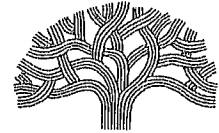


# CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, 4TH FLOOR • OAKLAND, CALIFORNIA 94612

Public Works Agency  
Raul Godinez II  
Director

(510) 238-3961  
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June 2, 2009

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

RE: Appeal of Tree Removal Permit for 6138 Ocean View Drive

Dear Mr. Taylor and Members of PRAC:

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

## SUMMARY

The Tree Services Division approved a tree permit to remove two trees at 6138 Ocean View Drive, and denied the removal of four others requested by the applicant. An adjacent neighbor appealed the permit decision, wanting all six trees preserved and allowing no removals. The property owner also appealed the decision, wanting to remove all six trees.

## BACKGROUND

On February 24, 2009, Michael DeSerio of Brende and Lamb Tree and Shrub Care, agent for the property owner, submitted an application to Tree Services to remove six redwood trees. The application states the reason for removal as:

“Redesign, more light/sun to yard, view of Oakland Hills.”

On March 27, 2009, the Tree Services Division made a permit decision allowing removal of two trees and requiring the preservation of four other redwoods (see attached Permit Site Plan and aerial photograph of the property). The decision would improve the view for the property owner, but keep screening and other tree values for adjacent neighbors. Two separate appeals were filed, one from a neighbor and one from the property owner.

On April 1, 2009, Timothy Durham, an adjacent neighbor, living at 6301 Brookside Avenue, appealed staff's decision. The basis for the appeal was stated in a letter to the Tree Services Division (attached). To summarize, Mr. Durham feels:

1. The View Ordinance, Chapter 15.52 of the Oakland Municipal Code (OMC), applies to this case and has the criteria used to make a decision regarding the tree removal application.



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2. The applicant has not met the criteria of the View Ordinance and the application should be denied.

On April 14, 2009, Peter Vinella, property owner of 6138 Ocean View Drive, filed an appeal. The basis for the appeal was stated as:

“The neighbors that responded against the permit did not ask what we intended to do after we remove the trees. In fact, our plan is quite extensive and includes planting five oaks.”

## DISCUSSION

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

- First, applications are reviewed to see if they accomplish at least one of five possible objectives. Tree Services feels:
  - Removal of two trees meets criterion 12.36.050(A)3: “To take reasonable advantage of views, including such measures as are mandated by the resolution of a view claim in accordance with the view preservation ordinance (Chapter 15.52 of this code).” Removing trees #3 and #4 opens up a northeast view of the Oakland Hills, and it is reasonable to allow the property owner to take advantage of this. The View Ordinance criteria do not apply for this permit application; the ordinance would be used only if the property owner was trying to remove a neighbor’s trees. Since the applicant owns the trees in question, the PTO applies; and
  - No justification was provided for removing four additional trees. Criterion 12.36.050(A)4 would possibly allow removal of more trees, but a landscape plan is required and was not submitted with the application.
- 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. There are no grounds for denial for trees #3 and #4. Pruning of the two trees could be required, but the view improvements would be so minimal that it would be unreasonable to deny the property owner a more open view through a narrow, northeast corridor.
  - If a landscape plan had been submitted, the possible grounds for denial one or more of the remaining four redwoods is criterion 12.36.050(B)1a, reasonable redesign of the site plan, prior to construction. Could the landscape plan incorporate any of the remaining four trees?

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 Timothy Durham and Peter Vinella; and
- Instruct staff to issue tree permit application ND09-015 for 6138 Ocean View Drive, upholding staff's decision to require preservation of four redwood trees and allowing the applicant to remove two redwood trees, #3 and #4 on the site plan.

