

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

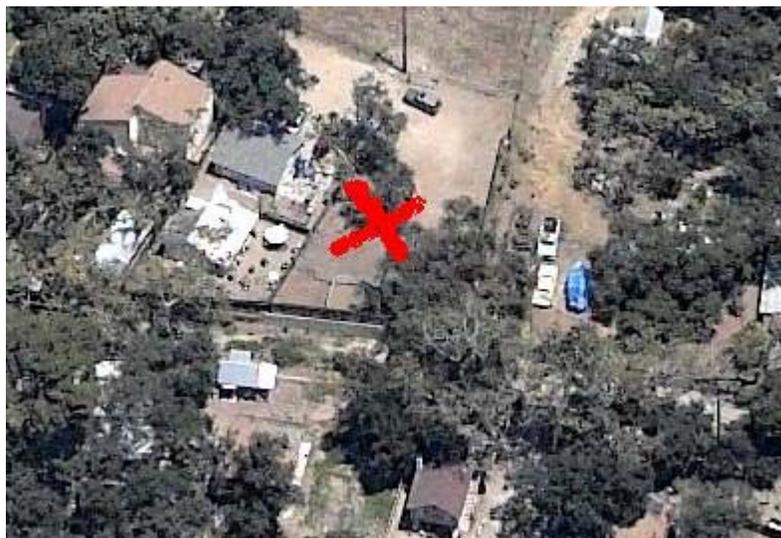
HEARING DATE: February 21, 2007
TO: Orange County Planning Commission
FROM: Land Use Services Division

SUBJECT/SYNOPSIS: PA06-0083, a site development permit for construction of a garage and carport with second story storage space, which would be attached by a patio cover trellis to a two-story single-family dwelling built with no permits on an adjoining separate legal building site. On this other site, there also exists an additional existing single family dwelling (now labeled “2nd unit”) built with permits in 1976 but since added to without permits.

All unpermitted work done by one or more previous owners, including the removal of one oak tree of unknown size, an interior fire sprinkler system in that “main” or “front” house with no permits, percolation testing for a new septic disposal system (septic tank and seepage pits), installation of that system, and possible grading of as much as 1.5 feet of fill generally in the area behind the new garage, is proposed to now, after-the-fact, be approved, in order for the current owner to be able to occupy and use the property.

The “proposed” homes and garage would all together total 2,826 square feet of living space, 600 square feet of garage space, 200 square feet of carport space, 388 square feet of garage second floor storage space, 100 square feet of “original house” loft storage and 264 square feet of area under the trellis/patio cover, on two legal building sites totaling 14,386 square feet (portions thereof being located in Hickey Creek) in the “Trabuco Oaks Residential” (TOR) District of the Foothill-Trabuco Specific Plan. The size of these lots does not trigger open space dedication.

LOCATION: 20741 Mountain View, Trabuco Canyon (District 3) [Property seen in 2003, when unpermitted front house was only a one story structure, North is to left]



APPLICANT: Gary and Christine Hoffman, owners

STAFF Jim Swanek (Jim.Swanek@pdsd.ocgov.com)

CONTACT: Phone (714) 796-0140 FAX (714) 834-4772

FOOTHILL/TRABUCO SPECIFIC PLAN REVIEW BOARD:

On November 10, 2006, the Foothill/Trabuco Specific Plan Review Board reviewed this project. They declined to recommend either approval or denial of the application. Their minutes, attached as Exhibit 2, draw the Planning Commission's attention to a wide variety of issues, being:

1. "Orange County Zoning Code allows only one SFD (single family dwelling) per 20,000 s/f. Lot 216 is considerably smaller than 20,000 s/f and even when the two lots are combined (which they should not be without a lawful joining action) are approximately 17,000 s/f. Thus the second unit should probably NOT be considered a SFD, but could become a guest house after removal of the kitchen and/or bath."
2. "That Lot 216 should be appropriate for a guest house under current State laws."

Staff Response: State law requires that where a single family dwelling exists on a legal lot, a second unit of at least "efficiency" size must be allowed with the provision of parking per local ordinances. The Specific Plan does not identify second units as permitted uses, and this project does not meet the "second unit" standards of Zoning Code Sec. 7-9-146.5(b)(1) or (3). The original permitted house from 1976 on this lot was 432 sq. ft. in living area. It is now 584 sq. ft. in living area. This structure in terms of its size only would meet both the standards of state law and the Zoning Code as a permitted "second unit".

