

**FINDINGS AND CONDITIONS OF APPROVAL FOR COUNTY FILE #TP19-0036, TAMBRI HEYDEN & DAVID MONTALBO (APPLICANT & OWNER):**

**I. FINDINGS**

**A. Required Factors for Granting Permit.** The Zoning Administrator is satisfied that the following factors as provided by County Code Section 816-6.8010 for granting a tree permit have been satisfied:

- *Reasonable development of the property would require removal and/or work within the dripline of code-protected trees, and this development could not be reasonably accommodated on another area of the lot.*

Development is limited to the northeastern portion of the lot due to topography (the project site generally slopes upwards from the northeastern corner of the property towards the southwestern corner of the of the subject parcel), the location of overhead utility lines, and the location of a 25-foot wide access easement along the southern portion of the eastern property line. The applicant is also proposing to underground a portion of the overhead utility lines that run north to south on the subject property, necessitating the removal of seven (7) out of the 22 code-protected trees proposed for removal.

- *Where the arborist or forester report has been required, the Deputy Director for the Community Development Division is satisfied that the issuance of a permit will not negatively affect the sustainability of the resource.*

The project site is heavily wooded, but only a small portion of the 2.56-acre parcel would be developed. Pursuant to the site area calculations for the project, the proposed residence and other impervious improvements would make up less than 3 percent of the total area of the lot. Therefore, the majority of the property and trees remaining on the property would remain as is, protecting the sustainability of the resource.

**B. Required Factors for Denying a Tree Permit.** The Zoning Administrator is satisfied that the following factor for denial of a tree permit has not been established:

- *It is reasonably likely that alteration or removal of the tree will cause problems with drainage, erosion control, land stability, windscreen, visual screening, and/or privacy and said problems cannot be mitigated as part of the proposed removal of the tree.*

The June 18, 2019 Geotechnical Study prepared by Bear Engineering Group, Inc., for the project did not identify any potential erosion control or land stability issues for the site related to the removal of the trees.

## **II. CONDITIONS OF APPROVAL FOR COUNTY FILE #TP19-0036**

### **Project Approval**

1. This application for a Tree Permit includes the removal of 22 code-protected trees and work within the driplines of six (6) code-protected trees for the purpose of constructing a new, two-story, single-family residence and retaining walls on a vacant parcel. The trees to be removed include thirteen (13) coast live oak trees ranging in size from 7 inches to 43.5 inches in diameter, six (6) valley oak trees ranging in size from 8 inches to 38 inches in diameter, two (2) multi-stemmed California buckeye trees, and one (1) multi-stemmed plum tree. The trees that would be subjected to dripline encroachment include three (3) coast live oak trees ranging in size from 10 inches to 17.5 inches in diameter, including a multi-stemmed coast live oak tree, two (2) coast redwood trees ranging in size from 10 inches to 12 inches in diameter, and one (1) 33-inch valley oak tree. The subject property is located south of Olympic Boulevard and west of 2776 West Newell Avenue, in the Walnut Creek area of unincorporated Contra Costa County. This project is approved based on the following documents and materials submitted to the Department of Conservation and Development, Community Development Division (CDD):
  - A. Application materials submitted on July 18, 2019;
  - B. Revised Arborist Report prepared by Jennifer Tso, Certified Arborist with Traverso Tree Service, received on November 5, 2019;
  - C. Arborist Report Addendum prepared by Jennifer Tso, Certified Arborist with Traverso Tree Service, received on October 10, 2019;
  - D. As generally shown on the revised project plans received on October 10, 2019;
  - E. As generally shown on the revised tree protection plan sheet received on November 5, 2019.

Except as otherwise specified, development shall be in accord with the recommendations of the arborist report. Code-protected trees that are not included under this permit shall not be removed or altered. All grading, site and development plans shall clearly indicate trees approved for removal, alteration or otherwise affected by construction.

### **Payment of Fees**

2. This application was subject to an initial application deposit of \$500.00, which was paid with the application submittal, plus time and material costs if the application review expenses exceed the initial deposit. **Any additional costs due must be paid within 60 days of the permit effective date or prior to use of the permit, whichever occurs first.** Pursuant to

Contra Costa County Board of Supervisors Resolution Number 2013/340, where a fee payment is over 60 days past due, the application shall be charged interest at a rate of ten percent (10%) from the date of approval. The applicant may obtain current costs by contacting the project planner. A bill will be mailed shortly after permit issuance.

