

## DRAFT RESOLUTION

### OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO APPROVING A HILLSIDE EXCEPTION TO ALLOW THE CONSTRUCTION OF AN 864 SQUARE FOOT DECK EXPANSION ON SLOPES GREATER THAN 30% AT AN EXISTING HILLSIDE RESIDENCE LOCATED AT 22637 SAN JUAN ROAD

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#### SECTION I: PROJECT DESCRIPTION

Application No.: EXC-2020-007  
Applicant: Curt Cline  
Property Owner: Steve Rifai and Patricia Billard  
Location: 22637 San Juan Road (APN#342-17-064)

#### SECTION II: FINDINGS FOR A HILLSIDE EXCEPTION:

WHEREAS, the Planning Commission of the City of Cupertino received an application for a Hillside Exception 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 Planning Commission has held at least one public hearing 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 15303 for the reasons set forth in the staff report dated August 25, 2020 and incorporated herein; and

WHEREAS, on February 9, 2021, the Planning Commission held a duly noticed public hearing to receive public testimony on the Project, including the categorical CEQA exemption in CEQA Guidelines section 15303, and reviewed and considered the information contained in the staff report pertaining to the Project, all other pertinent documents, and all written and oral statements received by the Planning Commission at or prior to the public hearing; and

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

WHEREAS, the Planning Commission finds as follows with regard to this application:

1. The proposed development will not be injurious to property or improvements in the area nor be detrimental to public health and safety;

*The proposed site is surrounded by existing hillside single-family residences. A geotechnical study has been conducted for the proposed project and all recommendations of the geotechnical consultant have been incorporated into the development conditions of the approval. In addition, the development is required to meet the Best Management Practices (BMPs), as required by the State Water Resources Control Board and the Bay Area Air Quality Management District's (BAAQMD) air quality standards for construction activities. The project is also required to adhere to the City's C.3 Municipal Permit for storm water runoff management. Therefore, the development will not be injurious to property or improvements in the area nor be detrimental to the public health and safety.*

2. The proposed development will not create a hazardous condition for pedestrian or vehicular traffic;

*The proposed deck will not create any new traffic impacts and/or driveways to the shared private access. Therefore, the development will not create a hazardous condition for pedestrian or vehicular traffic.*

3. The proposed development has legal access to public streets and public services are available to serve the development;

*The property is accessed by the private shared driveway onto San Juan Road. In addition, water and sewer connections are available in the street. The proposed project does not propose any changes to such access or services. Therefore, the development has legal access to public streets and public services to serve the development.*

4. The proposed development requires an exception which involves the least modification of, or deviation from, the development regulations prescribed in this chapter necessary to accomplish a reasonable use of the parcel;

*Any onsite development that requires construction of a structure greater than 500 sf on slopes greater than 30% requires a Hillside Exception. Development cannot feasibly occur on the property without a Hillside Exception request as the site is constrained by steep slopes over 30%. The siting and design of the deck will minimize grading, and minimize the removal of landscaping necessary on site to develop the property in a manner consistent with the Residential Hillside Ordinance.*

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5. All alternative locations for development on the parcel have been considered and have been found to create greater environmental impacts than the location of the proposed development;

*The proposed development will be located adjacent to the existing home and swimming pool in order to avoid excessive grading of the site. Further, the site is constrained by steep slopes that limit areas on the parcel where development may occur. The siting and design of the accessory structure will minimize grading, and minimize the removal of landscaping necessary to develop the property in a manner consistent with the purpose of the Residential Hillside Ordinance.*

*Other alternative locations for development on the parcel would result in greater grading on the site and removal of additional landscaping and/or native trees. The proposed development is located to minimize environmental and grading impacts on the site.*

6. The proposed development does not consist of structures on or near known geological or environmental hazards which have been determined by expert testimony to be unsafe or hazardous to structures or persons residing therein (See General Plan Policies 2-49);

