

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2005 JUN -9 PM 7:59

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Public Works Agency
DATE: June 21 2005

**RE: RESOLUTION DENYING THE APPEAL FILED BY ROBERT BOBB
AGAINST THE DECISION OF THE PUBLIC WORKS AGENCY
APPROVING THE ISSUANCE OF TREE REMOVAL PERMIT DRO2-123
FOR BROOKPARK ROAD, AN UNDEVELOPED LOT, APN 085-0105-040-00,
IN ORDER TO BUILD A NEW HOME**

SUMMARY

This report provides background information and a recommendation regarding a Tree Removal Permit for the proposed removal of four trees from an undeveloped lot on Brookpark Road. In order to preserve the appellant's right to appeal the staff decision approving the permit application, staff requests the concurrence of the City Council in waiving the three (3) appeal related deadlines contained in the Protected Tree Ordinance (PTO): (a) the appeal shall be filed within five (5) working days after the date of a decision by the Public Works Agency (PWA); (b) the hearing date set by the City Clerk shall be not more than thirteen (13) working days from the date of the decision by the PWA; and (c) if the appeal is not finally disposed of by the City Council within eighteen (18) working days of the date of the decision by the PWA, said decision shall be deemed affirmed, and the permit appeal denied.

Staff approved the Tree Removal Permit on the basis that the trees proposed for removals are growing within the footprint of, or too close to, the proposed construction of a new single-family home. There is no reasonable redesign of the site plan that would save the trees. In order to save the trees, the proposed home would have to be reduced in size approximately 50%. The cost of their preservation to the property owner, including any additional design and construction expenses, exceeds the value of the trees. Staff has prepared a resolution that will enable the City Council to implement a decision that denies Mr. Bobb's appeal and allows the issuance of the tree permit.

In addition, on April 25, 2005, City Planning issued a Special Residential Design Review Permit and a Creek Protection Permit for the same project; the Creek Protection Permit is appealable to the City Planning Commission.

Item: _____
City Council
June 21, 2005

FISCAL IMPACTS

There is no fiscal impact to the City’s budget if the appeal is denied or upheld.

BACKGROUND

Tree Services approved a permit to remove four Coast Live Oaks from an undeveloped lot on Brookpark Road. The applicant and property owner is Peter Romweber. Robert Bobb lives next to the proposed home. Mr. Romweber originally applied for a tree permit on December 30, 2002. Mr. Romweber re-designed the home subsequent to the tree permit application and the tree permit was re-filed on January 5, 2005. Tree Services approved the permit on March 16, 2005.

A site design conference was held on January 28, 2005, in an effort to achieve a design which would accommodate the jeopardized trees. Attending the meeting were city staff, Peter Romweber, Robert Bobb and Harold P. Smith, Mr. Bobb’s attorney. A design to save the trees in question would require the applicant to reduce the house size by approximately 50%. Peter Romweber would not agree to make such a change and staff felt doing so would be an unreasonable redesign of the project.

Harold P. Smith, representing Robert Bobb, filed an appeal on March 28, 2005. The following was stated as the basis for the appeal:

1. The removal of trees will damage the aesthetic quality of the neighborhood.
2. The development proposed by the developer/applicant could be reduced or redesigned so that mature trees do not have to be removed.
3. The north side of the proposed house should be moved further to the south so that mature trees do not have to be removed.
4. The removal of trees violates accepted standards of forestry design and maintenance.

“We also maintain that the permit or permits were granted in error, constitute an abuse of discretion and that the decision is not supported by the evidence in the written record.”

Harold Smith was not sent a copy of the permit until April 29, 2005. He was given until 3:30 p.m. on May 9, 2005 to submit materials to supplement the tree permit appeal. Mr. Smith did submit a letter dated May 5, 2005 and supplemented the appeal as follows:

1. The tree permit fails to consider alternative designs that reduce the house to a size that will not require the removal of all four trees. For instance, the house can be redesigned in a manner that does not require the removal of tree #4.
2. There is no substantial evidence that would support the conclusion that the redesign of the property in order to save trees would cost the developer additional monies in any specific amount.

Item: _____
City Council
June 21, 2005

3. The conclusions regarding the transfer of land stability elements provided by existing trees to equivalent stability provided by newly planted trees are not supported by substantial evidence. At a minimum, the design and planting of new trees should be examined by both soils and horticulture experts and specific findings and requirements should be imposed to ensure that soils stability does not suffer from the removal of existing trees.
4. The permitting authority has not adequately studied or considered engineered alternatives to building at a slightly more southerly location. Specifically, the permit contains conclusory language regarding the possible problems associated with building on a portion of the unstable soils and drainage swale to the south of the proposed house. The soils condition is largely due to the developer's past practices which failed to adequately engineer soils that were disturbed and further failed to control and direct water within the watershed to improve stability. We maintain that the house can be constructed on a portion of the southerly side in a manner that can be engineered for both stability and watershed protection.

KEY ISSUES AND IMPACTS

The first key issue is the waiving of the appeal related deadlines in the PTO. Due to report preparation timeframes (and public notification due to the Sunshine Ordinance) the City Clerk is unable to set a hearing date within 13 working days, and the City Council cannot dispose of the appeal within 18 days from the date of the decision by PWA. The PTO also has a requirement that the appeal shall be filed within five working days after the date of a decision by the PWA. The appeal was filed eight days after the PWA decision. The City Council should still allow the appeal. The waiving of the deadlines has been a routine request to the City Council in previous tree permit appeal hearings.

The second key issue is whether staff correctly followed the PTO guidelines in approving Mr. Romweber's tree removal application. Staff believes the PTO was properly applied and recommends that the City Council approve the resolution denying the appeal. The resolution allows the removal of four trees and requires the preservation of all other protected trees on the property.

Section 12.36.050 of the PTO lists the criteria used to determine if a tree should be removed or preserved (see Attachment F). This criteria review is a two-step process:

- First, the tree removals must be necessary in order to accomplish at least one of five possible objectives. In this case, two objectives apply; (a) the trees are within the footprint or in close proximity to a proposed new home and (b) requiring their preservation could be considered an unconstitutional regulatory taking of property.

- Second, regardless of the first determination, a finding of any one of five possible situations listed in the PTO is grounds for permit denial. For this project, three possible situations apply: (1) 12.36.050 (B)(1)(a), removal of a healthy tree could be avoided by reasonable redesign of the site plan, prior to construction, (2) 12.36.050 (B)(2), adequate provisions for drainage, erosion control, land stability or windscreen have not been made in situations where such problems are anticipated as a result of the removal, and (3) Section 12.36.050 (B)(4), the value of the trees is greater than the cost of their preservation to the property owner.

PWA was unable to support findings for denial based on the following:

- A re-design of the site plan, prior to construction, is not reasonable. The proposed house is unable to be relocated further to the south due to the soil conditions and topography of the site. The southern portion of the subject lot contains a large swale which, according to a soils report prepared for the site (dated August 30, 1999) is to be avoided due to unstable soils (see Attachment B). The large swale also contains the watershed area forming the headwaters to the existing creek located in the southeast portion of the lot. Construction within the watershed area would result in potential adverse impacts to the creek.
- The proposed house is approximately 78 feet wide. If the four trees proposed for removal were saved by re-design of the site plan, the home would have to be reduced to a width of approximately 42 feet in order to provide adequate future growing space for the trees' canopies, and to prevent significant damage to root systems. The loss in total livable floor area of the house would be significant and cannot be made up by extending the home further down the slope to the east. Extending a building design farther down the slope to the east would cause trees to be removed that are currently being saved.
- If four trees are removed from the lot, Tree Services does not anticipate any problems with drainage, erosion control or land stability. Trees reduce soil surface erosion but are not a primary component of land stability. The loss of soil erosion benefits will be mitigated by replacement tree plantings. A soils report was prepared for the site, dated August 30, 1999. Since the report is more than five years old, a new soils report will be required at the time of building permit application.
- The trees proposed for removal are not large specimens. The trunk diameters of the four trees are 10.5, 17, 18.5 and 13 inches. The value of the four trees as determined by a formula developed by the International Society of Arboriculture is \$30,530. The cost of preserving the four trees, including any additional design and construction expenses, could exceed \$30,530. If preservation costs exceed the value of the trees proposed for removal, tree removal is allowed.
- The house could be redesigned to save tree #4 at the rear of the house. However, Community and Economic Development Agency staff in the Planning and Zoning Division estimated the cost of redesign would exceed the \$5,700 value of the tree. If the cost of redesign exceeds the value of the tree, preservation cannot be required.

