



**Contra  
Costa  
County**

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: February 25, 2020

Subject: Tree permit appeal for a new single-family residence on West Newell Avenue in Walnut Creek

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**RECOMMENDATION(S):**

1. OPEN the public hearing on an appeal of the County Planning Commission's approval of a tree permit, RECEIVE testimony, and CLOSE the public hearing.
2. DETERMINE that the proposed project is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15303(a) (new construction of one single-family residence).
3. DENY the appeals of Patricia McGregor, William Schultz, and Bronwyn Shone.
4. APPROVE a tree permit to allow the removal of 22 code-protected trees and work within the driplines of six code-protected trees for the purpose of constructing a new single-family residence on West Newell Avenue in the unincorporated Saranap area, County File #TP19-0036.
5. APPROVE the attached findings and conditions of approval for County File #TP19-0036.
6. DIRECT the Department of Conservation and Development to file a CEQA Notice of

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☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY  
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

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Action of Board On: **02/25/2020** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

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: February 25, 2020

Contact: Susan Johnson,  
925-674-7868

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

By: , Deputy

cc:

Exemption with the County Clerk.

## FISCAL IMPACT:

The applicants are responsible for all of the time and material costs associated with processing the application.

## BACKGROUND:

### **Project Description**

This is a hearing for an appeal of the County Planning Commission's decision to deny an appeal and uphold the decision of the County Zoning Administrator to approve a tree permit to allow 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 in the Walnut Creek/Saranap area of unincorporated Contra Costa County. 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 applicants are 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.

### **Project Background**

The subject property is a vacant 2.56-acre parcel located at the end of West Newell Avenue, south of Olympic Boulevard and west of 2776 West Newell Avenue, in the Saranap area of unincorporated Contra Costa County. A small portion of the northwest corner of the subject property is located within the City of Lafayette. The project site is heavily wooded and generally slopes upwards from the northeastern corner (lowest point) of the property towards the southwestern corner of the of the subject parcel (highest point). Overhead utility lines run in an east to west direction along West Newell Avenue towards the middle of the property, and then change to a north to south direction, connecting to a power pole located off Olympic Boulevard. West Newell Avenue provides access to the site and a private easement that is located along the southern portion of the eastern property line provides access to two adjacent properties (2776 West Newell Avenue and a vacant parcel south of the project site). Due to the topography of the parcel, and the location of overhead utility lines and the access easement on the subject property, viable development is limited to the northeastern portion of the lot (where the proposed residence is located).

On July 18, 2019, an application (County File #TP19-0036) was submitted for the removal of 21 code-protected trees and for work within the driplines of four (4)

code-protected trees for the purpose of constructing a new, two-story, single-family residence and retaining walls on a vacant parcel.

During the public notification period, one (1) appeal of the Zoning Administrator's decision to tentatively approve the project was received on August 22, 2019. An amendment to the appeal was submitted on August 26, 2019.

After the project was appealed, modifications were made to the project plans to incorporate a widened driveway on the eastern side of the property, adjacent to West Newell Avenue. As a result of the widened driveway, one (1) additional multi-stemmed coast live oak tree is proposed for removal and work will also occur within the driplines of two (2) additional coast live oak trees. Therefore, the project scope was amended to include the removal of 22 code-protected trees and work within the driplines of six (6) code-protected trees. Accordingly, Condition of Approval #4 of the attached Findings and Conditions of Approval, was amended to require a cash or surety bond sufficient to cover the preparation of a landscaping and irrigation plan (for the planting of up to six (6) 15-gallon-size trees of species appropriate for the subject site), by a licensed landscape architect, arborist, or landscape contractor, in the event that construction activity damages trees that are to be preserved.

At the December 11, 2019 County Planning Commission Meeting, the Commission upheld the County Zoning Administrator's decision and denied the appeal. The motion was passed by the Commission with a 4-3 vote. The Commission's motion included the addition of a condition of approval that required that the trees not be removed until a building permit for construction of the residence is issued (see COA #10 in the attached conditions of approval).

In addition to the condition of approval added by the Planning Commission, staff has also added an indemnification requirement to the attached conditions of approval (COA #11).

Two appeals have been filed on the matter, one by Patricia McGregor and William Schultz and the other by Bronwyn Shone.