*The geotechnical report and peer review do not indicate any significant conflicts with geological or environmental hazards. Additionally, all recommendations of the geotechnical engineers have been incorporated into the conditions of approval in order to ensure structural stability of the proposed building. Therefore, the proposed development does not consist of structures that have been determined by expert testimony to be unsafe or hazardous to structures or persons residing therein.*

7. The proposed development includes grading and drainage plans which will ensure that erosion and scarring of the hillsides caused by necessary construction of roads, housing sites, and improvements will be minimized (See General Plan Policies 2-53, 2-54 and 2-57);

*The proposed development follows, as closely as possible, the primary natural contours of the lot to minimize erosion and scarring of the hillsides caused by necessary construction of the housing site and improvements. Drainage and grading plans have been reviewed and will continue to be reviewed by the City Engineer and the City's consultant geotechnical engineers to ensure the safety of the development and of those neighboring residences.*

8. The proposed development does not consist of structures which would disrupt the natural silhouette of ridgelines as viewed from established vantage points on the valley floor unless either:
- a. The location of a structure on a ridgeline is necessary to avoid greater negative environmental impacts; or

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- b. The structure could not otherwise be physically located on the parcel and the size of the structure is the minimum which is necessary to allow for a reasonable use of the parcel (See General Plan Policies 2-46, 2-47 and 2-48);

*The property is not located on a prominent ridgeline.*

9. The proposed development consists of structures incorporating designs, colors, materials, and outdoor lighting which blend with the natural hillside environment and which are designed in such a manner as to reduce the effective visible mass, including building height, as much as possible without creating other negative environmental impacts (See General Plan Policies 2-46, 2-50, 2-51 and 2-52);

*The applicant is required to use natural earth tone and/or vegetation colors, which blend with the natural hillside environment (as a condition of approval) and has designed the project in such a manner as to reduce the effective visible mass to surrounding neighbors as much as possible.*

10. The proposed development is located on the parcel as far as possible from public open space preserves or parks (if visible there from), riparian corridors, and wildlife habitats unless such location will create other, more negative environmental impacts (See General Plan Policies 2-55, 5-14 and 5-28);

*The parcel is not located adjacent to public open space preserves, parks, a riparian corridor, or wildlife habitats. The project site is adjacent to other developed properties with a similar zoning.*

11. The proposed development includes a landscape plan, which retains as many specimen trees as possible, which utilizes drought-tolerant native plants and ground covers consistent with nearby vegetation, and which minimizes lawn areas (See General Plan Policies 2-54, 5-15 and 5-16);

*A preliminary landscape plan has been evaluated and the project is conditioned to provide a landscape plan to be reviewed and approved prior to Building Permit issuance. The project shall also comply with Chapter 14.15: Landscape Ordinance of the City of Cupertino Municipal Code (CMC). Additionally, since the site is located in an area designated as Wildland Urban Interface Fire Area by CMC Chapter 16.74, fire-prone plant materials and highly flammable mulches are strongly discouraged. In conformance with California Public Resources Code Section 4291, plants shall be selected, arranged, and maintained to provide defensible space for wildfire protection. The installation of invasive plant species and noxious weeds is also prohibited. Further, Residential Hillside homes are required to minimize turf areas on hillsides and turf may not be planted on slopes greater than 25%.*

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*Through the proposed site design and conditions of approval, which limit invasive species of plants and turf areas, a balance between the residential development and preservation of the natural hillside setting can be maintained.*

12. The proposed development confines solid fencing to the areas near a structure rather than around the entire site (See General Plan Policy 5-17); and

*To allow free movement of animals, in compliance with the RHS fencing standards, only 5,000 square feet (excluding the principal building) of net lot area may be enclosed with solid fencing.*

13. The proposed development is otherwise consistent with the City's General Plan and with the purposes of this chapter as described in Section [19.40.010](#).

