



**Contra  
Costa  
County**

To: Board of Supervisors  
From: John Kopchik, Director, Conservation & Development Department  
Date: October 11, 2022

Subject: Appeal of the County Planning Commission's Decision to Approve Tree Permit County File #CDTP21-00076

**RECOMMENDATION(S):**

1. OPEN the public hearing on an appeal of a Planning Commission decision to approve a Tree Permit to construct a new single-family residence on an undeveloped lot that requires removal of 21 trees consisting of 20 Oak trees and 1 Bay Laurel tree and work within the dripline of 5 Oak trees, and removal of 5 additional Oak trees because they are dead, at 5 Casa de Campo in the unincorporated Martinez area of the county (County File #CDTP21-00076), RECEIVE testimony, and CLOSE the public hearing.
2. DENY the appeal of Mr. and Mrs. Dan and Sibhan Stokes of 130 Oak Bridge Lane in Martinez.
3. APPROVE Tree Permit CDTP21-00076 to allow the removal of 21 trees consisting of 20 Oaks and 1 Bay Laurel and work within the dripline of 5 Oaks to develop a single-family residence on a vacant lot, and allow the removal of 5 additional Oaks that are dead, at 5 Casa de Campo in the unincorporated Martinez area.
4. APPROVE the findings in support of the project.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY  
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

Action of Board On: **10/11/2022** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**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: October 11, 2022

Monica Nino, County Administrator and Clerk of the Board of Supervisors

Contact: Dominique Vogelpohl,  
(925) 655-2880

By: June McHuen, Deputy

cc:

5. APPROVE the project conditions of approval.

6. DETERMINE that the project is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15303(a)(new construction).

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

**FISCAL IMPACT:**

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

## **BACKGROUND:**

This hearing is to consider an appeal of the County Planning Commission's June 22, 2022 decision to deny an appeal and approve a tree permit to allow the removal of 26 trees and work within the driplines of 5 trees for the purpose of constructing a new single-family residence at 5 Casa de Campo in the unincorporated Martinez area.

**Site Description:** The subject property is a 5.619-acre vacant lot that is part of the Creekside Oak Estates subdivision in an established single-family residential neighborhood within the unincorporated area of Martinez. The subject property is located on Casa de Campo and is accessed from Alhambra Valley Road via Creekside Oaks. The property slopes up from the street and nearly the entire property supports slopes in excess of 26%. The area and property itself are in a natural setting of native oak trees. The property also has a Restricted Development Area easement that encompasses nearly half of the lot area, and is located along the north, east, and south boundary lines. There is an existing road and driveway that were previously constructed with the creation of the subdivision.

**General Plan Land Use Designation** The subject property is located within an Agricultural Lands (AL) General Plan Land Use designation. The purpose of the AL designation is to preserve and protect lands capable of and generally used to produce food, fiber, and plant materials. However, properties located in the Agricultural Lands designation are also permitted for residential use. The approval and recordation of the Creekside Oak Estates subdivision legally established the subject property to be used for residential development. The proposed development necessitating the tree permit is the construction of one single-family residence on the subject property. Therefore, the proposed development is consistent with the Agricultural Lands designation. The Land Use Element of the County General Plan provides policies for specific geographic areas of the unincorporated County. These specific area policies focus on providing additional policies that pertain to the unique characteristics and needs of each identified area. Pursuant to Figure 3-2 (unincorporated Communities with Adopted Area Policies) of the Land Use Element, the subject property is not located within one of these identified communities.

**Zoning District:** The subject property is located within a General Agricultural (A-2) zoning district. A single-family residence (and the accessory structures and uses normally auxiliary to it) is a permitted use in A-2. The proposed development is the construction of a single-family residence, which is a permitted use that is also consistent with the development standards of A-2. Therefore, the proposed development is consistent with the intent and purpose of the A-2 zoning district.

