

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

DRAFT RESOLUTION

OF THE ADMINISTRATIVE HEARING OFFICER OF THE CITY OF CUPERTINO
APPROVING A TREE REMOVAL PERMIT TO ALLOW THE REMOVAL AND
REPLACEMENT OF TWELVE PROTECTED TREES AT THE MCCLELLAN
SQUARE SHOPPING CENTER LOCATED AT
10385-10497 S. DE ANZA BLVD (APN 359-17-019 and 359-17-023)

SECTION I: PROJECT DESCRIPTION

Application No.: TR-2019-05
Applicant: Victor DeMelo (Browman Development Company)
Location: 10385-10497 S. De Anza Blvd (APN 359-17-019 and 359-17-023)

SECTION II: FINDINGS TREE REMOVAL 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 necessary public notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the Administrative Hearing Officer has held at least one public meeting in regard to the application; and

WHEREAS, the project is determined to be exempt from the California Environmental Quality Act (CEQA); and

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

WHEREAS, the Administrative Hearing Officer finds as follows with regard to this application:

1. 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 in conflict with the proposed site improvements and are not suitable for preservation or relocation; and have poor canopy form.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the maps, facts, exhibits, testimony, staff's report and presentation, and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on PAGE 2 thereof:

The application for a Tree Removal permit, Application no. TR-2019-05 is hereby approved and that the subconclusions upon which the findings and conditions specified in this resolution are based and contained in the Public Meeting record concerning Application no. TR-2019-05 as set forth in the Minutes of the Administrative Hearing Meeting of February 28, 2019 and are 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 arborist review dated January 7, 2016, consisting of one (1) sheet entitled, "McClellan Square List of Trees" by Michael Bench; the removal plan, consisting of one (1) sheet entitled, "Conceptual Landscape Plan" by James Ferguson Clabaugh; and a replacement plan dated March 3, 2018, consisting of one (1) sheet entitled, "McClellan Square Landscape Development Plans" drawn by Yamasaki Landscape Architecture, except as may be amended by conditions in this resolution.

2. 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.

3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. ASA-2018-10 and SP-2018-02 shall be applicable to this approval.

4. FINAL PLANTING PLAN

The applicant shall plant replacement trees in accordance with the replacement requirements of the Protected Tree Ordinance. The trees shall be planted prior to final occupancy of site permits.

The final planting plan shall be reviewed and approved by the Director of Community Development prior to issuance of building permits. The Director of Community Development shall have the discretion to require additional 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.

5. TREE REPLACEMENTS

The applicant is required to plant twelve (12) 24" box replacement tree in accordance with the Protected Tree Ordinance. All replacement trees shall be native, low-water using species.

6. 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.
- Signs indicating the protected status of the tree shall be installed on the protective fencing.
- Tree protection conditions shall be posted on the tree protection fencing.
- 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.
- Retained trees shall continue to be irrigated or hand-watered to maintain them in good health.

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. Additionally, a report ascertaining the good health of the trees mentioned above shall be provided prior to issuance of final occupancy. Any trees identified to be in poor health or

incongruent with the site-wide tree replacement plan in the report shall be required to be removed and replaced.

7. MAINTENANCE

The property owner shall be responsible for ensuring that the existing trees and newly planted trees are properly maintained including but not limited to ensuring that there is adequate soil drainage, that the soil is well-aerated, and irrigation systems are thoroughly tested to provide sufficient water to landscaped areas while reducing water waste.

8. DISCLOSURE OF PROTECTED TREES AND COVENANT

The property owner/applicant understands that the replacement trees may not be removed without a Tree Removal Permit and that they shall be responsible for ensuring the ongoing proper maintenance and care of the trees. The location and species of all replacements trees on site shall be disclosed upon sale of the property. In addition, a covenant shall be recorded on the property that identifies all the protected trees, prior to final occupancy.

9. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is responsible for consulting 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.

9. 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.

10. 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 28th day of February, 2019 at a noticed Public Meeting of the Administrative Hearing Officer of the City of Cupertino, State of California, held by the Director of Community Development, or his or her designee, pursuant to Cupertino Municipal Code Section 19.12.120.

ATTEST:

APPROVED:

Ellen Yau
Associate Planner

Benjamin Fu
Acting Director of Community Development