

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

OFFICE OF THE CITY CLERK  
2006 SEP 21 PM 4:05

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Public Works Agency  
DATE: October 3, 2006

RE: Resolution Denying The Appeal Filed By Erin Vang Against The Decision Of The Public Works Agency Approving The Issuance Of Tree Removal Permit DR06-028 For An Undeveloped Lot at 6468 Oakwood Drive (Assessor's Parcel # 048F 7375 017)

---

**SUMMARY**

*This report provides background information and a recommendation regarding a Tree Removal Permit for the proposed removal of three (3) protected 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 two (2) appeal-related deadlines contained in the Protected Tree Ordinance (PTO): (a) 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 (b) 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 removal are growing within the footprint of the proposed home and driveway on the site. There is no reasonable redesign of the site plan that would save the trees. Staff has prepared a resolution that will enable the City Council to implement a decision that denies Erin Vang'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.

**BACKGROUND**

On July 11, 2006, Tree Services approved a permit to remove (1) 30-inch diameter Coast Live Oak, one (1) 5-inch diameter Coast Live Oak and one (1) 14-inch Bay Laurel from an undeveloped lot. The Protected Trees Ordinance requires three (3) twenty-four inch box size replacement trees as mitigation for removal of the oaks and bay laurel. The replacement trees are one of the conditions of approval attached to the tree permit.

A site design conference was held on June 26, 2006, in an effort to address the concerns of both the applicants and adjacent property owners. Attending the meeting were the property owners

Item: \_\_\_\_\_  
City Council  
October 3, 2006

(Mr. and Mrs. Foster); the architect (John Newton); City staff from Council District 4, the Planning Department and the Tree Division; and an adjacent resident. The house design was reviewed and detailed explanations given regarding the reasons for removing the trees. Replacement trees and landscape design were also discussed.

Erin Vang filed an appeal on July 19, 2006. She lives next to the proposed home, on the east side of the lot. Some items listed in the basis for the appeal are:

“hillside stability, especially oak in front (#5) [*identified as #4 on the PWA Decision Letter—Tree Division staff comments*] and trees near steep areas in back; the soils are obviously vulnerable; shade, relief from summer heat, and windbreak provided by oak #5 to my house and especially the deck on the adjoining side of my property; aesthetic value of huge spreading oak; wooded character of the neighborhood on OAKwood Drive in OAKland; oak #5 is a protected species; surface water runoff; construction nuisance causing significant loss of value and use of my own home.” (See additional items attached).

### **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 three trees.

Section 12.36.050 of the PTO lists the criteria used to determine if trees should be removed or preserved (see Attachment C). 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, removal of trees due to their proximity to a proposed structure complies with objective (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.

Item: \_\_\_\_\_  
City Council  
October 3, 2006

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 has been the determination of the Planning Department that the preservation of tree #4 is unfeasible due to the topography of the site. Staff required the architect, John Newton, to present options for designing a home that would allow the preservation of the large Oak. Due to the steep uphill topography of the lot and the tree's location, centered on the lot approximately 19 feet from the edge of pavement, a re-design to preserve this tree would require retaining walls up to 16 feet high. Designing the driveway to adhere to the maximum slope restrictions would require excavation within the dripline of this tree. Any alternate design could lead to possible destabilization and a likely decline in the health of the tree due to root pruning and reduced growing space. No reasonable alternative exists that would allow this site to meet the required off street parking conditions (garage set back shall be 20 from edge of pavement) and the driveway slope constraints. The other two trees (#7 and #9) are growing within the footprint of the home. There is insufficient room to shift the design to the north or south; no reasonable design changes would provide enough space for the trees.
- It is unreasonable to ask for a complete redesign of the home. Moving the house further uphill would require increased excavation and not offer a viable option for preserving the Oak as a long-term part of the landscape.
- Adequate provisions for erosion control and land stability will be incorporated into the engineering plans for the house. The area occupied by the natural root zone of the trees will be excavated. The house will be designed with engineered retaining walls to support the hillside. The roof of the house will cover what was once native soil open to the impact of rainfall. The hillside stability will be improved by the foundation of the home.
- If the three trees are preserved, it is questionable whether a viable project could be built.

