

CITY OF OAKLAND



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December 10, 2008

The Honorable Jeffrey Taylor, Chair
Parks and Recreation Advisory Commission (PRAC)
City of Oakland, CA

RE: Appeal of Tree Removal Permit for 13312 Clairepointe Way

Dear Mr. Taylor and Members of PRAC:

The following is a summary, background, discussion, and staff recommendation regarding the subject appeal of a tree removal permit determination.

SUMMARY

The Tree Services Division denied a tree removal permit application for the removal of four coast live oak trees from the backyard of a home at 13312 Clairepointe Way. The applicant wants to remove the trees to resolve the view claims of two adjacent property owners (see Attachment #1). The permit was denied because coast live oak trees are categorically exempt from view claims per Section 15.52.030 of the View Ordinance. Also, a number of other trees, non-oaks, are blocking views and removing low limbs from those trees will restore views.

BACKGROUND

Merrilee Mitchell, the property owner of 13312 Clairepointe Way, submitted an application to the Tree Services Division on August 27, 2008 to remove four oak trees. The reason for the removal was stated as:

"The large tree is seriously blocking the view of one neighbor and beginning to block the view of another neighbor. These trees were tiny when we all moved in 20-30 years ago. They are a potential canopy fire hazard and are causing stress among neighbors. Topping will negatively impact the health of the large tree and its health is already compromised".

On October 3, 2008, the Tree Services Division denied the permit application. The request was denied because it did not comply with the criteria of the View Ordinance and the trees are healthy and are not a fire hazard.



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On October 10, 2008, Merrilee Mitchell appealed staff's decision. The basis for the appeal was stated as:

"Requesting permission to remove just one of the four oak trees that is an unhealthy tree and is ruining the view for neighbors. The value of one house is negatively affected by the loss of a formerly spectacular view. One neighbor won a judgment against another neighbor years ago to remove other trees but they were never removed. Now my one tree has wrecked the last of their view, and I would like to accommodate them".

On October 10, 2008, Austra Gauger also filed an appeal. She is an adjacent neighbor, living at 13300 Clairepointe Way. The basis for the appeal was stated as:

"As an adjoining neighbor whose view is impacted by this one tree nearest of the four oak trees, I am requesting removal of this oak tree, an unhealthy tree. In 1974 we bought our house because of its spectacular, unobstructed view (my neighbor is completely obstructed). Our home values are negatively or will be affected by this view loss".

DISCUSSION

Section 12.36.050 of the Protected Tree Ordinance lists the criteria used to decide if trees should be removed or preserved. Decision making for tree removals is a two-step process:

- First, the applications are reviewed to see if they accomplish at least one of five possible objectives. The Tree Services Division feels removal of four trees, or just the largest tree, does not meet criterion 12.36.050(A)3, which states, "To take reasonable advantage of views, including such measures as are mandated by the resolution of a view claim in accordance with the view preservation ordinance (Chapter 15.52 of this code)." The criterion is not met for the following reasons:
 - Coast live oak trees are categorically exempt from view claims;
 - The three smaller trees are causing no view obstructions;
 - The largest oak is obstructing a small percentage of the view; and
 - It is unreasonable to request the removal of oak trees when other, non-categorically exempt trees are blocking the view. The non-exempt trees are providing significant view obstruction and should be the focus of the neighbors' view restoration negotiations, (see Attachments #2 and #5).
- Second, even if the tree(s) qualify for a removal objective, preservation is required if at least one of four possible grounds for denial apply to the situation. The grounds for denial for this permit are Section 12.36.050(B) 1b, which states that "Removal of a healthy tree of a protected species could be avoided by trimming, thinning, tree surgery or other reasonable treatment".

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- Pruning work, on trees other than the oaks, will restore a reasonable amount of view for the neighbors. The View Ordinance states that both trees and views are valuable, and that when the two come into conflict, find a solution that achieves a balance between views and trees. The View Ordinance *does not* state that 100% of a view shall be restored at the expense of trees.
- The tree owner may prune the large oak to try and restore some view for the neighbors. No permit is needed from the city for pruning. However, little will be gained in view restoration and the oak will be damaged by unnecessary tree work.
- The property owner is not obligated to trim, thin or do any work on the large oak due to the View Ordinance categorical exemption.

