



**TOWN OF LOS GATOS**  
**PLANNING COMMISSION STAFF REPORT**  
**Meeting Date: August 27, 2014**

**ITEM NO: 2**

PREPARED BY: Jennifer L. Savage, Senior Planner  
[jsavage@losgatosca.gov](mailto:jsavage@losgatosca.gov)

APPLICATION NO.: Tree Removal Permit Application T14-060

LOCATION: **205 & 215 Westchester Drive** (northwest side of Westchester Drive, approximately 0.25 miles northeast from the Westchester Drive and Camino del Cerro intersection)

APPLICANT/  
PROPERTY OWNER: John Fritz (215 Westchester Drive)

APPELLANT/  
CONTACT PERSON: Daniel J. Roberts (205 Westchester Drive)

APPLICATION SUMMARY: Appeal of a decision denying a Tree Removal Permit on properties zoned R-1:8. APNs 523-35-031 and 030.

RECOMMENDATION: Deny the appeal.

PROJECT DATA: General Plan Designation: Low Density Residential 0-5 units/acre  
Zoning Designation: R-1:8 – Single Family Residential, 8,000 square foot lot minimum  
Parcel Size: 8,000 square feet  
Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Ross Creek	Open Space	R-1:8
East	Residential	Low Density Residential	R-1:8
South	Residential	Low Density Residential	R-1:8
West	Residential	Low Density Residential	R-1:8

CEQA: The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15304: Minor Alterations of Land.

FINDINGS: ■ As required by the adopted Guidelines for the Implementation of the California Environmental Quality Act this project is Categorically Exempt, Section 15304: Minor Alterations of Land.

STANDARDS OF REVIEW: ■ As required by Section 29.10.0990 of the Town Code for a tree removal permit.

ACTION: The decision of the Planning Commission is final unless appealed within ten days.

EXHIBITS: 1. Location Map  
2. Findings and Standards of Review  
3. Draft Conditions of Approval (one page)  
4. Tree Removal Application (one page)  
5. Appeal Form and Letter, received May 7, 2014 (seven pages)

#### BACKGROUND:

On March 21, 2014, the Parks and Public Works Department (PPW) received a Tree Removal Application to remove a 62-inch diameter Sugar Pine tree (Exhibit 4). The tree is located at 215 Westchester and overhangs the property at 205 Westchester. The property owner for 215 requested the removal of the tree based on previous property damage from falling pine cones and fear of potential injuries to people or property at 205 Westchester. The Town's Arborist conducted an inspection and determined that selective pruning by a Certified Arborist would limit the amount of dropping foliage and cones. Therefore, the Tree Removal Application was denied on April 28, 2014.

The property owner of 205 Westchester appealed the decision on May 7, 2014 (Exhibit 5). The appellant believes that the tree is a public nuisance and could be removed pursuant to Town Code Section 29.10.0990 (1) described below. The appellant was not required to provide a report by a licensed arborist because the reason for removal does not involve tree health, disease, structural integrity, forestry practices, or similar issues.

#### ANALYSIS:

##### A. Standards of Review

The standards for review of Tree Removal Permits are set forth in Town Code Section 29.10.0990 (Exhibit 2). The appellant stated that the Sugar Pine should be removed pursuant to Section 29.10.0990 (1) which states:

“The condition of the tree or trees with respect to disease, imminent danger of falling or structural failure, proximity to existing or proposed structures based on a report from a certified arborist, structural damage to a building or a public nuisance caused by a tree. The danger of falling or failure shall be rated using the ISA Tree Hazard Rating Form or an approved equivalent.”

The Town’s Arborist conducted an inspection and found the tree in good health. The Town’s Arborist determined that selective pruning by a Certified Arborist would limit the amount of dropping foliage. Staff recommends denial of the appeal because pruning the tree would reduce the concerns raised by the appellant.

B. Environmental Review

The project is Categorically Exempt according to the adopted Guidelines for the Implementation of California Environmental Quality Act, Section 15304: Minor Alterations of Land.