### **Appeal of the County Planning Commission's Decision**

On December 20, 2019, Patricia McGregor and William Schultz filed an appeal with the Department of Conservation and Development, Community Development Division, over the decision of the County Planning Commission to deny the appeal and uphold the decision of the County Zoning Administrator to approve County File #TP19-0036. The appeal points have been summarized and addressed below:

*Patricia McGregor and William Schultz, 2776 West Newell Avenue, Walnut Creek, CA 94595*

**Summary of Appeal Point #1:** The two oak trees identified as #36 and #37 should be

saved because their removal would adversely affect appellants' oak tree #38.

**Staff Response:** Tree #36 is located within the footprint of the proposed residence, and therefore cannot be saved. Tree #37 cannot be saved because it would be structurally compromised during construction, and not survive construction impacts. Pursuant to an email from the applicant on September 24, 2019, the gas service location for the proposed residence cannot be changed because the service comes from West Newell Avenue, from the east. Additionally, the gas line cannot be located on the south side of the home since PG&E does not permit gas lines next to drainage or wet utilities. Based on this information, the consulting arborist concluded that, if the trench for the gas line is aligned with the side of the residence adjacent to the trunk of tree #37, the trenching depth extends to 3 feet below grade, and the utility must be installed via open trench, then the tree will need to be removed as it will be structurally compromised and is highly likely to fall over. Furthermore, if tree #37 were to remain, major limbs would hang over the proposed residence, and pursuant to a statement from Cyrus Mashhoodi, P.E., tree #37 would be within 5 feet of the new foundation and may affect the integrity of the foundation in the future. Therefore, based on the project arborist's recommendation both trees #36 and #37 are recommended to be approved for removal.

With regard to tree #38, the arborist report prepared by Jennifer Tso, a Certified Arborist with Traverso Tree Service, takes into account that tree #36 and tree #37 are proposed for removal. The arborist report provides pre-construction and construction phase recommendations for the protection of the trees that could be impacted by construction activities, which includes protecting tree #38. Condition of Approval #5 requires the applicant to implement all measures recommended by the consulting arborist that are intended to mitigate potential construction-related impacts. These recommended measures include (but are not limited to) the following:

- Footings of the proposed retaining wall within 15 feet of tree #38 shall be dug by hand for the top 3 feet of soil. Project arborist shall be consulted for recommendations if roots  $\geq 2$  inches in diameter are encountered; footings shall be adjusted to save large roots.
- Fill/grading shall be done by hand within 20 feet of tree #38 with minimal compaction. Keep fill at least 12 inches clear of its trunk.

Additionally, 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, Condition of Approval #7 requires the applicants to 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 and the construction plans shall stipulate on their face where temporary fencing is to be placed. Thus, based on the arborist report prepared by Jennifer Tso, Certified Arborist, with Traverso Tree Service, tree #38 should survive construction impacts, which includes the removal of tree #36 and tree #37, as long as the applicant implements all measures recommended by the consulting arborist

that are intended to mitigate potential construction-related impacts.

**Summary of Appeal Point #2:** The lot is substandard in size for the proposed development. Most of the property is designated as Open Space and the site plan should illustrate this. In addition, the residence would be significantly larger than any other home built on West Newell Avenue. The house can be made smaller or relocated in order to save trees #36 and #37. The removal of large oak trees will cause significant visual impacts.

**Staff Response:** Pursuant to County Code Section 82-10.002(c), any lot of less area or width than required by Divisions 82 and 84 would be considered a “small lot”. Since the subject property is located within the Single-Family Residential Zoning District (R-20), the minimum lot area required is 20,000 square-feet and the minimum lot width required is 120 feet. The subject property is 2.56 acres in area and has an average width of approximately 285 feet. Thus, the project site is not a “small lot”.

The subject property has a General Plan land use designation of Single-Family Residential – Low Density (SL) and Open Space (OS). Both General Plan land use designations (SL and OS) allow for the construction of one single-family residence on an existing, legal lot. Additionally, the proposed residence would be located on the northeastern portion of the lot, entirely within the SL General Plan land use designation portion of the property. Furthermore, according to Table 3-5 of the Land Use Element of the County’s General Plan, the Single-Family Residential zoning status of the subject parcel is consistent with the corresponding SL General Plan land use designation of the portion of the property to be developed. Since the Open Space General Plan designation is not a scenic easement, the applicant is not required to illustrate the boundaries of the underlying General Plan land use designations on the site plan. Moreover, General Plan and Zoning maps are provided as attachments with this report.