Item: _____
City Council
June 21, 2005

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The potential environmental impact of this project was evaluated when the subject lot was subdivided from the adjacent lot to the north. In 1997 the City Planning Commission adopted a Mitigated Negative Declaration pursuant to State California Environmental Quality Act (“CEQA”) Guidelines and local environmental review regulations. Since the adoption of the Mitigated Negative Declaration, there have been changes to the project, new circumstances have emerged surrounding the project, and new information related to the project has become available. City Planning, as lead agency, has prepared an addendum to the previously adopted Mitigated Negative Declaration that analyzes the potential environmental effects that could occur as a result of the project changes, new circumstances, and new information. Although not legally required to do so, a draft of the addendum was circulated for public review and comment on May 25, 2004. All comments received were considered by CEDA. The final addendum to the previously adopted Mitigated Negative Declaration was prepared on February 14, 2005, which contained certain minor additions and clarifications. It has been determined that given the project changes, new circumstances, and new information, the project could not have a significant impact on the environment and thus no further environmental review is required. The environmental documents are attached to this report.

SUSTAINABLE OPPORTUNITIES

The construction of a new home meets the Mayor and City Council’s Priority Objective to improve the housing opportunities of the city’s neighborhoods. Property tax revenues paid to the county will increase as a result of the construction of a new home.

RECOMMENDATION AND RATIONALE

Staff recommends that the City Council waive the appeal deadlines mandated by the PTO. Staff feels that it is important for the appellants to have the opportunity to present their case before the City Council.

Staff recommends that the City Council approve the resolution denying the appeal of tree permit application DR02-123 and allowing the issuance of a tree removal permit for four trees on Brookpark Road, APN 085-0105-040-00.

ALTERNATIVE RECOMMENDATION

The City Council can reverse staff’s decision and require the preservation of the four trees. The City Council can require changes or impose additional conditions of approval that, in its judgment, are necessary to ensure the tree permit decision conforms to the PTO conditions of approval in section 12.36.060. This action would be taken if the City Council found that staff made an error or abused their discretion when they approved the removal of the four trees. Section 12.36.060 (E) of the PTO allows any other conditions that are reasonably necessary to

Item: _____
City Council
June 21, 2005

implement the provisions of the chapter. This alternative would require the property owner to redesign the proposed home.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the resolution denying the appeal of tree removal permit DR02-123 and issuing the tree permit for the removal of four trees on Brookpark Road, APN 085-0105-040-00. The Conditions of Approval for the tree removal permit include planting four native replacement trees and installing protective fencing around two trees that will be close to the proposed construction.

Respectfully submitted,



RAUL GODINEZ, P.E.
Director, Public Works Agency

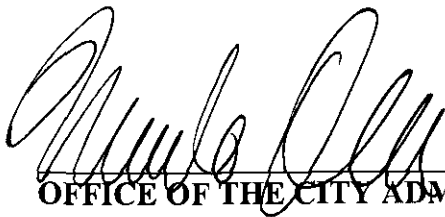
Reviewed by:
Bruce Saunders, Assistant Director

Prepared by:
Dan Gallagher, Tree Supervisor II
Department of Infrastructure & Operations

Attachments:

- A. Appeal filed by Peter Smith
- B. PWA decision letter, with conditions of approval
- C. January 8, 1997, Mitigated Negative Declaration
- D. February 14, 2005, Final Addendum
- E. Mitigation Measures incorporated as conditions of approval
- F. OMC Section 12.36.050 Criteria for Tree Removal Permit

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



OFFICE OF THE CITY ADMINISTRATOR

Item: _____
City Council
June 21, 2005

ATTACHMENT A

CITY OF OAKLAND
OFFICE OF PARKS & RECREATION
OFFICE OF THE CITY CLERK
 OAKLAND
TREE REMOVAL PERMIT APPEAL FORM

05 MAR 28 PM 3:28

1. Date: 3/28/05
2. Appellant's Name: ROBERT + JOYCE BOBIS
3. Appellant's Address: c/o H. P. Smith 1901 HARRISON ST, 9TH FL
 City, State & Zip: OAKLAND CA 94612
 Telephone #: (510) 273 8880
4. Tree Removal Permit Number: TD2-123 PR 02-123
5. Address of Tree Removal: see attached
6. Basis for Appeal: see attached

I HEREBY CERTIFY UNDER PENALTY OF PERJURY, THAT I AM THE
REPRESENTATIVE OF THE
 OWNER OF:

- THE REAL PROPERTY DESCRIBED IN (5) ABOVE, OR
- REAL PROPERTY ADJOINING AND/OR CONFRONTING THE REAL PROPERTY DESCRIBED IN (5) ABOVE.

Signature: [Signature] Date: 3/28/05

FOR OFFICE USE ONLY

.....

Appeal Hearing Date: 5/17/05 [Signature]

Received By: J McKay [Signature]

Appeal Fee Paid: \$50.00 *\$50 fee for Tree Appeal

Receipt #: 396

Note: Appeals must be heard by the tree committee at its next scheduled meeting.

LAW OFFICES OF
HAROLD P. SMITH
1901 HARRISON STREET, NINTH FLOOR
OAKLAND, CALIFORNIA 94612

Harold P. (Peter) Smith

www.smithlawcal.com

Telephone: (510) 273-8880
Facsimile: (510) 903-8881
Email: psmith@smithlawcal.com

March 28, 2005

City Clerk
City of Oakland
One Frank Ogawa Plaza, Second Floor
Oakland, CA 94612

VIA HAND DELIVERY

Re: Appeal of Tree Permit / Brookpark Road Property
Permit Numbers: T02-123 / DR 02-123
Related Development Permits: VDRC02-0603 / CP03-094

To Whom It May Concern:

I represent Joyce and Robert Bobb with regard to the above referenced permits. The Bobbs are adjoining neighbors to the proposed development activity. By telephone message, I was advised that the last day to appeal the granting of the above referenced tree removal permit is March 28, 2005.

This letter will constitute an appeal of the tree removal permit or permits associated with the above development. If there is any fee associated with this appeal, please provide me with the information forthwith.

I have requested a copy of the appeal form from the Tree Division, but was advised that the form is maintained by the City Clerk. I requested that the City Clerk provide me with a copy of the form, but there has been no response to my request. I have requested that the Tree Division provide me with a permit number, but the Tree Division could not locate a number. (The Planning Department did have a number.) I have requested that we be provided with a copy of the tree permit or permits, but have not yet received the permit or permits. I have not been provided with any written or facsimile notice of the issuance of any tree permit or permits. I have also requested that I be advised of any fees for an appeal, but have not been provided with that information.

The Bobbs hereby appeal the granting of any tree removal permit or permits associated with the above referenced development on the following grounds:

1. The removal of trees will damage the aesthetic quality of the neighborhood.
2. The development proposed by the developer/applicant could be reduced or redesigned so that mature trees do not have to be removed.

City Clerk
Page 2
March 28, 2005

LAW OFFICES OF
HAROLD P. SMITH

3. The north side of the proposed house should be moved further to the south so that mature trees do not have to be removed.
4. The removal of trees violates accepted standards of forestry design and maintenance.

We also maintain that the permit or permits were granted in error, constitute an abuse of discretion and that the decision is not supported by the evidence in the written record.

Sincerely,



Harold P. (Peter) Smith

HPS:

cc: Joyce and Robert Bobb

Document26

<p>TREE PERMIT City of Oakland, Public Works Agency</p>

Permit #DR02-123
 Brookpark Road, APN 085-0105-040-00
 Applicant: Peter Romweber

Approved: March 16, 2005
 Expires: March 16, 2006

Removal Approved

#1	Coast Live Oak	#3	Coast Live Oak
#2	Coast Live Oak	#4	Coast Live Oak

Preservation Required

A	Coast Live Oak		
		▶	All other protected trees

As per Chapter 12.36 of the Oakland Municipal Code, this Development-related permit approves the removal of four (4) protected trees and requires the preservation of one (1) protected tree near the proposed home, and all other protected trees on the lot, subject to conditions of approval. This permit is effective five (5) working days after the date of this decision unless appealed as explained below. This permit is defined as a Development-related permit due to the proposed residential development on the site.

This decision of the Public Works Agency, Tree Services Section may be appealed by the applicant, or the owner of any “adjoining” or “confronting” property, to the City Council within five (5) working days after the date of this decision and by 5:00 p.m. The term “adjoining” mean immediately next to, and the term “confronting” means in front of or in back of. An appeal shall be on a form prescribed by and filed with the City Clerk, at One Frank H. Ogawa Plaza, second floor. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the City or wherein such decision is not supported by the evidence in the record and must include payment of \$50.00, in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal this decision and raise any and all issues in your appeal may preclude you from challenging this determination in court.

OAKLAND MUNICIPAL CODE SECTION 12.36.050(A) FINDINGS

The application complies with Section 12.36.050(A)(1) of the Oakland Municipal Code. Four Coast Live Oaks need to be removed to construct a single-family home. The trees are located within the footprint of the building and must be removed to allow space for the project.