SUMMARY AND RECOMMENDATION:

A. Summary

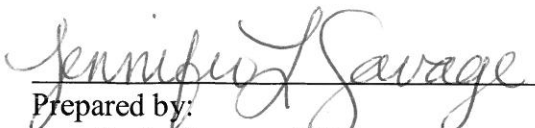
Staff recommends the appeal be denied because the tree can be pruned to limit the damage caused by the pine cones.


B. Recommendation

Uphold the denial of the tree removal permit and deny the appeal.

Alternatively, the Commission can:

1. Grant the tree removal permit appeal subject to the required canopy replacement;  
or
2. Continue the matter to a date certain with specific direction.

  
Prepared by:  
Jennifer L. Savage, AICP  
Senior Planner

  
Approved by:  
Laurel R. Prevetti  
Assistant Town Manager/  
Director of Community Development

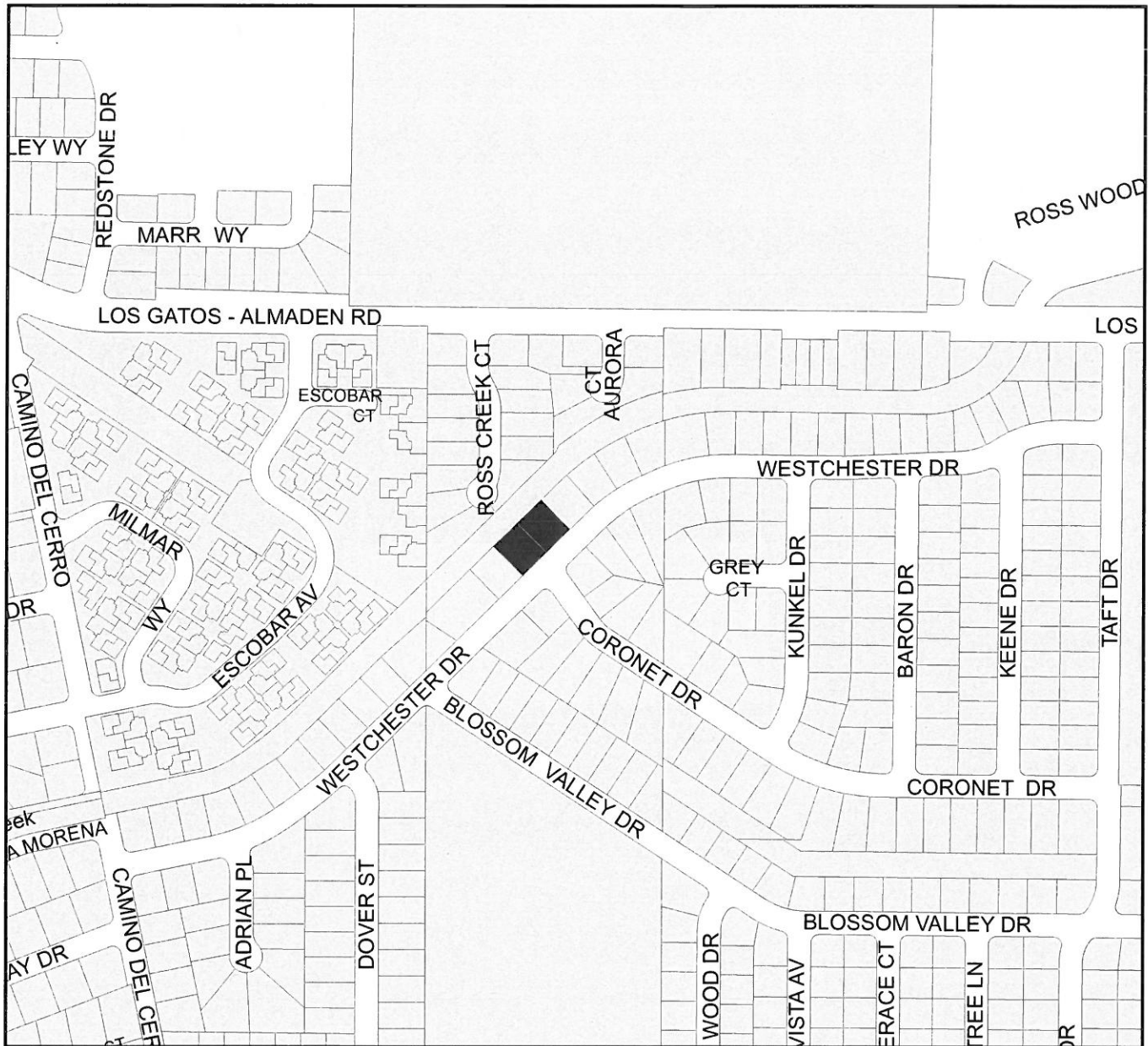
Planning Commission Staff Report - Page 4  
205 & 215 Westchester Drive/T14-060  
August 27, 2014

