



AGENDA

Thursday, August 27, 2015

6:30 P.M.

REGULAR MEETING PLANNING COMMISSION

Council Chambers
211 Hillcrest Avenue
Marina, California

VISION STATEMENT

Marina will grow and mature from a small town bedroom community to a small city which is diversified, vibrant and through positive relationships with regional agencies, self-sufficient. The City will develop in a way that insulates it from the negative impacts of urban sprawl to become a desirable residential and business community in a natural setting. **(Resolution No. 2006-112 - May 2, 2006)**

MISSION STATEMENT

The City Council will provide the leadership in protecting Marina's natural setting while developing the City in a way that provides a balance of housing, jobs and business opportunities that will result in a community characterized by a desirable quality of life, including recreation and cultural opportunities, a safe environment and an economic viability that supports a high level of municipal services and infrastructure. **(Resolution No. 2006-112 - May 2, 2006)**

1. CALL TO ORDER 
2. ROLL CALL & ESTABLISHMENT OF QUORUM (Planning Commission Members)
Katherine Biala, David Burnett, Margaret Davis, Tim Ledesma, Virgil Piper, Ken Turgen, Adam Urrutia
3. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE (Please stand)
4. SPECIAL ANNOUNCEMENTS AND COMMUNICATIONS FROM THE FLOOR:
Announcements of special events or meeting of interest as information to Board and Public. At this time any person may comment on any item, which is not on the agenda. Please state your name and address for the record. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on the next agenda. Planning Commission members or City staff may briefly respond to statements made or questions posed as permitted by Government Code Section 54954.2. In order that all interested parties have an opportunity to speak, please limit comments to a maximum of Four (4) minutes. Any member of the public may comment on any matter listed on this agenda at the time the matter is being considered by the Planning Commission.

5. CONSENT AGENDA: *Background information has been provided to the Planning Commission on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. If discussion is requested by anyone on any item, that item will be removed from the Consent Agenda and placed at the end of Other Action Items if separate action is requested.*

a. Minutes for the August 4, 2015 Special Meeting and the August 13, 2015 Regular Meeting

6. PUBLIC HEARINGS: *Time will be set aside during the Public Hearing to receive oral comments on all items listed as Public Hearings. Staff will present the project brought forth for Planning Commission consideration and possible action and answer questions from the Planning Commissioners. The applicant will then have the opportunity to raise any issues. The public will then be invited to approach the podium to provide up to four (4) minutes of public testimony.*

a. None

7. SPECIAL PRESENTATIONS:

a. Regional Urban Design Guidelines (RUDG)

Fort Ord Reuse Authority staff will provide an update on the urban design guidelines that will establish standards for road design, setbacks, building height, landscaping, signage, and other matters of visual importance.

8. OTHER ACTION ITEMS: *Action listed for each Agenda item is that which is brought forth for Planning Commission consideration and possible action. The Planning Commission may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*

a. It is recommended that the Planning Commission:

Deny appeal of Tree Committee Resolution No. 2015-03, upholding issuance of Tree Removal Permit (TP 2015-05) for removal of one (1) Monterey Cypress (*cupressus macrocarpa*) located on 3rd Avenue at 10th Street in Phase 1C of the Dunes on Monterey Bay (formerly University Villages) Specific Plan area (APNS 031-251-050 &-051)

9. COMMISSIONERS AND STAFF INFORMATIONAL REPORTS:

- a. City Council, Design Review Board, Tree Committee and other meetings of note.
- b. Upcoming items scheduled for future meetings.
- c. Ad Hoc Committee

10. CORRESPONDENCE:

a. None

11. ADJOURNMENT

CERTIFICATION

I, Judy Paterson, Administrative Assistant for the City of Marina, do hereby certify that a copy of the foregoing agenda was posted at Marina City Council Chambers bulletin board, 211 Hillcrest Avenue; City Kiosk at the corner of Del Monte Boulevard and Reservation Road; and Monterey County Free Library Marina Branch at 190 Seaside Circle on or before 6:30 p.m. Monday, August 24, 2015.

Judy Paterson, Administrative Assistant II
Planning Services Division
Community Development Department

PLANNING COMMISSION NOTES:

1. The Marina Planning Commission regularly meets at 6:30 P.M. on the second and fourth Thursdays of each month.
2. The Planning Commission follows procedures intended to allow for project applicants and members of the public the fullest possible opportunity to be heard, while enabling the Commission to complete its meetings within a reasonable time.
3. Copies of staff reports are available to the public on the Friday afternoon, prior to the Thursday meetings at the Community Development Department office located at 209 Cypress Avenue.
4. Planning Commission subcommittees include the Marina Design Review Board (DRB) and Tree Committee. The DRB regularly meets at 6:30 P.M. on the third Wednesday of each month and the Tree Committee meets quarterly on the 2nd Wednesday of January, April, July and October... All meetings take place in the Council Chambers unless otherwise noticed... Public notices and agendas are posted at the following locations: Monterey County Library Marina Branch, Kiosk at the corner of Del Monte Blvd. and Reservation Rd., and Marina City Council Chambers Bulletin Board.
5. The public is invited and encouraged to participate in all meetings of the Planning Commission and its subcommittees.
6. **ALL MEETINGS ARE OPEN TO THE PUBLIC. THE CITY OF MARINA DOES NOT DISCRIMINATE AGAINST PERSONS WITH DISABILITIES.** Council Chambers are wheelchair accessible. Meetings are broadcast on cable channel 25 and recordings of meetings can be provided upon request. To request assistive listening devices, sign language interpreters, readers, large print agendas or other accommodations, please call (831) 884-1278 or e-mail: marina@ci.marina.ca.us. Requests must be made at least **48 hours** in advance of the meeting.



MINUTES

Tuesday, August 4, 2015

6:30 P.M.

**SPECIAL MEETING
PLANNING COMMISSION**

**Council Chambers
211 Hillcrest Avenue
Marina, California**

1. CALL TO ORDER

Chair Burnett called the meeting to order at 6:30 p.m.

2. ROLL CALL & ESTABLISHMENT OF QUORUM (Planning Commission Members)

Kathy Biala, David Burnett, Margaret Davis, Tim Ledesma, Virgil Piper, Ken Turgen, Adam Urrutia

3. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE

4. SPECIAL ANNOUNCEMENTS AND COMMUNICATIONS FROM THE FLOOR:

Commissioner Ledesma reminded the audience that the City's Labor Day Parade and 40th Birthday Festival will be on Saturday, September 5.

5. CONSENT AGENDA:

- a. Minutes for the May 28, and July 23, 2015 Planning Commission meetings

Vice-Chair Turgen made a motion to approve the minutes of May 28, 2015. The motion was seconded by Commissioner Piper and passed by a 5-0-0-2 (Biala, Urrutia) vote.

Vice-Chair Turgen made a motion to approve the minutes of July 23, 2015. The motion was seconded by Commissioner Piper and passed by a 5-0-0-2 (Biala, Urrutia) vote.

6. PUBLIC HEARINGS:

It was requested that the Planning Commission:

- a. Adopt Resolution No. 2015- , recommending that City Council consider approving a text amendment to General Plan Policy 2.40, Table 2.4 and other applicable General Plan policies to allow that the minimum Floor Area Ratio (FAR) for projects within Specific Plan areas designated "Retail/Service" on the General Plan Land Use Map (Figure 2.2) may be less than 0.25 FAR, provided that findings are made by the approving body that the project is consistent with General Plan policies, and the development standards and design guidelines of the Specific Plan; and approving a map amendment to change the General Plan Land Use Map

from “Multiple Use” to “Retail/Service” for a ±3.7 acre project site within the Dunes on Monterey Bay (formerly University Villages) Specific Plan area (APNs 031-282-024 through -027), and;

Mr. Meek gave a staff report. He described the proposed General Plan and map amendments and emphasized that the recommended changes would repeal and replace those that were adopted by the commission on May 28.

Commissioners asked for clarification of parking calculations, and details of the lease agreements with surrounding tenants that may affect parking and building design.

Chair Burnett opened the public hearing.

Paula Pelot, Marina resident noted that the General Plan was a culmination of many public meetings that represented the vision that the community had for the City. The policies reflect the desire for higher density, walkability, etc. She stated that the project before them was inconsistent with the current General Plan and that the commission should not amend the plan to accommodate the project, but rather the project should be designed to be consistent with current policies.

Jan Shriner, Marina resident, expressed concerns with costs associated with the proposed amendment, its affect on jobs generation and requested that the commission not recommend approval of the amendment.

Scott Negri, project applicant, addressed the restrictions imposed on the site by topography and the leases with the anchor tenants. He described The Dunes Shopping Center as a regional draw to nationwide brands that people will primarily drive to. He also indicated that he had attempted to make the site as walkable as possible.

Wendy Elliott, representing Marina Community Partners, commented that the proposed General Plan amendment was purposely narrow in scope, affecting only retail service sites. She further mentioned that the General Plan envisioned The Dunes as a regional center and that automobiles would be the primary mode of transportation. She felt that the applicant has provided pedestrian connectivity and supported the proposed amendment.

The public hearing was closed.

Commissioners asked for further clarification of the negotiations with Best Buy for their restrictions on the development of the site.

Commissioner Davis expressed a concern that allowing a lower Floor Area Ratio will lower the income potential for the city.

Commissioner Biala addressed procedural issues for amending the General Plan and expressed a concern with the process.

Commissioner Davis made a motion to deny the resolution recommending General Plan text and map amendments as described in the agenda. The motion was seconded by Commissioner Ledesma and passed by a 5-2 (Piper, Turgen) -0-0 vote.

- b. Modify Planning Commission Resolution No. 2015-02 Condition of Approval No. 2 to be consistent with the aforementioned General Plan text amendment language.

Following a lengthy discussion and several attempted motions, it was determined that no action was required for item 6 b. No vote was taken.

7. OTHER ACTION ITEMS:

a. None

8. COMMISSIONERS AND STAFF INFORMATIONAL REPORTS:

Staff reported on:

- a. City Council, Design Review Board, Tree Committee and other meetings of note.
- b. Upcoming items scheduled for future meetings.

9. CORRESPONDENCE:

a. None

10. ADJOURNMENT

The meeting was adjourned at 8:20 p.m.

ATTEST:

David Burnett, Chair

Judy Paterson, Admin. Assistant II

DATE



MINUTES

Thursday, August 13, 2015

6:30 P.M.

**REGULAR MEETING
PLANNING COMMISSION**

**Council Chambers
211 Hillcrest Avenue
Marina, California**

1. CALL TO ORDER

Chair Burnett called the meeting to order at 6:30 p.m.

2. ROLL CALL & ESTABLISHMENT OF QUORUM (Planning Commission Members)
Katherine Biala, David Burnett, Margaret Davis, Tim Ledesma, Virgil Piper, Adam Urrutia

Members absent: Ken Turgen (excused)

3. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE

4. SPECIAL ANNOUNCEMENTS AND COMMUNICATIONS FROM THE FLOOR:

Mike Owen, Marina resident and member of the Tree Committee provided information regarding the upcoming appeal of a tree removal permit for The Dunes housing project.

Commissioner Davis announced this year's date for the Friends of the Fort Ord Warhorse's sixth annual Veterans Day Celebration on Saturday, November 7th, from 9:30–11:30am at the Marina Equestrian Center Park.

5. CONSENT AGENDA:

a. None

6. PUBLIC HEARINGS:

CONTINUED FROM JULY 23, 2015

It is requested that the Planning Commission:

a. Open a public hearing, take any testimony from the public, and consider:

1. Consider adopting Resolution No. 2015- , approving Conditional Use Permit UP 2015-01, for installation of a fifty (50) foot tall wireless facility located within the "General

Commercial (C-2)" Zoning District at Unit # 74, 224 Reindollar Avenue (APN 032-421-015), subject to conditions, and;

2. Approving Site and Architectural Design Review DR 2015-06, for installation of a fifty (50) foot tall wireless facility, that is concealed by branches of a simulated pine tree, and conversion of a ±600-square-foot portion of an existing storage unit to be used as the equipment area, located at Unit #74, 224 Reindollar Avenue (APN 032-421-015), subject to conditions.

The applicant requested another continuance of this item until September 10, 2015. A motion was made to continue the item to September 10, 2015, and passed by a 6-0-1(Turgen) -0 vote.

7. OTHER ACTION ITEMS:

a. None

8. COMMISSIONERS AND STAFF INFORMATIONAL REPORTS:

Staff reported on:

- a. City Council, Design Review Board, Tree Committee and other meetings of note.
- b. Upcoming items scheduled for future meetings.
- c. Ad Hoc Committee

9. CORRESPONDENCE:

a. None

10. ADJOURNMENT

The meeting was adjourned at 6:41 p.m.

ATTEST:

David Burnett, Chair

Judy Paterson, Admin. Assistant II

DATE

August 20, 2015

Item No:

Honorable Chair and Members
of the Marina Planning Commission

Planning Commission Meeting of
August 27, 2015

PLANNING COMMISSION OPEN A PUBLIC HEARING AND CONSIDER DE NOVO AN APPEAL OF TREE COMMITTEE RESOLUTION NO. 2015-03 AND THE COMMUNITY DEVELOPMENT DEPARTMENT ACTING DIRECTOR'S APPROVAL OF A TREE REMOVAL PERMIT (TP 2015-05) FOR REMOVAL OF ONE (1) MONTEREY CYPRESS (CYPRESSUS MACROCARPA) LOCATED ON 3RD AVENUE AT 10TH STREET IN PHASE 1C OF THE DUNES ON MONTEREY BAY (FORMERLY UNIVERSITY VILLAGES) SPECIFIC PLAN AREA

RECOMMENDATION:

It is recommended that the Planning Commission:

1. Open a public hearing and consider *de novo*, i.e., as if no other hearing had been held an appeal of Tree Committee Resolution No. 2015-03 and the Community Development Department Acting Director's approval of a Tree Removal Permit (TP 2015-05) for removal of one (1) Monterey Cypress (*cypressus macrocarpa*) located on 3rd Avenue at 10th Street in Phase 1C of the Dunes on Monterey Bay (formerly University Villages) Specific Plan area.

BACKGROUND:

At a special meeting of May 31, 2005, the Marina City Council adopted Resolutions No. 2005-127 through 2005-133, taking the following actions: certifying the Final Environmental Impact Report (SCH. No. 2004091167) for the Dunes on Monterey Bay (formerly University Villages) Specific Plan; approving General Plan map and text amendments; making findings and determinations pursuant to California Water Code Section 10911(c) and California Government Code Section 66473(B)(3); approving the Dunes on Monterey Bay Specific Plan (DSP); approving the Tentative Map for the 358 acre project site; approving Site and Architectural Design Review for all phases of the residential units within the development; approving a Tree Removal Permit for Phase 1 including the removal, preservation and relocation of trees; finding that the legislative land use approval for the project is consistent with the Fort Ord Reuse Plan; and authorizing execution by the Marina Redevelopment Agency of specified agreements and making required statutory findings and approvals for developing the project within the former Fort Ord Redevelopment Project Area No. 3.

The Tree Removal Permit (Resolution No. 2005-133) (“**EXHIBIT A**”) was based on a Tree Disposition Plan dated April 8, 2005, prepared by the Guzzardo Partnership, Inc. and the Dahlin Group, which mapped each tree, and a corresponding Tree Removal and Protection Plan dated August 31, 2005, and augmented on May 16, 2006, prepared by Staub Forestry and Environmental Consulting (“**EXHIBIT B**”).

On May 18, 2012, by Resolution 2012-05, the Site and Architectural Design Review Board approved the Dunes site plans and building elevations for the duets, small lot alley, small lot standard, and large lot alley (carriage homes) residential housing types. On February 26, 2015, the City Council

approved and on March 3, 2015, Shea Limited Partnership (“Shea” or the “Respondent”) recorded the final map for Phase 1-C showing the final locations of lots, streets, and alleys for Phase 1C of Shea’s residential project.

By the above-referenced approvals and actions, Shea has acquired vested rights to develop its property.

On June 4, 2014, Chris Stump, on behalf of Shea Homes Limited Partnership, requested a Tree Removal Permit to remove two Monterey cypress trees located near residential construction activities of Phase 1C of the Dunes on Monterey Bay. A Preliminary Forester/Arborist Evaluation dated April 29, 2015 prepared by Vaughan Forestry and Land Management and a letter dated May 14, 2015 from Shea Homes were provided as part of the application.

At the regular meeting June 24, 2015, the Tree Committee of the City of Marina considered the staff report, above-noted application materials and testimony and adopted Resolution No. 2015-03, approving removal of two (2) Monterey cypress (*Cupressus macrocarpa*) located in Phase 1C of the DSP area (APNs 031-251-050 and -051) with a three to one vote (one member absent). The June 24, 2015 staff report with exhibits and executed Resolution No. 2015-03 is attached (“**EXHIBIT C**”). The minutes from the meeting are also attached (“**EXHIBIT D**”).

On July 1, 2015, in a meeting with Shea Homes representatives, the Acting Community Development Director provided an e-mail notification to Shea Homes of the issuance of the Tree Removal Permit (“**EXHIBIT E**”).

On July 6, 2015, Michael and Candy Owen filed a written appeal of the Acting Community Development Director’s decision with regards to both trees. On July 27, 2015 the appellants filed a “Refocus” of the July 6, 2015 appeal specific to one of the two trees, the Monterey cypress located at 3rd Avenue and 10th Street (“**EXHIBIT F**”). This tree is referenced as Tree #2 in the June 24, 2015 staff report.

Also on July 6, 2015, Chris Stump acting on behalf of Shea Homes filed a building permit application to construct a single family residence on Lot 105 north of the private street adjacent to the subject tree. On July 23, 2015, the Senior Planner informed Mr. Stump that “Approval [of the building permit application] is subject to the results of the tree removal appeal at the Planning Commission” (“**EXHIBIT G**”).

On August 3, 2015, Wilson Wendt from Miller, Starr, Regalia real estate attorneys representing Shea Homes sent a letter to City Attorney Robert R. Wellington expressing concern about the City’s decision to grant an appeal hearing to reconsider the Tree Removal Permit (“**EXHIBIT H**”).

Also on August 3, 2015, Chris Stump acting on behalf of Shea Homes filed a building permit application to construct a single family home on Lot 109 south of the private street adjacent to the subject tree. On August 6, 2015 Chris Stump provided a detailed plot plan overlay with aerial photograph showing construction of the single family residence within the trees dripline (“**EXHIBIT I**”).

On August 12, 2015, Robert Rathie responded to Mr. Wendt’s August 3, 2015 letter on behalf of City Attorney Wellington Law offices concluding that the matter is properly before the Planning Commission (“**EXHIBIT J**”).

Following a site visit on August 14, 2015 with Don Hofer representing Shea Homes, it was evident that with minor pruning of the subject tree, the canopy was clear of the vertical construction zone and on August 17, 2015 a building permit was issued for construction of a single family residence on Lot 105.

Approval of the building permit application for Lot 109 is being held pending removal or pruning of the tree within the construction zone adequate to accommodate the vertical construction. Issuance of a building permit for a permitted use on an approved lot of record is a ministerial action and there is no discretion to deny a building permit once conditions related to the issuance of the building permit are met.

On August 18, 2015, the Acting Community Development Director met with Arborist Frank Ono at the site of the subject tree to request a peer review of the Vaughn Preliminary Evaluation, and the likelihood of the subject tree to withstand pruning and root severance needed to allow construction of the private street, retaining walls and residence on Lot 9.

ANALYSIS:

Dunes on Monterey Bay Specific Plan

The stated goal of the DSP is to preserve as many of the healthy, existing Monterey cypress and oak trees as practicable.

Section 5.9, Existing Tree Removal, Relocation and Replacement Standards of the DSP requires that, "Removal of any tree that was preserved as part of a previous tree removal permit shall require a new application of a tree removal permit."

Purpose and Intent of Marina Municipal Code Chapter 17.51, Tree Removal, Preservation and Protection

- "A. The city recognizes that the maintenance and new growth of healthy trees facilitates drainage, combats soil erosion, reduces global warming, adds real property and aesthetic values, and provides habitat for wildlife. To enhance the beauty of the city, while at the same time recognizing individual rights to develop private property, the city council adopts this chapter, establishing basic standards and measures to preserve and maintain existing trees and to encourage new tree planting.

- B. It is the intent of the city by the adoption of these regulations to limit and restrict the removal of healthy and desirable trees in the city. However, regarding single-family residential properties which cannot be further subdivided, the intent is to limit and restrict only the removal of landmark trees. (Ord. 2006-19 § 1 (part), 2006)"

Required Findings for Approval of Tree Removal Permit pursuant to Section 17.51.060 (C) are spelled out within the approved Tree Removal Permit Resolution No. 2015-03 issued for the subject tree are as follows:

1. Clear and compelling reasons exist for the removal of the tree, in that configuration of Lot 109, and associated housing construction may impair the viability of tree #284; and
2. The tree proposed for removal does not serve as part of a windbreak system or otherwise play a role in maintaining the existing urban forest, in that the remaining trees and proposed planting(s) in the Dunes project area help to maintain the existing urban forest; and

3. Due to the tree's contribution to the aesthetic beauty of the area, the removal of the tree would not have a substantial detrimental effect on neighboring property values, in that replacement Monterey cypress trees would be planted onsite; and
4. The removal request is concurrent with development plans for Lot 109 and the development plans indicate that it is necessary to remove (or relocate) the trees to enable reasonable and conforming use of the properties which are otherwise prevented by the location of the trees.

The Commission will have before it at the hearing on the appeal the documents considered by the Tree Committee and the Acting Director, documents provided subsequently by the Appellants and the Respondent, and the testimony and statements received during the hearing.

Location of Tree

The subject tree is located at the terminus of an unnamed private street between two residential development parcels adjacent to 3rd Avenue at 10th Street. The private street parallels 10th Street and does not go through to 3rd Avenue. This street serves as a hammerhead turn around that will allow vehicles to exit the garages on the adjacent parcels by backing out onto the private street and exiting the site in a forward motion.

The subject tree is identified within the Staub Tree Removal and Protection Plan as Tree 284S described as an existing cypress tree with an 80” base in good condition to be retained in Phase 1.