Development is limited to the northeastern portion of the lot due to topography, 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. Despite these limitations, the new residence would be located at the base of the hillside on the flattest portion of the lot, and meet all of the required development standards pursuant to the R-20 Zoning District. Since the project site is not a “small lot” and the proposed development is not subject to design review, it would be unreasonable to limit the size of the residence based on the size of homes built on West Newell Avenue in the late 1940s. In general, homes built 70 – 80 years ago tend to be smaller than recently developed and/or remodeled homes. Furthermore, if the applicants were to remove the top story of the proposed two-story residence it would be similar in size to smaller homes located on West Newell Avenue, but the footprint of the proposed residence would remain the same and impacts to existing trees would remain the same. It should also be noted that larger homes do exist off Olympic Boulevard (across the road from the project site). These homes have between 2,730 and 14,605 square feet of living area (per the Assessor’s records). The proposed residence will have 3,492.5 square-feet of living area, which is compatible in

size with the aforementioned nearby residences.

With regard to the preservation of trees on private property to preserve scenic beauty, it is important to note that only a small portion of the 2.56-acre parcel would be developed, thus minimally compromising the aesthetic beauty of the overall project site. Also, pursuant to Figure 5-4 (Scenic Routes Plan) and Figure 9-1 (Scenic Ridges and Waterways) of the Transportation and Circulation Element of the County's General Plan (2005 - 2020), neither West Newell Avenue nor Olympic Boulevard have been identified as scenic routes and the hillside located on the subject property has not been identified as a County designated scenic ridge. Furthermore, since the subject property is located at the end of West Newell Avenue, and the proposed residence would be located at the base of the hillside on the flattest portion of the lot, the proposed development would not be visible from most nearby residences.

**Summary of Appeal Point #3:** Trees #36 and #37 provide soil stabilization. Due to a downward slope toward appellants' home, the proposed 2-foot retaining wall would not provide the same support for stabilizing the ground.

**Staff Response:** A licensed civil engineer has prepared the grading and drainage plans. These plans will be reviewed by the Building Inspection Department during the plan check process, prior to issuance of a building permit. A geotechnical report for the site has been provided by the applicant and reviewed by staff. The geotechnical report did not indicate that any issues with erosion or potential landslides at the site would occur with the removal of the trees. According to the report, the site is suitable for the proposed development provided the recommendations contained within the attached geotechnical report are incorporated into the project designs and adhered to during construction. As further discussed below, Public Works has reviewed drainage issues on site and has not identified significant concerns. Therefore, it is not reasonably likely that tree removal will cause problems with drainage, erosion control, or land stability.

In addition, no documentation has been submitted to support the claim that a 2-foot retaining wall is insufficient. The applicants will be required to submit structural calculations for the proposed retaining walls during the plan check process, prior to issuance of a building permit.

**Summary of Appeal Point #4:** A geotechnical engineering report is warranted.

**Staff Response:** It should be noted that submittal of a geotechnical report is not required prior to approval of a tree permit. However, a geotechnical report is required as part of the submittal for a building permit and/or grading permit and such report has been submitted for this project. (please see the attached geotechnical report prepared by Bear Engineering, dated June 18, 2019). As stated above, according to the geotechnical report prepared for the project, the site is suitable for the proposed development provided the recommendations contained within the attached geotechnical report are incorporated into the project designs and adhered to during construction.

**Summary of Appeal Point #5:** The current gutter and drainage system on West Newell Avenue will be overwhelmed by the increased storm water runoff caused by the construction of the house and removal of the trees.

**Staff Response:** Pursuant to the Public Works Department, impacts would be minimal and per the Public Works Maintenance Division, they have received no significant calls over the last 5 years regarding the subject area, other than complaints about issues such as minor debris blocking culverts. In 2003 – 2004, the cause of the complaints regarding an area east of the subject area turned out to be runoff from the hill to the south, not at the end of West Newell Avenue.

All new building permits for homes (at least 1,000 square-feet or larger) are routed to Grading Inspection during the building permit plan check process. Grading Inspection reviews the grading and drainage plans per the grading/drainage ordinance. If necessary, Grading Inspection will forward certain projects to the Public Works Department for a drainage permit. A building permit will not be issued until the drainage and grading plans are approved by Grading Inspection. Condition of Approval #10 prevents the removal of any trees before a building permit is obtained.

