

FILED  
OFFICE OF THE CITY CLERK  
CITY OF OAKLAND  
AGENDA REPORT

2004 JAN -7 PM 3: 39

TO: Office of the City Manager  
ATTN: Deborah Edgerly  
FROM: Life Enrichment Agency  
DATE: January 20, 2004

RE: REPORT AND RECOMMENDATION ON THE APPEAL FILED BY STEFANIE GANDOLFI AGAINST THE DECISION OF THE OFFICE OF PARKS AND RECREATION APPROVING A PERMIT TO REMOVE ELEVEN TREES AT 300 ELYSIAN FIELDS DRIVE

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## SUMMARY

This report provides background information and a recommendation regarding a Tree Removal Permit which involves the proposed removal of 11 protected trees from an undeveloped 1.47 acre lot on Elysian Fields Drive. 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 18-day appeal deadline contained in the Protected Tree Ordinance (PTO).

Staff approved the Tree Removal Permit on the basis that the protected trees proposed for removal are growing within or in close proximity to the proposed driveway location and foundation footprint of a new single family home. Secondly, adequate provisions have been required for the protection of seven Coast Live Oaks close to construction and 48 other trees are also to be preserved on-site. The applicant will be required to plant two native replacement trees within the property boundaries and pay an in lieu fee of \$300 per tree for the other eight native trees approved for removal. Due to the site's densely wooded characteristic, insufficient planting area exists for more native trees to be planted.

The trees proposed for removal are growing in locations such that by requiring their preservation, the property owner would have to redesign the home and driveway. The cost of additional design and construction expenses would exceed the value of the trees that would be preserved. Staff has prepared a resolution that will enable the City Council to implement a decision that denies Stefanie Gandolfi's appeal, thereby allowing the issuance of the permit.

## FISCAL IMPACTS

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

## BACKGROUND

The Office of Parks and Recreation (OPR) approved a permit to remove 10 Coast Live Oaks and one Canary Island Pine from an undeveloped lot on Elysian Fields Drive. Edward Patmont, the property owner, applied to remove the trees in order to build a single-family home. The trees are growing within or in close proximity to the proposed driveway and footprint of the new home.

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Stefanie Gandolfi filed an appeal on December 8, 2003. The basis for appeal was stated as, "Removal of 13 trees, including 10 California Coast Oaks: subsidence of hillside; damage to Arroyo Viejo; flooding of neighboring properties; impacts to wildlife, including protected species; scarring of wooded view."

### KEY ISSUES AND IMPACTS

The (PTO), Section 12.36.050 (A)(1) of the Oakland Municipal Code, allows the removal of trees in order to insure the public health and safety as it relates to the proximity to proposed structures. However, preservation of trees is required if removal could be avoided by reasonable redesign of the site plan. OPR feels it is unreasonable to redesign the proposed new home for the following reasons:

- The new home has been designed according to the best location for this site. This vacant parcel is 1.47 acres in size and is zoned for four units. The property owner has elected to preserve a large portion of the wooded lot and only build a single residence.
- The removal of the eleven protected trees will not significantly impact the area.

The issue is whether staff has correctly followed the PTO guidelines in approving Mr. Patmont's tree removal application. Staff believes the PTO was properly applied and recommends that the City Council approve the resolution denying the appeal. This resolution allows the removal of 11 protected trees, requires the preservation and protection of seven Coast Live Oaks close to construction, and also requires the preservation and protection of 48 other trees beyond the construction area.

Section 12.36.050 of the PTO lists the criteria used to determine if a tree should be removed or preserved (see Attachment A). 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 would be considered an unconstitutional regulatory taking of property.
- Second, regardless of the first determination, the tree removal permit application may be denied if any one of four possible criteria applies. In this case, it is not reasonable to require the property owner to redesign the home to preserve the trees approved for removal.
- Additionally, a creek protection permit with attached conditions of approval was issued for this construction project in accordance with Chapter 13.16 of the Oakland Municipal Code (Creek Protection Ordinance). This permit includes requirements to protect against erosion and drainage problems thereby safeguarding the creek and riparian corridor.

The key issue is whether the value of the trees proposed for removal is greater than the cost of their preservation to the property owner. This cost, according to Section 12.36.050 of the PTO, shall

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include any additional design and construction expenses required. A design change that would provide sufficient space to preserve any of the trees approved for removal would exceed the value of the tree.

### **SUSTAINABLE OPPORTUNITIES**

The construction of this 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.

The PTO states that replacement plantings shall be required for the removal of native species in order to prevent excessive loss of shade, erosion control, groundwater replenishment, and visual screening and wildlife habitat. If this permit were approved, a condition of approval would require the applicant to plant two 24-inch box native trees within the property boundaries and due to site constraints, pay a \$300 in lieu fee for each protected native tree that cannot be replaced. The property owner also intends to landscape around the new house. These new plantings will also benefit the environment as prescribed in the PTO.

