

**CITY OF OAKLAND**  
**AGENDA REPORT**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2004 JUL -8 PM 6:03

TO: Office of the City Administrator  
ATTN: Deborah A. Edgerly  
FROM: Public Works Agency  
DATE: July 20, 2004

RE: REPORT AND RECOMMENDATION ON TREE PROTECTION MEASURES AND APPROVED BUILDING PLANS TO BE ADHERED TO DURING THE CONSTRUCTION OF A SINGLE FAMILY HOUSE AT 6036 CONTRA COSTA ROAD.

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**SUMMARY**

This report provides background information and a resolution regarding a Tree Removal Permit's Conditions of Approval to protect existing Oak trees during the construction of a house at 6036 Contra Costa Road. Tree Permit DR01-154 was approved on February 4, 2002. This final permit included conditions of approval that were agreed upon as a result of an appeal that had been filed by two adjoining property owners.

Two of the conditions listed in the permit conflict with the approved building plans. The tree protection fence, if installed at a 12-foot perimeter would prevent the installation of a foundation pier, grade beam and living room wall as shown on the building plan and would require the building to be redesigned. Secondly, the driveway cannot be built 16 foot wide without encroaching on the 12-foot protected perimeter.

Staff recommends that the existing fence (installed on two sides of the trees with less than a 12-foot perimeter) be permitted to serve as the protective tree fence, and that the owners be permitted to build the home according to the approved building plan, including allowing the driveway to be 16 feet wide at its entrance.

Staff has prepared a resolution that will enable the City Council to implement a decision that amends prior Resolution No. 77953 C.M.S. and its Attachment A to accept the currently existing tree protection fence as sufficient, to allow construction of the house, driveway and flagstone walkway as shown on the approved building plan and to remove the requirement of a tree protection fence on a small Oak tree in the rear of the proposed house.

**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 Removal Permit DR01-154 was approved on February 4, 2002. The permit allowed four *Quercus agrifolia* (Coast Live Oak) trees and one *Salix laevigata* (Red Willow) tree to be removed in order to build a new single-family home. During the permit process, the applicants (Guita Boostani and Stephen Glaudemans) agreed to modify the proposed plans to address neighbor's concerns. The building envelope was reduced by: (1) pulling back the second level over the garage five feet, (2) pulling back the building footprint at the one-story living room two feet and (3) pulling back the family room at the rear of the building by two feet to provide additional clearance from an existing Oak tree in the rear yard.

An appeal was filed by two adjacent property owners (Meyer family and Bracco family) on February 10, 2002. The basis for appeal was stated as "1) Fencing requirements will not adequately protect "Tree A." 2) Fencing Requirements prohibit access for tractors and building storage. 3) Proposed soil excavation for driveway compromise health of Tree A." Prior to the appeal being heard, the owners further agreed to modify the driveway construction plans to minimize impacts to the large existing Oak in the front of the property, "Tree A," and to reduce the interior garage width to 18 feet. They also proposed that they would hire a Certified Arborist to determine the existence of major roots within the driveway entry cut and if the proposed 16 foot wide driveway would have significant impacts due to existing roots, the driveway entry would be reduced to 12 feet.

A public hearing was held on March 26, 2002. That evening, Michael Bracco (one of the appellants) and the property owners, Guita Boostani and Stephen Glaudemans, signed an agreement for conditions of approval to be included in the tree permit. Six items were listed on this agreement and the final decision on the appeal was held in abeyance until a storm drain location was decided upon.

On July 15, 2003, the City Council heard and approved a resolution denying the appeal of the tree permit due to the storm drain location being approved by all interested parties. The East Bay Regional Park District granted the City an easement along the left side of the property for construction, repair and maintenance of a storm drain.

On February 27, 2004, the Building Services Department approved the building plans. On March 2, 2004, the permits were issued to the owners allowing construction to commence. On April 14, 2004, staff was made aware that the tree protection fence had been installed in a location that did not precisely adhere to the agreement signed on March 26, 2002 and written as a condition of approval for the tree removal permit. The owners agreed to not perform any construction within the 12-foot perimeter until the City Council heard this report.

