



## Council Agenda Report

From: Darren Nash, Associate Planner

Subject: Oak Tree Removal Permit 17-003 (Kleck Road, Lot 7 – Phoenix) - Council consideration of OTR 17-003 request to remove of one oak tree (Tree No. 1683) and amendment of development plan building envelope in conjunction with the construction of a single family home. (APN 025-527-007)

Date: March 7, 2017

---

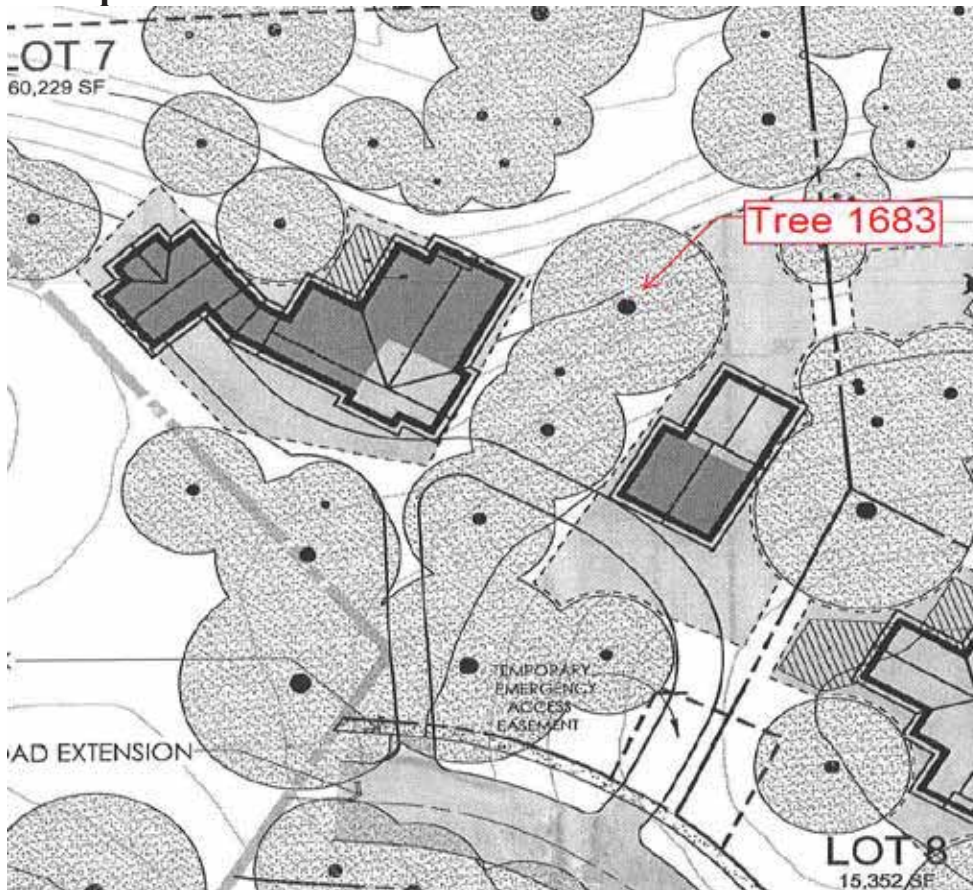
### **Facts**

1. Tract 2805 is located at the west end of Kleck Road; see Vicinity Map, Attachment 1.
2. Lot 7 is currently vacant. Phoenix Construction is in the process of developing plans to build a home on the lot. The lot has many oak trees and will require a custom home to be designed to accommodate the oaks. See Lot 7 Site Plan, Attachment 2.
3. With the approval of Tract 2805, the Planning Commission also approved PD 06-006, which approved a Development Plan for the Tract that included building envelopes on each lot, See Attachment 3. The building envelopes are areas outside of oak tree Critical Root Zones (CRZ) where homes would be built. As part of this oak removal request the applicant is also requesting to modify the building envelope/development plan for Lot 7.
4. Tree 1683 is a 24-inch Blue Oak, that was originally planned to be preserved. Chip Tamagni has evaluated Tree 1683 and indicates that since the original evaluation in 2006, the tree has had two major limb failures accounting for more than 50% of the canopy and there is multiple signs of decay. See Arborist Report, Attachment 5.
5. Planning Staff inspected the site to review the trees. Since the tree was shown to be saved on an approved development plan and the tree shows signs of growth, the Director could not make the determination that the tree is "clearly dead or diseased beyond correction," and therefore, Section 10.01.050.C of the Oak Tree Ordinance would consider the tree "healthy" and require that the City Council make the determination of whether the tree should be removed or not, after consideration of the factors listed in Section 10.01.050.D.
6. Chip Tamagni, on behalf of Phoenix Construction is requesting that the City Council waive the \$600 oak removal fee and the requirement to plant replacement trees. In his e-mail (Attachment 4) he indicates that per Section 10.01.050.B and G., that the existing disease of the tree is not the fault of the current owner.

**Tree 1683 – Lot 7 Tract 2805 – Dormant Blue Oak during winter**



**Development Plan – Lot 7**



## Options

1. Approve Draft Resolution A, approving OTR 17-003, authorizing the removal of Tree No. 1683 (24-inch Blue Oak) based on the tree being in poor health, as indicated in the Arborist Report and require the \$600 removal permit fee to be paid, and four (4) 1.5-inch diameter Blue Oak replacement trees (or a reduced number of larger diameter replacement trees adding up to 6-inches) be planted on site at the direction of the Arborist., and approve Draft Resolution B approving a modified Development Plan for Lot 7.