As recent as June 10, 2014, as shown on the Rough Grading Plans for the site (part of “EXHIBIT C”), pad revisions for Lots 105 north of the subject tree (Sheet RG7) and Lot 109 south of the subject tree (Sheet RG2) show the subject tree to be retained in place.

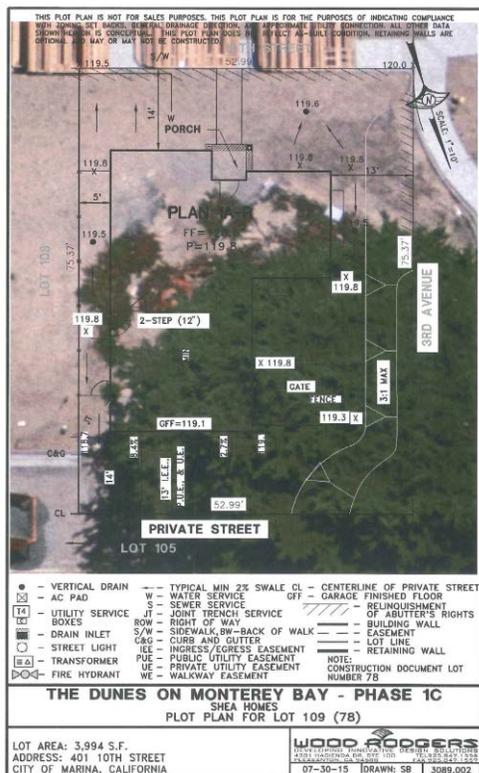
The submitted building permit plot plan with overlay of aerial photograph for Lot 109 (copy of “EXHIBIT I” shown at left) shows the amount of pruning and root severance that would be needed to permit the entitled development to occur.

Preliminary Forester/Arborist Evaluation

The arborist report prepared by Cassady Bill Vaughan, International Society of Arboriculture Certified Arborist #WE-10039A describes that,

“The tree is bordered by a rock armored gabion wall designed to retain constructed fills at the western edge of the alley between Lots 78 (Lot 109) and 85 (Lot 105) as well as the developed pad at Lot 78 (Lot 109).

Reconnaissance-level field review (grade stakes and construction limits were not defined) suggests that the proposed alley and Lot 78 are projected to be too close to Tree #2. While crown reduction efforts and tree well



options cannot be ruled out there is serious doubt as to whether the cypress tree can accommodate the current design.”

The report goes on to suggest that,

“Shortening the alley so that the toe of the gabion wall lands at or slightly east of the existing manhole and abandoning construction at Lot 78 (Lot 109) should be considered. This approach would still see a perimeter fence installed and 18’ (around Tree #2, and modest pruning to accommodate construction of Lot 85. This 18’ perimeter fence defines the minimum setback for grading, placement of fill, trenching, equipment operations, and/or retaining wall installation.

There is some latitude for a creative turnaround/alley design and a modified unit floor plan/garage entry at Lot 78 (Lot 105). However, the minimum setback requirements noted in the previous paragraph need to be considered in the design criteria. The project engineer and architect are encouraged to work with the Arborist to develop an adaptive plan to improve the tree’s chances of survival over the long term.”

Arborist Peer Review of Preliminary Evaluation

On August 19, 2015, Frank Ono, International Society of Arboriculture Certified Arborist #536 and Society of American Forester’s Member #48004, provided a peer review of the Vaughan report (“**EXHIBIT K**”).

This report concludes that,

“Statements made by the [Vaughan] report are pertinent to the required findings for tree removal and/or retention. The reports also states that Tree #2 would be effected by the construction of the design in particular development for Lot 78 [Lot 109]; it makes references so in order to not impact the tree, a design change or no development should occur near the tree for its safe and aesthetic retention. The report adequately addresses the tree’s chances for long term survival and aesthetic features which will be questionable after required pruning and grading.”

Thus, staff concludes that the required findings of the Resolution No. 2015-03 stand.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

At a special meeting of May 31, 2005, the Marina City Council adopted Resolutions No. 2005-127 certifying the Final Environmental Impact Report (SCH. No. 2004091167) for the Dunes on Monterey Bay Specific Plan. The Biological Resources Section of the FEIR provided Mitigation Measures to reduce impacts to a less than significant level. With relation to trees, Mitigation Measure BR-2.2 requires that, “Any tree removal that occurs during the construction phase of the project shall be subject to the conditions in the City of Marina Tree Removal, Preservation and Protection Standards and shall be mitigated accordingly”.

Tree Removal Permit Resolution No. 2015-03 Condition of Approval #2 requires that, “Tree #2 shall be compensated with three (3) relocated (boxed) Monterey cypress trees from the project area on the property (i.e. in the landscape area along 3rd Avenue and at least 18-feet away from the house on Lot 78 (Lot 109).” Thus, the impacts of removal would be adequately mitigated.

CONCLUSION:

This matter is before you tonight on appeal, The Commission will open a public hearing and hear the appeal *de novo* and, based upon substantial evidence, and in accordance with Marina Municipal Code Section 17.56.010, has the power to decide the appeal, which involves an interpretation of the Zoning Ordinance, by either affirming or reversing, wholly or partly, the Acting Director's decision, or to modify the decision or make such order as may be appropriate.

Provided that substantial evidence is presented at the appeal hearing in support of the findings required by Municipal Code Section 17.51.060C, set forth above, by this Staff Report together with its Exhibits and by the testimony received during the hearing from the Appellants, the Respondent, City staff, and the public, then the Acting Director's decision to approve removal of the tree should be affirmed.

Respectfully submitted,

Theresa Szymanis, AICP CTP
Acting Director, Community Development Department
City of Marina

RESOLUTION NO. 2015-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MARINA, DENYING APPEAL OF TREE COMMITTEE RESOLUTION NO. 2015-03 AND THE COMMUNITY DEVELOPMENT DEPARTMENT ACTING DIRECTOR'S APPROVAL OF A TREE REMOVAL PERMIT (TP 2015-05) FOR REMOVAL OF ONE (1) MONTEREY CYPRESS (*CYPRESSUS MACROCARPA*) LOCATED ON 3RD AVENUE AT 10TH STREET IN PHASE 1C OF THE DUNES ON MONTEREY BAY (FORMERLY UNIVERSITY VILLAGES) SPECIFIC PLAN AREA

WHEREAS, on August 27, 2015, the Planning Commission of the City of Marina conducted a duly noticed public hearing to consider adopting Resolution No. 2015- , denying appeal of Tree Committee Resolution No. 2015-03 and the Community Development Department Acting Director approval of a Tree Removal Permit (TP 2015-05) for removal of one (1) Monterey Cypress (*cypressus macrocarpa*) located on 3rd Avenue at 10th Street in Phase 1C of the Dunes on Monterey Bay (formerly University Villages) Specific Plan area, considered all public testimony, written and oral, presented at the public hearing, received; and considered the written information and recommendation of the staff report for the June 19, 2014 meeting related to the appeal, and;

WHEREAS, the Tree Removal Permit (Resolution No. 2005-133) was based on a Tree Disposition Plan dated April 8, 2005, prepared by the Guzzardo Partnership, Inc. and the Dahlin Group, which mapped each tree, and a corresponding Tree Removal and Protection Plan dated August 31, 2005, and augmented on May 16, 2006, prepared by Staub Forestry and Environmental Consulting, and;

WHEREAS, on May 18, 2012, by Resolution 2012-05, the Site and Architectural Design Review Board approved the Dunes site plans and building elevations for the duets, small lot alley, small lot standard, and large lot alley (carriage homes) residential housing types. On February 26, 2015, the City Council approved and on March 3, 2015, Shea Limited Partnership ("Shea" or the "Respondent") recorded the final map for Phase 1-C showing the final locations of lots, streets, and alleys for Phase 1C of Shea's residential project, and;

WHEREAS, by the above-referenced approvals and actions, Shea has acquired vested rights to develop its property, and;

WHEREAS, on June 4, 2014, Chris Stump, on behalf of Shea Homes Limited Partnership, requested a Tree Removal Permit to remove two Monterey cypress trees located near residential construction activities of Phase 1C of the Dunes on Monterey Bay. A Preliminary Forester/Arborist Evaluation dated April 29, 2015 prepared by Vaughan Forestry and Land Management and a letter dated May 14, 2015 from Shea Homes were provided as part of the application, and;

WHEREAS, at the regular meeting June 24, 2015, the Tree Committee of the City of Marina considered the staff report, above-noted application materials and testimony and adopted Resolution No. 2015-03, approving removal of two (2) Monterey cypress (*Cupressus macrocarpa*) located in Phase 1C of the DSP area (APNs 031-251-050 and -051) with a three to one vote (one member absent), and;

WHEREAS, on July 1, 2015, in a meeting with Shea Homes representatives, the Acting Community Development Director provided an e-mail notification to Shea Homes of the issuance of the Tree Removal Permit, and;

WHEREAS, On July 6, 2015, Michael and Candy Owen filed a written appeal of the Acting Community Development Director's decision with regards to both trees and on July 27, 2015 the appellants filed a "Refocus" of the July 6, 2015 appeal specific to one of the two trees, the Monterey cypress located at 3rd Avenue and 10th Street, and;

WHEREAS, also on July 6, 2015, Chris Stump acting on behalf of Shea Homes filed a building permit application to construct a single family residence on Lot 105 north of the private street adjacent to the subject tree, and;

WHEREAS, on August 3, 2015, Wilson Wendt from Miller, Starr, Regalia real estate attorneys representing Shea Homes sent a letter to City Attorney Robert R. Wellington expressing concern about the City's decision to grant an appeal hearing to reconsider the Tree Removal Permit, and;

WHEREAS, also on August 3, 2015, Chris Stump acting on behalf of Shea Homes filed a building permit application to construct a single family home on Lot 109 south of the private street adjacent to the subject tree, and;

WHEREAS, on August 12, 2015, Robert Rathie responded to Mr. Wendt's August 3, 2015 letter on behalf of City Attorney Wellington Law offices concluding that the matter is properly before the Planning Commission, and;

WHEREAS, following a site visit on August 14, 2015 with Don Hofer representing Shea Homes, it was evident that with minor pruning of the subject tree, the canopy was clear of the vertical construction zone and on August 17, 2015 a building permit was issued for construction of a single family residence on Lot 105, and;

WHEREAS, approval of the building permit application for Lot 109 is being held pending removal or pruning of the tree within the construction zone adequate to accommodate the vertical construction, and;

WHEREAS, on August 18, 2015, the Acting Community Development Director met with Arborist Frank Ono at the site of the subject tree to request a peer review of the Vaughn Preliminary Evaluation, and the likelihood of the subject tree to withstand pruning and root severance needed to allow construction of the private street, retaining walls and residence on Lot 9, and;

WHEREAS, the stated goal of the Dunes on Monterey Bay Specific Plan is to preserve as many of the healthy, existing Monterey cypress and oak trees as practicable and Section 5.9, Existing Tree Removal, Relocation and Replacement Standards of the DSP requires that, "Removal of any tree that was preserved as part of a previous tree removal permit shall require a new application of a tree removal permit.", and;

WHEREAS, the subject tree is located at the terminus of an unnamed private street between two residential development parcels adjacent to 3rd Avenue at 10th Street, and this street serves as a hammerhead turn around that will allow vehicles to exit the garages on the adjacent parcels by backing out onto the private street and exiting the site in a forward motion, and;

WHEREAS, the subject tree is identified within the Staub Tree Removal and Protection Plan as Tree 284S described as an existing cypress tree with an 80” base in good condition to be retained in Phase 1, and;

WHEREAS, as recent as June 10, 2014, as shown on the Rough Grading Plans for the site, pad revisions for Lots 105 north of the subject tree (Sheet RG7) and Lot 109 south of the subject tree (Sheet RG2) show the subject tree to be retained in place, and;

WHEREAS, the submitted building permit plot plan with overlay of aerial photograph for Lot 109 shows the amount of pruning and root severance that would be needed to permit the entitled development to occur, and;

WHEREAS, the Preliminary Arborist/Forester Evaluation prepared by Cassidy Bill Vaughan, International Society of Arboriculture Certified Arborist #WE-10039A concludes that while crown reduction efforts and tree well options cannot be ruled out there is serious doubt as to whether the cypress tree can accommodate the current design and suggests alternative designs, and;

WHEREAS, on August 19, 2015, Frank Ono, International Society of Arboriculture Certified Arborist #536 and Society of American Forester’s Member #48004, provided a peer review of the Vaughan report concluding that Tree #2 would be effected by the construction of the design in particular development for Lot 78 [Lot 109]; it makes references so in order to not impact the tree, a design change or no development should occur near the tree for its safe and aesthetic retention. The report adequately addresses the tree’s chances for long term survival and aesthetic features which will be questionable after required pruning and grading, and

WHEREAS, staff concludes that the required findings of the Resolution No. 2015-03 stand, and;

WHEREAS, at a special meeting of May 31, 2005, the Marina City Council adopted Resolutions No. 2005-127 certifying the Final Environmental Impact Report (SCH. No. 2004091167) for the Dunes on Monterey Bay Specific Plan and the Biological Resources Section of the FEIR provided Mitigation Measures to reduce impacts to a less than significant level. With relation to trees, Mitigation Measure BR-2.2 requires that, “Any tree removal that occurs during the construction phase of the project shall be subject to the conditions in the City of Marina Tree Removal, Preservation and Protection Standards and shall be mitigated accordingly, and;

WHEREAS, Tree Removal Permit Resolution No. 2015-03 Condition of Approval #2 requires that, “Tree #2 shall be compensated with three (3) relocated (boxed) Monterey cypress trees from the project area on the property (i.e. in the landscape area along 3rd Avenue and at least 18-feet away from the house on Lot 78 (Lot 109).” Thus, the impacts of removal would be adequately mitigated.

NOW, THEREFORE BE IT RESOLVED by the Planning Commission of the City of Marina that it hereby denies the appeal of Tree Committee Resolution No. 2015-03 and the Community Development Department Acting Director approval of a Tree Removal Permit (TP 2015-05) for removal of one (1) Monterey Cypress (*cypessus macrocarpa*) located on 3rd Avenue at 10th Street in Phase 1C of the Dunes on Monterey Bay (formerly University Villages) Specific Plan area.

PASSED AND ADOPTED by the Planning Commission of the City of Marina at a regular meeting duly held on the 27th day of August, 2015, by the following vote:

AYES, PLANNING COMMISSION MEMBERS:

NOES, PLANNING COMMISSION MEMBERS:

ABSENT, PLANNING COMMISSION MEMBERS:

ABSTAIN, PLANNING COMMISSION MEMBERS:

David Burnett, Chair
Marina Planning Commission

ATTEST:

Theresa Szymanis, AICP CTP
Acting Director, Community Development Department
City of Marina

“EXHIBIT A”

Tree Removal Permit Resolution No. 2005-133 (May 31, 2005)

RESOLUTION NO. 2005-133

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING, AS RECOMMENDED BY THE PLANNING COMMISSION, THE
TREE REMOVAL PERMIT INCLUDING THE REMOVAL, PRESERVATION
AND RELOCATION OF TREES FOR PHASE 1 DEVELOPMENT WITHIN THE
UNIVERSITY VILLAGES SPECIFIC PLAN**

WHEREAS, the City Council of the City of Marina, California, did on the 31st day of May, 2005, hold a duly-noticed Public Hearing, continued from the 17th day of May, 2005, approval of the tree removal permit including the removal, preservation and relocation of trees for Phase 1 commercial development within University Villages Specific Plan; and

WHEREAS, the Planning Commission of the City of Marina, California, did on the 5TH day of May, 2005, hold a duly-noticed Public Hearing, continued from the 14th day of April, 2005, and a work session, on April 23, 2005 and recommended approval; and

WHEREAS, the Tree Committee at its October 4, 2004 meeting, reviewed and provided comments on Section 5.6 Existing Tree Removal, Relocation and Replacement Standards of the Specific Plan and the University Villages Specific Plan tree inventory; and

WHEREAS, the Tree Committee at its April 4, 2005 meeting, recommended the Planning Commission recommend to the City Council approval of the tree removal permit including the removal, preservation and relocation of trees within Phase 1 of the University Villages Specific Plan, subject to conditions; and

WHEREAS, said application has complied with the requirements of the California Environmental Quality Act of 1970 in that the City of Marina has prepared the University Villages Specific Plan Environmental Impact Report (SCH No. 2004091167); and

WHEREAS, the Planning Commission of the City of Marina, California has reviewed and considered the Draft Environmental Impact Report; and

WHEREAS, at a public hearing, upon hearing and considering all testimony and arguments, if any, of all interested persons desiring to be heard, said City Council did affirm the finding regarding the referenced case, and further, did find the following facts to justify recommending approval of the tree removal permit:

1. The proposed development plans specifically grading and site plans for the property indicate that it is necessary to remove or relocate the trees to enable reasonable and conforming use of the property which is otherwise prevented by the location of the trees.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marina, recommends as follows:

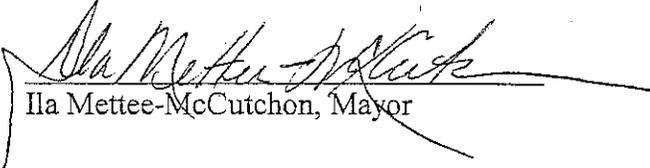
1. That the above recitations are true and correct and constitute the findings of the City Council in this case;
2. That it does hereby grant approval of the tree removal permit for the reasons set forth in this Resolution.

PASSED AND APPROVED by the City Council at a regular meeting of May 17, 2005 and continued to May 31, 2005, by the following vote:

AYES, COUNCIL MEMBERS: Gray, Morrison, Wilmot, McCall and Mettee-McCutchon

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None


Ila Mettee-McCutchon, Mayor

ATTEST:


Joy P. Junsay, City Clerk, Secretary

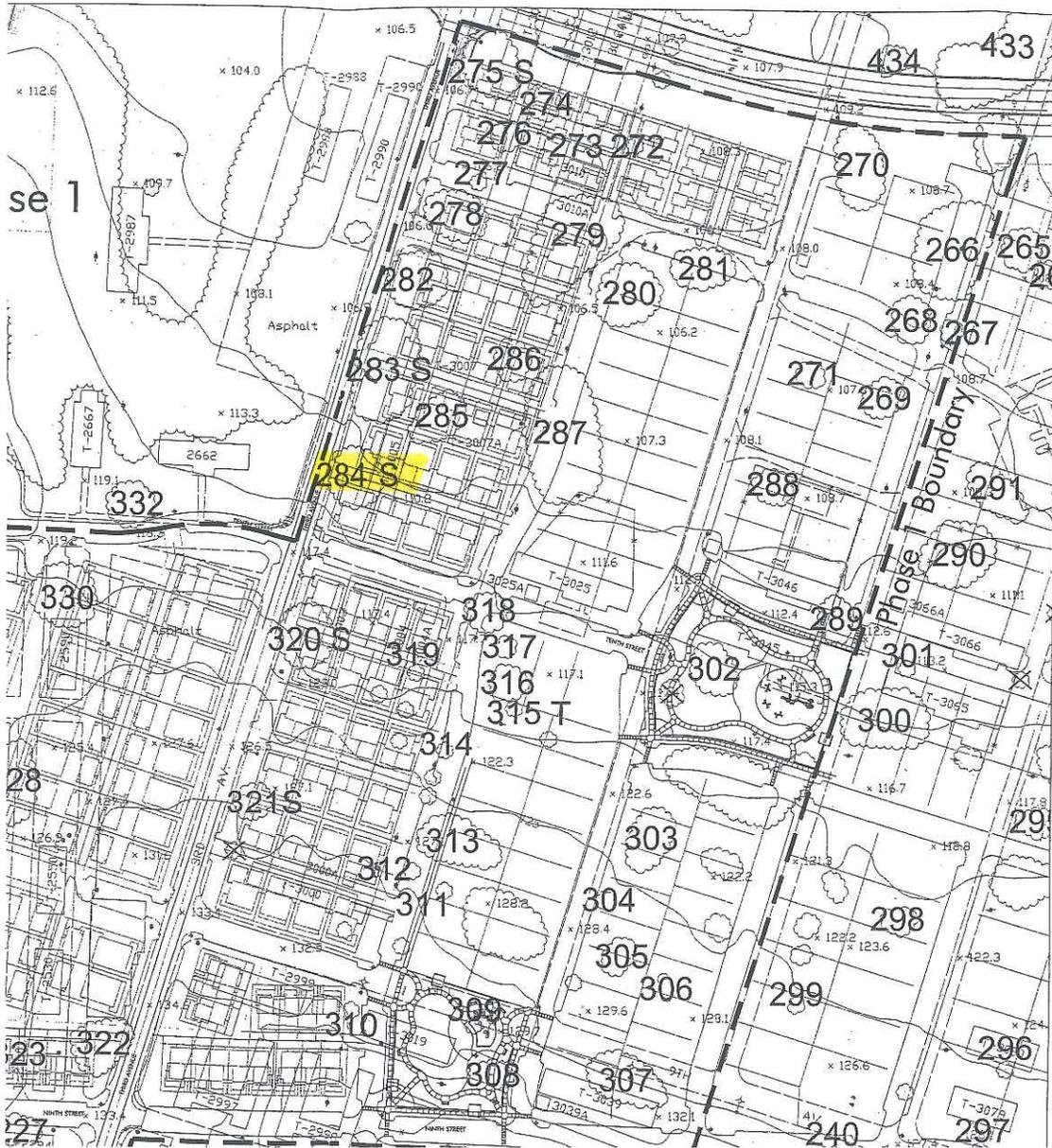
“EXHIBIT B”

Tree Disposition Plan dated April 8, 2005,
prepared by the Guzzardo Partnership, Inc. and the Dahlin Group

Tree Removal and Protection Plan dated August 31, 2005,
prepared by Staub Forestry and Environmental Consulting

Augmentation to Tree Removal and Protection Plan May 16, 2006,
prepared by Staub Forestry and Environmental Consulting

TREE DISPOSITION PLAN



S = Existing Trees to be Retained in Phase 1

Legend

- S - Existing trees to be retained in Phase 1.
- T - Existing trees to be transplanted in Phase 1.
- E - Existing trees to be reevaluated during construction in Phase 1, to be retained or transplanted.