LRP:JS:cg

cc: Daniel J. Roberts, 205 Westchester Drive, Los Gatos, CA 95032  
John Fritz, 215 Westchester Drive, Los Gatos, CA 95032  
Matt Morley, Director of Parks & Public Works

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# 205 & 215 Westchester Drive



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**PLANNING COMMISSION – August 27, 2014**  
**REQUIRED FINDINGS & STANDARDS OF REVIEW FOR:**

**205 & 215 Westchester Drive**  
**Tree Removal Permit T14-060**

**Appeal of a decision denying a Tree Removal Permit on properties zoned R-1:8. APNs 523-35-031 & -030.**

**APPLICANT/PROPERTY OWNER: John Fritz**

**APPELLANT/PROPERTY OWNER: Daniel J. Roberts**

**FINDINGS**

**Required finding for CEQA:**

- The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of California Environmental Quality Act, Section 15304: Minor Alterations of Land.

**STANDARDS OF REVIEW**

**Required standards of review for a Tree Removal Application:**

- As required by Section 29.10.0990 of the Town Code for granting approval of a Tree Removal Application:

Each application for a tree removal permit required by this division shall be reviewed using the following criteria:

- (1) The condition of the tree or trees with respect to disease, imminent danger of falling or structural failure, proximity to existing or proposed structures based on a report from a certified arborist, structural damage to a building or a public nuisance caused by a tree. The danger of falling or failure shall be rated using the ISA Tree Hazard Rating Form or an approved equivalent.
- (2) The condition of the tree giving rise to the permit application cannot be reduced to a less than significant level by the reasonable application of preservation, preventative measures or routine maintenance.
- (3) The removal of the tree(s) will not result in a density of trees or tree cover that is inconsistent with the neighborhood.
- (4) The number of trees the particular parcel can adequately support according to good urban forestry practices, or whether a protected tree is a detriment to or crowding another protected tree.
- (5) In connection with a proposed subdivision of land into two (2) or more parcels, no protected tree shall be removed unless removal is unavoidable due to restricted access to the property or deemed necessary to repair a geologic hazard (landslide, repairs, etc.) The tree removed shall be replaced in accordance with the standards in section 29.10.0985 of this Code. Tree preservation and protection measures for any lot that is created by a

proposed subdivision of land shall comply with the regulations of this Code.

- (6) The retention of a protected tree would result in reduction of the otherwise-permissible building envelope by more than twenty-five (25) percent. In such a case, the removal shall be conditioned upon replacement in accordance with the standards in section 29.10.0985 of this Code.
- (7) The Hillside Development Standards and Guidelines, current version.
- (8) Removal of the protected tree(s) will not result in a substantial adverse change in the site's aesthetic and biological significance; the topography of the land and the effect of the removal of the tree on erosion, soil retention, or diversion or increased flow of surface waters.
- (9) Whether the Protected Tree has a significant impact on the property.



