

ATTACHMENT E

Tree Permit Background Documents:

1. Tree Permit Approval Letter, April 28, 2011
2. Appeal to Parks and Recreational Advisory Commission
3. Parks and Recreation Advisory Commission Staff Report, May 11, 2011 (without attachments)

TREE PERMIT

City of Oakland, Public Works Agency

Permit #T09-00019

Approved: April 28, 2011

Location: Oakland Zoo (9777 Golf Links Rd.)

Expires: One year from date of issuance.

Applicant: East Bay Zoological Society

Permit Type: City-Owned

Removal Approved		Preservation Required		
Tree Quantity	Identified As	Tree Quantity	Identified As	Protective Fencing Required
Seven (7) for the Veterinary Hospital	26A - 26F and 875	Twelve (12) + All Trees Near Perimeter Fence	<u>Veterinary Hospital:</u> 13, 26G, 27B, 101, 876. <u>Maintenance Road (partial):</u> 15, 32, 33, 34, 35, 41, 843. <u>Perimeter Fence:</u> All Trees.	YES - Veterinary Hospital. Maintenance Road, from Veterinary Hospital up to, and including, tree 843.

As per Chapter 12.36 of the Oakland Municipal Code, the Protected Trees Ordinance (PTO), this permit approves the removal of seven (7) protected trees, based upon and subject to enclosed findings and conditions of approval. One tree is an almond and the other six are old shrubs (*Escallonia* sp., an evergreen shrub native to South America) that have grown large enough to qualify as small trees due to the definition of a tree in the PTO. This permit is effective five (5) working days after the date of this decision unless appealed to the Oakland Parks and Recreation Commission by 5:00 pm on May 5, 2011, as explained below.

The permit is necessary for the proposed construction at the Oakland Zoo, a City-owned property (and thus City-owned tree removal), of (a) a new veterinary hospital, (b) paving of the steep portion of an existing dirt maintenance road that travels uphill from the veterinary hospital to an area where it levels off near the southwest corner of the planned California Exhibit and (c) a perimeter fence around the California Exhibit and Ecological Recovery Zones, consistent with the amended Zoo Master Plan.

The tree permit application requested the removal of fifty-two (52) trees and the preservation of one hundred and ten (110) trees. The request was changed by the applicant to only include those trees affected by work proposed for the Phase I development described above. Work proposed for the California Exhibit itself is scheduled for later phases of the project and the trees involved in those phases will therefore be the subject of a later, separate tree permit application and decision.

If the applicant or any concerned resident seeks to challenge this decision, such appeal must be filed by no later than 5:00 p.m. on May 5, 2011. An appeal shall be on a form provided by Public Works Agency (PWA), Tree Section, submitted to same at 7101 Edgewater Dr., Oakland, California, 94621. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion or wherein this decision is not supported by substantial evidence and must include payment of \$50.00 in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude the applicant, or concerned resident, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure

to do so may preclude the applicant, or any concerned resident, from raising such issues during the appeal and/or in court.

OAKLAND MUNICIPAL CODE SECTION 12.36.050(A) FINDINGS

In order to grant a tree removal permit, the City must determine that removal is necessary in order to accomplish any one of five following objectives listed in Section 12.36.050(A) of the Oakland Municipal Code:

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; or
5. To implement the vegetation management prescriptions in the S-11 site development review zone.

The Oakland Zoo's application complies with Objective 1 of Section 12.36.050(A). Seven (7) protected trees need to be removed to build the veterinary hospital. The trees are located within the footprint of the building or within the area of grading. No trees will be removed to pave a portion of the maintenance road or install the perimeter fencing.

OAKLAND MUNICIPAL CODE SECTION 12.36.050(B) FINDINGS

A finding of any one of four (4) situations is grounds for permit denial, regardless of the findings in subsection A noted above. No grounds for denial were determined as explained below:

1. Removal of a healthy tree of a protected species could be avoided by reasonable re-design of the site plan, prior to construction, Section 12.36.050(B)(1)(a), or by trimming, thinning, tree surgery or other reasonable treatment, Section 12.36.050(B)(1)(b).