Staub Forestry &
Environmental Consulting



"RECOMMENDED" FOR APPROVAL
BY:

Planning Commission

5/5/2005
Date

APPROVED BY:

Marina University Villages
Phase 1 Tree Removal and Protection Plan
August 31, 2005

CC Resolution 2005-131

5/31/05
Date

Overview

All trees to be removed, evaluated or protected for Phase 1 of the Marina University Villages project are identified using the project's tree inventory that identifies trees within numbered polygons shown on the Tree Disposition Plan dated 04.08.05. Tree polygon numbers followed by a letter (E=Evaluate, S=Save, T=Transplant) must not be removed until and unless required evaluation, protection or transplanting steps have been completed by the project's forester/arborist. The forester/arborist may recommend removal of a tree originally projected for retention if its health has declined so much that its vigor cannot reasonably be expected to be maintained during and after construction. All trees in polygons not followed by a letter are expected to be removed.

Initial A total of 252 trees (including Monterey cypress, Monterey pine, coast live oak and eucalyptus species) are scheduled for removal for Phase 1 of Marina University Villages. Phase 1 includes a total of 75 retained, transplanted and to be evaluated trees: 49 retained trees (all Monterey cypress), 5 transplant trees (4 Monterey cypress, 1 coast live oak) and 21 trees (all Monterey cypress) that are to be evaluated based on final grading plans. In order to ensure that these 75 trees are provided adequate protection during the tree removal and demolition phases of this project, the following recommendations are provided.

Tree Removal Measures

1. Trees to be removed for any project phase shall be marked in advance on their trunks with a horizontal stripe of paint. In addition, the number of the tree inventory polygon shall be painted on the first tree in any polygon where trees are to be removed.
2. Trees to be evaluated or retained within in any area where tree removal is imminent shall be identified in advance with flagging and any recommended tree protection areas for such trees shall be delineated in advance using flagging or fencing wherever such measures are recommended. Each tree to be retained must also be individually marked with an aluminum tree tag placed at its base on the south side.
3. The project forester/arborist shall confirm that implementation of the above items is satisfactory prior to commencement of tree removal.
4. Stump and root removal of trees located within 25' of trees being retained shall be done by

grinding or other methods that pose no threat to roots of retained trees within their TPZs.

5. Initial Tree Removal for Phase 1A and south to polygons 186, 195, and 209

- Tree removal activities shall not occur within Tree Protection Zones (TPZs) that are at least 10 times the diameter of transplant trees 346.1 (10' radius), 347.1 (13' radius), & 349.1 (11.25' radius). The perimeter of the TPZ for 347.1 should be flagged prior to commencement of removal activities.
- Tree 355.1 shall not be removed at this time pending further evaluation for possible use as a transplant tree.
- TPZs should be flagged for retained trees in Polygons 177S and 178S prior to removal of trees in nearby polygons 179, 183 and 186.

Tree Protection Measures During Demolition and Construction

1. Protection measures for all retained trees shall be established by the forester/arborist in consultation with all relevant project staff and contractors while considering proposed project requirements for grading, trenching, and construction. Feasible tree protections may require:

- * special construction measures to avoid or minimize impacts to rooting zones
- * on-site review with contractor prior to or during active grading or construction activities
- * on-site review of the adequacy of protection measures
- * standard protection measures such as Tree Protection Zones, remedial crown pruning, root pruning and maintenance, soil mulching and watering.

2. Tree Protection Zones (TPZs) shall be established in consultation with the forester/arborist around all retained trees for the duration of all demolition and construction activities. TPZs shall extend to at least the dripline of all retained trees or established within the dripline of individual trees in order to minimize tree removals and maintain tree health during construction. TPZ perimeters shall be fenced using chainlink fencing anchored into the ground and at least 6 feet in height. Fencing shall be labeled with a sign indicating "protected tree" typically and shall have bright orange tape or similar surrounding the top to visually identify the fence during construction. Fencing shall not be moved and TPZs shall not be encroached upon for any reason unless approved as a special condition by the forester/arborist.

3. Where tree crowns extend into demolition or construction operations area, a qualified tree service shall prune tree crowns in accordance current arboricultural standards and practices (See ISA Tree Pruning Guidelines, Appendix E) prior to commencement of operations to balance the canopy, provide necessary clearances, remove dead wood, and to promote the health of the tree.

4. Root Protection Measures - Roots exposed by excavation must be pruned and recovered as quickly as possible to promote callusing, closure and healthy regrowth.

* Where excavation will occur within tree driplines, the following root severing procedures during excavation are recommended: Gently expose and cleanly sever roots one foot further from the tree than the final limit of grading and then hand dig the final foot of width. Roots should then be cleanly pruned to the side wall of excavation with a saw, sawzall, narrow trencher with sharp blades, or clippers. Hydraulic or pneumatic excavation technologies are available

which can expose and minimize damage to roots. Severed roots should be recovered with temporary fill or draped immediately with at least two layers of untreated burlap or carpets secured to cover the excavated surface to a depth of 3 feet from the ground surface. Burlap or carpeting (or temporary fill) shall be soaked nightly and kept in place until the excavated surface is backfilled and watered.

* Where trenching operations occur within tree driplines, the above measures should be followed except that roots larger than 1.5" should be tunneled under or bridged over to the maximum extent feasible rather than severed.

* Where demolition of existing pavement or structures or any construction activity exposes rooting zones of retained trees, exposed soil and roots shall be covered with at least 4 inches of chips or mulch, preferably with some nutritive value.

5. Watering and Fertilization – Retained trees shall be watered periodically in accordance with species needs to promote tree health. Tree trunks shall not be sprayed or watered directly. Trees shall be fertilized and treated as necessary to promote the health of the tree and as recommended by the forester/arborist.

6. Initial Tree Protection for Phase 1A and south to polygons 186, 195, and 209

- Demolition should not occur within TPZs for transplant trees 346.1, 347.1, 349.1 and potential transplant 355.1 until transplanting occurs or until released for removal by the forester/arborist.
- Fenced TPZs should be established around all retained trees that could be affected by operations in polygons 177, 178, 180, 181, 182, 353 and 354.
- Note that the 44" at base cypress to be saved in polygon 180 (the only tree in the polygon) is in declining health and needs remedial treatments (removal of surrounding pavement and curbs, pruning, expanded rooting area, fertilizing, and watering) if it is to recover sufficient vigor to be worth saving. Evaluation of proposed demolition, grading and construction plans is warranted prior to making these treatments.

Submitted by:

Stephen R. Staub
Registered Professional Forester #1911
ISA Certified Arborist #WE-6739A

*Staub Forestry &
Environmental Consulting*



RE protection for transplant tree 347.1 during tree removal, the following language already contained in the specifics under Tree Removal should be adequate:

- Tree removal activities shall not occur within Tree Protection Zones (TPZs) that are at least 10 times the diameter of transplant trees 346.1 (10' radius), 347.1 (13' radius), & 349.1 (11.25' radius). The perimeter of the TPZ for 347.1 should be flagged prior to commencement of removal activities.

The obvious corollary is that existing limbs and foliage of 347.1 should also remain completely undamaged by operations removing other trees in polygon 347.

Hope this helps.

Steve

Stephen R. Staub
Registered Professional Forester #1911

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*Staub Forestry &
Environmental Consulting*



**Marina University Villages
Tree Removal and Protection Plan - Phase 1B Supplement
May 16, 2005**

Overview

This supplemental report to the Phase 1 Tree Removal and Protection Plan dated August 31, 2005 recapitulates procedures and general requirements for tree removal and protection with details on measures for trees still being evaluated, retained or transplanted in the Phase 1B area.

All trees to be removed, evaluated or protected for Phase 1 of the Marina University Villages project are identified using the project's tree inventory that identifies trees within numbered polygons shown on the Tree Disposition Plan dated 04.08.05. Tree polygon numbers followed by a letter (E=Evaluate, S=Save, T=Transplant) must not be removed until and unless required evaluation, protection or transplanting steps have been completed by the project's forester/arborist. The forester/arborist may recommend removal of a tree originally projected for retention if its health has declined so much that its vigor cannot reasonably be expected to be maintained during and after construction. All trees in polygons not followed by a letter are expected to be removed.

A total of 252 trees (including Monterey cypress, Monterey pine, coast live oak and eucalyptus species) are scheduled for removal for Phase 1 of Marina University Villages. Phase 1 includes a total of 75 retained, transplanted and to be evaluated trees: 49 retained trees (all Monterey cypress), 5 transplant trees (4 Monterey cypress, 1 coast live oak) and 21 trees (all Monterey cypress) that are to be evaluated based on final grading plans. In order to ensure that these 75 trees are provided adequate protection during the tree removal and demolition phases of this project, the following recommendations are provided.

Tree Removal Measures

1. Trees to be removed for any project phase shall be marked in advance on their trunks with a horizontal stripe of paint. In addition, the number of the tree inventory polygon shall be painted on the first tree in any polygon where trees are to be removed.
2. Trees to be evaluated or retained within in any area where tree removal is imminent shall be identified in advance with flagging and any recommended tree protection areas for such trees shall be delineated in advance using flagging or fencing wherever such measures are recommended. Each tree to be retained must also be individually marked with an aluminum tree tag placed at its base on the south side.
3. The project forester/arborist shall confirm that implementation of the above items is satisfactory prior to commencement of tree removal. **The project forester confirms that the above items have been completed satisfactorily for the Phase 1B area as of May 16th.**

4. Stump and root removal of trees located within 25' of trees being retained shall be done by grinding or other methods that pose no threat to roots of retained trees within their TPZs.

5. Initial Tree Removal for Phase 1B

- Tree Protection Zones (TPZs) have been flagged with blue and white striped flagging on limbs and portions of the trunk on all the individual trees still being evaluated, retained or transplanted within the Phase 1B area: Evaluation Trees-198.1, 198.2, 200.1, 202.1, 203.1, 203.2, 203.3, 205.1, 220.1, 321.1; Retained Trees-218.1, 275.1, 283.1, 283.2, 284.1, 320.1, 331.6; Transplant tree-315.1.
- Evaluation trees must be retained undamaged until final decisions can be made about feasibility of protection given grading requirements and space available both above and below ground. Tree 205.1 has only fair to poor health and form.
- Transplant tree candidate 315.1 is a dense cluster of small oaks that will need thinning and further evaluation before it can be lifted.

Tree Protection Measures During Demolition and Construction

1. Protection measures for all retained trees shall be established by the forester/arborist in consultation with all relevant project staff and contractors while considering proposed project requirements for grading, trenching, and construction. Feasible tree protections may require:

- * special construction measures to avoid or minimize impacts to rooting zones
- * on-site review with contractor prior to or during active grading or construction activities
- * on-site review of the adequacy of protection measures
- * standard protection measures such as Tree Protection Zones, remedial crown pruning, root pruning and maintenance, soil mulching and watering.

2. **Tree Protection Zones (TPZs) shall be established in consultation with the forester/arborist around all retained trees for the duration of all demolition and construction activities.** TPZs shall extend to at least the dripline of all retained trees or established within the dripline of individual trees in order to minimize tree removals and maintain tree health during construction. TPZ perimeters shall be fenced using chainlink fencing anchored into the ground and at least 6 feet in height. Fencing shall be labeled with a sign indicating "protected tree" typically and shall have bright orange tape or similar surrounding the top to visually identify the fence during construction. Fencing shall not be moved and TPZs shall not be encroached upon for any reason unless approved as a special condition by the forester/arborist.

3. Where tree crowns extend into demolition or construction operations area, a qualified tree service shall prune tree crowns in accordance current arboricultural standards and practices (See ISA Tree Pruning Guidelines, Appendix E) prior to commencement of operations to balance the canopy, provide necessary clearances, remove dead wood, and to promote the health of the tree. **Prior to commencement of demolition, evaluation and retained trees 198.1, 198.2, 200.1, 202.1, 203.1, 203.2, 203.3, 218.1, 220.1, 275.1, 283.1, 283.2, 284.1, 320.1, & 331.6 should be pruned away from adjoining buildings to prevent damage.** For retained trees, preliminary

pruning of excessively long or low limbs to prevent damage and improve form may be done at the same time if desired.

4. **Root Protection Measures** - Roots exposed by excavation must be pruned and recovered as quickly as possible to promote callusing, closure and healthy regrowth.

* Where excavation will occur within tree driplines, the following root severing procedures during excavation are recommended: Gently expose and cleanly sever roots one foot further from the tree than the final limit of grading and then hand dig the final foot of width. Roots should then be cleanly pruned to the side wall of excavation with a saw, sawzall, narrow trencher with sharp blades, or clippers. Hydraulic or pneumatic excavation technologies are available which can expose and minimize damage to roots. Severed roots should be recovered with temporary fill or draped immediately with at least two layers of untreated burlap or carpets secured to cover the excavated surface to a depth of 3 feet from the ground surface. Burlap or carpeting (or temporary fill) shall be soaked nightly and kept in place until the excavated surface is backfilled and watered.

* Where trenching operations occur within tree driplines, the above measures should be followed except that roots larger than 1.5" should be tunneled under or bridged over to the maximum extent feasible rather than severed.

* Where demolition of existing pavement or structures or any construction activity exposes rooting zones of retained trees, exposed soil and roots shall be covered with at least 4 inches of chips or mulch, preferably with some nutritive value.

5. **Watering and Fertilization** - Retained trees shall be watered periodically in accordance with species needs to promote tree health. Tree trunks shall not be sprayed or watered directly. Trees shall be fertilized and treated as necessary to promote the health of the tree and as recommended by the forester/arborist.

6. Initial Tree Protection for Phase 1B

- The demolition contractor should mark WARNINGS on the buildings being demolished to PROTECT TREE (evaluation and retained trees) next to building being demolished - 198.1, 198.2, 200.1, 202.1, 203.1, 203.2, 203.3, 218.1, 220.1, 275.1, 283.1, 283.2, 284.1, 320.1, & 331.6 .
- **Flagged TPZs for all evaluation, retained or transplant trees should be replaced by fenced TPZs as specified above prior to commencement of grading activities.**
- Evaluation tree 205.1 has declined noticeably in health since our initial inventory and can only be made a suitable retention tree with considerable arboricultural and horticultural care. Depending on team evaluation of its final growing space, replacement may be preferable to retention

Submitted by:



Stephen R. Staub

Registered Professional Forester #1911

ISA Certified Arborist #WE-6739A

	268	269.1	EUC	18			
1	269	269.2	EUC	18			
1	270	270.1	EUC	20			
2	271	271.1	EUC	10 to 12	multiple stems		
	271	271.2	EUC	22			
1	272	272.1	EUC	12,12,12			
3	273	273.1	CYP	22	P		
	273	273.2	CYP	23	P		
	273	273.3	CYP	11	P		
1	274	274.1	CYP	33 @base	P	topped	
2	275	275.1	CYP	25	G		Save
	275	275.2	CYP	59 @base	F/P		
1	276	276.1	CYP	24	F		
1	277	277.1	CYP	7	P		
2	278	278.1	CYP	27 @base	P		
	278	278.2	CYP	50 @base	P		
5	279	279.1	CYP	41 @base	F		
	279	279.2	EUC	12 to 14	multiple stems		
	279	279.3	CYP	33	P	large, shallow roots	
	279	279.4	CYP	30	P		
	279	279.5	CYP	56 @base	P	structure	
5	280	280.1	EUC	10 to 30	5 eucs		
1	281	281.1	EUC	10,12	almost dead		
2	282	282.1	CYP	37 @base	P	structure, broken limbs	
	282	282.2	CYP	21	P		
2	283	283.1	CYP	50	F		Save
	283	283.2	CYP	73 @base	F		Save
1	284	284.1	CYP	80 @base	G	numerous stems	Save
3	285	285.1	EUC	15		broken stems	
	285	285.2	CLO	21,21	G	numerous stems	
	285	285.3	EUC	21			
1	286	286.1	CYP	35			
5	287	287.1	EUC	10 to 30	group of eucs		
1	288	288.1	EUC	34			
1	289	289.1	EUC	35			
2	302	302.1	EUC	20			
	302	302.2	EUC	22			
4	303	303.1	EUC	16 to 36	4 eucs		
1	304	304.1	EUC	16			
1	305	305.1	EUC	23			
1	306	306.1	EUC	6,10,18			
3	307	307.1	CYP	21 @base	P	topped	
	307	307.2	CYP	34	P	topped	
	307	307.3	EUC	10,10,16			
2	308	308.1	EUC	10,10			
	308	308.2	EUC	8,10,11			
1	309	309.1	EUC	7,11			
1	310	310.1	EUC	10,12			
1	311	311.1	EUC	6,16			
1	312	312.1	EUC	6,6,10,12,16			
2	313	313.1	MP	11	F		
	313	313.2	EUC	24,24			
1	314	314.1	EUC	10 @base			
1	315	315.1	CLO	3 to 7	G/F		Transplant
1	316	316.1	EUC	23			
1	317	317.1	EUC	10 to 16			
1	318	318.1	EUC	33			
1	319	319.1	EUC	6,10,12			
1	320	320.1	CYP	59 @base	G/F		Save
1	321	321.1	CYP	36 @base	F		Reevaluate
1	322	322.1	CYP	45 @base	F/P	topped, many stems	
1	323	323.1	CYP	30 @base	F		
2	324	324.1	CYP	27 @base	P	structure, topped	
	324	324.2	CYP	17 @base	P	structure, topped	

“EXHIBIT C”

Staff report with Exhibits for the June 24, 2015 Tree Committee meeting

Tree Removal Permit Resolution No. 2015-03 (June 24, 2015)

June 17, 2015

Item No: 7b

Tree Committee Members

Tree Committee Meeting
of June 24, 2015

**TREE COMMITTEE CONSIDER ADOPTING RESOLUTION NO. 2015- ,
APPROVING TREE REMOVAL PERMIT (TP 2015-05) FOR REMOVAL
OF TWO (2) MONTEREY CYPRESS (*CUPRESSUS MACROCARPA*)
LOCATED IN THE PHASE 1C OF THE DUNES ON MONTEREY BAY
(FORMERLY UNIVERSITY VILLAGES) SPECIFIC PLAN AREA (APNS
031-251-050 AND -051), SUBJECT TO CONDITIONS**

RECOMMENDATION:

It is recommended that the Tree Committee:

1. Consider adopting Resolution No. 2015- , approving Tree Removal Permit (TP 2015-05) for removal of two (2) Monterey cypress (*Cupressus macrocarpa*) located in Phase 1C of the Dunes on Monterey Bay (formerly University Villages) Specific Plan area (APNs 031-251-050 and -051), subject to conditions.

BACKGROUND:

Shea Homes is in the process of constructing homes within Phase 1C of the Dunes project area.

On June 4, 2014, the applicant, Chris Stump, on behalf of Shea Homes Limited Partnership, requested a Tree Removal Permit to remove the two subject Monterey cypress trees.

ANALYSIS:

The Tree Removal Permit application includes an arborist report dated April 29, 2015, prepared by Cassady Bill Vaughan, International Society of Arboriculture Certified Arborist #WE-10039A (“**EXHIBIT A**”). The applicant has also provided a letter describing the tree removal request (“**EXHIBIT B**”).

The two subject trees are located in or near areas designated for residential development in the Dunes on Monterey Bay Specific Plan. One of the subject trees is a landscape area along 3rd Avenue in between lots 78 and 85 (APN 031-251-051). The second subject tree is in the proposed park along 2nd Avenue next to lot 295 (APN 031-251-050).

Tree #1

The arborist report indicates that if there is no flexibility in the design of the housing unit on lot 295, it appears the current configuration would require removal of about 40 percent of the live crown of the tree. While 40 percent pruning of the crown exceeds the general rule of thumb of less than 30 percent crown reduction, such pruning may be acceptable for this particular tree if care is taken to remove defective and dead limbs on the northern portion of the crown and an attempt is made to achieve balanced tree form through selective pruning. The arborist report specifies a minimum setback for tree retention at 15 feet, which is three times the diameter of the tree (60 inches).

The applicant indicates that because the tree is located 12 feet away from the future home on lot 295 and seven feet lower in elevation from the house pad, the tree would require extensive

pruning and would be undermined by a seven-foot-high retaining wall installed approximately five feet away from the tree. The applicant requests that the tree be removed and replaced with a series of new trees in the same general location that will over time grow to similar size and massing. In addition, the applicant proposes to compensate the visual impact of the requested tree removal by planting one of the relocated (boxed) cypress trees from the Dunes project area in the adjacent park.

Review of the Tree Relocation Map prepared by the landscape architecture firm vanderToolen Associates for Shea Homes on October 24, 2014, indicates that tree #1 would be retained by relocating it onsite south of its current location and away from the proposed retaining walls.

Tree #2

The arborist report indicates that the proposed alley and lot 78 configuration may be too close to tree #2, drawing doubt as to whether or not the tree could accommodate the current design. Recommended considerations include shortening the alley, abandoning construction of lot 78, and modifying the unit floor plan/garage entry for lot 78. Crown reduction and tree well options are not ruled out as possible considerations, too. The arborist report specifies a minimum setback for tree retention at 18 feet, which is three times the diameter of the tree (70 inches).

The applicant indicates that because the tree is located 15 feet away from the future home on lot 78 and four feet lower in elevation from the house pad, the tree would require extensive pruning and would be undermined by street and home improvements within the recommended tree setback. In addition, the applicant proposes to compensate for the removal of this tree by planting additional Monterey cypress trees in the adjacent 3rd Avenue landscape area.

Review of the Tree Relocation Map prepared by the landscape architecture firm vanderToolen Associates for Shea Homes on October 24, 2014, indicates that tree #2 would be retained onsite in its current location.

Staff concludes that the required findings pursuant to MMC §17.51.060.C can be made to approve the removal of the two (2) Monterey cypress.

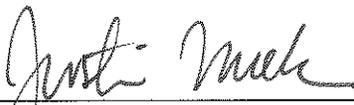
CALIFORNIA ENVIRONMENTAL QUALITY ACT

Approval of the tree removal request for the two (2) Monterey cypress trees is eligible for a Class 4 exemption under the California Environmental Quality Act (CEQA) Guidelines Section 15304 that exempts minor alterations to land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees.

CONCLUSION:

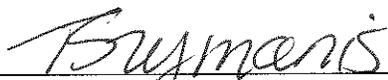
This request is submitted for Tree Committee consideration and possible action.