**DRAFT CONDITIONS OF APPROVAL – August 27, 2014**

**205 & 215 Westchester Drive**  
**Tree Removal Permit T14-060**

**Appeal of a decision denying a Tree Removal Permit on properties zoned R-1:8. APNs 523-35-031 & -030.**

**APPLICANT/PROPERTY OWNER: John Fritz**

**APPELLANT/PROPERTY OWNER: Daniel J. Roberts**

**TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:**

*Planning Division*

1. **APPROVAL:** This application shall be completed in accordance with all of the conditions of approval listed below.
2. **EXPIRATION:** The Tree Removal Application approval will expire two years from the approval date pursuant to Section 29.20.320 of the Town Code, unless the approval has been vested.
3. **REPLACEMENT TREES:** Replacement trees shall be planted for trees being removed. The number and size of new trees shall be determined by the Town Arborist using the canopy replacement table in the Town's Tree Protection Ordinance. Required trees shall be planted within 60 days of tree removal.
4. **TREE STAKING:** All newly planted trees shall be double-staked using rubber tree ties.
5. **TOWN INDEMNITY:** Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval, and may be secured to the satisfaction of the Town Attorney.

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# TOWN OF LOS GATOS

## TREE REMOVAL APPLICATION AND PERMIT

PARKS & PUBLIC WORKS  
SERVICE CENTER  
41 MILES AVENUE  
LOS GATOS, CA 95030  
(408) 399-5770

### \*\* APPLICATION \*\*

Please **PRINT** the following information:

Name of Property Owner: JOHN FRITZ Phone: 408-375-5891  
Property Owner's Site Address: 215 WESTCHESTER DR. Zip Code: 95032  
Property Owner's Mailing Address: 215 WESTCHESTER DR. Zip Code: 95032

I, \_\_\_\_\_ (Name), consent and agree to allow \_\_\_\_\_ (Name), to apply and obtain a tree removal permit on my property location at (Address) 215 WESTCHESTER DR.

Property Owner's Signature (required): [Signature] Date: 3/21/14

Name of CDD Planner (if applicable): \_\_\_\_\_

Tree Type	Trunk Diameter (measured 3' from ground)	Reason for Removal (attach additional sheet, if needed)	Fee Amount	Tree Size Verified
<u>SUGAR PINE</u>	<u>12 1/2"</u>	<u>TREE EXTENDS OVER NEIGHBOR'S</u>	<u>\$ 130</u>	
	<u>5 1/2"</u>	<u>BACKYARD. FELLING PINE (ONLY</u>	<u>\$</u>	
		<u>HAVE DAMAGED FOUNTAIN, AND THEY</u>	<u>\$</u>	
		<u>FEAR BEING HIT &amp; INJURED.</u>	<u>\$</u>	

Total number of tree(s) requesting to be removed: \_\_\_\_\_ Total Fees: \$ 130

Staff will review each application and notify applicant of approval or denial within 14 business days of receipt.  
This application becomes a permit only upon approval.

### SUBMITTAL REQUIREMENTS

- ☒ Photos of tree(s) proposed for removal depicting reason for requested removal (required);
- ☒ Map indicating tree(s) location on the property (required);
- ☐ Arborist Report (if applicable);
- ☒ Fee \$130 for one tree + \$65 for each additional tree on same application (required) and;

Payment Received: 3/21/14  
Receipt #: WM 2164  
Check/Money Order #: 5607  
Credit Card Authorization #: \_\_\_\_\_  
Account: TREEREM

Payments (Cash, Check/Money Order made payable to the "Town of Los Gatos" or Credit Cards (VISA/MasterCard) are accepted Monday through Friday, at the following locations:

Parks & Public Works Department  
41 Miles Avenue  
8:00 a.m. to 1:00 p.m.

Civic Center (Lower Level)  
110 East Main Street  
8:00 a.m. to 1:00 p.m.

### \*\* PERMIT \*\*

T 14 - 060 PER - 60 - 14

Application Received Date: 3/21/14 Inspection Date: 4-28-14 Inspection Conducted By: Rob Moulton

#### Summary of Inspection:

Tree is healthy. Amount of foliage can be limited by selective pruning by Certified Arborist.

Pursuant to Section 29.10.0990 of the Zoning Ordinance of the Town of Los Gatos Code, the removal of tree(s) is:

APPROVED \_\_\_\_\_ DENIED XXXXX Amount of Refund: \$ 65.00

Denial Notification Date: 4-28-14 Appeal Deadline Date: 5-15-14

#### Replacement Tree Requirement:

(Fruit trees do not count as a replacement requirement.)

