

TREE PERMIT DECISION

City of Oakland, Public Works Agency

Tree Services Division, 7101 Edgewater Drive, Oakland, CA 94621; (510) 615-5934
Chapter 12.36, Oakland Municipal Code, Protected Trees Ordinance

Permit #: T1500124

Address: Oak Knoll Mixed Use Development Project

Parcel #:

Recommendation: 10-19-2017*

Applicant /Agent: WRA Environmental Consultants

Permit Type: Development

Expires: The Tree Permit shall expire at the same time as all other Oak Knoll approvals at the same time as the VTTM. The Tree Permit shall be vested for the project as a whole upon the removal or relocation of the first tree permitted to be removed or relocated under the Tree Permit. However, the Developer shall remove only those trees necessary for the commencement of a phase, or a portion of a phase, including temporary grading or out of phase extension of utilities, to occur not more than 90 days after removal of such trees.

Removal Approved		Preservation Required		Replacement Tree Required	In Lieu Fee-\$475 per tree
Tree Quantity	Identified As	Tree Quantity	Identified As		
3,567 (2,518 native trees)	Various species including, but not limited to: <i>Acacia baileyana</i> <i>Acacia longifolia</i> <i>Acacia melanoxylon</i> <i>Aesculus californica</i> <i>Alnus rhombifolia</i> <i>Cedrus deodara</i> <i>Pinus ponderosa</i> <i>Pinus radiata</i> <i>Prunus ilicifolia</i> <i>Quercus agrifolia</i> <i>Quercus ilex</i> <i>Salix laevigata</i> <i>Salix lasiolepis</i> <i>Sequoia sempervirens</i> <i>Umbellularia californica</i>	2,599	Various species including 2,280 native trees	~8,500* A greater than 4:1 native tree replacement ratio.	-

*Per the March 24, 2017 Oak Knoll Mixed Use Development Project Tree Removal Impact Mitigation Plan, the mitigation credits for replacement trees will be calculated at the following ratios (replacement trees to removed trees), with larger sized replacement trees receiving greater mitigation credit: 5:1 for 5-gallon pot size, 3:1 for 15-gallon pot size, 1:1 for 24-inch box size, 1:1.5 for 36-inch box, 1:2 for 48-inch box, 1:3 for 60-inch box size

SITE INSPECTION / FINDINGS

City staff reviewed the tree removal and mitigation plan as well as conducted several site visits. The tree removal permit is necessary to develop the Oak Knoll project, perform corrective/remedial grading to address poorly compacted and unstable soils, landslides and landslide prone area hazards, balance the cut and fill on-site so that soil will not need to be imported or exported, address the heavily incised creek banks in order to perform

the Rifle Range and other creek restoration, and comply with the City's roadway design standards. The Project also includes removal of non-native and invasive trees.

The tree mitigation plan includes preserving trees within the Hardenstine parcel and those in the Oak woodlands and on the steeper areas of the Project site that provide valuable wildlife habitat. In addition, the Project is proposing extensive replacement/mitigation for the removal of the trees as discussed below

Staff has reviewed and agrees with the conclusions, application of the City's Standard Conditions of Approval, Mitigation Measures, and Recommended Measures in the Oak Knoll Mixed Use Community Plan Project Supplemental Environmental Impact Report (SEIR), and City staff has relied on the findings contained within the SEIR.

PERMIT REVIEW – FINDINGS 12.36.050(A)

The applicant's request accomplished the following objective(s):

- 1. Insured the public health and safety as it related 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. Avoided an unconstitutional regulatory taking of property.
- 3. Took reasonable advantage of views, including such measures mandated by the resolution of a view claim in accordance with the view preservation ordinance (Chapter 15.52 of the Oakland Municipal Code).
- 4. Pursued accepted, professional practices of forestry or landscape design. Submission of a landscape plan acceptable to the Director of Public Works shall constitute compliance with this criterion.
- 5. Implemented the vegetation management prescriptions in the S-11 site development review zone.
- None of the objectives above were accomplished by the proposed removal(s).*

PERMIT REVIEW – FINDINGS 12.36.050(B)

Any one of the following situations was grounds for permit denial, regardless of the findings in section (A) above:

- 1a. Removal could be avoided by reasonable redesign of the site plan, prior to construction.
- 1b. Removal could be avoided by trimming, thinning, tree surgery or other reasonable treatment.
- 2. Adequate provisions for drainage, erosion control, land stability or windscreen were not made.
- 3. The tree(s) were a member of a group of trees in which each tree was 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.
- There were no grounds to deny the permit based on criteria listed in OMC 12.36.050(B).*

OAKLAND MUNICIPAL CODE SECTION 12.36.060 CONDITIONS OF APPROVAL

The following conditions were imposed. Conditions #18 - #20 were imposed if they were check marked:

1. Prior to issuance of building permits. A Tree Removal/Preservation permit application shall be approved by the Tree Services Division for removal or preservation of all protected trees on the site and adjacent properties. The applicant shall abide by all Conditions of Approval of that permit.

2. Defense, Indemnification and Hold Harmless. To the maximum extent permitted by law, the applicant and its contractor shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Public Works Agency and its respective agents, officers, employees and volunteers (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 for or on account of any damage to property or bodily injury, including death, or damage sustained or arising out of, related to or caused by in any way from the performance of work in this tree permit matter. 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.

3. Defense, Indemnification and 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 Oakland Public Works Agency and its respective agents, officers, employees and volunteers (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, (a) an approval by the City relating to this tree permit matter, City's CEQA approvals and determination, and/or notices in the tree permit matter; or (b) implementation of such. 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.

