire department apparatus by way of an approved fire apparatus access road (including bridges and culverts) with an asphalt, concrete or other approved driving surface capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds (34050 kg) or as otherwise determined by the fire code official. **3. Minimum clear height:** Vertical clearance over required vehicular access roads and driveways shall be 13'6". **4. Grade:** Maximum grade shall not exceed 15% (6.75 degrees). **5. Turn Radius (circulating):** The minimum outside turning radius is 42 feet for required access roadways. Greater radius up to 60 feet may be required where the Fire Department determines that Ladder Truck access is required. Circulating refers to travel along a roadway without dead ends. **6. Turning Radius (Cui-de-sacs):** The minimum outside turning radius is 36 feet. Use of cui-de-sacs is not acceptable where it is determined by the Fire Department that Ladder Truck access is required, unless greater turning radius is provided. **7. Turnarounds:** Turnarounds are required for all dead end roadways with a length in excess of 150 feet. The turnaround details shown in this document are intended to provide a general design concept only. Modifications or variations of these designs may be approved by the Fire Department on a case-by-case basis. All turnaround designs submitted for Fire Department review shall meet all previously stated requirements. These details are applicable when a 36-foot minimum turning radius for dead ends is specified. These details are not applicable where turning radius greater than 36 feet is specified or when a circulating radius is specified. **8. Dead ends:** Dead-end fire apparatus access roads in excess of 150 feet (45720 mm) shall be provided with width and turnaround provisions as determined by the fire code official. **9. Parking:** When parking is permitted on streets, in both residential/commercial applications, it shall conform to the following:
- parking is permitted both sides of the street with street widths of 36 feet or more

- parking is permitted on one side of the street with street widths of 28-35 feet
- no parking is permitted when street widths are less than 28 feet

NOTE: Rolled curbs can be part of the curb I sidewalk and used to increase the roadway width with approval from the fire code official. Additional requirements may apply for buildings 30 feet in

height or greater. See requirements under AERIAL FIRE APPARTUS ACCESS ROADS. **10. Access to a hydrant:** Fire hydrants located on a public or private street, or on-site, shall have an unobstructed clearance of not less than 30 feet (15 feet either side of hydrant), in accordance with California vehicle code 22514. Marking shall be per California vehicle code 22500.1 **11. Traffic calming:** Traffic calming devices and the design thereof shall be approved by the fire department. CFC Sec. 503 and SCCFD SD&S A-1

3. **TIMING OF REQUIRED ROADWAY INSTALLATIONS**

Required access roads, up through first lift of asphalt, shall be installed and accepted by the Fire Department prior to the start of combustible construction. During construction, emergency access roads shall be maintained clear and unimpeded. Note that building permit issuance may be withheld until installations are completed. Temporary access roads may be approved on a case by case basis. CFC Sec. 501

4. **PRIVATE ON-SITE FIRE HYDRANT(S) REQUIRED**

Provide private on-site fire hydrant(s) installed per NFPA Std. #24, at location(s) to be determined by the Fire Department. Maximum hydrant spacing shall be 600 feet, with a minimum acceptable flow of TBD GPM at 20 psi residual pressure. Prior to design, the project civil engineer shall meet with the fire department water supply officer to jointly spot the required fire hydrant locations. CFC Sec. 507, and Appendix B, Table B105.1 and Appendix C

5. **FIRE SPRINKLERS REQUIRED**

Approved automatic sprinkler systems in new and existing buildings and structures shall be provided in the locations described in this Section or in Sections 903.2.1 through 903.2.18 whichever is the more restrictive. For the purposes of this section, firewalls used to separate building areas shall be constructed in accordance with the California Building Code and shall be without openings or penetrations. An automatic sprinkler system shall be provided throughout all new buildings and structures. Exception: Group A, B, E, F, I, L, M, S and U occupancy buildings and structures that do not exceed 1,000 square feet of building area and that are not located in the Wildland-Urban Interface Fire Area. **NOTE:** The owner(s), occupant(s) and any contractor(s) or subcontractor(s) are responsible for consulting with the water purveyor of record in order to determine if any modification or upgrade of the existing water service is required. **NOTE:** Covered porches, patios, balconies, and attic spaces may require fire sprinkler coverage. A State of California licensed (C

-16) Fire Protection Contractor shall submit plans, calculations, a completed permit application and appropriate fees to this department for review and approval prior to beginning their work. CFC Sec. 903.2 as adopted and amended by CUPMC

6. **POTABLE WATER SUPPLIES**

Potable water supplies shall be protected from contamination caused by fire protection water supplies. It is the responsibility of the applicant and any contractors and subcontractors to contact the water purveyor supplying the site of such project, and to comply with the requirements of that purveyor. Such requirements shall be incorporated into the design of any water-based fire protection systems, and/or fire suppression water supply systems or storage containers that may be physically connected in any manner to an appliance capable of causing contamination of the potable water supply of the purveyor of record. Final approval of the system(s) under consideration will not be granted by this office until compliance with the requirements of the water purveyor of record are documented by that purveyor as having been met by the applicant(s). 2007 CFC Sec. 903.3.5 and Health and Safety Code 13114.7

7. **TIMING OF REQUIRED WATER SUPPLY INSTALLATIONS**

Installations of required fire service(s) and fire hydrant(s) shall be tested and accepted by the Fire Department, prior to the start of framing or delivery of bulk combustible materials. Building permit issuance may be withheld until required installations are completed, tested, and accepted. CFC Sec. 501

8. **CONSTRUCTION SITE FIRE SAFETY**

All construction sites must comply with applicable provisions of the CFC Chapter 14 and our Standard Detail and Specification SI-7.

9. **EMERGENCY ESCAPE AND RESCUE**

Ground-ladder rescue from second and third floor rooms shall be made possible for fire department operations. With the climbing angle of seventy five degrees maintained, an approximate walkway width along either side of the building shall be no less than seven feet clear. Landscaping shall not be allowed to interfere with the required access. CFC Sec. 1029

10. **PREMISES IDENTIFICATION**

Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Numbers shall contrast with their background. CFC Sec. 505

SECTION VI: CONDITIONS ADMINISTERED BY THE CUPERTINO SANITARY DISTRICT

1. **SANITARY SEWER AVAILABILITY**

Sanitary sewer is currently available for the subject parcel.

2. **IMPROVEMENT PLANS**

Improvement plans shall be submitted to the District for review and comments.

3. **FEES AND PERMITS**

Cupertino Sanitary District fees and permits will be required.

NOW, THEREFORE, BE IT RESOLVED that after careful consideration of the environmental analysis, 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,

1. The application for Application no. DP-2017-01 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. DP-2017-01 as set forth in the Minutes of the City Council Meeting of April 17, 2018 and are incorporated by reference as though fully set forth herein.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 17th day of April, 2018 by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
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AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Darcy Paul, Mayor, City of Cupertino