



AGENDA REPORT

TO: Jestin D. Johnson
City Administrator

FROM: G. Harold Duffey
Director, Public Works

SUBJECT: Development-Related Tree Removal
Permit Appeal, 13193 Skyline Blvd

DATE: October 25, 2023

City Administrator Approval

Date: Oct 27, 2023

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt One of the Following Three Options: (1) A Resolution Denying The Appeal Of Ifeoma Adams And Upholding Staff's Granting of A Development-Related Tree Removal Permit for 13193 Skyline Blvd; or, Provided The City Council Can Make The Appropriate Findings, Either: (2) A Motion Directing Staff To Prepare A Resolution For Future City Council Consideration To Deny The Appeal With Additional Conditions; Or (3) A Motion To Direct Staff To Prepare A Resolution For Future City Council Consideration To Uphold The Appeal; On The November 7, 2023 City Council Agenda As A Public Hearing

EXECUTIVE SUMMARY

This report provides background information and a recommendation regarding a Tree Removal Permit for the proposed removal of two protected trees for a development-related project. Staff approved the Tree Removal Permit on the basis that the trees proposed for removal are growing within the footprint of the proposed single-family home on the site and are also in poor condition. There is no reasonable redesign of the site plan that would save the trees, and there is no reasonable way to correct their poor condition. The criteria listed in the appeal are outside the scope of the Protected Tree Ordinance (PTO) and was not considered during permit approval decisions. Staff has prepared a resolution that will enable the City Council to implement a decision that denies the appeal and allows the issuance of the tree permit.

REASON FOR URGENCY

This appeal was submitted to the City Clerk on October 19, 2023 (**Attachment D**)

Per OMC 12.36.100(C), (**Attachment A**), the City Clerk shall set the appeal hearing at the next available City Council meeting. The hearing date set by the City Clerk shall not be more than thirteen working days from the date of the permit decision. If the appeal is not finally disposed of by the City Council within eighteen working days of the date of the permit decision, said decision shall be deemed affirmed, and the permit appeal denied.

City Council
November 7, 2023

BACKGROUND / LEGISLATIVE HISTORY

Tree removal permit applications are submitted to the Public Works Parks and Trees Division (**Attachment B**) On October 17, 2023, the City of Oakland Public Works Parks and Tree Division approved a Development-Related Tree Removal Permit application to remove two trees located on a vacant lot located at 13193 Skyline Blvd (**Attachment C**) The proposed development is for a single-family house. This permit application included the removal of one 34" diameter at breast height (DBH) redwood tree, and one 40" DBH redwood tree. Diameter-at-breast height, or DBH, is the measurement of tree trunk diameter 4.5' above the ground. The Protected Tree Ordinance (PTO) requires replanting two native replacement trees for the mitigation of these two tree removals.

A Design Conference took place on October 17, 2023. In attendance were the permit applicant, permit appellant, Oakland Public Works Parks and Tree Division staff, and Planning and Building staff. The parties discussed the [site plans](#) and the permit appellant's concerns but were unable to reach a compromise, leading to the submittal of the formal permit appeal.

On October 19, 2023, the owner of an adjoining property, Ifeoma Adams, submitted a permit appeal to contest the permit decision (**Attachment D**). She cited the following reasons as basis for the appeal:

- 1) "The placement and location of the proposed site building plan accompanying the Development Related Tree Permit is not a workable plan, not meeting the measurement and setbacks of the easement rights and therefore cannot be addressed until the design issue challenge is addressed regarding coming up with a workable plan that protects the rights of all the property owners."
- 2) "The Arboricultural Inspector came to the site conference with a conclusion already made, letting me know right away that he is going to approve the permit because he has looked at the trees.... He made his determination and approval based upon a Non-Developmental Related Tree Removal request. This is a Development-related request, and related to a design that is being challenged and currently with the City Attorney"

ANALYSIS AND POLICY ALTERNATIVES

Section 12.36.050 of the PTO lists the criteria used to determine if trees should be removed or preserved.

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 ensure 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.
- First, the tree removals must be necessary in order to accomplish at least one of the five possible objectives. In this case, the removal of trees due to their poor structure and health would be necessary to protect the life and property that will inhabit this property (A)(1).
 - 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, the criterion that must be considered is Section 12.36.050 (B)(1)(a): removal of a healthy tree could be avoided by reasonable redesign of the site plan, prior to construction.

The following citywide priority is advanced by this recommended policy action:

- **Housing, economic, and cultural security.** The construction of a new residential unit aligns with the Housing Element component of Oakland's General Plan and Oakland's commitment to build 26,251 new housing units between 2023 to 2031.

Oakland Public Works Was Unable To Support Findings For Permit Denial Based On The Following:

- The two redwood trees meet the criteria for removal due to their poor health and structural condition. These conditions are not correctable.
- The two redwood trees are directly within the footprint of the proposed home. A redesign of the home to save these two trees would result in the taking of neighboring healthy trees instead.

Setbacks and easement rights are outside the scope and jurisdiction of the Protected Tree Ordinance and are categorically not considered as criteria for approving or denying tree removal permit decisions.

FISCAL IMPACT

There is no fiscal impact.

PUBLIC OUTREACH / INTEREST

Per OMC 12.36.070 (F), trees proposed for removal are posted and numbered for public visibility within two days of making a tree removal permit application. Per OMC 12.36.070 (F), The City of Oakland shall notify adjacent property owners within ten days of application the fact

that a tree removal permit application has been submitted by the applicant and the closing date for public input. The public comment period shall be no less than twenty working days following the verification of the posting.

COORDINATION

Development-related tree removal permit applications are coordinated between the Building and Planning Department and Public Works. Both departments attended a Design Conference at the property on October 17, 2023.

SUSTAINABLE OPPORTUNITIES

Economic: The construction of a new residential unit aligns with the Housing Element component of Oakland's General Plan and Oakland's commitment to build 26,251 new housing units between 2023 to 2031.

Environmental: The applicant is required to plant two native trees as mitigation for the removal of the two trees in question.

Race & Equity: N/A

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

"Exempt per the State CEQA Guidelines Section 15303 – New Construction or Conversion of Small Structures and 15183 – Projects Consistent with a Community Plan, General Plan, or Zoning.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the Resolution denying the appeal of tree removal permit application T22-154 and allowing the issuance of a tree removal permit for two protected trees on this undeveloped lot at 13193 Skyline Blvd

For questions regarding this report, please contact David Moore, Acting Manager, Parks and Tree Division, at (510) 615-5852.

Respectfully submitted,



G. Harold Duffey
Director, Oakland Public Works

Reviewed by:
Kristin Hathaway
Assistant Director, Oakland Public Works

Prepared by:
David Moore, Acting Manager
Parks and Tree Division

Attachments: (4)

- A. OMC Section 12.36
- B. Tree Removal Permit Application (T23-094)
- C. Tree Removal Permit Approval
- D. Appeal filed by Ifeoma Adams