**Project Description:** The Applicant requests a tree permit to allow removal of 26 code-protected trees and work within the dripline of 5 code-protected trees for the purpose of constructing a single-family residence on a vacant lot located at 5 Casa de Campo in the unincorporated Martinez area. To allow for the development of the

property, the applicant has requested to remove 17 Coast Live Oaks (between 6.5-64 inches trunk diameter), 3 Valley Oaks (between 8-14 inches trunk diameter), and 1 Bay Laurel (20 inches trunk diameter), and work within the dripline of 3 Coast Live Oaks (between 8-26 inches trunk diameter) and 2 Valley Oaks (14 and 16 inches trunk diameter). The applicant also requests to remove 5 dead Coast Live Oaks (between 13-43 inches trunk diameter) from the property. The proposed residence will be located within the Creekside Oak Estates subdivision and the Alhambra Valley Specific Plan area.

**County Planning Commission:** The requested tree permit was tentatively approved by the County Zoning Administrator on February 18, 2022. A letter of appeal was received on February 28, 2022, from Dan and Sibhan Stokes. The appeal was heard by the County Planning Commission (CPC) on April 27, 2022. The item was continued to June 22, 2022, to allow the Appellants time to have their own arborist report prepared. The Appellants provided an arborist report prepared by certified arborist John Traverso (WE-0206-B) of Traverso Tree Service. After discussing the Traverso arborist report and taking testimony, the CPC denied the appeal and approved the tree permit as recommended by County staff.

On July 5, 2022, the Appellants filed an appeal of the CPC's approval of the tree permit. The main points of the appeal are summarized below, followed by staff's responses.

Appeal Point #1: Five trees slated for removal are Heritage Trees, the removal of which was not properly analyzed under the County's Heritage Tree Protection Ordinance.

Staff Response to Appeal Point #1: The County's Heritage Tree Protection Ordinance requires that trees designated by the Board of Supervisors as heritage trees may only be removed upon the issuance of a permit. The original Creekside Oak Estates subdivision approval included a Heritage Tree Program that nominated certain listed trees for designation. Five of the trees that the Applicant has requested to remove were nominated under the Program (Trees #293, #4143, #4157, #4197, and #4198). Neither the Appellant nor staff have identified the Board of Supervisors resolution approving the heritage tree designation for any tree nominated under the Program. But assuming the referenced trees were properly designated, the requested tree permit would authorize their removal in accordance with the County's Heritage Tree Protection Ordinance. The Ordinance authorizes the issuance of a permit to allow the removal of a heritage tree based upon the consideration of enumerated factors, including whether development is prevented as a result of heritage tree protection and preservation. The subject site is constrained significantly by natural hillsides and a recorded scenic easement restricting development. The subdivision established the future development area to be the least impactful, and the road and driveway are already constructed further restricting the feasible development area.

Appeal Point #2: The project as approved is not consistent with the Alhambra Valley Specific Plan's Goals, Policies, and Design Regulations.

The Appellant cites the following goals and policies:

The Environment –

- i. Goal #1: Preserve and enhance both the natural and man-made environment in Alhambra Valley.
- ii. Policy 3: Hilltops, ridges, rock outcroppings, mature stands of trees and other natural features shall be preserved to the greatest extent possible in the design of new projects.

New Development –

- i. Goal 1: Allow development in accord with the goals and policies of the Countywide General Plan as it pertains to Alhambra Valley.
- ii. Policy 2: Ensure that the applicable rules for environmental protection are applied to both major and minor subdivisions.

Staff Response to Appeal Point #2: The proposed development area was established under the subdivision approval for Creekside Oak Estates. Future development envelopes were identified at the time of subdivision to be least impactful and consistent with the General Plan and Alhambra Valley Specific Plan. See, for example, Figure 2 of the *Creek Preservation and Enhancement Plan, Creeksbank – Riparian Habitat Setback Verification Plan, and Tree Impact Analysis* report prepared by W.E.S Technology Corp, dated July 15, 1993. The building site is also dictated by the restricted development area easement. The restricted development area is a product of the Rural Residential Development “Ranchette” policy, a General Plan policy applicable in the Alhambra Valley, as it relates to major subdivisions.