### **Restitution for Tree Removal**

3. The following measures are intended to provide restitution for the removal of code-protected trees.
  - A. Planting and Irrigation Plan: **Prior to issuance of building permits**, the applicant shall submit a tree planting and irrigation plan prepared by a licensed arborist or landscape architect for the review and approval of the Department of Conservation and Development, Community Development Division (CDD). The plan shall provide for the planting of **three (3)** native-species trees, minimum 15 gallon in size, or an equivalent planting contribution as determined appropriate by CDD. The plan shall comply with the State's Model Water Efficient Landscape Ordinance or the County's Water Efficient Landscape Ordinance, if the County's ordinance has been adopted, and verification of such shall accompany the plan. The plan shall also include an estimate prepared by a licensed landscape architect, arborist, or landscape contractor for the materials and labor costs to complete the improvements (accounting for supply, delivery, and installation of trees and irrigation).
  - B. Required Security to Assure Completion of Plan Improvements: A security shall be provided to ensure that the approved planting and irrigation plan is implemented. **Prior to issuance of building permits**, the applicant shall submit a security that is acceptable to the CDD. The security shall be the amount of the approved cost estimate described in Section 3.a above, *plus* a 20% inflation surcharge.
  - C. Initial Deposit for Processing of Security: The County ordinance requires that the applicant pay fees to cover all staff time and material costs for processing the required security. At the time of submittal of the security, the applicant shall pay an initial deposit of \$100.00.
  - D. Duration of Security: When the replacement trees and irrigation have been installed, the applicant shall submit a letter to the CDD, composed by a licensed landscape architect, landscape contractor, or arborist, verifying that the installation has been done in accordance with the approved planting and irrigation plan. The CDD will retain the security for a minimum of 12 months up to 24 months beyond the date of receipt of this letter. As a prerequisite of releasing the bond between 12 and 24 months, following completion of the installation, the applicant shall arrange for the consulting arborist to inspect the replacement trees and to prepare a report on the trees' health. The report shall be submitted for the review of the CDD and shall include any additional measures necessary for preserving the health of the trees. These measures shall be implemented by the applicant. Any replacement tree that dies within the first

year of being planted shall be replaced by another tree of the same species and size. If the CDD determines that the applicant has not been diligent in ensuring the replacement trees' health, then all or part of the security may be used by the County to ensure that the approved restitution plan is successfully implemented.

### **Security for Possible Damage to Trees Intended for Preservation**

4. Pursuant to the requirements of Section 816-6.1204 of the Tree Protection and Preservation Ordinance, to address the possibility that construction activity damages trees that are to be preserved, the applicant shall provide the County with a security to allow for replacement of trees that are significantly damaged or destroyed by construction activity. **Prior to issuance of building permits**, the applicant shall provide a cash or surety bond that is acceptable to the CDD.

A. Amount of Security: The security shall be an amount sufficient to cover:

- i. Preparation of a landscaping and irrigation plan by a licensed landscape architect, arborist, or landscape contractor for the review and approval of the CDD. The plan shall provide for planting of up to **six (6)** 15-gallon-size trees of species appropriate for the subject site. The plan shall comply with the State's Model Water Efficient Landscape Ordinance or the County's Water Efficient Landscape Ordinance, if the County's ordinance has been adopted, and verification of such shall accompany the plan. **If deemed necessary by the CDD, the plan shall be implemented prior to final building inspection.**
- ii. The estimated materials and labor costs to complete the improvements shown on the approved planting and irrigation plan (accounting for supply, delivery, and installation of trees and irrigation).
- iii. An *additional* 20% above the costs described in Sections A.i and A.ii above to account for inflation potential.

B. Initial Deposit for Processing of Security: The County ordinance requires that the applicant pay fees to cover all staff time and material costs for processing the required security. At the time of submittal of the security, the applicant shall pay an initial deposit of \$100.

C. Duration of Security: After the final inspection has been completed, the applicant shall submit a letter to the CDD, composed by a consulting arborist, describing any construction impacts to trees intended for preservation. The security shall be retained by the County for a minimum of 12 months and up to 24 months beyond the date of receipt of this letter. As a prerequisite of releasing the bond between 12 and 24 months, the applicant shall arrange for the consulting arborist to inspect the trees and to prepare a report on the trees' health. The report shall be submitted to the CDD for

review, and it shall include any additional measures necessary for preserving the health of the trees. These measures shall be implemented by the applicant. If the CDD determines that trees intended for preservation have been damaged by development activity, and that the applicant has not been diligent in providing reasonable restitution of the damaged trees, then the CDD may require that all or part of the security be used to provide for mitigation of the trees damaged, including replacement of any trees that have died.

### **Compliance with Arborist Recommendations**

5. The applicant shall implement all measures recommended by the consulting arborist that are intended to mitigate potential construction-related impacts.

### **Arborist Expense**

6. The expenses associated with all required arborist services shall be borne by the developer and/or property owner.

### **Construction Period Requirements and Restrictions**

7. Site Preparation: Prior to the start of construction or any clearing, stockpiling, trenching, grading, compaction, paving or change in ground elevation on site with the trees to be preserved, the Applicant shall install protective fencing at or beyond the drip lines of the trees to be preserved and along the boundaries of all other protected trees within the vicinity of construction. The fencing shall remain in place for the duration of construction activities. Prior to grading or issuance of any permits, the fences may be inspected and the location thereof approved by the Building Inspection Division or Community Development Division staff. *Construction plans shall stipulate on their face where temporary fencing is to be placed. The required fencing shall be installed **prior to the commencement of any construction activity.***
8. Contractor and/or developer shall comply with the following requirements and restrictions, which shall be stated on the face of all construction drawings for grading or building permits:
  - A. All construction activities shall be limited to the hours of 8:00 A.M. to 5:00 P.M., Monday through Friday, and shall be prohibited on State and federal holidays.

