



Agenda Item # _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Fahey and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Richard Thompson, Director of Community Development
Daniel A. Moreno, Associate Planner

DATE: May 3, 2005

SUBJECT: Consideration of a Planning Commission Decision to Approve a Tree Permit Appeal To Allow Removal and Replacement of a Tree at 809 Duncan Place

RECOMMENDATION:

Staff recommends that the City Council **RECEIVE and FILE** this report.

FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action.

BACKGROUND:

Tree Ordinance

The City's Tree Preservation Ordinance was originally adopted August 19, 1993 (Ordinance No. 1884), and is included as Section 10.52.120 of the Zoning Code (Exhibit B). At that time, the Ordinance applied only to the Tree Section, generally bounded by Rosecrans Avenue, Blanche Road, Valley Drive and Sepulveda Boulevard. The Ordinance protects all trees, except deciduous fruit-bearing trees and Washingtonian species palms, with a 12" or greater trunk diameter located in the front yard. At that time the Ordinance was implemented more as a "removal and replacement" regulation than a "preservation" regulation.

On May 6, 2003, the Ordinance was expanded (Ordinance No. 2045) to apply to all of the residential zones in Area Districts I and II; the Beach Area is not covered by the Tree Ordinance. The Purpose Section states, in part, that "The intent of this section is the retention and preservation of trees while permitting the reasonable enjoyment of private property." With the expansion of the Tree Ordinance, planning staff began implementing the regulation as a "preservation" regulation, not a "removal and replacement" regulation as previously implemented.

After the adoption of the expanded Tree Ordinance, the City Council and Planning Commission held a joint meeting on July 22, 2003 and discussed the Tree Ordinance. At that meeting the City Council stated that the Ordinance was intended to preserve trees, and that Staff should continue to enforce the Ordinance accordingly. Staff works with architects, developers and contractors during the design of a home and throughout construction to ensure that new

construction considers and protects existing trees that are protected under the Ordinance.

Permit Application Process

Applications for a permit typically include notification signatures from neighbors and/or an arborist's written recommendation that the tree should be removed. Tree permits for dead or unhealthy trees typically require little review or concern. Proposed tree removals related to construction projects involve more review, and staff encourages retention of protected trees in the design process. If no alternatives are available then Staff typically approves an application. Remaining trees are required to be protected by chain link fencing during the construction process.

DISCUSSION

On July 27, 2004, a building permit was issued for a first and second story remodel. The submitted survey for the project showed a large 36" diameter eucalyptus tree located within the 20 foot front yard setback. During construction in the fall of the same year, the property owners inquired about the possibility to remove the tree. After conducting a site visit, staff advised them that the healthy mature tree could not be removed as it was protected under the Tree Ordinance.

On September 27, 2004, a Tree Permit application was submitted to allow the removal of the tree. The reasons cited by the property owner were: the tree is very big, it leans towards the neighbor's house, it is unsafe as branches continue to fall off, and the root had invaded the sewer lines. The application as submitted did not provide compelling information for the removal of the tree. On December 1st and 4th of 2004 the owner submitted brief letters from their arborist stating that trenching for utilities between the neighbors retaining wall and the tree would be detrimental to the health of the tree. Staff continued to work with the contractor and the property owner to find alternative solutions to the undergrounding of the utilities in a manner that was not detrimental to the tree.

On February 23, 2005, after receiving an e-mail from staff that the tree could not be removed, the applicant's contractor (Blue Sky West, Inc.) requested in writing that the tree be removed, and again staff denied the request. On March 2, 2005, an application for an appeal of an administrative decision was filed requesting a hearing before the Planning Commission to allow the removal of the tree.

On April 6, 2005 an arborist report was submitted from Neighborhood Consulting Arborist, which requested that the tree be removed as soon as possible for various reasons. This arborist report was reviewed by staff on April 7, 2005 (West Coast Arborist) two days prior to the distribution of the Planning Commission report for the April 13, 2005 meeting. The City's arborist concluded that the submitted tree assessment report draws a reasonable conclusion and therefore recommended that the tree should be removed.

At the regularly scheduled Planning Commission meeting of April 13, 2005, the Commission voted (3-0-1) (Commissioner Simon was absent) to approve the Tree Permit Appeal thereby allowing the eucalyptus tree to be removed. The Commission noted that the arborist report provided by the applicant recommended 2-48" box trees as replacement trees. After discussion with staff about appropriate tree replacement for the subject site, the Commission approved a condition that one 48" box replacement tree be provided within the front yard setback area. The

applicants have advised staff that they would comply with the Planning Commission decision to install a 48" box tree and would submit plans for staffs review and approval. At the April 13, 2005 Planning Commission meeting, several adjoining property owners spoke in favor of allowing the tree to be removed due to safety concerns.

ALTERNATIVE

The alternative to the staff recommendation includes **REMOVE** this item from the Consent Calendar, and **MODIFY** the decision of the Planning Commission.

- Attachments:
- A. Excerpt from the Planning Commission Minutes, dated 4/13/05 (available electronically)
 - B. Planning Commission Reports and attachments, dated 4/13/05 (available electronically as noted in the report)
 - C. Chronology of Events

cc: Joseph and Marie Mulligan, Applicant's
Tony, Sky Blue West, Inc.

D R A F T CITY OF MANHATTAN BEACH D R A F T
MINUTES OF THE REGULAR MEETING OF THE PLANNING COMMISSION
APRIL 13, 2005

1 A regular meeting of the Planning Commission of the City of Manhattan Beach was held on
2 Wednesday, April 13, 2005, at 6:40 p.m. in the City Council Chambers, City Hall, 1400
3 Highland Avenue.

4
5 **ROLL CALL**

6
7 Chairman O'Connor called the meeting to order.

8
9 Members Present: Kuch, Savikas, Chairman O'Connor
10 Members Absent: Simon
11 Staff: Richard Thompson, Director of Community Development
12 Rosemary Lackow, Senior Planner
13 Daniel Moreno, Associate Planner
14 Juan Price, Maintenance Superintendent
15 Sarah Boeschen, Recording Secretary
16

17 **COMMENDATION PRESENTATION TO RICHARD MONTGOMERY**

18
19 Chairman O'Connor congratulated Richard Montgomery on being appointed to the City Council
20 and presented him with a plaque in appreciation of his service on the Planning Commission.

21
22 Commissioners Savikas and Kuch also congratulated Richard Montgomery on his election to the
23 Council and thanked him for his service on the Commission and in the community.

24
25 Richard Montgomery thanked Director Thompson, staff and the Commissioners for all of their
26 dedication and hard work.

27
28 **APPROVAL OF MINUTES** March 23, 2005

29
30 Chairman O'Connor requested that page 3, line 23 should read "Joe Devine, a resident of the 300
31 block of Kuhn Drive, stated that ~~said that~~ . . ."

32
33 Chairman O'Connor requested that page 8, line 4 be revised to state: "He said that he is not
34 sure of the harm of including the same requirements for medium and high density lots in Area
35 Districts I and II as those proposed in Area Districts III and IV."

36
37 Chairman O'Connor requested that on page 8, line 26 and 32, the spelling be corrected to "Mr.
38 Osterhout."

39
40 Chairman O'Connor requested that page 9, line 3 be revised to read: "Director Thompson
41 commented that the argument can also be made that the proposed restrictions are a method of
42 discouraging further reduction in density . . ."

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1
2 Chairman O'Connor requested that page 9, line 34 be revised to read: “. . . however he is not
3 particularly impressed with the differences between the amount that is currently permitted and
4 the amount that would be permitted under the proposed new guidelines of 70 percent. He
5 indicated that he would have expected to see a greater difference between the proposal and the
6 current permitted maximum BFA.”

7
8 Chairman O'Connor requested that page 10, line 12 be revised to read: He commented that ~~that~~
9 he also would not discourage considering 50 percent of allowable BFA for larger lots.”

10
11 A motion was MADE and SECONDED (Kuch/O'Connor) to **APPROVE** the minutes of March
12 23, 2005, as amended.

- 13
14 AYES: Kuch, Chairman O'Connor
15 NOES: None
16 ABSENT: Simon
17 ABSTAIN: Savikas

18
19 **AUDIENCE PARTICIPATION** None

20
21 **BUSINESS ITEMS**

22
23 **A. Request for a One-Year Time Extension of a Master Use Permit and Coastal**
24 **Development Permit for Property Located at 1100 Manhattan Avenue (Ristani)**

25
26 Director Thompson said that the request is for a one year time extension to a Master Use Permit
27 that was originally approved for the project. He indicated that the Code has not changed since
28 the original approval, and the project is consistent with the City's current Codes and policies.
29 He indicated that staff is recommending approval of the extension. He commented that it is the
30 last extension available to the applicant before being required to reapply for a new Use Permit.

31
32 **Bill Little**, representing the applicant and project contractor, said that they may not be able to
33 begin construction before the deadline of the Use Permit because of pending legal action against
34 a tenant in the existing building who refuses to give up his lease. He pointed out that the delay
35 has been beyond the control of the applicant.

36
37 In response to a question from Chairman O'Connor, **Mr. Little** indicated that once the legal
38 issue is resolved, they have a schedule of a year to 14 months of actual construction.

39
40 In response to a question from Commissioner Savikas, Director Thompson indicated that this is
41 the second request for an extension by the applicant, which is permitted by Code.

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1
2 Chairman O'Connor stated that the primary purpose of offering the opportunity for review by the
3 Commission for one-year extension requests is to assure that Codes have not been changed since
4 the original approval. He said that such reviews do allow the Commission an opportunity to
5 require that the project meet the new Codes.

6
7 The Commissioners commented that they support staff's recommendation to grant the extension.

8
9 A motion was MADE and SECONDED (Savikas/Kuch) to **APPROVE** a request for a one-year
10 time extension of a Master Use Permit and Coastal Development Permit for property located at
11 1100 Manhattan Avenue

- 12
13 AYES: Kuch, Savikas, Chairman O'Connor
14 NOES: None
15 ABSENT: Simon
16 ABSTAIN: None

17
18 Director Thompson indicated that the item will be placed on the City Council's Consent
19 Calendar for their review on May 3, 2005.

20
21 **B. Appeal of an Administrative Decision to Deny a Tree Permit Requesting Approval**
22 **to Remove a Tree at 809 Duncan Place**

23
24 Associate Planner Moreno summarized the staff report. He said that the City Council adopted a
25 Tree Preservation Ordinance in August of 1993, which originally applied only to the Tree
26 Section. He indicated that the Ordinance applied to trees of a diameter of 12 inches or greater
27 located in the front yard setback. He commented that the Ordinance was originally enacted as a
28 removal/replacement regulation rather than a preservation regulation. He said that the Council
29 voted to expand the Ordinance to apply to all of Area Districts I and II in May of 2003. He said
30 that basically all projects require a survey which identifies the diameter and location of trees. He
31 stated that the applicant will work with staff during the design phase of projects to address
32 concerns regarding the removal of any healthy tree and in determining whether a tree permit
33 application is required. He indicated that if a tree is dead, unhealthy or unsafe, staff would
34 consider allowing removal. He said that if a tree needs to be protected, fencing is required
35 around the drip line to avoid any harm to the root system during construction.