2. Approve Draft Resolution A, approving OTR 17-003, authorizing the removal of Tree No. 1683 (24-inch Blue Oak) based on the tree being in poor health, as indicated in the Arborist Report and **waive** the \$600 removal permit fee to be paid, and require the replanting of four (4) 1.5-inch diameter Blue Oak replacement trees (or a reduced number of larger diameter replacement trees adding up to 6-inches) on site at the direction of the Arborist; and approve Draft Resolution B approving a modified Development Plan for Lot 7.
3. Approve Draft Resolution A, approving OTR 17-003, authorizing the removal of Tree No. 1683 (24-inch Blue Oak) based on the tree being in poor health, as indicated in the Arborist Report and **waive** the \$600 removal permit fee to be paid, and **waive** the replanting requirement for four (4) 1.5-inch diameter Blue Oak replacement trees; and approve Draft Resolution B approving the modified Development Plan for Lot 7.
4. Denial OTR 17-003 with findings and require the oak trees to remain and be protected.
5. Refer back to staff for additional analysis.

## Analysis and Conclusions

The applicant has provided a written request that the Council waive the deposit and replacement tree requirement based on his determination that the condition of the tree (disease) is not the fault of Phoenix Construction. See e-mail from Chip Tamagni, Attachment 4.

Section 10.01.050 allows the Council to make exceptions to deposit and replacement requirements under the following circumstances:

- B. Exception to deposit requirements: A property owner may make a written request for authorization to remove a dead or diseased oak tree without the need to provide a deposit if he or she can provide documentation from a Certified Arborist on the City Council's approved list concluding that the tree's death or disease is not their fault.
- G. Exceptions to replacement requirement: A property owner may make a written request for authorization to remove a dead or diseased oak tree without the need to provide the required replacement trees if he or she can provide documentation from a Certified Arborist on the City Council's approved list concluding that the tree's death or disease is not their fault.

Kleck Road LLC has owned the Hidden Oaks tract for a number of years. Although tree is still alive, it is clearly in decline, which was likely, attributable to the drought. As such, the disease/decline is clearly "not their fault." However, native oak trees in decline can have scenic and habitat value, which could still merit mitigation replantings.

The City Council has full discretion to determine whether the trees warrant removal or not and whether the deposit and replacement trees should be required. If the Council does not approve the removal, the project can move forward with the development. It may be necessary to redesign the buildings in the vicinity of the trees to lessen impacts to the tree.