Finding: It would be unreasonable to shift the foot print of the hospital about one hundred and thirty (130) feet to the southeast, or one hundred and eighty (180) feet to the northwest, in order to save a small, half-dead almond tree and six escallonia shrubs. Shifting the building in either direction will require the removal of native coast live oak trees that will be preserved and are a very valuable tree species in northern California. Trimming, thinning, etc. is a situation that does not apply since doing this type of tree work will not create space to construct the hospital.

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, Section 12.36.050(B)(2).

Finding: Removal of the seven trees in question would not result in any of the problems listed, even if the hospital was not being built. Other, larger trees exist on the site, and the total square feet of soil protected by the approved tree removals is minimal. Roof drains, catch basins, sub-drains, a bioswale, retaining walls and a creek extension with rock weirs are planned and will certainly offset any impact of removing seven small trees.

3. The tree to be removed is a member of a group of trees in which each tree is dependent upon the others for survival, Section 12.36.050(B)(3).

Finding: This situation is intended for densely packed trees in a forest location where removals will cause trees on the interior of the stand to become perimeter trees, exposed to wind loads to which they are not adapted, creating an extreme risk of failure due to changed conditions. The approved removals are not part of a forest and will not impact other trees in the area in this manner.

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 City Arborist using the criteria established by the International Society of Arboriculture (ISA), 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.

Finding: Not applicable since this is a City-owned Tree Removal. Moreover, the half-dead almond tree has no value per the ISA formula. The value of the six escallonia shrubs cannot be calculated with the ISA formula since escallonia does not usually grow large enough to be considered a tree, and is not listed in Species Classification and Group Assignment, a booklet from the Western Chapter of the ISA, a required component for data when calculating value.

OAKLAND MUNICIPAL CODE SECTION 12.36.070(E) CEQA REVIEW

On April 27, 2011, the Oakland City Planning Commission adopted/approved the Subsequent Mitigated Negative Declaration/Addendum (SMND/A) and made the appropriate CEQA-related findings. The Public Works Agency, based upon its independent review, consideration, and the exercise of its independent judgment, relies upon, and adopts, the Planning Commission's CEQA-related findings and incorporates them by reference, as if fully set forth herein.

The monitoring and reporting of CEQA mitigation measures in connection with the Tree Removal Permit will be conducted in accordance with the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP), which are hereby adopted as conditions of approval. Adoption of the Tree Removal SCAMMRP fulfills the CEQA monitoring and/or reporting requirement set forth in Section 21081.6 of CEQA. All proposed standard conditions/mitigation measures are capable of being fully implemented by the efforts of the City of Oakland or other identified public agencies of responsibility.

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.** To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (hereafter collectively called "City") from any liability, damages, claim, judgment, loss, (direct or indirect) action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) any approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees. Within ten (10) calendar days of the filing of any Action as specified above, the applicant shall execute a Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the applicant of any of the obligations contained in the Approval, conditions of approval, mitigation measures, or other requirements that may be imposed by the City.
3. **Posting.** The applicant shall post a copy of the tree removal permit in plain view on site while tree removal work is underway.
4. **Debris.** All debris from the tree removal work shall be removed from the property within two weeks of debris creation, and such debris shall be properly disposed of by the applicant in accordance with all applicable laws, ordinances, and regulations.
5. **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 Tree Services Division of such damage. If such tree cannot be preserved in a healthy state, the Tree Services Division 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.
6. **Protection Fencing.** Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed to be potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree to be determined by the City Arborist. Such fences shall remain in place for the duration of all such work. All trees to be

removed shall be clearly marked. A scheme shall be established for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree.

A. Material. All fencing shall be chain-link, minimum six foot height, with vertical support poles installed in the ground. Support posts on moveable bases are not acceptable.

B. Veterinary Hospital. Fencing shall encircle the crowns and shall be installed at the drip line of trees 13, 26G, 27B, and 101.

C. Maintenance Road. The trees are listed in order when traveling uphill from the veterinary hospital to the limit of paving. Fencing shall be installed the following distances from the base of each tree: #15 - 4 feet, #34 - 4 feet, #33 - 8 feet, #32 - 10 feet, #35 - 6 feet, #41 - 3 feet and #843 - at the toe of the slope.