Subsequently the "front house" was constructed without any permits, first as a one-story structure of possibly 900 square feet and then, sometime after the 2003 aerial photo above (but well before acquisition by the current applicant), reconstructed without any permits as a two-story structure of the current 2,242 square feet of living area, and 3 bedrooms (plus den/"office"). Zoning Code Sec. 7-9-146.5(b)(3) would thus not have allowed the front unit, built second, to be enlarged beyond the 900 square foot one-story configuration it had until 2003.

The Planning Commission has authority to either approve the front two-story unit, constructed without any permits, to order it to be combined with the one at the rear to make a single dwelling, for it to be returned to a one-story structure as existing prior to 2003, to require it to be modified in some other fashion, or to disapprove said dwelling and require its demolition.

Staff believes the Commission has the authority, should it first choose to approve retention of the unpermitted front dwelling, to then define the "rear unit" (the original unit, later added onto to the extent of perhaps 150 sq. ft.) as a "second unit" for the purposes of complying with State law, since both units in fact "exist".

3. “That adequate off street parking consist(ent) with the Orange County Zoning Code should be achieved. This may require a formal joining of the two Lots.”

Staff Response: The proposed parking of four covered spaces exceeds definitions the County has utilized to determine the off-street parking required for a home and “second unit”. If the front house were instead regarded as a proposed 4-bedroom dwelling with the rear house an existing 0-bedroom dwelling (not a guesthouse or second unit), which is a more accurate description of the proposal, the parking requirement under Zoning Code Section 7-9-145.3(d)(2) would be 5, with 3 covered. The applicant would then be required to maintain an existing additional paved area at least 10’ wide by 20’ long in front of the “front house” as the required 5th parking space.

In terms of the recommended formal joining, there is nothing legal this or any future owner could do to turn the now-proposed garage and second floor storage area into something that might be independently saleable without further discretionary site development permit review. Additionally, this proposal will be approved as a precise plan of development. There is a standard condition to this effect, and staff is recommending in this case a supplementary finding (Finding #) related to all these structures on two lots being part and parcel of one single precise plan of development.

Should the Commission instead choose to require the two lots to be formally combined, they could never again be split apart in the future under the Specific Plan, because the minimum lot size of 20000 square feet would then come into play, and the Specific Plan has no possible procedure to create lots smaller than the minimum for that district.

4. “The applicant should demonstrate the availability of adequate water and water pressure for fire fighting needs at the site.”

Staff Response: Recently, the applicant had the hydrant pressure tested and it was found adequate to serve the existing fire sprinkler system in the front house. These results indicate the applicant will be able to meet those conditions of approval recommended by OCFA and included herein.

5. “That the current or planned replacement septic system leach field or leach pit(s) are properly set back from the property lines on the site and are an adequate distance from existing Live Oak Trees on site, if required by current codes that there (be) 100% excess capacity on the site for a “new leach field”.”

Staff Response: The current County Plumbing Code requires either leach fields or seepage pits, in addition to tanks. Some jurisdictions have abandoned the latter, but the County has not, nor does the San Diego Regional Water Quality Control Board prohibit seepage pits in its current Basin Plan. One existing seepage pit (placed by mistake in Mountain View Road) will be relocated on-site. The applicant thus has an adequate system for both units, but without proper permits. As to oak trees, staff believes this is the area where a prior owner removed a single oak tree for the purposes of installing a new septic system. There are no other trees nearby at present.

6. “Verification that the buildings currently on site are outside the flood pla(in).”

Staff Response: Staff is in possession of materials signed by licensed land surveyor Fred Nankervis demonstrating that the existing AND proposed structures will meet Hickey Creek floodplain requirements.

7. “That there has been no Hydrology study available to the F/TSP Review Board.”

Staff Response: Pursuant to Specific Plan Section III.G.2.0.f., the Manager, Land Use Services chose not to require a hydrology study in the absence of evidence that any significant grading has occurred on this site since 1981, when the rear wall off Hickey Creek was installed by permit.

8. “That there has been no Tree Management Plan available to the F/TSP Review Board.”