## **SUSTAINABLE OPPORTUNITIES**

Economic: The construction of a residential unit meets the Mayor and Council's Priority Objective to facilitate the development of housing of for all incomes and will increase the property tax revenues paid to the county.

Environmental: There are no direct environmental opportunities associated with this appeal.

Social Equity: There are no social equity opportunities associated with this appeal.

## **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 also recommends that the City Council approve the resolution, denying the appeal of tree permit application DR06-028, and allowing the issuance of a tree removal permit for three protected trees on an undeveloped lot at 6468 Oakwood Drive since staff processed the permit in compliance with the PTO.

Item: \_\_\_\_\_  
City Council  
October 3, 2006


**ALTERNATIVE RECOMMENDATION**

The City Council can reverse staff’s decision and require the preservation of the three 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 three 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 project.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council approve the resolution denying the appeal of tree permit application DR06-028 and allowing the issuance of a tree removal permit for three protected trees on an undeveloped lot at 6468 Oakwood Drive.

Respectfully submitted,

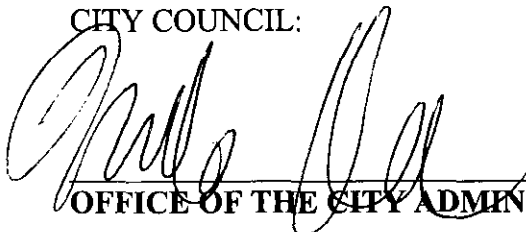
*for*   
\_\_\_\_\_  
**RAUL GODINEZ, II, P.E.**  
Director, Public Works Agency

Reviewed by:  
Bruce Saunders, Assistant Director

Prepared by:  
Dan Gallagher, Tree Supervisor II  
Department of Infrastructure & Operations

- Attachments: A. Appeal filed by Erin Vang  
B. PWA decision letter, with conditions of approval  
C. OMC Section 12.36.050 Criteria for Tree Removal Permit  
D. Building Plans

APPROVED AND FORWARDED TO THE  
CITY COUNCIL:

  
\_\_\_\_\_  
**OFFICE OF THE CITY ADMINISTRATOR**

Item: \_\_\_\_\_  
City Council  
October 3, 2006

## ATTACHMENT A

p. 1 of 4

Appeal by Erin Vang of tree removal permit #DR06-0281 Standing to appeal

- 1.1 According to 12.36.100 (A), I have standing as the owner of adjoining property to appeal this permit decision. I, Erin L. Vang, am the owner of assessor's parcel number 48F-7375-18 at 6474 Oakwood Dr, Oakland, CA 94611 (henceforth "I," "me," "my," etc.).

2 Nature of appeal

- 2.1 I am appealing specifically the granting of the permit to remove the huge, old, live oak near the front of the lot. This tree appears to be labeled #5, but the small red tag presumably intended to label that tree is currently lying on the ground near to the tree and the tree itself is physically unlabeled. My objections stated during the public comment period on 10 April included concerns regarding other trees, but my appeal here is focused on tree #5.
- 2.2 I am relying on the Tree Removal Permit Appeal Form supplied by The Oakland Municipal Service Center, Tree Section by fax on 21 April 2006 upon my request to Ms. Garcia. This form might not be the correct form, as it states that appeals are heard by the tree committee, whereas 12.36.100 (B) states that appeals for development-related removals are to be heard by the City Council. However, when I requested the form for development-related appeals by voicemail on 18 July 2006, my call was not returned, nor was a different form or explanation supplied.

3 Grounds for appeal of tree removal permit #DR06-028 on 6462 Oakwood Dr [sic; see paragraph 4, "Minor discrepancies"]3.1 Lack of record

- 3.1.1 Oakland Municipal Code §12.36.100 (C) states, "The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director of Parks and Recreation or wherein such decision is not supported by the evidence in the record." However, to my knowledge, no record has been supplied to me, offered for inspection at a public venue, or otherwise made available for my inspection. Without any records, it is impossible to determine whether the permit decision is supported by evidence in the record. My right to appeal is therefore meaningless.