7. Encroachment. Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, firing, or compaction of the existing ground surface within the protected perimeter shall be minimized. No change in existing ground level shall occur within the fenced, protected perimeter of any protected tree at any time. No burning or use of equipment with an open flame shall occur near or within the protected perimeter of any protected tree.

A. Veterinary Hospital.

a. Underground utilities and drainage shall be installed by boring under trees 27B and 101, a minimum of three feet depth. Drilling directly under the centerline of the trunks is recommended.

b. The subdrain outside of the drip-line of tree 876 shall be hand dug. Roots less than 2"-diameter may be cut, if necessary, and only with hand tools. Roots 2"- diameter or larger shall be preserved unless inspected and approved for cutting by a Certified Arborist or a Consulting Arborist. The approval must be obtained prior to root cutting and the cutting shall be done under the direct supervisor of the Arborist. Hand digging shall be done for a minimum distance of 10 feet total in an east/west direction from the centerline of the trunk.

B. Maintenance Road. No paving shall be done north of tree 843, which is near the southwest boundary of the proposed California Exhibit.

C. California Exhibit Perimeter Fencing.

a. No tracked/wheeled vehicles or equipment shall be allowed under the drip line of any tree at any time.

b. Post holes shall be dug with a portable, hand-carried, gasoline powered posthole digger, or equivalent.

c. Post hole locations that encounter roots shall be adjusted to a root-free location, and roots shall not be cut, with the following exceptions; roots 1"-diameter or less may be cut on trees with trunk diameters (measured at 4.5 feet above grade) of 12" or less, and roots 2"-diameter or less may be cut on trees with trunk diameters more than 12". Roots shall be cut with hand tools.

8. Miscellaneous. No storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees shall occur within the drip line of any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construction materials shall be operated or stored within the drip line any protected trees. Wires, ropes, or other devices shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the

botanical classification, shall be attached to any protected tree. Periodically during construction, the leaves of protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit leaf transpiration.

9. **Tree Damage.** If any damage to a protected tree should occur during or as a result of work on the site, the applicant shall immediately notify the Tree Services Division of such damage. If, in the professional opinion of the City Arborist, such tree cannot be preserved in a healthy state, the Arborist shall require replacement of any tree removed with another tree or trees on the same site deemed adequate by the Arborist to compensate for the loss of the tree that is removed.
10. **Tree Contractors.** Workers compensation, public liability, and property damage insurance shall be provided by any person(s) performing tree removal work authorized by a tree removal permit.
11. **Root Protection - General.** Roots shall be preserved and no activities shall affect the health and safety of existing trees. If roots are encountered during grading or construction, they may be cut only if they are less than 2"-inch diameter. Hand tools must be used to cut the roots; the use of excavators, backhoes, or similar equipment is prohibited. Roots 2"-diameter or larger may be cut only if inspected and approved by a Certified Arborist or a Consulting Arborist.
12. **Pruning.** Construction personnel shall not prune trees on the site. Tree pruning shall be performed by qualified Zoo staff or a licensed, insured tree work contractor that has an arborist on staff certified by the International Society of Arboriculture.
13. **Tree Removal During Breeding Season.** To the extent feasible, removal of any tree and/or other vegetation suitable for nesting of raptors shall not occur during the breeding season of March 15 and August 15. If tree removal must occur during the breeding season, all sites shall be surveyed by a qualified biologist to verify the presence or absence of nesting raptors or other birds. Pre-removal surveys shall be conducted within 15 days prior to start of work from March 15 through May 31, and within 30 days prior to the start of work from June 1 through August 15. The pre-removal surveys shall be submitted to the Planning and Zoning Division and the Tree Services Division of the Public Works Agency. If the survey indicates the potential presences of nesting raptors or other birds, the biologist shall determine an appropriately sized buffer around the nest in which no work will be allowed until the young have successfully fledged. The size of the nest buffer will be determined by the biologist in consultation with the CDFG, and will be based to a large extent on the nesting species and its sensitivity to disturbance. In general, buffer sizes of 200 feet for raptors and 50 feet for other birds should suffice to prevent disturbance to birds nesting in the urban environment, but these buffers may be increased or decreased, as appropriate, depending on the bird species and the level of disturbance anticipated near the nest.
14. **Tree Replacement Plantings.** Replacement plantings shall be required for erosion control, groundwater replenishment, visual screening and wildlife habitat, and in order to prevent excessive loss of shade, in accordance with the following criteria:
 - A. No tree replacement shall be required for the removal of nonnative species, for the removal of trees which is required for the benefit of remaining trees, or where insufficient planting area exists for a mature tree of the species being considered.
 - B. Replacement tree species shall consist of *Sequoia sempervirens* (Coast Redwood), *Quercus agrifolia* (Coast Live Oak), *Arbutus menziesii* (Madrone), *Aesculus californica* (California Buckeye) or *Umbellularia californica* (California Bay Laurel) or other tree species acceptable to the Tree Services Division.