36
37 Associate Planner Moreno said that a building permit was issued in July of 2003 for a first and
38 second story remodel of the subject property, and the survey taken indicated that there was an
39 existing 36 inch diameter Eucalyptus tree located within the 20 foot front yard setback. He
40 stated that there was a verbal request by the applicant in the fall of 2003 for removal of the
41 subject tree, and they were informed that their request was denied and that the tree is protected

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1 under the Ordinance. He commented that the applicant submitted a letter from their arborist in
2 December of 2004 stating that the trenching for utilities between the retaining wall on the
3 adjoining property and the tree would be detrimental to the health of the tree. He said that on
4 February 2, 2005, an e-mail was sent by staff to the contractor stating that the tree could not be
5 removed based on the information submitted to the City. He commented that the applicant's
6 contractor submitted a letter on February 23, 2005, again requesting removal of the tree. He
7 stated that a tree permit application was submitted on February 28, 2005, and it was suggested by
8 staff at that time that the applicants provide a comprehensive arborist report. He indicated that
9 an appeal was filed on March 2, 2005. He said that an arborist report was submitted from
10 Neighborhood Consulting Arborist on April 6, 2005, requesting that the tree be removed. He
11 said that the City's Arborist has not had sufficient time to provide a written report before the
12 staff report was completed; however, he did conclude that the submitted tree assessment report
13 draws a reasonable conclusion. He said that staff is recommending approval of the request
14 subject to review and approval of an appropriate mature replacement tree being provided. He
15 indicated that property owners within 500 feet of the site were noticed, and two letters and one
16 phone call were received regarding the application supporting removal of the tree.

17
18 In response to a question from Commissioner Savikas, Associate Planner Moreno indicated that
19 staff received no input from neighbors in support of retaining the tree. He indicated that staff's
20 concern with trimming the tree is regarding the method used and the harm it may have on the
21 tree.

22
23 In response to a question from Commissioner Kuch, Associate Planner Moreno said that there
24 are concerns with the tree undermining the retaining wall on the adjacent property. He said that
25 staff was previously unaware of the health of the tree before the submitting of the second report
26 by the applicants' arborist, which was submitted late last week..

27
28 Director Thompson indicated that staff agreed that there might be a safety issue and decided to
29 change their opinion that the tree should be retained based on the report from the applicants'
30 arborist and the opinion of the City's arborist. He commented that staff's main concerns are the
31 safety issues as pointed out in the arborist's report, and staff would have granted the tree permit
32 originally if all of the information had been submitted at the time it was filed. He stated that
33 staff considered whether or not to withdraw the item for consideration by the Commission after
34 the determination was made that all requirements for granting a permit were satisfied; however,
35 they decided that the hearing should take place since it had already been noticed.

36
37 In response to a comment from Commissioner Savikas, Director Thompson commented that the
38 applicants originally had no intention of removing the tree, and it was only much later in the
39 process that it was identified that they were interested in its removal. He said that the building
40 permit was issued with staff believing that the tree would remain.

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1 In response to a question from Chairman O'Connor, Director Thompson indicated that the
2 applicant was advised at the beginning of the process that a tree permit would be required if they
3 wished to remove the tree.

4
5 **Joe Mulligan**, the applicant, said that the tree has only recently began to cause problems. He
6 commented that they are not proposing an extremely large addition. He said that the tree has
7 been weakened dramatically by an beetle called the psyllid lerp that has harmed many
8 Eucalyptus trees in the City, and there was a question of many trees falling down and causing
9 massive damage. He indicated that the tree begins to burn and char when it grows too close to a
10 nearby power line, and Southern California Edison periodically sends out a tree company to trim
11 the branches. He said that a tree limb fell and broke their garage door in August last year, and
12 another branch fell and narrowly missed their neighbor's car.

13
14 **Mr. Mulligan** indicated that they made a written request in September of 2003 stating that major
15 limbs have fallen; that the tree was leaning; and that the roots are invading their sewer line. He
16 indicated that they then spent \$400.00 and delivered a written arborist report in December of
17 2003 that reiterated their reasons for removing the tree in further detail. He commented that they
18 were told by staff in February of 2004 that there was no recollection of the tree permit
19 application or an arborist report; however, the report was later found by staff. He said that they
20 were then told by staff that a more detailed report was needed, and they then provided an
21 additional report from their arborist. He said that the report indicates that the tree is not
22 appropriate for the location and there is a potential for the tree to completely fail. He pointed out
23 that he would be held liable if the tree falls on a neighboring property. He indicated that they
24 would like to trench in order to place their utility lines underground, which the arborists have
25 indicated would cause the tree to fall. He said that the suggestion previously made by staff for
26 routing the underground lines around the tree would require an easement extending into their
27 driveway, which would create additional liability for them. He commented that the City's
28 arborist agrees with the conclusion of the arborist's report that the tree is a danger and there is a
29 high probability of limb failure in the next six months.

30
31 **Marie Mulligan** stated that she has a copy of the original application that they submitted for a
32 tree permit dated September 27, 2004. She said that she was surprised in February of 2005 to be
33 told by staff that there was no record of the application. She said that the reasons stated in the
34 application were that the tree had become too large; it was leaning towards their neighbor's
35 home; branches had fallen; and roots had invaded the sewer line.

36
37 **Chairman O'Connor** commented that there is some confusion in the time line of events
38 because the tree permit application is dated September 27, 2004 but was stamped as being
39 received by the City on February 28, 2005.

40
41 **Anthony O'Connor**, Blue Sky West, representing the applicant, indicated that the City did not

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1 ask for a fee when the original tree permit application was filed in September of 2004, and the
2 fee was received in February of 2005. He commented that the Commission was sent a copy of
3 the arborist's report. He stated that when he took over the project in September of 2004, he
4 recognized that the tree was directly in the path of the area where the utilities would be placed
5 underground. He said that there was some confusion for staff because the tree permit application
6 originally stated concerns that the tree is a hazard, and he later raised additional concerns that
7 retaining the tree would make it extremely difficult to underground the utilities. He indicated
8 that they then finally submitted information stating all of their reasoning to staff.

9
10 In response to a question from Chairman O'Connor, **Anthony O'Connor** said that an alternative
11 path for undergrounding the utilities around the tree was discussed. He stated that it would not
12 be feasible to route the underground lines and pole boxes for the utilities around the tree because
13 of the many bends and curves that would be required. He indicated that they also would need to
14 cut significantly into the roots of the tree in order to accommodate the trenching that would be
15 required.

16
17 **Armond Vardian**, a resident of the 800 block of Duncan Place, said that his home is directly
18 west of the subject property and at a significantly lower elevation. He stated that the entire east
19 side of his home including his bedroom is directly below the tree. He indicated that a branch
20 previously has landed on his car that could have easily damaged it. He commented that there is a
21 retaining wall that is directly adjacent to the tree which has several cracks resulting from the
22 growth of the roots or the tree leaning. He said that his concern is safety from damage to the tree
23 that might occur from wind.

24
25 **Dick May**, a resident of the 800 block of Duncan Place, indicated that his property is across the
26 street and east of the subject property, and his bathroom is within reach of the tree. He said that
27 he also is concerned with the tree falling and would request that it be removed.

28
29 In response to a question from Chairman O'Connor, **Mr. May** commented that a younger
30 replacement tree would most likely be stronger and smaller than the subject tree.

31
32 Commissioner Kuch said that he would support staff's recommendation.

33
34 Commissioner Savikas commented that safety concerns were part of the reasoning behind the
35 previous removal of several Eucalyptus trees along Rosecrans Avenue. She indicated that she
36 would support staff's recommendation. She commented that she would like to see some
37 compensation to the applicant for their fees if the City did originally misplace the application.

38
39 Director Thompson commented that reimbursing fees is the jurisdiction of the City Council, and
40 such refunds are typically not granted. He pointed out that fees that are imposed to cover the
41 expenses incurred by staff. He indicated that he would not assume that staff made an error in

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1 this case; however, there was miscommunication between staff and the applicant. He
2 commented that staff was working with the contractor and applicant to reach a solution before
3 the actual filing of the fees and the tree permit application. He pointed out that the building
4 permit was issued assuming that the tree would be preserved. He commented that staff's
5 intentions is towards preserving trees. He indicated that staff was not provided with the required
6 information to justify removing the tree until very late, and staff does agree with the applicant
7 based on the arborist's report.

8
9 Chairman O'Connor stated that he was originally opposed to removing the tree. He commented
10 that he is a strong supporter of the newly revised Tree Ordinance and lobbied to make it even
11 more restrictive. He said that there has been a significant deforestation throughout the City
12 primarily resulting from spec builders clearing lots indiscriminately. He indicated that he did
13 have questions regarding the chronology of events in this particular case. He commented that he
14 asked for a copy of the tree permit that was omitted from the otherwise thorough staff report, and
15 he is sympathetic to the applicant because of the omission by staff.

16
17 In response to a question from Chairman O'Connor, **Mr. Mulligan** commented that they would
18 request to replace the subject tree with one 48 inch box tree.

19
20 Chairman O'Connor indicated that his understanding is that the Code requirement is for a tree
21 that is removed be replaced with a 24 inch box tree. He stated that there was an original
22 suggestion in the first arborist's report that suggested replacing the tree with two 24 inch box
23 trees, and the second report suggested that it be replaced with two 48 inch box trees. He asked
24 whether staff had a recommendation regarding an appropriate replacement.

25
26 Juan Price, the City's maintenance superintendent, said that the general guideline is for a single
27 tree that is removed to be replaced with a single tree. He commented that his opinion is that one
28 replacement 48 inch box tree would be sufficient for the subject property, and the process of
29 installing a tree that is any larger would become burdensome to the property owner.

30
31 In response to a question from Commissioner Savikas, Director Thompson indicated that the
32 City does have a list of types of appropriate types of replacement trees for the public right-of-
33 way. He commented that staff usually provide several options when working with applicants,
34 and a list is provided if requested. He said that staff typically discusses alternatives with the
35 applicant to determine an appropriate replacement for the specific location. He indicated that
36 any replacement tree does have to be approved by staff.

37
38 **Anthony O'Connor** commented that there is a water main and utilities that will be placed near
39 the area of the existing tree, and they have a concern with placing a 48 inch box replacement tree
40 in the same location.

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1 Director Thompson said that staff is aware of the easements along the front of the property and
2 will work with the applicant to find an appropriate location for a replacement tree that will not
3 interfere with the utility lines.

4
5 A motion was MADE and SECONDED (Savikas/Kuch) to **APPROVE** appeal of an
6 administrative decision to deny a tree permit requesting approval to remove a tree at 809 Duncan
7 Place conditional on replacing the subject tree with one 48 inch box tree.

