

DRAFT – FEBRUARY 9, 2007

## TREE REMOVAL PERMIT

<b>FILE NO.</b>	<b>TR05-178</b>
<b>LOCATION OF PROPERTY</b>	1099 Camino Ricardo
<b>ASSESSOR'S PARCEL NUMBER</b>	264-59-081
<b>ZONING DISTRICT</b>	R-1-8 Single-Family Residence District
<b>ENVIRONMENTAL STATUS</b>	Exempt
<b>OWNER/ADDRESS</b>	Anita and Todd Holt PO Box 1066 Tres Pinos, CA 95075

### FACTS

The Director of Planning finds that the following are the relevant facts regarding this proposed project:

1. The subject site is 0.14 gross acres and is located within the R-1-8 Single Family Residence Zoning District. An existing Deodara Cedar tree, located on the corner of the lot, has been designated Heritage Tree No. HT-06-002 by the City Council on August 14, 2004, Resolution No. 72274.
2. This Permit does not consider or allow removal of the Heritage Tree.
3. The surrounding properties are zoned R-1-8 Single Family Residence and are predominately developed with single-family detached residences.
4. The subject site has a designation of Medium Low Density Residential (8 DU/AC) on the San Jose 2020 General Plan/Land Transportation Diagram.
5. Property owner Buu Phan Van filed for this Tree Removal Permit on December 19, 2005 requesting to remove two ordinance size California Sycamore trees and one non-ordinance size Sycamore tree on the subject site.
  - a. Prior to filing the subject Tree Removal Permit, property owners Buu and Le Thi Phan and Manuela and Todd H Pardula filed Building Permit File No. 05-052854 on September 13, 2005 requesting to construct a new 2,750 square foot two-story

single-family detached residence on the undeveloped property located at 1099 Camino Ricardo.

- b. Planning staff meet with the property owner on September 13, 2005 and explained 1) that the floor area ratio of the proposed single-family detached residence exceeded 0.45 of the lot and that the proposal required a Single Family House Permit, 2) the trees shown on the site plan were not consistent with the actual locations of the trees on the site and that the Heritage Tree was not shown on the plan, 3) revised plans were required that depicted the accurate location of all existing trees on the site and 4) a separate Tree Removal Permit was required for any proposal to remove any Ordinance or Heritage tree on the site.
  - c. Planning staff met with the applicant after the subject Tree Removal Permit was filed. On January 27, 2006, Planning staff requested additional evidence from the property owner to support the applicant request for a Permit to remove the Sycamore trees, including: 1) a set of architectural plans that showed the accurate location of all existing trees, 2) the location of a proposed single-family detached residence that was designed to preserve and protect the existing trees and 3) a certified arborist report that included specific measures to preserve and protect the three Sycamores and the heritage tree.
6. At the time this application was filed, two ordinance size California Sycamore trees that measured 100 and 104 inches in circumference as measured at two feet above grade and one non-ordinance size Sycamore tree that measured 47 inches in circumference as measured at two feet above grade existed in the southwesterly portion of the site.
  7. As per Title 13 of the San Jose Municipal Code, a Tree Removal Permit is required for any tree proposed for removal if it measures 56 inches or greater as measured at two and a half feet above grade.
  8. The purpose of the tree removal regulations included in Title 13.32 of the San Jose Municipal Code is to promote the health, safety and welfare of the City's residents by controlling the removal of trees in the city.
  9. Title 13.32 of the San Jose Municipal Code cites numerous benefits trees provide, including but not limited to, enhancing the scenic beauty of the city, increasing property values, contributing to energy efficiency, reducing urban temperatures, decreasing the amount of urban/stormwater runoff, serving as windbreaks, purifying the air and producing oxygen.
  10. This project has been determined to be exempt from environmental review under Section 15304 of the California Environmental Quality Act.
  11. A Certified Arborist report, dated April 25, 2006, prepared by Barrie D. Coate & Associates, was emailed to Planning staff by the applicant on June 16, 2006.
  12. Planning staff determined that the report did not include specific measures to preserve and protect the Heritage Deodar Cedar tree and did not address the measures necessary to preserve and protect the Sycamore trees during construction. Planning staff requested that