According to Section 10.01.050.D, there are several factors that the City Council needs to review when considering the removal of a “healthy” oak tree. These factors along with Staff’s analysis of each factor are listed below:

*D. If a request is being made to remove one or more healthy oak trees for which a permit to remove is required, the director shall prepare a report to the City Council, outlining the proposal and his recommendation, considering the following factors in preparation of his recommendation.*

- 1. The condition of the oak tree with respect to its general health, status as a public nuisance, danger of falling, proximity to existing or proposed structures, interference with utility services, and its status as host for a plant, pest or disease endangering other species of trees or plants with infection or infestation;*

Based on the Arborist indicating that the tree is in poor condition and has low aesthetic value, the tree appears to be good candidate for removal.

- 2. The necessity of the requested action to allow construction of improvements or otherwise allow reasonable use of the property for the purpose for which it has been zoned. In this context, it shall be the burden of the person seeking the permit to demonstrate to the satisfaction of the director that there are no reasonable alternatives to the proposed design and use of the property. Every reasonable effort shall be made to avoid impacting oak trees, including but not limited to use of custom building design and incurring extraordinary costs to save oak trees;*

It is possible for the project to be constructed in a manner that could retain the trees. The Arborist concludes that the trees are in poor condition. Given that the tree is currently in poor condition, and furthermore, it is anticipated that there could be further impacts to the trees as a result of construction of the project, removal would seem to be the best option.

- 3. The topography of land, and the potential effect of the requested tree removal on soil retention, water retention, and diversion or increased flow of surface waters. The director shall consider how either the preservation or removal of the oak tree(s) would relate to grading and drainage. Except as specifically authorized by the planning commission and city council, ravines, stream beds and other natural water-courses that provide a habitat for oak trees shall not be disturbed;*

The removal of the trees would not result in negative effects on soil retention, water retention or surface water flows for the neighborhood.

- 4. The number, species, size and location of existing trees in the area and the effect of the requested action on shade areas, air pollution, historic values, scenic beauty and the general welfare of the city as a whole;*

If the tree is allowed to be removed, there are many other trees that would remain on the site.

- 5. Good forestry practices such as, but not limited to, the number of healthy trees the subject parcel of land will support.*

The removal of the trees will require replacement trees to be planted on site, unless Council decides to waive the requirement. Additionally; the remaining oak trees on site will be protected.

**Option 1, 2 and 3:**

Approve the tree removal and amend the building envelope for Lot 7. After taking in consideration recommendation by the project Arborist to remove the trees, and consideration of the factors listed in Section 10.01.050.D (listed above) authorize the removal of the Tree No. 1683. Based on the tree

removal being part of a new development, require replacement trees to be planted as mitigation to the tree removal. It will be up to the Council to determine if the Applicant's request to waive the fee and/or replanting requirement for the project is warranted.

**Option 4:**

Deny tree removals. The project was originally approved with the preservation of Tree No. 1683.

**Option 5:**

Council may wish to refer the item back to staff for additional analysis.

**Fiscal Impact**

There is not a fiscal impact to the City related to this oak tree removal request. Oak trees can provide value to a property, and be an aesthetic value to the City as a whole. If the Council wishes to waive the \$600 application fee, the time and materials for providing the staff report to the Council would be covered from the General Fund.

**Recommendation**

Option 1. Based on the Arborist's recommendation and the factors listed in this staff report removal of the tree is justified with the planting of new replacement oak trees.

Approve Draft Resolution A, approving OTR 17-003, authorizing the removal of Tree 1683 (24-inch Blue Oak) based on the tree being in poor health, as indicated in the Arborist Report and require four (4) 1.5-inch diameter Blue Oak replacement trees (or a reduced number of larger diameter replacement trees adding up to 12-inches) be planted on site at the direction of the Arborist.

Approve Draft Resolution B, approving a modified building envelope/development plan for Lot 7.