- C. Replacement trees shall be at least of twenty-four (24) inch box size, unless a smaller size is recommended by the arborist, except that three fifteen (15) gallon size trees may be substituted for each twenty-four (24) inch box size tree where appropriate;
 - D. Minimum planting areas must be available on site as follows:
 - 1) For *Sequoia sempervirens*, three hundred fifteen square feet per tree;
 - 2) For all other species listed in (B) above, seven hundred (700) square feet per tree.
 - E. In the event that replacement trees are required but cannot be planted due to site constraints, an in lieu-fee as determined by the master-fee schedule of the City may be substituted for required replacement plantings, with all such revenues applied toward tree planting in city parks, streets and medians.
 - F. Plantings shall be installed prior to the issuance of a final inspection of the building permit, subject to seasonal constraints, and shall be maintained by the project applicant until established. The Tree Reviewer of the Tree Division of the Public Works Agency may require a landscape plan showing the replacement planting and the method of irrigation. Any replacement planting which fails to become established within one year of planting shall be replanted at the project applicant's expense.
15. **Effectiveness of Approval; City Council Authority.** This permit shall not become effective unless the amendment to the Zoo Master Plan is approved by the City Council. The City Council has the authority to consider and revise as appropriate (accept, reject, or modify) this adjudicatory land use decision, regardless of whether an appeal to the City Council is filed challenging this adjudicatory land use decision.
16. **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.

If you have any questions, please contact the undersigned at (510) 615-5852, however, this does not substitute for filing of an appeal as described above.

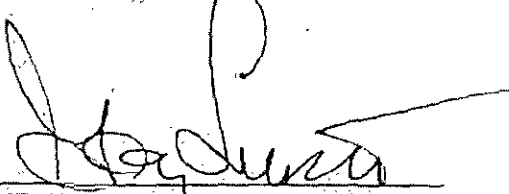
<u>Mitch Thomson</u>	<u>4/28/11</u>	<u>Robert Zahn</u>	<u>4/28/11</u>
Mitch Thomson	Date	Robert Zahn	Date
Arborist		Senior Forester	
Certified Arborist WE-1937A		Certified Arborist WE-8102A	
Certified Tree Risk Assessor #907			

I certify that on April 28, 2011, a copy of this permit (Permit #T09-00019) was placed in the U.S. mail system, postage prepaid for first class mail, and sent to:

Dr. Joel Parrott
Oakland Zoo
P.O. Box 5238
Oakland, CA 94605

Thomas M. DeBoni
350 Elysian Fields Drive
Oakland, CA 94605

Ruth Malone
Co-Chair, Friends of Knowland Park
10700 Lochard Street
Oakland, CA 94605



NAME AND SIGNATURE OF PERSON PLACING IN MAIL

DATE

4-28-11

GAY LOSTER

CITY OF OAKLAND
OFFICE OF PARKS & RECREATION

TREE REMOVAL PERMIT APPEAL FORM

1. Date: May 5, 2011
2. Appellant's Name: Friends of Knowland Park
3. Appellant's Address: 10700 Lockard St.
City, State & Zip: Oakland CA 94605
- Telephone #: (510) 636-0165
4. Tree Removal Permit Number: T09-00019
5. Address of Tree Removal: Oakland Zoo, 9777 Golf Links Rd.
6. Basis for Appeal: The trees to be removed are part of a project that is under appeal to the City Council. Removal is premature, pending further action by that body. Objections to the Project are outlined in the Planning Appeal documents, and are summarized in the attached document.