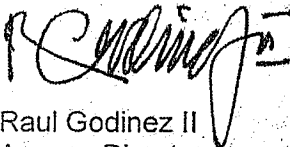
Section 12.36.110(C) of the PTO states, "In considering the appeal, the Park and Recreation Advisory Commission shall determine whether the proposed tree removal conforms to the applicable criteria. It may sustain the decision of The Tree Services Division or require such changes or impose such reasonable conditions of approval as are, in its judgment, necessary to ensure conformity to said criteria".

RECOMMENDATION

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

- Deny the appeals by Merrilee Mitchell and Austra Gauger; and
- Instruct staff to issue tree permit application number ND08-119, upholding staff's decision to require preservation of four oak trees and deny the applicant's request to remove four oak trees.

Respectfully submitted,



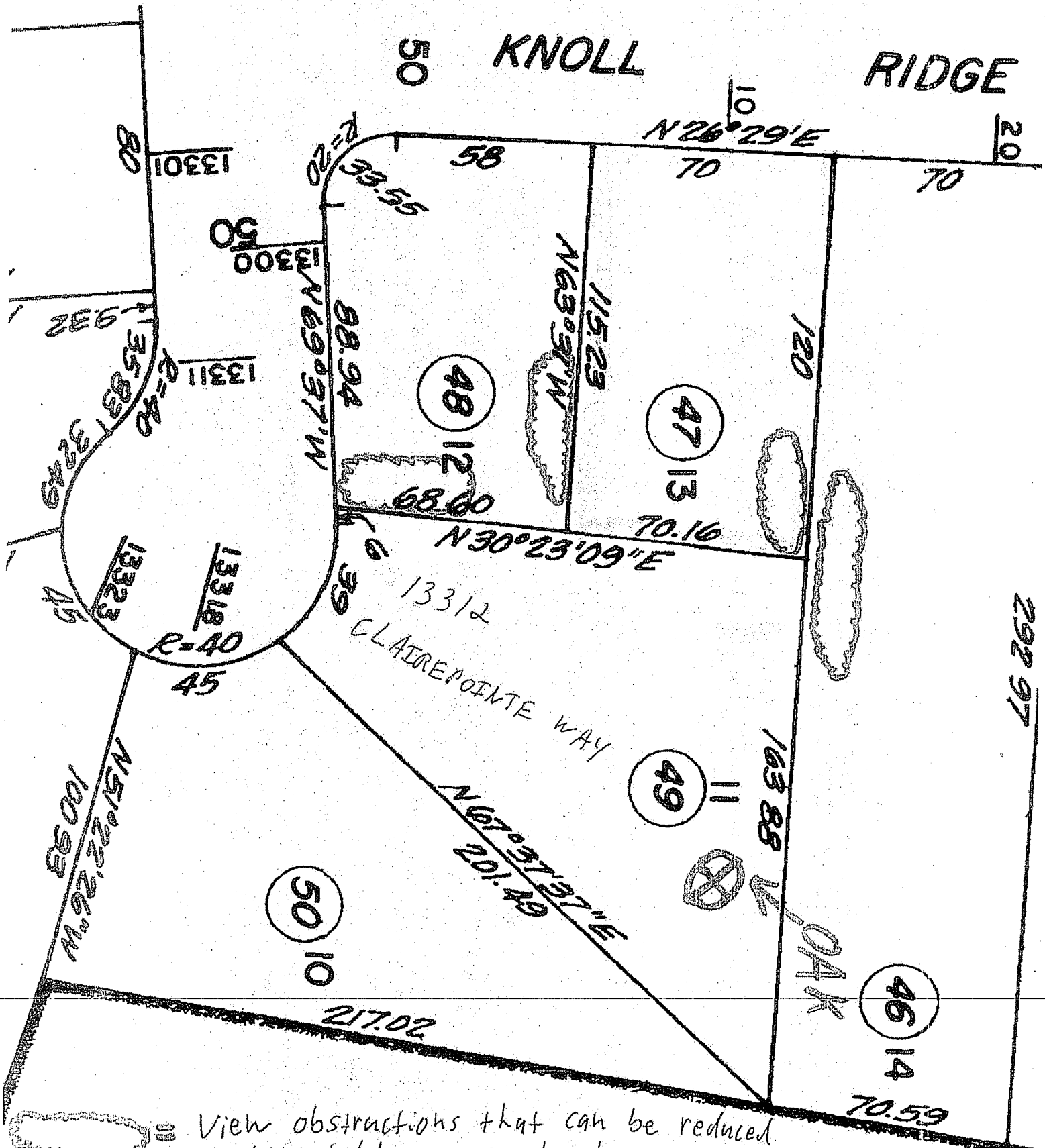
Raul Godinez II
Agency Director

RG:DG:pia

Enclosures

cc: Bruce Saunders, Department of Infrastructure and Operations
Daniel Gallagher, Tree Services Division

ATTACHMENT #1



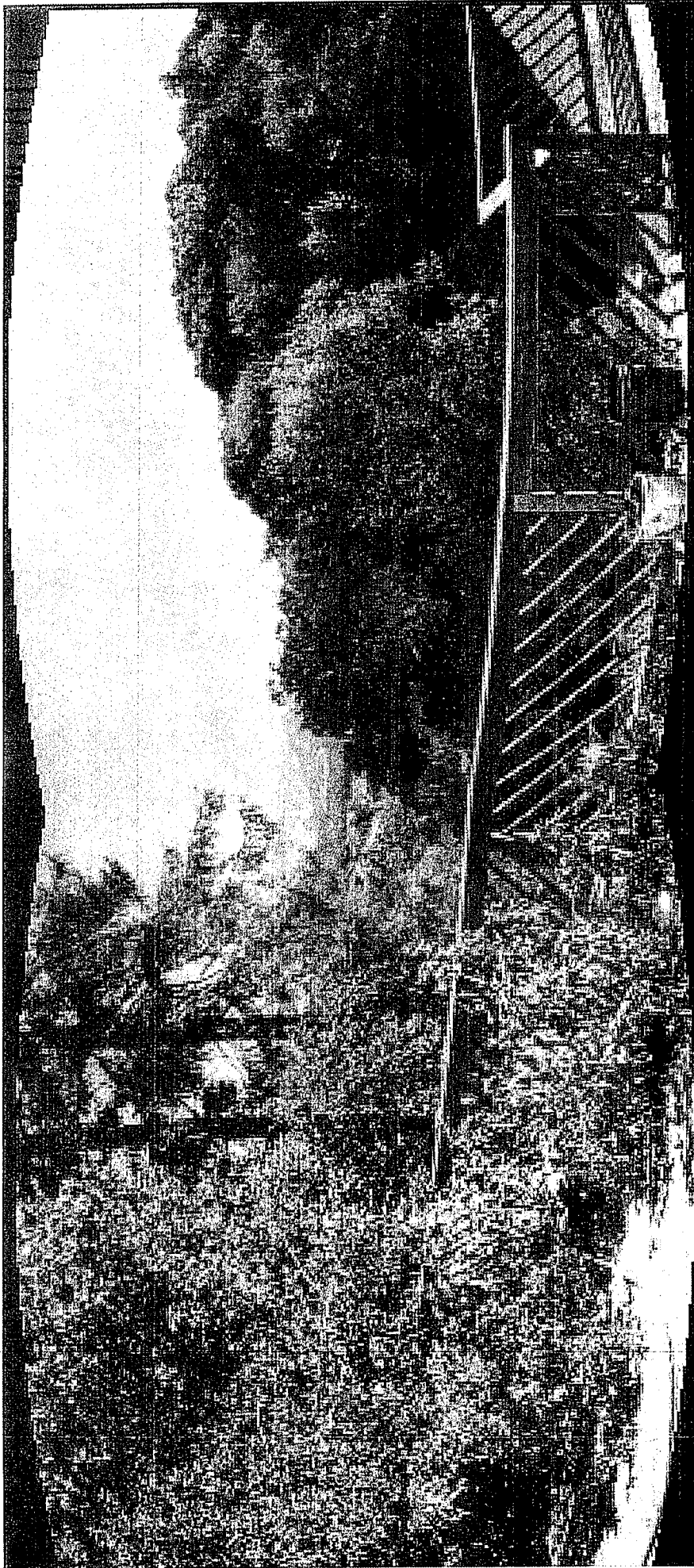
View obstructions that can be reduced or eliminated by removing low limbs.