Staff Response: Again, under Section III.G.2.0.f., the Manager, Land Use Services chose not to require a Tree Management Plan or “Site Specific Oak Woodlands Analysis” in the absence of evidence that any further significant impacts beyond the one oak tree removed by a previous owner of unknown size would occur. The sycamore trees located near the proposed carport bend rather distinctly away from that structure and toward the existing structures, so that the carport roof will not be within their driplines.

As for mitigation for the loss of said single oak (here presumed to have been not more than 35 inches in trunk diameter), twelve trees of 15-gallons each are proposed to be placed on 19401 Oakie Dokey, seven in areas previously open space easement-dedicated to the County as part of the approval of PA000015 for placement of a home at that address, plus five trees in the previously approved “development” area, with assurance of continued maintenance to the satisfaction of County Harbors, Beaches & Parks.

PUBLIC NOTICE:

Notices of a Public Hearing were mailed and posted as required by state law. Additionally, a public notice has been mailed to those parties that have specifically requested notification on projects in the Foothill-Trabuco Specific Plan area. As of the writing of this staff report, no objections to the project have been received from said noticing.

CEQA COMPLIANCE:

Pursuant to the California Environmental Quality Act (CEQA), the proposed project is documented by an Addendum Initial Study to EIR 531, prepared for adoption of the Specific Plan itself. Additional mitigation measures were included in the addendum to address grading, drainage, the on-site private sewage disposal system, biologic impacts, and construction noise. These mitigation measures have been transposed into recommended conditions of approval for the project. Prior to project approval, the decision-maker must conclude that this EIR and Addendum is adequate to satisfy the requirements of CEQA for the proposed project. A finding to that effect is included.

PROJECT ANALYSIS:

The project site is located in the Trabuco Oaks Residential (TOR) District of the Foothill/Trabuco Specific Plan. The 0.33 acre lots were created by a tract map recorded in 1929. There are no “resource” or “open space” easements on said map. They were not required at the time, and are not now required due to the smaller lot size.

The applicant is proposing a site development permit to construct a new 3-car garage to be attached by a trellis to an existing single family dwelling, itself on a separate lot with another single family dwelling at the rear.

A number of elements of the project have already been completed without benefit of permits by prior owners, including:

1. An addition to the original “rear” house;
2. Constructing an entirely new, 2-story, “front” house;
3. Removing one oak tree;
4. Performing percolation testing.
5. Installing a new septic disposal system (septic tank and seepage pits, with one of the latter placed in the road right of way); and
6. Grading of perhaps 1.5 feet of fill generally in the area behind the new garage.

There is no reason to believe that Items 1-5 above were completed prior to the adoption of the Specific Plan in 1991. It is possible that Item 6 was performed near the time of the Specific Plan adoption. If in fact performed at any time prior, said work may not have required any permits due to its minor scale. In staff’s view, Item 6 presents no substantive issues even today, with the Specific Plan in place.

The Trabuco Oaks District height limit of 35’, grading yardage limitation of 3,000 cubic yards, and structural setbacks of 10’ from the front and rear and 5’ from the sides would be met by the proposed plan of development.

Attached as Exhibit 5 is the Foothill-Trabuco Specific Plan Project Consistency Checklist completed for this project. Staff concludes the project proposal is generally consistent with the Specific Plan Regulations, Guidelines, Goals and Objectives.

The Commission must exercise its discretionary judgment on the two-story “front house” of 2,242 square feet of living area and 3 bedrooms (plus den/office). It was constructed after the existing house at the rear, and after the Specific Plan went into effect. Staff believes the Commission has complete authority to order the demolition of this house, to order it to be combined with the one at the rear to make a single dwelling, for it to be returned to a one-story structure as existing prior to 2003, or to make other modifications.

RECOMMENDED ACTION:

1. Receive staff presentation and public testimony; and
2. Approve PA06-0083, subject to recommended findings and conditions (Appendices A-B).

Respectfully submitted,

Timothy S. Neely, Director
Planning & Development Services

APPENDICES:

- A. Recommended Findings for Project Approval
- B. Recommended Conditions for Project Approval

EXHIBITS:

- 1. Applicant's Letter of Justification
- 2. Foothill-Trabuco Specific Plan Review Board meeting minutes
- 3. Project Plans (Planning Commission copies only)
- 4. Addendum Initial Study PA04-0062 to EIR 531 (Planning Commission copies only)
- 5. Foothill-Trabuco Specific Plan Project Consistency Checklist (Planning Commission only)
- 6. Site Photographs

APPEAL PROCEDURE:

Any interested person may appeal the decision of the Planning Commission on this permit to the Orange County Board of Supervisors within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$760.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana.