4. Letter of Agreement. Within ten (10) calendar days of the filing of any Action as specified in conditions 1 or 2 above, the applicant and/or its contractor 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 this Section or any other requirements or conditions of approval that may be imposed by the City.

5. Debris. All debris created as a result of any tree removal work shall be removed from the property by the applicant 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.

6. Dust. 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 and photosynthesis.

7. Fencing. Tree protection fencing shall be chain link, installed on posts driven into the ground and shall be a minimum of 5 feet tall. The fencing shall be installed at the perimeter of the drip line or a lesser distance if demolition or construction does not allow it, for trees listed above in "Preservation Required".

8. Hazards. The removal of extremely hazardous, diseased, and/or dead trees shall be required where such trees have been identified by the City Arborist.

9. Insurance. 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.

10. 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.

11. Nesting Birds. 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.

12. Permit. Tree removal, as defined in the Protected Trees Ordinance, Section 12.36.020 of the Oakland Municipal Code, may not start unless and until the applicant has received this permit from Tree Services.

13. Posting. The applicant shall post a copy of the tree removal permit in plain view on site while tree removal work is underway.

14. Pruning. Construction personnel shall not prune trees or tree roots. Tree pruning of the crown or roots (if done) shall be performed by a licensed, insured tree work contractor that has an arborist on staff certified by the International Society of Arboriculture.

15. Recording. 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.

16. Root Protection. Roots shall be preserved and no activities shall affect the health and safety of existing trees. If roots are encountered, they may be cut only if they are less than two-inch diameter. Hand tools must be used to cut the roots; the use of excavators, backhoes, or similar equipment is prohibited. Roots larger than two-inch diameter may be cut only if inspected and approved in advance. All work must be done by a Certified Arborist from the International Society of Arboriculture or a Registered Consulting Arborist from the American Society of Consulting Arborists.

17. Tree Damage. If any damage to a protected tree should occur during or as a result of work on the site, the property owner/contractor 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.

18. Sidewalks. The damaged sidewalk shall be repaired in compliance with the rules and regulations of the City of Oakland, including a sidewalk repair permit if more than 25 square feet of sidewalk is being repaired. Contact the Sidewalk Division at 238-3499 for more information.


19. Replacement Trees. The property owner shall plant ~8,500 replacement native tree(s) on the property per the March 24, 2017 Oak Knoll Mixed Use Development Project Tree Removal Impact Mitigation Plan. The replacement trees shall be excellent quality nursery stock and maintained by the applicant until established. Any replacement planting which fails to become established within one year of installation shall be replanted at the applicant's expense.

Within 180 days after issuance of the first certificate of occupancy for the first residential structure in each phase of development, mitigation for the loss of trees in the form of planting of new trees and/or relocation in compliance with the Project’s Tree Mitigation Plan, noted in the Oak Knoll Mixed Use Community Plan SEIR shall be complete.

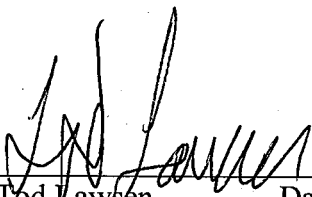
- A. Mitigation credits for replacement trees will be calculated at the following ratios (replacement trees to removed trees), with larger sized replacement trees receiving greater mitigation credit: 5:1 for 5-gallon pot size, 3:1 for 15-gallon pot size, 1:1 for 24-inch box size, 1:1.5 for 36-inch box, 1:2 for 48-inch box, 1:3 for 60-inch box size
- B. Replacement tree species shall consist of species native to this area, all of which are found to occur naturally within the vicinity of the Project area, including but not limited to: *Sequoia sempervirens* (coast redwood), *Quercus agrifolia* (coast live oak), *Arbutus menziesii* (madrone), *Aesculus californica* (California buckeye) or *Umbellularia californica* (California bay laurel).
- C. Replacement trees shall be installed as shown on the landscape plan submitted with the tree removal permit application.

20. Other Conditions:

- A. The property owner shall retain a consulting arborist for the project.
 - i. The arborist shall be a Certified Arborist from the International Society of Arboriculture or a Registered Consulting Arborist from the American Society of Consulting Arborists.
 - ii. The arborist shall recommend, implement, and monitor preservation measures for pre-construction, construction and post-construction phases. Site development shall not damage protected trees directly or indirectly.
 - iii. Preservation measures shall include, but are not limited to:
 - 1. Wood chip mulch
 - 2. Supplemental irrigation
 - 3. Pruning
 - 4. Tree Protection Zone with chain-link fencing
 - 5. Hand digging to protect roots.

 10/19/17

 Giacomo Damonte Date
 Arbicultural Inspector – Acting Sr. Forester
 Certified Arborist © WE-8155A

 10/19/17

 Tod Lawsen Date
 Arbicultural Inspector
 Certified Arborist © WE-6321A

**All recommendations as to the CEQA findings, certification of the SEIR and the Project will automatically be considered by the City Council for its independent review, consideration and final action on November 7, 2017. Thus, no appeal of the Tree Permit is necessary.*

However, per the Tree Ordinance, the applicant or the owner of any “adjoining” or “confronting” property must exhaust their administrative remedies by raising any and all issues and/or evidence at the public hearing on November 7, 2017 or in writing received by the Project Planner Scott Gregory or Heather Klein no later than 4:00 pm on November 7, 2017. The term “adjoining” means immediately next to, and the term “confronting” means in front of or in back of.

Failure of these parties to timely exhaust administrative remedies by raising any and all issues and/or evidence at the public hearing on November 7, 2017 or in writing may preclude you from challenging this determination in court.