- ☒ Cartograph Work Request/Order
- ☒ Accela Application
- ☐ PPW Tree Inspection
- ☒ PPW Tree Replacement

Distribution: PPW (white copy), Planning Department (yellow copy), Applicant (pink copy)

**EXHIBIT 4**

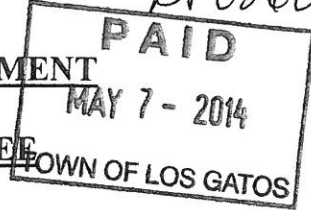
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**TOWN OF LOS GATOS  
COMMUNITY DEVELOPMENT DEPARTMENT**

110 E. Main Street  
Los Gatos, CA 95030

**APPEAL OF THE DECISION OF  
DIRECTOR OF COMMUNITY DEVELOPMENT  
OR  
DEVELOPMENT REVIEW COMMITTEE**



**PLEASE TYPE or PRINT NEATLY**

I, the undersigned, do hereby appeal a decision of the COMMUNITY DEVELOPMENT DEPARTMENT/DIRECTOR OF COMMUNITY DEVELOPMENT OR DEVELOPMENT REVIEW COMMITTEE as follows:

DATE OF DECISION: 4/28/14

PROJECT/APPLICATION: TREE REMOVAL PERMIT

LOCATION: 215/205 WESTCHESTER DR.

**LIST REASONS WHY THE APPEAL SHOULD BE GRANTED:**

PINE TREE STRADDLING THE TWO PROPERTIES REPRESENTS A DANGER AS SOLID SPIKED PINE CONES DROP FROM TREE. TOWN ARBORIST DENIED PERMIT BASED ON HEALTH OF THE TREE, NOT DANGER. PRUNING CANOPY BACK 25% WOULD NOT RESULT IN A SAFE SCENARIO. BOTH NEIGHBORS HAVE AGREED TO REMOVE AND REPLACEMENT AS PER  
(If more space is needed, attach additional sheets.)

TOWN GRAPPLANCE. ADDITIONAL INFO. HAS BEEN SUBMITTED, INCLUDING PHOTOS, SIGNED AGREEMENT, ETC.

**IMPORTANT:**

1. APPEAL **MUST** BE FILED WITHIN TEN (10) DAYS AFTER THE DATE OF MAILING OF WRITTEN NOTIFICATION OF THE DECISION.
2. THE APPEAL SHALL BE SET FOR THE FIRST REGULAR MEETING OF THE PLANNING COMMISSION WHICH THE BUSINESS OF THE PLANNING COMMISSION WILL PERMIT, MORE THAN FIVE (5) DAYS AFTER THE DATE OF THE FILING OF THE APPEAL. THE PLANNING COMMISSION MAY HEAR THE MATTER ANEW AND RENDER A NEW DECISION IN THE MATTER.
3. YOU WILL BE NOTIFIED, IN WRITING, OF THE APPEAL DATE.
4. CONTACT THE PROJECT PLANNER TO DETERMINE WHAT MATERIAL IS REQUIRED TO BE SUBMITTED FOR THE PUBLIC HEARING.

**RETURN APPEAL FORM TO COMMUNITY DEVELOPMENT DEPARTMENT**

PRINT NAME DANIEL T ROBERTS

SIGNATURE Daniel Roberts

DATE MAY 7, 2014

ADDRESS 205 WESTCHESTER DR.

95032

PHONE 408-391-4354 cell

408-356-3628 HOME

\*\*\*\*\*

**OFFICE USE ONLY**

DATE OF PLANNING COMMISSION HEARING: \_\_\_\_\_

COMMISSION ACTION: 1. \_\_\_\_\_ DATE: \_\_\_\_\_  
2. \_\_\_\_\_ DATE: \_\_\_\_\_  
3. \_\_\_\_\_ DATE: \_\_\_\_\_

PLAPPEAL \$ 172.00 Residential  
PLAPPEAL \$ 689.00 Commercial  
PLAPPEAL \$ 70.00 Tree Appeals

RECEIVED

May 7<sup>th</sup>, 2014

MAY 07 2014

TOWN OF LOS GATOS  
PLANNING DIVISION

Dear members of the Planning Commission,

I am writing in regard to a denied tree removal permit application that I wish to appeal. The permit is for the removal of a large pine tree located at 215 Westchester Drive and was applied for by the homeowner, John Fritz, at my request. The tree overhangs our property, 205 Westchester Drive, and represents a significant danger to my family, such that we are unable to safely use our backyard.

