



Contra  
Costa  
County

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: May 22, 2018

Subject: Appeal of a Tree Permit for the Removal of Eight Code-Protected Trees in Alamo

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**RECOMMENDATION(S):**

1. OPEN the public hearing, RECEIVE testimony, and CLOSE the public hearing.
2. DENY the appeal of Gabriela Odell and Bruce Tarter, Sophia and Lomit Patel.
3. UPHOLD the Zoning Administrator's decision to approve the removal of three existing code-protected trees and five previously removed code-protected trees.
4. APPROVE County File #TP17-0033, a Tree Permit Application for a request to allow the removal of three existing code-protected redwood trees ranging in size from 20" to 40" in diameter and five previously removed code-protected redwood trees ranging in size from 15 gallons to 24" in diameter.
5. APPROVE the attached findings in support of the project and APPROVE the conditions of approval for County File #TP17-0033.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY  
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

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Action of Board On: **05/22/2018** ☐ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes:

See Addendum

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: May 22, 2018

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Grant Farrington,  
925-674-7797

cc:

## RECOMMENDATION(S): (CONT'D)

6. DETERMINE that the tree permit application is categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15304, minor alterations to land.

7. DIRECT the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk.

## FISCAL IMPACT:

The applicant has paid the necessary applicant deposit, and is obligated to pay supplemental fees to cover all additional costs associated with the application process.

## BACKGROUND:

This is an appeal of the County Planning Commission's decision to approve a tree permit to allow the removal of a total of eight code-protected trees. Three of the trees are existing redwood trees ranging in size from 20" to 40" in diameter. The other five trees were removed without permits. Of the five removed without permits, one was a 24" redwood tree, and the four others were 15 gallon replacement trees required to be planted as a condition of approval for a previous tree permit (County File #TP14-0008). All of the five trees removed without permits were protected trees based on the previously approved tree permit. No development is proposed; however, the existing trees have been determined to be in poor health by the applicant's arborist as documented in the report that was submitted with the application. The Zoning Administrator's decision was not overturned by the Planning Commission following a 3-3 tie vote at a public hearing held on January 24, 2018.

The tree permit requesting the removal of three redwood trees due to declining health was submitted on July 25, 2017, and included an arborist report dated July 25, 2017 prepared by Tim Hendricks. After reviewing the submittal, staff determined that five additional trees were removed that had not been previously approved. All eight trees are protected because they were shown to be preserved on the site plan for County File #TP14-0008 as a condition of approval. The reason provided by the applicant for the removal of the five trees was the health of the trees. The applicant is paying a penalty fine/higher permit fee for five already removed trees. On September 21, 2017 a Notice of Tentative Approval of a Tree Permit was mailed to adjacent property owners. Within the 10-day appeal period, two separate appeals from Sophia and Lomit Patel, and Gabriela Odell and Bruce Tarter were filed with the Department of Conservation and Development.

A total of four arborist reports have been submitted, including two by the applicant and two by the appellant.

## Site Description

The subject property address is 1593 Hillgrade Avenue; it is approximately 23,000 square feet and irregular in shape and located at the intersection of Crest and Hillgrade Avenues

in the Alamo area. The majority of the property is rectangular with a narrow strip of land approximately 330 feet in length extending to the southwest. A single-family residence with an attached garage and the subject trees are located on site. The subject trees are adjacent to the western side of the single-family residence. The site also has a moderate slope with additional trees located along the narrow southwestern extension. The site is accessed via an 8.5-foot wide access easement connected at the corners of Crest and Hillgrade Avenues.

### **General Plan/ Zoning**

The subject property is located within Single-Family Residential-Low Density (SL) and Open Space (OS) General Plan Land Use designations. The single-family residence and the subject trees are located on the portion of the lot designated SL. This project proposes no additional development to the single-family residence already existing on the lot. The portion of the subject property which is in the OS Land Use designation does not have any existing or proposed structures and thus the project is consistent with both Land Use designations. The subject property is located within the Single-Family Residential (R-20) zoning district. The project does not propose any new development and thus is consistent with the R-20 zoning district.

### **Planning Commission Hearing**

On January 24, 2018, the County Planning Commission (CPC) held a public hearing on the appeal of the Zoning Administrator's (ZA) decision to approve the Tree Permit application. The hearing included staff's presentation and testimony from the applicants (Gil and Carla Gibson), appellants (Gabriella Odell and Bruce Tarter and Sophia Patel), and an arborist speaking at the request of the appellants (Torrey Young). The Gibsons presented the project emphasizing the poor health of the trees and how the location of the trees posed a hazard to themselves and their house. Mr. Tarter presented his concern that the trees are capable of recovery and redwood trees in particular warrant special protection within the County. Mrs. Patel also presented her concern that the trees are capable of recovery and that the applicants had prematurely removed trees and attempted to remove the existing trees without a permit. Mr. Young presented his concern that the trees are capable of recovery and that staff misrepresented his report determining the health of the existing trees. After receiving testimony from the public, the Planning Commission closed the hearing and voted 3-3 to uphold the Zoning Administrator's approval. As a result, the Zoning Administrator's decision to approve the project was upheld and therefore the appeal denied.