- the applicant provide a revised arborist report that includes specifications and requirements to allow the construction of a single-family residence while preserving all existing trees on the site.
13. The applicant emailed Planning staff a revised arborist report prepared by Barrie D. Coate & Associates (dated July 5, 2006) on July 11, 2006. The report indicates specific building setbacks, root buffer zones, and tree protection measures that would be necessary in order to ensure survival of the Sycamore trees during construction. Planning staff explained that an architectural plan set that depicted the recommendations of the arborist was required in order for staff to conclude review of the Permit request and make a determination as to how to proceed.
  14. On December 13, 2006, the subject property was purchased by Todd and Anita Holt, the current owners of the property.
  15. Planning staff was notified by the community on January 3, 2007 that tree removal service companies were observed at the site performing estimates.
  16. On January 9, 2007 Planning staff sent a letter to the applicant detailing the steps to be taken to proceed with the Tree Removal application and requested verification of current ownership of the property. The letter was mailed to both the prior and current owner of the site.
  17. The community notified Planning staff via e-mail on January 14, 2007 that the three Sycamore trees were removed from the site on Saturday, January 13, 2007.
  18. Section 13.32.030 of Title 13 of the San Jose Municipal Code deems that it is unlawful for any person to remove, or cause to be removed, any live tree, as defined in Section 13.32.020, from any private parcel of land in the city unless one of the following conditions exists:
    - a. Removal of the tree(s) is required pursuant to the provisions of Chapter 13.28 of the Title 13 of the San Jose Municipal Code; or
    - b. A development permit that allows the removal of the tree(s) has been issued and accepted by the permit applicant pursuant to the provisions of Title 20 of the San Jose Municipal Code; or
    - c. An amendment to a development permit that allows the removal of the tree(s) has been issued and accepted pursuant to the provisions of Title 20 of the Municipal Code; or
    - d. A tree removal permit that allows the removal of that tree(s) has been issued and accepted pursuant to the provisions of this chapter.
  19. On January 18, 2007 Planning staff scheduled the subject Tree Removal Permit to be heard during the February 14, 2007 public Director's Hearing.
  20. On January 25, 2007, the current property owners, Todd and Anita Holt, signed the application form for this Permit request, allowing the Planning Division to take this project to public hearing for decision.

21. The Code Enforcement Division issued a compliance order on January 26, 2007 to the current property owners requiring them to contact the Planning Department by February 9, 2007 to proceed with a Tree Removal Permit and to obtain a permit on or before March 9, 2007.
22. Title 13 specifies that in order to grant a Tree Removal Permit, the Director of Planning, or the Planning Commission upon appeal, must make one or more of the following findings:
  - a. That the tree(s) affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of this chapter as set forth in Section 13.32.010' or
  - b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or
  - c. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.
23. Prior to the removal of the trees, sufficient evidence was not supplied to the Planning Department that supported the necessary findings to remove the Sycamore trees in that the trees were determined to be in fair condition by a certified arborist and it appeared possible to construct a single-family residence while preserving the trees. Planning staff believed that the removal of the trees would frustrate the purpose of the ordinance to promote the health, safety and welfare of the City's residents by controlling the removal of trees in the city, in that the trees were healthy, were not unreasonably restricting the economic development of the parcel in question, and were highly visible and significant to the surrounding community.
24. The canopy of the Sycamore trees covered a significant portion of the site and the trunk of each tree was substantial.
25. The removal of the trees is not consistent with General Plan Urban Forest Policy #3, which states, "The City encourages the maintenance of mature trees on public and private property as an integral part of the urban forest. Prior to allowing the removal of any tree, all reasonable measures which can effectively preserve the tree should be pursued."

**Based on the above facts, the Director of Planning finds:**

1. The trees affected were of a size, type and condition, and is in such a location in such surroundings, that their removal would significantly frustrate the purposes of this chapter as set forth in Section 13.32.010.
2. The trees affected offered significant benefits to the surrounding community, including but not limited to, enhancing the scenic beauty of the surrounding area and the city as a whole, increasing property values, contributing to energy efficiency, reducing urban temperatures, decreasing the amount of urban/stormwater runoff, serving as windbreaks, purifying the air and producing oxygen. Because of the canopy size and height of the trees, provision of replacement trees cannot truly remedy the negative impacts of removing the trees in the near term.
3. Provision of replacement trees in the amount specified by this Permit allows the Director to make the required findings to approve the after-the-fact removal of the trees.