*The development meets all the development standards for RHS zoned properties and is consistent with the City's General Plan and with the purposes of Chapter 19.40 as described in Section 19.40.010. These have been described in detail in each of the findings above.*

WHEREAS, the Planning Commission has independently reviewed and considered the Project and the basis for the exemption prior to taking any approval actions on the Project, and exercising its independent judgment, based upon the entire record before it, has determined that the Project is exempt from CEQA pursuant to CEQA Guidelines section 15303, which applies to new construction or conversion of single-family residences and accessory structures; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission takes the following actions:

1. Exercises its independent judgment and determines that the Project is exempt from CEQA pursuant to CEQA Guidelines section 15303 and that none of the exceptions to the categorical exemptions in CEQA Guidelines section 15300.2 apply. The exemption in CEQA Guidelines section 15303 applies to new construction or conversion of single-family residences and accessory structures. The proposed project is accessory to the existing single-family residence.
2. Approves the application for a Hillside Exception, Application no. EXC-2020-007 subject to the conditions which are enumerated in this Resolution beginning on PAGE 6 thereof. The conclusions and subconclusions upon which the findings and conditions specified in this resolution are based, including those contained in the Public Hearing record concerning Application no. EXC-2020-007 as set forth in the Minutes of Planning Commission Meeting of February 9, 2021, are hereby incorporated by reference as though fully set forth herein.

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NOW, THEREFORE, BE IT FURTHER RESOLVED that the foregoing recitals are true and correct and are included herein by reference as findings.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval is based on the plan set consisting of seven (7) sheets, labeled Sheets A0.0 through A4.1 entitled, "Planning Permit Review Set: Rifai Residence," drawn and submitted by Modern House Architecture and Design, the Civil Drawings consisting of two (2) sheets, submitted by Westfall Engineers, Inc.

2. ANNOTATION OF THE CONDITIONS OF APPROVAL

The conditions of approval set forth shall be incorporated into and annotated on the first page of the building plans.

3. 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.

4. EXTERIOR BUILDING MATERIALS/TREATMENTS

Final building exterior treatment plan (including but not limited to details on exterior color, material, architectural treatments and/or embellishments) shall be reviewed and approved by the Director of Community Development prior to issuance of building permits. The exterior colors and materials shall be natural earth tones and have low light reflectivity values of 60 or less. The final building exterior plan shall closely resemble the details shown on the original approved plans. Any exterior changes determined to be substantial by the Director of Community Development shall require a minor modification approval with neighborhood input.

5. DEMOLITION REQUIREMENTS

All demolished building and site materials shall be recycled to the maximum extent feasible to the satisfaction of the Building Official. The applicant shall provide evidence that materials were recycled **prior to issuance of final demolition/grading permits.**

6. PRE-CONSTRUCTION MEETING AND CONSTRUCTION MANAGEMENT PLAN

Prior to commencement of construction activities, the applicant shall arrange for a

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pre-construction meeting with the pertinent departments (including, but not limited to, Building, Planning, Public Works, Santa Clara County Fire Department), **prior to issuance of grading and/or building permits**, to review an applicant-prepared construction management plan including, but not limited to:

- a. Plan for compliance with conditions of approval
- b. Plan for public access during work in the public right-of-way
- c. Construction staging area
- d. Construction schedule and hours
- e. Construction phasing plan, if any
- f. Contractor parking area
- g. Tree preservation/protection plan
- h. Site dust, noise and storm run-off management plan
- i. Emergency/complaint and construction site manager contacts

7. CONSTRUCTION HOURS

The applicant shall comply with the standards in Chapter 10.48, Community Noise Control, of the Cupertino Municipal Code. The developer shall be responsible for educating all contractors and subcontractors of said construction restrictions. Rules and regulation 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, **prior to commencement of demolition and/or grading activities**.

8. 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:

- a. Water all exposed surfaces areas (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) 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.
- b. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d. All vehicle speeds on unpaved roads shall be limited to 15 mph.