New Year's Day (State and Federal)  
Martin Luther King, Jr. Day (State and Federal)  
Washington's Birthday/Presidents' Day (State and Federal)  
Lincoln's Birthday (State)  
Cesar Chavez Day (State)  
Memorial Day (State and Federal)  
Independence Day (State and Federal)  
Labor Day (State and Federal)

Columbus Day (State and Federal)  
Veterans Day (State and Federal)  
Thanksgiving Day (State and Federal)  
Day after Thanksgiving (State)  
Christmas Day (State and Federal)

For information on the actual days and dates that these holidays occur, please visit the following websites:

Federal: [http://www.opm.gov/Operating\\_Status\\_Schedules/fedhol/2020.asp](http://www.opm.gov/Operating_Status_Schedules/fedhol/2020.asp)

California: <http://www.ftb.ca.gov/aboutFTB/holidays.shtml>

- B. The applicant shall immediately notify the CDD of any damage that occurs to any tree during construction. Any tree not approved for destruction or removal that dies or is significantly damaged as a result of this project shall be replaced with a tree or trees of equivalent size and of a species as approved by the CDD to be reasonably appropriate for the situation.
- C. No parking or storage of vehicles, equipment, machinery, or construction materials and no dumping of paints, oils, contaminated water, or any chemicals shall be permitted within the drip line of any tree to be preserved.
- D. No grading, compaction, stockpiling, trenching, paving, or change in ground elevation shall be permitted within the drip line of any tree intended for preservation unless such activities are indicated on the improvement plans approved by the County and addressed in the arborist reports. If any of the activities listed above occur within the drip line of a tree to be preserved, an arborist may be required to be present. The arborist shall have the authority to require implementation of measures to protect the trees.
- E. The applicant shall not block access to and from the private road and limit off-site construction vehicle parking.
- F. The applicant shall require their contractors and subcontractors to fit all internal combustion engines with mufflers that are in good condition and shall locate stationary noise-generating equipment such as air compressors as far away from existing residences as possible.
- G. Transporting of heavy equipment and trucks shall be limited to week days between the hours of 9:00 AM and 4:00 PM and prohibited on federal and State holidays.
- H. The site shall be maintained in an orderly fashion. Following the cessation of construction activity, all construction debris shall be removed from the site.

## **Retaining Walls**

9. Retaining walls within the required setback areas shall not exceed 3 feet in height, as measured from existing or finished grade, whichever is lower.

## **Tree Removal**

10. Trees approved for removal under this permit may not be removed until a building permit for the new residence has been issued.

## **Indemnification**

11. Prior to submitting for building permits, the Applicant(s) shall enter into an Indemnification Agreement with the County, and the Applicant shall indemnify, defend (with counsel reasonably acceptable to the County), and hold harmless the County, its boards, commissions, officers, employees, and agents (collectively "County Parties") from any and all claims, costs, losses, actions, fees, liabilities, expenses, and damages (collectively, "Liabilities") arising from or related to the Project, the Applicant's application for a tree permit, the County's discretionary approvals for the Project, including but not limited to the County's actions pursuant to the California Environmental Quality Act and planning and zoning laws, regardless of whether those Liabilities accrue before or after Project approval.

## **ADVISORY NOTES**

**ADVISORY NOTES ARE NOT CONDITIONS OF APPROVAL. ADVISORY NOTES ARE PROVIDED FOR THE PURPOSE OF INFORMING THE APPLICANT OF ADDITIONAL ORDINANCES AND OTHER LEGAL REQUIREMENTS THAT MAY BE APPLICABLE TO THE PROJECT.**

- A. NOTICE OF 90-DAY OPPORTUNITY TO PROTEST FEES, DEDICATIONS, RESERVATIONS, OR OTHER EXACTIONS PERTAINING TO THE APPROVAL OF THIS PERMIT.

Pursuant to California Government Code Section 66000, et seq., the applicant has the opportunity to protest fees, dedications, reservations or exactions required as part of this project approval. To be valid, a protest must be in writing pursuant to Government Code Section 66020 and must be delivered to the Community Development Division within a 90-day period that begins on the date that this project is approved. If the 90<sup>th</sup> day falls on a day that the Community Development Division is closed, then the protest must be submitted by the end of the next business day.

- B. This project may be subject to the requirements of the following agencies:

- Contra Costa County Building Inspection Division
- Contra Costa County Public Works Department
- Contra Costa County Fire Protection District
- Central Contra Costa Sanitary District
- East Bay Municipal Utility District

The applicant is strongly encouraged to review these agencies' requirements prior to continuing with the project.