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City of Santa Cruz
Parks and Recreation Commission
809 Center Street
Santa Cruz, CA 95060

December 5, 2022

Meeting Date: December 12, 2022

Agenda Item: Appeal of Heritage Tree Permit TR22-0201

Dear Commissioners,

The Sierra Club encourages your Commission to deny this permit application. The required findings cannot be made to support this application for the removal of Heritage Trees on this parcel. Namely, with a complex development project such as seen here (Dev. Project Planning Application CP-22-0128), the finding that “(a) construction project design cannot be altered to accommodate existing heritage trees or heritage shrubs”¹ cannot be made, as that finding is not made until the final discretionary permit hearing before the Santa Cruz City Council. In addition, the Sierra Club makes official notice of the refusal of City staff to allow independent appeal under City of Santa Cruz Code 9.56.070(a)(1).

Required Findings

The Criteria and Standards require one of more of the findings to be made for removal of a heritage tree or heritage shrub:

- (1) The heritage tree or heritage shrub has, or is likely to have, an adverse effect upon the structural integrity of a building, utility, or public or private right of way; or
- (2) The physical condition or health of the tree or shrub, such as disease or infestation, warrants alteration or removal; or
- (3) A construction project design cannot be altered to accommodate existing heritage trees or heritage shrubs.

The Sierra Club asserts that any determination that this project design cannot be altered to accommodate existing trees is premature, and thus cannot be made. The discretionary development permit for the large project proposed for this location has not had its development permit hearings yet, at which point numerous determinations will be made by the decisional body for the project permit – the Santa Cruz City Council.

¹ Heritage Tree Ordinance Criteria and Standards; City of Santa Cruz Resolution No. NS-23,710

It will not be until that body has reviewed all aspects of the plans and impacts that it will have been decided that the “construction project design cannot be altered to accommodate existing heritage trees or heritage shrubs.” Although City staff can make recommendations to the City Council regarding the project design, no decision about possible alteration will have been made until the City Council has voted to approve the overall project (and the appeal period for that decision has run).

The addition to this Heritage Tree removal permit of a condition that no trees will be cut until that final project approval, and the issuance of subsequent building permits, does not cure the circumstance – the City Code requires that the finding be made to have issued this permit, and it cannot be made. The Parks and Recreation Commission cannot make or sustain such a finding at this appeal, as the reviewing body (the City Council) for the overall development project is the body with the authority to make this decision, and it has not yet made that decision.

Trees/Design

Although the Sierra Club believes that this appeal is not a proper forum for argument about the design and specific trees, as discussed above, it must be noted that the arborist’s report² had “judged five trees (nos. 4, 7, 9, 10 & 11) as worthy of preservation.” Of these, trees 4, 10, and 11 are streetside and appear not to interfere with any buildings, even as currently designed. A later arborist’s report states that “(a)ll twelve trees on site must be removed to accommodate construction.”³ This statement cannot be made affirmatively, as the project must undergo a discretionary development permit hearing where all such determinations will be made.

Potential Adverse Implication

With the Parks and Recreation Commission hearing this appeal,⁴ should this Commission uphold the permit it may be later argued by the Applicant and/or the City that a final determination on this issue (of design alteration to preserve trees) has already been made, thus precluding it from further deliberation. Yet the Parks and Recreation Commission is not tasked with the overall project design review. Should this Commission uphold this permit, it may interfere with later productive discussion on this issue.

Standing

The Sierra Club makes official notice that it attempted to follow the Appeal Procedure posted on the Tentative Permit, sending a designated representative to retrieve a “Form C” from the Parks and Recreation Department. The City refused to provide that form, saying that the Sierra Club could only be added onto the existing appeal. This occurred prior to the end date of the period for appeal. There is no basis in the City Code for this refusal by City staff to accommodate independent appeal. The Sierra Club did add itself to the list of Appellants for that

² Dryad, LLC report entitled Tree inventory and evaluations, dated January 18, 2022

³ Dryad, LLC report entitled Consulting Arborist services for development – addendum report, dated September 9, 2022

⁴ City of Santa Cruz Ordinance 2013-18, 9.56.070 Right Of Appeal


singular appeal (as that was all it was allowed to do), but is not bound by any assertions or statements made in that appeal filing. The Sierra Club also asserts that it maintains standing as an independent appellant in any future proceedings with regard to this matter.

Summary

The Sierra Club urges the Parks and Recreation Commission to deny this permit application.

Sincerely,

Michael A. Guth

A handwritten signature in cursive script that reads "Michael Guth".

Executive Committee Chair

Santa Cruz Group of the Ventana Chapter of the Sierra Club