**Summary of Appeal Point #6:** If the applicants are able to underground the power lines on the hillside, despite PG&E being unable to do so given the steepness of the hillside, then the proposed development should not be exempt from the California Environmental Quality Act because the hillside will become unstable.

**Staff Response:** The applicants are 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. No documentation has been submitted to support the claim that PG&E has or will deny the applicants' request to underground this portion of the overhead utility lines. Ultimately, this decision is not under the purview of the County and the applicants are responsible for complying with PG&E's rules and regulations regarding the undergrounding of overhead power lines.

The proposed project is exempt under CEQA Guidelines, Section 15303(a), regarding "New Construction", which exempts the construction of one single-family residence in a residential zone (from environmental review). As previously stated, the applicants are responsible for complying with PG&E's rules and regulations regarding the undergrounding of overhead power lines, which includes paying for PG&E engineering, project management, and materials costs (through PG&E). Furthermore, pursuant to Figure 5-4 (Scenic Routes Plan) and Figure 9-1 (Scenic Ridges and Waterways) of the Transportation and Circulation Element of the County's General Plan (2005 - 2020), neither West Newell Avenue nor Olympic Boulevard have been identified as scenic routes and the hillside located on the subject property has not been identified as a County designated scenic ridge.



**Summary of Appeal Point #7:** The removal of the trees would negatively affect the value of appellants' home and that of the surrounding homes.

**Staff Response:** Trees proposed for removal are either within the footprint of the proposed residence, would not survive construction impacts, or are proposed for removal in order 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. Pursuant to an email from the consulting arborist on August 1, 2019, the arborist recommended that no more than three (3) trees be replanted based on the location of remaining trees, the footprint of the residence, and the location of utility easements. Condition of Approval #3 of the attached Findings and Conditions of Approval will require the applicant to plant three (3) native-species trees, minimum 15 gallon in size, or an equivalent planting contribution as determined appropriate by CDD.

New construction will usually increase property value, which in turn adds value to the neighborhood. Furthermore, pursuant to a diagram prepared by the applicant (see attached Existing Tree Count diagram), even after removal of 22 trees, at least 114 trees (6 ½ inches or greater in diameter), would remain.

**Summary of Appeal Point #8:** The County Planning Commission incorrectly determined that staff can add conditions of approval to the tree permit after the tree permit is approved.

**Staff Response:** The County Planning Commission raised several questions about documents that would be required as part of the submittal for the building permit (e.g., a geotechnical report). The applicants cannot submit for a building permit until the tree permit is approved and they are not required to provide a geotechnical report with the permit application. However, a geotechnical report is required as part of the submittal for a building permit and/or grading permit and such report has been submitted. Please see the attached geotechnical report prepared by Bear Engineering, dated June 18, 2019. In addition, before approving County File #TP19-0036, the County Planning Commission added the following condition of approval: "Trees approved for removal under this permit may not be removed until a building permit has been obtained."

**Summary of Appeal Point #9:** A two-page letter, prepared by Joseph McNeil, Certified Arborist, with McNeil Arboriculture Consultants LLC was attached with the appeal letter. The comments and questions raised in Joseph McNeil's letter relate to the potential impacts the proposed development will have on tree #38.

**Staff Response:** The applicant's arborist, Jennifer Tso, Certified Arborist, with Traverso Tree Service, provided a response to Joseph McNeil's letter. Please see attached "Response to Recommendations by Neighbor's Arborist" letter.

In addition, per the applicants' civil engineer, Comment # 2 (last paragraph on the first page) is incorrect. Per the applicants' civil engineer, there is no cut at any portion of this

wall. It is fill and there is fill within 2 feet of the trunk base. The fill is gradual and non-compacted. The grade/fill is approximately 24 inches higher than existing grade, 17 feet away from the subject tree (tree #38).

On December 23, 2019, Bronwyn Shone filed an appeal with the Department of Conservation and Development, Community Development Division, over the decision of the County Planning Commission to deny the appeal and uphold the decision of the County Zoning Administrator to approve County File #TP19-0036. The appeal points have been summarized and addressed below:

*Bronwyn Shone, 2757 West Newell Avenue, Walnut Creek, CA 94595*

**Summary of Appeal Point #1:** Paper copies of the of the Staff Report, Conditions of Approval, and attachments were not received 96 hours before the Planning Commission Meeting on December 11, 2019.