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- e. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
  - f. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
  - g. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
  - h. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

The applicant shall incorporate the City's construction best management practices into the building permit plan set **prior to any grading, excavation, foundation or building permit issuance.**

#### 9. NESTING SURVEY

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:



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- 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.

10. LANDSCAPE PROJECT SUBMITTAL:

The applicant shall submit a full landscape project submittal, per sections 490.1, 492.1, and 492.3 of the Department of Water Resources Model Water Efficient Landscape Ordinance, **for projects with landscape area more than 500 square feet**; the applicant shall submit either a full landscape project submittal or submit the Prescriptive Compliance Checklist per Appendix D of the Department of Water Resources Model Water Efficient Landscape Ordinance **for projects with landscape area more than 500 square feet and less than 2,500 square feet**. The Landscape Documentation Package or Prescriptive Compliance Checklist shall be reviewed and approved to the satisfaction of the Director of Community Development **prior to issuance of building permits**.

11. 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.

12. INDEMNIFICATION AND LIMITATION OF LIABILITY

As part of the application, to the fullest extent permitted by law, the applicant shall agree to 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 (collectively referred to as "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

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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. The indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. 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 agree to 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 shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs 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.

The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

### 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.

## SECTION IV: CONDITIONS ADMINISTERED BY THE PUBLIC WORKS DEPARTMENT

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### 1. GRADING

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

### 2. DRAINAGE

Drainage shall be provided to the satisfaction of the Director of Public Works. 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 Director of Public Works. 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.

### 3. FEES

The project developer shall provide payment of fees, including but not limited to checking and inspection fees, storm drain fees, park dedication fees and fees for undergrounding of utilities. Said fees shall be executed and paid prior to issuance of Building permit.

Fees:

- a. Checking & Inspection Fees: Per current fee schedule (\$1,046)
- b. Storm Drainage Fee: Per current fee schedule (\$3,875 per DU)

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

### 4. 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.

5. 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.

6. 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.

7. 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.

8. GEOTECHNICAL AND STRUCTURAL ENGINEERING DESIGN COORDINATION

The Project Geotechnical Consultant and Project Structural Engineer should coordinate to provide a deck foundation system that performs in a manner consistent with the swimming pool and residence. Pier recommendations for the swimming pool and residential underpinning included minimum embedment depths of 8 feet into bedrock, whereas the deck pier recommendations include minimum bedrock embedment of 5 feet. If the residential structure was not underpinned, then the performance differences between the deck and residence should be taken into account in the new deck design.

9. STRUCTURAL PLANS

Structural plans and calculations should be generated that incorporate the recommendations of the Project Geotechnical Consultant.

10. GEOTECHNICAL PLAN REVIEW

The applicant's geotechnical consultant should review and approve all geotechnical aspects of the development plans (i.e., including site preparation and grading, site drainage improvements and design parameters for building foundations) to ensure that their recommendations have been properly incorporated. The Geotechnical and Structural Engineering Coordination, Structural Plans, and Geotechnical Plan Review should be submitted to the City for review and approval by the City Staff and City Geotechnical Consultant prior to approval of Building Permits. The following should be performed prior to final (as-built) project approval:

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#### 11. GEOTECHNICAL FIELD INSPECTION

The geotechnical consultant should inspect, test (as needed), and approve all geotechnical aspects of the project construction. The inspections should include, but not necessarily be limited to: site preparation and grading, site surface and subsurface drainage improvements, and excavations for pier foundations prior to the placement of steel and concrete. The results of these inspections and the as-built conditions of the project should be described by the geotechnical consultant in a letter and submitted to the City Engineer for review and approval prior to final (asbuilt) project approval.

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PASSED AND ADOPTED this 9th day of February, 2021, Regular Meeting of the Planning Commission of the City of Cupertino, State of California, by the following roll call vote:

AYES: COMMISSIONERS:  
NOES: COMMISSIONERS:  
ABSTAIN: COMMISSIONERS:  
ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

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Piu Ghosh  
Planning Manager

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R Wang  
Vice Chair, Planning Commission