

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

DRAFT RESOLUTION

OF THE ADMINISTRATIVE HEARING OFFICER OF THE CITY OF CUPERTINO
ADOPTING A MITIGATED NEGATIVE DECLARATION AND MITIGATION
MONITORING AND REPORTING PROGRAM TO SUBDIVIDE AN
APPROXIMATELY 0.74-ACRE LOT INTO THREE PARCELS RANGING
BETWEEN 9,699 SQ. FT. AND 11,928 SQ. FT. LOCATED AT
11226 BUBB ROAD (APN 342-29-036)

SECTION I: PROJECT DESCRIPTION

Application No: EA-2018-02
Applicant: Ray Chen (Lands of Qi)
Location: 11226 Bubb Road (APN: 362-06-036)

SECTION II: ENVIRONMENTAL REVIEW PROCESS

WHEREAS, the City of Cupertino received an application to subdivide an approximately 0.74-acre lot into three parcels of approximately 9,746 square feet, 9,699 square feet, and 11,928 square feet; 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 prepared an Initial Study and proposed Mitigated Negative Declaration for the Project ("IS/MND"); and

WHEREAS, the Project is additionally described in the November 2020 "Bubb Road Project" Draft Initial Study/Mitigated Negative Declaration ("Draft IS/MND"); and

WHEREAS, on December 3, 2020 the City issued a Notice of Intent to Adopt a Mitigated Negative Declaration; and

WHEREAS, on December 3, 2020 the Draft IS/MND for the project was distributed to responsible agencies and the public for review and comment for a 20-day period that ended December 24, 2020; and

WHEREAS, the IS/MND concluded that significant environmental effects on Biological Resources, and Hazards and Hazardous Materials would be avoided or reduced to less-than-significant levels by mitigation measures ("MM") identified in the IS/MND; and

WHEREAS, on January 21, 2021, prior to any action adopting the Draft IS/MND, the City of Cupertino's Environmental Review Committee held a duly noticed public hearing to receive public testimony where it considered the information contained in the Draft IS/MND, and voted 4-0-1 (Fung absent) to determine that a Mitigated Negative Declaration is appropriate for the project; and

WHEREAS, the Administrative Hearing Officer is the approval authority on this permit pursuant to the City of Cupertino Municipal Code; and

WHEREAS, on February 11, 2021, the Administrative Hearing Officer held a duly noticed public hearing to receive staff's presentation and public testimony, and consider the information contained in the Final IS/MND, along with all staff reports, other pertinent documents, and all written and oral statements received prior to and at the public hearing; and

WHEREAS, prior to taking action on the Project, the Administrative Hearing Officer has independently reviewed and considered the Final IS/MND.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony, staff reports, public comments, and other evidence submitted in this matter, the Administrative Hearing Officer:

1. Finds that the Final IS/MND for the Project has been completed in compliance with the CEQA and reflects the independent judgment and analysis of the City.
2. Finds that, on the basis of the whole record before it, there is no substantial evidence that the Project as proposed and mitigated will have a significant effect on the environment.
3. Adopts the Final Mitigated Negative Declaration (Final MND) for the Project.
4. Adopts the Mitigation Monitoring and Reporting Program for the Project, attached hereto as Exhibit 1, and incorporated herein by reference, which incorporates all the mitigation measures required under the Final MND. The Administrative Hearing Officer further makes the mitigation measures required conditions of approval of the Project to the extent they are within the responsibility and jurisdiction of the City as summarized below:

a. BIOLOGICAL RESOURCES MITIGATION MEASURES

MM IV-1:

Nests of raptors and other birds shall be protected when in active use, as required by the federal Migratory Bird Treaty Act and the California Fish and Game Code. The construction contractor shall indicate the following

on all construction plans, if construction activities and any required tree removal occur during the breeding season (February 1 and August 31).

Preconstruction surveys shall:

- Be conducted by a qualified biologist prior to tree removal or grading, demolition, or construction activities. Note that preconstruction surveys are not required for tree removal or construction, grading, or demolition activities outside the nesting period.
- Be conducted no more than 14 days prior to the start of tree removal or construction.
- Be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped.
- Document locations of active nests containing viable eggs or young birds.

Protective measures for active nests containing viable eggs or young birds shall be 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 the 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.
- Monitoring active nests within an exclusion zone on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status.
- An increase in the radius of an exclusion zone 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 only in consultation with California Department of Fish and Wildlife.
- 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.

b. HAZARDS AND HAZARDOUS MATERIALS MITIGATION MEASURES**MM VIII-1:**

Prior to issuance of any grading permits, the following measures shall be reflected on the project grading and foundation plans, subject to review and approval by the Santa Clara County Environmental Health Department:

- Soil adjacent (within three feet) to the foundation along the front of the house shall be removed to a depth of one foot and off-hauled by a licensed hazardous waste contractor (Class A) and contractor personnel that have completed 40-hour OSHA hazardous training. The soil shall be disposed of appropriately in accordance with applicable federal, State, and local regulations associated with hazardous waste.
- After demolition of the existing residence, the soil within the foundation shall be removed to a depth of one foot and off-hauled by a licensed hazardous waste contractor (Class A) and contractor personnel that have completed 40-hour OSHA hazardous training. The soil shall be disposed of appropriately in accordance with applicable federal, State, and local regulations associated with hazardous waste.