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: [Handwritten Signature] Date: 05 May 11

for F.O.R.P. (FOR OFFICE USE ONLY)

Appeal Hearing Date: _____

Received By: _____

Appeal Fee Paid: _____

Receipt #: _____

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

May 5, 2011

To: Oakland Public Works Agency, Tree Section
7101 Edgewater Dr., Oakland CA 94621

From: Friends of Knowland Park

RE: Tree Permit T09-00019

According to the Tree Permit, removal of these trees is necessary "for the proposed construction at the Oakland Zoo, a City-owned property (and thus City-owned tree removal), of (a) a new veterinary hospital, (b) paving of the steep portion of an existing dirt maintenance road that travels uphill from the veterinary hospital to an area where it levels off near the southwest corner of the planned California Exhibit and (c) a perimeter fence around the California Exhibit and Ecological Recovery Zones, consistent with the amended Zoo Master Plan."

In addition, as explained by the Public Works Agency, the initial application "requested removal of fifty-two (52) trees and the preservation of one hundred and ten (110) trees." However, we learn that the request was changed by the applicant to only include those trees affected by work proposed for the Phase I development described above.

In view of the fact that the entire Project for expansion of the Zoo has not been approved, we therefore believe that the removal of any trees ostensibly necessitated by the proposed project is inappropriate, arbitrary and unreasonable. In the event that the Project is approved at a later date, a revised application could be reviewed by the Public Works Agency.

The Public Works Agency should be aware that a formal regulatory or administrative challenge of the Project is in progress.

This challenge is based in part on the City's failure to comply with the California Environmental Quality Act (CEQA) and federal environmental laws in analyzing the impacts of the proposed Amendment to the Oakland Zoo Master Plan ("the Project"), including the removal of trees required by this Project. In particular, the City did not require a full environmental impact report (EIR) despite significant new and substantially more severe impacts than the Zoo's original plan. That plan itself was never subjected to a full EIR.

For this reason, we believe that approval of the tree permit (specifically for removal of trees in Knowland Park associated with the new proposed Project) is premature and should not be granted. In our opinion, approval of a tree removal permit before approval of the entire Project would circumvent appropriate public process and legal review. The East Bay Zoological Society has not demonstrated the necessity for removal of these trees at this time, and therefore the approval of their application is not supported by substantial evidence.

Friends of Knowland Park is appealing the Planning Commission decision to approve the Oakland Zoo Master Plan, including the removal of trees required by this project, on the following grounds:

1. The decision is not supported by substantial evidence.

2. The decision constitutes an abuse of discretion because the Planning Commission failed to require the preparation of a full environmental impact report (EIR) as mandated by the California Environmental Quality Act (CEQA) and the rules and regulations of the Federal Environmental Protection Agency (EPA).
3. The decision was based on misstatements and misrepresentations of law and fact by responsible City agencies and administrators, for example:
 - (a) The Oakland Planning Department's Staff Report concludes that "An EIR would not result in additional or better analysis, different mitigations, or different conclusions" than had already been performed under the draft SMND/A (see audio-visual presentation, part V, paragraph 10). Since state law and federal law expressly distinguish between the public rights and governmental procedures required for each level of environmental review applicable to a proposed project (for example, as noted in the Staff Report, the extended public comment period provided for an EIR), the Commission's decision approving the Project constitutes an admission that the agency is unwilling or unable to meet its obligations under those laws.
 - (b) The Parks and Recreation Advisory Commission (PRAC) recommended approval of the Project despite declarations by its members at a public hearing that it had neither the time nor the expertise to conduct a meaningful review of the Project.
 - (c) The Friends of Knowland Park was falsely accused of willfully doctoring a photograph submitted in support of its opposition to the Zoological Society's application.
4. The decision conflicts with fundamental elements of the Oakland General Plan.
5. The Planning Commission failed to comply with mandatory procedures of CEQA by failing to make all documents referenced in the Subsequent Mitigated Negative Declaration/Addendum (SMND/A) available for public viewing.
6. The Friends of Knowland Park, as a group of private, interested citizens and park users, was unfairly and improperly held to an unreasonable standard for failing to formally critique the professional document commissioned by the Zoological Society to rebut its alternative design concepts. Those concepts were expressly developed and submitted by the Friends of Knowland Park merely to suggest the range of alternatives that might be explored were a full EIR to be prepared – not to substitute for a legally mandated study of alternatives.

