

# NOTICE OF DECISION

PLANNING DIVISION  
555 LIBERTY ST. SE, RM 305  
SALEM, OREGON 97301  
PHONE: 503-588-6173  
FAX: 503-588-6005



*Si necesita ayuda para comprender esta información, por favor llame 503-588-6173*

## DECISION OF THE PLANNING ADMINISTRATOR

**TREE CONSERVATION PLAN: TCP22-12**

**APPLICATION NO.: 22-114285-PLN**

**NOTICE OF DECISION DATE:** July 18, 2023

**REQUEST:** A Tree Conservation Plan in conjunction with a Subdivision (Case No. SUB22-07) proposing the preservation of four trees (36.4%) out of a total of 11 trees on the property. The subject property is zoned RS (Single Family Residential) and located at 4120 Kurth Street S (Marion County Assessor Map and Tax Lot Numbers: 083W09BB01600 and 00300).

**APPLICANT:** MMH, LLC (Charles Weathers, John Wulf)

**LOCATION:** 4120 Kurth St S, Salem OR 97302

**CRITERIA:** Salem Revised Code (SRC) Chapter 808.035.

**FINDINGS:** The findings are in the attached Decision dated July 18, 2023.

**DECISION:** The **Planning Administrator APPROVED** TCP22-12 subject to the following conditions of approval:

- Condition 1:** All trees designated for preservation under the tree conservation plan shall be protected during construction with the installation of an above ground silt fence, or its equivalent, which shall encompass 100 percent of the critical root zone of the trees. Tree protection measures shall remain in place until the issuance of Notice of Final Completion for the dwelling unit(s) on the lot.
- Condition 2:** Each lot or parcel within the development proposal shall comply with the tree planting requirements set forth in SRC 808.050.
- Condition 3:** No tree designated for preservation may be removed or critically damaged unless and until a Tree Conservation Plan Adjustment application is submitted to the Community Development Department and approval has been granted by the Planning Administrator. Failure to preserve trees marked for preservation may result in a civil penalty.

The applicant, and all representatives thereof, shall comply with all applicable development standards of SRC Chapter 808. The approved Tree Conservation Plan is on file with the City of Salem and is binding on the lots created by the division of the subject property. No tree designated for removal on the approved Tree Conservation Plan shall be removed or critically damaged prior to the Tree Conservation Plan approval date.

Approval of the Tree Conservation Plan shall remain valid as long as the development proposal the tree conservation plan is issued in connection with remains valid.

Case Manager: Bryce Bishop, Planner III, [bbishop@cityofsalem.net](mailto:bbishop@cityofsalem.net), 503-540-2399

This decision is final unless written appeal from the applicant or the owner of the subject property is filed with the City of Salem Planning Division Room 305, 555 Liberty Street SE, Salem OR 97301 no later than **Wednesday, August 2, 2023 by 5:00 p.m.** The appeal must state where the decision failed to conform to the approval criteria in SRC Chapter 808. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Hearings Officer will review the appeal at a public hearing. After the hearing, the Hearings Officer may amend, rescind, or affirm the action or refer the matter to staff for additional information.

<http://www.cityofsalem.net/planning>

## BEFORE THE PLANNING ADMINISTRATOR OF THE CITY OF SALEM

### DECISION

IN THE MATTER OF APPROVAL OF	)	FINDINGS & ORDER
TREE CONSERVATION PLAN	)	
CASE NO. TCP22-12;	)	
4120 KURTH STREET S	)	JULY 18, 2023

In the matter of the application for a Tree Conservation Plan, the Planning Administrator, having received and reviewed the evidence and application materials, makes the following findings and adopts the following order as set forth herein.

### REQUEST

A Tree Conservation Plan in conjunction with a Subdivision (Case No. SUB22-07) proposing the preservation of four trees (36.4%) out of a total of 11 trees on the property. The subject property is zoned RS (Single Family Residential) and located at 4120 Kurth Street S (Marion County Assessor Map and Tax Lot Numbers: 083W09BB01600 and 00300).

### PROCEDURAL FINDINGS

1. On July 11, 2022, an application for a Tree Conservation Plan was submitted for property located at 4120 Kurth Street S (**Attachment A**).
2. The Tree Conservation Plan (**Attachment B**) was submitted in conjunction with a subdivision application for the subject property (Case No. SUB22-07).
3. After additional requested information was provided by the applicant, the application was deemed complete on September 22, 2022.