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## KEY ISSUES AND IMPACTS

The Tree Permit Conditions of Approval and the approved building plans conflict. The tree permit restricts construction within a 12-foot distance measured from the base of the tree and the approved building plan allows the right front corner of the living room to be located within this same space. Strict adherence to the tree permit conditions of approval would require a redesign of the home, moving the living room wall further back to be beyond 12 feet from the base of the tree. The driveway edge could not be built as a straight side, since the 12 foot perimeter encroaches into the edge of the driveway.

Rather than erecting the tree protection fence in a circular perimeter around the tree, which would require a larger number of posts to be driven and thereby possibly damaging roots, the fence was erected in a rectangular shape enclosing the tree on two sides at somewhat less than 12 feet, locating it on one side immediately inside the curb along the street and lastly being placed beyond sixteen feet on the remaining side. The existing rectangular-shaped tree protection fence encloses a 7.4 % larger root protection zone than that of a circular fence established at a 12-foot radius from the tree would.

At the time the additional conditions of approval agreement was signed, just prior to the first City Council appeal hearing, the 12-foot radius measurement was derived from a plan that expressed the tree as a uniform circle. Section 12.36.060 (A) (1) of the Oakland Municipal Code's Protected Trees Ordinance (PTO) requires that fence locations are measured from the base of the tree. The base of Tree A is not a uniform circle. Therefore, it was not recognized then that the tree protection fence would impinge upon the location of the living room wall and driveway.

Additionally, the topography of the site is such that, beyond 12 feet from the base of the tree in the direction of the house, the slope of land drops away dramatically. As such, it can be reasonably assumed that the presence of roots beyond this point is unlikely. If the living room's foundation pier and grade beam were moved to be located just beyond 12 feet from the base of the tree, that required redesign would have a negligible benefit to the tree.

Secondly, the owners hired a Certified Arborist who used a pneumatic soil excavation technique to determine if any roots were present within the driveway entrance cut area. Only two Oak roots exist. One root is 1¼ inches in diameter and the other root is 1¾ inches in diameter. Considering the size of the tree and the root area that will be enhanced for future growth of roots under the driveway, the pruning of these two roots four feet back from the point at which they were measured would not be considered a significant impact to the tree.

A structural soil mix will be used as fill in the driveway area and permeable paving blocks are being used as the driveway surface which will allow for water penetration and gas exchange. These two treatments will greatly improve the growing medium of the soil and allow for root growth into this area of the property that, in the past, did not have significant roots present.

The Director of the Building Services Division has recommended, in a letter sent to the Director of Parks and Recreation, that the Tree Permit Conditions of Approval be modified to allow the 16-foot wide driveway to be built for its entire length (see attached letter). A 16-foot wide driveway would be a safer design by allowing two vehicles to park side by side, thereby eliminating the need for the rear vehicle to back out in order to allow a front parked car to exit. A wider drive would also provide room for one additional off street parking space. Contra Costa Road is only 20 feet wide with no parking permitted on the subject property side.

Thirdly, as part of the Landscape Plan, submitted with the design review and building permit applications, a flagstone path was shown that originated at the driveway and led to the front concrete porch. Walkway flagstones are laid on a sand and gravel base. It would be necessary to excavate a minimal amount of soil within the root protection zone to allow this path to be constructed.

Finally, the tree protection fence to be located around the small Oak tree behind the home cannot be safely installed due to the steep terrain. The inaccessible nature of the terrain itself is adequate protection for this tree to be preserved.

The key issue is whether the currently existing fence is adequate for the protection of "Tree A" and whether the presence of two roots, less than two inches in diameter, would be considered significant enough to deny the owners permission to build a 16-foot wide driveway. Staff considers the potential construction impacts to "Tree A" to be insignificant and that the tree can be preserved in a healthy state while allowing the home to be built according to the approved building plans.

PWA feels it is unreasonable to further redesign the home or to require that the driveway entrance be narrowed due to the presence of two roots. Additionally, a dry laid flagstone walkway would not significantly impact the health of this tree and should be allowed to be built. Finally, the steep topography in the rear of the home is sufficient to prevent construction impacts to the small Oak tree and the terrain prevents a fence from being safely erected.