Appendix A Findings PA060083

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- 1 **MULTI-LOT DEVELOPMENT PLAN** **PA060083 (Custom)**
 Although 2 legal building sites are involved in this application, this permit is approved as a precise plan of development for both lots together. The structures to be emplaced on either lot by themselves are neither intended or approved to function independently of one another, noting that the parking is located on one lot and the structures with livable space on the other. If the applicant proposes changes regarding the location or alteration of any use or structure, the applicant shall submit a changed plan to the Director, PDS, for approval. If the Director, PDS, determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing before the Planning Commission.
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- 2 **GENERAL PLAN** **PA060083**
 That the use or project proposed is consistent with the objectives, policies, and general land uses and programs specified in the General Plan adopted pursuant to the State Planning and Zoning Law.
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- 3 **ZONING** **PA060083**
 That the use, activity or improvement(s) proposed, subject to the specified conditions, is consistent with the provisions of the Zoning Code, or specific plan regulations applicable to the property.
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- 4 **COMPATIBILITY** **PA060083**
 That the location, size, design and operating characteristics of the proposed use will not create unusual conditions or situations that may be incompatible with other permitted uses in the vicinity.
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- 5 **GENERAL WELFARE** **PA060083**
 That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.
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- 6 **PUBLIC FACILITIES** **PA060083**
 That the approval of the permit application is in compliance with Codified Ordinance Section 7-9-711 regarding public facilities (fire station, library, sheriff, etc.).
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- 7 **CATEGORICALLY EXEMPT** **PA060083 (Custom)**
 That the proposed project is Categorically Exempt (Class 3) from the provisions of CEQA.
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- 8 **FISH & GAME - SUBJECT** **PA060083**
 That pursuant to Section 711.4 of the California Fish and Game Code, this project is subject to the required fees as it has been determined that potential adverse impacts to wildlife resources may result from the project.
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- 9 **NCCP NOT SIGNIFICANT** **PA060083**
 That the proposed project will not have a significant unmitigated impact upon Coastal Sage Scrub habitat and therefore, will not preclude the ability to prepare an effective subregional Natural Communities Conservation Planning (NCCP) Program.
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- 10 **OFF-STREET PARKING** **PA060083 (Custom)**
 That the proposed off-street parking facilities comply with the intent of Section 7-9-145.1 "Off-Street Parking Regulations" of the Orange County Zoning Code.



Appendix B Conditions of Approval PA060083

1 CP CP NA BASIC/ZONING REG PA060083

This approval constitutes approval of the proposed project only to the extent that the project complies with the Orange County Zoning Code and any other applicable zoning regulations. Approval does not include any action or finding as to compliance of approval of the project regarding any other applicable ordinance, regulation or requirement.

2 CP CP NA BASIC/TIME LIMIT PA060083

This approval is valid for a period of 36 months from the date of final determination. If the use approved by this action is not established within such period of time, this approval shall be terminated and shall thereafter be null and void.

3 CP CP NA BASIC/PRECISE PLAN PA060083

Except as otherwise provided herein, this permit is approved as a precise plan. If the applicant proposes changes regarding the location or alteration of any use or structure, the applicant shall submit a changed plan to the Director, PDS, for approval. If the Director, PDS, determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing.

4 CP CP NA BASIC/COMPLIANCE PA060083

Failure to abide by and faithfully comply with any and all conditions attached to this approving action shall constitute grounds for the revocation of said action by the Orange County Planning Commission.

5 CP CP NA BASIC/OBLIGATIONS PA060083

Applicant shall defend at his/her sole expense any action brought against the County because of issuance of this permit. Applicant shall reimburse the County for any court costs and attorneys fees that the County may be required to pay as a result of such action. The County may, at its sole discretion, participate in the defense of any action, but such participation shall not relieve applicant of his/her obligations under this condition.

6 SG SG G DRAINAGE STUDY PA060083

Prior to the issuance of any grading permits, the following drainage studies shall be submitted to and approved by the Manager, Subdivision and Grading:

- A. A drainage study of the project including diversions, off-site areas that drain onto and/or through the project, and justification of any diversions; and
- B. When applicable, a drainage study evidencing that proposed drainage patterns will not overload existing storm drains; and
- C. Detailed drainage studies indicating how the project grading, in conjunction with the drainage conveyance systems including applicable swales, channels, street flows, catch basins, storm drains, and flood water retarding, will allow building pads to be safe from inundation from rainfall runoff which may be expected from all storms up to and including the theoretical 100-year flood.