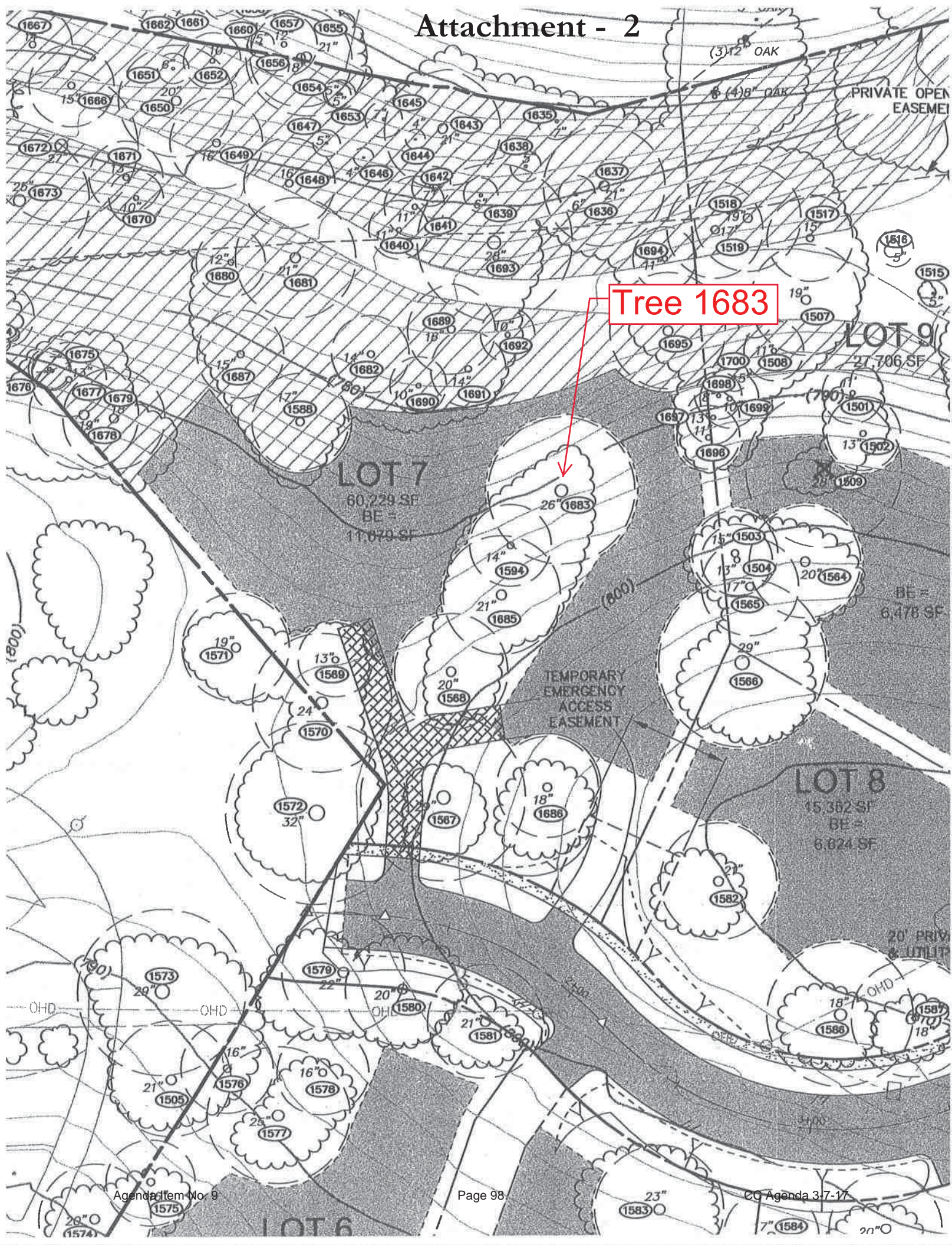
**Attachments**

1. Vicinity Map
2. Site Plan
3. Lot Dev. Plan
4. Chip Tamagni e-mail
5. Draft Resolution A - Approval the removal of the tree
  - a. A&T Arborist Report
6. Draft Resolution B – Approval of a modified development plan for Lot 7.