After investigation and hearing held pursuant to Chapter 13.32 of the San José Municipal Code, the Director of City Planning concludes and finds:

1. That the trees affected were of a size, type and condition, and is in such a location in such surroundings, that their removal would not significantly frustrate the purposes of this chapter as set forth in Section 13.32.010 in that two ordinance-size Sycamore trees will be replaced as follows:
  - b. 10 replacement trees will be provided for each tree.
  - c. Of the 20 total required replacement trees: two 36-inch box native trees (Coastal Live Oak) will be planted on the site in the vicinity of the trees that were removed; two 36-inch box native trees (California Sycamores) will be planted adjacent to the site within the Willow Street public-right-of-way; and the remaining 16 24-inch box replacement trees will be provided in the form of a monetary contribution (\$300 per tree) to the Our City Forest non-profit organization to facilitate tree planting in the surrounding community.

Based upon the above-stated finding, the Director of Planning **approves** the subject Tree Removal Permit to remove two California Sycamore trees, approximately 100 and 104 inches in circumference as measured at two feet above grade, on a 0.14 gross acre site **subject to the following conditions and to the satisfaction of the Director of Planning:**

1. **Permit Expiration.** This Tree Removal Permit shall automatically expire 120 days from and after the date of issuance hereof by said Director if within such 120-day period evidence of fulfilling the requirements of this Permit have not been provided to the City, pursuant to and in accordance with the provisions of this Tree Removal Permit. The date of issuance is the date this Permit is approved by the Director of Planning.
2. **Replacement Trees.** Within 90 days of the approval of this Permit, the applicant shall replace the two ordinance-size trees with 20 replacement trees. The replacement tree requirement shall be implemented as follows:
  - a. Two 36-inch box native trees (Coastal Live Oak) shall be planted on the site in approximately the same location as the removed trees. The trees may be planted five feet south of the location of the trees that were removed to facilitate extra room for the future growth of the trees;
  - b. Two 36-inch box native trees (California Sycamore) will be planted adjacent to the site within the Willow Street public-right-of-way;
  - c. The remaining 16 24-inch box replacement trees shall be provided in the form of a monetary contribution (\$300 per tree) to the Our City Forest non-profit organization to facilitate tree planting in the surrounding community.

3. **Site Preparation.** Prior to the installation of the new trees, the planting area shall be prepared by removing all visible remains of the Sycamore trees including roots, and one foot of new soil shall cover the planting area.
4. **Tree Protection.** The on-site replacement trees, heritage tree, and street trees shall be protected during all future construction activities in accordance with the specifications provided by the arborist's report included in the project file. Any changes to the tree protection plan must be approved by the Director of Planning.
5. **Plan Required.** The applicant shall submit a Site Plan, to scale, indicating the proposed location of the replacement trees relative to adjacent property lines. The plan should also depict the location of the heritage tree. The plan should call out a ten-foot radius around each of the new trees that will be maintained free of structures and buildings to provide sufficient space for the new trees' root systems and future growth. The plan should call out the planting area where one-foot of new soil will be added to the site, and should call out all of the tree protection plan requirements specified by the consulting arborist to ensure survival of the trees during construction. The plan shall be submitted to the Director of Planning (with the project file number TR05-178 noted on the face of the plan) for review and must be approved by the Director in order to fulfill this Permit condition.
6. **Street Tree Permit Required.** Street tree installation shall be coordinated/ approved by the City Arborist.
7. **Proof of Donation.** Provide evidence of compliance with the donation requirement to the Planning Department within 60 days of the issuance of this Permit. Evidence shall be in the form of a receipt and brief cover letter indicating that this requirement has been met. The project file number (TR05-178) shall be placed on all correspondence.

The Director's decision may be appealed to the Planning Commission by submitting a completed Notice of Appeal on the form available in the Department of Planning and a fee. The appeal must be delivered in person and received on or before **5:00 p.m., February 26th, 2007.**

If the Director's decision is not appealed this Permit may be executed the day following this appeal period. If the decision is appealed, your Project Manager will notify you; you may not execute the Permit until after the Planning Commission makes a decision on the appeal.

**APPROVED and issued this on 16<sup>th</sup> day of February, 2007.**

JOSEPH HORWEDEL  
Director of Planning, Building and Code Enforcement

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Deputy