Respectfully submitted,



Justin Meek, AICP
Senior Planner
City of Marina

REVIEWED/CONCUR:

A handwritten signature in cursive script, reading "Szymanis", written over a horizontal line.

Theresa Szymanis, AICP CTP
Acting Director, Community Development Department
City of Marina

**VAUGHAN FORESTRY & LAND MANAGEMENT**

Shea Homes
c/o: Victor Davi
2630 Shea Center Drive
Livermore, CA 94550

April 29, 2015

MEMO: Preliminary Forester/Arborist Evaluation for University Village Phases 10 and 18 (Lots 295, 78, 86, and 93).

On April 14, 2015, I reviewed four (4) large cypress trees located in close proximity to the above referenced Lots within the University Villages Subdivision. I was accompanied by Victor Davi, the project supervisor, who pointed out the various grading and construction activities and their potential to impact the 4 cypress trees located on attached Appendix Maps 1 and 2. Pictures of each of the trees are also included below. Note that the tree reference numbers (#s1-4) are for this letter only and do not correspond to the original tree inventory numbers assigned in 2007 (Staub, et al). For consistency, any formal report submitted to the City of Marina, or other oversight agency, should reference the original 2007 tree inventory.

Lot 295:

The cypress tree located immediately south of Lot 295 (Tree #1) is a large, spreading, multi-stemmed specimen in average condition (see Tree #1 picture). The base of the tree measures 60" or more in diameter, but is probably best characterized as five co-dominant stems measuring 16", 17", 18", 27", and 29" in diameter.

The grading plans reviewed in the field indicate that Tree #1 will be bordered on two sides by retaining walls, with a housing unit located above the northern wall. If there is no flexibility in the design of the unit, i.e. roof lines, second story, cut-out floor plan, etc., it appears the current configuration would require removal of about 40% of the live crown of Tree #1. This conclusion is based on ocular estimates of the retaining wall location and a projection of the final southern second story wall of the unit. Pruning 40% of the crown exceeds the general rule of thumb which recommends <30% crown reduction, but such pruning may be acceptable for this particular tree if care is taken to remove defective and dead limbs on the northern portion of the crown and an attempt is made to achieve balanced tree form through selective pruning.

Retention of Tree #1 should also consider vegetation removal requirements imposed by local fire response agencies relative to defensible space around structures. A perimeter fence should be installed around the base of the tree at a distance equal to 3X the diameter of the tree. Based on a total diameter of the 60", the fence should be placed no closer than 15'. This 15' perimeter fence defines the minimum setback for grading, placement of fill, trenching, equipment operations, and/or retaining wall installation. Final pruning and grading should be done in consultation with a Certified Arborist.

Lot 78:

The cypress tree located immediately northwest of Lot 78 (Tree #2) is a large, spreading, multi-stemmed specimen in better than average condition (see Tree #2 picture). The base of the tree measures 70"+ in diameter, with eight (8) co-dominant stems measuring 12- 22" in diameter.

The grading plans reviewed in the field indicate that Tree #2 is bordered on the east by a rock armored gabion wall designed to retain constructed fills at the western edge of the alley between Lots 78 and 85 as well as the developed house pad at Lot 78. Reconnaissance-level field review (grade stakes and construction limits were not defined) suggests that the proposed alley and Lot 78 are projected to be too close to Tree #2. While crown reduction efforts and tree well options cannot be ruled out, there is serious doubt as to whether the cypress tree can accommodate the current design. Shortening the alley so that the toe of the gabion wall lands at or slightly east of the existing manhole and abandoning construction at Lot 78 should be considered. This approach would still see a perimeter fence installed 18' (3X trunk diameter) around Tree #2, and modest pruning to accommodate construction at Lot 85. This 18' perimeter fence defines the minimum setback for grading, placement of fill, trenching, equipment operations, and/or retaining wall installation.

There is some latitude for creative a turnaround/alley design and a modified unit floor plan/garage entry at Lot 78. However, the minimum setback requirements noted in the previous paragraph need to be considered in the design criteria. The project engineer and architect are encouraged to work with the Arborist to develop an adaptive plan to improve the tree's chances for survival over the long term.

Lots 86 and 93:

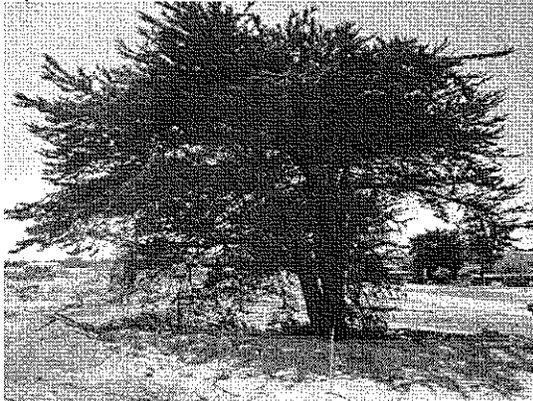
Based on reconnaissance-level field review (grade stakes and construction limits were not defined) suggests that the two cypress trees located west of Lots 86 and 93 (Trees #3 and #4) will not be impacted by proposed construction. Both trees are in good health and deserve protection (see attached As discussed with the project supervisor and grading engineer during the April 14, 2015 site visit, construction fencing shall be installed around both trees at a distance equal to 3X the diameter of Tree #3 and #4. Disturbance within the protective buffer shall be limited to minor surface scarification to key fills or establish the tow of a retaining structure. Based on field review, it appears both Tree #3 and #4 will require a +/- 15' tree protection zone (TPZ). Modifications to the construction limits discussed during the field visit or pruning which involves more than 30% of the crown of either tree will require consultation with an Arborist.

Please let me know if you have any questions.

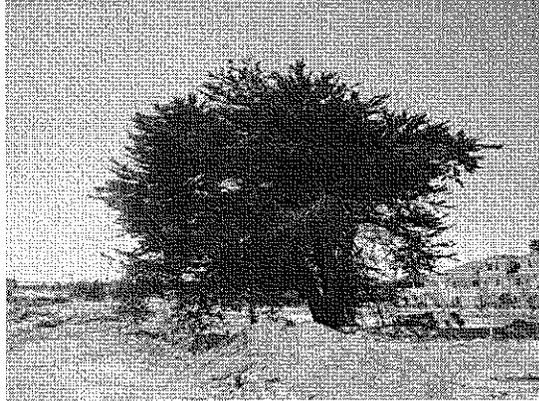


Cassady Bill Vaughan
Registered Professional Forester #2685
Certified Arborist # WE-10039A

TREE #1



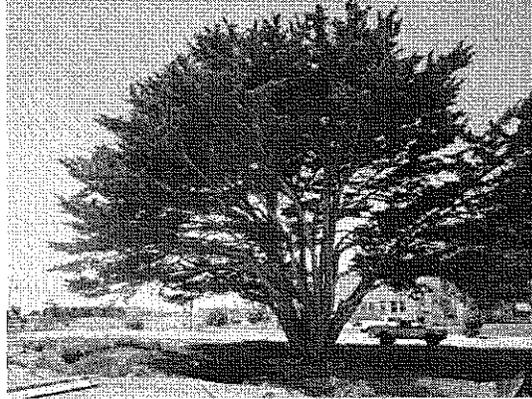
TREE #1



TREE #2



TREE #2



TREE #3 & #4



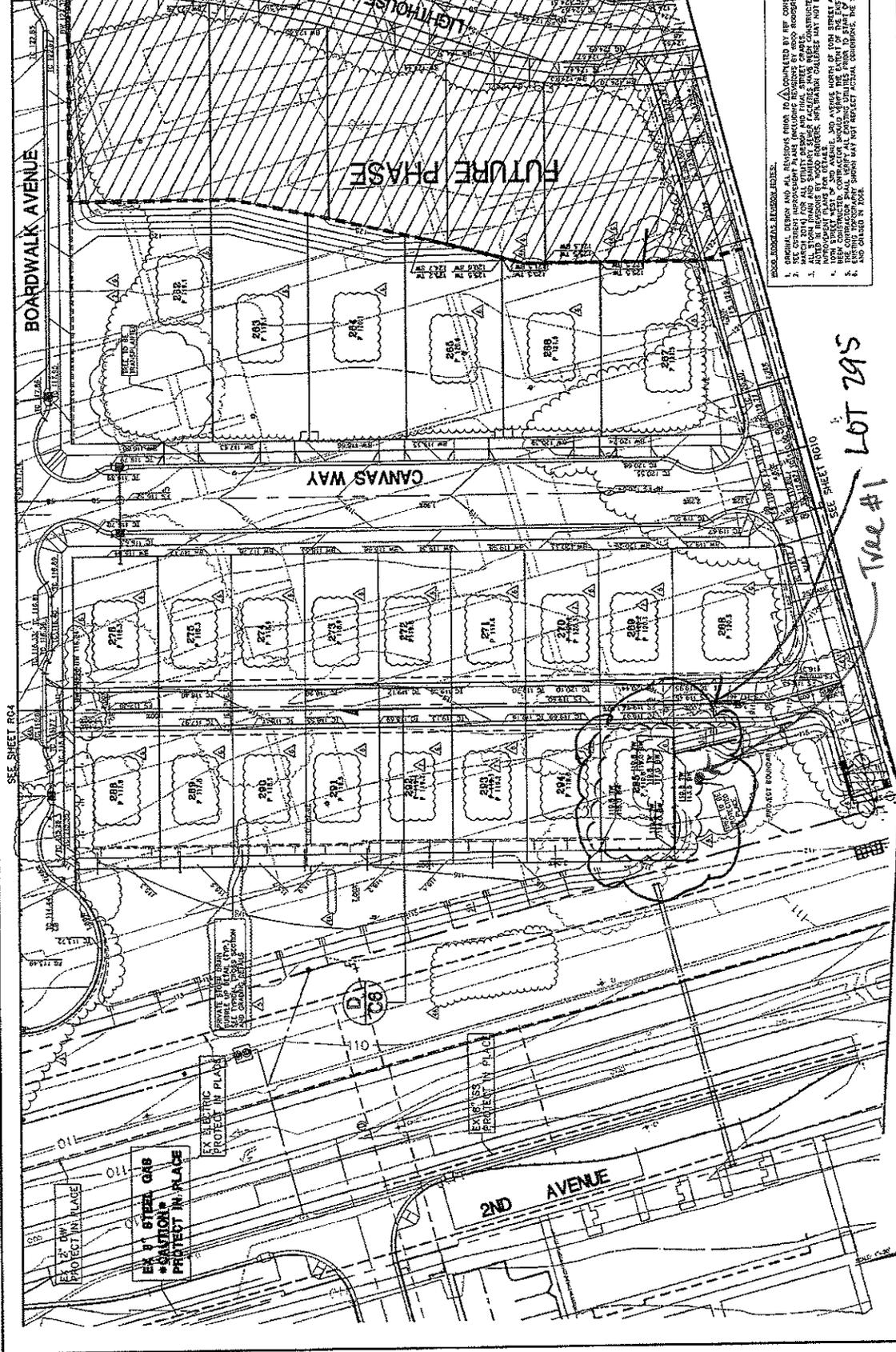
TREE #3 & #4



ATTACHMENT 1

SEE SHEET RC4

SEE SHEET RC8



- MODEL RECORD INDEX:**
1. ORIGINAL DESIGN AND ALL REVISIONS SHALL BE COMPLETED BY THE CONSULTING ENGINEER.
 2. ALL CHANGES SHALL BE MADE BY THE CONSULTING ENGINEER AND SHALL BE RECORDED IN THE MODEL RECORD INDEX.
 3. ALL CHANGES SHALL BE MADE BY THE CONSULTING ENGINEER AND SHALL BE RECORDED IN THE MODEL RECORD INDEX.
 4. ALL CHANGES SHALL BE MADE BY THE CONSULTING ENGINEER AND SHALL BE RECORDED IN THE MODEL RECORD INDEX.
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 8. ALL CHANGES SHALL BE MADE BY THE CONSULTING ENGINEER AND SHALL BE RECORDED IN THE MODEL RECORD INDEX.
 9. ALL CHANGES SHALL BE MADE BY THE CONSULTING ENGINEER AND SHALL BE RECORDED IN THE MODEL RECORD INDEX.
 10. ALL CHANGES SHALL BE MADE BY THE CONSULTING ENGINEER AND SHALL BE RECORDED IN THE MODEL RECORD INDEX.

Tree #1 LOT 295

WOOD ROSSERS
 4301 HACHENDA DR. SUITE 100 FAX 958.047.1938
 CLEARWATER, FL 34615

RBF CONSULTING
 100 W. WASHINGTON ST. SUITE 200
 TAMPA, FL 33602
 PREPARED BY: RBF CONSULTING

CITY OF MARINA

ROUGH GRADING AND DRAINAGE SHEET - UNIVERSITY VILLAGE - PHASE 3B AND 10

RG7

OF 15

NO.	REVISIONS	DATE
1	PREPARED BY WOOD ROSSERS, INC.	11-14-14
2	REVISIONS BY WOOD ROSSERS, INC.	11-24-14
3	SHRUBS UP SETBACK UNDER REMAINING WALLS	12-22-14
4	REMOVING WALL, CHANGED DUE TO LOT	12-22-14
5	REMOVED GRADING FOR LOT/PARK ADJACENT	12-22-14
6	REMOVED GRADING REMAINING WALLS	12-22-14

SCALE: 1" = 40'

SheaHomes

2630 Shea Center Drive, Livermore CA 94550

May 14, 2015

City of Marina
Planning Department
209 Cypress Avenue
Marina, CA 93933
Attention: Theresa Szymanis

Subject: The Dunes 1C Tree Removal Permit

Ms. Szymanis:

Shea Homes is submitting a Tree Removal Permit for two cypress trees located on the Dunes 1C site. The trees are located adjacent to lots 295 (tree #1) and 78 (tree #2) in the attached report from Vaughan Forestry & Land Management dated April 29, 2015. Tree 1 and 2 are in conflict with 1C homes that have been approved by the City. The conflict in each case is more described as follows:

Tree #1:

The recommendations in the attached report state that a 15 foot setback is required from the tree trunk. The tree is located 12 feet away from the future home on lot 295 (lot #1 on the final Map) and 7 feet lower in elevation from the house pad. In order to construct the home, the tree would need to be extensively pruned on the north side, greatly reducing vegetative massing on this side in order to create necessary clearances. In addition, due to grade differences between the existing tree and the house, a significant retaining wall (7 feet high) would need to be constructed approximately 5 feet away from the tree #1 which is within the desired tree setback. Proximity of the wall to the tree in this case undermines the future health of the tree, and it is uncertain how the tree will respond in future years. It is therefore requested that Tree #1 be removed and replaced with a series of new trees in the same general location that will over time grow to similar size and massing. In addition, in order to more immediately compensate for visual impact, one of the relocated Cypress trees from the Dunes project will be planted in the adjacent Park A area.

Tree #2:

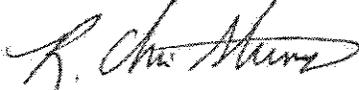
The recommendations in the attached report state that an 18 foot setback is required from the tree trunk. The tree is located 15 feet away from the future home on lot 78 (lot #109 on the final Map) and 4 feet lower in elevation from the house pad. In order to construct the necessary street and home improvements, a wall and fill would be required within the recommended tree setback. Furthermore, construction of the home would conflict with the canopy of tree 2 requiring extensive pruning for construction and maintenance of necessary safety setbacks between the home and tree. For this reason, it is requested that Tree #2 be removed. Additional Cypress trees will be planted in the adjacent Third Avenue landscape area to compensate for the removal of this tree.

SheaHomes

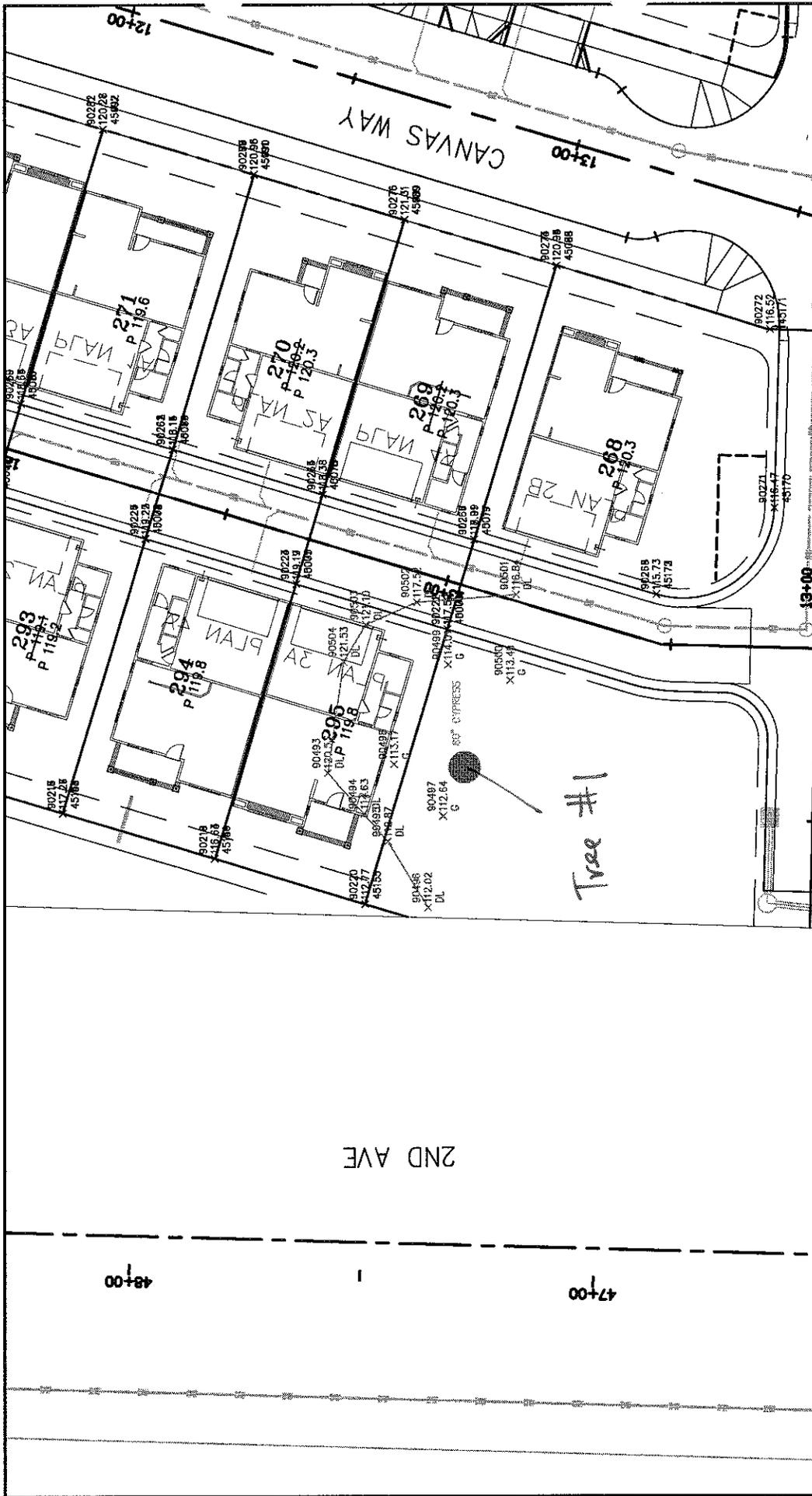
2630 Shea Center Drive, Livermore CA 94550

Tree #1 and 2 as identified in the Vaughan Forestry & Land Management report are in conflict with construction on lots #1 and 109. Development of these lots require that construction occur within the setback which jeopardizes tree survival. Extensive pruning is also required for home construction and creation of a defensible space in the event of a fire, which would impact the tree survival and overall aesthetics of the tree. We request the tree removal permit be granted for tree #1 and 2 with mitigation consisting of planting new cypress specimens in more appropriate locations.