The project applicant shall provide proof of implementation of the above measures to the Planning Department and the Santa Clara County Environmental Health Department.

PASSED AND ADOPTED this 11th day of February, 2021 at a noticed Public Hearing 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:

Jeffrey Tsumura
Associate Planner

Albert Salvador
Administrative Hearing Officer

Mitigation Monitoring and Reporting Program

Bubb Road Tentative Map

11226 Bubb Road
(APN 362-06-036)

| Impact | Mitigation Measure | Timeframe and Responsibility for Implementation | Method of Compliance | Oversight of Implementation |
|--|---|--|---|-----------------------------------|
| BIOLOGICAL RESOURCES | | | | |
| IMPACT A - BIO Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? | MM IV-1: Nests of raptors and other birds shall be protected when in active use, as required by the federal Migratory Bird Treaty Act and the California Fish and Game Code. The construction contractor shall indicate the following on all construction plans, if construction activities and any required by the federal Migratory Bird Treaty Act and the California Fish and Game Code. The construction contractor shall indicate the following on all construction plans, if construction activities and any required tree removal occur during the breeding season (February 1 and August 31). Preconstruction surveys shall: <ul style="list-style-type: none"> • Be conducted by a qualified biologist prior to tree removal or grading, demolition, or construction activities. Note that preconstruction surveys are not required for tree removal or construction, grading, or demolition activities outside the nesting period. • Be conducted no more than 14 days prior to the start of tree removal or construction. • Be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped. | If construction activities and any required tree removal occur during the breeding season (February 1 and August 31), a qualified biologist (hired by the Project proponent) shall conduct surveys prior to tree removal or construction activities. Preconstruction surveys are not required for tree removal or construction activities outside the nesting period. | If grading and/or tree removal begins during the stated dates in the mitigation measure, a final report of nesting birds, including any protection measures, shall be submitted to the Director of Community Development prior to the start of demolition and/or any construction activity, including grading. | Director of Community Development |

| Impact | Mitigation Measure | Timeframe and Responsibility for Implementation | Method of Compliance | Oversight of Implementation |
|--------|--|---|----------------------|-----------------------------|
| | <ul style="list-style-type: none"> • Document locations of active nests containing viable eggs or young birds. <p>Protective measures for active nests containing viable eggs or young birds shall be implemented under the direction of the qualified biologist until the nests no longer contain eggs or young birds. Protective measures shall include:</p> <ul style="list-style-type: none"> • 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 the 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. • Monitoring active nests within an exclusion zone on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status. • An increase in the radius of an exclusion zone by the qualified biologist if project activities are determined to be adversely | | | |

| Impact | Mitigation Measure | Timeframe and Responsibility for Implementation | Method of Compliance | Oversight of Implementation |
|---|--|---|---|--|
| | <p>affecting the nesting birds. Exclusion zones may be reduced by the qualified biologist only in consultation with California Department of Fish and Wildlife.</p> <ul style="list-style-type: none"> 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. | | | |
| HAZARDS AND HAZARDOUS MATERIALS | | | | |
| <p>IMPACT B – HAZ</p> <p>Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the likely release of hazardous materials into the environment?</p> | <p>MM VIII-1:</p> <p>Prior to issuance of any grading permits, the following measures shall be reflected on the project grading and foundation plans, subject to review and approval by the Santa Clara County Environmental Health Department:</p> <ul style="list-style-type: none"> Soil adjacent (within three feet) to the foundation along the front of the house shall be removed to a depth of one foot and off-hauled by a licensed hazardous waste contractor (Class A) and contractor personnel that have completed 40-hour OSHA hazardous training. The soil shall be disposed of appropriately in accordance with applicable federal, State, and local regulations associated with hazardous waste. After demolition of the existing residence, the soil within the | <p>Prior to issuance of any grading permits, the applicant shall note the required measures on all grading and foundation plans.</p> <p>The required measures shall be conducted by a licensed hazardous waste contractor (Class A) and contractor personnel that have completed 40-hour OSHA hazardous training.</p> | <p>The City Engineer shall review all project grading and foundation plans for the noted measures prior to issuance of any grading permits.</p> <p>Proof of implementation of the measures shall be provided to the Community Development Department upon completion.</p> | <p>Director of Community Development and City Engineer</p> |

| Impact | Mitigation Measure | Timeframe and Responsibility for Implementation | Method of Compliance | Oversight Implementation of |
|--------|---|--|----------------------|--------------------------------|
| | <p>foundation shall be removed to a depth of one foot and off-hauled by a licensed hazardous waste contractor (Class A) and contractor personnel that have completed 40-hour OSHA hazardous training. The soil shall be disposed of appropriately in accordance with applicable federal, State, and local regulations associated with hazardous waste. The project applicant shall provide proof of implementation of the above measures to the Planning Department and the Santa Clara County Environmental Health Department.</p> | | | |