OAKLAND MUNICIPAL CODE SECTION 12.36.050(B) FINDINGS

Tree removal cannot be avoided by reasonable re-design (OMC Section 12.36.050(B)(1)(a).

A re-design of the site plan, prior to construction, is not reasonable. The proposed house is unable to be relocated further to the south due to the soil conditions and topography of the site. The southern portion of the subject lot contains a large swale which, according to a soils report prepared for the site (dated August 30, 1999) is to be avoided due to unstable soils. The large swale also contains the watershed area forming the headwaters to the existing creek located in the southeast portion of the lot. Construction within the watershed area would result in potential adverse impacts to the creek.

The proposed house is approximately 78 feet wide. The trees in question are located on the north side of the lot. Trees #1, #2 and #3 are growing within the proposed footprint of the home; tree #4 is adjacent to the rear of the building and against the deck. If the trees were saved by re-design of the site plan, the home would have to be reduced to a width of approximately 42 feet in order to provide adequate future growing space for the trees' canopies, and to prevent significant damage to root systems. The loss in total livable floor area of the house would be significant and cannot be made up by extending the home further down the slope to the east. Extending a building design farther down the slope to the east would cause trees to be removed that are currently being saved.

Adequate provisions for drainage, erosion control, land stability or windscreen have been made (OMC Section 12.36.050(B)(2)).

Four oak trees averaging 14.75 inches in diameter will be removed from the lot to build a home. As a result of the tree removals, Tree Services does not anticipate any problems with drainage, erosion control and land stability or windscreen.

Tree canopies intercept rainfall and reduce surface erosion. Also, tree root systems help stabilize the upper portion (top 3 feet) of the soil. When the trees are removed from the site, their assistance with reducing soil erosion and stabilizing the hill will be lost.

This loss will be offset by the house because it will cover soil that was once exposed to surface erosion, and, the intact tree root systems will still be in place underground, even though the above-ground portion of the trees were removed. The underground root system will decay slowly over time and will continue to help with soil stability until the roots decay into soil components. Replacement trees will be planted and will eventually perform the same surface erosion and soil stability functions as the four trees that were removed.

The value of the trees is not greater than the cost of their preservation to the property owner (OMC Section 12.36.050(B)(4)).

The trunk diameters of trees #1 through #4 are 10.5", 17", 18.5" and 13", respectively. The value of the trees as determined by a formula developed by the International Society of Arboriculture is \$30,530. The cost of reducing the width of the home from 78 feet to 42 feet, including any additional design and construction expenses, will exceed \$30,530. Therefore, there are no grounds for permit denial.

OAKLAND MUNICIPAL CODE SECTION 12.36.070(E) CEQA REVIEW

The potential environmental impact of the proposed house was evaluated when the subject lot was subdivided from the adjacent lot to the north. In 1997 the City Planning Commission adopted a mitigated negative declaration pursuant to the State of California Environmental Quality Act ("CEQA") Guidelines and local environmental review regulations. Since the adoption of the mitigated negative declaration, there have been changes to the project, new circumstances have emerged surrounding the project, and new information related to the project has become available. The Community and Economic Development Agency, as lead agency, has prepared an addendum to the previously adopted mitigated negative declaration that analyzes the potential environmental effects that could occur as a result of the project changes, new circumstances, and new information. A draft of the addendum was circulated for public review and comment on May 25, 2004. All comments received were considered by the Community and Economic Development Agency. The final addendum to the previously adopted mitigated negative declaration was prepared on February 14, 2005. It has been determined that given the project changes, new circumstances, and new information, the project could not have a significant impact on the environment. No further environmental review is required.

OAKLAND MUNICIPAL CODE SECTION 12.36.060 CONDITIONS OF APPROVAL

1. Limitations on Tree Removals

Tree removals, as defined in the Protected Trees Ordinance, Section 12.36.020 of the Oakland Municipal Code, may not commence unless and until the applicant has obtained all other necessary permits pertinent to site alteration and construction.

2. Defense, Indemnification & Hold Harmless

Within ten (10) business days of the filing of a claim, action or proceeding that is subject to this provision, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes this condition of approval.

The applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, Oakland Redevelopment Agency, Oakland City Planning Commission and their respective agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Planning and Zoning Division, Oakland City Planning Commission, the City of Oakland Redevelopment Agency or City Council relating to this project. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.


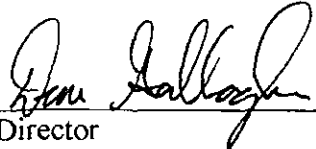
3. Fencing. Two tree protection fences must be installed before the start of any clearing, excavation, construction or other work on the site. The applicant must

install a fence to protect tree 'A' listed above in Preservation Required, and an unlisted 16 inch diameter oak tree on the north property line. The fences shall be chain-link, minimum five feet tall, with 1-7/8" diameter metal pipe driven two feet into the ground for posts. The attached sign, "Warning – Tree Protection Zone", shall be attached to the fence and maintained during the project. Each fence shall encircle the tree at a distance of ten feet, measured from the base of the tree, to ensure that the activities listed below in # 4 - #6 are prohibited. However, the fence for tree 'A' shall be reduced to no closer than two feet from the tree, near the corner of the deck, in order to provide a narrow passageway for construction workers. Fencing shall remain in place throughout the duration of the project and may only be moved or removed with the consent of the Tree Services Section.

4. **Debris.** All debris from the tree removal work shall be removed from the property within two weeks of it being cut. It shall be properly disposed of in a legal manner.
5. **Excavation and Fill.** Excavation of existing soil shall not be performed and fill soil shall not be deposited within fenced tree protection zones. Fill soil shall not be allowed to migrate into fenced tree protection zones
6. **Root Preservation.** Tractor work, storage of material, depositing soil, removing soil, trenching, cutting roots, parking of equipment or any other work activities are prohibited within fenced tree protection zones for the duration of the project. If any work must occur within protection zones, it shall be approved in advance by the Tree Services Section. Failure to comply with this requirement may result in fines and/or replacement trees and suspension of permits, for working illegally around protected trees.
7. **Tree Damage.** If any damage to a protected tree should occur during or as a result of work on the site, the contractor, builder or owner shall promptly notify the Tree Services Section of such damage.
8. **Tree Planting.** Four (4) replacement trees shall be planted within the property boundaries, prior to the final inspection of the house, in order to prevent excessive loss of shade, erosion control, groundwater replenishment, visual screening and wildlife habitat. The tree species shall be Sequoia sempervirens (Coast Redwood), Quercus agrifolia (Coast Live Oak), Arbutus menziesii (Madrone), Aesculus californica (California Buckeye) or Umbellularia californica (California Bay Laurel).
9. **Tree Specifications.** The replacement trees shall be in a 24-inch box: eight to nine feet tall, one and a half inch caliper, with a crown spread of three to four feet. Three fifteen (15) gallon size trees may be substituted for each twenty-four (24) inch box tree where appropriate. Tree Services staff must approve the trees before planting, and inspect again after planting, to insure correct installation and that good quality, disease free trees were purchased.
10. **Tree Watering.** An appropriate amount of water must be applied each week, for three years, to establish the replacement trees in the landscape. The trees shall be watered by an irrigation system and timer. The trees must remain on the property as a

permanent part of the landscape. Any replacement tree(s) not alive and healthy three years after the final inspection shall be replaced by the applicant.

11. **Landscape Plan.** A landscape plan showing the replacement plantings and the method of irrigation is required. The plan shall be reviewed and approved by Tree Services. The plan shall be submitted prior to the final inspection.
12. **Site Posting.** The applicant shall post a copy of the tree removal permit in plain view on site while tree removal work is underway.
13. **Recordation of Conditions.** The applicant/owner(s) shall record the conditions of approval attached to this permit with the Alameda County Recorder's Office in a form prescribed by the Director of Public Works.

	3-16-05		3-16-05
Arboricultural Inspector	Date	Director	Date

cc:

1. Law Offices of Harold P. Smith, 1901 Harrison Street, Ninth Floor, Oakland, CA 94612
2. Robert Bobb, 12960 Brookpark Road, Oakland, CA 94619
3. Darin Ranelletti, Community & Economic Development Agency, Building Services, 250 Frank H. Ogawa Plaza, Suite 2340, Oakland, CA 94612

-WARNING-

Tree Protection Zone

This fence shall not be removed without approval of the Office of Parks and Recreation. Violators will be prosecuted and are subject to fine pursuant to section 12.36.060 of the Oakland Municipal Code.