Sincerely,



R. Chris Stump
Community Development Manager
Shea Homes



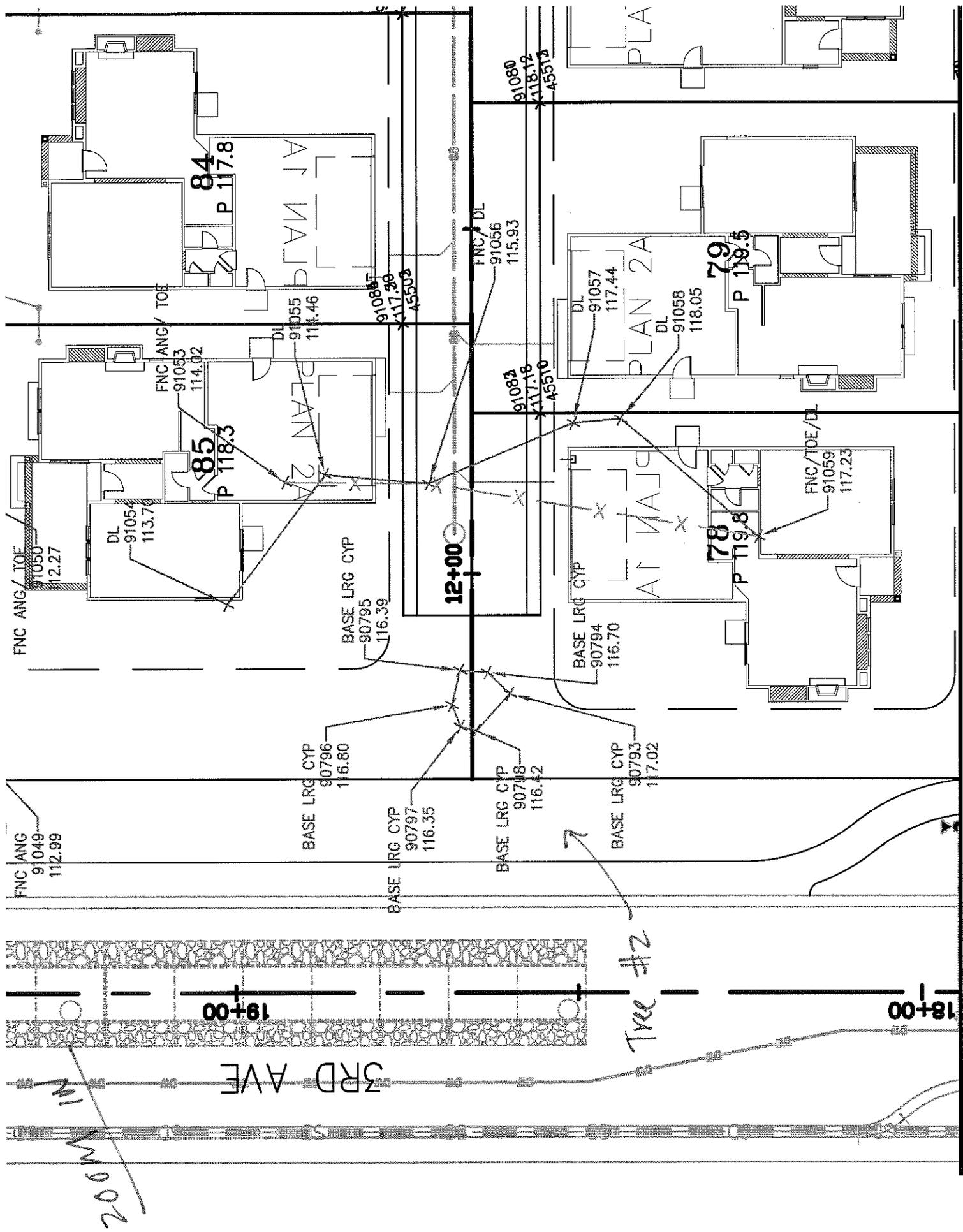
1"=20'



JULY 11, 2014
Sheet 1 of 1

Whitson Engineers
5686 Blue Larkspur Lane, Suite 105 | Monterey, CA 93940 | 831 649-5225 | F 831 373-5065
CIVIL ENGINEERING - LAND SURVEYING - PROJECT MANAGEMENT | www.whitsonengineers.com
Project No.: 3140.01

JULY 10, 2014 CONSTRUCTION STAKING AND FIELD CONDITIONS
DUNES ON MONTEREY BAY
MARINA, CALIFORNIA



RESOLUTION NO. 2015-03

A RESOLUTION FROM THE MARINA TREE COMMITTEE APPROVING TREE REMOVAL PERMIT (TP 2015-05) FOR REMOVAL OF TWO (2) MONTEREY CYPRESS (*CUPRESSUS MACROCARPA*) LOCATED IN PHASE 1C OF THE DUNES ON MONTEREY BAY (FORMERLY UNIVERSITY VILLAGES) SPECIFIC PLAN AREA (APNS 031-251-050 AND -051), SUBJECT TO CONDITIONS

WHEREAS, the Tree Committee of the City of Marina conducted a duly noticed public meeting to consider approving Tree Removal Permit (TP 2015-05) for removal of two (2) Monterey cypress (*Cupressus macrocarpa*) located in Phase 1C of the Dunes on Monterey Bay (formerly University Villages) Specific Plan area (APNs 031-251-050 and -051), considered all public testimony, written and oral, presented at the public meeting, and;

WHEREAS, the applicant has submitted plans and other application materials for Tree Removal Permit, including an arborists report June 4, 2015, prepared by Cassady Bill Vaughan, International Society of Arboriculture Certified Arborist #WE-10039A, that complies with MMC §17.51.060.

NOW, THEREFORE BE IT RESOLVED by the Tree Committee of the City of Marina that it hereby approves removal of two (2) Monterey cypress (*Cupressus macrocarpa*) located in Phase 1C of the Dunes on Monterey Bay (formerly University Villages) Specific Plan area (APNs 031-251-050 and -051), based upon the following findings:

Findings

Based on the following findings, the granting of Tree Removal Permit (TP 2015-03) for the removal of two (2) Monterey cypress (*Cupressus macrocarpa*) located in Phase 1C of the Dunes on Monterey Bay (formerly University Villages) Specific Plan area will achieve the spirit, purpose and intent of Chapter 17.51 of the City of Marina Municipal Code:

1. The applicant outlines a clearly documented and compelling reason for the removal of the trees, in that configuration of lots 78 and 295 and associated housing construction may impair the viability of trees #1 and #2.
2. The trees proposed for removal do not serve as part of a windbreak system or otherwise play a prominent role in maintaining the existing urban forest, in that the remaining trees and proposed plantings in the Dunes project area help to maintain the existing urban forest.
3. Due to the tree's contribution to the aesthetic beauty of the area, the removal of two (2) trees would not have a substantial detrimental effect on neighboring property values, in that replacement Monterey cypress trees would be planted onsite.
4. The removal request is concurrent with development plans for lots 78 and 295 and the development plans indicate that it is necessary to remove (or relocate) the trees to enable reasonable and conforming use of the properties which are otherwise prevented by the location of the trees.

Conditions of Approval

1. Tree #1 shall be compensated by implementing one of the following options: (a) relocating the tree onsite further to the south within the park such that it is at least 15 feet from the

proposed house on lot 295 and/or retaining wall(s); or (b) replanting a relocated (boxed) Monterey cypress from the Dunes project area at a 3:1 ratio. Option "b" shall be selected only if option "a" is deemed unviable by a city-approved Certified Arborist.

2. Tree #2 shall be compensated with three (3) relocated (boxed) Monterey cypress trees from the Dunes project area on the property (i.e., in the landscape area along 3rd Avenue and at least 18-feet away from the house on lot 78).
3. No trees shall be removed until the applicant has either identified the use of relocated (boxed) Monterey cypress trees or obtained an equivalent sized Monterey cypress tree from a nursery (minimum tree size for planting shall be in a 60-inch or 5'x5' box).
4. The trees approved for removal shall be removed together with any stump or root structure, and any hole created by such removal shall be backfilled with existing soil from the site.
5. The replacement trees shall be planted employing standard measures to ensure successful establishment of trees, including staking, soil amendment, mulching and installation of an automated irrigation system. Such replacement shall be accomplished within one (1) month after the stipulated trees have been identified and/or obtained.
6. The replacement trees shall be replaced and planted as described in Conditions No. 1 through 3 if the trees do not survive two years from the date of planting.
7. Staking shall be removed and irrigation components for watering of trees may be removed when trees are established.
8. The surrounding landscaping and grounds shall be continuously maintained in a weed-free, litter-free, healthy, growing condition and watering shall be done through the installation of an automatic irrigation system.
9. All of the remaining trees within the Dunes project area are not a part of this Tree Removal Permit and shall be retained.
10. Native trees and plants shall be protected from damage by tree removal activities. Protection measures shall include the use of protective barricades, plywood, or 2x4 material to protect any native tree that is located within striking distance (typically 50 feet) of the tree work that is to be performed. At no time shall tree limbs or wood be stacked upon native trees or plants.

NOW, THEREFORE BE IT RESOLVED by the Tree Committee of the City of Marina that it hereby approves removal of two (2) Monterey cypress (*Cupressus macrocarpa*) located in Phase 1C of the Dunes on Monterey Bay (formerly University Villages) Specific Plan area (APNs 031-251-050 and -051) as shown on "EXHIBIT A" attached hereto.

PASSED AND ADOPTED by the Tree Committee of the City of Marina at a special meeting duly held on the 24th day of June 2015, by the following vote:

AYES, COMMITTEE MEMBERS: Boynton, Ledesma, Morris

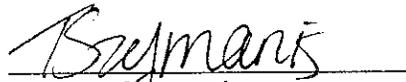
NOES, COMMITTEE MEMBERS: Owen

ABSENT, COMMITTEE MEMBERS: Youngblood

ABSTAIN, COMMITTEE MEMBERS:


Michael Owen, Chairperson

ATTEST:



Theresa Szymanis, AICP CTP
Acting Director, Community Development Department
City of Marina

“EXHIBIT D”

Minutes of June 24, 2015 Tree Committee meeting



MINUTES

Wednesday, June 24, 2015

6:30 P.M.

**SPECIAL MEETING
TREE COMMITTEE
MARINA CITY COUNCIL CHAMBERS
211 HILLCREST AVENUE**

VISION STATEMENT

Marina will grow and mature from a small town bedroom community to a small city, which is diversified, vibrant and through positive relationships with regional agencies, self-sufficient. The City will develop in a way that insulates it from the negative impacts of urban sprawl to become a desirable residential and business community in a natural setting. **(Resolution No. 2006-112 - May 2, 2006)**

MISSION STATEMENT

The City Council will provide the leadership in protecting Marina's natural setting while developing the City in a way that provides a balance of housing, jobs and business opportunities that will result in a community characterized by a desirable quality of life, including recreation and cultural opportunities, a safe environment and an economic viability that supports a high level of municipal services and infrastructure. **(Resolution No. 2006-112 - May 2, 2006)**

1. CALL TO ORDER: 6:30 p.m.

2. ROLL CALL & ESTABLISHMENT OF QUORUM:

Present: Michael Owen (Chair), Richard Boynton (Vice-Chair), Kenneth Morris, Tim Ledesma

Absent: Gail Youngblood

3. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE (Please stand)

4. SPECIAL ANNOUNCEMENTS: Michael Owen reported that Gail Youngblood was at a Friends of Marina meeting. Michael Owen reported that Caltrans had provided a certificate of completion to the Tree Committee and that approximately 1,000 Monterey cypress trees have been planted along Highway 1. Michael Owen noted that there was an article in the Monterey Herald regarding a four-fold increase in the removal of dead and dying trees.

5. COMMUNICATIONS FROM THE FLOOR: None.

6. CONSENT AGENDA:

- a. Tree Committee Minutes: none.

7. ACTION ITEMS:

It is requested that the Tree Committee:

- a. **Consider adopting Resolution No. 2015- , approving Tree Removal Permit (TP 2015-02) for removal of one (1) Canary Isla pine tree (*Pinus canariensis*) located at 320 Carmel Avenue (APNs 032-531-001 through -010), subject to conditions.**

Justin Meek summarized the staff report and introduced Kathryn Pernet, who was present to represent the Carmel Avenue Homeowners Association.

Kathryn Pernet requested that Condition of Approval No. 8 be removed because the Carmel Avenue Homeowners Association had never been responsible for the street trees along Crescent Avenue. Justin Meek informed the Tree Committee that staff continues to investigate the history of the street trees origin, noting that they may have been planted at the same time of the housing construction across Crescent Avenue and associated roadway modifications.

Chair Owen expressed his opposition for the proposal, citing the implicit goal of the Tree Removal, Preservation and Protection Ordinance to protect and preserve upper canopy trees. He suggested trimming “minor” stems to maintain the upper canopy of the subject tree.

Vice Chair Boynton noted that tree trimming would not hinder root growth and that the tree roots would continue to push up the adjacent wall and eventually bust the wall and sidewalk.

In response to a suggestion to remove two Monterey cypress trees in front of units 1-4, Justin Meek noted that they were previously required replacement trees.

In response to a question about the type of tree the applicant would plant were the Tree Removal Permit approved, Kathryn Pernet indicated that they might select a cherry blossom tree to match some of the trees in front of units 1-4. Vice Chair Boynton clarified that ornamental plum trees are planted, not cherry blossom trees.

Tim Ledesma suggested removing Condition of Approval No. 8.

Approval Moved by Tim Ledesma with removal of Condition of Approval No. 8; Seconded by Richard Boynton; Ayes: Boynton, Ledesma, Morris; Nos: Owen.

- b. **Consider adopting Resolution No. 2015- , approving Tree Removal Permit (TP 2015-05) for removal of two (2) Monterey cypress (*Cupressus macrocarpa*) located in Phase 1C of the Dunes on Monterey Bay (formerly University Villages) Specific Plan area (APNs 031-251-050 and -051), subject to conditions**

Justin Meek summarized the staff report and introduced the representative of Shea Homes Limited Partnership, Chris Stump.

The Tree Committee first discussed tree #1.

In response to a question concerning the location of tree #1, Chris Stump indicated that it is located in the planned park along 2nd Avenue and south of the recently constructed model homes.

Chair Owen expressed his opposition for the proposal and provided a handout describing his objections (Attachment A).

In response to a question concerning the size of potential boxed replacement trees, Chris Stump noted that they were small but not certain of the trunk diameter.

The Tree Committee next discussed tree #2.

In response to a question as to why the tree could not remain by modifying the cul-de-sac length or lot configuration, Chris Stump provided a plot plan for Lot 78 showing the relation of the proposed residential building and alley to the existing tree. His contention was that the tree could not be saved without eliminating the house and associated alley.

Chair Owen expressed his opposition for the proposal as described in the aforementioned handout (Attachment A).

Tree Committee members commented on the large size of tree #2 and the long amount of time it would take to replace such a tree. Chris Stump noted that to the best of his knowledge the tree was approximately 75 years old, which the Tree Committee members concurred was the likely age of tree #2.

Kenneth Morris suggested changing the conditions of approval to require the use of boxed Monterey cypress trees (approximately 25 years in age), rather than a young replacement tree in a 15-gallon container.

Tim Ledesma suggested requiring a tree replacement ratio of 3:1 instead of 2:1.

Approval Moved by Richard Boynton; Seconded by Kenneth Morris.

Friendly Amendment by Tim Ledesma to modify existing and add new Conditions of Approval as follows:

1. Tree #1 shall be compensated by implementing one of the following options: (a) relocating the tree onsite further to the south within the park such that it is at least 15 feet from the proposed house on lot 295 and/or retaining wall(s); or (b) replanting a relocated (boxed) Monterey cypress from the Dunes project area at a 3:1 ratio. Option "b" shall be selected only if option "a" is deemed unviable by a city-approved Certified Arborist.
2. Tree #2 shall be compensated with ~~two (2) replacement~~ three (3) relocated (boxed) Monterey cypress trees from the Dunes project area on the property (i.e., in the landscape area along 3rd Avenue and at least 18-feet away from the house on lot 78), and the minimum tree size for planting shall be in a 15-gallon container.

3. No trees shall be removed until the applicant has either identified the use of relocated (boxed) Monterey cypress trees or obtained an equivalent sized Monterey cypress tree from a nursery (minimum tree size for planting shall be in a 60-inch or 5'x5' box).
- ~~3.4.~~ The trees approved for removal shall be removed together with any stump or root structure, and any hole created by such removal shall be backfilled with existing soil from the site.
- 4.5. The replacement trees shall be planted employing standard measures to ensure successful establishment of trees, including staking, soil amendment, mulching and installation of an automated irrigation system. Such replacement shall be accomplished within one (1) month of the tree removal after the stipulated trees have been identified and/or obtained.

In response to an inquiry by Vice Chair Boynton whether the applicant would support this amendment, Chris Stump indicated that Shea Homes wishes to provide a nice community and, therefore, would support a 3:1 replacement using some of the larger boxed trees and, if necessary, commercially purchased trees.

Ayes: Boynton, Ledesma, Morris; Nos: Owen.

8. INFORMATIONAL REPORTS: None.
9. CORRESPONDENCE: None.
10. ADJOURNMENT: 8:02 p.m.

ATTACHMENT A

Objections to Tree Removal Requests 24 June 2015 recommended to Marina Tree Committee re: 2 Monterey Cypress on 2nd & 3rd Ave in the Dunes on Monterey Bay specific plan area.

1. City Senior Planner states removals are eligible for an exemption to CEQA because the 2 trees are not HEALTHY, MATURE or SCENIC.

HEALTHY = Arborist report relied upon by Shea Homes & City Planner states that tree # 2 by lot 78 is a "large...specimen in better than average condition..."

He also says tree #1 is in "average condition"

There is no browning of the totally green canopies for both trees. In my opinion both Cypress appear in good health. If not I am sure the Arborist would have stated otherwise.

MATURE = Base on my experience

- (a) Stationed at Ft Ord in 1975 with offices on 2nd ave and
- (b) Photos of cypress planted when Ft Ord started gearing up in 1940's and
- (c) Anecdotes from Army Personnel in charge of planting trees in the 1960's
- (d) My own Adopt a Hwy plantings of approximately 1000 cypress since 1996

The 2 Cypress were planted in the 1940's making them 70 -75 years old and are 60 inches & 70 inches respectively at base diameter. Approximate height is 40 - 50 feet. Such info is easily verified by arborist concerned if asked.

Considering size & average life span of Monterey cypress, these 2 specimens are mature.

SCENIC = Tree #1 is one of the largest Monterey Cypress on 2nd Ave. It is the largest Monterey Cypress along the east side of 2nd Ave. It is between 40 & 50 feet high & clearly visible from CSUMB North Quad student housing on 4th Ave over a mile away to the south east. It is clearly visible from Divarty st & 2nd ave over a mile away to the south. It is clearly visible from the VA clinic to the west by Hwy One.

It stands as natural landmark almost surrounded by the vast asphalt old Army motor pool to the SE & clear cut scrapped earth of the Dunes property to the east & similar landscape to the west across 2nd Ave.

Indeed, it actually meets the criteria for LANDMARK TREES section 17.51.070 of the Marina Tree Ordinance as follows: Both A (1) & (2) required. Only one of B (2) & (3) or (5) needed.

A (1) 'prominently visible from public streets, public parking areas, parks or open space, from a minimum distance of one hundred feet.'

(2) "...at least a seventy percent chance of surviving more than ten years & be able to be maintained w/o excessive threat to public health, safety & welfare"

B (2) 'posses special beauty, or horticultural or historic interest'

B (3) 'Is of such substantial size or prominence that it has significant visibility from city streets, parks or open space.'

B (5) 'is of such substantial size that it makes a significant contribution to the forest skyline of the city.'

SCENIC = Tree #2 meets the same conditions as #1 to a generally lesser degree due to 3rd Ave being much shorter street at this point and also because of the company of trees # 3 and # 4 also being significant attractions.

2. Senior Planner analysis also states that when the 2 trees are removed, they will be replaced by new trees...that over time grow to similar size & massing. Since the estimated age of the trees are 70 – 75 years. The analysis might not seem so dismissive if it had indicated how long it would take any new trees to reach such similar size & mass.

3. Therefore, I disagree with all 4 findings used to justify the removal requests. I ***emphatically disagree*** that granting of this removal permit ‘WILL ACHIEVE THE SPIRIT, PURPOSE & INTENT OF CHAPT 17.51’...otherwise know as the TREE REMOVAL, PRESERVATION & PROTECTION ordinance.

As one who helped write the purpose & intent of the ordinance in 1994, I know the emphasis was on Preservation & Protection of which there was none before 1994. All removal requests before 1994 were approved 100% of the time. The rewritten 1994 ordinance was enacted in order to give city staff the tools to add preservation & protection in their responses to pressure for removals.

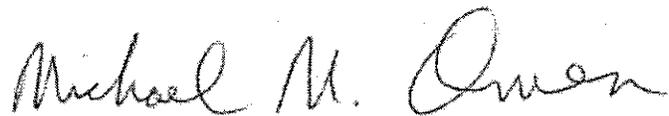
Specifically FINDING #1 is not supported by the arborist report relied upon by the City Planner. The submitted arborist reports provides a number of alternatives for preserving the 2 trees which is ignored by the City staff.

FINDINGS of #2 #3 and #4 are contradicted by the two trees being able to meet the criteria for Landmark status & the tree’s contribution to the aesthetic beauty of the area is especially highlighted by the extreme baren landscape to the east, west & south of the sites.

4. As a final observation, refer to today’s Monterey Herald, 24 June 2015, page 2 & 3 article entitled EMERGENCY REGULATION FOR DEAD TREE REMOVAL ADOPTED. The article states that because of the severe 4 yr drought as of this April 12 & half million dead trees were identified – 4 times as many last year. Removal was needed due to fire concerns by California Board of Forestry.

Marina should consider itself fortunate to have two healthy, mature & scenic Cypress as a gift from nature against which it seems most ~~wasteful~~ ^{WASTEFULL} to easily throw away.

Sincerely Mike Owen
3247 Estrella Del Mar Way, Marina 93933
...also Chair Marina Tree Committee.



“EXHIBIT E”

Director notification of Tree Removal Permit issuance

Theresa Szymanis

From: Theresa Szymanis
Sent: Wednesday, July 01, 2015 2:43 PM
To: chris.stump@sheahomes.com
Cc: Don Hofer; Wendy Elliott
Subject: Tree Removal Permit

This is to confirm that, per your discussion with Justin Meek on Thursday June 25, 2015, your application for a Tree Removal Permit TP 2015-05 has been approved with conditions as spelled out at the meeting at which you were present.

A copy of the executed Resolution will be forwarded in the near future.

Regards,

Theresa Szymanis, AICP
Acting Director, Community Development Department City of Marina
(831) 884-1289

Sent from my iPhone

“EXHIBIT F”

“Refocus” of Mike and Candy Owen Appeal dated July 27, 2015 (with information provided July 7, 2015 & July 9, 2015) plus photo of tree by Steve Zmak

To Planning Commission
From Mike Owen and Candy M. Owen residents
Subj: Refocus of 6 July Appeal to the Monterey Cypress on 3rd Ave



1. Although there is now no dispute that the Monterey Cypress on 2nd Ave ~~is mature, scenic, healthy & desirable~~, a closer look at the 28 March 2005 Tree Disposition Plan (TDP) shows it to be "Examined during construction". So the developer should not be faulted for requesting removal now. The arborist analysis gave 40% trim back & the 7' retaining wall 5' from the trunk as 2 reasons for removal. Examples of City trimming discounts the 40% reason, but retaining wall reason stands. Replanting was mentioned by the arborist, but the size, extensive root system, cost & 50/50 chance of survival makes this option unrealistic.

Merely viewing Steve Zmack's photo of the 2nd Ave Cypress puts staff's Findings #2 and #3 for removal into question. Photo is attached. However, their Findings #1 & #4 are valid. So we are not able to reasonably object to the removal of the 2nd Ave Cypress.

The following are restatements of our grievances related to just the 3rd Ave Cypress. All bolding, underlining etc are mine.

2. Reasons for Planning Commissioners to reverse removal authorization 6 July:

- A. Staff report & recommendations for the 24 June Tree Committee meeting, upon which the Tree Committee members relied, were significantly flawed, biased, & incomplete.

Examples:

- 1.) Sr Planner cited CEQA guidelines as reasons to remove the 2 trees because they were NOT "healthy, mature, scenic trees"

After discussion during the meeting, he reversed course & stated the trees were scenic, mature & healthy.

The developer & Sr Planner's supervisor later stated the CEQA cite did not apply & was in error.