- 3.1.1.1 I have relied on information given to me by telephone from Ms. Ceci Garcia of the Oakland Municipal Service Center, Tree Section. I have spoken with Ms. Garcia on numerous occasions including 10 April 2006 when I provided my public comment by voicemail and several times subsequently when I called to learn the permit status and enquire after appeal procedures should the permit be approved, including 21 April, 8 May, 21 June, 12 July, and 18 July 2006. I have repeatedly asked about my rights to appeal and procedures for doing so and have never been offered any opportunity to review nor been informed of the existence of any records pertaining to this permit. On 18 July 2006 I explicitly requested by voicemail to Ms. Garcia an opportunity to review "the record, if any existed" and as of the time of this filing, I have received no reply.

- 3.1.1.2 Except as noted elsewhere in this Appeal, I have received no documents by mail, email, fax, personal or courier delivery, announcement of availability, nor any other means.

3.1.2 Examples of missing documents:

- 3.1.2.1 Findings of the tree reviewer regarding the permit. According to §12.36.050 (C), these must be set forth in writing. According to §12.36.070 (K) the written findings must note public comment. No such records are available. Written findings of decisions required under §12.36.050 (B) include:

- 3.1.2.1.1 (B)(1)(a) decision whether tree removal could be avoided by "reasonable redesign of the site plan, prior to construction"

- 3.1.2.1.2 (B)(2) whether there are adequate provisions for "drainage, erosion control, land stability or windscreen"

2006.07.19 13:44:28

Appeal by Erin Vang of tree removal permit #DR06-028

ATTACHMENT A

p. 2 of 4

Appeal by Erin Vang of tree removal permit #DR06-028

3.1.2.1.3 (B)(4) whether "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."

3.1.2.2 Findings made at the pre-application design conference as set forth in §12.36.070 (B).

3.1.2.3 Survey and site plans as required by § 12.36.070 (C)

3.1.2.4 Record of the site design conference as required by § 12.36.070 (J)

3.1.2.5 California Environmental Quality Act (CEQA) checklist. § 12.36.070 (E) states that CEQA applies, and therefore there must be an exemption, negative impact statement, or environmental impact report (EIR).

3.1.3 Given that no official record has been supplied, I have been forced to construct my own record from the following data, from which all inferences and conclusions stated below in paragraphs 3.2-3.6 are drawn.

3.1.3.1 The written notes from my telephone conversations with Ms. Garcia as described above in paragraph 3.1.1.1.

3.1.3.2 The written notes from which I gave my public comment by voicemail to Ms. Garcia on 10 April 2006, in which I raised the following issues, listed here for the record:

3.1.3.2.1 hillside stability, especially oak in front (#5) and trees near steep areas in back; the soils are obviously vulnerable

3.1.3.2.2 shade, relief from summer heat, and windbreak provided by oak #5 to my house and especially the deck on the adjoining side of my property

3.1.3.2.3 aesthetic value of huge spreading oak

3.1.3.2.4 wooded character of the neighborhood on OAKwood Drive in OAKland

3.1.3.2.5 oak #5 is a protected species

3.1.3.2.6 surface water runoff

3.1.3.2.7 construction nuisance causing significant loss of value and use of my own home:

3.1.3.2.7.1 From observing other homes being constructed in my neighborhood in the seven years that I have lived here, I know that construction of any home in the lot next door is likely to require extensive, noisy digging and construction that typically lasts at least three years. During this time I can expect to lose significant value of my home due to loss of use.

3.1.3.2.7.2 The demands of my job as International Program Manager for a software R&D division of SAS requires that I work at home to attend teleconferences and correspond with colleagues in other time zones. I require reasonable quiet to perform my job.

3.1.3.2.7.3 I am also a professional union musician and active member in good standing of the American Federation of Musicians, Local #6. I rely upon being able to practice and make recordings in my home music studio. Both would be impossible during the noise of construction.

3.1.3.2.8 I explicitly stated my lack of objection and in fact encouragement to trim or remove entirely the tree closest to my chimney due to repeated issues with shingle damage, noise, fire hazard, and risk of glass damage caused by its not being trimmed sufficiently and regularly.

3.1.3.2.9 trees not marked with 12" numbers visible and legible from the street as required by §12.36.070 (F).