- 8
9 AYES: Kuch, Savikas, Chairman O'Connor
10 NOES: None
11 ABSENT: Simon
12 ABSTAIN: None

13
14 Director Thompson explained the 15 day appeal period and indicated that the item will be placed
15 on the City Council's Consent Calendar for their review on May 3, 2005.

16
17 **C. Appeal of an Administrative Decision to Deny a Tree Permit Requesting Approval**
18 **to Remove a Tree at 1600 Chestnut Avenue**

19
20 Director Thompson summarized the staff report and stated that the tree being requested to be
21 removed is located on the property at 1600 Chestnut Avenue, which is adjacent to the property at
22 1604 Chestnut Avenue proposed to be redeveloped. He said that the original tree permit
23 application was submitted by the owner of the property on which the tree is located. He
24 commented that alternatives to removing the tree include possibly changing the orientation of the
25 proposed new home so that the driveway would be located on the opposite side of the property
26 from the tree; having an arborist monitor the tree and evaluate the situation during construction;
27 and incorporating the use of a bio barrier, structural soil, and grasscrete for the driveway. He
28 indicated that the tree permit application was submitted in February of 2005 and was denied on
29 March 9, 2005. He indicated that an appeal of staff's decision denying the tree permit
30 application was filed by the owners of the property at 1604 Chestnut, and staff received new
31 information on March 12, 2005 from their structural engineer that roots must be removed 2 to 3
32 feet deep from the site. He indicated that after considering the situation and discussing it with
33 the City's arborist, staff is recommending that building permits be granted for the construction
34 with the understanding that a City arborist be present during demolition and grading to evaluate
35 as the area is excavated around the tree in order for it to possibly be preserved. He indicated that
36 without currently knowing the specifics of the root system underground, it is not possible to
37 know the impact that the construction would have on the tree. He stated that staff's feeling is
38 that the tree can be saved; however it would be permitted to be removed if it is found that it is
39 not likely to survive the construction process. He indicated that if the tree did survive, the use of
40 a bio barrier, grasscrete and structural soil could possibly be used. He said that staff feels the
41 tree could survive a major trimming necessary to accommodate the new construction based on

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1 the evaluation of the City's arborist and maintenance supervisor.

2
3 In response to a question from Commissioner Savikas, Director Thompson said that it would be
4 possible to use grasscrete for the driveway which would allow water to penetrate through the
5 surface. He stated that the appellants have concerns that the roots could harm the foundation of
6 the proposed home regardless of whether the orientation is changed. He stated, however, that
7 staff feels that there are alternatives such as the bio barrier that would prevent any damage.

8
9 **Mr. Price** indicated that a bio barrier is a product that has embedded polymers with a herbicide,
10 and the dissolving of the polymer creates a vapor barrier that eliminates root intrusion. He said
11 that there has been some success with the use of the product in the City. He indicated that the
12 barrier could be placed along the property line and along any utility lines or other areas to be
13 protected against root intrusion.

14
15 **Abe Chorbajian**, the architect for the project, said that their proposal meets all City Code
16 requirements. He stated that the structural engineer hired by the applicants is very experienced.
17 He stated that much more than the driveway of the new home would be impacted by the tree, as
18 60 percent of the drip line is located over the construction area. He commented that the
19 structural engineer has indicated that roots must be removed to 2 ½ to 3 feet below grade in
20 order to avoid settlement resulting from deteriorating roots. He said that he would not have
21 confidence that a bio barrier would be effective in preventing roots from intruding under the
22 home. He commented that it took a great deal of time to arrive at the design of the proposed
23 home, and it cannot simply be reconfigured. He indicated that it would not be possible to walk
24 on the tile roof of the proposed home in order to trim the tree. He indicated that any pipes and
25 utility lines placed underground would also be jeopardized by the roots. He pointed out that staff
26 did not comment regarding the issue when the plans were originally submitted for plan check.
27 He indicated that the existing home is uninhabitable because demolition has already been started,
28 which has resulted in a large financial loss to the applicant.

29
30 **Steve Zukotynski**, the appellant, said that he previously sent a letter to the Commissioners on
31 March 14, 2005. He provided a letter with signatures of 43 of his neighbors in support of
32 removing the tree. He indicated that a survey clearly depicting the subject pine tree was
33 submitted to the City in December of 2003. He stated that he spoke to Don Boudreau on August
34 20, 2004, who agreed that the tree should be removed. He said that Mr. Boudreau suggested he
35 approach his neighbor to discuss having it removed or alternatively that he prune the branches,
36 remove the roots, and put in a barrier to prevent the roots from spreading. He indicated that plan
37 check was then completed in November of 2004, and the plans were stamped as being ready for
38 issuing of the building permit. He said that he then contacted two arborists who refused to dig
39 up the roots and install the tree root barrier so close to such a large mature tree because they
40 feared it could fall. He stated that **Marilyn Beaumont**, the owner of the property on which the
41 tree is located, also consulted an arborist and agreed that the tree could become a danger and

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1 needed to be removed. He said that **Ms. Beaumont** then submitted an application for a tree
2 permit. He indicated that they began the demolition process during that time believing that the
3 building permits would be issued, and it was not until after he requested a final pre-demolition
4 inspection that he discovered on his own that the property was red tagged by the City. He said
5 that he went on the advise of staff to have the tree removed or cut, and now his home is
6 uninhabitable. He indicated that he has taken a great deal of time to demonstrate the damage the
7 tree has caused to his home, but staff continues to downplay the impact of the tree.

8
9 **Mr. Zukotynski** indicated that the tree roots have generated sufficient force to cause cracks in
10 his foundation that is concrete footing 2 feet thick and 1 foot wide. He commented that the
11 City's arborist wrote in his report that stone pines are a species of tree that frequently fall, and
12 there have been several instances of pine trees in the Los Angeles area that have fallen and
13 injured or killed people. He commented that the City's arborist acknowledged that the trunks
14 hanging over his property and his neighbor's property weigh thousands of pounds. He said that
15 the retaining wall adjacent to the tree is deteriorating and needs replacing. He commented that
16 their structural engineer is credentialed to perform plan check in many cities. He said that case
17 histories in the literature regarding bio barriers indicate that it is not to control large mature trees
18 but rather to define a space for young trees to grow. He indicated that other tree permits have
19 been granted in the City because of roots causing damage to driveways and lawns or because of
20 branches being located too close to the roof line of a home. He indicated that the subject tree not
21 only damaged his driveway and home but also poses a safety hazard to his family and neighbors.
22 He said that the tree would touch the roof of his new home, which would create a fire hazard.
23 He pointed out that it would be more dangerous to remove a destabilized tree than when it is
24 living and still has firm roots.

25
26 **Chi Tran**, the appellant, said that trees do not only damage foundations because of the roots
27 intruding but also because the roots will soak up all of the available moisture in the area around
28 the tree during very dry years causing the ground to shrink and the foundation to shift. She
29 indicated that the last few years have been dry, which has resulted in the tree causing more
30 damage to their home. She indicated that there are large cracks that run the entire length of the
31 foundation of their home. She indicated that she chose to buy the property knowing that the tree
32 was next door but did not realize the damage that it would cause. She said that the tree is not
33 appropriate for the location. She commented that the retaining wall adjacent to the tree is
34 damaged and could collapse. She stated that a bio barrier cannot be used in this case because
35 cutting the roots of a large tree to such a great extent would cause the tree to fall. She
36 commented that it cannot be guaranteed that bio barrier will be completely effective, and it may
37 be necessary to spray herbicide on both sides of the barrier, which could kill the tree roots. She
38 commented that the tree roots would damage the foundation even if the orientation of the home
39 were changed.

40
41 Director Thompson said that staff does not lie to the public nor to applicants who process their

PLANNING COMMISSION MINUTES

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1 applications. He pointed out that plans were never approved for the project, and his
2 understanding is that the applicants were well aware of the issue regarding the tree before the
3 application was filed. He said that Don Boudreau would never indicate to the applicants that the
4 tree needed to be removed. He indicated that the owner of the property where the tree is located
5 would prefer alternatives be used to save the tree, and there is no evidence of any damage to her
6 home.

7
8 Commissioner Kuch indicated that he has had the utmost trust in staff in the six years he has
9 served on the Commission, and this is the first instance he has heard of someone accusing any of
10 them of lying. He said that he is aware of the time that staff invests in projects, and he is
11 surprised to hear such testimony.

12
13 **Roger Hartman**, a resident of Manhattan Beach, said that the tree is very imposing. He pointed
14 out that removing the tree is agreeable to the owners of both properties, and a replacement tree
15 would be provided.

16
17 **Martha Andreani**, a resident of the 100 block 10th Street, said that she is a proponent of the
18 Tree Ordinance. She commented that she would consider existing trees on or adjacent to a
19 property before purchasing it. She stated that she supports the work that has been done by staff
20 and stated that trees will survive with roots being trimmed and branches cut.

21
22 **Don McPherson** said that he has never known Don Boudreau to lie. He indicated that his
23 understanding is that the applicant and developer were previously aware of the tree, and he feels
24 the proposed structure should have been designed to fit the property.

25
26 **Marilyn Beaumont**, the applicant, said that she applied for the tree permit in order to
27 accommodate her neighbor and to remove a potential hazard. She said that she would like for
28 alternatives to be used to retain the tree if possible; however she would accommodate the
29 applicants if necessary. She commented that staff has been very accommodating to her.

30
31 In response to a question from Commissioner Savikas, **Ms. Beaumont** stated that she has lived
32 in her home for 22 years and has not had any damage to her home from the tree.

33
34 Commissioner Kuch stated that there are alternatives to removing the tree, and staff has outlined
35 a clear step by step process for attempting to retain it. He said that he is not certain he believes
36 the statements by the applicant regarding the ineffectiveness of root barriers. He said that he has
37 used root barriers on some of the most obtrusive trees, and they have been very effective. He
38 indicated that he is not convinced that the concrete cracks on **Mr. Zukotynski's** property are
39 necessarily due to the roots of the tree. He indicated that he has not heard sufficient evidence to
40 convince him that the tree should be removed.

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1 Commissioner Savikas indicated that she is comfortable with the approach included with staff's
2 recommendation for an arborist to evaluate the situation as grading and demolition for the new
3 project occurs.

4
5 Chairman O'Connor commented that said that there has been significant effort focused on
6 addressing this particular tree and defining manners by which it may be protected. He indicated
7 that the preservation of trees is a fairly subjective topic, and the City has framed an Ordinance
8 granting the Community Development Director administrative responsibility for making very
9 difficult judgments. He commented that this proposal is exactly why the proposal was recently
10 upgraded. He indicated that the subject tree is a significant addition to the neighborhood, and
11 great lengths should be given to protect it. He said that he would support monitoring under the
12 supervision of an arborist to preserve the tree if possible. He commented that he does not
13 believe the tree permit application would have been filed if the information that has now been
14 provided was known originally.