### SUBSTANTIVE FINDINGS

#### 1. Proposal

The tree conservation plan identifies a total of 11 trees on the property with a diameter-at-breast-height (dbh) of 10 inches or greater, with seven of the trees identified for removal (**Attachment B**). There are no heritage trees or riparian corridor trees or native vegetation located on the property; one of the trees located on the property is a significant tree, a 42.5-inch fir.

#### 2. Applicability

A tree conservation plan is required in conjunction with any development proposal for the creation of lots or parcels to be used for single family uses, two family uses, three family uses, four family uses, or cottage clusters.

### 3. Summary of Record

The application materials are available on the City's online Permit Application Center at <https://permits.cityofsalem.net>. To view the materials without registering, you may use the search function and enter the permit number listed here: 22-114285.

### **DECISION CRITERIA FINDINGS**

#### 4. Analysis of Tree Conservation Plan Approval Criteria

Salem Revised Code (SRC) 808.035(d) provides that an application for a Tree Conservation Plan shall be granted if the following criteria are met. The following subsections are organized with approval criteria, followed by findings of fact upon which the decision is based. Lack of compliance with the following criteria is grounds for denial or for the issuance of conditions of approval to satisfy the criteria.

***SRC 808.035(d)(1)(A): No heritage trees are designated for removal;***

**Finding:** There are no heritage trees located on the subject property; therefore, the preservation requirements of SRC 808.035(d)(1)(A) are not applicable to the tree conservation plan.

***SRC 808.035(d)(1)(B): No significant trees are designated for removal, unless there are no reasonable design alternatives that would enable preservation of such trees;***

**Finding:** There is one significant tree located on the property, a 42.5-inch fir. As shown on the tree conservation plan, this tree is designated for removal. The removal of this tree is necessary because there are no reasonable design alternatives that would enable preservation of the tree. Pursuant to SRC 808.035(d)(2), when an approval criterion in this subsection requires a determination that there are no reasonable design alternatives that would enable the preservation of a tree, the factors included under SRC 808.035(d)(2)(A)-(D) shall be considered in making such determination. As identified in the findings included under staff's analysis of the proposal for conformance with approval criterion SRC 808.035(d)(2), the location of the tree in proximity to the required boundary street improvement of Browning Avenue S results in a situation where there are no reasonable design alternatives to save the tree due to the substantial impacts to the critical root zone of the tree that will be required in connection with the construction of the required street improvements along Browning Avenue. This approval criterion is therefore met.

***SRC 808.035(d)(1)(C): No trees or native vegetation in a riparian corridor are designated for removal, unless there are no reasonable design alternatives that would enable preservation of such trees or native vegetation.***

**Finding:** There are no riparian corridors located on the subject property; therefore, no riparian trees or native vegetation are proposed for removal. The tree preservation requirements of SRC 808.035(d)(1)(C) are not applicable to the tree conservation plan.

***SRC 808.035(d)(1)(D): Not less than 30 percent of all trees located on the property are designated for preservation, unless there are no reasonable design alternatives that would enable preservation of such trees;***

**Finding:** The tree conservation plan identifies a total of 11 trees on the subject property, with four (36.4%) of the trees designated for preservation and seven (63.6%) of the trees designated for removal. Because the tree conservation plan designates 36.4 percent of the existing trees on the property for preservation, it exceeds the minimum tree preservation requirement of 30 percent. This approval criterion is met.

***SRC 808.035(d)(1)(E): When less than 30 percent of all trees located on the property are designated for preservation, the mitigation measures required under SRC 808.035(e) are met.***

**Finding:** The tree conservation preserves 36.4 percent of the existing trees on the subject property. Because the tree conservation plan preserves more than 30 percent of the trees on the property this approval criterion is not applicable to the tree conservation plan.