Attachment - 1



# Attachment - 2



# Attachment - 3

PRIVATE OPEN SPACE

LOT 9  
27,706 SF

LOT 7  
60,229 SF

Tree 1683

TEMPORARY  
EMERGENCY  
ACCESS  
EASEMENT

LOT 8  
15,352 SF

.K  
ROAD EXTENSION



Darren,

Per your request, both property owners (Kleck and Experimental) are hereby requesting that both the deposit requirement and the replacement requirements be waved. The Kleck Road tree obviously has had no impact anywhere near the tree and as I showed you is in obvious decline due to age. The Experimental oak had an old concrete pad 30-40 years old within the crz that has since been removed. Zero root damage occurred as I was present during the demo which is obviously not the reason the tree is in heavy decline. There were old mobile homes in the vicinity but they played no part in the decline of the tree. Excess weight caused the major break about 15 or more years ago. The break allowed decay to infest inside the tree trunk leading to the tree's decline.

Again, no fault of the owners previous or current. I am curious how the planning department would allow development so close to a tree in poor health as stated in the Althouse and Meade Report and at the same time allow the footing at the opposite end of the building to extend into the trunk of a healthy oak tree without asking any questions. Just curious.

Per section 10.01.050 B. (deposit requirement) and G. (replacement requirement), the disease in the trees is of no fault of the owner thereby allowing the owners to avoid financial impacts from diseased tree removal whereas the disease is obviously not their fault.

I am not an employee of the planning department so I feel it is not my responsibility to inform Ron and Andrew Berry about the building envelope as I would not want to mislead them in any way as that is a planning issue and not my area of expertise. With that said, please refer me to the law/ordinance that states that modifying the building envelope would have to go back to the PC because of a diseased tree. In addition, please also cite the section in the ordinance that states that:

"Based on both of these trees being part of previous oak tree preservation/mitigation requirements as part of Development Plans approved by the Planning Commission, both trees need to go to Council for approval of the removal requests."

I sure can't find it so please let me know where that came from. If you cannot, I have to assume this was made up.

Put these on council for the 7th. In the meantime, I am going to pursue other remedies to this bs from Frace.

Chip Tamagni, A & T Arborists

# Attachment 5

## Draft Resolution A

### RESOLUTION 17-xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES  
AUTHORIZING THE REMOVAL OF ONE 24-INCH DIAMETER BLUE OAK TREE  
AT 2022 KLECK ROAD – LOT 7 TRACT 2805 (OTR 17-003)  
(PHOENIX CONSTRUCTION)

---

WHEREAS, Chip Tamagni of A&T Arborists on behalf of Phoenix Construction has submitted a request to remove one oak tree on Lot 7 of Tract 2805, located at 2022 Kleck Road; and

WHEREAS, the trees proposed to be removed is one 24-inch diameter Blue Oak; and

WHEREAS, Chip Tamagni, Arborist has provided information indicating that the tree has had two major limb failures accounting for more than 50% of the canopy and there is multiple signs of decay, and recommends that the tree be removed to prevent future hazard in Exhibit A; and

WHEREAS, if the tree is approved to be removed, there are multiple other oak trees on the site that would be preserved; and

WHEREAS, since the tree was shown to be saved on an approved Development Plan and the tree shows signs of growth, the Community Development Director could not make the determination that the tree is “clearly dead or diseased beyond correction,” and therefore, Section 10.01.050.C of the Oak Tree Ordinance would consider the tree “healthy” and require that the City Council make the determination of whether the tree should be removed or not, after consideration of the factors listed in Section 10.01.050.D; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. All of the above recitals are true and correct and incorporated herein by reference.

Section 2. Findings. The City Council finds the factors outlined in Section 10.01.050.D, and the information provided by the Arborist, justify the removal of the 24-inch Blue Oak tree, based on the tree being in poor health and in danger of falling, as indicated in Exhibit A.

Section 3. Mitigation. Four (4) 1.5-inch diameter blue oak tree replacement trees shall be planted on site at the direction of the Arborist to mitigate the visual impact of the tree’s removal.