15
16 A motion was MADE and SECONDED (Kuch/Savikas) to **DENY** appeal of an administrative
17 decision to deny a tree permit requesting approval to remove a tree at 1600 Chestnut Avenue

18
19 AYES: Kuch, Savikas, Chairman O'Connor
20 NOES: None
21 ABSENT: Simon
22 ABSTAIN: None

23
24 Director Thompson said that staff's understanding is that the Commissioners support their
25 recommendation that the applicants proceed with the development, provided they trim the tree
26 and proceed with demolition and grading under the supervision of a City arborist. He indicated
27 that if the arborists determines that the tree is unlikely to survive, then staff would approve
28 replacement. He indicated that staff would follow the arborists' recommendation if the tree
29 survives to further protect the tree roots from intruding onto the project site.

30
31 In response to a question from Commissioner Savikas, Director Thompson stated that staff
32 would negotiate placing a 48 inch box tree on both the project site and **Ms. Beaumont's**
33 property if it is determined that the tree needs to be replaced. He pointed out that all of the costs
34 associated with retaining the tree would occur would be at the cost of the project proponent.

35
36 Commissioner Kuch commented that he feels staff's plan is systematic and appropriate for the
37 situation.

38
39 Chairman O'Connor suggested that the City should consider the arborists' opinion and make a
40 judgment rather than simply following the arborists' opinion.

PLANNING COMMISSION MINUTES

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Page 13

1 A motion was MADE and SECONDED (Savikas/Kuch) that the subject tree be preserved with
2 the tree being trimmed as recommended by the City's arborist and with demolition of the house
3 and grading to occur under the supervision of the City's Arborist. Two appropriate replacement
4 trees will be approved by City staff if a determination is made by the arborist that the tree is
5 unlikely to survive, and the project proponent will follow the recommendation of the arborist if
6 the tree is preserved. All costs associated with preserving the tree will be incurred by the project
7 proponent.

8
9 Director Thompson explained the 15 day appeal period and indicated that the item will be placed
10 on the City Council's Consent Calendar for their review on May 3, 2005.

11
12 At 9:35 a 20 minute break was taken.

13
14 AYES: Kuch, Savikas, Chairman O'Connor

15 NOES: None

16 ABSENT: Simon

17 ABSTAIN: None

18 19 PUBLIC HEARINGS

20 21 **05/0413.1 Amendment to Master Use Permit to Allow the Remodel of an Existing** 22 **Bakery/Café to Include the Addition of a New Outdoor Seating Area,** 23 **Located at 1808 North Sepulveda Boulevard (Manhattan Beach Bagel** 24 **Company)**

25 Assistant Planner Moreno summarized the staff report. He indicated that the proposal is for an
26 interior/exterior remodel of an existing bakery restaurant which includes an upgrade to the
27 outdoor seating area. He indicated that the outdoor seating area would encompass 250 square
28 feet; would include 7 tables and 14 chairs; and would require a reconfiguration of the sidewalk.
29 He stated that the proposed interior changes would include replacement of the counters,
30 customer service equipment, and furniture. He commented that the issues that have been
31 identified by staff are regarding parking and circulation. He indicated that the current parking
32 reduction allows for 175 parking spaces based on the mix of tenants in the center. He indicated
33 that based on the amount of additional square footage that is proposed, the applicant would be
34 required to include one additional parking space. He commented that a new parking restriping
35 plan has been submitted for the site, which would provide 177 parking spaces and would
36 accommodate all required disabled access spaces. He said that the expansion would replace two
37 existing parking spaces in front of the building, and a concern was raised regarding visibility for
38 drivers exiting an existing driveway for the adjacent building. He said that staff feels that the
39 issue of visibility and circulation will be minimized based on the proposed design of the
40 structure, sidewalk, and planters. He said that staff finds the design is appropriate, complies with
41 Zoning regulations regarding the reduction of parking, and is recommending approval.

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1
2 **Michael Keegan**, the applicant, indicated that they are looking forward to remodeling the center.
3 He commented that they have made changes to allow for handicapped access as requested by
4 staff. He indicated that they feel the request would be a benefit to the site, and they are hoping
5 for approval.

6
7 Chairman O'Connor opened the public hearing.

8
9 There being no members of the audience wishing to speak, Chairman O'Connor closed the
10 public hearing.

11
12 Commissioner Kuch said that the proposal is an improvement to the articulation and appearance
13 of the building, and it will be a benefit for the applicant.

14
15 Commissioner Savikas said that the proposal will add to the community and improve the
16 appearance along Sepulveda Boulevard.

17
18 In response to a question from Commissioner Savikas, **Mr. Keegan** said that construction would
19 take approximately 60 to 90 days in the front and 60 to 90 days in the rear of the building.

20
21 Chairman O'Connor stated that he is also pleased with the proposed improvements to the ramp at
22 the rear of the property along with the improvements to the front. He indicated that he is also
23 pleased that the proposal has not raised any contention and is for an applicant who has been a
24 benefit to the community and has established a thriving business.

25
26 A motion was MADE and SECONDED (Kuch/Savikas) to **APPROVE** Amendment to Master
27 Use Permit to allow the remodel of an existing bakery/café to include the addition of a new
28 outdoor seating area, located at 1808 North Sepulveda Boulevard

- 29
30 AYES: Kuch, Savikas, Chairman O'Connor
31 NOES: None
32 ABSENT: Simon
33 ABSTAIN: None

34
35 Director Thompson explained the 15 day appeal period and indicated that the item will be placed
36 on the City Council's Consent Calendar for their review on May 3, 2005.

37
38 **DIRECTOR'S ITEMS**

39
40 Director Thompson indicated that Assistant Planner Don Boudreau recently left Manhattan
41 Beach for a position with the City of Hawaiian Gardens and commended him on his work for the

PLANNING COMMISSION MINUTES

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1 City during the past five years.

2

3 **PLANNING COMMISSION ITEMS** None

4

5 **TENTATIVE AGENDA: April 27, 2005**

6

7 A. Zoning Code Amendment and Local Coastal Program Amendment Regarding Residential
8 Lot Mergers (Continued)

9

10 **ADJOURNMENT**

11

12 The meeting of the Planning Commission was **ADJOURNED** at 10:15 p.m. in the City Council
13 Chambers, City Hall, 1400 Highland Avenue, to Wednesday, April 27, 2005, at 6:30 p.m. in the
14 same chambers.

15

16

17 _____
18 RICHARD THOMPSON
Secretary to the Planning Commission

SARAH BOESCHEN
Recording Secretary

- 14. Building exteriors and common areas shall be maintained in the absence of an individual owner's agreement.
- 15. All common areas including, but not limited to, exterior portions of buildings, structures, utilities, yards, driveways, open space, etc., shall be under common ownership of all owners of condominium units.
- 16. All title conditions, covenants, and restrictions (CC&Rs), in form and content, and any revisions thereto shall, if required by the project use permit, be subject to approval of the City Attorney.
- 17. Two (2) off-street parking spaces and one (1) guest space shall be provided, consistent with Section 10.64.030.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91; Ord. No. 1891, Amended, 01/06/94; § 2, Ord. 2014, eff. July 6, 2000)

10.52.120 Tree preservation and restoration in residential zones, Area Districts I and II.

A. **Purpose.** Tree preservation is necessary for the health and welfare of the citizens of the City of Manhattan Beach in order to conserve scenic beauty, prevent erosion of topsoil, protect against flood hazards, counteract pollutants in the air, and generally maintain the climatic and ecological balance of the area. The intent of this section is the retention and preservation of trees while permitting the reasonable enjoyment of private property.

B. **General Requirements.** Except as provided in subsection G (Exemptions), no person shall directly or indirectly remove or cause to be removed any protected tree as herein defined, from residentially zoned properties within Area Districts I and II, without first obtaining a permit to do so in accordance with the procedures set forth in this section.

C. **Definitions.**

- 1. "Protected tree" shall include: any species of tree, (excluding deciduous fruit-bearing trees and Washingtonia species palms) the trunk of which is located at least partially within the required front yard of a site, with a trunk diameter of twelve inches (12") or multiple trunks totaling twelve inches (12") in diameter at a height of four and one-half feet (4.5') from existing grade; and any replacement tree required pursuant to this section.
- 2. A "tree permit" is a permit required for the removal or replacement of a protected tree.
- 3. A "tree plan" shall mean a plot plan (scale 1/8 inch = 1 foot, minimally) with all trees on the subject property identified by location, size and species, including:
 - a. footprint of all existing and proposed buildings and/or additions to buildings on the property
 - b. location of all trees within the front yard
 - c. size (diameter and height) and species of each tree
 - d. location of drip line for each tree
 - e. designation of tree(s) to be removed, saved, and/or replaced
 - f. proposed location, size and type of replacement tree(s)
 - g. photos of all trees in front yard.

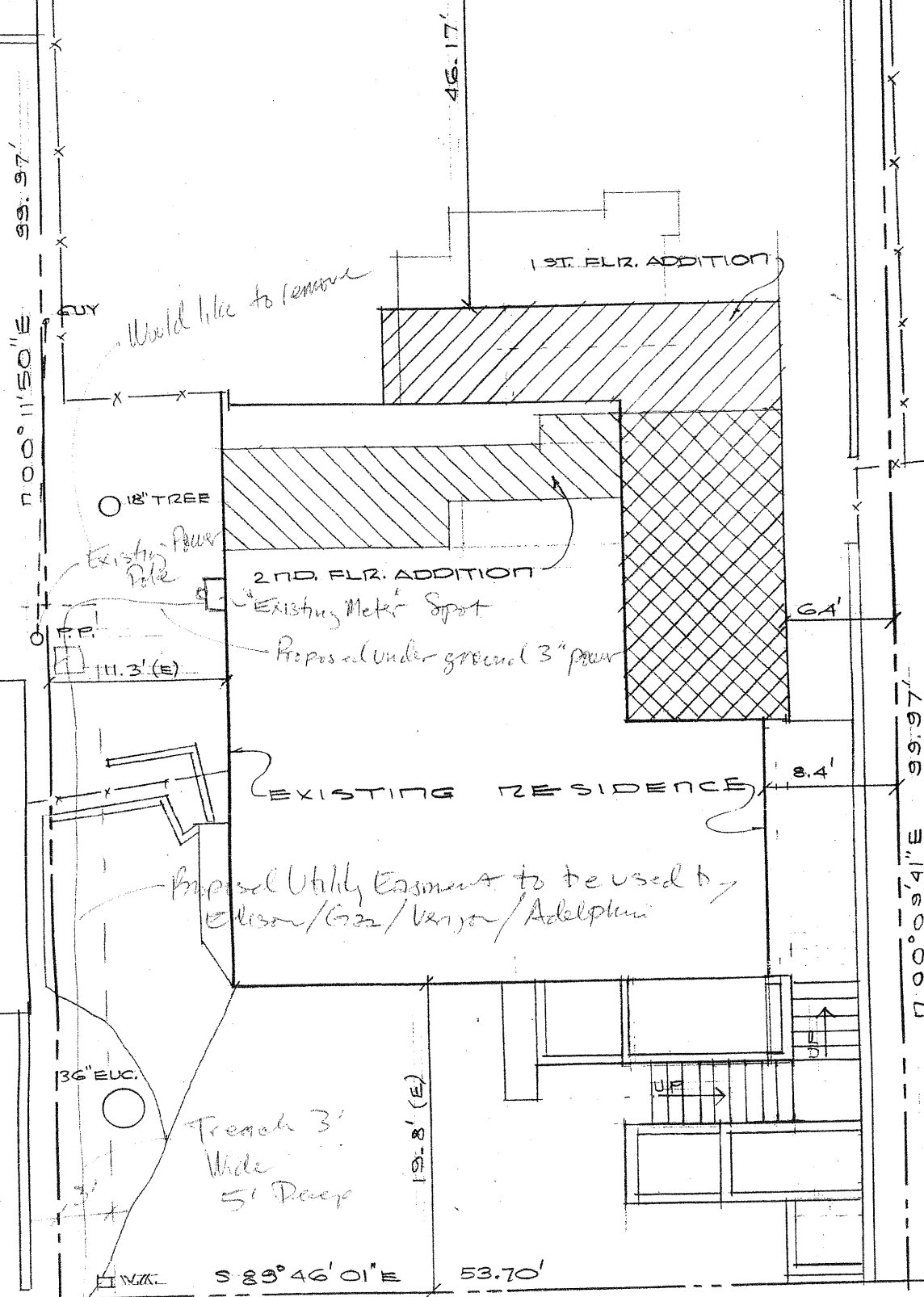
D. **Preservation of Trees During Grading and Construction Operations.**