***SRC 808.035(d)(2): When an approval criterion in this subsection requires a determination that there are no reasonable design alternatives that would enable preservation of a tree(s), the following factors, which include but are not limited to those included under SRC 808.035(d)(2)(A-D), shall be considered in making such determination.***

**Finding:** As shown on the tree conservation, the proposed development requires the removal of one significant tree, a 42.5-inch fir located along the northern boundary of the site abutting Browning Avenue SE. Because this tree is a significant tree based on its size, it can only be approved for removal if there are no reasonable design alternatives that would enable its preservation. SRC 808.035(d)(2) identifies the following factors which are required to be considered in making a determination that there are no reasonable design alternatives that would enable the preservation of a significant tree proposed for removal:

(A) *Streets. The removal is necessary due to:*

- (i) *The location and alignment of existing streets extended to the boundary of the subject property;*
- (ii) *The planned alignment of a street identified in the Salem Transportation System Plan (TSP);*
- (iii) *(A street required to meet connectivity standards, to serve property where a flag lot accessway is not possible, or where a cul-de-sac would exceed maximum allowed length;*
- (iv) *Any relocation of the proposed street resulting in lots that do not meet lot standards;*
- (v) *A required boundary street improvement.*

(B) *Utilities. The removal is necessary due to existing or proposed utilities that cannot be relocated to an alternative location.*

(C) *Site topography. The removal is necessary due to the topography of site which will require severe grading in the critical root zone of the tree in order to comply with*

*maximum street or intersection grades, fire department access requirements, or Fair Housing Act or ADA accessibility standards.*

- (D) *Dwelling unit density. The removal is necessary in order to meet a minimum dwelling unit density of 5.5 dwelling units per acre. In consideration of this factor:*
- (i) *Not more than 15 percent of the proposed dwelling units within the development shall be required to be designated for middle housing in order to meet density requirements and demonstrate there are no reasonable design alternatives enabling preservation of a tree(s); and*
  - (ii) *The following may be excluded from the total site area for purposes of calculating density:*
    - (aa) *Riparian corridors, provided the riparian corridor is not graded or developed;*
    - (bb) *Areas of the site with slopes exceeding 25 percent, provided such areas are not graded or developed; and*
    - (cc) *Open space that will preserve significant natural features, provided the perpetual maintenance and operation of the open space is provided by a home owners' association.*

Of the above identified factors, it is the required half-street improvement along the property's Browning Avenue frontage, and the associated utility improvements, that result in there being no reasonable design alternative to enable the preservation of this tree. The tree is located on the northern property line of the subject property. Because Browning Avenue is currently underimproved and lacks sufficient public street right-of-way to meet its collector street classification under the City's Transportation System Plan (TSP), right-of-way dedication and a half-street boundary street improvement are required along the property's Browning Avenue frontage. The required right-of-way dedication will result in the tree being located within the public street right-of-way and the street and utility improvements associated with the required improvement of Browning Avenue will result in roughly at least 46 percent or more of the tree's critical root zone being impacted by grading and construction. Due to the required alignment of the street, these improvements cannot be relocated to eliminate damage to the tree. As such, there are no reasonable design alternatives to enable the tree's preservation and its removal is therefore warranted in consideration of the factors included under SRC 808.035(d)(2). This approval criterion is met.

## **5. SRC 808.035(e) Mitigation Measures**

When less than 30 percent of all trees located on a property are designated for preservation under a tree conservation plan, any combination of one or more of the mitigation measures identified under SRC 808.035(e)(1-4) is required shall be provided for each tree removed in excess of 70 percent.

**Finding:** The tree conservation plan preserves 36.4 percent of the existing trees on the property. Because the tree conservation does not propose the removal of more than 70 percent of the existing trees, provision of the mitigation measures identified under SRC 808.035(e)(1-4) is not required in conjunction with the approval of the proposed tree conservation plan.

## 6. SRC 808.046 Protection Measures During Construction

Pursuant to SRC 808.046, any trees or native vegetation required to be preserved or protected under the UDC shall be protected during construction.

Protection measures shall include the installation of an above ground silt fence encompassing 100 percent of the critical root zone of the tree or the perimeter of the native vegetation. Protection measures are required to remain until issuance of notice of final completion for dwelling unit(s) on the lot, or issuance of certificate of occupancy in all other cases.

**Finding:** The tree conservation plan identifies four trees for preservation. These trees are therefore required to be protected in conformance with the tree protection measures required under SRC 808.046.