ATTACHMENT C

CITY OF OAKLAND



CITY HALL • ONE CITY HALL PLAZA • OAKLAND, CALIFORNIA 94612

City Planning Commission

TTY 839-6451

January 8, 1997

Larry Orlick
Kathleen Donovan
12980 Brookpark Road
Oakland, CA. 94619

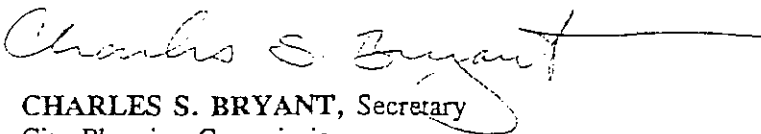
RE: Challenge to a Mitigated Negative Declaration for a three lot subdivision, construction of two new houses, and a Shared Access Facility at 12960 Brookpark Road in the R-30 One-Family Residential Zone.

Dear Mr. Orlick and Ms. Donovan:

On January 8, 1997, the City Planning Commission denied the above-referenced challenge to a Mitigated Negative Declaration. This decision is final and may not be appealed to the City Council.

The City Planning Commission is scheduled to make a decision on the associated Major Conditional Use Permit for a Shared Access Facility at its meeting of Wednesday, January 22, 1997. The meeting begins at 6:30 p.m. in Hearing Room 1 of Oakland City Hall. If you have any questions, please contact Robin NiDana at (510) 238-6344.

Very truly yours,


CHARLES S. BRYANT, Secretary
City Planning Commission

cc: Peter Romweber
"Interested Parties"
Ray Derania, Housing Conservation
Cleve Williams, Parks and Recreation
Thomas Casey, Zoning Counter Supervisor
Calvin Wong, Building Services Division
Phil Grubstick, Engineer Services/Permit Processing

FILE COPY

NOTICE TO ALL PARTIES:

The time within which judicial review must be sought of this decision of the Planning Commission is governed by Section 1094.6 of the Code of Civil Procedure of the State of California. With certain exceptions, the time is ninety (90) days from the date of the decision. If you challenge this application in court, you may be limited to raising only those issues you or someone else raised at the public hearing, or in written correspondence delivered to the Community and Economic Development Agency/Zoning at, or prior to, the public hearing.

File No. ER96-6
Ref. No. CM96-31

City of Oakland
Oakland, California

INITIAL STUDY AND ENVIRONMENTAL REVIEW CHECKLIST
California Environmental Quality Act (CEQA)

- I. PROJECT PROPONENT: G. Peter Romweber
- II. PROJECT NAME: 12960 Brookpark
- III. PROJECT ADDRESS AND LOCATION: 12960 Brookpark Drive
Oakland, CA
- IV. LEAD AGENCY: City of Oakland
Office of Planning and Building
Zoning Division
1330 Broadway, 2nd Floor
Oakland, CA 94612
- Agency Contact: Robin NiDana Telephone No. (510) 238-6344

V. ENVIRONMENTAL DETERMINATION:

On the basis of this initial environmental evaluation:

- I find that the proposed project *could not* have a significant effect on the environment, and a Negative Declaration will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the attached *mitigation measures* have been incorporated into the project. Therefore, a ~~Mitigated Negative Declaration~~ will be prepared.
- I find that the proposed project *may* have a significant effect on the environment, and an **Environmental Impact Report (EIR)** is required to assess the effects on the environment.

WILLIE YEE, JR.
Acting Director of City Planning

By: ANU RAUD
Environmental Review Coordinator

Signature

Date

VI. DESCRIPTION OF THE PROJECT: Subdividing one 81,021 square foot lot with an existing single family dwelling into three lots (56,000, 11,000 and 14,000 square feet, respectively) for a total of three single family dwellings. One dwelling is currently under construction (building permit issued April 20, 1995). The two additional houses would be built on the steeper slope between the one under construction and the accessway to Brookpark. The area proposed for the new homes is grassy and would not require the removal of trees or brush. The site is accessed by way of a 25 foot wide "flag pole" that runs between two houses on the ridge for about 135 feet before it opens to the wider lot area behind the lots along Brookpark Road.

VII. DESCRIPTION OF THE ENVIRONMENTAL SETTING: The large lot is just over the ridge of hills between the single family residential development along Brookpark Drive and the Regional Park System adjacent and below the site. The site is wooded with native and exotic trees and is directly opposite the East Bay Skyline National Recreation Trail. The site is clearly visible from this trail. It is characterized by steep slopes (50-80% estimated slopes). The home under construction sits on a ridge of relative high ground between two drainage cuts on either side. The watercourse beyond the site chosen for the existing construction is generally steeper and densely vegetated. It is not proposed for new construction. The site chosen for the two additional homes is steep but grassy and clear of any trees or shrubs.

VIII. ENVIRONMENTAL EFFECTS

(CEQA requires that an explanation of all "yes" and "maybe" answers be provided along with this checklist, including a discussion of ways to mitigate any significant effects identified. As defined here, a significant effect is considered a substantial adverse effect.)

Earth. Will the proposal result in:

- | | | | | |
|----|--|-------|-------|-------|
| 1. | Unstable earth conditions, including mudslides, landslides or changes in geologic substructures either on or off-site? | _____ | _____ | _____ |
| | | Yes | No | Maybe |
| 2. | Major changes in topography or ground surface relief features, or disruptions, displacements, compaction or overcovering of the soil? | _____ | _____ | _____ |
| | | Yes | No | Maybe |
| 3. | Construction on loose fill or other unstable land that might expose people or property to geologic hazards, such as earthquakes, liquefaction or ground failure, or similar seismic hazards? | _____ | _____ | _____ |
| | | Yes | No | Maybe |

Comment: According to the U.S. Soils Conservation Service Soils Classification, the soils on the site are characterized as Milsholm Silt Loam, which are used for recreation, watershed and home sites. These soils have certain development limitations that should be recognized by the proposed engineering and structural design prior to construction. With these soils characteristics kept in mind, the development of the proposal should not have a significant adverse effect on the site.

The project site is located in Area III, an area characterized as most susceptible area of the City for landslides (The Environmental Hazards Element of the Comprehensive Plan, 1974); BUT A Review of Land Stability maps maintained by the Building Services Department indicate that there are, are no recorded landslides near the site.

Source: Environmental Hazards Element of the Oakland Comprehensive Plan
 U.S. Soils Conservation Service Soils Maps, Western Alameda County
 Oakland Office of Planning & Building (OPB) Land Stability Maps

The proposed development will alter the natural drainage pattern on the site. During construction, surface drainage should be redirected away from the area of construction. After construction, the introduction of new impervious surfaces such as the driveway pad, rooftops, and decks, will decrease areas of soil saturation, and increase surface flow into the storm drain. This increase in surface flow is not considered a significant adverse effect.

Given the steep slopes for this project, project-related grading activities could create a potential for erosion and sedimentation that in turn, could have adverse effects on downstream storm drains and basins. It is estimated that during construction, sedimentation production rates could increase one to two times the existing rate. When eroded soils are carried into a body of water, the nutrients in the soil trigger algal blooms that reduce water clarity, deplete oxygen, may lead to fish kills, and create odors. In addition, erosion removes nutrients in the topsoil that are important to vegetation. Thus, reestablishment of vegetation becomes difficult, and the eroded soil has less potential for growth of vegetation in the disturbed area (Erosion and Sediment Control Handbook, Goldman, et al, 1986). Unless adequate sedimentation and erosion controls are implemented, sedimentation rates after construction could increase two to five times over the natural rate. However, once landscaping has set-in, the estimated sedimentation load could be reduced by two to eight percent of the natural rate (North Oakland Hill Area Specific Plan, 1986).

Source: Flood Insurance Rate Map (FIRM) Floodplain Maps, Federal Emergency Management Administration (FEMA) Panel Number 065048 0020 B
 Environmental Hazards Element of the Oakland Comprehensive Plan
Erosion and Sediment Control Handbook, Goldman, et al, 1986

10. Substantial air emissions, deterioration of ambient air quality or the creation of objectionable odors?
- Yes No Maybe

Comment: Construction vehicles and equipment will emit dust and exhaust at the site, but the amount of the increase will not be considered significant. The scale of the proposed project will not generate air emissions in sufficient quantities to violate any air quality standards, because the project is relatively small in scale. The development thresholds for single family dwellings are 200 units. (Air Quality and Urban Development: Guidelines For Assessing Projects and Plans, BAAQMD, 1985). This proposal involves the creation of 2 single family dwelling units which is below this threshold.

Source: Bay Area Air Quality Management District (BAAQMD) Air Quality and Urban Development Open Space, Conservation and Recreation (OSCAR) Element of the Oakland Comprehensive Plan

11. Alteration of air movement, moisture, temperature, or any change in climate, either locally or regionally?
- Yes No Maybe

Comment: The small scale of the project will not result in any significant alteration in air movement or changes in climate.

