

CITY OF OAKLAND
AGENDA REPORT

CITY OF OAKLAND
05 SEP -7 PM 5:31

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Public Works Agency
DATE: September 20, 2005

RE: RESOLUTION DENYING THE APPEAL FILED BY CAROL WOLMAN-CLAPSADLE AGAINST THE DECISION OF THE PUBLIC WORKS AGENCY APPROVING THE ISSUANCE OF TREE REMOVAL PERMIT DRO5-083 FOR 400 – 40TH STREET IN ORDER TO BUILD TWENTY-EIGHT (28) RESIDENTIAL UNITS, THREE (3) COMMERCIAL SPACES, AND PARKING

SUMMARY

This report provides background information and a recommendation regarding a Tree Removal Permit for the proposed removal of ten (10) trees for a development related project. 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 development on the site: ten (10) residential units in two (2) buildings on the north side of the property and eighteen (18) residential units above parking with three (3) commercial spaces on the south side of the property. There is no reasonable redesign of the site plan that would save the trees. 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 Carol Wolman-Clapsadle's appeal and allows the issuance of the tree permit.

FISCAL IMPACTS

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

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BACKGROUND

Tree Services approved a permit to remove nine Silk Oak trees and one Date Palm from a half-acre parcel for a mixed-use project. Nine new street trees are shown on the site plan. Tree Services approved the permit on July 19, 2005.

Silk Oak trees have brittle wood and are known for limb breakage problems, especially in high wind. These Australian natives have low monetary value due to the characteristics of the wood. Tree Services uses a formula developed by the International Society of Arboriculture when appraising the value of trees. When calculating the monetary value of Silk Oaks, the species is only rated at 10% in the formula, compared to Coast Live Oak, which is rated at 90% for the species. The trees' minimal value is further eroded by the fact the trees have all been topped some time in the past.

Carol Wolman-Clapsadle filed an appeal on July 20, 2005. The following was stated as the basis for the appeal:

“These are healthy trees, ten of the oldest and tallest in the neighborhood. They provide much-needed shade, oxygen, windbreak, and are home to many birds and squirrels.”

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 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 the 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 ten trees.

Section 12.36.050 of the PTO lists the criteria used to determine if trees 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.

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- 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. It would be unreasonable to ask for significant changes to the project to accommodate trees that have almost no monetary value.
- 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.
- The value of the trees is less than the cost of their preservation to the property owner. Each inch of trunk diameter of a Silk Oak on this property is worth \$14.58. Tree #1 has a diameter of 24 inches and is worth \$350.00. The diameters of the Silk Oaks range from 12 inches to 32 inches. The total value of the nine Silk Oaks is \$3,020.00. Since the value of the trees is so low, the applicant was not asked to re-design and save the trees. The value of the one palm tree growing on the property was not calculated as it would not have enough value to change the findings for this criterion.

SUSTAINABLE OPPORTUNITIES

The construction of twenty-eight new residential units 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 the new homes.

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 DR05-083 and allowing the issuance of a tree removal permit for ten trees at 400 – 40th Street.

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ALTERNATIVE RECOMMENDATION

The City Council can reverse staff’s decision and require the preservation of the ten 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 ten trees. Section 12.36.060 (E) of the PTO allows any other conditions that are reasonably necessary to implement the provisions of the chapter. This alternative would require the property owner to redesign the development project.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the resolution denying the appeal of tree removal permit DRO5-083 and issuing the tree permit for the removal of ten trees on 40th Street.

Respectfully submitted,



RAUL GODINEZ II, 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. Tree Permit approval July 19, 2005
- B. Tree Removal Permit Appeal form filed by Carol Wolman-Clapsadle

**APPROVED AND FORWARDED TO THE
CITY COUNCIL:**


OFFICE OF THE CITY ADMINISTRATOR

Item: _____
City Council
September 20, 2005

CITY OF OAKLAND
City of Oakland, Public Works Agency

400 40th Street

Approved: July 19, 2005
Expires: One year from date of issuance

Applicant: Miles Hobbs, Branagh, Inc.,

#1	Silk Oak	#6	Silk Oak
#2	Silk Oak	#7	Silk Oak
#3	Silk Oak	#8	Date Palm
#4	Silk Oak	#9	Silk Oak
#5	Silk Oak	#10	Silk Oak

	▶ All other protected trees
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As per Chapter 12.36 of the Oakland Municipal Code, this Development-related permit approves the removal of two (2) protected trees, 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 ten (10) residential units in two (2) buildings on the north side and eighteen (18) residential units above parking with three (3) commercial spaces on the south side proposed for 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" means 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. Ten (10) are located within the footprint of the project and must be removed to allow space for the construction.

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. Nine out of ten trees are Silk Oaks, which are considered a very low value tree due to weak wood and limb breakage problems. The trees' limited value is further eroded by the fact the trees have all been topped some time in the past. It would be unreasonable to ask for significant changes to the project to accommodate trees that have almost no monetary value.

Tree removal cannot be avoided by trimming, thinning, tree surgery or other reasonable treatment (OMC Section 12.36.050 (B)(1)(b)).

Trimming or thinning will not create the space needed to build the proposed project.

