

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

RESOLUTION NO. \_\_\_\_

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 10200 SOUTH DE ANZA BOULEVARD

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SECTION I: PROJECT DESCRIPTION

Application No.: TR-2021-021  
Applicant: Brian Bolandi (Rubicon Point Partners)  
Location: 10200 S. De Anza Blvd.

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 June 24, 2021 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:

2. 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).

*The trees are proposed for removal due to the poor planting locations, and due to conflict with the proposed improvements. The applicant has worked with Staff to minimize the number of removals to those that are in poor health, direct conflict with proposed improvements, or both.*

3. 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 trees are proposed for removal due to poor health, poor planting locations, and due to conflict with the proposed improvements. The applicant has worked with Staff to minimize the number of removals to those that are in poor health, direct conflict with proposed improvements, or both. 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-2021-021 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-2021-021 as set forth in the Minutes of the Administrative Hearing Meeting of June 24, 2021 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 removals is based on the certified arborist report prepared by Jillian Keller (ISA Certified Arborist and utility Specialist #WE-12057A) with Hort Science | Bartlett Consulting, dated March 4, 2021 consisting of 25 pages and Sheets L0.03, L2.01, and L2.02 prepared by Rene Bihan of SWA Landscape Architect that includes the removal and replacement plan, 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-2021-001 shall be applicable to this approval.

4. 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.

5. TREE REPLACEMENTS

The required replacements are 15 24-inch box trees to be planted on the subject property within 30 days of tree removal. The applicant is proposing to plant 14 36" box Mission Olive trees, and nine (9) 48" box Coast Live Oak trees, exceeding the required replacements. The final planting plan will be reviewed and approved by the Director of Community Development. The applicant shall provide the Department of Community Development adequate documentation, including but not limited to photographs, receipts or invoices, to verify that the replacement trees have been planted.

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. INDEMNIFICATION

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 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.

8. 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.

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PASSED AND ADOPTED this 24<sup>th</sup> day of June 2021 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:

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Erick Serrano  
Senior Planner

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Albert Salvador  
Assistant Director of Community Development