Source: Staff field visit to project site area on May 7, 1996.

12. Change in groundwater quantity, through direct addition or

withdrawal, or interception of an aquifer by cuts or excavation?
 Yes No Maybe

Comment: The source of potable water for the City is supplied by EBMUD. In this built out, urban area, no groundwater under the City is used as potable water. Therefore alteration of the underground aquifers would not have significant environmental effect on public health or safety. The proposal will not involve cuts or excavations to depths that might intercept an aquifer.

Source: Project description.

Biotic. Will the project result in:

- 13. Reduction in quantity or diversity of plant and animal species in the project vicinity, interfere with migratory or other natural movement patterns, degrade existing habitats or require extensive vegetation removal?
 Yes No Maybe
- 14. Reduce the numbers of any unique, rare or endangered species of plants or animals?
 Yes No Maybe
- 15. Introduction of new species of plants or animals into an area, or result in a barrier to the replenishment of existing plant species, or the migration or movement of animals?
 Yes No Maybe
- 16. Deterioration to existing aquatic or wildlife habitat?
 Yes No Maybe

Comment: The proposal is within a built out, urbanized area where former biotic habitat and natural vegetation has been replaced with wildlife that have adapted to the urban setting and with ornamental, non-native vegetation. In addition, the project site is an isolated parcel on the boundary of urban development. The particular sites proposed for development are sparsely vegetated and do not serve as a wildlife corridor for migratory or other natural movement patterns, nor would the loss of other habitat values be significant. The Alameda Manzanita, a rare species, has been found in the general area in which the site is found, but the proposed house sites are currently clear of any trees or brush. No Alameda Manzanita are present on the proposed home sites. Therefore, the environmental effect on native habitat is not considered significant.

Source: OSCAR Element of the Oakland Comprehensive Plan
 Site visit on May 7, 1996.
 California Department of Fish and Game (CDFG), Natural Diversity Database
 Project Application and Site Plans.

Noise. Will the project result in:

- 17. Increase in existing ambient noise levels near sensitive noise receptors?
 Yes No Maybe

Comment: The nearest sensitive noise receptors are the nearby houses, which are located approximately 0.1 miles away from the proposed project. The proposed project land use (residential) will not generate significant noise impacts. Further, the intervening terrain and distance would dissipate any potential noise impact to below a level of significance.

Source: Noise Element of the Oakland Comprehensive Plan
 Project description
 Site visit on May 7, 1996.

18. Exposure of people to severe noise levels?

	<u>X</u>	
Yes	No	Maybe

Comment: While construction generated noise levels would temporarily create significant noise effects, the implementation of noise mitigation measures such as limiting the time periods of construction activity, requiring the implementation of best available control technology methods, restricting the number of daily truck trips, among other mitigatory means would reduce the temporary noise effects to a less than significant level.

The project's contribution to ambient noise levels is expected to be within tolerable levels (approximately 65 dBA for a residential project).

Source: Noise Element of the Oakland Comprehensive Plan
 U.S. Department of Housing and Urban Development (HUD) Noise Guidebook
 Site visit on May 7, 1996.

Light and Glare. Will the project result in:

19. Produce new light or glare in areas sensitive to light and glare (i.e., residents near industrial and commercial uses, freeways, and parks)?

		<u>X</u>
Yes	No	Maybe

Comment: The project is just below the ridge typically separating the urban development in the City of Oakland from the East Bay Regional Park District (EBRPD). The site is visible from the East Bay Skyline National Recreation Trail. The project could introduce glare to a sensitive area. Therefore, mitigations are proposed to require all project windows potentially visible from the park to be glazed or given some other non-glare treatment to ensure that no impacts from light and glare will result from this project.

Source: Site visit on May 7, 1996.

20. Produce shade and shadow, or otherwise diminish sunlight or solar access?

	<u>X</u>	
Yes	No	Maybe

Comment: The proposed building height, setbacks and bulk are consistent with surrounding buildings. The proposal will not have a significant adverse effect.

Source: Project plans
 Site visit on May 7, 1996.

Land Use and Socioeconomic Factors. Will the project result in:

- | | | | | |
|-----|--|--------------|-------------|----------------|
| 21. | Conflict with approved plans for the area or the Oakland Comprehensive Plan or alter the present or planned land use of an area? | _____
Yes | _____
No | _____
Maybe |
| 22. | Cause a substantial alteration in neighborhood land use, density or character? | _____
Yes | _____
No | _____
Maybe |
| 23. | Involve an increase of 100 feet or more in the height of any structure over any previously existing adjacent structure? | _____
Yes | _____
No | _____
Maybe |

Comment: The proposal is not consistent with the land use density and character of the surrounding neighborhood.

The height of the proposal will not involve in a 100 foot increase in height over existing structures. Therefore, the project will not have a significant adverse effect.

Source: Land Use Element of the Oakland Comprehensive Plan
 Oakland Policy Plan of the Oakland Comprehensive Plan
 Oakland Zoning Regulations: R-30 Single Family Residential Zone
 Project application and site plans
 Site visit on May 7, 1996.

- | | | | | |
|-----|--|--------------|-------------|----------------|
| 24. | Require relocation of residents and/or businesses, or affect existing housing or create a demand for additional housing? | _____
Yes | _____
No | _____
Maybe |
|-----|--|--------------|-------------|----------------|

Comment: The proposal will not require the relocation of businesses or residents.

Source: Project application and site plans
 Site visit on May 7, 1996.

Human Health and Risk of Upset. Will the project involve:

- | | | | | |
|-----|---|--------------|-------------|----------------|
| 25. | The risk of an explosion or the release of hazardous substances, including oil, pesticides, chemicals or radiation, in the event of an accident that could create or expose people to potential health hazards? | _____
Yes | _____
No | _____
Maybe |
|-----|---|--------------|-------------|----------------|

Comment: The site of the proposal is not listed on the State Hazardous Waste List.

Source: State Hazardous Waste List
 Project Description

- | | | | | |
|-----|---|--------------|-------------|----------------|
| 26. | Possible interference with an emergency response plan or emergency evacuation plan? | _____
Yes | _____
No | _____
Maybe |
|-----|---|--------------|-------------|----------------|

Comment: Upon review of the goals and objectives of the City's Multi-Hazard Functional Plan ("City Emergency Plan") in comparison to the proposal, it can be determined that the proposal will not significantly interfere with the emergency routes tentatively identified by the plan. In addition,

the proposal is within the scale of development as delineated in the Oakland Comprehensive Plan.

Source: Multi-Hazard Functional Plan (City Emergency Plan) for the City of Oakland.

Transportation/Circulation: Will the project result in:

- | | | | | |
|-----|--|--------------|-------------|----------------|
| 27. | Substantially increase vehicular movement resulting in traffic hazards to motor vehicles, bicyclists, or pedestrians; or create a demand for new parking facilities? | _____
Yes | _____
No | _____
Maybe |
| | | | X | |
| 28. | Alterations to present patterns of circulation or movement of people and/or goods, or alterations to waterborne, rail or air traffic? | _____
Yes | _____
No | _____
Maybe |
| | | | X | |
| 29. | Have a substantial impact on existing transportation systems or circulation patterns? | _____
Yes | _____
No | _____
Maybe |
| | | | X | |

Comment: The scale of the proposal is such that no significant effects on patterns of circulation are expected.

The proposal will not substantially increase traffic volume and increase demand for parking spaces.

The project site plan as currently proposed will not create hazardous traffic conditions. The proposed access meets the requirements for shared access facilities, and joins with Brookpark where there is good visibility and clear sight lines.

Source: Oakland Office of Public Works (OPW), Traffic Engineering Division.
 Institute of Traffic Engineers (ITE) Trip Generation/ITE Parking Generation
 Project Residential Parking Demand Calculation
 Circulation Element of the Oakland Comprehensive Plan

Public Services and Utilities: Will the project have an effect upon, or result in a need for new or altered public services in any of the following areas:

- | | | | | |
|-----|--|--------------|-------------|----------------|
| 30. | Impose a burden on public services or facilities including fire, solid waste disposal, police, schools or parks? | _____
Yes | _____
No | _____
Maybe |
| | | | X | |
| 31. | Impose a burden on existing utilities including roads, electricity, gas, water and sewers? | _____
Yes | _____
No | _____
Maybe |
| | | | X | |

Comment: The proposal is in a built out urban area with all utilities in place. The small scale of the project ensures that no significant impacts will result.