## ATTACHMENT A

2006.07.19 13:44:28 Appeal by Erin Vang of tree removal permit #DR06-028

p. 3 of 4

Appeal by Erin Vang of tree removal permit #DR06-028

OFFICE OF THE CITY CLERK

3.1.3.3 Written notes taken by Victoria K. Williams, resident of 6474 Oakwood Dr, who attended the design conference on 26 June at 1pm on my behalf. I was unable to attend the conference personally because I was in North Carolina for business and received notice of the conference (from Ms. Garcia by telephone on 21 June) too late to reschedule my travel.

3.1.3.4 Recollection of personal conversations with adjoining and non-adjoining affected neighbors who expressed first their intent and later the fact of their having filed objections according to the terms set forth in the Public Notice.

3.1.3.5 Direct physical observation. My digital photographs are available upon request.

3.1.3.6 Consultation by Erin Vang and Victoria Williams (at my expense) with Noe Hernandez, independent certified arborist, who made a personal visit to the site on 23 June 2006. Findings described below in paragraph 3.3.1.

3.1.3.7 Common sense.

**3.2 Error by Tree Reviewer to reject reasonable design.**

3.2.1 §12.36.050 (B)(1)(a) states that as grounds for permit denial that removal of a healthy tree of a protected species could be avoided by reasonable redesign.

3.2.2 At the design conference held on 26 June, no evidence of independent architectural review was presented. Dan Gallagher, the tree reviewer, is neither independent nor an architect and therefore unqualified to make a determination on this point.

3.2.3 A design for construction that did not require removal of tree #5 was presented at the conference by Mr. Newton himself, proving that redesign is in fact possible.

3.2.4 Numerous comparable lots within mere blocks of the lot in question are available that would permit extensive construction without removing or damaging a beautiful, historic, valuable oak tree. The lot only two doors downhill, at 6456 Oakwood, even has designs attached that do not require disturbing the lovely oak on that lot.

3.2.5 Basic code problems were apparent in the designs presented at the design conference. For example, the required five-foot setback from the pavement was missing. The designer himself, John Newton, admitted that he was unaware of this and other problems with the designs. Such problems indicate lack of proper design review by a qualified expert.

**3.3 Error for Tree Reviewer to find no danger of hillside instability.**

3.3.1 Independent certified arborist Noe Hernandez stated that it was inevitable that removing the large oak tree #5 would have a significant effect on hillside stability. He explained that the root structure of the tree is comparable to the visible portion of the tree above-ground, and that cutting the tree down to a stump would cause underground portions of the tree to decompose, inevitably causing settling and loss of stability to the entire hillside. Removing portions of the root system while excavating for construction would hasten the decomposition of the remaining root system.

3.3.2 It is plainly evident to a lay-person viewing the lot from the street that the huge live oak tree cannot possibly be removed without severely affecting the stability of the hillside, which is already unstable.

**3.4 Abuse of discretion by Tree Reviewer in findings regarding soil instability and drainage**

3.4.1 It is plainly evident to any lay-person who attempts to walk on this steep, rugged lot that the stability of this lot is already borderline at best. It is already unsafe to walk on large portions of the area in question. There is already ample evidence of soil shifting and drainage problems causing erosion, which is slowly burying the deck on the side of my house adjoining the lot in question. Clearly, removing the large oak could only exacerbate what is already a noticeable problem. It is irresponsible of the tree reviewer not to take

61

2006.07.19 13:44:28 Appeal by Erin Vang of tree removal permit #DR06-028

p. 4 of 4

**Appeal by Erin Vang of tree removal permit #DR06-028**

these facts into account and not to require formal analysis of the impact of instability and altered drainage on the adjoining houses.

3.4.2 If these trees are removed and the hillside is destabilized, how many tons of mud should expect to flood my lot and destroy my house during the next century rainstorm? This question has not been answered.

