

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 Edgerly
FROM: Office of Parks and Recreation
DATE: July 20, 2004

RE: REPORT AND RECOMMENDATION ON THE APPEAL FILED BY GUY
MOORE AND SHIRLEY LEONARD - MOORE AGAINST THE DECISION OF
THE OFFICE OF PARKS AND RECREATION APPROVING A PERMIT TO
REMOVE THREE TREES AT 4455 MOUNTAIN VIEW AVENUE

SUMMARY

This report provides background information and a recommendation regarding a Tree Removal Permit which involves the proposed removal of three trees from an undeveloped lot at 4455 Mountain View Avenue. 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 trees proposed for removal are growing within or in close proximity to the proposed driveway location, foundation footprint and within the rear deck of a new single family home. Secondly, the estimated value of the trees proposed for removal is less than the cost of their preservation. Adequate provisions have been required for the protection of sixteen other Coast Live Oaks to be preserved on site. The applicant will be required to plant three native replacement trees within the property boundaries or pay an in lieu fee of \$300 per protected tree removed if minimum planting areas are not available due to site constraints.

Requiring preservation of the trees would constitute an unconstitutional regulatory taking of property. Two of the trees are growing in locations such that by requiring their preservation, the property owner would have to redesign the proposed home. The third tree is located in the area that is the most appropriate location for the driveway to be built. 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 Mr. Moore and Mrs. Leonard – Moore'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 three Coast Live Oaks from an undeveloped lot at 4455 Mountain View Drive. The applicant, William Brown, acting

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as the owner's agent, 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 foundation footprint of the new home.

Mr. Moore and Mrs. Leonard - Moore filed an appeal on April 9, 2004. The basis for appeal was stated as, "One tree scheduled for removal is landscaping for our property. We are in the process of hiring a surveyor to advise us of our legal property line and an attorney to advise us of our rights as property owners. We do not want the tree removed before we have legal representation." The survey submitted with the tree removal permit application shows all of the trees listed on the permit to be within the applicant's property boundaries.

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 can be avoided by reasonable redesign of the site plan. OPR feels it is unreasonable to redesign the proposed new home for the following reasons:

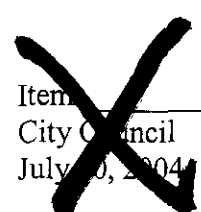
- The new home has been designed according to the best location for this site. At the request of staff, the building plan was revised to allow more growing space for trees # D and G. By moving the house closer to the street, seven Coast Live Oak trees will have construction impacts reduced.
- The removal of the three trees will not significantly impact the area. A screen of seven trees will be preserved in the front of the house and eleven protected trees will be preserved in the rear of the house.

The issue is whether staff has correctly followed the PTO guidelines in approving Mr. Brown'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 three trees and requires the preservation and protection of eighteen other trees on-site.

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. The property owner would be restricted from a reasonable use of his property.

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- Second, 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 applicant to redesign the home or driveway to preserve the trees approved for removal.

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 include any additional design and construction expenses required. To preserve the tree that the appellants are primarily concerned about (tree # 3), a driveway redesign would require two other trees, currently required to be preserved, to be removed. It would also require the entrance to the home and garage to be re-designed and would cost the applicant significantly more to re-engineer, design and build a different driveway. The other two Oak trees, approved for removal, are leaning toward the proposed house and would require the size of the house to be reduced to preserve the trees.

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 three 24-inch box sized native trees within the property boundaries or to pay a \$300 per tree in lieu fee for each protected tree removed that cannot be replaced due to site constraints.

RECOMMENDATION AND RATIONALE

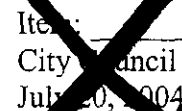
Staff recommends that the City Council waive the 18-day appeal deadline mandated by the PTO. This deadline has lapsed due to no fault of the appellant. Staff feels that it is important for the appellants to have the opportunity to present their case before the City Council.

Staff recommends that the City Council approve the resolution denying the appeal of tree permit application DR04-021 and allowing the issuance of a tree removal permit for three Coast Live Oaks on private property at 4455 Mountain View Avenue.

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 three trees or where the evidence in record does not support such decision.

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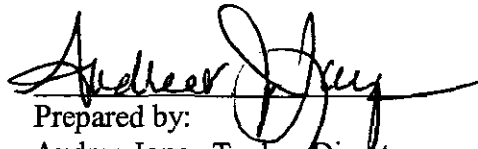


This alternative would require the property owner to redesign the new home and driveway. These additional redesign elements could be considered unreasonable if the owner is not permitted to do the required construction to build the new home.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the resolution denying the appeal of tree removal permit DR04-021 and issuing the tree removal permit for the removal of three *Quercus agrifolia* (Coast Live Oak) trees on private property at 4455 Mountain View Avenue. 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. Native replacement trees would be planted on site or an in lieu fee would be paid to be applied toward tree planting in city parks, streets and medians.