These and other bases for appeal are detailed in the public record for this Project, including the pending appeal of the Planning Commission's decision to the City Council, and need not be repeated here. Instead, the relevant documents are incorporated here by reference. Please see:

From Oakland City Staff Reports

Regarding the SMND/A, dated February 2011:

1. Email stream from California Native Plant Society (CNPS), dated April 28, 2010
2. Letter from Sierra Club, dated May 16, 2010
3. Comments submitted by Friends of Knowland Park, dated March 14, 2011

4. Comments from the California Native Plant Society, dated March 14, 2011
5. The CNPS Rare Plant Program Ranking System, labeled "Exhibit A"
6. Letter from California Native Grasslands Society (fax), dated March 13, 2011
7. Letter from Sierra Club, dated March 14, 2011
8. Letter from Golden Gate Audubon Society, dated March 15, 2011
9. Letter from Shute, Mihaly, and Weinberger, LLP, dated March 14, 2011

Regarding the City responses to the above-listed comments:

10. Comments submitted by Friends of Knowland Park, dated April 27, 2011
11. Letter from California Native Plant Society, dated April 26, 2011
12. Letter from California Wildlife Foundation & California Oaks, dated April 26, 2011



Public Works Agency
Director's Office

Memorandum

To: The Honorable Jeffrey Taylor, Chair
Parks and Recreation Advisory Commission (PRAC)

From: Vitaly Troyan, P.E., Agency Director *VT*

Date: May 11, 2011

Re: Tree Permit Appeal, Oakland Zoo

SUMMARY

On April 28, 2011, the Tree Services Division approved the East Bay Zoological Society's application to remove seven (7) protected trees, one almond tree and six old shrubs. The permit is necessary for the proposed construction at the Oakland Zoo, a City-owned property, of (a) a new veterinary hospital, (b) paving of the steep portion of an existing dirt maintenance road that travels uphill from the veterinary hospital to an area where it levels off near the southwest corner of the planned California Exhibit and (c) a perimeter fence around the California Exhibit and Ecological Recovery Zones, consistent with the amended Zoo Master Plan.

The Friends of Knowland Park appealed the decision. The basis for the appeal is that the trees to be removed are part of a project that is under appeal to the City Council and removal is premature, pending further action by that body. In addition, the Friends of Knowland Park object to the City's California Environmental Quality Act (CEQA) determination that an Environmental Impact Report is not required. The appeal form and three-page letter of explanation are attached. The PRAC is the hearing body for tree removal permit appeals per the Oakland Municipal Code (OMC), Section 12.36.110. Public Works Staff recommends the PRAC deny the appeal and uphold the decision of the Public Works Agency.

BACKGROUND

On March 9, 2011, seven (7) trees were posted for removal within the construction zone of the proposed veterinary hospital at the Oakland Zoo. The public comment period closed April 8, 2011. The Tree Services Division received two public comment letters during the public comment period (attached).

The PRAC recommended approval of the proposed amendment to the Oakland Zoo Master Plan on March 9, 2011. The tree permit decision was temporarily suspended pending the results of the April 27, 2011, Oakland Planning Commission meeting regarding the amendment to the Oakland Zoo Master Plan and the Subsequent Mitigated Negative Declaration/Addendum

(SMND/A).¹ The Planning Commission approved the amendment to the Master Plan and adopted/approved the SMND/A. On April 28, 2011, Tree Services adopted the Planning Commission's CEQA-related findings and approved seven (7) trees for removal (see attached tree permit). Friends of Knowland Park appealed the tree permit decision on May 5, 2011 (see attached appeal).²

DISCUSSION

Section 12.36.110(C) of the OMC states, "In considering the appeal, the Park and Recreation Advisory Commission shall determine whether the proposed tree removal conforms to the applicable criteria. It may sustain the decision of the Tree Services Section or require such changes or impose such reasonable conditions of approval as are, in its judgment, necessary to ensure conformity to said criteria." The information below is provided so that the PRAC may review the tree removal criteria and review the rationale for the tree permit decision.