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

As a result of the tree removals, Tree Services does not anticipate any problems with drainage, erosion control and land stability or windscreen.

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 cost of preservation, including any additional design and construction expenses, would exceed the monetary value of the trees. Therefore, there are no grounds for permit denial.

OAKLAND MUNICIPAL CODE SECTION 12.36.070(E) CEQA REVIEW

No environmental review is required.

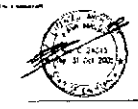
OAKLAND MUNICIPAL CODE SECTION 12.36.060 CONDITIONS OF APPROVAL

- 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



KAVA MASSINI ARCHITECTS
 Kava Massini Architects
 100 North Street
 Boston, MA 02109
 Tel: 617.552.1111
 Fax: 617.552.1112



Project Name:
 ELLWOOD HOUSING

Project Location:
 457-459 SOUTH STREET
 BOSTON, MASSACHUSETTS 02107

Project Number:
 05-001

Project Date:
 06/21/2005

Project Engineer:
 ROBERT J. KELLY
 License No. 10000
 State of Massachusetts

NO.	REVISION	DATE
1	ISSUE FOR PERMITTING	06/21/05
2	ISSUE FOR PERMITTING	06/21/05
3	ISSUE FOR PERMITTING	06/21/05
4	ISSUE FOR PERMITTING	06/21/05
5	ISSUE FOR PERMITTING	06/21/05
6	ISSUE FOR PERMITTING	06/21/05
7	ISSUE FOR PERMITTING	06/21/05
8	ISSUE FOR PERMITTING	06/21/05
9	ISSUE FOR PERMITTING	06/21/05
10	ISSUE FOR PERMITTING	06/21/05

ELLWOOD HOUSING

457-459 SOUTH STREET
 BOSTON, MASSACHUSETTS 02107

PROJECT ENGINEER:
 ROBERT J. KELLY
 LICENSE NO. 10000
 STATE OF MASSACHUSETTS

RECEIVED
 JUN 10 2005
 CITY-PLANNING COMMISSION
 ZONING DIVISION

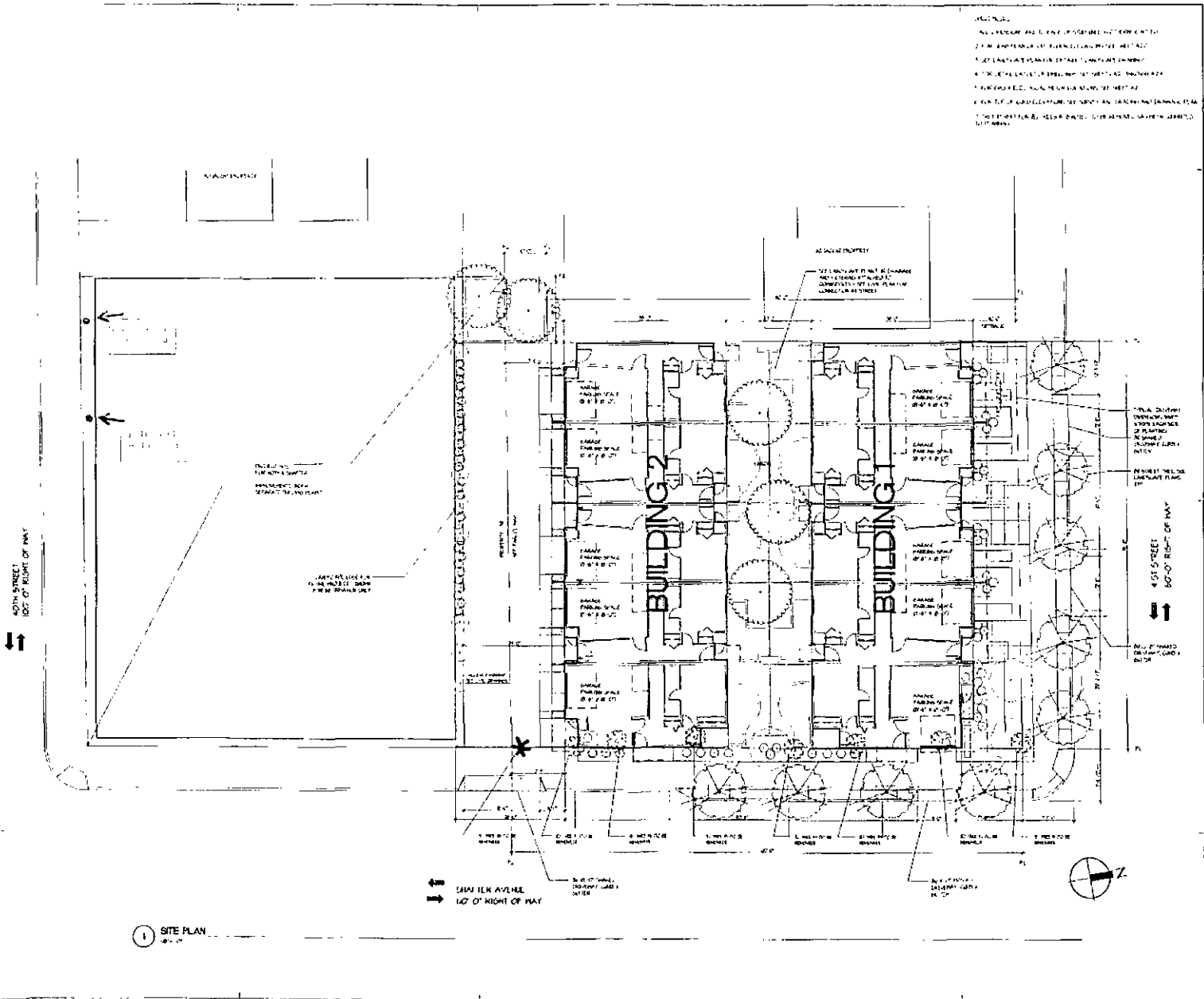
SCALE:
 1/8" = 1'-0"