**Staff Response:** The appellants were emailed a link to the Staff Report, Conditions of Approval, and attachments, which were available on the County's website, on Thursday, December 5, 2019, more than 96 hours before the hearing date. Per the Better Government Ordinance, "at least 96 hours in advance of a regular scheduled meeting, all staff reports and other materials prepared or forwarded by staff that provide background information and recommendation on agenda items must be made available to the public and to members of the body" (Ord. § 25-2.206 (a)). Paper copies of the Staff Report, Conditions of Approval, and attachments were mailed to the appellants as a courtesy.

**Summary of Appeal Point #2:** Lack of transparency - the applicant walked up to the staff table and communicated with staff several times throughout the Planning Commission Meeting. These conversations were not made public.

**Staff Response:** Questions asked by the Planning Commission as part of the public hearing process were answered directly into the microphone.

**Summary of Appeal Point #3:** Can a fire truck turn around?

**Staff Response:** The project site is within the Contra Costa Fire Protection District's (CCFPD) jurisdiction. The applicants submitted an application (with project plans) to the Fire District on 9-30-2019. Todd Schiess with the CCFPD reviewed and approved the emergency access for the project site on 10/7/2019 (see attached letter from the CCFPD and email from Todd Schiess).

**Summary of Appeal Point #4:** Was the Department of Fish and Wildlife consulted regarding potential impacts to protected species, such as the whipsnake, at the project site?

**Staff Response:** The proposed project is exempt under CEQA Guidelines, Section

15303(a), regarding “New Construction”, which exempts the construction of one single-family residence in a residential zone (from environmental review). Additionally, the most important natural areas in the County, including habitats of rare, threatened and endangered species (such as the Alameda whipsnake), and wetland areas, are inventoried and briefly described in Table 8-1 in the Conservation Element of the Contra Costa County General Plan (2005-2020). The generalized locations of each significant ecological area are shown in Figure 8-1. Pursuant to Figure 8-1, the subject site is not located within a significant ecological area.

**Summary of Appeal Point #5:** Did the Zoning Administrator review the revised plans?

**Staff Response:** Yes, the Zoning Administrator reviewed the plans that were presented at the December 11, 2019 County Planning Commission Meeting. However, since the plans were revised to incorporate a widened driveway after the project was appealed (as mentioned under the Project Background section of this Board Order), it was at the discretion of the County Planning Commission to approve or deny the initial appeal based on the revised project scope.

**Summary of Appeal Point #6:** What are the impacts of additional drainage on West Newell Avenue, which is already challenged by an outdated drain system?

**Staff Response:** Pursuant to a statement from the applicant, and as shown on Sheet C.3.1, the impervious areas are divided into drainage areas. Each drainage area is labeled with its size in square feet and to where it drains on-site. The design incorporates stormwater treatment in the form of bio-treatment planters, vegetated areas and self-retainment areas. In addition, the biotreatment planters are designed to provide volume detention control above the County stormwater requirement so as to control and mitigate the stormwater runoff flow rate exiting the property to West Newell as per County C.3 volume control calculations.

Additionally, pursuant to the Public Works Department, impacts would be minimal and per the Public Works Maintenance Division, they have received no significant calls over the last 5 years regarding the subject area, other than complaints about issues such as minor debris blocking culverts. Back in 2003 – 2004, the cause of the complaints regarding an area east of the subject area turned out to be runoff from the hill to the south, not at the end of West Newell Avenue.

**Summary of Appeal Point #7:** Add a Conditional of Approval requiring the applicants to obtain a drainage permit prior to removal of any trees.

**Staff Response:** All new building permits for homes (at least 1,000 square-feet or larger) are routed to Grading Inspection during the building permit plan check process. Grading Inspection reviews the grading and drainage plans per the grading/drainage ordinance. If necessary, Grading Inspection will forward certain projects to the Public Works Department for a drainage permit. A building permit will not be issued until the drainage

and grading plans are approved by Grading Inspection. Condition of Approval #10 prevents the removal of any trees before a building permit is obtained. Therefore, whether or not a drainage permit is required, will be determined during the building permit plan check process.

**Summary of Appeal Point #8:** The project requires the removal of 22 trees. However, Condition of Approval #3 only requires the applicants to replant three (3) trees. This is unbalanced and conflicts with Measure 8-h of the Conservation Element of the Contra Costa County General Plan (2005-2020). Off-site restitution for tree removal should be considered.