APPROVED this 7th day of March, 2016, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

Steven W. Martin, Mayor

ATTEST:

---

Kristen L. Buxkemper, Deputy City Clerk

Exhibits

A. A&T Arborist Report



11-8-2016

Phoenix Construction  
Attn: Andrew Berry  
CC: Darren Nash, City of Paso Robles  
Re: Diseased Tree Lot #7

This report is in regard to tree #1683, a 24" diameter blue oak (*Quercus douglasii*), located within the confines of lot #7 Kleck Road. This tree was planned to be saved back in 2006 when we completed the initial survey for the property. Since that time, the tree has suffered two major limb failures accounting for more than 50% of the canopy. I closely inspected the tree today and noticed the following:

There are about 6 or more active decay sites in the remaining limbs that are visible. There are also several conks (fruiting bodies) attached to the trunk and limbs in four different locations. Two of those spots have multiple years of decay (old conks and newer conks). We rarely see trees that have this many points of decay that are still standing. It will immediately become a hazard once a home is constructed and activity increases on this lot. We would expect this tree to completely fail in less than two years.

The tree definitely falls into the dead or diseased category giving The Community Development Director the authority to allow its removal. Four 1.5" diameter oaks will need to be planted on site before a final occupancy permit is granted by the city. The city is more than welcome for a site visit prior to granting the removal.

The following photographs illustrate the decline:



As can be seen in this photograph, the entire top has failed in the past. The newer break came off of the left scaffold. Obvious decay points throughout the tree.



Two separate years of conks. They are a sign that decay exists within the interior of the tree.



This photograph shows another conk along one of the remaining limbs (center left)

Please feel free to contact us with any questions.

Chip Tamagni  
Certified Arborist #WE 6436-A  
California State Pest Control Advisor #75850  
Certified Hazard Risk Assessor #1209  
Cal Poly B.S. Forestry and Natural Resources Management

# Attachment 6

## Draft Resolution B

### RESOLUTION 17-xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES  
APPROVING A MINOR MODIFICATION TO THE DEVELOPMENT PLAN BUILDING  
ENVELOPE FOR LOT 7 OF TRACT 2805  
AT 2022 KLECK ROAD – LOT 7 TRACT 2805 (OTR 17-003)  
(PHOENIX CONSTRUCTION – APN 025-527-007)

---

WHEREAS, Tract 2805 was approved by the Planning Commission along with PD 06-006 in July 2006, via Resolutions 06-0056, 06-0057, 06-0058; and

WHEREAS, Tract 2805 is located at the west end of Kleck Road; and

WHEREAS, in order to insure that there was a sufficient building envelope on each lot that protected the oak trees, an Oak Tree Location and Lot Development Plan was prepared; and

WHEREAS, on March 7, 2017, the City Council approved the removal of Tree No. 1683 on Lot 7, based on the tree being in poor condition; and

WHEREAS, with the removal of the tree, the applicant is requesting that the City Council approved a modified Lot Development Plan for the lot 7 as shown in Exhibit A; and

WHEREAS, as a result of the City Council approving the removal of Tree No. 1683, the building envelope for the lot can be expanded consistent with the intent of the original project approval; and

WHEREAS, since the building envelope expansion will not result in additional impacts to the remaining oak trees on the lot, a public hearing is not required; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. All of the above recitals are true and correct and incorporated herein by reference.

Section 2 Findings. Based upon the facts and analysis presented in the staff report, public testimony received and subject to the conditions listed below, the City Council makes the following findings as required by Government Code Sections 66474 and 65457:

1. Modifying the building envelope for Lot 7 to correspond with the removal of Tree 1683, would allow for additional area on the lot to build a home in a manner that would preserve the remaining oak trees on the Lot 7.

Section 3. Approval. The City Council does hereby approve a modified Lot Development Plan of Lot 7 of Tract 2805 /PD 06-006, subject to the following conditions of approval:

1. The building envelope of Lot 7 of Tract 2805 can be modified as shown on Exhibit A of this resolution.



APPROVED this 7th day of March, 2017, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

Steven W. Martin, Mayor

ATTEST:

---

Kristen L. Buxkemper, Deputy City Clerk

Exhibits

- A. Lot 7 Amendment Development Plan and Building Envelope

