

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 FIFTEEN PROTECTED
TREES LOCATED AT 10605 N. WOLFE ROAD

SECTION I: PROJECT DESCRIPTION

Application No.: TR-2019-034
Applicant: Tom Young (Spectrum Development)
Location: 10605 N. Wolfe Road (APN 316-47-049)

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, pursuant to the provisions of the California Environmental Quality Act of 1970 (Public Resources Code section 21000 et seq.) ("CEQA"), together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"), the City staff has independently studied the proposed Project and has determined that the Project is exempt from environmental review pursuant to the categorical exemption in CEQA Guidelines section 15304 for the reasons set forth in the staff report dated May 14, 2020 and incorporated herein; 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 protected trees are a detriment to the subject property and cannot be adequately supported according to good urban forestry practices due to the overplanting or overcrowding of trees on the subject property.

The proposed tree removals are supported due to poor initial planting locations not suitable for the continued growth and maintenance of the trees. The proposed tree replacements will improve the aesthetics of the site for its users. The City's consulting arborist has reviewed the arborist report and takes no exception to the proposal for removal.

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-2019-034 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-2019-034 as set forth in the Minutes of the Administrative Hearing Meeting of May 14, 2020 and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

This approval for tree removal is based on the certified arborist report prepared by Lori Murphy (ISA Certified Arborist, WE-7844AM) with Davey Resource Group, dated September 4, 2019 and consisting of 24 pages; and the tree replacement plan drawn by licensed landscape architect, Melvin R. Easter (LA # 4128), consisting of one (1) page labeled L.002, 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 no. ASA-2019-007 shall be applicable to this approval.

4. PREVIOUS CONDITIONS OF APPROVAL

All previous conditions of approval, in accordance with TR-2010-12 shall remain in effect except as may be amended by conditions contained in this resolution.

5. TREE #3 TO BE RETAINED

This approval is for the removal of the fifteen (15) protected trees outlined in the certified arborist report with the exception of Tree #3, 6" DBH Cherry Plum (*Prunus cerasifera*), as indicated in the arborist's Tree Inventory. Tree #3 shall be retained on site and protected.

6. 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.

7. TREE REPLACEMENTS

The applicant is required to plant replacement trees in accordance with the Protected Tree Ordinance and per the approved replacement plan.

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:

- a. 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.
- b. Signs indicating the protected status of the tree shall be installed on the protective fencing.
- c. Tree protection conditions shall be posted on the tree protection fencing.
- d. No parking or vehicle traffic shall be allowed under root zones, unless using buffers approved by the Project Arborist.
- e. 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.

- f. Wood chip mulch shall be evenly spread inside the tree projection fence to a four-inch depth.
- g. 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.

9. TREE AND LANDSCAPE 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.

10. 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.

11. 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.

12. INDEMNIFICATION

The applicant agrees that, to the fullest extent permitted by law, the applicant shall indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, 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 related to any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized 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 (thirty) days following receipt of invoices from City. Such attorneys' fees and costs shall include amounts paid to the City's outside counsel 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. The applicant shall likewise indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties.

The Applicant further agrees to defend, indemnify and hold harmless the indemnified parties for all cost incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review if the applicant desires to continue to pursue the project.

13. 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 May 2020 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:

Erika Poveda
Associate Planner

Albert Salvador
Assistant Director of Community Development