The house does follow the natural contours of the hillside while also setting into it to minimize visibility. Its lower level is cut into the hillside to minimize bulk, and it terraces with the uphill slope. There is a second story, but it is setback to keep in scale with the neighboring residences, pursuant to the Alhambra Valley Specific Plan guidelines. Additionally, the grading is only to cut into the hillside and around the building’s footprint to restabilize the hillside. The only fill that is proposed is for the driveway to create vehicular access to the garage. To minimize visibility of the proposed development from Alhambra Valley, the building is tucked into the hillside to reduce the bulk by excavating below grade. The recommended tree permit also includes condition of approval #10(A), requiring a tree replacement plan to assist in screening the building from Alhambra Valley Road.

Staff believes the proposed development is respectful of the natural landscape in only proposing tree removal and grading that is necessary to safely construct a single-family residential building on the site, while complying with the subdivision restrictions and the redistricted development area.

Appeal Point #3: The project and tree permit do not comply with the conditions of approval for the original Creekside Oaks Estates subdivision, specifically Condition Nos.

3(F), 13, 20(F), 20(H), and 21.

Staff Response to Appeal Point #3:

1. Condition No. 3(F) provides that the Creekside Oak Estates subdivision approval was based, in part, on a Tree Impact Analysis prepared by W.E.S Technology Corporation, dated July 15, 1993. Appellants quote from the Analysis that “It is recommended that a certified arborist be contacted during individual lot design to minimize the effects on these trees” and “Tree impacts can be largely reduced through redesign.” The condition does not present any restriction on future development of individual lots. But the Analysis recognizes that a project and site-specific analysis of tree impacts by an arborist should occur. This has occurred under this tree permit application. The Applicant had an arborist report, specific to the proposed development, prepared by certified arborist Robert Peralta (#WE-7150A) of Bob Peralta Arbor Consulting, dated November 3, 2021. The report is based on a site visit conducted on October 31, 2021. Mr. Peralta assessed a total of 36 trees that surround the proposed home site, including 29 Coast Live oaks, 6 Valley oaks, and 1 Bay Laurel. The arborist report identified 5 dead trees that need to be removed before they fail. The report also identified 8 critical trees that are leaning so severely they cannot be safely pruned and recommended these trees for removal. The report also identified additional trees that are in poor condition with poor canopy structure and canopies full of deadwood from the competing trees growing above them. These trees are also recommended for removal before they fail or die off creating fire hazards.

Due to their current health condition, the trees identified in the report as critical or poor and that are also located within the grading areas are not anticipated to survive post construction and are recommended for removal. The trees to be removed due to construction of the residence and retaining walls cannot be avoided. However, mitigation measures are feasible to protect during construction the trees identified in the report as being in fair condition. These mitigation measures will be required to be in place throughout the entire construction period.

The Tree Impact Analysis cited by the Appellants provided tree protective measures, applicable to tree conditions in 1993, for the grading and construction of overall site improvements, including utility lines, drainage, and roads for the subdivision, that occurred after the final map was recorded for the subdivision. The current arborist report prepared for the proposed development provided tree analysis for the current condition for the onsite trees and protective measures with respect to the “individual lot design” as recommended at the time of subdivision approval.

2. Condition No. 13 provides: The applicant or owner shall submit grading plans for review and approval of the Zoning Administrator prior to issuance of a grading permit for the purpose of tree preservation. All the mitigations contained in the July 15, 1993 Tree Impact Analysis are mandated. Prior to the submission to the Zoning Administrator, a licensed arborist shall have an opportunity to comment on the proposed plan relative to compliance with required tree preservation measures.

This condition of approval was applicable to grading plans and permits necessary for the grading and construction of overall site improvements, including utility lines, drainage, and roads for the subdivision, that occurred after the final map was recorded. The only condition of approval derived from the 1993 Tree Impact Analysis that applies specifically to the future development of the subject site is Condition No. 20(F).