## 7. SRC 808.050 Tree Planting Requirements

SRC Chapter 808.050 establishes tree planting requirements for lots or parcels to be used for single family uses, two family uses, three family uses, four family uses, or cottage clusters. The specific number of trees that must be provided on each lot is based upon the requirements of Table 808-1, as shown below:

<b>Table 808-1 (Tree Planting Requirements)</b>	
<b>Lot or Parcel Size</b>	<b>Minimum Trees Required</b>
Less than 4,000 ft. <sup>2</sup>	1
4,000 ft. <sup>2</sup> to 6,000 ft. <sup>2</sup>	2
6,001 ft. <sup>2</sup> to 7,000 ft. <sup>2</sup>	3
7,001 ft. <sup>2</sup> to 8,000 ft. <sup>2</sup>	4
8,001 ft. <sup>2</sup> to 9,000 ft. <sup>2</sup>	5
Greater than 9,000 ft. <sup>2</sup>	6

In the event there are insufficient existing trees on a lot or parcel to meet the requirements of Table 808-1, the deficiency shall be made up by planting trees that are at least 1.5 inches in caliper.

**Finding:** At the time of building permits, each lot shall meet the tree planting requirements identified in Table 808-1.

### **IT IS HEREBY ORDERED**

The proposed Tree Conservation Plan is consistent with the provisions of SRC Chapter 808 and is hereby **APPROVED** subject to the applicable standards of the Salem Revised Code, the findings contained herein, and the following conditions of approval adopted pursuant to SRC 808.035(e):

**Condition 1:** All trees designated for preservation under the tree conservation plan shall be protected during construction with the installation of an above ground silt fence, or its equivalent, which shall encompass 100 percent of the critical root zone of

the trees. Tree protection measures shall remain in place until the issuance of Notice of Final Completion for the dwelling unit(s) on the lot.

**Condition 2:** Each lot or parcel within the development proposal shall comply with the tree planting requirements set forth in SRC 808.050.

**Condition 3:** No tree designated for preservation may be removed or critically damaged unless and until a Tree Conservation Plan Adjustment application is submitted to the Community Development Department and approval has been granted by the Planning Administrator. Failure to preserve trees marked for preservation may result in a civil penalty.



---

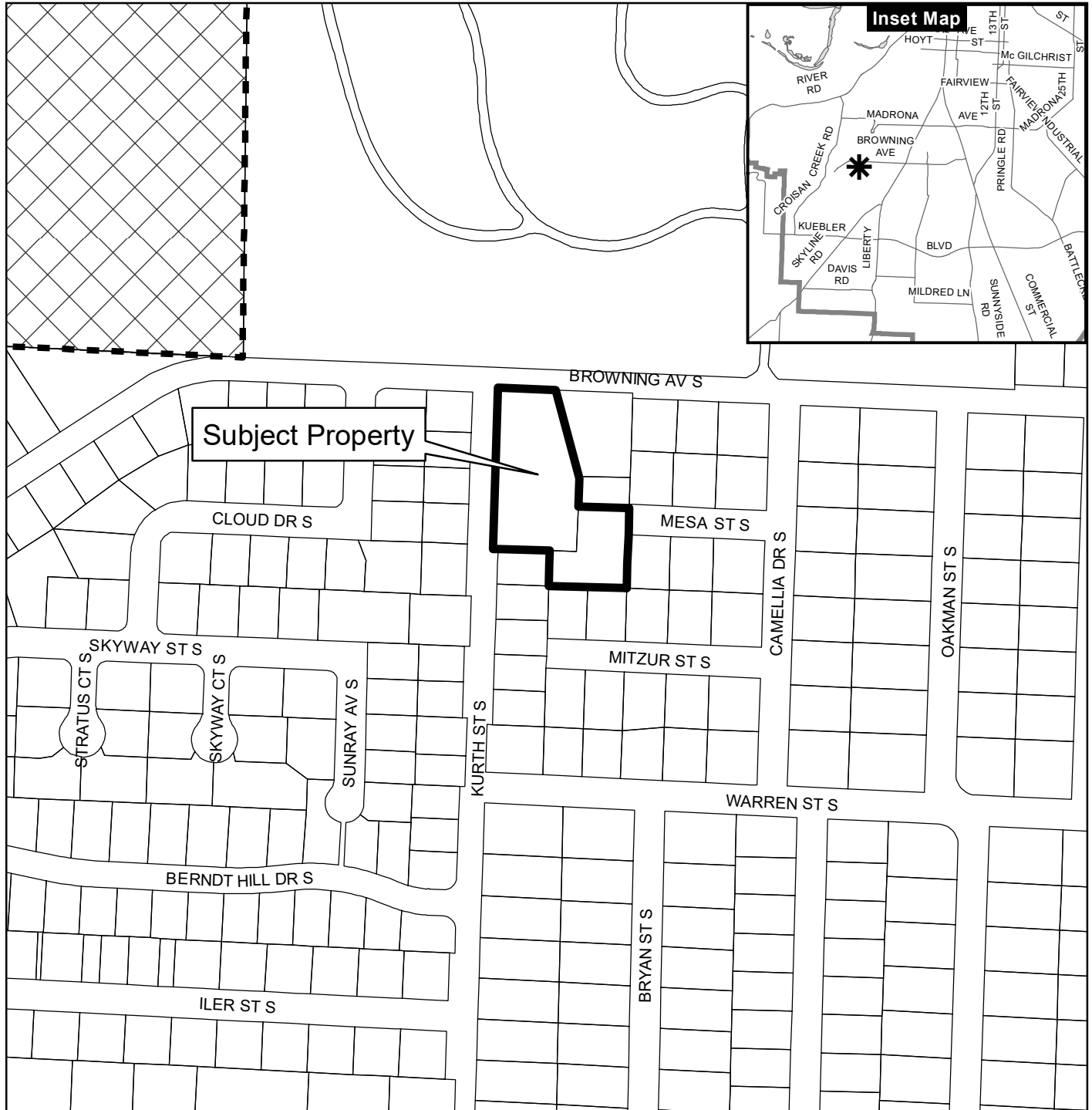
Bryce Bishop, Planner III, on behalf of  
Lisa Anderson-Ogilvie, AICP  
Planning Administrator