**3.5 Error for Tree Reviewer to neglect intent and findings of the Protected Tree Ordinance**

3.5.1 §12.36.010(A) states "significant psychological and tangible benefits" of protected trees, which are listed in §12.36.010(B): "Trees contribute to the visual framework of the city by providing scale, color, silhouette and mass. Trees contribute to the climate of the city by reducing heat buildup and providing shade, moisture, and wind control. Trees contribute to the protection of other natural resources by providing erosion control for the soil, oxygen for the air, replenishment of groundwater, and habitat for wildlife. Trees contribute to the economy of the city by sustaining property values and reducing the cost of drainage systems for surface water. Trees provide screens and buffers to separate land uses, landmarks of the city's history, and a critical element of nature in the midst of urban settlement."

3.5.2 Removing the huge, beautiful oak tree on this lot would cause irreparable damage to or loss of many of these values, which I stated among my objections on 10 April.

3.5.3 I have described above in paragraph 3.4 the obvious risks to soil stability and drainage.

3.5.4 The photograph of tree #5 shown in its present context that is attached and incorporated herein by reference demonstrates the indisputable aesthetic value of the tree, which is a venerable old "landmark of the city's history."

3.5.5 Clearly its removal would significantly decrease the cooling shade and windbreak currently provided by this tree to many of the properties in its vicinity. I have observed many species of wildlife, including birds, squirrels, and raccoons living in this tree.

**3.6 Error for Tree Reviewer not to address public comment**

3.6.1 According to §12.36.070 (K) the written findings of the tree reviewer must acknowledge public comment. However, none of the comments I raised appear to have been addressed in any meaningful manner.

**4 Additional minor discrepancies, noted here for the record:**

4.1 §12.36.070 (F) states "Site Posting. The applicant shall paint a sequential number of not less than twelve (12) inches in height on each protected tree proposed for removal, and shall post the summary notices as required herein within two days after making an application for a tree removal permit. The painted numbers and summary notice shall not be removed until such time as a tree removal permit is issued or denied by the city for the tree(s) in question." However, the trees were marked with red paper measuring 5.5"x8.5" in which the numbers were less than three (3) inches in height. As of 18 July 2006, the numbers are not visible even from arm's length, and they were never legible from the street.

4.2 The public notice of permit application dated 17 March 2006 ("Public Notice") states the location as 6462 Oakwood Dr. However, the actual location of the lot is between 6462 and 6474 Oakwood Dr and would presumably be 6468 Oakwood Dr.

4.3 The Public Notice of permit application dated 17 March 2006 states that appeal requests must be filed with a \$250 fee at the City Clerk's office; however, the Tree Removal Permit Appeal Form stated that the fee was \$50.

*Erin Vang* 12/11/06



**TREE PERMIT**  
 City of Oakland, Public Works Agency

Permit #DR06-028

Oakwood Drive (Assessor's Parcel # 048F 7375 017)

Approved: July 11, 2006

Applicant: John Newton

Expires: One year from date of issuance

COPY

Removal Approved

1, 2	Unprotected Plums	7	Bay Laurel
3, 5, 6	Unprotected Elderberries	10	Unprotected Holly
4, 9	Coast Live Oaks	11	Unprotected Bay Laurel

Preservation Required

▶	All other protected trees		
---	---------------------------	--	--

As per Chapter 12.36 of the Oakland Municipal Code, this Development-related permit approves the removal of three (3) protected trees. 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 proposed 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" mean 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. Two Coast Live Oaks and One Bay Laurel needs to be removed to construct a single family home. The trees are located within the footprint of the construction and must be removed to allow space for the project.

**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. It has been the determination of the Planning Department that the preservation of tree #4 is unfeasible

due to the topography of the site. Any re-design to preserve this tree would require enormous retaining walls and possible destabilization of the tree.

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

Two Oak trees, 30 inches and 5 inches in diameter, and one Bay tree, 14 inches in diameter, will be removed from the lot to build the single family home. 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 redesign and construction expenses would significantly exceed the value of the trees. Therefore, there are no grounds for permit denial.

#### **OAKLAND MUNICIPAL CODE SECTION 12.36.070(E) CEQA REVIEW**

The potential environmental impact of the proposed single family home was evaluated and the Department of Planning and Zoning determined this project to be categorically exempt under Section 15303 of the State of California Environmental Quality Act (“CEQA”) Guidelines and local environmental review regulations. No further environmental review is required.