### **SUSTAINABLE OPPORTUNITIES**

The construction of this 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 a home being built on this vacant lot.

## **RECOMMENDATION AND RATIONALE**

Staff recommends that the City Council amend Resolution No. 77953 C.M.S. and its Attachment A to:

1. Allow the currently existing fence to serve as an adequate tree protection fence, thereby permitting the house to be built according to the approved building plans.
2. Since "significant roots" were not found to be within the driveway entrance zone, and the configuration of a 16-foot wide driveway has been determined to be safer and allow for more off street parking on a narrow road with limited parking, the driveway shall be 16 feet wide for its entire length.
3. A flagstone path will be permitted to be laid on a sand and gravel base leading from the driveway to the front concrete porch. This shall be done only after all other construction has been completed and the tree protection fence has been approved to be removed by the Tree Services Section.
4. Oak tree "C" in the rear of the proposed home shall not require a tree protection fence to be installed.

Staff feels that it is important for the interested parties to have the opportunity to present their case before the City Council.

Staff recommends that the City Council approve a resolution to amend a previous Resolution No. 77953 C.M.S. and the additional conditions of approval included in the tree permit number DR01-154 to permit the construction of a single family home to be built according to the approved building plans.

## **ALTERNATIVE RECOMMENDATION**

The City Council can require that the property owners of 6036 Contra Costa Road strictly adhere to the conditions of approval agreed upon on March 26, 2002 or require such changes to the conditions that, in its judgment, are necessary to ensure the tree permit decision conforms to the PTO removal criteria in section 12.36.050. This alternative would require the property owners to further redesign the single family home.

At a minimum, the front wall of the living room and its supporting pier and foundation wall would have to be pulled back further. The driveway edge could not be built in a straight line, but would have a slight curve along the side closest to the tree that corresponded with the 12 foot radial distance from the tree's base.

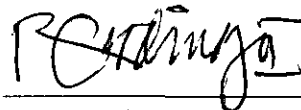
Requiring a strict adherence to Resolution No. 77953 C.M.S. would deny the owners the right to build according to the approved building plans and would not significantly change the construction impacts on the Oak tree A to be preserved.

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**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council approve a resolution amending a previous Resolution No. 77953 to allow the currently existing fence to serve as the tree protection fence, thereby allowing the construction of the single family home at 6036 Contra Costa Road to be built according to the approved building plans. This includes not requiring the front pier foundation and living room wall to be pulled back, allowing a 16-foot wide driveway entrance cut, permitting a flagstone walkway on a sand and gravel base between the driveway and front concrete porch to be laid and to remove the fencing requirement for tree C in the rear of the home.

Respectfully submitted,



Raul Godinez, Director  
Public Works Agency

Prepared by:  
Daniel H. Gallagher, Tree Supervisor II  
PWA Tree Section

APPROVED AND FORWARDED TO THE  
CITY COUNCIL:

  
OFFICE OF THE CITY ADMINISTRATOR

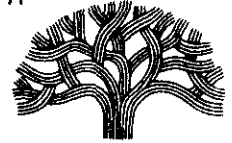
**ATTACHMENT A**

Letter from Calvin N. Wong to Audree Jones-Taylor

**ATTACHMENT B**

Site Map depicting Tree A, existing fence location, 12-foot perimeter fence requirement, proposed house and driveway locations and areas of conflict

## CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA, SUITE 2340 • OAKLAND, CALIFORNIA 94612-2031

Community and Economic Development Agency  
Building Services Division

(510) 238-3102  
FAX (510) 238-2959  
TDD (510) 238-6312

June 16, 2004

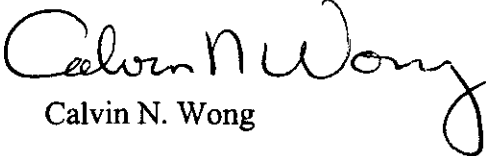
To: <sup>cc</sup> Audrae Jones-Taylor - Director of the Office of Parks and Recreation