Source: OSCAR Element of the Oakland Comprehensive Plan
 Environmental Hazards Element of the Oakland Comprehensive Plan

Cultural and Aesthetic Resources. Will the project:

- | | | | | |
|-----|--|--------------|--------------------|----------------|
| 32. | Destroy, deface or alter a structure, object, natural feature or site of prehistoric historic, architectural, archeological or aesthetic significance? | _____
Yes | <u> X </u>
No | _____
Maybe |
| 33. | Result in adverse physical or aesthetic effects to a prehistoric or historic building, structure, or object? | _____
Yes | <u> X </u>
No | _____
Maybe |
| 34. | The obstruction of any scenic vista or view open to the public? | _____
Yes | <u> X </u>
No | _____
Maybe |

Comment: The proposal will not result in the obstruction of any scenic vista or view open to the public. It is located on the edge of urban development, but is well below the ridge and is screened from view by surrounding vegetation. It is located on an undeveloped site not near any creek or other potential archaeologically significant site. Therefore, no significant impacts to historic or prehistoric resources are expected.

Source: OSCAR Element of the Oakland Comprehensive Plan
 Historic Preservation Element of the Oakland Comprehensive Plan
 OSCAR Element of the Oakland Comprehensive Plan
 Land Use Element of the Oakland Comprehensive Plan
 Site Visit on May 7, 1996.

Energy. Would the project:

- | | | | | |
|-----|---|--------------|--------------------|----------------|
| 35. | Use or encourage use of substantial quantities of fuel or energy? | _____
Yes | <u> X </u>
No | _____
Maybe |
|-----|---|--------------|--------------------|----------------|

Comment: The proposal will be required to comply with the Title 24: Energy Conservation requirements of the Uniform Building Code. In addition, scale of the proposal is within the capacity of fuel and energy resources, both available now and plan for by Pacific Gas and Electric Company (PG & E).

Resource: Project application

IX. MANDATORY FINDINGS OF SIGNIFICANCE (An EIR is required if the answer to any of the following questions is "yes" or "maybe".)

- | | |
|--|-----------------------------------|
| | <u>Yes</u> <u>No</u> <u>Maybe</u> |
| a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of an aquatic or wildlife species, cause a aquatic or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal species, or eliminate important examples of the major periods of California history or | |

prehistory? X

b. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one that occurs in a relatively brief, definitive period of time, while long-term impacts will endure well into the future. X

c. Does the project have impacts that are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant). X

d. Does the project have environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly? X

X. DETERMINATION

On the basis of this initial environmental evaluation:

I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the attached *mitigation measures* have been incorporated into the project. Therefore, a **Mitigated Negative Declaration** will be prepared.

Name Robin NiDana

Date September 24 1996

Title Planner II

MITIGATION MEASURES
CASE FILE NO. ER96-6
ATTACHMENT

The following mitigation measures, if incorporated into the project, would reduce the identified potential adverse impacts to a level of insignificance:

1. Particular care should be taken during and after construction to ensure that site drainage does not impact the natural vegetation on the slopes below. The most stringent erosion control measures should be used during construction and site drainage should be engineered to prevent the concentration of surface flows from the site or any flows that could cause erosion or excess water accumulation.
2. Only native, non-invasive plants should be used as landscaping on the site.
3. All windows on the three sides of the proposed houses that are potentially visible from the East Bay Regional Park District or its trails should use only glass coated or otherwise treated such that no glare is produced from the site in any park area.

AMENDMENTS TO THE INITIAL STUDY

The following corrections to typographical errors in the Initial Study are hereby made as indicated:

Page 2, Comment following question 3, the following should be added to the end of the comment:

However, the applicant's soils engineer identified areas of instability on and near the site in the soils report for the construction of the existing house and has indicated what engineering practices will be required to remedy these potential geologic hazards.

Page 3, Comment following question 4, the first sentence should read:

The project is located approximately 1.4 miles from the Hayward fault, and is outside of the Alquist-Priolo Geologic Hazards Zone Act Special Studies Area.

Page 3, Comment following question 9, the last sentence should read:

Therefore, the project will not expose people or property to water related hazards.

Page 6, Comment following question 17, the first sentence should read:

The nearest sensitive noise receptors are the nearby houses, which are located approximately 30 feet from the nearest new proposed dwelling.

Page 7, Comment following question 23, the first sentence should read:

The proposal is consistent with the land use density and character of the surrounding neighborhood.

City of Oakland
Community and Economic Development Agency
February 14, 2005

**FINAL ADDENDUM TO
PREVIOUSLY ADOPTED MITIGATED NEGATIVE DECLARATION**
Includes revisions to Addendum dated May 25, 2004
(Added text is underlined; deleted text is struck-out)

California Environmental Quality Act (CEQA)

1. **Project Name:** Case File Numbers DRC05-048 ~~VDRC02-603~~ & CP03-094
2. **Lead Agency:** City of Oakland
Community and Economic Development Agency
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Contact: Darin Ranelletti, Planner III / Telephone: (510) 238-3663
3. **Project Location:** Brookpark Road, Oakland
Vacant lot located immediately southeast of 12950 Brookpark Road
APN 085-0105-040-00
4. **Project Sponsor:** G. Peter Romweber
5. **Previously Adopted Mitigated Negative Declaration:** Case File Number ER96-6 (Jan. 8, 1997)
6. **Previous Project Description:** The applicant originally proposed, and the Mitigated Negative Declaration evaluated, the subdivision of one 81,021 square-foot parcel containing one existing single-family dwelling into three lots (approximately 56,000, 11,000, and 14,000 square feet, respectively) and constructing two new single-family dwellings for a total of three single-family dwellings. The lots would be accessed from Brookpark Road via a Shared Access Facility comprised of an existing driveway. However, the City approved the subdivision into two lots (approximately 56,467 and 24,554 square feet, respectively) and constructing one new single-family dwelling for a total of two single-family dwellings. The lots would be accessed from Brookpark Road via a Shared Access Facility comprised of an existing driveway.
7. **Current Project Description:** Construction of one new single-family dwelling located on the vacant lot created by the previously approved subdivision.
8. **New Information that has Become Available after the Adoption of the Mitigated Negative Declaration:**
 - A. Protected Trees: The Initial Study/Environmental Checklist prepared for the previously adopted Mitigated Negative Declaration stated that the area where the new homes were to be constructed on the subject property was clear of any trees. The revised project now includes

d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

Comments to Questions b and c:

On March 7, 2003, the applicant submitted an application for a Tree Removal Permit (Case File Number T02-123) which is under review by the Public Works Agency, Office of Parks and Recreation, Tree Division. There are currently 15 ~~13~~ Protected Trees, as defined by the City of Oakland Tree Preservation Ordinance, located on the site. The project would require the removal of four ~~three~~ Protected Trees—one ~~two~~ Coast Live Oaks measuring 10.5 ~~12~~ inches in diameter at breast height (“DBH”), one Coast Live Oak measuring 13 inches DBH, one Coast Live Oak measuring 17 inches DBH, and one Coast Live Oak measuring 18.5 ~~16~~ inches DBH. Pursuant to the Tree Preservation Ordinance, prior to the removal of these trees the applicant will ~~would~~ be required to secure approval of a Tree Removal Permit from the Tree Division of the Public Works Agency Office of Parks and Recreation. The other 11 ~~ten~~ Protected Trees on site—one 12-inch Madrona, one multi-stemmed 12-inch Coast Live Oak (with multiple trunks measuring 9.5 inches, 10.5 inches, 11 inches, and 12 inches DBH), two ~~one~~ 16-inch Coast Live Oaks, one 36-inch Coast Live Oak, one 20-inch Cypress, four 24-inch Cypresses, and one 30-inch Redwood—are not proposed to be removed by the project. ~~Two of the Protected Trees not proposed to be removed—one 12-inch Coast Live Oak and one 16-inch Coast Live Oak—may be adversely affected by the project due to their proximity to the proposed building. The 12-inch Coast Live Oak is located approximately ten feet from the proposed building and the 16-inch Coast Live Oak is located approximately 13 feet from the building. The potential impact to these two trees depends upon the foundation system used for the building and each tree’s root system. The potential impact to these trees will be evaluated in more detail during the review of the Tree Removal Permit, as per standard City policy and practice. If it is determined that there will be a potential impact to these trees and the trees can be protected, under existing Tree Removal Permit policies, appropriate mitigation measures, such as redesigning the foundation, relocating the building, or installing protective fencing around the trees during construction activities, will be required in order to protect the trees. If it is determined that there will be a potential impact to these trees but the trees can not be protected, under existing Tree Removal Permit policies, these trees may be considered to be “removed” by the project.~~