**Staff Response:** The current County Tree Protection and Preservation ordinance does not provide a restitution formula for tree removal. Instead, the required restitution was based on the recommendation from the consulting arborist. Pursuant to an email received on August 1, 2019, the consulting arborist recommended that no more than three (3) trees be replanted based on the location of remaining trees, the footprint of the residence, and the location of utility easements. Condition of Approval #3 of the attached Findings and Conditions of Approval will require the applicant to plant three (3) native-species trees, minimum 15 gallon in size, or an equivalent planting contribution as determined appropriate by CDD.

The purpose of the Contra Costa County General Plan (2005-2020) is to express the broad goals and policies, and specific implementation measures, which will guide decisions on future growth, development, and the conservation of resources through the year 2020. Although Vegetation and Wildlife Implementation Measure 8-h of the Conservation Element of the Contra Costa County General Plan (2005-2020) states, “Amend the ordinance to require developers to pay mitigation costs according to an adopted schedule, such as requiring, where appropriate, and to the extent legally permissible, that three new trees be planted for every one mature tree removed as part of a development”, the current County Tree Protection and Preservation ordinance has not been amended to incorporate this goal/policy. In addition, no corresponding mitigation bank currently exists. Thus, off-site restitution for tree removal cannot be required until the current County Tree Protection and Preservation ordinance is amended.

**Summary of Appeal Point #9:** The developable area of the subject parcel is small compared to the developable area of lots in the surrounding neighborhood. Therefore, the subject parcel should be considered a “small lot” and the proposed development should be subject to design review.

**Staff Response:** Pursuant to County Code Section 82-10.002(c), any lot of less area or width than required by Divisions 82 and 84, that qualifies for occupancy by a single-family dwelling, is subject to design review. Therefore, whether or not a residential development project is subject to “small lot design review” is based on the size and width of the lot proposed for residential development, not the perceived developable area of said lot.

The subject property is located within the Single-Family Residential Zoning District (R-20). The minimum lot area required in the R-20 Zoning District is 20,000 square-feet. The minimum lot width required in the R-20 Zoning District is 120 feet. The subject property is 2.56 acres in area and has an average width of approximately 285 feet. Thus, the proposed development is not subject to design review.

### General Plan Consistency

The subject property has a General Plan land use designation of Single-Family Residential – Low Density (SL) and Open Space (OS). The SL General Plan land use designation allows a range of 1.0 and 2.9 single-family units per net acre. Although the most appropriate uses in Open Space areas involve resource management or low-intensity, private recreation for nearby residents, both General Plan land use designations (SL and OS) allow for the construction of one single-family residence on an existing, legal lot. Additionally, the proposed residence would be located on the northeastern portion of the lot, entirely within the SL General Plan land use designation portion of the property. Furthermore, according to Table 3-5 of the Land Use Element of the County's General Plan, the Single-Family Residential zoning status of the subject parcel is consistent with the corresponding SL General Plan land use designation of the portion of the property to be developed.

Located in the Saranap area of Walnut Creek, the project is also subject to specific policies in the Contra Costa County General Plan (2005-2020). The County's General Plan policies for the Saranap area state that the undeveloped hillside south of Olympic Boulevard and west of Tice Valley Boulevard is designated for Single-Family Residential – Medium Density development along the base of the hill along Olympic, with the remainder of the site designated as Agricultural Lands and Open Space, to reflect the steep, unbuildable slopes. Proposed construction takes place at the base of the hillside and no construction is proposed within the area of the parcel with an Open Space (OS) General Plan land use designation. The proposed residence would be located on the northeastern portion of the subject lot at least 140 horizontal feet from the ridgeline along the southwestern property line. Therefore, the project as proposed is consistent with the policies set forth for the Saranap area of Walnut Creek area pursuant to the County's General Plan.

### Zoning Compliance

The subject property is located within the Single-Family Residential Zoning District (R-20). A detached single-family dwelling is a use allowed by right within this zoning district. However, pursuant to County Code Section 816-6.6004 of the Tree Protection and Preservation ordinance, all trees measuring twenty inches or larger in circumference (approximately 6.5 inches in diameter), as measured four and one-half feet from ground level, on undeveloped property within any zoning district, are code protected trees. Since the construction of the new, two-story single-family residence and retaining walls would

require the removal of 22 code-protected trees and work within the driplines of six (6) code-protected trees, the applicants were required to submit a tree permit application before submitting for building permits.