From: Calvin N. Wong – Director of Building Services Division

Re: Tree Removal Permit at  
Driveway at 6036 Contra Costa Road

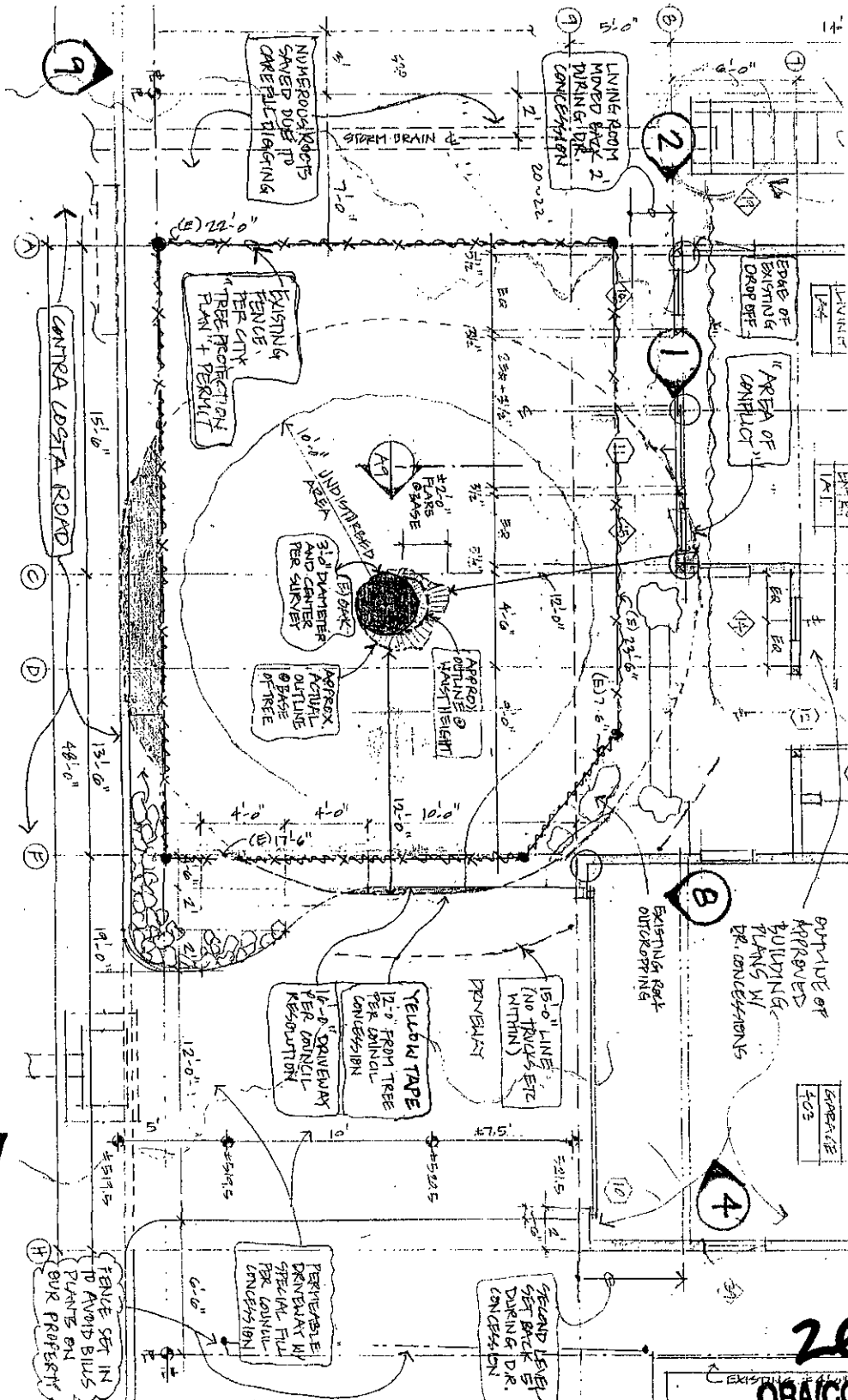
The purpose of this letter is to recommend that the driveway entrance width for 6036 Contra Costa road be 16 feet. The building permit plans were approved with a 16 feet driveway entrance. However the condition of the tree removal permit requires 12', although tandem parking is allowed, the process of moving a rear parked car to allow a front parked car to leave requires additional backing out maneuvers and create a hazardous condition for pedestrian and vehicles that would not occur with a 16 feet wide driveway entrance. The 16 feet wide driveway would also allow for more off street parking. Contra Costa Road is 20 feet wide with no parking on the subject property side. Please contact me at 238-4794 if you have any question.