### **APPEAL**

On February 5, 2018, the Department of Conservation and Development received appeals of the County Planning Commission's decision from Gabriela Odell and Bruce Tarter, and Sophia and Lomit Patel. The appeals cited multiple points of opposition, which primarily focused on staff's decision to recommend approval for the project, the condition

of the existing trees and the necessity of the trees for erosion and mudslide prevention. Staff has summarized and provided a response to each appeal point below:

### **Patel Appeal points**

**Summary of Appeal Point #1:** The appellants state that the County has a moral and legal obligation to protect State protected redwoods.

Staff Response: The applicant submitted a complete tree permit application including an arborist report from a certified arborist, Tim Hendricks dated July 25, 2017. Mr. Hendricks' report concluded, after conducting an on-site inspection, that the three existing trees have declined in health due to drought conditions and construction of the shared driveway. Mr. Hendricks' report noted that the main stems of the trees are in decline and defoliation is severe in the upper half of the trees. After reviewing the submittal, the Zoning Administrator approved the tree permit based on the arborist report indicating that the trees are in poor health and the issuance of a permit will not negatively affect the sustainability of the resource per Section 816-6.8010 of the Tree Protection Ordinance provided that eight replacement trees are planted as a required Condition of Approval (COA) #2(a). While redwood trees are native to portions of California and Contra Costa County, the trees are unlikely to have naturally occurred in Alamo.

**Summary of Appeal Point #2:** The existing trees are in fair condition and can be rehabilitated.

Staff Response: The Zoning Administrator approved the tree permit based on the arborist report submitted by the applicant and prepared by Mr. Hendricks which identified the existing trees as being in poor health. While the reports submitted by the appellants indicated the trees could recover, staff finds there is sufficient evidence of a hazard to warrant issuing the permit. See also Patel Appeal Point #1.

**Summary of Appeal Point #3:** The redwood trees provide protection from soil erosion and mudslides.

Staff Response: Mr. Hendricks's report did not identify erosion and drainage problems as consequences of removing the three trees. Subsequent reports did not identify erosion and drainage problems as consequences of removing the existing trees. The approved removal of the trees is based on the health of the trees consistent with the Tree Protection Ordinance. See Patel Appeal Point #1. COA #2(a) requires that two of the eight trees to be replanted must be located along the southwestern property line that is adjacent to the Patel lot. Once planted, all eight of the trees to be replanted are considered code-protected per Section 816-6.6004 of the County Ordinance. After consulting with County grading staff, they indicated that replacing the removed trees with compacted soil and applying sediment control measures such as straw blankets, mulch and hydro seeding are measures that can be implemented to minimize the risk of soil erosion.

**Summary of Appeal Point #4:** 1593 and 1597 have shared drainage, landscaping, driveway and the existing trees fall on the border of the Patel property line.

Staff Response: The subject trees are located on the applicant's lot and the property owner has a right to apply for a tree permit.

**Summary of Appeal Point #5:** Staff failed to consider and evaluate additional arborist reports submitted.

Staff Response: Staff reviewed and evaluated all four arborist reports submitted, all of which concluded that the trees have been impacted by drought and construction activities. The arborist reports submitted by the appellants recommended specific rehabilitation measures but staff did not find there was sufficient evidence that these measures would prevent a falling hazard. See Patel Appeal Point #1 and #2.

**Summary of Appeal Point #6:** Staff recommended approval based on the number of arborist reports submitted.

Staff Response: Staff reviewed the information and arguments in all four of the arborist reports and determined that there was sufficient evidence indicating hazardous conditions of the trees to warrant issuance of the permit.

**Summary of Appeal Point #7:** The tree permit violates the County's Tree Protection and Preservation Ordinance.

Staff Response: See Patel Appeal Point #1.

### **Odell and Tarter Appeal Points**

**Summary of Appeal Point #1:** The decision to allow the removal of the code-protected trees was based on a "numbers game."

Staff Response: The property owner submitted an application and arborist reports for a tree permit and staff conducted a site visit. The Zoning Administrator approved the tree permit based on the arborist reports indicating the trees are in poor health and the removal of the trees will not negatively affect the sustainability of the resource per Section 816-6.8010 of the Tree Protection Ordinance provided that eight replacement trees are planted as a required COA #2(a). While redwood trees are native to portions of California and Contra Costa County, the trees are unlikely to have naturally occurred in Alamo.

**Summary of Appeal Point #2:** None of the protective measures from the previous tree permit were enforced and trees were removed by the applicant without permits.