Respectfully submitted,



Prepared by:
Audree Jones-Taylor, Director
Office of Parks and Recreation

APPROVED AND FORWARDED TO THE
CITY COUNCIL:


OFFICE OF THE CITY ADMINISTRATOR

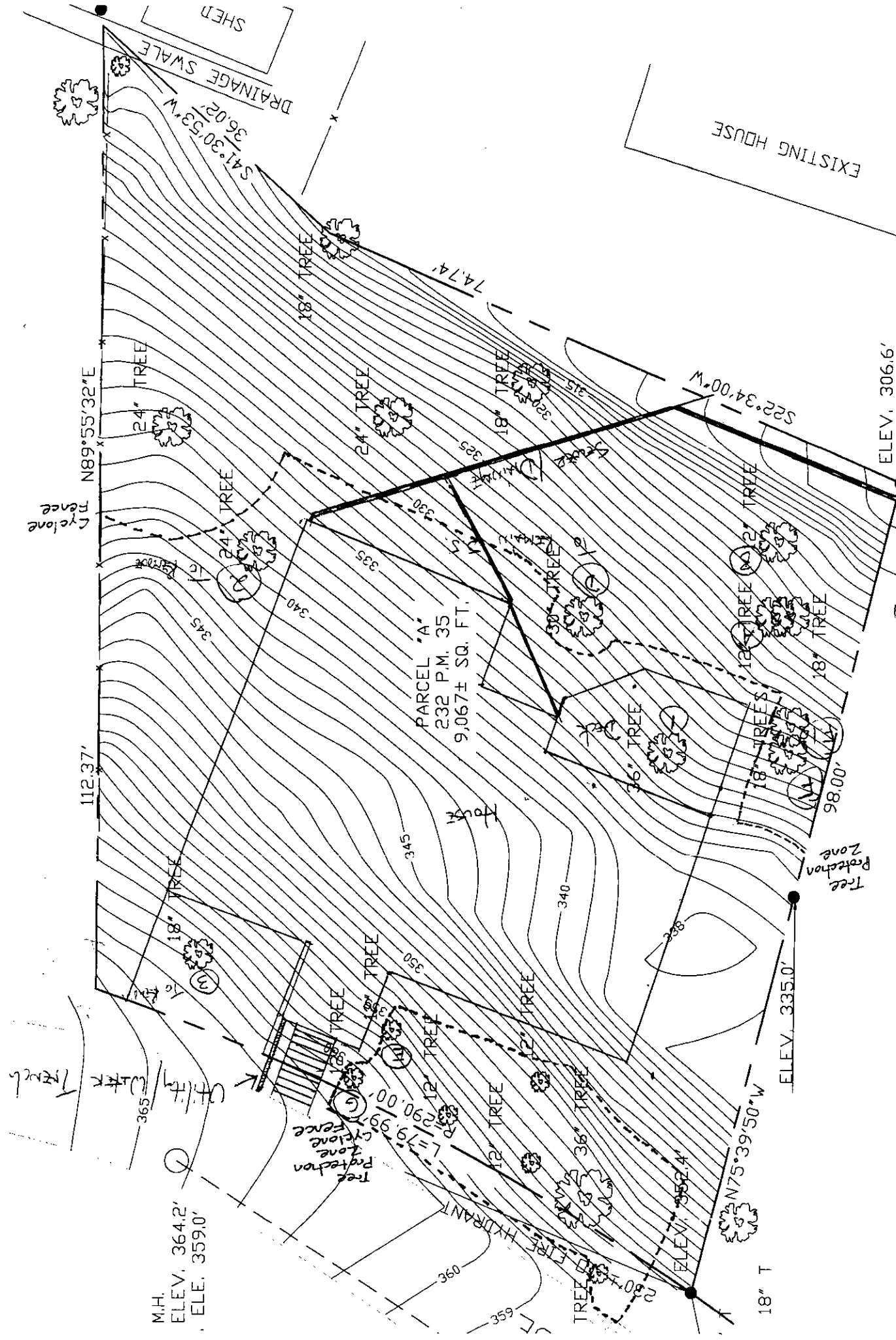
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ATTACHMENT A

**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.

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JUL 20 2004



SHEED
DRAINAGE SWALE
S41°30'53"W
36.02'

EXISTING HOUSE

112.37'
N89°55'32"E
Cyclone Fence

PARCEL "A"
232 P.M. 35
9,067± SQ. FT.