7 SG SG G DRAINAGE IMPROVEMENTS PA060083

A. Prior to the issuance of any grading permits, the applicant shall in a manner meeting the approval of the Manager, Subdivision and Grading:

- 1) Design provisions for surface drainage; and
- 2) Design all necessary storm drain facilities extending to a satisfactory point of disposal for the proper control and disposal of storm runoff; and
- 3) Dedicate the associated easements to the County of Orange, if determined necessary.

B. Prior to the issuance of any certificates of use and occupancy, said improvements shall be constructed in a manner meeting the approval of the Manager, Construction.

8 SG SG G DRAINAGE OFFSITE PA060083

Prior to the issuance of any grading permit, and if determined necessary by the Manager, Subdivision and Grading, the applicant shall record a letter of consent, from the upstream and/or downstream property owners permitting drainage diversions and/or unnatural concentrations. The form of the letter of consent shall be approved by the Manager, Subdivision and Grading Services prior to recordation of the letter.

9 SG CP/BI SU FLOODPLAIN ELEVATION PA060083 (Custom)

Prior to the issuance of certificates of use and occupancy for any building, the applicant shall complete Section "E" of the Elevation Certificate, identifying the Base Flood Elevation (BFE) and certifying the as built lowest floor, including basements, as constructed, is at least one (1) foot above the BFE, in a manner meeting the approval of the Manager, Building Inspection Services.

10 SG SG/BI RGBU FIRM MAP REVISION PA060083 (Custom)

Prior to the issuance of certificates of use and occupancy for buildings within the FP-2 Zoning District, the applicant shall accomplish the following in a manner meeting the approval of the Manager, Building Inspection, Services, in consultation with the Manager, Subdivision and Grading:

Submit either:

(a) A certified elevation certificate which demonstrates that the as-built lowest floor is at least one (1) foot above the 100-year flood elevation of the FIRM in effect, or

(b) Obtain a Letter of Map Revision (LOMR) from the Federal Emergency Management Agency (FEMA) for revising the FIRM

11 SG SG B FP DELINEATION PA060083

Prior to the issuance of any grading permits, applicant shall delineate on the grading plan the floodplain which affects the property, in a manner meeting the approval of the Manager, Subdivision and Grading.

12 F F SB ARCHITECTURAL BUILDING PLANS PA060083
[Com] Service Codes: 1.14-1.17

Prior to the issuance of a building permit, the applicant shall submit architectural plans for the review and approval of the Fire Chief if required per the "Orange County Fire Authority Plan Submittal Criteria Form." Please contact the Orange County Fire Authority at (714) 744-0499 for a copy of the Site/Architectural Notes to be placed on the plans prior to submittal.

13 F F GBU FIRE HYDRANTS PA060083 (Custom)
[Res] Service Code: 1.12.1, 1.29, 1.30

A. Prior to the recordation of a subdivision map, the issuance of any grading permits or the issuance of a building permit, whichever occurs first, the applicant shall submit a fire hydrant location plan to the Fire Chief for review and approval.

B. Prior to the issuance of a building permit, the applicant shall submit evidence of the on-site fire hydrant system to the Fire Chief and indicate whether it is public or private. If the system is private, it shall be reviewed and approved by the Fire Chief prior to building permit issuance, and the applicant shall make provisions for the repair and maintenance of the system in a manner meeting the approval of the Fire Chief. Please contact the Orange County Fire Authority at (714) 744-0499 or visit the Orange County Fire Authority website for a copy of the "Guidelines for Private Fire Hydrant &/or Sprinkler Underground Piping."

14 F F RBU AUTOMATIC FIRE SPRINKLER PA060083 (Custom)
[Res] Service Codes: 1.27-1.28

A. Prior to the issuance of a building permit, the applicant shall submit plans for the required automatic fire sprinkler system in any structure to the Fire Chief for review and approval. Please contact the Orange County Fire Authority at (714) 744-0499 for additional information.

B. Prior to the issuance of a certificate of use and occupancy, this system shall be operational in a manner meeting the approval of the Fire Chief.