**Attachments:**

- A. Vicinity Map
- B. Approved Tree Conservation Plan



# Vicinity Map 4120 Kurth Street S



## Legend

- Taxlots
- Urban Growth Boundary
- City Limits
- Outside Salem City Limits
- Historic District
- Schools

Parks

**CITY OF Salem**  
AT YOUR SERVICE  
Community Development Dept.

This product is provided as is, without warranty. In no event is the City of Salem liable for damages from the use of this product. This product is subject to license and copyright limitations and further distribution or resale is prohibited.

0 100 200 400 Feet





TREE TABLE			
NO.	SPECIES	DBH	CRITICAL ROOT ZONE
1	FIR	42.5"	42.5'
2	FIR	18"	18'
3	FIR	26"	26'
4	FIR	26"	26'
5	FIR	22"	22'
6	MAPLE	14"	14'
7	BIRCH	16"	16'
8	ALDER	15"	15'
9	BIRCH	14"	14'
10	MAPLE	12"	12'
11	MAPLE	16"	16'
SUMMARY			
TOTAL NUMBER OF TREES ON SITE		11	
NUMBER OF TREES ON SITE TO BE REMOVED		7	
TREES ON SITE REMAINING		4	
PERCENT TREES REMAINING		36%	

**Tree Summary:**  
-Trees designated for preservation: 4 (36.4%)  
-Tree designated for removal: 7 (63.6%)  
-Total trees: 11

**Significant Trees:**  
-Significant trees designated for preservation: 0  
-Significant trees designated for removal: 1  
-Total significant trees: 1

● Tree Designated for Preservation  
● Tree Designated for Removal  
■ Significant Tree Designated for Removal

**PLANNING ACTION**  
APPROVED SUBJECT TO  
DEVELOPMENT REQUIREMENTS  
NOTED ON PLANS.  
*Bryce Bishop*  
Date and Signature of Planner  
07/16/2023 6:59:45 AM

VERIFY SCALE  
BAR IS ONE INCH ON  
ORIGINAL DRAWING  
IF NOT ONE INCH ON  
SCALE, SCALE  
ACCORDINGLY

DSN. JW  
DRN. RS  
CKD. JW

NO. 1  
DATE 08/08/2022

DESCRIPTION  
REVISIONS

PROFESSIONAL  
ENGINEER  
REVIEW  
WILLIAM J. KELLS  
REV. 12/2023  
REVISIONS: 6/30/2024

**WESTTECH ENGINEERING, INC.**  
CONSULTING ENGINEERS AND PLANNERS  
**WE**  
3841 Fairview Industrial Dr. S.E., Suite 100, Salem, OR 97302  
Phone: (503) 585-2474 Fax: (503) 585-3986  
E-mail: westtech@westtech-eng.com

CHARLES WEATHERS  
KURTH STREET SUBDIVISION

SITE TREE CONSERVATION  
PLAN

DRAWING  
C-2

JOB NUMBER  
3362.0000