Based on above, it seems that the Sr Planner did not personally visit the site to look at the trees and that he gratuitously & erroneously added the CEQA cite as additional support for his recommendation to remove the trees.

- 2.) Sr Planner, in recommending removal, ignored all evaluations for the retention of the 3rd Ave cypress tree by Vaughan Forestry & Land Mgt hired by the applicant, SHEA HOMES, dated 29 April 2015.
The arborist report was exhibit A & suggested a number of measures that would allow retention not removal. Please see attached 24 June Tree Committee packet.
- 3.) The Sr planner was unaware of the 2005 TDP by Dahlin Group for University Villages phase 1 to which the City & Developer agreed as to trees to be saved. Plans were dated March, August & Sept 2005 & received Council approval in final form. The tree in question was marked as to be saved on the 2005 map. Only 7 out of over 200 trees were marked to be saved. Stating that there is no flexibility in design to allow retention is just an automatic get out of jail card that is totally at the discretion of the developer any time any where. Please see attached 2005 TDP.

- B. The 3rd Ave Monterey Cypress far exceeds the criteria for Landmark Status as stated in the Tree Ordinance section 17.51.070, and as such should be given extra consideration for saving because of their aesthetic contribution to our community and especially to the Shea Home future residents. Please see my attached comments re: landmark qualities of the tree.

To be clear, this tree is not a landmark tree & would never be granted Landmark status because that would require support by Shea Homes. My point is that it far exceed the minimum requirements for Landmark status.

3. Grievances added 9 July

We do not consider the City's declared intent to limit & restrict the removal of healthy & desirable trees as just lip service. So we feel personally aggrieved that:

- A. Staff did not appear to personally look at the healthy, mature & scenic tree in place before deciding to remove it.
- B. Not sure if two of the other Tree Committee members were able to see the tree in place before agreeing to staff's decision.
- C. Staff invokes the "**Purpose and Intent**" section 17.51.010 of the Tree Ordinance, as supporting their decision to remove the **scenic, healthy, mature tree** in addition to several hundred already removed. The "Purpose & Intent" recognizes the "rights to develop private property" **while at the same time** limiting & restricting "the removal of healthy & desirable trees in the city."
- D. Staff was focused on just TREE REMOVAL when the complete heading of the Tree ordinance is TREE REMOVAL, PRESERVATION, AND PROTECTION.
- E. The tree is clearly a "healthy and desirable tree" for which the city's intent was "to limit and restrict the removal" by adopting the Chapt 17.51 and of which staff chose instead to encourage and expedite such removal.
- F. That staff's Resolution 4 Findings are subjective assertions stated as facts when the findings by the professional arborist does not support and /or contradicts staff's assertions.
- G. Staff apparently accepts the developers assessment on construction impact on the survival of the trees, when the arborist made no such assessment. The developer is not a tree expert. The arborist is.
- H. Specifically in Finding 1. "The applicant outlines a clearly documented & compelling reason for removal..." while part of the applicants rational includes the arborist's report, which offers a number of ways to actually preserve the tress.
- I. Specifically in Finding 2. The trees do not play a prominent role in maintaining the existing urban forest. Actually, it is the largest tree on 3rd Ave! It is the one most visible close to a mile away from the Equestrian Center. Basically, there is not even a pretense of an "Urban Forest" when the few remaining upper canopy trees are removed because the density of the new housing no longer allows enough room for larger upper canopy trees.
- J. Again specifically in Finding 3. The negative impact on aesthetic values due to the removals would be completely off set by the replacement of new cypress replacements. The tree is 75 years old, 70 " diameter at base height. It is approximately 50 ' tall & healthy with a life expectancy of 100 – 300 years altogether. This is a LANDMARK eligible trees & it would take more than just a few decades for any young replacements to even begin to match the canopy loss of such removals.

In addition, so far the Cypress tree transplants & replacements on site are suffering from total neglect & care. Two of the large cypress boxed for the last 10 years are totally fried brown. Large cypress already transplanted show stress & desiccation. One is leaning already. None have supporting poles. There are no noticeable signs of a watering system. None have any protective orange protective netting & so there is already construction debris accumulating in some of the tree wells, which could lead to toxic poisoning. All of the mulch designed to retain moisture has blown away. In contrast, you have an existing, well established, desirable & impressive Cypress in good health which has been well cared for by the Army up until 1994 & has survived well despite past 4 years of severe drought.

4. Finding 4. concludes location of the trees prevent reasonable & conforming use of the properties according to development plans.

A.) The University Villages Project Planner, Christine di Iorio, submitted a 22 March 2005 recommendation that the Tree Committee recommend to the Planning Commission a Tree Disposition Plan (TDP) for the removal, relocation & preservation (emphasis mine) of trees in phase 1.

Minutes of the meeting can verify that the Tree Committee approved Christie's recommendation to the Planning Commission & minutes of the Planning Commission & later Council meetings can verify that the City approved the TDP drawn up by the developer.

The following are 2 sentences from Christie's description of the project.

"The grades will not change significantly along Third Avenue and First Street, therefore the trees currently aligning the street will be preserved and integrated into the landscape plan. The preservation of trees along Third Avenue will require larger residential lots than is typically proposed so as to accommodate the existing trees." This plan would have fulfilled the Intent & Purpose of the Tree Ordinance by fully allowing the "rights to develop private property" while at the same time limiting & restricting "the removal of healthy & desirable trees in the city.

B.) Excerpted Blueprints of the TDP dated received by the City 28 March 2005 showing the phase area currently under construction and the locations of the Monterey Cypress at issue in our appeal is provided. I do have an original provided to the Tree Committee, but it is very worn.

The TDP's legend shows trees marked with a bold "S" are to be saved. Tree # 284 on the TDP is the same tree on 3rd Ave now authorized for removal by staff.

Tree # 220 on the TDP is marked as "E" meaning it is to be evaluated during construction and is the same tree as the one on 2nd Ave authorized for removal.

It should be noted that the TDP Tree # 275 is on the corner of Imjin & 3rd Ave. Although it is marked as to be SAVED, it has disappeared without a trace or a removal permit. There is a house under construction at the same location.

The point is that plans for development by the project planner called for the saving of the tree in question from the very beginning in 2005. The plan was to build larger houses along 3rd Ave allowing for more landscaping space as opposed to squeezing in more smaller home lots. The location of the trees on 3rd Ave are a problem for the developer because he later changed his own development plans.

See Dunes Sales office handouts listing house plans, sq ft and locations.

5. Inflexibility of design questions:

A. Model homes range from "SEA HORSE" plan 1 with 1,523 sq ft to "SURF HOUSE" plan 3 with 2,158 sq ft. The row of 4 Surf Houses, which developer says leaves no room for saving the tree, totals 8,206 sq ft as opposed to 6092 sq ft if the smaller plan 1 Sea Houses were built. With 1237 houses at full build out, is it just inconvenience or inflexibility of design as the removal reason? See attached The Dunes on Monterey Bay Shea Homes sales office price lists & lot map for Surf & Sea Houses.

B. Next to the Cypress at issue are 2 cypress on 3rd Ave which will be saved and that is because BUNGALOW DRIVE, the next street east of 3rd Ave, follows a parallel straight line south from TELEGRAPH BVD until it intersects the alley heading like an arrow straight at the Cypress in question. At that point it curves west towards the Cypress at issue eliminating the same space allowing for the other 3RD AVE two

cypress to be saved. The reason for curving the street towards the tree appears to be in order to make little more room for a future park one block over to the east. Should not the developer be responsible for the design inflexibility which could have been easily avoided by taking into account the 2005 TDP? Re: Shea Homes sales office map.

6. If despite the 2005 TDP, the developer insists that removal is the only option, then we have to agree – removing the intrusive house not the tree

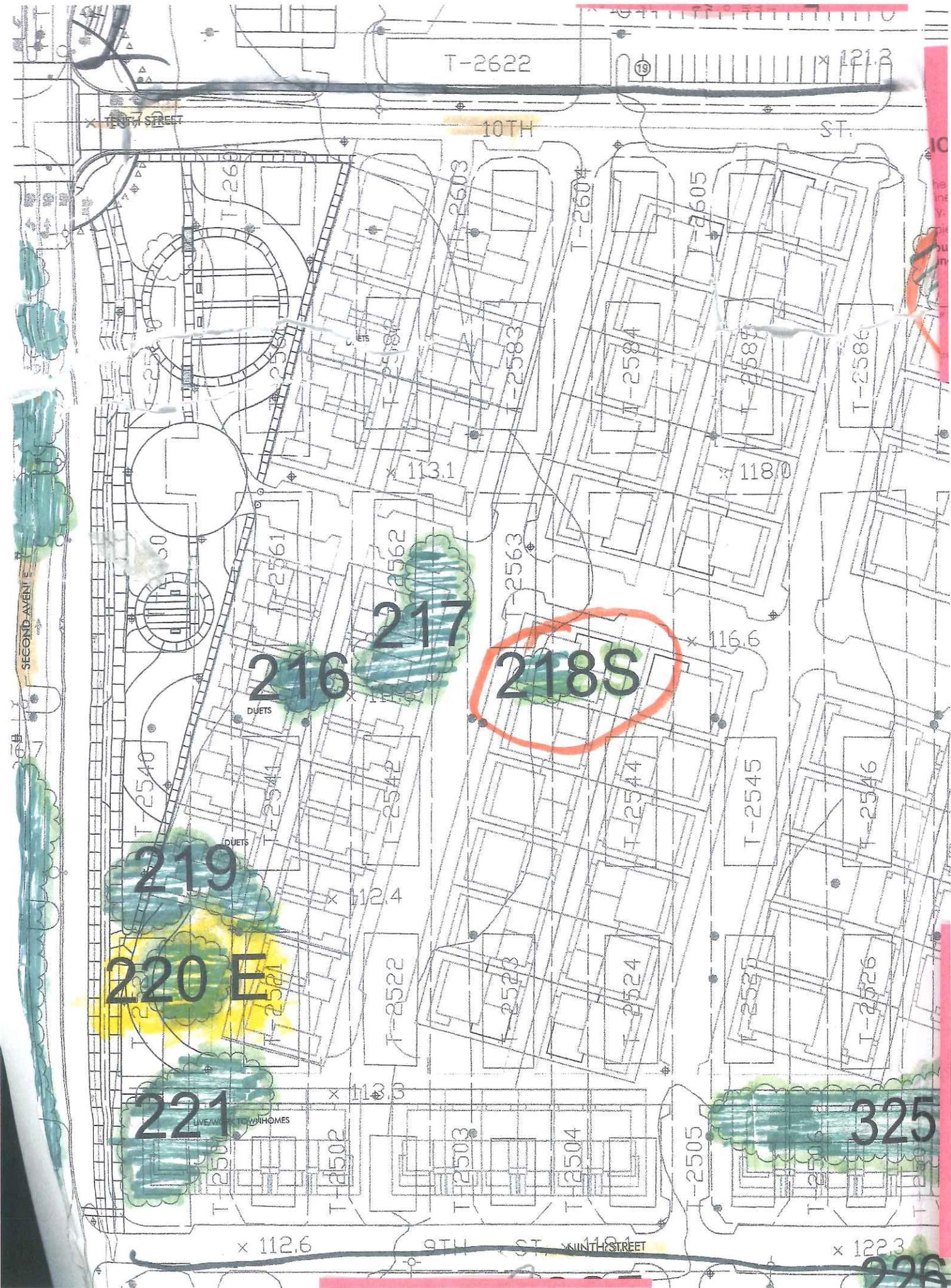
7. If successful, this appeal is not just to retain the Cypress. Because of the continued construction of the alley way to within arms reach of the Cypress trunk, there is a concrete mix with alkaloids which is poisonous when leached into the root zone. This needs to be removed and arborist's report should be provided to the City showing adequate protection measures for the tree.

Finally, we would request that a copy of the Director's authorization for removal be provided to the Planning Commissioners & to Candy & I.

Respectfully, Candy & Mike Owen, 3247 Estrella Del Mar Way, Marina, CA 93933

Mike Owen
Candy Owen





T-2622

121.2

10TH ST.

10TH

ST.

T-2603

T-2604

T-2605

T-26

T-2583

T-2584

T-2585

T-2586

113.1

118.0

T-2561

T-2562

T-2563

216

217

218S

116.6

T-2540

T-2541

T-2542

T-2544

T-2545

T-2546

219

112.4

220 E

T-2521

T-2522

T-2523

T-2524

T-2525

T-2526

221

113.3

LIVE WITH TOWNHOMES

T-2502

T-2503

T-2504

T-2505

325

112.6

9TH ST.

ST.

11TH STREET

122.3

226

27 July 2015

x PLAN 1
2x PLAN 2
1x PLAN 3 = 6723 Sq FT

THE DUNES

on Monterey Bay



Sea House

Plan 2 1,692 sq. ft., 3 Bedrooms, 2.5 Baths, 2 Car Garage

Lot	Elevation	Home Features	Estimated Delivery	Price
3	C9	View Lot!	Oct/Nov/Dec 2015	\$593,000

Plan 3 1,816 sq. ft., 3 Bedrooms, 2.5 Baths, 2 Car Garage

Lot	Elevation	Home Features	Estimated Delivery	Price
81	B4	3 Bedroom	Dec 2015/Jan2016	\$533,000
84	C9	Garden View	Dec 2015/Jan2016	\$533,000

Plan 4 1,896 sq. ft., 3 - 4 Bedrooms, 2.5 Baths, 2 Car Garage

Lot	Elevation	Home Features	Estimated Delivery	Price
71	C8	3 Bedroom w/Loft	Oct/Nov/Dec 2015	\$553,000
77	B5	4 Bedroom	Dec 2015/Jan2016	\$554,445
80	A3	4 Bed, Detached Home w/Balcony	Dec 2015/Jan2016	\$560,445

Plan 1 1,523 sq. ft., 2 Bedrooms, 2.5 Baths, 2 Car Garage – currently unavailable

4x " = 6092 SQ FT

Sea House HOA Dues will range from approximately \$170 - \$216 per month and will include maintenance of common areas, landscaping outside fenced areas, reserves for future maintenance, management fees and property insurance.

Community Facilities District Tax will be approximately \$37 per month and covers Street Maintenance, Sidewalk Maintenance, Curb and Gutter Maintenance, Street Lighting, and Storm Drain Maintenance.

The Dunes Sales Office (831) 901-3972

3003 Boardwalk Avenue, Marina, CA 93933

Tamara Gonsalves (CalBRE#01470950) | Tamara.Gonsalves@Sheahomes.com

Josh Miller (CalBRE#01737288) | Josh.Miller@Sheahomes.com

Please visit <https://ijeong-sheamortgage.mortgagewebcenter.com/> and click "Apply Now" to get pre-qualified for your new home purchase.



Brokers must register clients on first visit to qualify for referral program. Additional properties are also available. The prices shown here are subject to change without notice. Shea Homes has the right to change prices, terms, features, conditions and options at any time without notice or obligation.

7/22/2015

1 X PLAN 1
 2 X PLAN 2
 1 X PLAN 3

29 JULY 2015

4 HOUSES TOTAL SQ FT = 8,206 THE DUNES
 LEAVING NO ROOM TO SAVE CYPRESS UNDER APPEAL

on Monterey Bay

Surf House



Plan 1 1,928 sq. ft., 3 Bedrooms, 2.5 Baths, 2 Car Garage

Lot	Elevation	Home Features	Estimated Delivery	Price
101	A1	End Location	Dec 2015 Jan 2016	\$637,000
106	C7	Corner Lot	Early 2016	\$647,000RSVD
109	A2	Corner Lot	Early 2016	\$652,000RSVD

Plan 2 2,060 sq. ft., 3 - 4 Bedrooms, 2.5 Baths, 2 Car Garage

Lot	Elevation	Home Features	Estimated Delivery	Price
108	C8	3 Bedroom w/ Loft	Early 2016	\$667,000

Plan 3 2,158 sq. ft., 3 - 4 Bedrooms, 2.5 Baths, 2 Car Garage

Lot	Elevation	Home Features	Estimated Delivery	Price
107	B6	3 Bedroom w/ Loft	Early 2016	\$677,000

Surf House HOA Dues will range from approximately \$166 - \$212 per month and will include maintenance of common areas, landscaping outside fenced areas, reserves for future maintenance, and management fees.

Community Facilities District Tax will be approximately \$37 per month and covers Street Maintenance, Sidewalk Maintenance, Curb and Gutter Maintenance, Street Lighting, and Storm Drain Maintenance.

The Dunes Sales Office (831) 901-3972
 3003 Boardwalk Avenue, Marina, CA 93933

Tamara Gonsalves (CalBRE#01470950) | Tamara.Gonsalves@SheaHomes.com

Josh Miller (CalBRE#01737288) | Josh.Miller@SheaHomes.com

Please visit <https://jjeong-sheamortgage.mortgagewebcenter.com/>
 and click "Apply Now" to get pre-qualified for your new home purchase.



27 July 2013

VANISHED ?

SURF HOUSE



SAVED

SAVED

CYPRESS
UNDER APPEAL

FATE?
TO BE
DECIDED



1,523 SQ FT

PLAN 1

1,692 SQ FT

PLAN 2

1,896 SQ FT

PLAN 3

MODELS & SALES OFFICE AREA



THE DUNES

by Shea Homes

2ND AVENUE

8TH STREET

March 22, 2005

Item No. _____

Chair and Members of the Tree Committee
Meeting of April 4, 2005

**RECOMMENDATION TO THE PLANNING COMMISSION APPROVAL
OF THE REMOVAL, PRESERVATION AND RELOCATION OF TREES, AS
SPECIFIED IN THE TREE DISPOSITION PLAN, DATED MARCH 24, 2005
WITHIN PHASE ONE OF THE UNIVERSITY VILLAGES PROJECT**

RECOMMENDATION:

It is recommended that the Tree Committee:

1. Recommend to the Planning Commission approval of the removal, preservation and relocation of trees, as specified in the tree disposition plan, dated March 24, 2005, within phase one of the University Villages project.

BACKGROUND:

The Tree Committee, at its October 4, 2004 meeting, reviewed and provided comments regarding Section 5.6 Existing Tree Removal, Relocation and Replacement Standards of the Specific Plan. This chapter contains the development regulations specific to the criteria for rating trees and the protocol for inventorying of trees within the University Villages Specific Plan project.

In mid-August, 2004, Marina Community Partners (MCP) submitted development applications consisting of a General Plan Amendment, Zoning Code Amendment, Development Agreement, Specific Plan, Tree Removal Permit, Tentative Tract Map and Design Review. The submittal package was deemed "complete." Processing of the applications through the appropriate boards, commissions and committees are underway.

PROJECT DESCRIPTION

The tree removal permit application includes a Tree Disposition Plan, which illustrates the location of trees proposed for preservation, relocation and removal. A site visit using the Tree Inventory, previously reviewed by the committee, was conducted by a landscape architect and certified arborist, to determine which trees were to be removed, retained or relocated.

Due to grading proposed with the regional retail area, trees were evaluated for potential transplanting, as they could not be preserved in place. Nine trees were identified and it is proposed that these trees be relocated along the Imjin Parkway frontage.

The grades will not be changed significantly along Third Avenue and First Street therefore the trees currently aligning the street will be preserved and integrated into the landscape plan. The preservation of trees along Third Avenue will require the larger residential lots than is typically

proposed so as to accommodate the existing trees. Along First Street the parking areas will allow for landscape planters to accommodate the trees.

Trees within the Highway 1 corridor will be retained. The area proposed for apartments has several clusters of trees and the proposed location of the buildings will be such that many of these can be preserved. Lastly, two trees within the residential area were considered for preservation. They will be located in smaller parks internal to the subdivision.

FINDINGS

In accordance with Municipal Code Section 12.04.060.B the Committee is to use the following applicable criteria in review of the tree removal permit:

1. The tree's contribution to the aesthetic beauty of the area and the effect its removal would have on neighboring property values; and
2. The concurrent submittal of development plans for the property that indicate that it is necessary to remove or relocate the tree to enable reasonable and conforming use of the property which is otherwise prevented by the location of the tree.

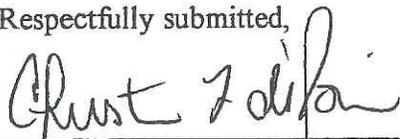
ANALYSIS

Findings per Municipal Code Section 12.04.060 and Specific Plan Section 5.6 can be made to allow the removal, relocation and preservation of trees in that it is necessary to remove, and transplant trees to enable reasonable development with the Phase I area.

CONCLUSION

Recommend to the Planning Commission approval of removal, relocation and preservation of trees, as specified on the Tree Disposition Plans, dated March 24, 2005, for Phase 1 within University Villages.

Respectfully submitted,



Christine di Iorio, AICP
University Villages Project Planner
City of Marina

1. SAVE Additional trees
2. clarify boundaries
3. State # of trees saved + removed
4. INCL Tree preservation measures
5. T evaled for relocation
- 6

To Planning Commissioners

From Mike & Candy Owen, appellants

9 July 2015

Re: Appeal of Staff authorization for removal of 2 Cypress in Dunes phase 1c

Added grievances:

Staff advice for making our appeal was to list our grievances. Our initial appeal yesterday tried to be analytical & critical of staff's analysis. On a more personal level, our concern is deep, going back to our appeal of staff's decision in 1990 to remove 2 eucalyptus in Windy Hill Park which council later resolved to be the first Landmark trees in Marina.