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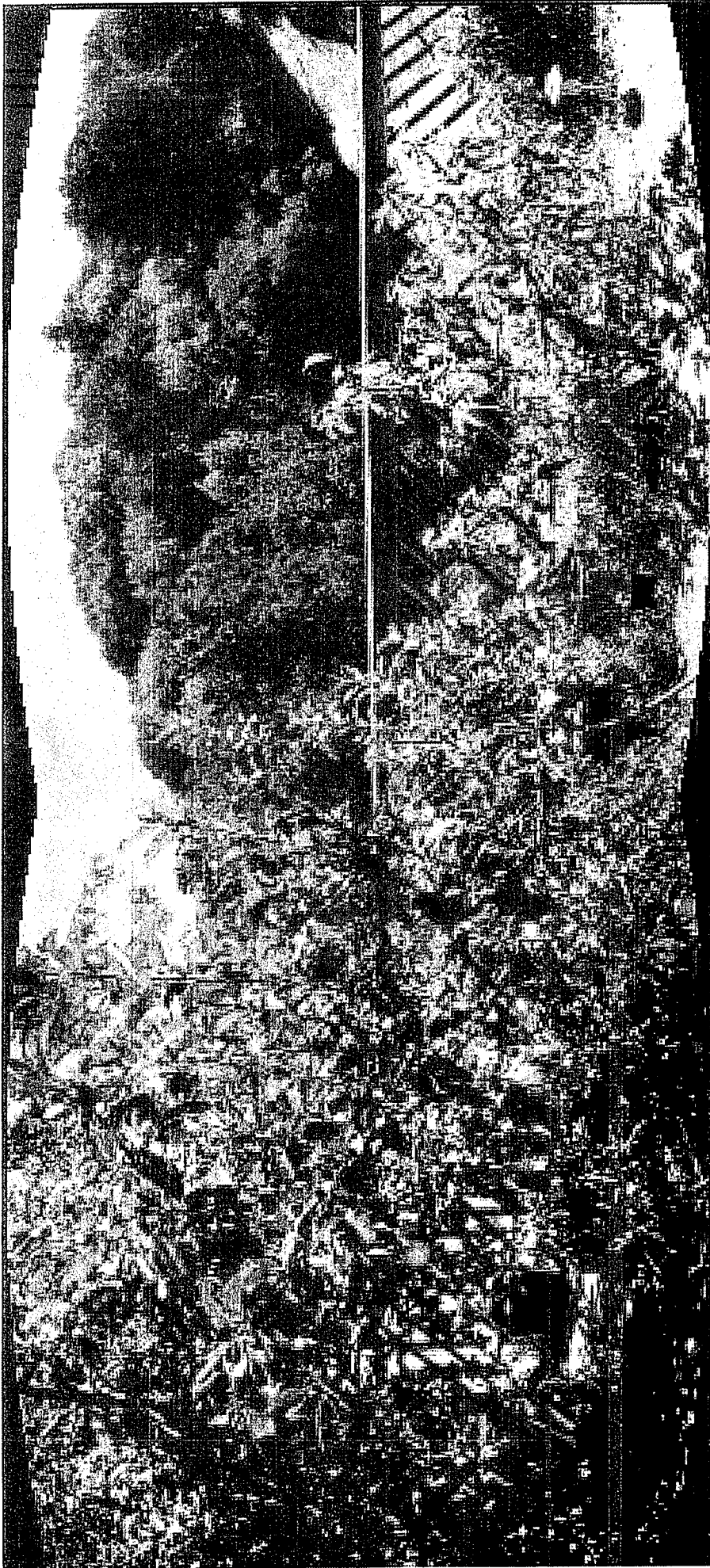
View from deck of 10 Knoll Ridge Way, looking toward largest oak tree.