Very truly yours,

  
Calvin N. Wong



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60310 CONTRA COSTA ROAD RB 0306018 ± 1/8" = 1'-0"  
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OAKLAND CITY COUNCIL

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*B. P. [Signature]*

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

2004 JUL -8 PM 6:05

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

RESOLUTION TO AMEND RESOLUTION NO. 77953 C.M.S. AND TREE REMOVAL PERMIT DR01-154'S CONDITIONS OF APPROVAL REGARDING A TREE REMOVAL PERMIT APPEAL AT 6036 CONTRA COSTA ROAD

WHEREAS, on December 24, 2001, Guita Boostani, Steven Glaudemans Architects ("Applicants") submitted an application for Tree Removal Permit (TRP) DR01-154 to remove five (5) protected trees from the property located at 6036 Contra Costa Road; and

WHEREAS, to address neighbor's concerns, the proposed plans were modified by reducing the size of the house to provide additional growing space to two Oak trees to be preserved; and

WHEREAS, on February 4, 2002, the Office of Parks and Recreation (OPR) approved the issuance of TRP DR01-154 for the removal of five (5) trees from said property; and

WHEREAS, on February 10, 2001, William and Jill Meyer and Michael and Kathy Bracco ("Appellants") filed an appeal with the Office of the City Clerk against the OPR decision approving TRP DR01-154; and

WHEREAS, the appeal came before the City Council on March 26, 2002, and the applicants and appellants jointly agreed to additional conditions of approval to be included in the tree permit and to hold the final decision on this appeal pending the decision of the storm drain location; and

WHEREAS, the adjoining property owner, East Bay Regional Park District, granted an access easement to the City of Oakland for the purpose of maintaining storm drain facilities on the applicant's property; and

WHEREAS, the appeal came before the City Council on July 15, 2003, the appeal was denied and the permit was approved subject to certain conditions; and

WHEREAS, on February 27, 2004, the Building Services Department approved the building plans; and

WHEREAS, it has been recognized that the location of the tree protection fence required by the tree permit's conditions of approval conflicts with the proposed location of the right front corner of the living room, front porch and the edge of the driveway, and

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WHEREAS, the Building Services Division has recommended that the driveway be 16-feet wide, and

WHEREAS, an exploratory trench was dug along the edge of the proposed driveway and it was determined that significant roots do not exist in the area of the driveway, and

WHEREAS, it is reasonable to allow the property owners to install a flagstone walkway from the driveway to the front door, and

WHEREAS, these four amendments to the conditions of approval will not have a significant impact on the health of the trees to be preserved, now, therefore, be it

RESOLVED: That the Additional Conditions of Approval contained in Tree Removal Permit DR01-154 and Resolution No. 77953 C.M.S be amended; and be it

FURTHER RESOLVED: That the amended Additional Conditions of Approval, (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 permit and site conditions, finds, for all the reasons stated in this resolution and any additional reasons brought before the Council, that Resolution No. 77953 C.M.S. shall be amended; and be it

FURTHER RESOLVED: That the record relating to this permit 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 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, NADEL, QUAN, REID, 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

**OFFICE OF PARKS AND RECREATION**  
**Additional Conditions of Approval**  
**Tree Permit DR01-154**  
**6036 Contra Costa Road: APN 048A-7101-003-13**

### 1. Fencing Requirement

The existing cyclone fencing must remain in place until all construction activities relating to the house and driveway are completed. Fence removal must be pre-approved by the Tree Services Section. Please telephone (510) 615-5850 to schedule the approval of this requirement.

