



---

## PLANNING & ZONING CONSIDERATION ITEM

### CITY OF FAIR OAKS RANCH, TEXAS

September 14, 2023

---

AGENDA TOPIC: Consideration and possible action recommending approval of a Heritage Tree Plan for the Fox Falls Off-site Gravity Sewer Project.

DATE: September 14, 2023

DEPARTMENT: Public Works

PRESENTED BY: Kelsey Delgado, Environmental Program Manager

---

#### **INTRODUCTION/BACKGROUND:**

The Fox Falls Off-site Gravity Sewer project is a San Antonio Water System (SAWS) utility project consisting of over two miles of sewer line upgrades between Fair Oaks Village (IH-10 Frontage Road and Fair Oaks Parkway) and Old Fredericksburg Road. The upgrades will cross through Fair Oaks Parkway, Frost Bank, Leslie Pfeiffer Dr and The Woods at Fair Oaks neighborhood and they require tree removal to accommodate the larger sewer line. This project is being completed within existing SAWS utility easements, originally dedicated in 2008 within The Woods at Fair Oaks.

On May 5, 2023, a Tree Preservation Plan and Heritage Plan for the Fox Falls Off-site Gravity Sewer was submitted to the Public Works Department by M.W. Cude Engineers, LLC (**Attachment A**) on behalf of the applicant Meritage Homes of Texas, L.P.

As outlined in UDC Section 8.8, tree mitigation shall be at a 1:1 ratio for Tree Circumference (TC) inches to be removed. In cases where soil, slope, lot size, or other natural constraints make replacing the same number of Tree Circumference (TC) inches unfeasible, the City Manager (or designee), may allow some or all of the mitigation to take place on a separate, public site within the City, or on lands owned by an association that operates and maintains trails, open space, or parkland within the City. In addition, the City Manager (or designee) may allow mitigation by payment of fee for some or all of the trees to be removed, if the City's fee schedule includes a provision for Fee In Lieu of Replacement Trees.

The applicant has voiced concerns regarding the replanting of mitigation trees within the utility easements since they may interfere with future maintenance requirements or cause damage to the underground sewer line. Additionally, the applicant stated they attempted to find an alternate location for replanting but no resolution with The Woods HOA or FORHA was reached.

On August 17, 2023, Cude Engineers requested to move forward with the plans with the intention that mitigation shall be met through the City Council adoption of a Fee-In-Lieu of Replacement Trees. The first reading of an Ordinance amending the City of Fair Oaks Ranch Code of Ordinances Appendix A "Fee Schedule," Article A8.000 "Subdivision/Land Development Regulation Fees" to include a Fee-in- of Lieu was approved at the September 7, 2023 Regular City Council meeting. A second reading will be held at the September 21, 2023 City Council meeting.

This plan submission is subject to the City's UDC adopted in 2019. Section 8.8 contains an exemption for preservation requirements for trees in utility easements but states the following

requirements: “A Heritage Plan is required to be reviewed and approved by the Planning and Zoning Commission and City Council prior to any construction activity that is likely to endanger a Heritage Tree, TC 75 inches or larger. The tree trunk circumference is measured at diameter of breast height (DBH), or four and a half (4 ½) feet, as detailed by the Texas Forest Service...A Heritage Plan must be submitted to the City, reviewed by City Staff, and voted on by the Planning and Zoning Commission before a Preliminary Plat or Site Development Permit is forwarded to City Council. It must be approved by City Council before a Preliminary Plat is approved.” The submitted Heritage Plan shows the following Heritage Trees:

<u>Tag #</u>	<u>Size/Type</u>	<u>Saved/Removed</u>
Tree #6067	42” Oak	To Be Removed
Tree #6093	38” Oak	To Be Removed
Tree #32337	26” Oak	To Be Removed
Tree #32344	25” Oak	To Be Removed

To mitigate, the applicant has requested to pay a fee-in-lieu once adopted by City Council. The proposed Fee-In-Lieu schedule is as follows:

<b>PROPOSED FEE-IN-LIEU SCHEDULE</b>	
<b>Tree Type</b>	<b>Fee per Circumference Inch</b>
Heritage (24-48” diameter)	\$200
Protected (12-24” diameter)	\$100
Standard (8-12” diameter)	\$50

Based on the proposed fee-in-lieu, the payment for removing heritage trees is estimated to be \$82,400.