### **RECOMMENDATION AND RATIONALE**

Staff recommends that the City Council waive the 18-day appeal deadline mandated by the PTO. This deadline has lapsed due to no fault of the appellant.

Staff recommends that the City Council approve the resolution denying the appeal of tree permit application DR03-123 and allowing the issuance of a tree removal permit for 10 Coast Live Oaks and one Canary Island Pine on private property at 300 Elysian Fields Drive.

### **ALTERNATIVE RECOMMENDATION**

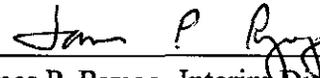
The City Council can reverse staff's decision and require the preservation of trees, require changes or impose additional conditions of approval that, in its judgment, are necessary to ensure the tree permit decision conforms to the PTO removal criteria in section 12.36.050. This type of action would be taken if the City Council found that staff made an error, abused their discretion when they approved the removal of the eleven trees or where the evidence in record does not support such decision.

This alternative would require the property owner to redesign the new home. The redesigned home would still require the removal of some of the protected trees to allow construction to occur. These additional redesign elements could be considered unreasonable if the owner is not permitted to do the required construction to build the new home.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council approve the resolution denying the appeal of tree removal permit DR03-123 and issuing the tree removal permit for the removal of 11 protected trees on private property at 300 Elysian Fields Drive. Conditions of approval for the tree removal permit require a protected perimeter be established by fencing to restrict construction activities under the trees to be preserved. Two native replacement trees will be planted on the property.

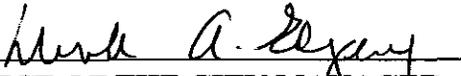
Respectfully submitted,



James P. Ryugo, Interim Director  
Office of Parks and Recreation

Prepared by:  
Dan Gallagher  
Tree Supervisor II

APPROVED AND FORWARDED TO THE  
CITY COUNCIL:



OFFICE OF THE CITY MANAGER

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## **ATTACHMENT A**

### **Section 12.36.050    Criteria for tree removal permit review. Chapter 12.36 of the Oakland Municipal Code Protected Tree Ordinance**

- 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 on 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.

OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

*Margaret Fujita*

RESOLUTION DENYING THE APPEAL FILED BY STEFANIE GANDOLFI AGAINST THE DECISION OF THE DIRECTOR OF THE OFFICE OF PARKS AND RECREATION APPROVING THE ISSUANCE OF TREE REMOVAL PERMIT DR03-123 AT 300 ELYSIAN FIELDS DRIVE

WHEREAS, on October 10, 2003, Edward Patmont ("Applicant") submitted an application for Tree Removal Permit (TRP) DR03-123 to remove eleven (11) protected trees from an undeveloped property at 300 Elysian Fields Drive; and

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

WHEREAS, on December 1, 2003, the Office of Parks and Recreation (OPR) approved the issuance of TRP DR03-123 for the removal of eleven (11) 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 tree's proximity to a proposed structure; and

WHEREAS, on December 8, 2003, Stefanie Gandolfi ("Appellant") filed an appeal with the Office of the City Clerk against the OPR decision approving TRP DR03-123; and

WHEREAS, in this case all of the trees to be removed are located within or in close proximity to the proposed driveway location or foundation footprint of the structure; and

WHEREAS, the appeal came before the City Council on January 20, 2004, 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 January 20, 2004, after a public hearing of said appeal was conducted, and a motion to deny the appeal and to approve issuance of TRP DR03-123 subject to certain conditions noted below was passed; now, therefore, be it

RESOLVED: That the decision of the Office of Parks and Recreation is hereby affirmed; and be it

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FURTHER RESOLVED: That the appeal filed by Stefanie Gandolfi against the decision of the OPR approving the removal of trees in TRP DR03-123 is hereby denied; and be it

FURTHER RESOLVED: That in accordance with the criteria established in Sections 12.36.050 (A) (1) and (2) of the Oakland Municipal Code, the removal of 10 Quercus agrifolia (Coast Live Oak) and one Pinus canariensis (Canary Island Pine) trees in TRP DR03-123 is hereby approved by the Office of Planning and Building; and be it

FURTHER RESOLVED: That in accordance with 12.36.060 (A) and (B) of the Oakland Municipal Code, the conditions of approval in the tree permit (attached as Attachment A and hereby incorporated by reference as if fully set forth herein) shall be provided during the construction period; 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, finds, for all the reasons stated in this resolution that the appeal should be denied. Therefore, the decision of the Director, OPR, approving the trees removal is affirmed, the appeal is denied, and the application for tree removals is approved subject to the conditions of approval (attached as Attachment A and hereby incorporated by reference as if fully set forth herein); and be it