15 F F RG FIRE ACCESS ROADS PA060083 (Custom)
[Res] Service Code: 1.12.1

Prior to the issuance of any grading permits or the issuance of a building permit, whichever occurs first, the applicant shall obtain approval of the Fire Chief for all fire protection access roads to within 150 feet of all portions of the exterior of every structure on site. Please contact the Orange County Fire Authority at (714) 744-0499 or visit the Orange County Fire Authority website to obtain a copy of the "Guidelines for Emergency Access".

16 **F F RRB** **FIRE HAZARD NOTIFICATION** **PA060083 (Custom)**
[Res] Service Codes: 1.5 & 1.7

Prior to the issuance of a building permit, the applicant shall place a note on the plans meeting the approval of the Fire Chief that all requirements for development and construction within a "Special Fire Protection Area," including increased street widths, Class A roof assemblies, fire sprinklers, etc. will be met.

17 **F F B** **COMBUSTIBLE CONSTRUCTION LETTER** **PA060083**
[Res] No OCFA Service Code (Usually Received with 1.12.1)

Prior to the issuance of a building permit for combustible construction, the builder shall submit a letter on company letterhead stating that water for fire-fighting purposes and all-weather fire protection access roads shall be in place and operational before any combustible material is placed on site. *Building permits will not be issued without Orange County Fire Authority approval obtained as a result of an on-site inspection.* Please contact the Orange County Fire Authority at (714) 744-0499 to obtain a copy of the standard combustible construction letter.

18 **SG SG G** **GEOLOGY REPORT** **PA060083**

Prior to the issuance of a grading permit, the applicant shall submit a geotechnical report to the Manager, Subdivision and Grading, for approval. The report shall include the information and be in the form as required by the Grading Manual.

19 **SG SG GB** **FINAL SOILS RPT/SEPTIC** **PA060083**

Prior to the issuance of any grading or building permits, the applicant shall submit a final soils report and plans for all private sewage disposal systems to the Manager, Building Permit Services, for review and approval in accordance with the following:

A. The applicant shall submit the results of percolation tests and a log of soil borings, performed and reported by a Registered Sanitarian, Registered Civil Engineer, or Registered Geologist, in accordance with "On Site Sewage Disposal System Guidelines," to the Manager, Building Permit Services, for review and approval.

B. The applicant shall design each proposed individual sewage disposal system in accordance with "On Site Sewage Disposal System Guidelines." The applicant shall delineate the proposed dwelling and disposal system by stakes or other means for inspection by the Building Permit Services.

C. The applicant shall design, construct, and connect an additional soil percolation system, equal to a maximum of 100% of the original design capacity or as deemed necessary by the Manager, Building Permit Services.

20 **HP HP RG** **TREE PRESERVATION PLAN** **PA060083 (Custom)**

Prior to the issuance of any grading permits, the applicant shall obtain the approval of the Manager, HBP/Program Management and Coordination, of a landscape and tree preservation plan for the property, which in this case also includes replacement planting on another property in the Specific Plan area identified in the staff report.

21 **BP BP G** **CONSTRUCTION NOISE** **PA060083**

A. Prior to the issuance of any grading permits, the project proponent shall produce evidence acceptable to the Manager, Building Permit Services, that:

- (1) All construction vehicles or equipment, fixed or mobile, operated within 1,000' of a dwelling shall be equipped with properly operating and maintained mufflers.
- (2) All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).
- (3) Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.

B. Notations in the above format, appropriately numbered and included with other notations on the front sheet of the project's permitted grading plans, will be considered as adequate evidence of compliance with this condition.

22 **BI BI GB** **EROSION AND SEDIMENT CONTROL PLAN** **PA060083**

Prior to the issuance of any grading or building permit, the applicant shall submit a Erosion and Sediment Control Plan (ESCP) in a manner meeting approval of the Manager, Building Permit Services, to demonstrate compliance with local and state water quality regulations for grading and construction activities. The ESCP shall identify how all construction materials, wastes, grading or demolition debris, and stockpiles of soil, aggregates, soil amendments, etc. shall be properly covered, stored, and secured to prevent transport into local drainages or coastal waters by wind, rain, tracking, tidal erosion or dispersion. The ESCP shall also describe how the applicant will ensure that all BMP's will be maintained during construction of any future public right-of-ways. A copy of the current ESCP shall be kept at the project site and be available for County review on request.