- 1. Trees required to be retained shall be protected during demolition, grading, and construction operations by methods subject to the approval of the Community Development Director.
- 2. Care shall be exercised for trees to be preserved so that no damage occurs to said trees. All construction shall preserve and protect the health of trees:
 - a. Remaining in place
 - b. Being relocated



1. Suspension, Revocation, and Restoration: In addition to any other penalties allowed by this Code, the Director of Community Development may suspend any Tree Permit. The Planning Commission or City Council may suspend the Tree Permit for a Discretionary Project upon a finding at a public hearing that a violation of conditions of approval has occurred.
2. Stop Work Orders: Whenever any construction or work is being performed contrary to the provisions of this section or condition of approval of the applicable discretionary project the Director of Community Development may issue a written notice to the responsible party to stop work on the project on which the violation has occurred or upon which the danger exists. The notice shall state the nature of the violation and the risk to the trees. No work shall be allowed until the violation has been rectified and approved by the Director of Community Development.
3. After-the-Fact Permit Fees: The standard permit fee shall be doubled for tree removals or other work requiring a tree permit pursuant to this section when commenced prior to issuance of said permit.

(Ord. No. 1884, Enacted August 19, 1993; § 2, Ord. 2045, eff. May 6, 2003)



Would like to remove

1ST. FLR. ADDITION

18" TREE

Existing Power Pole

2ND. FLR. ADDITION

Existing Meter Spot

Proposed Under ground 3" power

EXISTING RESIDENCE

Proposed Utility Easement to be used by Edison/Gas/Venon/Adelphi

36" EUC.

Trench 3' Wide 5' Deep

S 89° 46' 01" E 53.70'

Proposed Underpass

809

DUNCAN PLACE

360 480 8354 Cell

310 410-1000 WIL

Adelphi

-----Original Message-----

From: Laurie B. Jester
Sent: Wednesday, February 02, 2005 5:39 PM
To: 'Tony-blue Sky West'
Cc: Ron McFarland; Carol Jacobson; Donald Boudreau; Juan Price
Subject: 809 Duncan Place-36" Eucalyptus tree-

Tony-

This e-mail confirms our conversation today. You had requested that the Eucalyptus tree to the west of the driveway be removed so that new utilities (gas and electric) could be installed in a trench between the tree and the west property line. I spoke with Tom Cross of SCE and he said that the new electrical service could be undergrounded to the existing pole on the property to the west and the existing overhead from that pole to the existing pole on Duncan Place could remain; the pole on the property to the west is not required to be removed. I talked to Ron McFarland and he agreed.

I spoke to Ron about the gas line and he said that it could be routed around the house and down the driveway, out of the dripline of the tree so that it will not impact the roots of the tree, and then connect to the main in Duncan Place.

Therefore, the tree should remain, and no trenches or grading within the dripline should occur.

Thanks Laurie

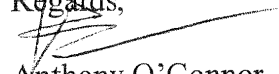
04/08/2005

EXHIBIT
E pc

-This tree will have to be removed sometime in the near future to allow for underground utilities. It is inevitable. Why subject my client to the extra cost and aggravation of having to open the street again and tear up their yard again at a later date. A new tree could be well on its way to providing shade and beauty that my clients and their neighbors could enjoy.

Thank-you again for your consideration.

Regards,



Anthony O'Connor
Blue Sky West Inc.

MANHATTAN BEACH

Different solutions offered to save eucalyptus trees

by Cindy Yoshiyama

Since it was first discovered in California more than two years ago, a native Australian insect has spread to threaten the lives of eucalyptus trees throughout the state, including all of Manhattan Beach.

However, two recent remedies have been found that could effectively save the trees temporarily and preserve the beauty they offer in areas such as the tree section of the city until their natural resistance to the predator is restored.

Within a few years time, the psyllid lerp has invaded the eucalyptus trees that have taken more than 60 years to grow in some parts of the city. The insects strip the trees of their natural defenses. The trees, which are generally durable, not requiring any water once they are full grown, have not been threatened until now.

The adult psyllid was first found inhabiting the trees' foliage in 1998. The nymph psyllid attaches itself to the leaves and builds a type of house, or lerp, from which it can suck the juices out of the leaves, thus killing them.

As a defense mechanism, the trees produce more leaves that are again killed off as the psyllid lays more eggs. According to the city's maintenance supervisor, Juan Price, the eucalyptus trees can only survive three to four defoliations before their starch reserves are depleted and the trees die. More than two dozen trees have had to be removed from the city as a result of the psyllids' infestation.

According to landscape design specialist Mike Garcia, whose company Enviroscap has removed a number of these expired trees, predatory wasps called the psyllphagus wasp, which are natural predators to the psyllid lerp, have been released in an attempt to control the growth of the insects. However, their effectiveness has been hindered by the fact that they are reproducing quickly enough to control

the psyllid population.

At this rate, Garcia predicts that the number of trees that die off could double each month as time carries on.

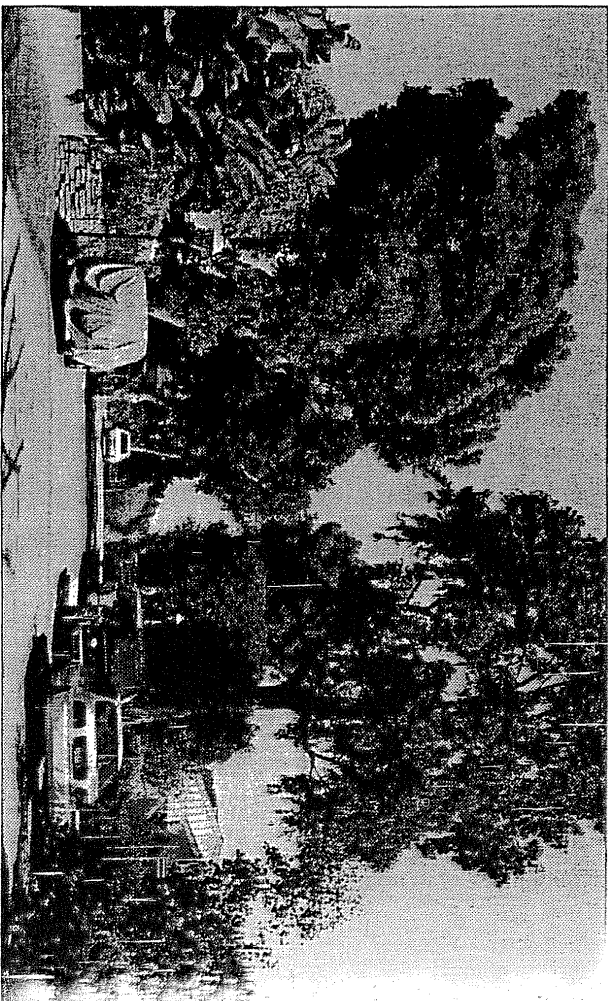
Although Price and Garcia agree that a temporary remedy is necessary for the trees to regain their own defenses, they have different approaches to the problem.

Garcia favors a procedure involving the microinjection of insecticide directly into the trees' trunk that he said takes effect immediately and provides continuous control for more than a year.

"Action should be taken immediately because in two to three years the trees could be gone," he said.

Price is partial to an insecticide called Merit, which is injected directly into the trees' soil and sucked up through the roots. According to Price, the city experimented with the insecticide last year, which resulted in partial improvement. This year, by injecting the insecticide before the spring, when the roots absorb more, he hopes to see greater progress.

He does not approve of the microinjection technique, which he believes harms the tree by allowing the entrance of bacterial and fungal diseases through the hole that is made in the trunk.



Manhattan's shady eucalyptus trees are threatened by insect infestation.

(photo by Chris Allen)

"There are two schools of thought, but I'm opposed to (microinjection) because it drills a hole into the tree like a giant hypodermic needle," he said. "It's like the cure is worse than the disease. I'm philosophically opposed to it."

Although Price claims that his alternative does not harm the tree, he also said that he might not see the effects of the procedure for three to six months.

According to Garcia, insecticides are the only practical option at the moment. Further, he said the insecticides on the long run are more cost-efficient than microinjection, which he said can cost \$1,500 to \$2,000.

In addition in 2001 we treated our tree for the Eucalytus beetle that infested it.

We think the tree has been weakened by that infestation in spite of the treatment received. Which further lends us to believe that that tree has got to go for safety sake.

Karin Louise
and Joe Mulligan

809 Duncan place
Kamhattan Beach CA 90266

tel (310) 562-8709

DEAR COMMISSION MEMBERS,

EVERY SINGLE NEIGHBOR IN OUR STREET VOLUNTEERED TO SIGN OUR PETITION TO REMOVE THE TREE IN OUR FRONT YARD.

PLEASE TAKE THE TIME AND CARE TO READ THEIR COMMENTS FOR THEY ARE MEMBERS OF OUR COMMUNITY, SOME OF THEM FOR A VERY LONG TIME, AND THEIR FEARS AND TROUBLES CANNOT BE IGNORED.

SINCERELY,

PETITION TO REMOVE THE TREE AT 809 DUNCAN PLACE

By Marie and Joe Mulligan.

Dear neighbors,

This petition is to ask for your help in getting our Eucalyptus tree in our front yard removed.

We initially decided to cut the tree because it had become a liability and danger for us, our property and yours. In the spring of 2004, a branch fell on our open garage door and broke it, a month before that, a branch had fallen a few inches away from Armen's car and narrowly missed it, all that in spite of our and Southern California Edison regular trimming. Our next door neighbor Liz was also concerned about how much this big tree was leaning toward the street, no longer vertical. If anything happened to our neighbors we were and are liable. It became obvious the tree had to go for the sake of all, and we requested a tree removal permit.