- Tractor work, storage of material, depositing soil, removing soil, cutting roots, parking of equipment or any other work activities are prohibited within the fenced area.
- Excavation or removal of soil within the protected perimeter of Tree A will only be permitted in the installation of the flagstone walkway and the planting of the approved landscape plants.
- **Failure to comply with this requirement will result in fines and/or replacement trees for working illegally around protected trees.**

### 2. Additional Requirements

- Pruning of tree 'A' shall be limited to the minimum amount that will allow construction to occur. The pruning must be done by a Certified Arborist and follow the International Society of Arboriculture's Tree Pruning Guidelines.
- Heavy machinery will be kept 15 feet away from tree 'A'.
- The driveway shall be 16 feet wide for its entire length with the fill section utilizing a structural soil mix of aggregate and topsoil.
- Interlocking pavers or an equivalent material shall be installed as the driveway so that water infiltration and gas exchange can occur in the soil for the root system's benefit.
- Tree roots within the construction area must be cut cleanly with hand tools. Roots may not be severed by bulldozer blade, backhoe, or other motorized equipment that will fracture and damage tree roots. All exposed roots shall be cut clean and the root ends are not to be left exposed to the air.
- The dry stone retaining wall construction along the driveway shall be limited to the excavation necessary for the minimum wall foundation and step up from the street level to the existing grade. No other grade changes shall occur under the canopy of tree 'A' within the entire root protection perimeter.
- A four to six inch layer of mulch shall be applied to the soil surface under the canopy of tree 'A' in order to mitigate the affects of any root loss. The mulch material shall be shredded bark, woodchips or an equivalent. The mulch shall be kept at least one foot away from the tree trunk.
- No trenching will be permitted within the protected perimeter of tree "A". This includes installation of any drainage, utility or irrigation lines.
- All landscape plants within the drip-line area of tree 'A' shall be listed in the California Oak Foundation's guide, "Compatible Plants Under and Around Oaks".

### 3. Tree Planting Requirement

The applicant shall plant (4) 24" box size or (12) 15-gallon size replacement tree(s) within the property boundaries or on the adjacent park property with written permission from the East Bay Regional Park District.

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1. The tree species shall be your choice of:
    - Sequoia sempervirens (Coast Redwood)
    - Quercus agrifolia (Coast Live Oak)
    - Arbutus menziesi (Madrone)
    - Aesculus californica (California Buckeye)
    - Umbellularia californica (California Bay Laurel)
  2. If the Tree Reviewer determines that the replacement trees cannot be planted due to site constraints, an off-site planting fee shall be paid to the City of Oakland. This fee shall be \$300 per tree for each 24 inch box size tree required.
  3. If the 24 inch box size trees are planted, the tree(s) shall be:
    - Eight to nine feet tall
    - One and a half inch caliper
    - Crown spread of three to four feet
  4. Tree Section staff must approve the tree(s) quality before planting, and inspect again after planting to insure correct installation. The property owner and the department must mutually agree upon the location of the tree(s). The tree(s) must remain on the property as a permanent part of the landscape.
  5. The trees must be watered appropriately to establish them in the landscape by watering once a week with ten to fifteen gallons of water, for three years. An irrigation system with a timer must be installed to water the trees. During the rainy season it may be possible to water less depending how much precipitation is received each week. Any tree not alive and healthy one year after the final inspection shall be replaced.
  6. The trees must be planted or an off-site planting fee paid prior to the final inspection and certificate of occupancy, or the Department will consider the tree(s) that were removed as illegal tree work. The penalty for illegal tree work is a fee; not to exceed the value of the tree(s) illegally removed as evaluated by the formula developed by the International Society of Arboriculture. The fee could be attached as a lien against the property if the fee is not paid.
4. **Building Requirements (agreed to 3/26/02 as item from permit appeal discussions and approved by City Council Resolution on 7/15/03.)**
- The architects agree to put skylights on the roof instead of a light well, and the skylight will be no higher than 6 inches above the rooftop and no wider than 10% of the aggregate horizontal building area.
  - The existing storm drain will be rerouted pursuant to Private Job Permit # PX0200030 along the left side of the property.

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