As a member of the Tree Committee for 25 years, I do not consider the City's declared intent to limit & restrict the removal of healthy & desirable trees as just lip service. So we feel personally aggrieved that:

1. Staff did not personally look at the 2 healthy, mature & scenic trees in place before deciding to remove them.
2. None of the other Tree Committee members apparently looked at both trees in place before agreeing to staff's decision. (one member was able to locate one of the 2 trees)
3. Staff invokes the "**Purpose and Intent**" section 17.51.010 of the Tree Ordinance, which I help write in 1994, as supporting their decision to remove 2 scenic, healthy, mature trees out of several hundred already removed.
4. Staff was focused on just TREE REMOVAL when the complete heading of the Tree ordinance is TREE REMOVAL, **PRESERVATION, AND PROTECTION**.....emphasis mine.
5. The 2 trees are clearly "healthy and desirable trees" for which the city's intent was "to limit and restrict the removal" by adopting the Chapt 17.51 and of which staff chose instead to encourage and expedite such removal.
6. That staff's Resolution 4 Findings are simply subjective assertions stated as facts when the findings by the professional arborist does not support and /or contradicts staff's assertions.
7. Staff apparently accepts the developers assessment on construction impact on the survival of the trees, when the arborist made no such assessment. The developer is not a tree expert. The arborist is.
8. Specifically in *Finding 1. "The applicant outlines a clearly documented & compelling reason for removal..."* while part of the applicants rational includes the arborist's report, which offers a number of ways to actually preserve the tress.
9. Specifically in *Finding 2. The trees do not play a prominent role in maintaining the existing urban forest.* Actually one is the largest upper canopy Cypress along the whole east side length of 2nd ave! It is the one most visible from over a mile away to the CSUMB north quad student housing bldg. which is actually pretty easy because of the vast expanse of the former Army asphalt motor pool area in between. Basically, there is not even a pretense of an "Urban Forest" when the few remaining upper canopy trees are removed because the density of the new housing no longer allows enough room for larger upper canopy trees.
10. Again specifically in *Finding 3. The negative impact on aesthetic values due to the removals would be completely off set by the replacement of new cypress replacements.* We are taking about two 75 year old Cypress planted in 1940 when the Army started gearing up for WW II in the proximate area of the old parade ground across from General Stillwell's headquarters by the current VTC bldg. Two trees that have taken 75 years to grow to 60 – 70 " diameter at base height and that are approximately 50 ' tall now & healthy with a life expectancy of 100 – 300 years altogether. These are LANDMARK eligible trees & it would take more than just a few decades for any young replacements to even begin to match the canopy loss of such removals. The staff's logic is the same as the rational to cut down "old growth"

11. Finding 4. concludes location of the trees prevent reasonable & conforming use of the properties according to development plans. The developer knew the location of these trees since 2005 and agreed to save the one on 3rd ave in 2005. The other on 3rd ave was to be evaluated during construction. The developer was responsible for plans which would save the trees indicated as SAVE in the 28 March Tree Disposition plan for phase 1. This was not an unforeseen circumstance. Basically attention to detail was lacking by the developer. Although, the arborist report indicates ways to preserve the trees, the developer ignores them.

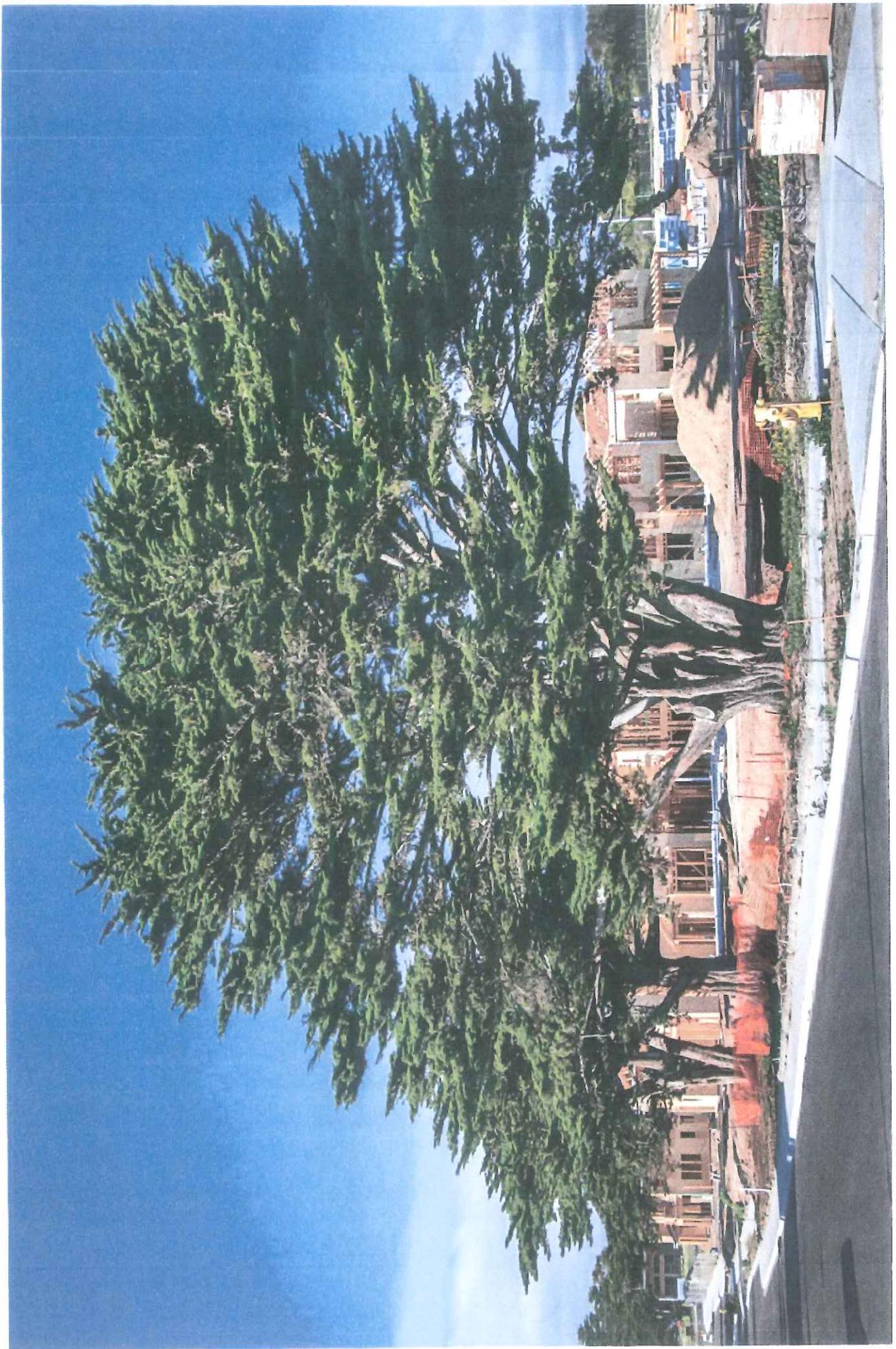
12. the issue for the 3rd ave tree boils down to a having a garage driveway or keeping the tree. The developer is looking to 2030 build out of 1237 homes. He promised in the 2005 agreements to save 7 trees in the current phase 1 & now is asking for two to be removed. One of the 7 trees to be saved on the corner of 3rd ave & Imjin Parkway has vanished w/o a trace which is fortunate because otherwise it would occupy a big part of the house under construction on that corner.

Altho the arborist suggested simply not building the house with the intrusive driveway off the alley in order to preserve the tree, Why couldn't the developer simply flip the house 180 degrees so the garage entrance was from 10th street? Just seems an unnecessary either/ or proposition = driveway V. landmark eligible tree.

Finally, we would request that a copy of the Director's authorization for removal be provided to the Planning Commissioners & to Candy & I. Depending on the content of the authorization, additional grievances may be submitted.

Respectfully,
Candy & Mike Owen *MM + Candy Owen*
3247 Estrella Del Mar Way, Marina

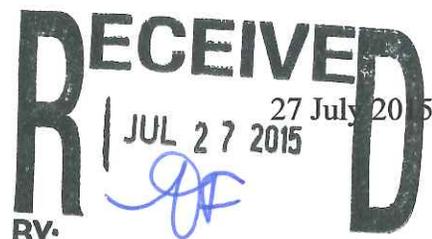




“EXHIBIT F”

“Refocus” of Mike and Candy Owen Appeal dated July 27, 2015 (with information provided July 7, 2015 & July 9, 2015) plus photo of tree by Steve Zmak

To Planning Commission
From Mike Owen and Candy M. Owen residents
Subj: Refocus of 6 July Appeal to the Monterey Cypress on 3rd Ave



1. Although there is now no dispute that the Monterey Cypress on 2nd Ave ~~is mature, scenic, healthy & desirable~~, a closer look at the 28 March 2005 Tree Disposition Plan (TDP) shows it to be "Examined during construction". So the developer should not be faulted for requesting removal now. The arborist analysis gave 40% trim back & the 7' retaining wall 5' from the trunk as 2 reasons for removal. Examples of City trimming discounts the 40% reason, but retaining wall reason stands. Replanting was mentioned by the arborist, but the size, extensive root system, cost & 50/50 chance of survival makes this option unrealistic.

Merely viewing Steve Zmack's photo of the 2nd Ave Cypress puts staff's Findings #2 and #3 for removal into question. Photo is attached. However, their Findings #1 & #4 are valid. So we are not able to reasonably object to the removal of the 2nd Ave Cypress.

The following are restatements of our grievances related to just the 3rd Ave Cypress. All bolding, underlining etc are mine.

2. Reasons for Planning Commissioners to reverse removal authorization 6 July:

- A. Staff report & recommendations for the 24 June Tree Committee meeting, upon which the Tree Committee members relied, were significantly flawed, biased, & incomplete.

Examples:

- 1.) Sr Planner cited CEQA guidelines as reasons to remove the 2 trees because they were NOT "healthy, mature, scenic trees"

After discussion during the meeting, he reversed course & stated the trees were scenic, mature & healthy.

The developer & Sr Planner's supervisor later stated the CEQA cite did not apply & was in error.

Based on above, it seems that the Sr Planner did not personally visit the site to look at the trees and that he gratuitously & erroneously added the CEQA cite as additional support for his recommendation to remove the trees.

- 2.) Sr Planner, in recommending removal, ignored all evaluations for the retention of the 3rd Ave cypress tree by Vaughan Forestry & Land Mgt hired by the applicant, SHEA HOMES, dated 29 April 2015.
The arborist report was exhibit A & suggested a number of measures that would allow retention not removal. Please see attached 24 June Tree Committee packet.
- 3.) The Sr planner was unaware of the 2005 TDP by Dahlin Group for University Villages phase 1 to which the City & Developer agreed as to trees to be saved. Plans were dated March, August & Sept 2005 & received Council approval in final form. The tree in question was marked as to be saved on the 2005 map. Only 7 out of over 200 trees were marked to be saved. Stating that there is no flexibility in design to allow retention is just an automatic get out of jail card that is totally at the discretion of the developer any time any where. Please see attached 2005 TDP.

- B. The 3rd Ave Monterey Cypress far exceeds the criteria for Landmark Status as stated in the Tree Ordinance section 17.51.070, and as such should be given extra consideration for saving because of their aesthetic contribution to our community and especially to the Shea Home future residents. Please see my attached comments re: landmark qualities of the tree.

To be clear, this tree is not a landmark tree & would never be granted Landmark status because that would require support by Shea Homes. My point is that it far exceed the minimum requirements for Landmark status.

3. Grievances added 9 July

We do not consider the City's declared intent to limit & restrict the removal of healthy & desirable trees as just lip service. So we feel personally aggrieved that:

- A. Staff did not appear to personally look at the healthy, mature & scenic tree in place before deciding to remove it.
- B. Not sure if two of the other Tree Committee members were able to see the tree in place before agreeing to staff's decision.
- C. Staff invokes the "**Purpose and Intent**" section 17.51.010 of the Tree Ordinance, as supporting their decision to remove the **scenic, healthy, mature tree** in addition to several hundred already removed. The "Purpose & Intent" recognizes the "rights to develop private property" **while at the same time** limiting & restricting "the removal of healthy & desirable trees in the city."
- D. Staff was focused on just TREE REMOVAL when the complete heading of the Tree ordinance is TREE REMOVAL, PRESERVATION, AND PROTECTION.
- E. The tree is clearly a "healthy and desirable tree" for which the city's intent was "to limit and restrict the removal" by adopting the Chapt 17.51 and of which staff chose instead to encourage and expedite such removal.
- F. That staff's Resolution 4 Findings are subjective assertions stated as facts when the findings by the professional arborist does not support and /or contradicts staff's assertions.
- G. Staff apparently accepts the developers assessment on construction impact on the survival of the trees, when the arborist made no such assessment. The developer is not a tree expert. The arborist is.
- H. Specifically in Finding 1. "The applicant outlines a clearly documented & compelling reason for removal..." while part of the applicants rational includes the arborist's report, which offers a number of ways to actually preserve the tress.
- I. Specifically in Finding 2. The trees do not play a prominent role in maintaining the existing urban forest. Actually, it is the largest tree on 3rd Ave! It is the one most visible close to a mile away from the Equestrian Center. Basically, there is not even a pretense of an "Urban Forest" when the few remaining upper canopy trees are removed because the density of the new housing no longer allows enough room for larger upper canopy trees.
- J. Again specifically in Finding 3. The negative impact on aesthetic values due to the removals would be completely off set by the replacement of new cypress replacements. The tree is 75 years old, 70 " diameter at base height. It is approximately 50 ' tall & healthy with a life expectancy of 100 – 300 years altogether. This is a LANDMARK eligible trees & it would take more than just a few decades for any young replacements to even begin to match the canopy loss of such removals.

In addition, so far the Cypress tree transplants & replacements on site are suffering from total neglect & care. Two of the large cypress boxed for the last 10 years are totally fried brown. Large cypress already transplanted show stress & desiccation. One is leaning already. None have supporting poles. There are no noticeable signs of a watering system. None have any protective orange protective netting & so there is already construction debris accumulating in some of the tree wells, which could lead to toxic poisoning. All of the mulch designed to retain moisture has blown away. In contrast, you have an existing, well established, desirable & impressive Cypress in good health which has been well cared for by the Army up until 1994 & has survived well despite past 4 years of severe drought.

4. Finding 4. concludes location of the trees prevent reasonable & conforming use of the properties according to development plans.

A.) The University Villages Project Planner, Christine di Iorio, submitted a 22 March 2005 recommendation that the Tree Committee recommend to the Planning Commission a Tree Disposition Plan (TDP) for the removal, relocation & preservation (emphasis mine) of trees in phase 1.

Minutes of the meeting can verify that the Tree Committee approved Christie's recommendation to the Planning Commission & minutes of the Planning Commission & later Council meetings can verify that the City approved the TDP drawn up by the developer.

The following are 2 sentences from Christie's description of the project.

"The grades will not change significantly along Third Avenue and First Street, therefore the trees currently aligning the street will be preserved and integrated into the landscape plan. The preservation of trees along Third Avenue will require larger residential lots than is typically proposed so as to accommodate the existing trees." This plan would have fulfilled the Intent & Purpose of the Tree Ordinance by fully allowing the "rights to develop private property" while at the same time limiting & restricting "the removal of healthy & desirable trees in the city.

B.) Excerpted Blueprints of the TDP dated received by the City 28 March 2005 showing the phase area currently under construction and the locations of the Monterey Cypress at issue in our appeal is provided. I do have an original provided to the Tree Committee, but it is very worn.

The TDP's legend shows trees marked with a bold "S" are to be saved. Tree # 284 on the TDP is the same tree on 3rd Ave now authorized for removal by staff.

Tree # 220 on the TDP is marked as "E" meaning it is to be evaluated during construction and is the same tree as the one on 2nd Ave authorized for removal.

It should be noted that the TDP Tree # 275 is on the corner of Imjin & 3rd Ave. Although it is marked as to be SAVED, it has disappeared without a trace or a removal permit. There is a house under construction at the same location.

The point is that plans for development by the project planner called for the saving of the tree in question from the very beginning in 2005. The plan was to build larger houses along 3rd Ave allowing for more landscaping space as opposed to squeezing in more smaller home lots. The location of the trees on 3rd Ave are a problem for the developer because he later changed his own development plans.

See Dunes Sales office handouts listing house plans, sq ft and locations.

5. Inflexibility of design questions:

A. Model homes range from "SEA HORSE" plan 1 with 1,523 sq ft to "SURF HOUSE" plan 3 with 2,158 sq ft. The row of 4 Surf Houses, which developer says leaves no room for saving the tree, totals 8,206 sq ft as opposed to 6092 sq ft if the smaller plan 1 Sea Houses were built. With 1237 houses at full build out, is it just inconvenience or inflexibility of design as the removal reason? See attached The Dunes on Monterey Bay Shea Homes sales office price lists & lot map for Surf & Sea Houses.

B. Next to the Cypress at issue are 2 cypress on 3rd Ave which will be saved and that is because BUNGALOW DRIVE, the next street east of 3rd Ave, follows a parallel straight line south from TELEGRAPH BVD until it intersects the alley heading like an arrow straight at the Cypress in question. At that point it curves west towards the Cypress at issue eliminating the same space allowing for the other 3RD AVE two

cypress to be saved. The reason for curving the street towards the tree appears to be in order to make little more room for a future park one block over to the east. Should not the developer be responsible for the design inflexibility which could have been easily avoided by taking into account the 2005 TDP? Re: Shea Homes sales office map.

6. If despite the 2005 TDP, the developer insists that removal is the only option, then we have to agree – removing the intrusive house not the tree

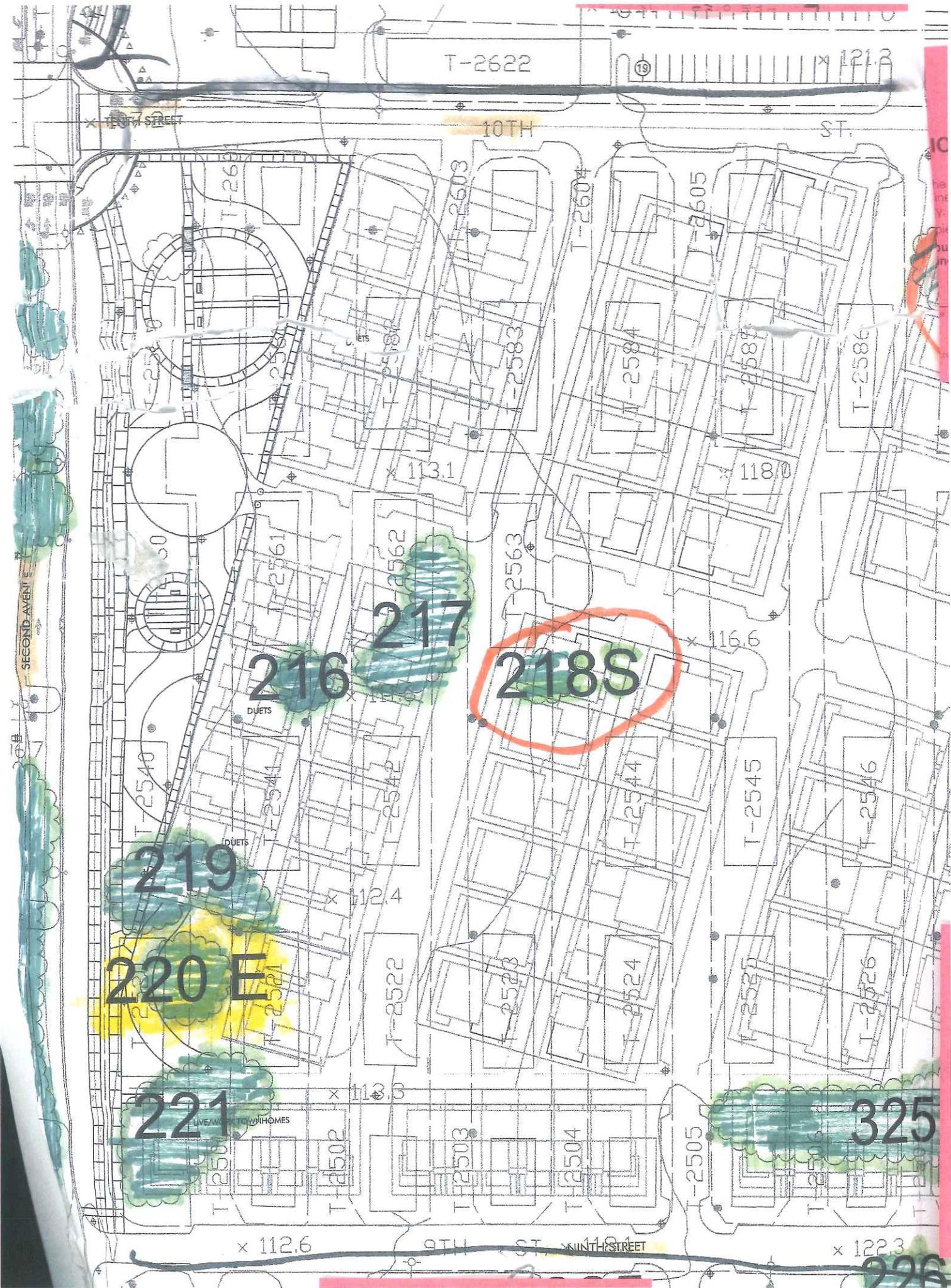
7. If successful, this appeal is not just to retain the Cypress. Because of the continued construction of the alley way to within arms reach of the Cypress trunk, there is a concrete mix with alkaloids which is poisonous when leached into the root zone. This needs to be removed and arborist's report should be provided to the City showing adequate protection measures for the tree.

Finally, we would request that a copy of the Director's authorization for removal be provided to the Planning Commissioners & to Candy & I.

Respectfully, Candy & Mike Owen, 3247 Estrella Del Mar Way, Marina, CA 93933

Mike Owen
Candy Owen





T-2622

x 121.2

TENTH STREET

10TH

ST.

T-2603

T-2604

T-2605

T-2583

T-2584

T-2585

T-2586

x 113.1

x 118.0

T-2561

T-2562

T-2563

216

217

218S

x 116.6

T-2540

T-2541

T-2542

T-2544

T-2545

T-2546

219

x 112.4

220 E

T-2521

T-2522

T-2523

T-2524

T-2525

T-2526

221

x 112.3

T-2502

T-2503

T-2504

T-2505

T-2506

T-2507

T-2508

x 112.6

9TH

ST.