ELEV. 306.6'

S22°34'00"W
522.34'00"

Tree Protection Zone

ELEV. 335.0'

M.H.
ELEV. 364.2'
ELEV. 359.0'

18" T

ELEV. 352.4'

N75°39'50"W
98.00'

HYDRANT

Tree Protection Zone
Cyclone Fence

099'

655'

TREE

36" TREE

12" TREE

12" TREE

12" TREE

12" TREE

12" TREE

12" TREE

12" TREE

12" TREE

12" TREE

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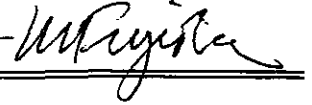
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OFFICE OF THE CITY CLERK
OAKLAND

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OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____



RESOLUTION DENYING THE APPEAL FILED BY GUY MOORE AND SHIRLEY LEONARD-MOORE AGAINST THE DECISION OF THE DIRECTOR OF THE OFFICE OF PARKS AND RECREATION APPROVING THE ISSUANCE OF TREE REMOVAL PERMIT DR04-021 AT 4455 MOUNTAIN VIEW AVENUE

WHEREAS, on March 4, 2004, William Brown ("Applicant") submitted an application for Tree Removal Permit (TRP) DR04-021 to remove three (3) protected trees from the property located at 4455 Mountain View Avenue; and

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

WHEREAS, on April 15, 2004, the Office of Parks and Recreation (OPR) approved the issuance of TRP DR04-021 for the removal of three (3) 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

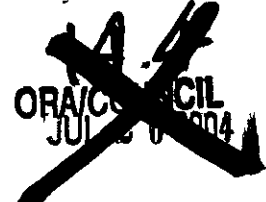
WHEREAS, on April 13, 2004, Guy Moore and Shirley Leonard - Moore ("Appellants") filed an appeal against the OPR decision approving TRP DR04-021; and

WHEREAS, in this case all of the trees to be removed are located within or in close proximity to the footprint of the proposed construction of a new home and driveway; and

WHEREAS, the appeal came before the City Council on July 6, 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 July 6, 2004, after a public hearing of said appeal was conducted, and a motion to deny the appeal and to approve issuance of TRP DR04-021 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



FURTHER RESOLVED: That the appeal filed by Guy Moore and Shirley Leonard-Moore against the decision of the OPR approving the removal of trees in TRP DR04-021 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 three Quercus agrifolia (Coast Live Oak) in TRP DR04-021 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 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 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 enactments 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 as to form and legality, 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, 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

~~AA
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Attachment A

Conditions of Approval 4455 Mountain View Avenue DR04-021

1. **Fencing.** Tree protection fencing must be installed before this permit, or any other city permits, are issued. No grading or construction work may be done on the property until this requirement is met. The applicant must install fences to protect the trees listed above in Preservation Required. Fencing 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 each fence and maintained during the project. The tree protection zones fences shall be a linear barrier, erected along the fence line drawn on the attached fencing plan, to ensure that the activities listed below in #6 are prohibited. Fences shall remain in place for the duration of all construction work.
2. **Pruning.** Pruning of protected trees shall be limited to 'crown cleaning' whenever possible, as defined by the International Society of Arboriculture (ISA). Additional pruning to provide clearance for the building shall be limited to the minimal pruning that complies with the ISA pruning guidelines. The pruning shall be done by a tree work contractor that has an ISA Certified Arborist on staff.
3. **Debris.** 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.
4. **Protection Zones.** 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 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. **Fill.** Fill soil shall not be deposited within the fenced tree protection zones. Fill soil shall not be allowed to migrate into tree protection zones. No change in the existing ground level shall occur within the tree protection zones.
6. **Roots.** Roots larger than one inch diameter in trenches or any other excavation shall be preserved unless root cutting is approved by the Tree Services Section.
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 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.

8. **Tree Planting.** Three replacement tree(s) 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).). If it is determined by the Office of Parks and Recreation that insufficient planting area exists due to site constraints, an in lieu fee of \$300 per tree will be required to be paid to the City of Oakland. This fee shall be paid prior to the issuance of the certificate of occupancy.
9. **Tree Specifications.** The replacement tree(s) 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 tree(s) before planting, and inspect again after planting, to insure correct installation. The applicant and the department must mutually agree upon the location of the tree(s).
10. **Tree Watering.** An appropriate amount of water must be applied each week, for three years, to establish the replacement tree (s) in the landscape. The tree(s) shall be watered by a drip irrigation system and timer. The tree(s) 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.
11. **Landscaping.** No turf or overhead irrigation is allowed under the drip line of any existing Oak trees. Irrigation around existing oak trees shall not spray the tree's trunk, or wet the soil within 10 feet of a trunk. Root diseases thrive in warm, wet soil and can kill oak trees slowly over many years. Landscaping under the drip line of the existing Oaks shall comply with the latest edition of Compatible Plants Under and Around Oaks, by the California Oak Foundation. For more information contact the foundation at www.californiaoaks.org or (510) 763-0282.

- Issue this permit only if all other permits are approved (e.g. - zoning, building, grading, demolition, creek protection).
- Approved permits must be posted on site when tree work is being done.