Staff Response: During a site visit, staff determined that five code-protected trees were previously removed from the subject property. The Zoning Administrator has included these trees as part of the application. Replanting and restitution for these trees have also been added to the COA's. The property owners are responsible for submitting a tree restitution plan (COA #2(a)), and a security bond to be held until verification of the health of the replanted trees has been submitted to the DCD (COA #2(b) and #2(d)). If the DCD determines the replacement trees have been damaged or dead, the security bond will be used to provide for replacement of the dead or damaged trees (COA #2(d)).

**Summary of Appeal Point #3:** Staff did not apply the Tree Protection Ordinance correctly.

Staff Response: See Patel Appeal Point #1.

**Summary of Appeal Point #4:** Staff did not pay any attention to the appellants' concerns about potential mud flow if the trees are removed.

Staff Response: See Patel Appeal Point #1 and #3. Condition of Approval (COA) #2(a) requires that four of the eight trees to be replanted must be located along the southeastern property line that is adjacent to the Odell and Tarter lot. Once planted, all eight of the trees to be replanted are now considered code-protected per Section 816-6.6004 of the County Ordinance.

**Summary of Appeal Point #5:** Staff relied upon flawed arborist reports to determine a recommendation.

Staff Response: The arborist reports submitted by the applicant and prepared by Tim Hendricks and Bob Peralta were based on site visits to determine the health of the trees. The reports addressed the conditions of the existing trees including the health of the canopies, branches and root zones. Mr. Hendricks' and Mr. Peralta's arborist reports concluded that the trees pose a safety hazard and recommended removal based on drought and construction factors which have caused root system decay and main stem decline. Mr. Peralta's report identifies the subject property as unsuited for redwood trees due to the climate differences compared to coastal California where redwood trees thrive. Neither report identified erosion drainage and soil erosion as a consequence of removing the existing trees.

**Summary of Appeal Point #6:** Staff failed to take into account points raised by a second arborist report submitted by the appellants.

Staff Response: Staff reviewed and evaluated all four arborist reports submitted, which concluded that the trees have been impacted by drought and construction activities. The arborist reports submitted by the appellants recommended specific rehabilitation

measures but staff did not find there was sufficient evidence that these measures would prevent a hazard. See Patel Appeal Point #1.

### **Conclusion:**

The project meets the criteria outlined in the Tree Protection and Preservation Ordinance. There is no proposed development and the project is in compliance of the R-20 zoning district as well as the policies of the SL and OS General Plan Land Use designations. Considering these facts, staff recommends that the Board of Supervisors deny the appeal by Gabriela Odell and Bruce Tarter and Sophia and Lomit Patel and sustain the Zoning Administrator's decision to approve the Tree Permit application.

### **CONSEQUENCE OF NEGATIVE ACTION:**

If the Board of Supervisors grants the appeal, the Zoning Administrator's approval of a tree permit application to remove 3 existing code-protected trees and 5 previously removed code-protected trees at 1593 Hillgrade Avenue will be overturned. The property owners of 1593 Hillgrade Avenue will be unable to remove and replace the code-protected trees.

### **CHILDREN'S IMPACT STATEMENT:**

This application is a request for approval of a tree permit to allow the removal of three existing code-protected trees and five previously removed code-protected trees. No element of the proposed project will impact children's programs within the County.

### **CLERK'S ADDENDUM**

*Speakers: Gabriela Odell, appellant; Sophia and Lomit Patel, appellants; Gil Gibson, Applicant and Owner; Tim Hendricks, resident of Concord; Bob Peralta. DENIED the appeal of Gabriela Odell and Bruce Tarter, Sophia and Lomit Patel;*

*UPHELD the Zoning Administrator's decision to approve the removal of three existing code-protected trees and five previously removed code-protected trees;*

*APPROVED County File #TP17-0033, a Tree Permit Application for a request to allow the removal of three existing code-protected redwood trees ranging in size from 20" to 40" in diameter and five previously removed code-protected redwood trees ranging in size from 15 gallons to 24" in diameter;*

*APPROVED the findings in support of the project and;*

*APPROVED the conditions of approval for County File #TP17-0033;*

*ADDED an additional condition of approval to require evidence of a mitigation plan for stability where the trees would be removed from;*

*DIRECTED the applicants obtain a bond for two years covering the replacement trees;*

*DETERMINED that the tree permit application is categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15304, minor alterations to land;*

*DIRECTED the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk;*

*And DIRECTED a 30 delay in the issuance of the Tree Permit Application to allow the appellants to file action in court if they desire to do so.*

## ATTACHMENTS

Appeal Letter to Board - Patel

Appeal Letter to Board - Odell and Tarter

Maps (Parcel Map, General Plan, Zoning and Aerial Photography)

Findings and Conditions

CPC Staff Report

Site Plan

Powerpoint Presentation