Development is limited to the northeastern portion of the lot due to topography, 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. Despite these limitations, the new residence would be located at the base of the hillside on the flattest portion of the lot, and meet all of the required development standards pursuant to the R-20 zoning district. As proposed, the residence would be set back 25 feet from the front property line (property line adjacent to the private road easement), set back 15 feet from the eastern side yard property line, more than 20 feet from the secondary front property line (portion of the property adjacent to Olympic Boulevard), more than 20 feet from the northwestern side yard property line, more than 15 feet from the rear (southwestern) property line, and more than 20 feet from the southeastern side yard property line. Additionally, the new residence will be 24 feet tall, but measure 27 feet tall from existing grade (due to the proposed grading for the residence), thus complying with the 35-foot height limitation for residences in the R-20 zoning district. Additionally, Condition of Approval #9 ensures that any retaining wall, not meeting the required setbacks (e.g.: the retaining wall located along the northern portion of the eastern property line), shall not exceed 3 feet in height. Condition of Approval #10 prevents the removal of any trees before a building permit is obtained. Since a detached single-family residence is a permitted use and does not conflict with the residential nature of the surrounding neighborhood, it meets the intent and purpose of the R-20 Zoning District and is an appropriate use for the site.

### Conclusion

The purpose of the County's Tree Protection and Preservation ordinance is to provide for the protection of trees on private property by controlling tree removal while allowing for the reasonable enjoyment of private property rights and property development. Staff finds that the proposed development is consistent with the Single-Family Residential Low-Density (SL) General Plan land use designation and complies with the intent and purpose of the Single-Family Residential District (R-20). Therefore, staff recommends that the Board of Supervisors deny the appeals and sustain the County Planning Commission's approval of County File #TP19-0036, based on the attached findings and subject to the attached conditions of approval.

### CONSEQUENCE OF NEGATIVE ACTION:

If the Board of Supervisors grants the appeal, the County Planning Commission's decision to uphold the County Zoning Administrator's approval of the tree permit, to allow 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, will be overturned. The applicants, Tambri Heyden and David Montalbo, would be unable to move forward with the project as proposed.

## CLERK'S ADDENDUM

**Speakers: David Montalbo and Tambri Heyden (Applicants), Patricia McGregor and William Schultz (Appellants); Bronwyn Shone (Appellant); Diana Daniels; Mary Thiessen; Joe McNeil, resident of Pleasant Hill; Edward Soares, resident of Walnut Creek; Allan Moore, resident of Walnut Creek; John Bakker, resident of Oakland; Clarence Lehman.**

Written materials were provided by (attached): Mary Thiessen and Bob Thiessen, Corrina Gould, Confederated Villages of Lisjan; Bronwyn Shone.

1. CLOSED the public hearing;
2. DETERMINED that the proposed project is exempt from the California Environmental Quality Act  
(CEQA) under CEQA Guidelines Section 15303(a) (new construction of one single-family residence);
3. DENIED the appeals of Patricia McGregor, William Schultz, and Bronwyn Shone;
4. APPROVED a tree permit to allow the removal of 22 code-protected trees and work within the driplines of six code-protected trees for the purpose of constructing a new single-family residence on West Newell Avenue in the unincorporated Saranap area, County File #TP19-0036;
5. DIRECTED staff to add Conditions of Approval to the permit to:
  - a. Require a pre-construction survey to examine the possible existence of nesting birds
  - b. Address the possible finding of archeological remains during the work
  - c. Require the developer to provide restroom facility for workers on site
  - d. Require the developer to ensure surrounding neighbors are provided with contact information for the County to report any observed violations
6. APPROVE the findings and conditions of approval for County File #TP19-0036; 7. DIRECTED the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk.

## ATTACHMENTS

Findings and Conditions of Approval

McGregor/Schultz Appeal Letter

Bronwyn Shone Appeal Letter

Maps

Tree Protection and Removal Plan (Trees Proposed for Removal are Highlighted in Yellow)

Project Plans

Revised Arborist Report

Arborist Report Addendum

Existing Tree Count

Email Exchange Between Arborist and Applicant, between August 1, 2019 - August 13, 2019

Email Exchange Between Arborist and Applicant, between September 24, 2019 - October 3, 2019

Consulting Arborist's Response to Apellant's Arborist Letter

Letter from Cyrus Mashhoodi, P.E.

CCCFPD Approval Letter

Email from CCCFPD

Geotechnical Report from Bear Engineering Group

PowerPoint Presentation