FURTHER RESOLVED: That the record relating to this application and appeal 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: The City Council hereby adopts the CEQA findings of the City's Environmental Review Officer and finds that the Project is exempt from CEQA under CEQA Guidelines Section 15311 and directs that the Review Officer prepare a Notice of Exemption for filing at the County Recorder; and be it

FURTHER RESOLVED: That the Office of the City Attorney has approved this resolution, and a copy will be on file in the Office of the City Clerk; 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- BRUNNER, CHANG, MAYNE, NADEL, REID, SPEES, WAN AND  
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST:

CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California

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**ATTACHMENT A**

<b>TREE PERMIT</b> City of Oakland, Office of Parks and Recreation
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**Permit #DR03-123**  
300 Elysian Fields Drive

Issued:  
Applicant: Edward Patmont

Expires:

**Removal Approved**

#1	Coast Live Oak	#9	Coast Live Oak
#2	Coast Live Oak	#10	Coast Live Oak
#4	Canary Island Pine	#11	Coast Live Oak
#6	Coast Live Oak	#12	Coast Live Oak
#7	Coast Live Oak	#13	Coast Live Oak
#8	Coast Live Oak		

**Preservation Required**

A	Coast Live Oak	E	Coast Live Oak
B	Coast Live Oak	F	Coast Live Oak
C	Coast Live Oak	G	Coast Live Oak
D	Coast Live Oak	▶	All other protected trees

**Comments**

*A single family home will be built on a vacant lot. Fencing and work restrictions will preserve remaining Oak trees. Two replacement trees will be planted and in-lieu fees for eight trees will be paid for the Oak trees approved for removal. Canary Island Pines #3 and #4 are too small to be protected and may be removed without a permit.*

**Conditions of Approval**

- 1. Fencing must be installed before this permit, or any other city permits, are issued. No grading, construction, or tree work may be done on the property until this requirement is met.** The applicant must install fences to protect the trees list above in Preservation Required. The fences shall be installed in a circle or square pattern around individual trees. Groups of trees may be protected with a linear section of fence that separates the trees from construction activity. Fencing shall be installed away from the tree trunk, out to the drip line, or farther. If construction activity requires fencing to be installed closer to the trunk than the drip line, maximum space will be given to the tree and minimum space given to the work area. Fencing shall be chain-link, minimum five feet tall, with sturdy metal pipe driven into the ground for posts. The attached sign, "Warning – Tree Protection Zone", shall be attached to each fence and maintained during the project.
- 2. The protective fencing for tree F shall also enclose the long limb (approx. 26 feet) that extends uphill toward the proposed paved driveway.**
- 3. Tree A shall be pruned to provide space for the building. The pruning shall be done by a tree work contractor that has an ISA certified arborist on staff.**

4. Tractor work, storage of material, depositing soil, removing soil, cutting roots, parking of equipment or any other work activities are prohibited within fenced tree areas for the duration of the project. If any work must occur within a fenced area, it shall be approved in advance by this office. Failure to comply with this requirement may result in fines and/or replacement trees and suspension of building permits, for working illegally around protected trees.
  5. 3" PVC, 6" PVC dissipaters, and 2' tall retaining walls shall be dug by hand. Roots less than 1" diameter may be cut cleanly with hand tools. Roots larger than 1" diameter shall be preserved. If roots larger than 1" diameter must be cut to do proposed work, than shall be inspected and approved in advance by Tree Services staff.
  6. Two replacement trees shall be planted within the property boundaries prior to the final inspection. 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).
  7. The 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. Tree Services staff must approve the trees before planting, and inspect again after planting to insure correct installation. The applicant and the department must mutually agree upon the location of the trees. An appropriate amount of water must be applied each week, for three years, to establish the trees in the landscape. The trees shall be watered by a drip irrigation system and timer. The trees must remain on the property as a permanent part of the landscape. Any replacement tree not alive and healthy three years after the final inspection shall be replaced.
  8. Ten replacement trees are required but eight cannot be planted due to site constraints. Therefore, an in lieu fee shall be substituted for eight trees, with all such revenues applied toward tree planting in city parks, streets and medians. The in lieu fee is \$300 per tree for a total of \$2,400. The fee shall be paid prior to the issuance of the tree permit.
  9. All debris from the tree removal work shall be removed from the property within two weeks. It shall be properly disposed of in a legal manner.
  10. 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 Office of Parks and Recreation of such damage. If such tree cannot be preserved in a healthy state, the Office of Parks and Recreation shall require replacement of any tree removed with another tree or trees on the same site deemed adequate to compensate for the loss of the tree that is removed.
- Issue this permit only if all other permits are approved, e.g. zoning, building, grading, demolition and creek protection permits.
- Approved permits must be posted on site when tree work is being done.