3. Condition No. 20(F) imposes as conditions on the subdivision the recommendations for the 1993 Tree Impact Analysis, including that “The driveway of Lot #3 should parallel the existing roadbed and the Lot #3 site should be moved downhill, out of the major tree mass to the extent feasible.” The grading plans for the driveway of the subject property (Lot #3) were reviewed and approved in 2007 under the compliance review report for the subdivision and building permits BI396988 and BI369455, and were found it to be to be consistent with Condition No. 20(F) as the driveway was shown to run parallel with the existing roadbed. The additional driveway being proposed with the proposed development directly connects to and extends from the end of the existing driveway running east, parallel with what is existing and away from the tree mass. The house site is as downhill as feasible without encroaching into the restricted development area. Additionally, if the house site were shifted north, as requested by the Appellant, this would be going uphill not downhill, and the new portion of the driveway would have to run perpendicular to the existing driveway, in conflict with Condition No. 20(F). This would result in extensive grading and additional impacts. The proposed development complies with Condition No. 20(F) because it is located downhill, away from the major tree mass “to the extent feasible” while avoiding the restricted development area.

4. Condition No. 20(H) imposes as conditions on the subdivision the recommendations for the 1993 Tree Impact Analysis, including that– “For any locations where the road passes close to trees located uphill of the road, retaining structures should be used to minimize impacts of grading on root zone integrity.” This condition of approval is not applicable as no roads are proposed.

5. Condition No. 21 required the subdivider provide for the replacement of trees for every 20 inches of aggregate circumference of trees proposed for removal. This condition of approval is specific to the tree removal done for the grading and overall site improvements (utility lines, drainage, roads, etc.) after the final map was recorded. The required tree replanting specific to that work has already taken place and was verified by County staff prior to releasing the tree bond for the subdivision on August 18, 2010.

Appeal Point #4: The proposed development does not comply with the amended map for the Creekside Oak Estates subdivision filed January 25, 2004, including the map’s Grading Plan, Tree Protection Plan, and Tree Schedule, each attached to the appeal.

Staff Response to Appeal Point #4: The referenced grading plan and the tree removal schedule and protection plan for the subdivision are specific to the grading and construction of overall site improvements, including utility lines, drainage facilities, and

roads, that occurred after the final map was recorded. Individual site development understandably requires site and project specific grading plans, which will include site and project specific tree protection measures. Here, the requested tree permit would require tree protection measures as specified in the project arborist report prepared for the proposed development.

Appeal Point #5: The Appellant contends that the project arborist report prepared by Bob Peralta was materially incorrect, creating an insufficient basis to make substantive findings.

Appeal Point #5a: The project arborist report failed to identify any trees as heritage trees.

Staff Response to Appeal Point #5a: See staff's response to appeal point #1 above.

Appeal Point #5b: The arborist report failed to label some trees, improperly measured other trees, and inadequately analyzed tree grove health in totality as a grove and instead analyzed each tree as an individual.

Staff Response to Appeal Point #5b: The Appellant's report stated, "It is [certified arborist John Traverso's] opinion that the [project] arborist looked at each tree individually and not as being a part of a grove. This would reduce both their health and structural ratings." Staff recognizes that the two arborists assessed the trees using different methodologies. Staff acknowledges that this may result in differing opinions amongst qualified professionals, but does not find it a sufficient basis to discount the findings of the project arborist report.

Appeal Point #5bi: Deed Recorded Heritage Tree #293 was listed in the Arborist report as a 19" tree in critical health. This tree, in the 2003 Hortscience Tree Survey was denoted as multi-stemmed, in good condition with a 4 out of 5 health rating, and had primary trunk diameters of 28" and 27" inches. The 2003 Hortscience Tree Survey health status was affirmed August 18, 2010 under the compliance review for Tree Bond Release – Subject SD907609.

Staff Response to Appeal Point #5bi: A 2003 tree survey, even if reaffirmed in 2010, is not relevant to the current health status of the tree, and does not invalidate the health status finding in the current project arborist report.