An inspection was conducted on April 28th by arborist, Rob M. for the town, during which both Mr. Fritz and I were able to discuss the situation with him. I explained how the tree drops heavy solid, spiked pine cones on our property on a daily basis, how it has damaged a fountain, smashed a pot located a considerable distance away from the tree canopy and how we are unable to let our children play in their own backyard for fear they will be struck and seriously injured. The arborist's response to this was that the tree wasn't unhealthy and that he could, therefore, not approve the permit.

According to the arborist, our only recourse (beyond making this appeal) was to have the tree trimmed back 25%. We have previously had this tree trimmed and it continues to be a danger. Trimming the tree back 25% of its current canopy will not result in a safe scenario on our property.

The Los Gatos Town Tree Ordinance states under the, "Standards of Review" (section 29.10.0990) that among the criteria by which a tree removal permit shall be reviewed, "The condition of the tree with respect to... proximity to existing or proposed structures based on a report from a certified arborist... or a public nuisance caused by a tree." The damage to our personal property, but more importantly, the distress that the ever-present danger of this tree causes for us is significant and qualifies as a public nuisance.

This pine tree is not located in a historic district of the town. This is not a rare species of tree. The tree drops pine cones throughout the calendar year. We have a signed agreement with Mr. Fritz stipulating that we will pay 75% of the removal cost of the tree on his property. Mr. Fritz has agreed to plant new trees in accordance with the determination of the Planning Commission as laid out in Table 3.1 of the Tree Ordinance.

The permit application number is T14-060 /PER – 60-14 with an appeal deadline date of May 15th. I have attached a scanned PDF of the tree removal application, our signed agreement with Mr. Fritz and photos of the tree and pine cones.

I can be contacted at:

(408) 391-4354 cell

(408) 356-3628 home

205 Westchester Drive, Los Gatos 95032

djrobert@earthlink.net

danroberts007@gmail.com

Thank you very much for considering this appeal.

Sincerely,



Daniel J. Roberts





# TOWN OF LOS GATOS

## TREE REMOVAL APPLICATION AND PERMIT

PARKS & PUBLIC WORKS  
SERVICE CENTER  
41 MILES AVENUE  
LOS GATOS, CA 95030  
(408) 399-5770

### \*\* APPLICATION \*\*

Please **PRINT** the following information:

Name of Property Owner: John T. 2 Phone: 908-575-5571  
Property Owner's Site Address: 215 West Chester Dr Zip Code: 95032  
Property Owner's Mailing Address: 215 West Chester Dr Zip Code: 95032

I, \_\_\_\_\_ (Name), consent and agree to allow \_\_\_\_\_ (Name), to apply and obtain a tree removal permit on my property location at (Address) 215 West Chester Dr

Property Owner's Signature (required): [Signature] Date: 3/21/14

Name of CDD Planner (if applicable): \_\_\_\_\_

Tree Type	Trunk Diameter (measured 3' from ground)	Reason for Removal (attach additional sheet, if needed)	Fee Amount	Tree Size Verified
<u>SUGAR PINE</u>	<u>12"</u>	<u>Tree is dead and damaged</u>	\$ <u>130</u>	
		<u>Roots are growing into driveway</u>	\$	
		<u>Tree is damaged and they</u>	\$	
		<u>had to remove it</u>	\$	

Total number of tree(s) requesting to be removed: \_\_\_\_\_ Total Fees: \$ 130

Staff will review each application and notify applicant of approval or denial within 14 business days of receipt.  
This application becomes a permit only upon approval.