All that was before we realized, after the remodel of our house had begun, that the tree was in the path of Southern California Edison's 3 feet easement and we wanted to underground the utilities. It is a mandatory easement and we have no choice but to accept it since every thing is going to be undergrounded soon in our neighborhood, and the power pole was already placed on my property, west side of it, 40 years ago.

The tree is in the way of undergrounding Gas, electricity and other utilities for my house but also for the neighbor west of me and north of Armen.

Digging by the roots of the eucalyptus would endanger its life, its safety and ours.

Therefore my contractor Tony O'Connor placed a second demand to remove the tree after being advised by an arborist about the lack of safety of the tree if we dug by it.

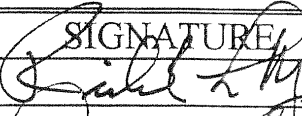
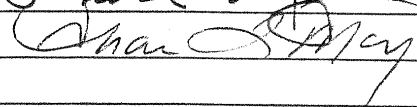
The city requires something that we were already fully prepared to do: replace the tree by another or several other trees, and we provided the city with our proposal to replace it with one or two pink Melaleucas, beautiful, elegant trees that do not grow too tall but would grace our street with pink boughs every spring.

Our permit was denied in spite of all the evidence that showed the tree should be removed : letters from an arborist, letter from Southern California Edison, recommendation from The Gas Company and letter from us, informing the city of Manhattan Beach of our and our neighbors concern for their belongings, their and their children's safety as well.

We required that a special commission review our request and we want to show the commission that you support it.

Please fill the information bellow and sign it, showing your support. You also have space for special comments. Thanks.

Marie and Joe Mulligan.

NAME	ADDRESS	SIGNATURE
RICHARD L. MAY	816 DUNCAN PLACE, M.B.	
SHARON L. MAY	816 DUNCAN PLACE M.B.	
Comments : SEE ATTACHMENT		

PETITION TO REMOVE THE TREE AT 809 DUNCAN PLACE

14

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Dear neighbors,

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We initially decided to cut the tree because it had become a liability and danger for us, our property and yours. In the spring of 2004, a branch fell on our open garage door and broke it, a month before that, a branch had fallen a few inches away from Armen's car and narrowly missed it, all that in spite of our and Southern California Edison regular trimming. Our next door neighbor Liz was also concerned about how much this big tree was leaning toward the street, no longer vertical. If anything happened to our neighbors we were and are liable. It became obvious the tree had to go for the sake of all, and we requested a tree removal permit.

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Marie and Joe Mulligan.

NAME	ADDRESS	SIGNATURE
ELIZABETH M. IRWIN	825 Duncan Place	Elizabeth M. Irwin
JAMES D. IRWIN	825 DUNCAN PLACE	James D. Irwin
Comments :		
PLEASE REMOVE THIS EYESORE (we have lived here 47 1/2 YEARS!)		

PETITION TO REMOVE THE TREE AT 809 DUNCAN PLACE
By Marie and Joe Mulligan.

14

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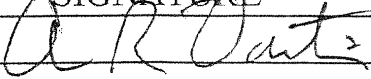
The city requires something that we were already fully prepared to do: replace the tree by another or several other trees, and we provided the city with our proposal to replace it with one or two pink Melaleucas, beautiful, elegant trees that do not grow too tall but would grace our street with pink boughs every spring.

Our permit was denied in spite of all the evidence that showed the tree should be removed : letters from an arborist, letter from Southern California Edison, recommendation from The Gas Company and letter from us, informing the city of Manhattan Beach of our and our neighbors concern for their belongings, their and their children's safety as well.

We required that a special commission review our request and we want to show the commission that you support it.

Please fill the information bellow and sign it, showing your support. You also have space for special comments. Thanks.

Marie and Joe Mulligan.

NAME	ADDRESS	SIGNATURE
Armen Vartian	805 Duncan Place, M.B.	
Comments :		

**Tree Assessment Report
809 Duncan Place**

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By _____

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EXHIBIT
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Greg J. Monfette

Certified Arborist

**Tree Assessment Report
809 Duncan Place**



Greg J. Monfette

Certified Arborist

This tree is a large tree that exists on a public street where we have pedestrians and vehicular traffic, power lines overhead and throughout the tree, with adjacent homes next to and across from this tree. If you severe, or damage, the roots of this tree in any manner you will be creating a more dangerous condition to public and property and that is why I am recommending that this tree be removed as soon as possible so the proposed work can be performed in the publics best interest.

Neighborhood Consulting Arborist is recommending that this tree be removed as soon as possible.

I would recommend that the property owner mitigate the loss of this tree by replacing the removed tree on a two for one basis with **48" box size specimen** trees to be planted at locations to be determined by the City. (The replacement tree should be one that is appropriate for the site)

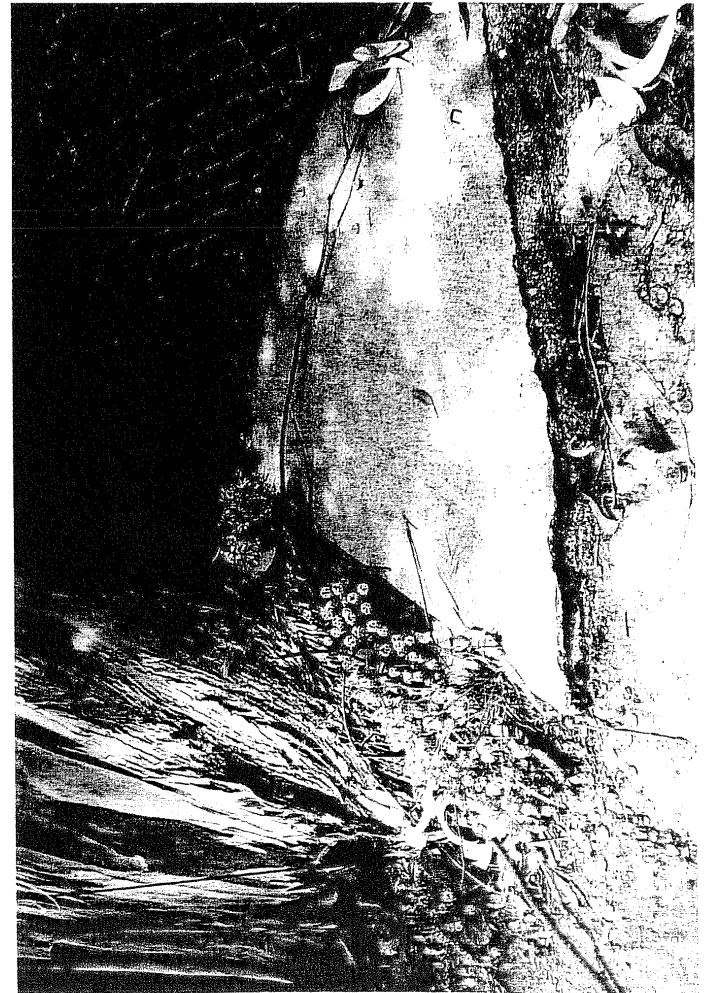
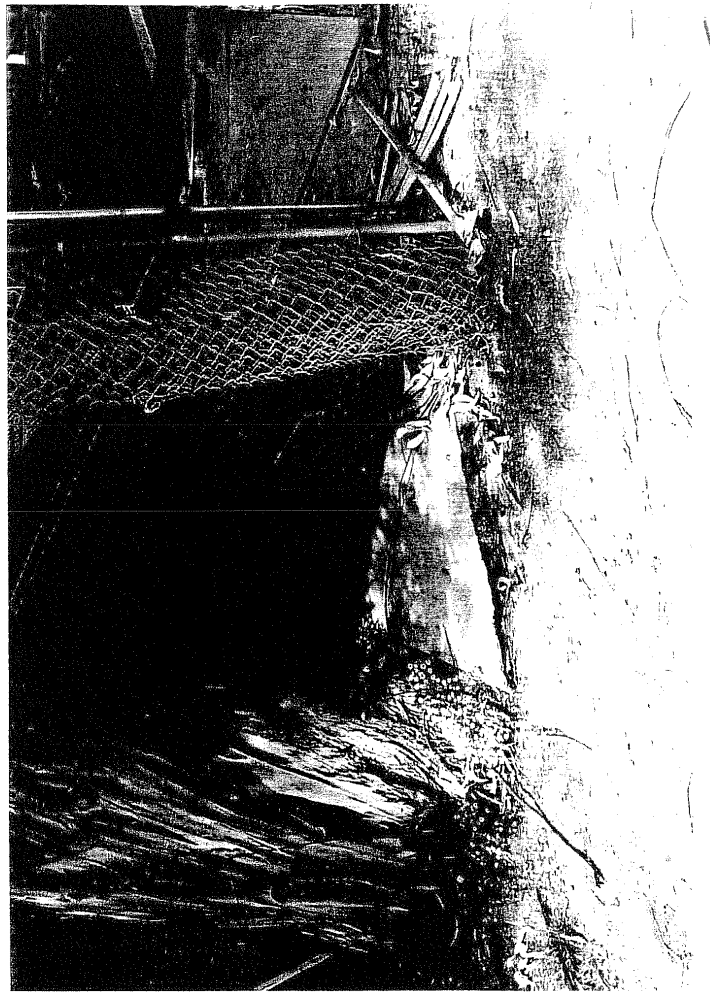
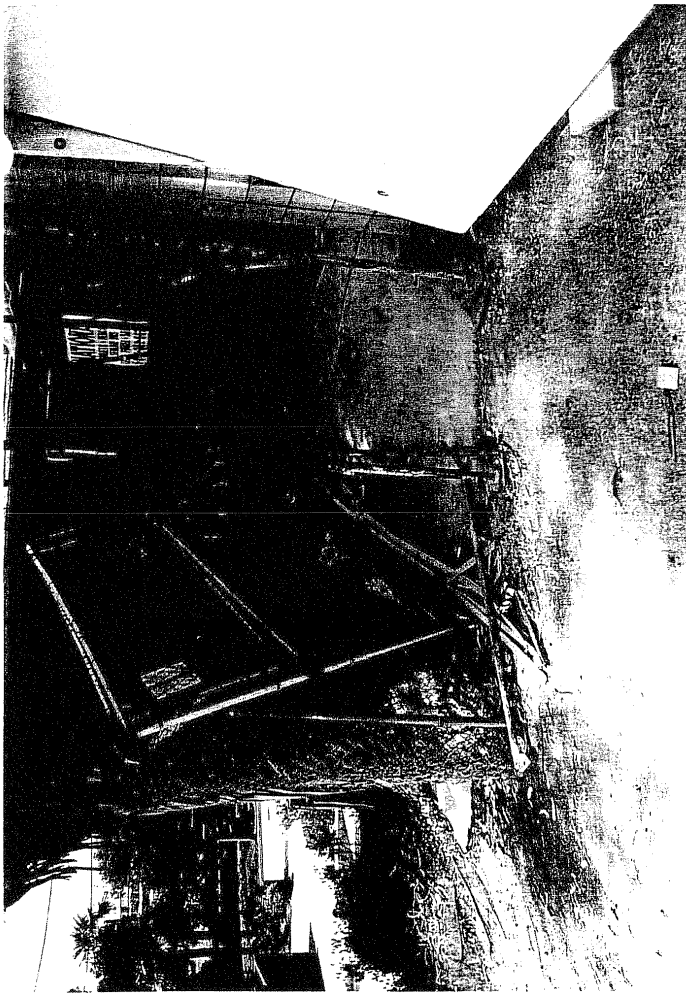
Assumptions and limiting conditions:

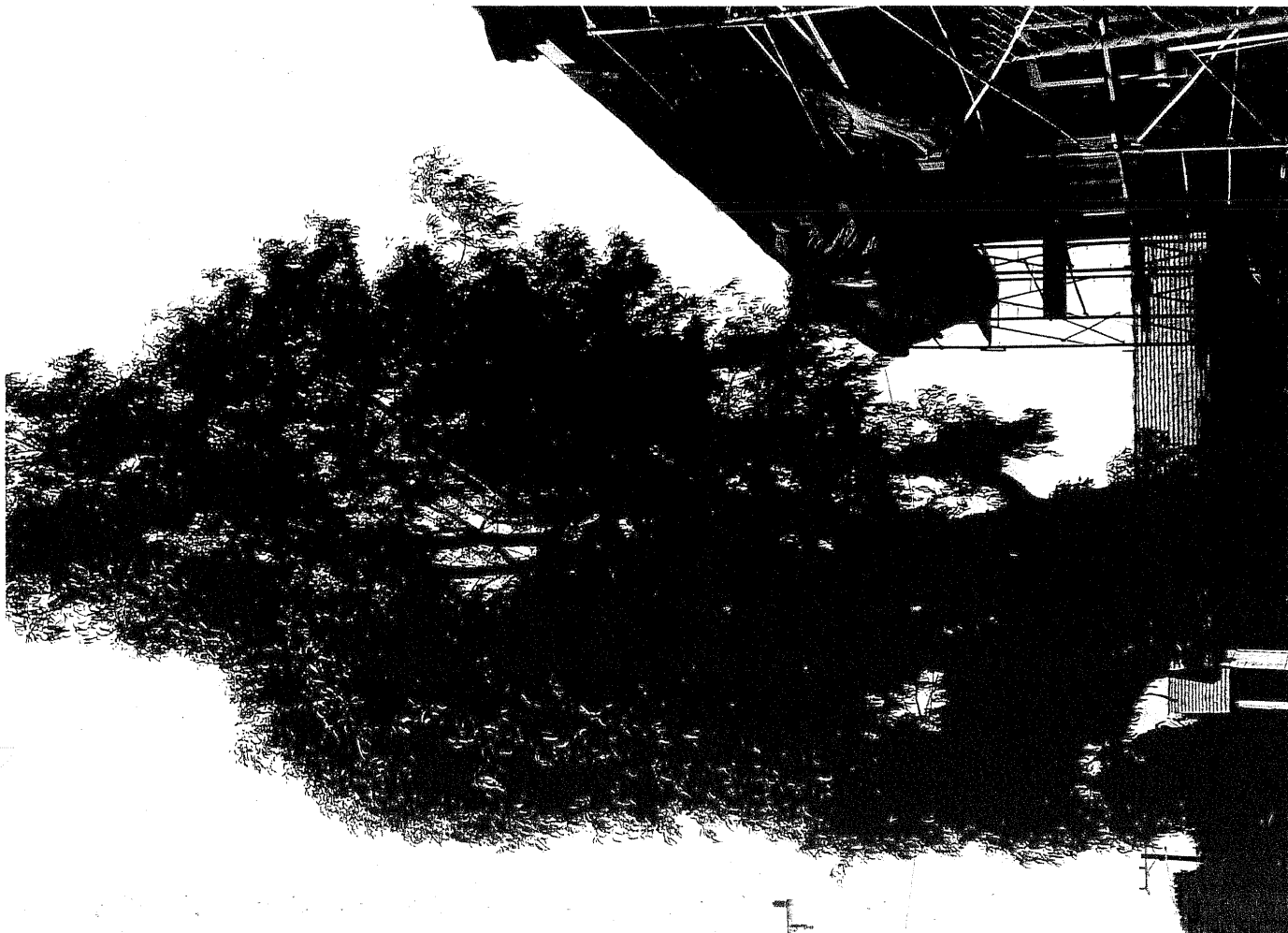
1. Care has been taken to obtain all information from reliable sources. All data have been verified insofar as possible; however, the consultant can neither guarantee nor be responsible for the accuracy of information provided by others.
2. The consultant will not be required to give testimony or to attend court by reason of this report unless subsequent contractual arrangements are made, including payment of an additional fee for such services as described in the fee schedule and contract of engagement.
3. Loss or alteration of any part of this report invalidates the entire report.
4. Possession of this report or a copy thereof does not imply right of publication or use for any purpose by any other than the person to whom it is addressed, without the prior expressed written or verbal consent of the consultant.
5. This report and any values expressed herein represent the opinion of the consultant, and the consultant's fee is in no way contingent upon the reporting of a specified value, a stipulated result, the occurrence of a subsequent event, nor upon any finding to be reported.
6. Unless expressed otherwise: 1) information contained in this report covers only those items that were examined and reflects the condition of those items at the time of inspection; and 2) the inspection is limited to visual examination of accessible items without dissection, excavation, or coring. There is no warranty or guarantee, expressed or implied, that problems or deficiencies of the trees or property in question may not arise in the future.



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Director, International Society of Arboriculture (ISA). The ISA is committed to the professional development and promotion of professional standards for arborist.

Member, California Oak Foundation (COF). A state wide organization devoted solely to the conservation, restoration and management of California's native oak heritage.

**EMPLOYMENT
EXPERIENCE**

**CITY OF LOS ANGELES, BUREAU OF STREET SERVICES,
STREET TREE DIVISION, SUPERINTENDENT I**

- ◆ Assist the Chief Forester of the Street Tree Division in Los Angeles
- ◆ Coordinate the City's Sidewalk Repair Program to ensure public safety and tree preservation in the City's Urban Forest
- ◆ Coordinate and train personnel in all root pruning and tree retention activities within the Urban Forest of Los Angeles
- ◆ Recommend the use, and oversee the implementation, of alternative options in lieu of conventional sidewalk repair throughout the Urban Forest of Los Angeles
- ◆ Act as the Bureau of Street Services liaison to the Board of Public Works
- ◆ Aid in the directing, managing, and monitoring of the Urban Forest
- ◆ Coordinate Community Enhancement, Streetscape, and Neighborhood Block Grant projects, as well as other alternately funded programs
- ◆ Apply Bureau policy to ensure compliance with safety rules
- ◆ Conduct/review feasibility studies and requests for grant funding
- ◆ Prepare reports for the Director and the Board of Public Works, and letters of response to Council Members, special interest groups and the public, regarding street tree related projects within LA's Urban Forest
- ◆ Attend Community, Council, and Board of Public Works meetings
- ◆ Oversee the interviewing, hiring, and transferring of personnel
- ◆ Provide quality service to the City, and work effectively with elected officials and various community groups
- ◆ Develop city policies related to the urban forest

- ◆ Review and develop long range goals for reforestation of the City of Los Angeles's urban forest
- ◆ Direct subdivision activities, review development plans, oversee tree maintenance contracts, and provide for the appropriate uniform application and enforcement of the Street Tree Ordinances and policies
- ◆ Assign, instruct and review work of supervisors and set priorities for special projects, service functions and related divisional procedures and policies
- ◆ Oversee all pesticide and herbicide applications, rules, procedures, and policies, and ensure a safe working environment

**CITY OF LOS ANGELES, BUREAU OF STREET SERVICES,
STREET TREE DIVISION, CITY WIDE INSPECTOR**

- ◆ Handle planting notices, contracts, street repair and improvement projects, Council orders affecting the Division, and supervise the Bay Area crews
- ◆ Coordinate tree trimming activities, tree removals, and enforce City safety rules and regulations

**CITY OF LOS ANGELES, BUREAU OF STREET SERVICES,
STREET TREE DIVISION, TREE SURGEON**

- ◆ Climbing, trimming, treating, planting, and removing trees
- ◆ Tree spraying with aerial spray equipment
- ◆ Conduct training sessions and enforce City safety rules
- ◆ Respond to all emergency tree call situations

OWNER/OPERATOR – NEIGHBORHOOD TREE SERVICE

- ◆ Responsible for labor scheduling, estimates, customer relations, equipment and vehicle maintenance

NORTH AMERICAN TREE SERVICE – TREE SURGEON

- ◆ Part and full time tree trimming work
- ◆ Climbing, trimming, treating, planting and removal, and timber cutting

EDUCATIONAL EXPERIENCE

- ◆ Diablo Valley College/Santa Monica College 1981-1984
- ◆ Los Angeles Com. College/Street Maintenance Technology 1997-1999

**CAREER ENHANCEMENT
DEVELOPMENT COURSES**

- ◆ Environmental Design - Pierce College - 1983
- ◆ Plant Identification & Use - Pierce College - 1989
- ◆ Voice & Articulation - Los Angeles Community College - 1990
- ◆ Spanish Conversation - Los Angeles Community College - 1994
- ◆ Electrical Craft Helper - Los Angeles Community College - 1995
- ◆ Electrical Hazards Awareness Program - (E.H.A.P.) - 1995
- ◆ Street Maintenance Technology - LA Community College - 1997 to 1999

SPECIALIZED TRAINING SEMINARS

John R. Sterling
828 First Street
Manhattan Beach, CA 90266

Apr 6, 2005

City of Manhattan Beach
Director of Community Development

Reference: Notice of Hearing Concerning an Appeal
Of Decision to Deny Removal of Tree-809 Duncan Place

My lot is contiguous to the one in question, i.e. the southwest corner of my lot touches the northeast corner of the one in question.

I think, in fairness to the owners of this property, they should be allowed to remove the tree to enhance the major addition project they are doing on their home. I have seen developers and utility companies remove many trees, so why should these owners be singled out for denial.

Furthermore, this tree is not compatible with the general landscaping in this area.

John R. Sterling
John R. Sterling

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By _____

- April 6, 2005 Arborist report submitted (from Neighborhood Consulting Arborist), which requests that the tree be removed as soon as possible for various reasons.
- April 7, 2005 Arborist report reviewed by staff and City's arborist (West Coast Arborist) two days prior to the distribution of the Planning Commission report for 4/13 meeting. City arborist did not have ample opportunity to respond in writing due to the lateness of the submittal of the report. However, he concluded that the submitted tree assessment report draws a reasonable conclusion and therefore the tree may be removed.
- April 13, 2005 Planning Commission approved request to remove the tree and replace it with a 48" box tree within the front yard setback area.