Staff Recommendation: Remove low limbs from trees on the left side of the view.



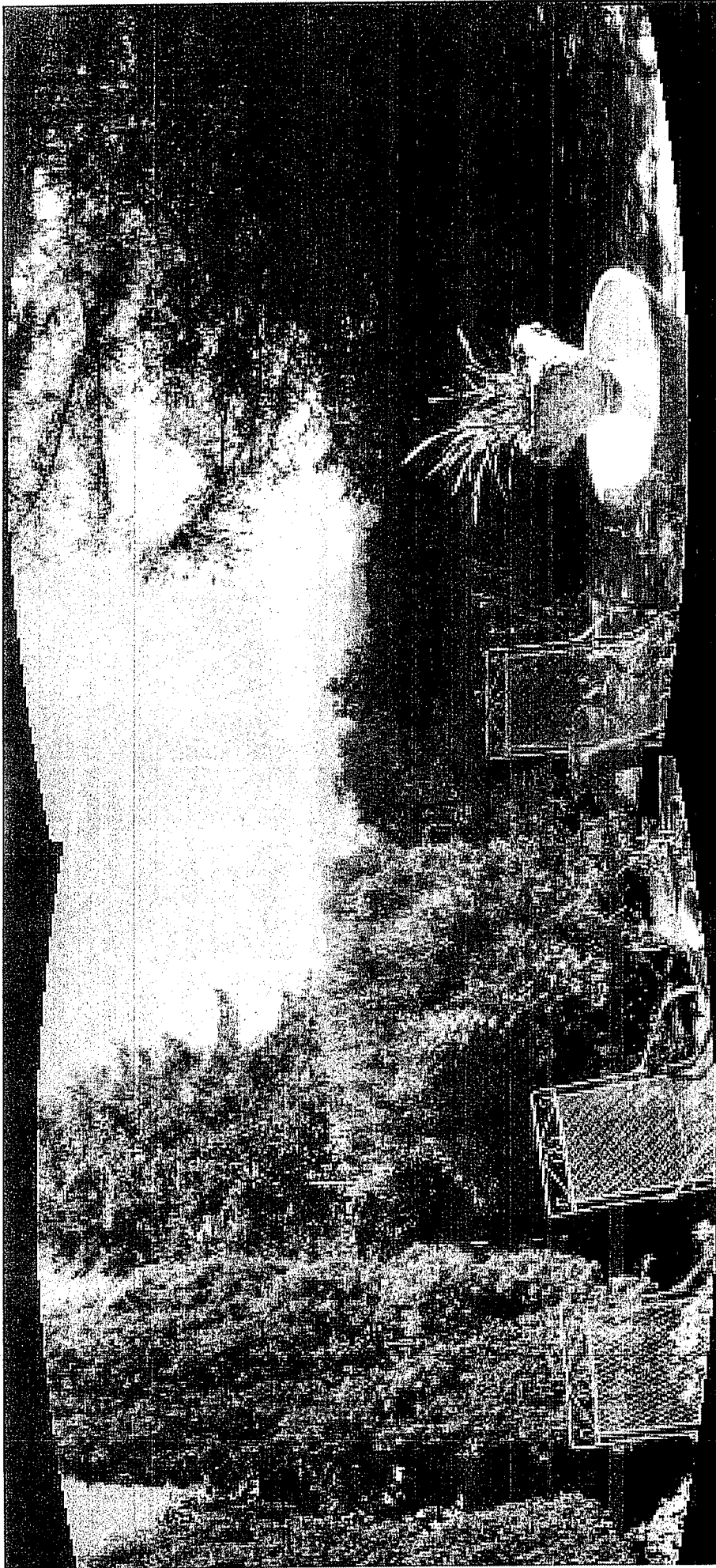
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View from living room of 10 Knoll Ridge Way.



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View from kitchen of 10 Knoll Ridge Way.



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View from kitchen of 13300 Clairepointe Way.