### SUBMITTAL REQUIREMENTS

- ☒ Photos of tree(s) proposed for removal depicting reason for requested removal (required);
- ☒ Map indicating tree(s) location on the property (required);
- ☐ Arborist Report (if applicable);
- ☒ Fee \$130 for one tree + \$65 for each additional tree on same application (required) and;

Payment Received: 3/21/14  
Receipt #: 11-104  
Check/Money Order #: 3007  
Credit Card Authorization #: \_\_\_\_\_  
Account: TREEREM

Payments (Cash, Check/Money Order made payable to the "Town of Los Gatos" or Credit Cards (VISA/MasterCard) are accepted Monday through Friday, at the following locations:

Parks & Public Works Department  
41 Miles Avenue  
8:00 a.m. to 1:00 p.m.

Civic Center (Lower Level)  
110 East Main Street  
8:00 a.m. to 1:00 p.m.

### \*\* PERMIT \*\*

T 14 - 000 / PER - 00 - 14

Application Received Date: 3/11/14 Inspection Date: 4-28-14 Inspection Conducted By: Rob [Signature]

#### Summary of Inspection:

Tree is healthy. Amount of foliage can be limited by selective pruning by Certified Arborist.

Pursuant to Section 29.10.0990 of the Zoning Ordinance of the Town of Los Gatos Code, the removal of tree(s) is:

APPROVED \_\_\_\_\_ DENIED XXXXX Amount of Refund: \$ 65.00

Denial Notification Date: 4-28-14 Appeal Deadline Date: 5-15-14

#### Replacement Tree Requirement:

(Fruit trees do not count as a replacement requirement.)

- ☒ Cartograph Work Request/Order
- ☒ Accela Application
- ☐ PPW Tree Inspection
- ☒ PPW Tree Replacement

Distribution: PPW (white copy), Planning Department (yellow copy), Applicant (pink copy)

March 19, 2014

To: Dan and Catherine Roberts  
From: John and Bonnie Fritz

RE: Tree Removal Agreement

Dear Dan and Catherine;

The Fritz family agrees in concept to the removal of the pine tree toward the rear of the lot of 215 Westchester Dr, Los Gatos, under the following conditions:

- 1) The Fritz family assumes responsibility for obtaining a tree removal permit and financial responsibility for tree removal application fees, and resulting fees or actions as required by the Town of Los Gatos after removal of the pine tree.
- 2) Upon agreement the Fritz family will procure at least three bids from licensed, bonded and insured tree removal experts upon tree removal application approval. Each bid will be based on total cost to include:
  - a. Tree removal
  - b. Stump grinding or removal
  - c. Post removal clean up of both the Roberts and Fritz properties.
- 3) The tree removal service provider will be chosen by mutual agreement based on bid competitiveness and the safety record of the contractor.
- 4) The Roberts family will pay 75% of cost as billed by the selected service provider; the Fritz family will pay 25% of tree removal cost as billed by the selected service provider.
- 5) This agreement proposal is valid for 30 days after delivery.

Agreed by Fritz Family representative: \_\_\_\_\_

date: 3/22/14

Agreed by Roberts Family representative: \_\_\_\_\_

date: 3/22/14



Amendment to the Tree Removal Agreement dated March 19, 2014

In recognition of a mutual desire to avoid future conflict over the issue of nuisance trees between the Roberts and Fritz properties, and with consideration for the significant majority of financial expense of tree and stump removal being paid by the Roberts party, the Fritz party agrees to:

- 1) Seek and receive approval by the Roberts party in advance with regard to the species of tree(s) that will be planted in replacement of the removed pine,
- 2) Position the planting of new replacement tree(s) on the Fritz property such that the majority of the tree(s) and future new growth will not overhang both properties.
- 3) Failure to seek or receive approval of the replacement tree(s) species will require the Fritz party to reimburse the Roberts party 25% of the total cost of pine tree and stump removal within 30 days of replacement tree planting.

The following tree species will not be approved: any species of Pine, Redwood, Eucalyptus, Olive or Sweetgum.