Pursuant to standard City policies concerning Tree Removal Permits, the applicant will be required to install one replacement tree for each Protected Tree removed. Two of the Protected Trees not proposed to be removed—the multi-stemmed Coast Live Oak and one 16-inch Coast Live Oak—may be adversely affected by the project. The multi-stemmed Coast Live Oak is located approximately five feet from the proposed building and the 16-inch Coast Live Oak is located approximately 20 feet from the building. Due to the proximity of these two trees to the proposed building, there is a possibility that the health of these two trees may be adversely affected by construction activities. Appropriate tree protection measures can be taken to protect these trees. With the incorporation of measures to replace Protected Trees that are being removed and measures to protect Protected Trees that are not proposed for removal but may be impacted by construction activities (see mitigation measures below) the potential impact to trees on the site would be reduced to less than significant. Pursuant to Section 15022(a)(1) of the State CEQA Guidelines, Section 17.158.280 of the Oakland Planning Code (“OPC”) lists activities that are considered exempt from CEQA requirements. Section 17.158.280(E)(2) of the OPC establishes a threshold for evaluating potential environmental impacts of Tree Removal Permits to remove Protected Trees. If no single tree to be removed has a diameter at breast

community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act? (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

Comments to Questions a, b, and d:

The Alameda whipsnake (*Masticophis lateralis euryxanthus*) is listed as a threatened species by the California Department of Fish and Game and the U.S. Fish and Wildlife Service. The project site was included in the area mapped by the U.S. Fish and Wildlife Service as Critical Habitat for the Alameda whipsnake. Despite the fact that the Critical Habitat designation has been subsequently invalidated by court action, the Alameda whipsnake remains listed as a state and federal threatened species.

The applicant has submitted a report prepared by a qualified consultant that states that the site does not contain any of the constituent elements of Alameda whipsnake habitat, therefore, the project would have *no impact* on Alameda whipsnake habitat. There is the possibility that the project could have a potentially significant impact directly to an Alameda whipsnake if one were to enter the site during construction of the project. The consultant's report recommends that during construction, the construction crew should be briefed on the identification of Alameda whipsnake and an exclusion fence should be placed along the eastern edge of the property. With the incorporation of these mitigation measures (see below) the potential impact would be reduced to *less than significant*.

New Mitigation Measures:

3. Prior to the issuance of a Building Permit, the applicant shall secure approval from the Planning and Zoning Division of informational materials to be distributed to construction crews during construction of the project. The informational materials shall include a photo of an Alameda whipsnake and directions instructing crewmembers to do the following if an

- | | | | | | |
|---|-------------------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|
| or planned uses for which permits have been granted)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| f) Otherwise substantially degrade water quality? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| j) Result in inundation by seiche, tsunami, or mudflow? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |


Comments to Questions a, c, d, e, and f:

The site is drained by a steep swale located in the southern portion of the property. The swale conveys storm water runoff to the east. At a point located approximately 35 feet east of the proposed house, the swale becomes a creek as defined by the Oakland Creek Protection, Storm Water Management and Discharge Control Ordinance. Pursuant to the Ordinance, development on a creekside property requires approval of a Creek Protection Permit. On June 27, 2003, the applicant submitted an application for a Creek Protection Permit (Case File Number CP03-094).

Construction activities associated with the project and the amount of impervious surface in the project could result in significant impacts to the creek in terms of damaging the water quality of the creek, increasing runoff and erosion to the creek, and increasing siltation and pollution in the creek.

2. Substantial changes will occur with respect to the circumstances under which the project is undertaken which will require major revisions to the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous MND was certified as complete, shows any of the following:
 - (a) The project will have one or more significant effects not discussed in the previous MND;
 - (b) Significant effects previously examined will be substantially more severe than shown in the previous MND;
 - (c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - (d) Mitigation measures or alternatives which are considerably different from those analyzed in the previous MND would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Accordingly, the proposed project is consistent with the environmental setting, environmental impacts and mitigation measures set forth in the 1997 MND, and with the imposition of the new mitigation measures, all impacts will be reduced to less than significant levels. No supplemental EIR or negative declaration is required.



Signature

2-14-05

Date

GARY V. PATTON
Deputy Director of Planning and Zoning

Attachment E

SPECIFIC CONDITIONS – MITIGATION MEASURES:

The Conditions of Approval below were identified in the Mitigated Negative Declaration (dated January 8, 1997) and the addendum to the Mitigated Negative Declaration (dated February 14, 2005) to reduce the potential environmental impact of the project to a less than significant level and are adopted to satisfy the requirements of a Mitigation Monitoring and Reporting Program.

14. Drainage Plan

a. Concurrent with submittal for building permit

The applicant shall submit a drainage plan for the project to the Building Services Division with the application for a building permit. Site drainage shall not impact the natural vegetation on the slopes below the proposed house and shall be engineered to prevent the concentration of surface flows from the site or any flows that could cause erosion or excess water accumulation.

[Mitigation Measure #1, Mitigated Negative Declaration (January 8, 1997)]

15. Landscaping Plan

a. Concurrent with submittal for building permit

Pursuant to Chapter 17.124 of the Oakland Planning Code, the project drawings submitted for a building permit shall contain a detailed landscaping plan to be reviewed and approved by the Planning and Zoning Division. The landscaping plan shall include the proposed method(s) of irrigation and shall include new landscaping in the street-fronting yard, along the east side of the driveway at the head of the swale, and along the rear of the building. The landscaping along the rear of the building shall contain a minimum of one (1) 15-

gallon tree or five (5) five-gallon shrubs, or substantially equivalent, for each 15 feet of lot width as measured at the rear face of the building. Only native, non-invasive plants shall be used. The landscaping plan shall also indicate that existing exotic invasive plants on site (such as French broom and giant reed) are to be eradicated and that new native trees (such as redwood and bay laurel), minimum 24-inch boxes, shall be planted in the head of the drainage swale located upland from the creek to further prevent future erosion into the creek. Four (4) replacement trees for the Protected Trees that are to be removed shall also be included on the landscaping plan in accordance with the requirements of the Public Works Agency, Tree Division.

b. Prior to issuance of a certificate of occupancy

The applicant shall install all proposed landscaping as shown on the approved landscaping plan prior to the issuance of a certificate of occupancy, unless bonded pursuant to the provisions of Section 17.124.50 of the Oakland Planning Code. The amount of such bond or cash deposit shall equal the greater of \$2500 or the estimated cost of the required landscaping, based on a licensed contractor's bid.

c. Ongoing

All required landscaping shall be permanently maintained in a healthy condition and, whenever necessary, replaced with new plant materials to ensure contained compliance with applicable landscaping requirements.

[Mitigation Measure #2, Mitigated Negative Declaration (January 8, 1997), and Mitigation Measures #1 and #8, Addendum to Mitigated Negative Declaration (February 14, 2005)]

16. Windows – Glare Mitigation

a. Concurrent with submittal for building permit

The project drawings submitted for a building permit shall indicate that all windows that are potentially visible from the East Bay Regional Park District parkland or trails to the east (i.e., windows on the east, north and south sides of the proposed house) shall be coated or otherwise treated such that no glare is produced from the windows as seen from the parkland and trails to the

east.

[Mitigation Measure #3, Mitigated Negative Declaration (January 8, 1997)]

17. Tree Protection

a. *Prior to commencement of construction activities*

Prior to the clearing, excavation, construction or other work on the site, the applicant shall install a fence to protect all Protected Trees not proposed for removal located within 20 feet of proposed construction activities or locations designated for equipment/materials storage. The fence shall be chain-link, minimum five feet tall, with 1-7/8" diameter metal pipe driven two feet into the ground for posts. A sign stating "Warning – Tree Protection Zone" shall be attached to the fence and maintained during the project. The fence shall encircle the tree at a distance of ten feet, measured from the base of the tree, except that the fence may be reduced to no closer than two feet from the multi-stemmed Coast Live Oak near the corner of the proposed rear deck to allow a passageway between the building and the fence for construction workers. The fence shall remain in place throughout the duration of the project. Excavation of existing soil shall not be performed and fill soil shall not be deposited within the fenced tree protection zone. Fill soil shall not be allowed to migrate into the fenced tree protection zone. Tractor work, storage of material, depositing soil, removing soil, trenching, cutting roots, parking of equipment or any other work activities are prohibited within fenced tree protection zones for the duration of the project.

[Mitigation Measure #2, Addendum to Mitigated Negative Declaration (February 14, 2005)]

18. Alameda Whipsnake Protection

a. *Concurrent with submittal for building permit*

The applicant shall secure approval from the Planning and Zoning Division of informational materials pertaining to the Alameda whipsnake (*Masticophis lateralis euryxanthus*) to be printed on the project drawings submitted for a building permit and to be distributed to construction crews during construction of the project. The informational materials shall include a photo of an Alameda whipsnake and directions instructing crewmembers to do the following if an Alameda whipsnake is sighted during construction: 1) Do not harm the Alameda whipsnake and 2) Immediately notify the construction site supervisor. The supervisor is required to immediately notify the applicant. In the event of an Alameda whipsnake sighting, the applicant is to immediately notify the Planning and Zoning Division. The applicant shall make arrangements for a qualified biologist to inspect the site for the presence of Alameda whipsnake before construction activities resume.

b. *Concurrent with submittal for building permit*

The project drawings submitted for a building permit shall include, for the review and approval by the Planning and Zoning Division, the proposed location and

design of a snake exclusion fence to be installed along the eastern edge of the site. The fence shall be installed prior to any construction activities and shall remain installed throughout the construction period.