TREE PERMIT APPEAL
809 Duncan Place
Chronology of Events

- July 27, 2004 Building permit #03-02428 was issued for a first and second story remodel. Submitted survey shows a large 36” diameter eucalyptus tree within the 20 front yard setback area. No construction was proposed near the vicinity of the tree.
- Fall, 2004 Verbal request by property owner to remove the tree. They were advised that the mature healthy tree could not be removed as it was protected under the Tree Ordinance.
- Sept, 27, 2004 Applicant submits Tree Permit application (not including fee), which includes neighbor’s acknowledgement form and reasons why the tree should be removed. Tree Permit application did not include an arborist report. Applicant was advised that the removal of the tree would not be approved as it was protected under the Tree Ordinance. Staff continued to work with the contractor to find solutions to protect the tree through meetings, site visits and phone conversations. It was suggested that they provide a comprehensive arborist evaluation.
- Dec. 1 & 4, 2004 Owner submitted brief letters from their arborist stating that trenching for utilities between the retaining wall and the tree would be detrimental to the health of the tree. Applicant was told verbally that the tree could not be removed based on the suggested trenching. Staff continued to work with the contractor to provide alternative solutions to undergrounding the utilities in a manner that was not detrimental to the tree.
- February 2, 2005 E-mail to contractor indicating that based on the information submitted the tree could not be removed.
- February 23, 2005 Applicant’s contractor (Blue Sky West, Inc.) requested in writing that the tree be removed. Again the request to remove the tree was denied by staff.
- February 28, 2005 Tree Permit application logged with payment of fee.
- March 2, 2005 Appeal application filed requesting hearing with the Planning Commission.

- April 6, 2005 Arborist report submitted (from Neighborhood Consulting Arborist), which requests that the tree be removed as soon as possible for various reasons.
- April 7, 2005 Arborist report reviewed by staff and City's arborist (West Coast Arborist) two days prior to the distribution of the Planning Commission report for 4/13 meeting. City arborist did not have ample opportunity to respond in writing due to the lateness of the submittal of the report. However, he concluded that the submitted tree assessment report draws a reasonable conclusion and therefore the tree may be removed.
- April 13, 2005 Planning Commission approved request to remove the tree and replace it with a 48" box tree within the front yard setback area.

**CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Planning Commission

THROUGH: Richard Thompson, Director of Community Development

FROM: Daniel A. Moreno, Associate Planner

DATE: April 13, 2005

SUBJECT: **Appeal of an Administrative Decision to Deny a Tree Permit Requesting Approval to Remove a Tree at 809 Duncan Place (Mulligan)**

RECOMMENDATION

Staff recommends that, based on the arborists' recommendation, that the Planning Commission **APPROVE** the tree permit appeal thereby allowing the Eucalyptus tree to be removed.

APPLICANTS

Joe and Marie Mulligan
809 Duncan Place
Manhattan Beach, Ca. 90266

BACKGROUND

Tree Permit Application

On February 28, 2005, the property owners filed a Tree Permit (TR05-0007) requesting formal approval to remove the tree. See vicinity map for property location (Exhibit A). Their stated reasons were that it was large, is leaning towards the neighbor's house, the branches are falling off and are a danger, and it is affecting the sewer lines. In addition to the above reasons, it is also the applicants desire to remove the tree because they believe that it will be in the way of the underground utilities. The owners arborist had previously determined that digging a wide deep trench immediately adjacent to the tree for utilities would be harmful to the tree, however the letter provided had a very narrow focus only addressing how trenching may impact the tree. Staff agreed with this assessment and the project was then redesigned to reroute the utilities around the tree, as close to the house as possible, and down the driveway, thereby avoiding the tree roots as much as feasible, and protecting the tree. The tree permit was then subsequently denied and the owner then appealed the Directors decision. Two days before the distribution of this staff report a comprehensive Tree Assessment Report from a certified arborist was submitted by the property owner which recommended removal of the tree for various reasons.

Tree Ordinance

The City's Tree Preservation Ordinance was originally adopted August 19, 1993 (Ordinance No. 1884), and is included as Section 10.52.120 of the Zoning Code (Exhibit B). At that time, the Ordinance applied only to the Tree Section, generally bounded by Rosecrans Avenue, Blanche Road, Valley Drive and Sepulveda Boulevard. The Ordinance protects all trees, except deciduous fruit-bearing trees and Washingtonian species palms, with a 12" or greater trunk diameter located in the front yard. At that time the Ordinance was implemented more as a "removal and replacement" regulation than a "preservation" regulation.

On May 6, 2003, the Ordinance was expanded (Ordinance No. 2045) to apply to all of the residential zones in Area Districts I and II; the Beach Area is not covered by the Tree Ordinance. The Purpose Section states, in part, that "The intent of this section is the retention and preservation of trees while permitting the reasonable enjoyment of private property." With the expansion of the Tree Ordinance, planning staff began implementing the regulation as a "preservation" regulation, not a "removal and replacement" regulation as previously implemented.

After the adoption of the expanded Tree Ordinance, the City Council and Planning Commission held a joint meeting on July 22, 2003 to discuss a variety of planning issues, including the Tree Ordinance. At that meeting the City Council stated that the Ordinance was intended to preserve trees, and that Staff should continue to enforce the Ordinance accordingly. Staff works with architects, developers and contractors during the design of a home and throughout the construction to ensure that new construction considers and protects existing trees that are protected under the Ordinance.

Applications for a permit typically include notification signatures from neighbors and/or an arborist's written recommendation that the tree should be removed. Tree permits for dead or unhealthy trees typically require little review or concern. Proposed tree removals related to construction projects involve more review, and staff encourages retention of protected trees in the design process. If no alternatives are available then Staff typically approves an application. Remaining trees are required to be protected by chain link fencing during the construction process. Staff works with architects, developers and contractors during the design of a home and throughout the construction to ensure that new construction considers and preserves existing trees that are protected under the Ordinance.

DISCUSSION

On July 27, 2003, building permit #03-02428 was issued for a first and second story remodel at the subject site. The submitted survey shows a large 36" diameter eucalyptus tree on the southwest area of the property within the 20-foot front setback area. No construction was proposed near the vicinity of the tree. This tree is surrounded by the subject property driveway to the east, the side yard property line retaining wall to the west, a planter with a water meter to the south, and a paved, sloped walkway to the north.

In the Fall of 2003, prior to demolition of the building, the property owners verbally requested removal of the tree. They were advised at that time that the mature tree appeared to be a healthy specimen and could not be removed as it was protected under the existing Tree Ordinance. Staff also suggested that a comprehensive arborist's evaluation could be beneficial.

On December 1st and 13th, 2004 the owner submitted two very brief letters from their arborist stating that the trenching for utilities between the retaining wall and the tree would be detrimental to the health of the tree. (Exhibits C and D). Staff continued to work with the contractor to provide alternative solutions to undergrounding the utilities in a manner that would not be detrimental to the tree, and on February 2, 2005 staff e-mailed the contractor and again indicated that based on the information submitted the tree could not be removed. (Exhibit E).

On February 23, 2005, the applicants' contractor, Blue Sky West, Inc. then requested in writing that the tree be removed (Exhibit F), and a formal Tree Permit application was submitted on February 28, 2005. Although an arborist's report was not submitted, the contractor stated the following reasons why he felt that the tree should be removed:

- The trees shallow root system makes it more likely to topple in a storm
- The trees west root system has been interrupted by a retaining wall on the west property line
- The pressure is forcing on the retaining wall is causing damage to the neighbor's home where it attaches to the retaining wall
- The roots from the tree continually clog their main sewer line
- Branches continually fall from the tree causing an unsafe condition
- The neighbor's find it unsafe and unsightly and would like for it to be replaced
- This type of tree is likely to be infested by beetles
- Not allowing this home to have underground utilities lowers the resale value of the home

At this point in time, the contractor still proposed to trench in the narrow space between the retaining wall and the tree for the underground utilities, and staff informed them that alternatives to protect the tree would be required to be explored. After planning staff consulted with both the Building and Engineering Divisions it was confirmed that the underground electrical lines could be routed down the existing driveway, in the same trench as the gas line thereby avoiding trenching between the tree and the retaining wall, which had been determined to be detrimental by the original arborist's letters. This design would also allow the existing utility pole between the neighbors (located at the common property line) to be removed as desired by the subject property owners, thus allowing the new utilities to be installed underground under the driveway, and then connected to the existing utility pole across the street to the southwest. Staff also suggested to the contractor that a more comprehensive arborist's evaluation could be beneficial. The request to remove the tree was again denied by staff and on March 2, 2005, the City received an appeal of the Directors administrative decision to deny removal of the tree. (Exhibit G)

Two days before this staff report was distributed, the appellant submitted a series of petitions from neighbors (Exhibit H) requesting removal of the Blue Gum Eucalyptus tree as well as an arborist report (Exhibit H) that recommends removal of the tree. The petition does not provide complete information and misrepresents the undergrounding required for the project. The existing utility pole on the west side property line is not required to be undergrounded by the City or Edison at this time. Although the area is an undergrounding district and all utilities are scheduled to be undergrounded within the next few years, the property owner is requesting that this pole be undergrounded at this time at their expense. The underground utilities would then connect to the pole to the southwest across Duncan Place and there would be no more overhead wires adjacent to the tree causing any potential conflicts.

The report from Neighborhood Consulting Arborist dated April 2, 2005, received April 6th, recommends that the tree be removed as soon as possible for various reasons. The City's arborist, West Coast Arborist (WCA), has not had an opportunity to respond in writing to the report due to the lateness of its receipt; however they did inspect the tree and respond verbally. In summary, WCA believes that the tree assessment report submitted by the appellant draws a reasonable conclusion and therefore the tree may be removed.

NOTIFICATION

Staff has mailed a notice to all neighboring property owners within 500 feet of the subject site. Staff has received one letter and one phone call requesting that the property owners be allowed to remove the tree (Exhibit I).

CONCLUSION

With the late submittal of the arborists' report the City's consulting arborist has determined that it is a reasonable conclusion that the tree should be removed. Staff recommends approval subject to review and approval of plans that require an appropriate mature replacement tree, including location and species.

Attachments:

- Exhibit A – Vicinity Map
- Exhibit B – Tree Ordinance
- Exhibit C – Arborist letter (December 1, 2004)
- Exhibit D – Arborist letter (December 13, 2004)
- Exhibit E – E-mail from Staff denying request to remove tree (February 2, 2005)
- Exhibit F - Blue Sky West, Inc. letter requesting removal of the tree- (February 23, 2005)
- Exhibit G – Appeal Application (March 2, 2005)

Exhibit H – Tree Assessment Report- Greg J. Monfette, April 2, 2005, and
neighbors petitions
Exhibit I- Letter from Neighbor dated April 6, 2005

cc: Joseph and Marie Mulligan – 809 Duncan Place, Applicant’s

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