

RESOLUTION NO. _____

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING TREE REMOVAL PERMIT TO ALLOW THE REMOVAL AND
REPLACEMENT OF PROTECTED TREES TO ACCOMMODATE
ADDITIONS AND RENOVATIONS AT 23500 CRISTO REY DRIVE**

SECTION I: PROJECT DESCRIPTION

Application No.: TR-2018-06
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). To accommodate these additions and renovations, 142 trees are proposed for removal, of which 25 are identified as protected species.

SECTION II: FINDINGS FOR DEVELOPMENT PERMIT:

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

WHEREAS, the Planning Commission held a public hearing on March 27, 2018 and recommended that the City Council approve the application that included a proposal of 25 independent living units, 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) 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).

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. ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Per the mitigation measures outlined in the Mitigation Monitoring and Reporting Program based on the EIR dated December 15, 2018, titled "The Forum Senior Community Update," prepared by Placeworks (EA-2017-01), the following are applicable mitigation measures for tree removals and tree protection:

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.

4. **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.

5. **TREE REPLACEMENTS**

The applicant shall be required to plant replacement trees on the property in accordance with the City's Protected Tree Ordinance. In the event a replacement tree cannot be planted on the property as determined by the Director of Community Development, the applicant will be required to pay an in-lieu tree replacement fee based upon the purchase and installation cost of the replacement tree(s) in compliance with the City's Protected Trees ordinance.

6. **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.

7. **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.

8. **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.

9. **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."

10. **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.

11. **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.

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. TR-2018-06 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.(s) TR-2018-06 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