Appeal Point #5bii: Deed Recorded Heritage Tree #4157 was listed in the Arborist report as poor health with diameters of 30" and 28". The 2003 Hortscience Tree Survey was denoted as Good health, with a 4 out of 5 health rating and trunk diameters multi-stemmed trunk diameters of 21", 20", 18", and 5". The 2003 Hortscience Tree Survey health status was affirmed August 18, 2010 under the compliance review for Tree Bond Release – Subject SD907609.

Staff Response to Appeal Point #5bii: A 2003 tree survey, even if reaffirmed in 2010, is not relevant to the current health status of the tree, and does not invalidate the health



status finding in the current project arborist report.

Appeal Point #5biii: Tree #4198 was listed as being dead, when it is in fact alive.

Staff Response to Appeal Point #5biii: The appellant arborist report found tree #4198 to be in “fairly good condition”. Staff is not an expert in the field, so the difference in health assessment of tree #4198 is a matter of a difference in professional opinion. However, it is worth noting that the other four trees the project arborist report found to be dead the appellant arborist report agreed.

Appeal Point #5biiii: Tree #2770 was listed as a 30” oak, and is actually 11”.

Staff Response to Appeal Point #5biiii: The indicated tree trunk diameter may or may not be an oversight, but the project arborist report does depict the correct location of tree #2770.

**Appellant Arborist Report**: The Appellant provided a counter arborist report prepared by certified arborist John Traverso (WE-0206-B) of Traverso Tree Service, dated June 6, 2022. The Appellant’s arborist report disputed several of the findings in the project arborist report. Mr. Traverso found tree #293 to be healthy, while Mr. Peralta found it to be in critical condition. Mr. Traverso found tree #4198 to be in “fairly good health”, while Mr. Peralta found it dead. As stated earlier, the two arborists assessed the trees using different methodologies. Staff acknowledges the difference in professional opinion, but does not find it a sufficient basis to discount the findings of the project arborist report.

Lastly, Mr. Traverso believes that 6 trees could be saved if the building footprint was moved and the grading reduced. As described above, the proposed development area cannot be feasibly moved further outside of the “tree mass”. The processing of the subdivision application that created the subject lot, took retaining the natural landscape into consideration, and designed prospective building sites accordingly with the inclusion of the restricted development easement areas. Though the subject property is 5.6 acres, the actual developable area is only approximately 2 acres as a result of the scenic development easement area, and with the amount of trees on the property and it being a hillside development is further limited. The subdivision established the area where the house is proposed to be the least impactful with the recording of the restricted development area easement and the road design. Also, the road and driveway were already constructed with the creation of the subdivision, so the house site is already predetermined. This development (building, structures, and grading) is outside the restricted development area and at the end of the already constructed road, resulting in the least amount of grading and tree removal. The house cannot be feasibly located elsewhere. Additionally, there is a retaining wall proposed to run along the back of the building in the tree mass to provide pedestrian access to the rear of the site per Fire code that the appellant arborist report did not consider.

### CONSEQUENCE OF NEGATIVE ACTION:

If Board of Supervisors grants the appeal, the requested tree permit would be denied. The proposed development of a single-family residence on the subject property could not proceed, and the property would remain undeveloped.

### CLERK'S ADDENDUM

**Presentation from legal representative for Mr. and Mrs. Dan and Sibhan Stokes, Vince Moita. Presentation by David Viggiano, USGO Land LLC, project architect.**

Speakers: Leslie Ries, Alhambra Valley Improvement Association; Todd Kilbourne; Jay Howard; No name given.

Written commentary received from: Kenric and Billie Fivella; Delores White; Jamie & Mike Menasco; Marell & Mike Jones; Dave Silva and Leslie Walsh; Gary Thompson and Carol Arnold; Vickie Dawes (attached).

### ATTACHMENTS

Findings and Conditions of Approval

Maps

Project Plans

Project Arborist Report

Site Photos

Appeal Letter

Appellant's Arborist Report

Planning Commission Staff Reports

Staff Presentation