[Mitigation Measures #3 and #4, Addendum to Mitigated Negative Declaration (February 14, 2005)]

19. Best Management Practices During Construction

a. *During construction activities*

Best Management Practices (BMPs) shall be observed during construction activities. Appropriate BMPs are contained in the document entitled “Blueprint for a Clean Bay: Best Management Practices to Prevent Stormwater Pollution from Construction-Related Activities” prepared by the Bay Area Stormwater Management Agencies Association and the Alameda Countywide Clean Water Program. Required BMPs shall be attached to the project drawings submitted for a building permit.

[Mitigation Measure #5, Addendum to Mitigated Negative Declaration (February 14, 2005)]

20. Wet Weather Grading Restriction

a. *During construction activities*

No grading activities are allowed during the rainy season (October 15 through April 15).

[Mitigation Measure #6, Addendum to Mitigated Negative Declaration (February 14, 2005)]

21. Creek Protection Plan

a. *Concurrent with submittal for building permit*

The project drawings submitted for a building permit shall include a creek protection plan to be reviewed and approved by the Planning and Zoning Division. The creek protection plan shall be substantially consistent with the approved creek protection plan received by the Planning and Zoning Division on March 22, 2005. The creek protection plan shall include the proposed location of straw bales to prevent soil from moving downslope into the creek as shown on the drawing labeled “Figure 1” in the creek assessment report prepared by Hydroikos Associates and received by the Planning and Zoning Division on January 5, 2004.

[Mitigation Measure #7, Addendum to Mitigated Negative Declaration (February 14, 2005)]

22. Roof Drains

a. *Concurrent with submittal for building permit*

The drainage plan required under Condition 11(a) above and the building construction drawings to be submitted for a building permit shall indicate that roof drains are designed to either disperse roof runoff onto the area of moderate slope (near the north side of the lot) or convey roof runoff in a drainage pipe to the bottom of the swale. The soil at the drain outlets shall be protected with energy dissipators to prevent localized soil erosion.

[Mitigation Measure #9, Addendum to Mitigated Negative Declaration (February 14, 2005)]

OAKLAND MUNICIPAL CODE

Title 12 STREETS, SIDEWALKS AND PUBLIC PLACES

12.36.050 Criteria for tree removal permit review.

A. In order to grant a tree removal permit, the city must determine that removal is necessary in order to accomplish any one of the following objectives:

1. To insure the public health and safety as it relates to the health of the tree, potential hazard to life or property, proximity to existing or proposed structures, or interference with utilities or sewers;
2. To avoid an unconstitutional regulatory taking of property;
3. To take reasonable advantage of views, including such measures as are mandated by the resolution of a view claim in accordance with the view preservation ordinance (Chapter 15.52 of this code);
4. To pursue accepted, professional practices of forestry or landscape design. Submission of a landscape plan acceptable to the Director of Parks and Recreation shall constitute compliance with this criterion;
5. To implement the vegetation management prescriptions in the S-11 site development review zone.

B. A finding of any one of the following situations is grounds for permit denial, regardless of the findings in subsection A of this section:

1. Removal of a healthy tree of a protected species could be avoided by:
 - a. Reasonable redesign of the site plan, prior to construction;
 - b. Trimming, thinning, tree surgery or other reasonable treatment.
2. Adequate provisions for drainage, erosion control, land stability or windscreen have not been made in situations where such problems are anticipated as a result of the removal.
3. The tree to be removed is a member of a group of trees in which each tree is dependent upon the others for survival.
4. The value of the tree is greater than the cost of its preservation to the property owner. The value of the tree shall be measured by the Tree Reviewer using the criteria established by the International Society of Arboriculture, and the cost of preservation shall include any additional design and construction expenses required thereby. This criterion shall apply only to development-related permit applications.

C. In each instance, whether granting or denying a tree removal permit, findings supporting the determination made pursuant to subsection A or B of this section, whichever is applicable, shall be set forth in writing. (Prior code § 7-6.05)

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

2005 JUN -9 PM 8:02

RESOLUTION No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____



RESOLUTION DENYING THE APPEAL FILED BY ROBERT BOBB AGAINST THE DECISION OF THE PUBLIC WORKS AGENCY APPROVING THE ISSUANCE OF TREE REMOVAL PERMIT DRO2-123 FOR BROOKPARK ROAD, AN UNDEVELOPED LOT, APN 085-0105-040-00, IN ORDER TO BUILD A NEW HOME

WHEREAS, on December 30, 2002, Peter Romweber ("Applicant") submitted an application for Tree Removal Permit (TRP) DR02-123 to remove four oak trees from an undeveloped lot on Brookpark Road, APN 085-0105-040-00 in order to build a home; and

WHEREAS, the project was redesigned and TRP DR02-123 was re-filed on January 5, 2005; and

WHEREAS, due notice of the application was given to all affected and interested parties; and

WHEREAS, in 1997 the City Planning Commission adopted a Mitigated Negative Declaration for a previous project and on February 14, 2005 a Final Addendum was prepared, which concluded that no further environmental review is required for this Project; and

WHEREAS, on March 16, 2005, the Public Works Agency (PWA) approved the issuance of TRP DR02-123 for the removal of four protected trees from said property; and

WHEREAS, the decision was justified on the basis that Section 12.36.050 (A) (1) of the Protected Trees Ordinance justifies approval of the tree removals based on the trees' proximity to a proposed structure; and

WHEREAS, on March 28, 2005, Harold P. Smith, Esq., representing Robert Bobb ("Appellant"), filed an appeal with the Office of the City Clerk against the PWA decision approving TP DR02-123; and

WHEREAS, due to the fact that Harold P. Smith was not sent a copy of the permit until April 29, 2005, he was given until 3:30 p.m. on May 9, 2005 to submit additional materials to the Public Works Agency, Tree Services Section office at the Municipal Service Center at 7101 Edgewater Drive; and

WHEREAS, Mr. Smith did submit additional materials to the City of Oakland by May 9, 2005; and

WHEREAS, the appeal came before the City Council on June 21, 2005, and the appellant, and interested neutral parties were given ample opportunity to participate in the public hearing and were given a fair opportunity to submit relevant evidence to the City Council; and

WHEREAS, the public hearing on the appeal and application was closed by the City Council on June 21, 2005; now, therefore, be it

RESOLVED: That the City Council has independently reviewed and considered both the Final Addendum and the previously prepared Mitigated Negative Declaration prior to making its decision on the appeal and hereby adopts the CEQA findings of the City's Environmental Review Officer (incorporated herein by reference) and finds that given the Project changes, new circumstances and new information, the Project could not have a significant effect on the environment and thus no further environmental review is required. A Notice of Determination shall cause to be filed at the County; and be it

FURTHER RESOLVED: That the City Council, having heard, considered and weighed all the evidence presented on behalf of all parties and being fully informed of the application and related materials, finds, for all the reasons stated in this resolution, the June 21, 2005, City Council Agenda Report and the March 16, 2005, PWA decision (hereby incorporated by reference), that the appeal should be denied, the decision of the Director, PWA, approving tree removals is affirmed, and the application for tree removals is approved subject to the conditions of approval and the mitigation measures contained in the January 8, 1997 Mitigated Negative Declaration and the February 14, 2005 Final Addendum; and be it

FURTHER RESOLVED: That the record relating to this application and appeal can be located at 7101 Edgewater Drive, Building 4, and 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland, and includes, without limitation the following:

1. The application, including all accompanying maps and papers;
2. All plans submitted by the applicant and his representatives;
3. All staff reports, decision letters and other documentation and information produced by or on behalf of the City, and all notices in relation to the application and attendant hearings;
4. All oral and written evidence received by the City staff, and City Council before and during the public hearings on the application and appeals;
5. All matters of common knowledge and all official enactment's and acts of the City, such as (a) Oakland Municipal Code, (b) other applicable City policies and regulations; and (c) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the custodian of the record for tree-related materials is Tree Services located at 7101 Edgewater Drive, Municipal Service Center Building #4, Room 405; CEQA-related materials are located at the, Community and Economic Development Agency, Planning and Zoning Division, 250 Frank H. Ogawa Plaza, Oakland; and be it

FURTHER RESOLVED: That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA,
PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California