Agreed by Fritz party representative [Signature] date: 3/22/14

Agreed by Roberts party representative [Signature] date: 3/22/14

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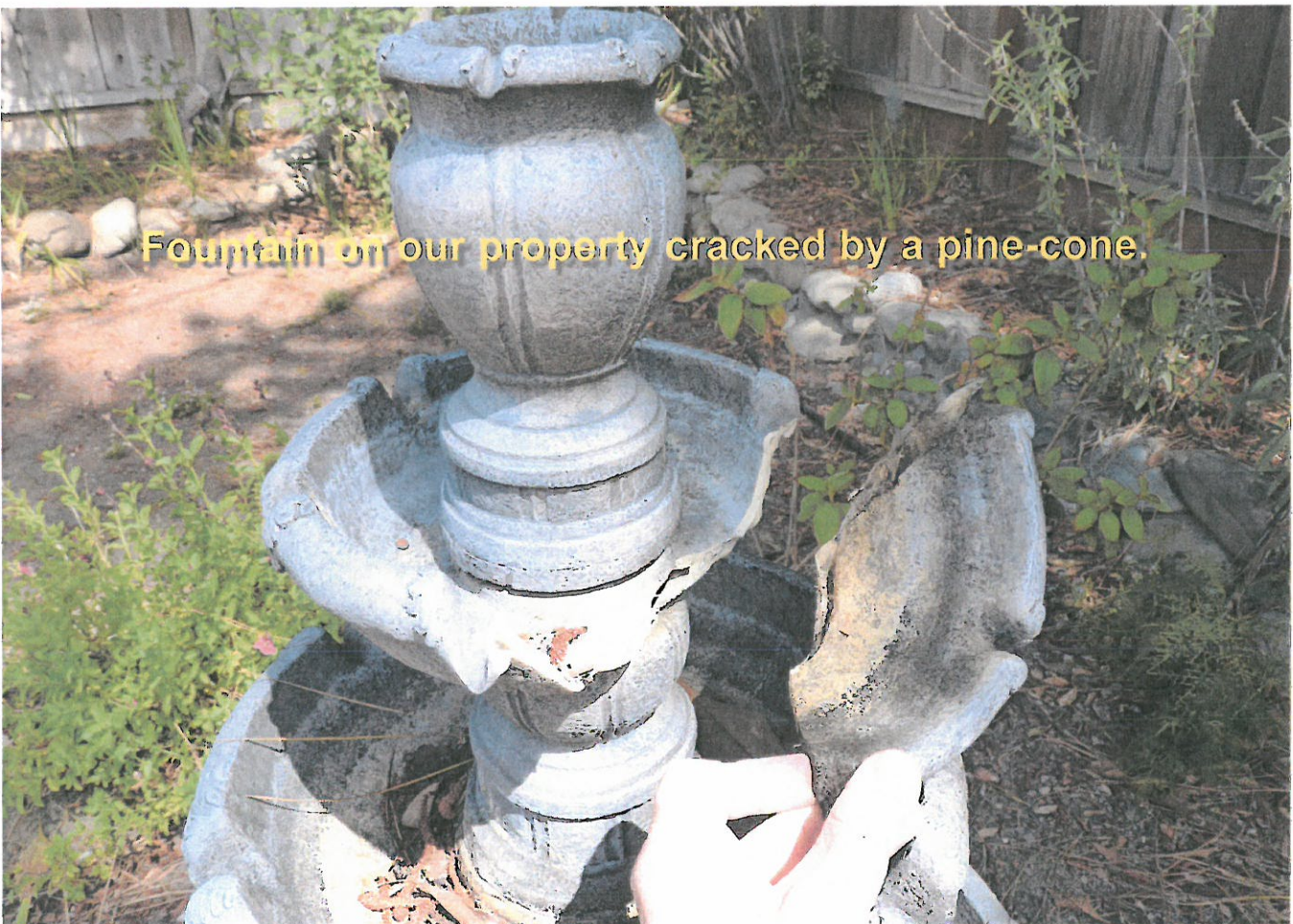








Pine cones that dropped on our property over 4 days: May 3rd - 6th, 2014



Fountain on our property cracked by a pine-cone.