In order to grant a tree removal permit, the City must determine that removal is necessary in order to accomplish any one of five objectives listed in Section 12.36.050(A) of the OMC:

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; or
5. To implement the vegetation management prescriptions in the S-11 site development review zone.

Basis for Tree Permit Approval

The Oakland Zoo's application complies with Objective 1 of Section 12.36.050(A) listed above. Seven (7) protected trees need to be removed to build the veterinary hospital. The trees are located within the footprint of the proposed building or within the area of grading. No trees will be removed to pave the subject portion of the maintenance road or install the perimeter fencing.

¹ The Draft SMND/A was previously provided to the PRAC on February 11, 2011, and is available for review at the City Clerk's office, at the CEDA Planning and Zoning Division office, and on the City's website at <http://www2.oaklandnet.com/Government/o/CEDA/o/PlanningZoning/s/Application/DOWD009157>. The staff report for the April 20, 2011 (adjourned to April 27, 2011), Planning Commission meeting is available for review at the City Clerk's office, at the CEDA Planning and Zoning Division office, and on the City's website at <http://www2.oaklandnet.com/Government/o/CEDA/o/PlanningZoning/o/Commissions/index.htm>.

² The appeal letter references documents (public comments) that were not attached to the appeal letter. These comments were previously considered by the Planning Commission prior to the decision to approve the amendment to the Zoo Master Plan and adopt/approve the SMND/A, and are available for review at the CEDA Planning and Zoning office. The comment letters not previously distributed to the PRAC (specifically items 6, 8, 10, 11, and 12) are attached to this report.

A finding of any one of four (4) situations listed in Section 12.36.050(B) of the OMC is grounds for permit denial, regardless of the findings in subsection A noted above. No grounds for denial were determined as explained below:

1. Removal of a healthy tree of a protected species could be avoided by reasonable re-design of the site plan; prior to construction, Section 12.36.050(B)(1)(a), or by trimming, thinning, tree surgery or other reasonable treatment, Section 12.36.050(B)(1)(b).

Finding: It would be unreasonable to shift the footprint of the hospital about one hundred and thirty (130) feet to the southeast, or one hundred and eighty (180) feet to the northwest, in order to save a small, half-dead almond tree and six escallonia shrubs. Shifting the building in either direction will require the removal of native coast live oak trees that will be preserved and are a very valuable tree species in northern California. Trimming, thinning, etc. is a situation that does not apply since doing this type of tree work will not create space to construct the hospital.

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, Section 12.36.050(B)(2).

Finding: Removal of the seven trees in question would not result in any of the problems listed, even if the hospital was not being built. Other, larger trees exist on the site, and the total square feet of soil protected by the approved tree removals is minimal. Roof drains, catch basins, sub-drains, a bioswale, retaining walls and a creek extension with rock weirs are planned and will certainly offset any impact of removing seven small trees.

3. The tree to be removed is a member of a group of trees in which each tree is dependent upon the others for survival, Section 12.36.050(B)(3).

Finding: This situation is intended for densely packed trees in a forest location where removals will cause trees on the interior of the stand to become perimeter trees, exposed to wind loads to which they are not adapted, creating an extreme risk of failure due to changed conditions. The approved removals are not part of a forest and will not impact other trees in the area in this manner.

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 City Arborist using the criteria established by the International Society of Arboriculture (ISA), 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.

Finding: Not applicable since this is a City-owned Tree Removal. Moreover, the half-dead almond tree has no value per the ISA formula. The value of the six escallonia shrubs cannot be calculated with the ISA formula since escallonia does not usually grow large enough to be considered a tree, and is not listed in Species Classification and Group Assignment, a

booklet from the Western Chapter of the ISA, a required component for data when calculating value.