#### **OAKLAND MUNICIPAL CODE SECTION 12.36.060 CONDITIONS OF APPROVAL**

**COPY**

##### **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 Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney’s fees) against the City of Oakland, Oakland Redevelopment Agency, Oakland City Planning Commission and their respective agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Planning and Zoning Division, Oakland City Planning Commission, the City of

agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, Oakland Redevelopment Agency, Oakland City Planning Commission and their respective agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Planning and Zoning Division, Oakland City Planning Commission, the City of Oakland Redevelopment Agency or City Council relating to this project. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

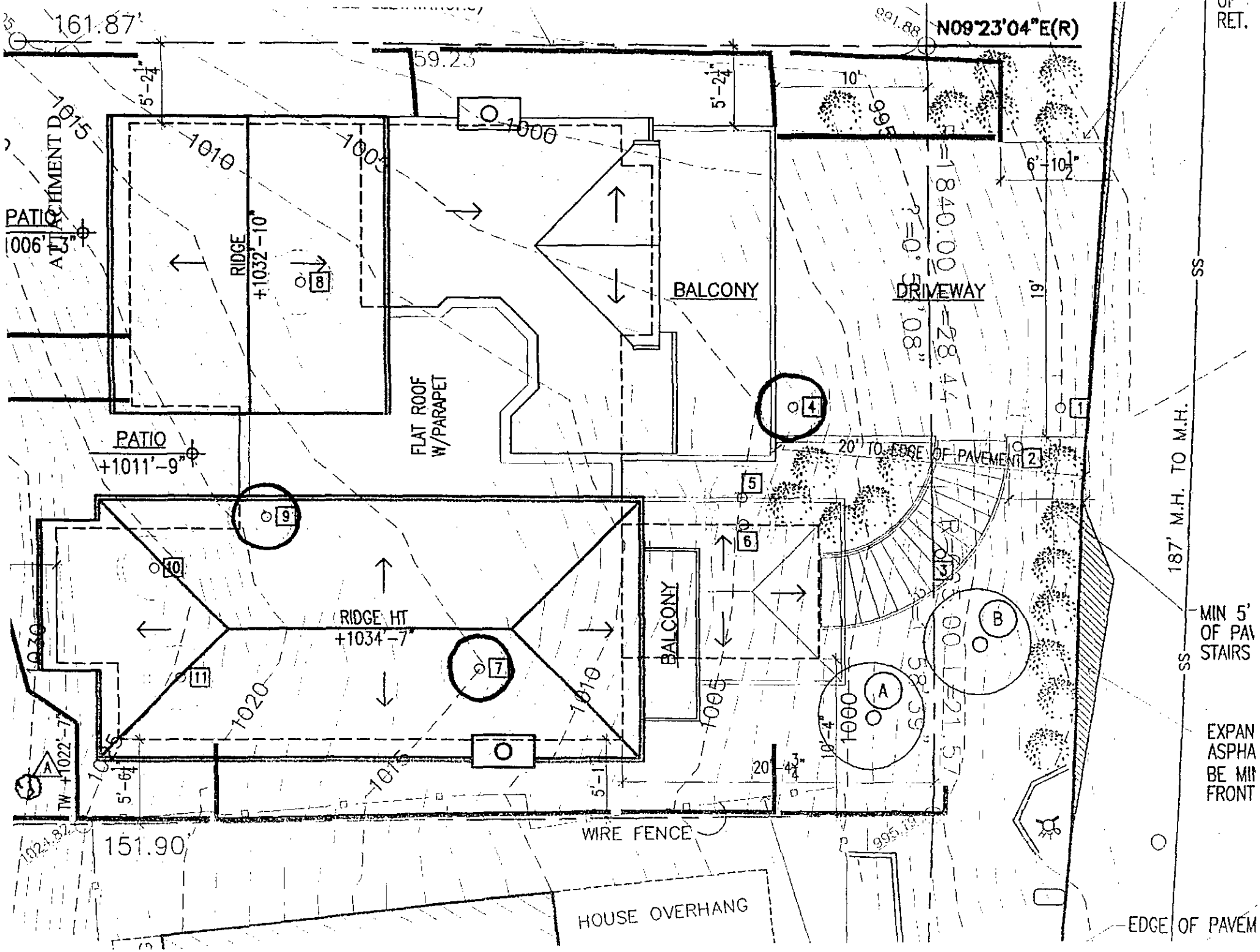
3. **Debris.** All debris from the tree removal work shall be removed from the property within two weeks of it being cut. It shall be properly disposed of in a legal manner.
4. **Tree Planting.** Three (3) replacement trees shall be planted within the property boundaries, prior to the final inspection of the house. 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) or any other species approved by the Tree Services Division within the submitted landscape plan (see condition number seven below).
5. **Tree Specifications.** The replacement 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. Three fifteen (15) gallon size trees may be substituted for each twenty-four (24) inch box tree where appropriate. Tree Services staff must approve the trees before planting, and inspect again after planting, to insure correct installation and that good quality, disease free trees were purchased.
6. **Tree Watering.** An appropriate amount of water must be applied each week, for three years, to establish the replacement trees in the landscape. The trees shall be watered by an irrigation system with an electronic timer. The trees 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 by the applicant.
7. **Landscape Plan.** A landscape plan showing the replacement plantings and the method of irrigation is required. The plan shall be reviewed and approved by Tree Services. The plan shall be submitted prior to the final inspection.
8. **Site Posting.** The applicant shall post a copy of the tree removal permit in plain view on site while tree removal work is underway.
9. **Recordation of Conditions.** The applicant/owner(s) shall record the conditions of approval attached to this permit with the Alameda County Recorder's Office in a form prescribed by the Director of Public Works.