Respectfully Submitted,



Raul Godinez II  
Agency Director  
Oakland Public Works

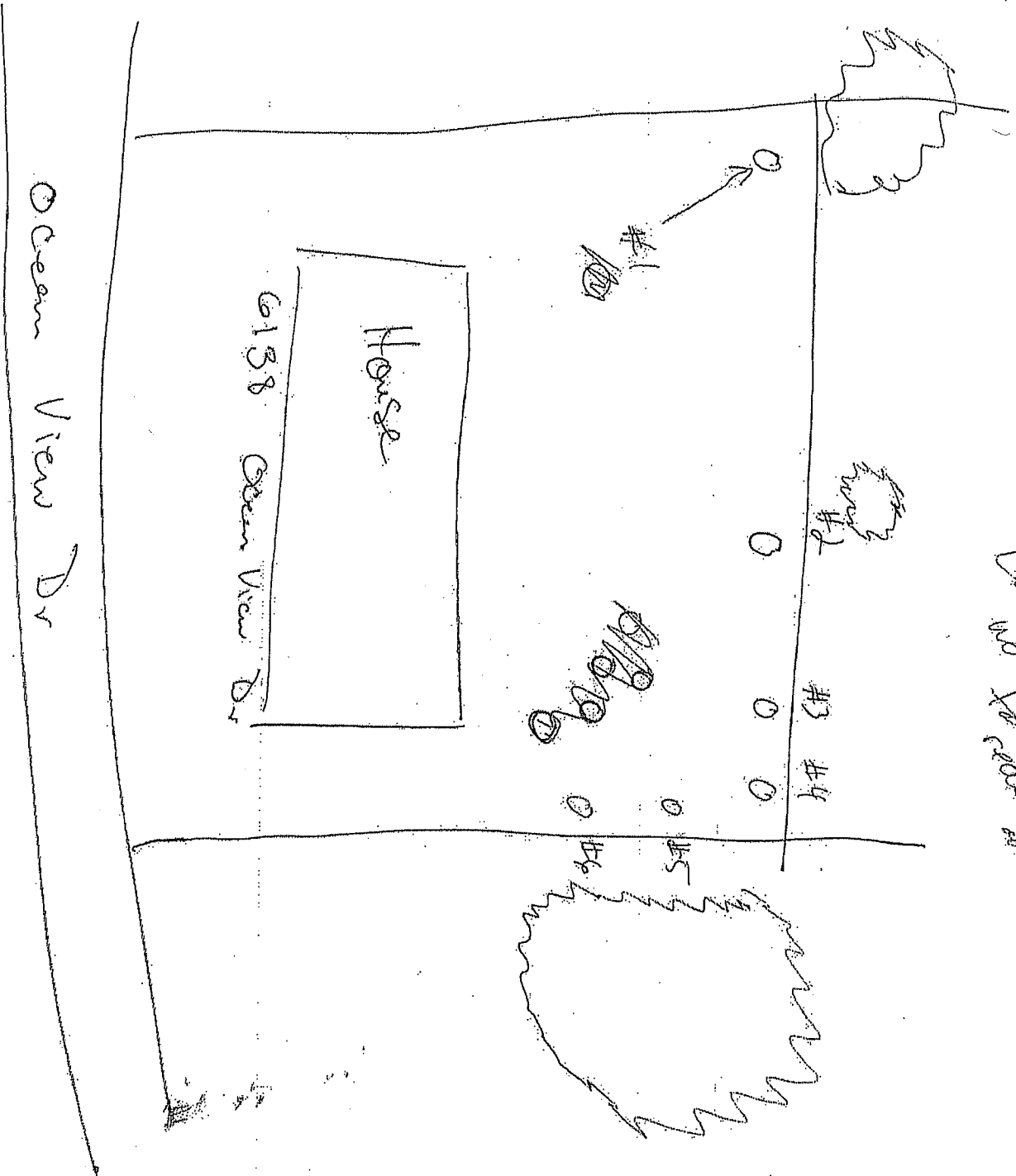
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Attachments

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

TREE PLANT  
SITE PLAN

For 1 year 5  
and no to remove



# 6301 Ocean View Drive

Tree Permit ND09-015



It is imperative that you obtain BOTH the Zoning and General Plan designations for the property(s) you are searching for.  
Questions? Contact a planner at (510)238-3911.  
Printed: 5/29/2009 9:31:22 AM



## Legend

- Selected Features
- City Limits
- Parcels
- Freeways
- Major Sts.
- Streets
- Water
- Land

April 1, 2009

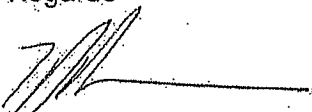
City of Oakland  
Municipal Service Center - Tree section  
7101 Edgewater Drive  
Oakland, CA 94621

This letter is submitted as part of the Public Input process for the permit application to remove 6 Sequoia Sempervirens from 6138 Ocean View (Application ND09-015), and specifically in response to the City of Oakland's intention to grant approval to remove 2 of the 6 redwoods as authorized by municipal code section 12.36.050.

I'd comment that the City of Oakland has no authority to approve the removal of any Sequoia Sempervirens unless the applicant can prove that the trees are not from natural regeneration (municipal code 15.52). Lacking such evidence, and since the subject trees are part of a large grove spread amongst several properties, with some soaring over 100 feet in height, natural regeneration is more than a reasonable assumption.

In the event the applicant can evidence that the trees are not from natural regeneration, an appeal will be filed under section 15.52.050. As the applicant purchased the home only 4 years ago, he has *"no right greater than that which existed at the time of the claimant's acquisition of the property involved in the view claim and shall provide evidence to provide the extent of said view"*. The appeal will assert that removing 2 entire Sequoia Sempervirens is a right greater than which existed at the time the property was acquired. In addition, the appeal will further assert that the applicant has not provided evidence to establish the extent of the said view 4 years ago.

Regards



Timothy Durham  
6301 Brookside Avenue  
Oakland, CA 94618  
415-364-4614