Response to Appeal

Friends of Knowland Park stated in the letter attached to the appeal form that, “In view of the fact that the entire Project for expansion of the Zoo has not been approved, we therefore believe that the removal of any trees ostensibly necessitated by the proposed project is inappropriate, arbitrary and unreasonable.” Approval of this tree permit application by the Public Works Agency does not mean the applicant may proceed with tree removals. Per Section 12.36.070 of the OMC, the Community and Economic Development Agency (CEDA) shall hold the tree permit until determinations are made regarding any other permit applications affecting the project in question. Furthermore, tree permit condition of approval #15 states that the tree permit will not become effective unless the amendment to the Zoo Master Plan is approved by the City Council. Once all permit applications for a particular project have been approved, including City Council approval, CEDA shall issue the applicable tree removal permit.

Friends of Knowland Park also stated in the appeal that, “The East Bay Zoological Society has not demonstrated the necessity for removal of these trees at this time, and therefore the approval of their application is not supported by substantial evidence.” As explained above in the findings for Section 12.36.050(B) (finding #1), it would be unreasonable to shift the footprint of the hospital about one hundred and thirty (130) feet to the southeast, or one hundred and eighty (180) feet to the northwest, in order to save a small, half-dead almond tree and six escallonia shrubs. Shifting the building in either direction will require the removal of native coast live oak trees that will be preserved and are a very valuable tree species in northern California. Trimming, thinning, etc. is a situation that does not apply since doing this type of tree work will not create space to construct the hospital. Therefore, there is substantial evidence that it is necessary to remove the trees. Friends of Knowland Park did not present any evidence to support their statement that it is not necessary to remove the trees.

Friends of Knowland Park stated that they are appealing the Planning Commission decision to approve the amendment to the Oakland Zoo Master Plan in part because, they argue, the City failed to comply with CEQA and federal environmental laws in analyzing the potential impact of the proposed amendment to the Zoo Master Plan, including the removal of trees. As stated above, on April 27, 2011, the Planning Commission adopted/approved the SMND/A and made the appropriate CEQA-related findings. The Public Works Agency, based upon its independent review, consideration, and the exercise of its independent judgment, relied upon, and adopted, the Planning Commission’s CEQA-related findings in approving the tree permit. In the tree permit appeal, Friends of Knowland Park did not present any evidence that the analysis in the SMND/A, including the analysis concerning potential effects of the project on trees, is inadequate.

The focus of the tree permit is that if construction of the proposed veterinary hospital receives all required approvals, it is reasonable to allow removal of seven (7) protected trees within the construction zone. Friends of Knowland Park have not submitted evidence in their tree permit appeal that approval of seven (7) trees in the construction zone somehow did not comply with the criteria of the Protected Trees Ordinance, Section 12.36 of the OMC, or that there was an error or abuse of discretion by the Public Works Agency.

Jeffrey Taylor, PRAC Chair

Re: PWA/Facilities and Environment -- Tree Removal Permit Appeal, East Bay Zoological Society, Oakland Zoo

PRAC Decision is Appealable

If the applicant or appellant seeks to challenge the PRAC's decision on this matter, they must file an appeal to the City Council within five (5) working days of the announcement of the decision. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion or wherein the PRAC's decision is not supported by substantial evidence. Failure to timely appeal will preclude the applicant or appellant from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude the applicant or appellant from raising such issues during the appeal and/or in court.

RECOMMENDATION

The Public Works Agency recommends that the Park and Recreation Advisory Commission:

- Deny the appeal by the Friends of Knowland Park; and
- Sustain the decision of the Public Works Agency, determining that the proposed tree removals comply with CEQA and conform to the applicable criteria of Section 12.36.050 of the OMC, as detailed above and in the April 28, 2011, Tree Permit decision letter, and the April 20, 2011 (adjourned to April 27, 2011), Planning Commission staff report, hereby incorporated by reference.

Respectfully Submitted,



Vitaly B. Troyan, P.E.
Public Works Director

Attachments: Public Comments Received During the Comment Period on for Tree Permit
April 28, 2011, Tree Permit Decision Letter
Appeal Letter
Public Comments Referenced in the Appeal Letter (those not previously provided
to the PRAC)