 7-11-06  
Arbicultural Inspector Date

**COPY**  
 7/11/06  
for Director Date

**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.



OF RET.

N09°23'04"E(R)

PATIO ATTACHMENT D

BALCONY

DRIVEWAY

PATIO

FLAT ROOF W/PARAPET

20' TO EDGE OF PAVEMENT

RIDGE HT

BALCONY

MIN 5' OF PAV STAIRS

EXPAN ASPHA BE MIT FRONT

WIRE FENCE

HOUSE OVERHANG

EDGE OF PAVEM

187' M.H. TO M.H.

SS

SS

SS

161.87'

151.90'

10'

6'-10 1/2"

18'4.00"

28'4.4"

19'

20'

10'-4"

58'3.39"

21.57'

10'-4"

10'-4"

10'-4"

10'-4"

10'-4"

10'-4"

10'-4"

10'-4"

10'-4"

10'-4"

10'-4"

10'-4"

10'-4"

OFFICE OF THE CITY CLERK  
OAKLAND

2006 SEP 21 PM 4:05

# OAKLAND CITY COUNCIL

**DRAFT**

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

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

RESOLUTION DENYING THE APPEAL FILED BY ERIN VANG AGAINST THE DECISION OF THE PUBLIC WORKS AGENCY APPROVING THE ISSUANCE OF TREE REMOVAL PERMIT DRO6-028 FOR AN UNDEVELOPED LOT AT 6468 OAKWOOD DRIVE (ASSESSOR'S PARCEL # 048F 7375 017)

WHEREAS, on March 13, 2006, John Newton, ("Applicant") submitted an application for Tree Removal Permit (TRP) DR06-028 to remove three trees from an undeveloped lot at 6468 Oakwood Drive (Assessor's Parcel # 048F 7375 017) in order to build a single family home; and

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

WHEREAS, on July 11, 2006, the Public Works Agency (PWA) approved the issuance of TRP DR06-028 for the removal of three 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 19, 2006, Erin Vang ("Appellant"), filed an appeal with the Office of the City Clerk against the PWA decision approving TRP DR06-028; and

WHEREAS, the appeal came before the City Council on October 3, 2006, 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 October 3, 2006, after a public hearing of said appeal was conducted, and a motion to deny the appeal and to approve issuance of TRP DR06-028 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 Erin Vang against the decision of the PWA approving the removal of trees in TRP DR06-028 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 three trees in TRP DR06-028 is hereby approved by the Office of Planning and Building; 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 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; 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: 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 15303 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