### **Applicable UDC sections**

Section 8.8 (6)(b) states:

“b. A Heritage Plan must be submitted to the City, reviewed by City Staff, and voted on by the Planning and Zoning Commission before a Preliminary Plat or Site Development Permit is forwarded to City Council. It must be approved by City Council before a Final Plat is approved.”

Section 8.8(2)(b) states:

*“Preservation Exemptions.* The following areas are exempt from the preservation requirements of this section:

- i. Right-of-way. Trees located within a right-of-way to be dedicated to and maintained by the City; and
- ii. Easements. Trees located within any utility easement”

Section 8.8 (7) states:

*“a. Removal by Right.* Protected Trees, including Heritage Trees, located within 10 feet of the perimeter of the proposed building footprint, the area over an OSSF, areas necessary for site access, **or within areas designated for the construction or installation of public facilities such as streets or utilities may be removed at the discretion of the applicant, provided that the terms of Sections 8.8(7)b-c. (below) are satisfied;**

*b. Removal and Mitigation of Protected Trees.* Developers of land are encouraged to preserve protected trees whenever possible. An applicant may remove Protected Trees if approved mitigation is provided. Generally speaking, mitigation shall be at a 1:1 ratio for TC inches to be removed. The applicant may plant smaller trees to replace Protected Trees, provided that no tree smaller than TC 8 inches is generally allowed, and that the total tree coverage on the lot (as measured in TC inches) is approximately the same as pre-development conditions. In cases where soil, slope, lot size, or other natural constraints make replacing the same number of TC inches unfeasible, the City Manager (or his designee), may, at their sole discretion, allow some or all of the mitigation to take place on a separate, public site within the City, or on lands owned by an association that operates and maintains trails, open space, or parkland within the City and that are usable by residents of the general area where the applicant’s land is located. In addition, **the City Manager (or designee) may allow mitigation by payment of fee for some or all of the Protected Trees to be moved, if the City’s fee schedule includes a provision for Fee In Lieu of Replacement Trees.**

*c. Removal and Mitigation of Heritage Trees.*

i. Heritage Trees may not be removed during construction, except under certain specific circumstances:

1. If the tree is sick or diseased and meets the criteria laid out in Section 8.8(4); or
- 2. If the tree is within the footprint as described in Section 8.8(7)a; or**
3. If the removal is approved by the City Council after consideration by the P&Z, with a formal recommendation from the P&Z to the Council on whether to approve the removal.

ii. If any Heritage Trees are planned for removal, they must be identified and clearly marked on the Heritage Plan. The Heritage Plan must also identify any Heritage Trees that are likely to be endangered by construction activity which might sever or compress the root zone, or otherwise threaten the health and life of the tree, as determined by a reasonable person. The City Council may grant removals under Section 8.8(7)c.i-3 (above) at its sole discretion. In considering whether to allow the removal of Heritage Trees, the City Council shall consider whether removal is absolutely necessary to allow the applicant to meet reasonable, investment-backed expectations for use of the property, and whether such use can be accomplished while preserving Heritage Trees.

**iii. If any Heritage Tree removals are granted, the applicant shall meet all the mitigation and replacement conditions outlined in 8.8(7)b. (above), except that any decisions delegated to the City Manager in that paragraph shall be made by the City Council."**

Staff has reviewed the Fox Falls Off-site Gravity Sewer Heritage Plan and recommends approval of the Heritage Tree Plan with the condition that mitigation shall be met by payment of the fee-in-lieu once adopted by City Council.

**POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:**

The applicant has met the requirements of the Heritage Plan as stated in section 8.8. As a utility, the applicant is exempt from Preservation requirement. However, the applicant is still subject to mitigation requirements. Replacing trees is not practical because the parcel is in a utility (sewer) easement and public land is not available for replanting. Therefore, a Fee in Lieu of Replacement Trees is the most viable option. The City Council must still approve the proposed fee schedule.

**LONGTERM FINANCIAL & BUDGETARY IMPACT:**

An estimated \$82,400 would be available for the City Council to initiate a tree preservation program for such activities including, but not limited to, right-of-way tree maintenance, oak wilt remediation, and citywide tree planting.

**RECOMMENDATION/PROPOSED MOTION:**

I move to recommend approval for the Fox Falls Off-site Gravity Sewer Heritage Tree Plan with the condition that mitigation shall be met by payment of the fee-in-lieu once adopted by City Council.