DATE:
 06/21/05

PROJECT NO.:
 05-001

SCALE:
 A1.1

- 1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
- 2. DIMENSIONS OF EXISTING BUILDINGS ARE AS SHOWN ON THE PLANS.
- 3. DIMENSIONS OF EXISTING BUILDINGS ARE AS SHOWN ON THE PLANS.
- 4. DIMENSIONS OF EXISTING BUILDINGS ARE AS SHOWN ON THE PLANS.
- 5. DIMENSIONS OF EXISTING BUILDINGS ARE AS SHOWN ON THE PLANS.
- 6. DIMENSIONS OF EXISTING BUILDINGS ARE AS SHOWN ON THE PLANS.
- 7. DIMENSIONS OF EXISTING BUILDINGS ARE AS SHOWN ON THE PLANS.
- 8. DIMENSIONS OF EXISTING BUILDINGS ARE AS SHOWN ON THE PLANS.
- 9. DIMENSIONS OF EXISTING BUILDINGS ARE AS SHOWN ON THE PLANS.
- 10. DIMENSIONS OF EXISTING BUILDINGS ARE AS SHOWN ON THE PLANS.



CITY OF OAKLAND
OFFICE OF PARKS & RECREATION

OFFICE OF THE CITY CLERK
OAKLAND

TREE REMOVAL PERMIT APPEAL FORM

JUL 20 PM 2:25

- 1. Date: 7/20/05
- 2. Appellant's Name: Carol Wolman Clapsadle
- 3. Appellant's Address: 406 41st St
City, State & Zip: Oakland CA 94609
Telephone #: (510) 655-4774
- 4. Tree Removal Permit Number: #83 / DR83
- 5. Address of Tree Removal: Shutter between 40th + 41st
- 6. Basis for Appeal: These are healthy trees, ten of the oldest & tallest in the neighborhood. They provide much-needed shade, O2, windbreak, & are home to many birds & squirrels

I HEREBY CERTIFY UNDER PENALTY OF PERJURY, THAT I AM 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: Carol Wolman - Clapsadle Date: 7/20/05

FOR OFFICE USE ONLY

Appeal Hearing Date: OCTOBER 19, 2005

Received By: [Signature]

Appeal Fee Paid: \$50.00 check # 9976 *\$50 fee for Tree Appeal

Receipt #: 00523

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

OAKLAND CITY COUNCIL

FILED
OFFICE OF THE CITY CLERK
CLERK

05 SEP -7 PM 5:32

RESOLUTION No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____ *Margaret Fijak*

RESOLUTION DENYING THE APPEAL FILED BY CAROL WOLMAN-CLAPSADLE AGAINST THE DECISION OF THE PUBLIC WORKS AGENCY APPROVING THE ISSUANCE OF TREE REMOVAL PERMIT DRO5-083 FOR 400 - 40TH STREET

WHEREAS, on June 10, 2005, Miles Hobbs of Branagh, Inc., ("Applicant") submitted an application for Tree Removal Permit (TRP) DR05-083 to remove ten trees from 400 - 40th Street in order to build twenty-eight residential units, three commercial spaces and parking; and

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

WHEREAS, on July 19, 2005, the Public Works Agency (PWA) approved the issuance of TRP DR05-083 for the removal of ten 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 July 20, 2005, Carol Wolman-Clapsadle ("Appellant"), filed an appeal with the Office of the City Clerk against the PWA decision approving TP DR05-083; and

WHEREAS, the appeal came before the City Council on September 20, 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 September 20, 2005, after a public hearing of said appeal was conducted, and a motion to deny the appeal and to approve issuance of TRP DR05-083 subject to certain conditions noted below was passed; now, therefore, be it

RESOLVED: That the decision of the Public Works Agency is hereby affirmed; and be it

FURTHER RESOLVED: That the appeal filed by Carol Wolman-Clapsadle against the decision of the PWA approving the removal of trees in TRP DR05-083 is hereby denied; and be it

FURTHER RESOLVED: That in accordance with the criteria established in Sections 12.36.050 (A) (1) of the Oakland Municipal Code, the removal of ten trees in TRP DR05-083 is hereby approved by the Public Works Agency; and be it

FURTHER RESOLVED: That in accordance with Section 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, PWA, approving tree removals 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: That 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- 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