EIGHTH STREET

x 122.3

325

226

27 July 2015

x PLAN 1
2x PLAN 2
1x PLAN 3 = 6723 Sq FT

THE DUNES

on Monterey Bay



Sea House

Plan 2 1,692 sq. ft., 3 Bedrooms, 2.5 Baths, 2 Car Garage

Lot	Elevation	Home Features	Estimated Delivery	Price
3	C9	View Lot!	Oct/Nov/Dec 2015	\$593,000

Plan 3 1,816 sq. ft., 3 Bedrooms, 2.5 Baths, 2 Car Garage

Lot	Elevation	Home Features	Estimated Delivery	Price
81	B4	3 Bedroom	Dec 2015/Jan2016	\$533,000
84	C9	Garden View	Dec 2015/Jan2016	\$533,000

Plan 4 1,896 sq. ft., 3 - 4 Bedrooms, 2.5 Baths, 2 Car Garage

Lot	Elevation	Home Features	Estimated Delivery	Price
71	C8	3 Bedroom w/Loft	Oct/Nov/Dec 2015	\$553,000
77	B5	4 Bedroom	Dec 2015/Jan2016	\$554,445
80	A3	4 Bed, Detached Home w/Balcony	Dec 2015/Jan2016	\$560,445

Plan 1 1,523 sq. ft., 2 Bedrooms, 2.5 Baths, 2 Car Garage – currently unavailable

4x " = 6092 SQ FT

Sea House HOA Dues will range from approximately \$170 - \$216 per month and will include maintenance of common areas, landscaping outside fenced areas, reserves for future maintenance, management fees and property insurance.

Community Facilities District Tax will be approximately \$37 per month and covers Street Maintenance, Sidewalk Maintenance, Curb and Gutter Maintenance, Street Lighting, and Storm Drain Maintenance.

The Dunes Sales Office (831) 901-3972

3003 Boardwalk Avenue, Marina, CA 93933

Tamara Gonsalves (CalBRE#01470950) | Tamara.Gonsalves@Sheahomes.com

Josh Miller (CalBRE#01737288) | Josh.Miller@Sheahomes.com

Please visit <https://ijeong-sheamortgage.mortgagewebcenter.com/> and click "Apply Now" to get pre-qualified for your new home purchase.



Brokers must register clients on first visit to qualify for referral program. Additional properties are also available. The prices shown here are subject to change without notice. Shea Homes has the right to change prices, terms, features, conditions and options at any time without notice or obligation.

7/22/2015

1 X PLAN 1
 2 X PLAN 2
 1 X PLAN 3

29 JULY 2015



4 HOUSES TOTAL SQ FT = 8,206 THE DUNES
 LEAVING NO ROOM TO SAVE CYPRESS UNDER APPEAL

on Monterey Bay

Surf House

Plan 1 1,928 sq. ft., 3 Bedrooms, 2.5 Baths, 2 Car Garage

<u>Lot</u>	<u>Elevation</u>	<u>Home Features</u>	<u>Estimated Delivery</u>	<u>Price</u>
101	A1	End Location	Dec 2015 Jan 2016	\$637,000
106	C7	Corner Lot	Early 2016	\$647,000RSVD
109	A2	Corner Lot	Early 2016	\$652,000RSVD

Plan 2 2,060 sq. ft., 3 - 4 Bedrooms, 2.5 Baths, 2 Car Garage

<u>Lot</u>	<u>Elevation</u>	<u>Home Features</u>	<u>Estimated Delivery</u>	<u>Price</u>
108	C8	3 Bedroom w/ Loft	Early 2016	\$667,000

Plan 3 2,158 sq. ft., 3 - 4 Bedrooms, 2.5 Baths, 2 Car Garage

<u>Lot</u>	<u>Elevation</u>	<u>Home Features</u>	<u>Estimated Delivery</u>	<u>Price</u>
107	B6	3 Bedroom w/ Loft	Early 2016	\$677,000

Surf House HOA Dues will range from approximately \$166 - \$212 per month and will include maintenance of common areas, landscaping outside fenced areas, reserves for future maintenance, and management fees.

Community Facilities District Tax will be approximately \$37 per month and covers Street Maintenance, Sidewalk Maintenance, Curb and Gutter Maintenance, Street Lighting, and Storm Drain Maintenance.

The Dunes Sales Office (831) 901-3972
 3003 Boardwalk Avenue, Marina, CA 93933

Tamara Gonsalves (CalBRE#01470950) | Tamara.Gonsalves@SheaHomes.com

Josh Miller (CalBRE#01737288) | Josh.Miller@SheaHomes.com

Please visit <https://jjeong-sheamortgage.mortgagewebcenter.com/>
 and click "Apply Now" to get pre-qualified for your new home purchase.



27 July 2013

VANISHED ?

SURF HOUSE



SAVED
SAVED

CYPRESS
UNDER APPEAL

FATE?
TO BE
DECIDED



- 1,523 SQ FT
- PLAN 1
- 1,692 SQ FT
- PLAN 2
- 1,896 SQ FT
- PLAN 3
- MODELS & SALES OFFICE AREA



THE DUNES

by Shea Homes

2ND AVENUE

9TH STREET

8TH STREET

3RD AVENUE

SANDY CLAY LANE

LIGHTHOUSE LANE

BLUWATER COURT

10TH STREET

BOARDWALK AVE

CANVAS WAY

SHOREBIRDS PLACE

3RD AVENUE

BOARDWALK AVENUE

10TH STREET

3RD AVENUE

BUNGALOW DRIVE

TELEGRAPH BLVD

SEA GLASS AVENUE

SEA GLASS AVENUE

WHARF TERRACE

MOONSHELL LANE

SKYVIEW DRIVE

PARKVIEW WAY

SEA GLASS AVENUE

9TH STREET

3RD AVENUE

SANDY CLAY LANE

LIGHTHOUSE LANE

BLUWATER COURT

8TH STREET

March 22, 2005

Item No. _____

Chair and Members of the Tree Committee
Meeting of April 4, 2005

**RECOMMENDATION TO THE PLANNING COMMISSION APPROVAL
OF THE REMOVAL, PRESERVATION AND RELOCATION OF TREES, AS
SPECIFIED IN THE TREE DISPOSITION PLAN, DATED MARCH 24, 2005
WITHIN PHASE ONE OF THE UNIVERSITY VILLAGES PROJECT**

RECOMMENDATION:

It is recommended that the Tree Committee:

1. Recommend to the Planning Commission approval of the removal, preservation and relocation of trees, as specified in the tree disposition plan, dated March 24, 2005, within phase one of the University Villages project.

BACKGROUND:

The Tree Committee, at its October 4, 2004 meeting, reviewed and provided comments regarding Section 5.6 Existing Tree Removal, Relocation and Replacement Standards of the Specific Plan. This chapter contains the development regulations specific to the criteria for rating trees and the protocol for inventorying of trees within the University Villages Specific Plan project.

In mid-August, 2004, Marina Community Partners (MCP) submitted development applications consisting of a General Plan Amendment, Zoning Code Amendment, Development Agreement, Specific Plan, Tree Removal Permit, Tentative Tract Map and Design Review. The submittal package was deemed "complete." Processing of the applications through the appropriate boards, commissions and committees are underway.

PROJECT DESCRIPTION

The tree removal permit application includes a Tree Disposition Plan, which illustrates the location of trees proposed for preservation, relocation and removal. A site visit using the Tree Inventory, previously reviewed by the committee, was conducted by a landscape architect and certified arborist, to determine which trees were to be removed, retained or relocated.

Due to grading proposed with the regional retail area, trees were evaluated for potential transplanting, as they could not be preserved in place. Nine trees were identified and it is proposed that these trees be relocated along the Imjin Parkway frontage.

The grades will not be changed significantly along Third Avenue and First Street therefore the trees currently aligning the street will be preserved and integrated into the landscape plan. The preservation of trees along Third Avenue will require the larger residential lots than is typically

proposed so as to accommodate the existing trees. Along First Street the parking areas will allow for landscape planters to accommodate the trees.

Trees within the Highway 1 corridor will be retained. The area proposed for apartments has several clusters of trees and the proposed location of the buildings will be such that many of these can be preserved. Lastly, two trees within the residential area were considered for preservation. They will be located in smaller parks internal to the subdivision.

FINDINGS

In accordance with Municipal Code Section 12.04.060.B the Committee is to use the following applicable criteria in review of the tree removal permit:

1. The tree's contribution to the aesthetic beauty of the area and the effect its removal would have on neighboring property values; and
2. The concurrent submittal of development plans for the property that indicate that it is necessary to remove or relocate the tree to enable reasonable and conforming use of the property which is otherwise prevented by the location of the tree.

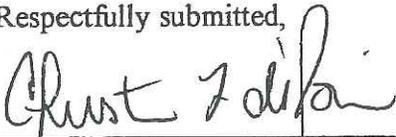
ANALYSIS

Findings per Municipal Code Section 12.04.060 and Specific Plan Section 5.6 can be made to allow the removal, relocation and preservation of trees in that it is necessary to remove, and transplant trees to enable reasonable development with the Phase I area.

CONCLUSION

Recommend to the Planning Commission approval of removal, relocation and preservation of trees, as specified on the Tree Disposition Plans, dated March 24, 2005, for Phase 1 within University Villages.

Respectfully submitted,



Christine di Iorio, AICP
University Villages Project Planner
City of Marina

1. SAVE Additional trees
2. clarify boundaries
3. State # of trees saved + removed
4. INCL Tree preservation measures
5. T evaled for relocation
- 6

To Planning Commissioners

From Mike & Candy Owen, appellants

9 July 2015

Re: Appeal of Staff authorization for removal of 2 Cypress in Dunes phase 1c

Added grievances:

Staff advice for making our appeal was to list our grievances. Our initial appeal yesterday tried to be analytical & critical of staff's analysis. On a more personal level, our concern is deep, going back to our appeal of staff's decision in 1990 to remove 2 eucalyptus in Windy Hill Park which council later resolved to be the first Landmark trees in Marina.

As a member of the Tree Committee for 25 years, I do not consider the City's declared intent to limit & restrict the removal of healthy & desirable trees as just lip service. So we feel personally aggrieved that:

1. Staff did not personally look at the 2 healthy, mature & scenic trees in place before deciding to remove them.
2. None of the other Tree Committee members apparently looked at both trees in place before agreeing to staff's decision. (one member was able to locate one of the 2 trees)
3. Staff invokes the "**Purpose and Intent**" section 17.51.010 of the Tree Ordinance, which I help write in 1994, as supporting their decision to remove 2 scenic, healthy, mature trees out of several hundred already removed.
4. Staff was focused on just TREE REMOVAL when the complete heading of the Tree ordinance is TREE REMOVAL, **PRESERVATION, AND PROTECTION**.....emphasis mine.
5. The 2 trees are clearly "healthy and desirable trees" for which the city's intent was "to limit and restrict the removal" by adopting the Chapt 17.51 and of which staff chose instead to encourage and expedite such removal.
6. That staff's Resolution 4 Findings are simply subjective assertions stated as facts when the findings by the professional arborist does not support and /or contradicts staff's assertions.
7. Staff apparently accepts the developers assessment on construction impact on the survival of the trees, when the arborist made no such assessment. The developer is not a tree expert. The arborist is.
8. Specifically in *Finding 1. "The applicant outlines a clearly documented & compelling reason for removal..."* while part of the applicants rational includes the arborist's report, which offers a number of ways to actually preserve the tress.
9. Specifically in *Finding 2. The trees do not play a prominent role in maintaining the existing urban forest.* Actually one is the largest upper canopy Cypress along the whole east side length of 2nd ave! It is the one most visible from over a mile away to the CSUMB north quad student housing bldg. which is actually pretty easy because of the vast expanse of the former Army asphalt motor pool area in between. Basically, there is not even a pretense of an "Urban Forest" when the few remaining upper canopy trees are removed because the density of the new housing no longer allows enough room for larger upper canopy trees.
10. Again specifically in *Finding 3. The negative impact on aesthetic values due to the removals would be completely off set by the replacement of new cypress replacements.* We are taking about two 75 year old Cypress planted in 1940 when the Army started gearing up for WW II in the proximate area of the old parade ground across from General Stillwell's headquarters by the current VTC bldg. Two trees that have taken 75 years to grow to 60 – 70 " diameter at base height and that are approximately 50 ' tall now & healthy with a life expectancy of 100 – 300 years altogether. These are LANDMARK eligible trees & it would take more than just a few decades for any young replacements to even begin to match the canopy loss of such removals. The staff's logic is the same as the rational to cut down "old growth"

11. Finding 4. concludes location of the trees prevent reasonable & conforming use of the properties according to development plans. The developer knew the location of these trees since 2005 and agreed to save the one on 3rd ave in 2005. The other on 3rd ave was to be evaluated during construction. The developer was responsible for plans which would save the trees indicated as SAVE in the 28 March Tree Disposition plan for phase 1. This was not an unforeseen circumstance. Basically attention to detail was lacking by the developer. Although, the arborist report indicates ways to preserve the trees, the developer ignores them.

12. the issue for the 3rd ave tree boils down to a having a garage driveway or keeping the tree. The developer is looking to 2030 build out of 1237 homes. He promised in the 2005 agreements to save 7 trees in the current phase 1 & now is asking for two to be removed. One of the 7 trees to be saved on the corner of 3rd ave & Imjin Parkway has vanished w/o a trace which is fortunate because otherwise it would occupy a big part of the house under construction on that corner.

Altho the arborist suggested simply not building the house with the intrusive driveway off the alley in order to preserve the tree, Why couldn't the developer simply flip the house 180 degrees so the garage entrance was from 10th street? Just seems an unnecessary either/ or proposition = driveway V. landmark eligible tree.

Finally, we would request that a copy of the Director's authorization for removal be provided to the Planning Commissioners & to Candy & I. Depending on the content of the authorization, additional grievances may be submitted.

Respectfully,
Candy & Mike Owen *MM + Candy Owen*
3247 Estrella Del Mar Way, Marina



“EXHIBIT G”

July 6, 2015 Shea Homes Building Permit Application Lot 105

Planning Review

Approvals Needed (select from drop down)

Building:	Yes
Planning:	Yes
Fire:	No
Public Works/Engineering:	Yes
Other Agencies:	MCWD, MRWPCA, MPUSD, FOR A

Project Address:	Lot 402 105
Project Description:	Small Lot Alley (Surf House) Phase 008
Date Received:	7/6/2015
Date Routed:	7/7/2015
Applicant Info:	Chris Stump - chris.stump@sheahomes.com
Contractor Info:	Shea Homes
Architect/Designer Info:	Dahlin Group
Occupancy Group:	R3
Construction Type:	VB

Date Approved	Date Disapproved	Date Need More Info
		7/23/15



Justin Meek

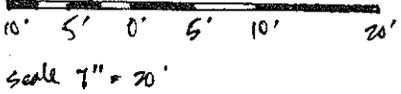
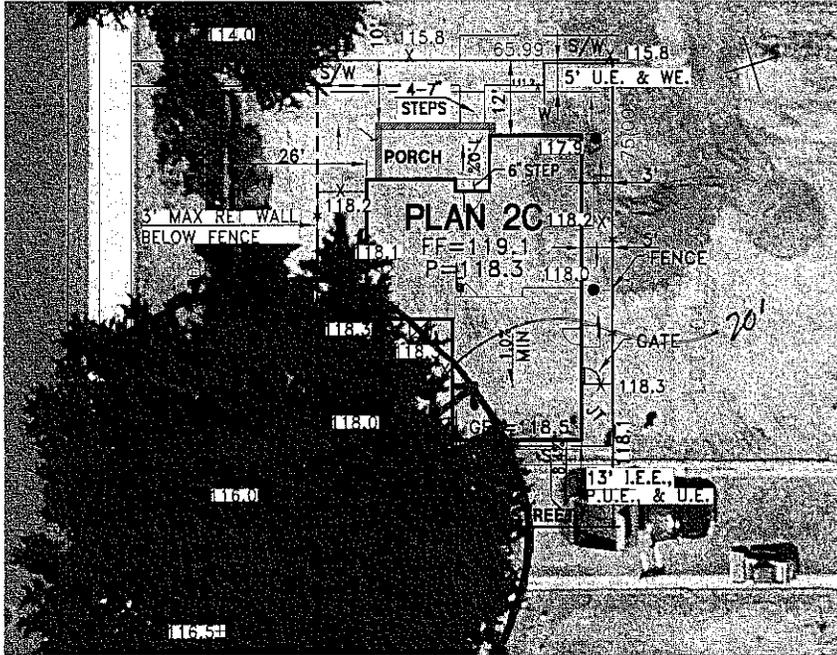
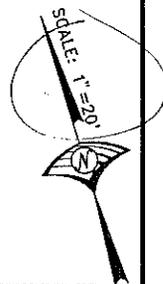
Theresa Szymanis or Justin Meek, Planner

PLEASE MAKE THE FOLLOWING CORRECTIONS ON FOUR (4) COMPLETE SETS OF PLANS FOR FURTHER REVIEW. FAILURE TO CORRECT ALL ITEMS MAY RESULT IN ADDITIONAL PLAN REVIEW FEES.

INDICATE TO THE LEFT OF EACH NUMBERED ITEM THE LOCATION OF THE PLANS WHERE THE CORRECTION OR CORRECTIONS MAY BE FOUND. CLOUD ALL REVISIONS ON PLAN SHEETS.

Approval subject to results of Tree Removal Appeal at Planning Commission mtg on Aug. 13, 2015.

THIS PLOT PLAN IS NOT FOR SALES PURPOSES. THIS PLOT PLAN IS FOR THE PURPOSES OF INDICATING COMPLIANCE WITH ZONING SET BACKS, GENERAL DRAINAGE DIRECTION, AND APPROXIMATE UTILITY CONNECTION. ALL OTHER DATA SHOWN HEREON IS CONCEPTUAL. THIS PLOT PLAN DOES NOT REFLECT AS-BUILT CONDITION, RETAINING WALLS ARE OPTIONAL AND MAY OR MAY NOT BE CONSTRUCTED.



- | | | |
|----------------------------|-----------------------------------|---|
| ● - VERTICAL DRAIN | --- TYPICAL MIN 2% SWALE CL | - CENTERLINE OF PRIVATE STREET |
| ⊗ - AC PAD | W - WATER SERVICE | GFF - GARAGE FINISHED FLOOR |
| T4 - UTILITY SERVICE BOXES | S - SEWER SERVICE | //// - RELINQUISHMENT OF ABUTTER'S RIGHTS |
| □ - DRAIN INLET | JT - JOINT TRENCH SERVICE | — - BUILDING WALL |
| ○ - STREET LIGHT | ROW - RIGHT OF WAY | --- - EASEMENT |
| ⊠ - TRANSFORMER | S/W - SIDEWALK, BW - BACK OF WALK | — - LOT LINE |
| ⊗ - FIRE HYDRANT | C&G - CURB AND GUTTER | — - RETAINING WALL |
| | IEE - INGRESS/EGRESS EASEMENT | |
| | PUE - PUBLIC UTILITY EASEMENT | |
| | UE - PRIVATE UTILITY EASEMENT | |
| | WE - WALKWAY EASEMENT | |
- NOTE:
CONSTRUCTION DOCUMENT LOT NUMBER 95

THE DUNES ON MONTEREY BAY - PHASE 1C
SHEA HOMES
PLOT PLAN FOR LOT 105

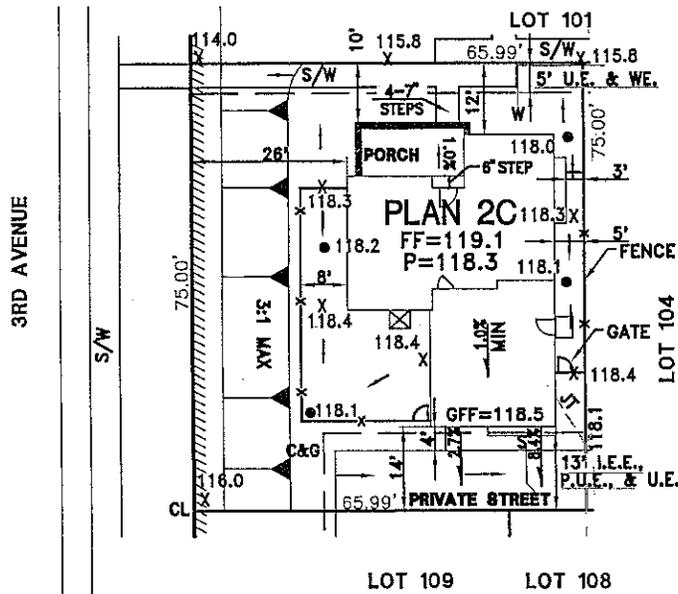
LOT AREA: 4,949 S.F.
ADDRESS: 408 BUNGALOW DRIVE
CITY OF MARINA, CALIFORNIA

WOOD RODGERS
DEVELOPING INNOVATIVE DESIGN SOLUTIONS
4301 HACIENDA DR. STE 100 TEL 925.847.1556
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06-18-15 DRAWN: RM 3089.002

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THIS PLOT PLAN IS NOT FOR SALES PURPOSES. THIS PLOT PLAN IS FOR THE PURPOSES OF INDICATING COMPLIANCE WITH ZONING SET BACKS, GENERAL DRAINAGE DIRECTION, AND APPROXIMATE UTILITY CONNECTION. ALL OTHER DATA SHOWN HEREON IS CONCEPTUAL. THIS PLOT PLAN DOES NOT REFLECT AS-BUILT CONDITION, RETAINING WALLS ARE OPTIONAL AND MAY OR MAY NOT BE CONSTRUCTED.



Show existing tree identified as 2845 in the Tree Disposition Plan (2005).

- - VERTICAL DRAIN
- ⊗ - AC PAD
- ⊠ - UTILITY SERVICE BOXES
- ⊞ - DRAIN INLET
- - STREET LIGHT
- ⊠ - TRANSFORMER
- ⊞ - FIRE HYDRANT
- TYPICAL MIN 2% SWALE
- W - WATER SERVICE
- S - SEWER SERVICE
- JT - JOINT TRENCH SERVICE
- ROW - RIGHT OF WAY
- S/W - SIDEWALK, BW - BACK OF WALK
- C&G - CURB AND GUTTER
- IEE - INGRESS/EGRESS EASEMENT
- PUE - PUBLIC UTILITY EASEMENT
- UE - PRIVATE UTILITY EASEMENT
- WE - WALKWAY EASEMENT
- CL - CENTERLINE OF PRIVATE STREET
- OFF - GARAGE FINISHED FLOOR
- /// - RELINQUISHMENT OF ABUTTER'S RIGHTS
- - BUILDING WALL
- - EASEMENT
- - LOT LINE
- - RETAINING WALL

NOTE:
CONSTRUCTION DOCUMENT LOT NUMBER 95

THE DUNES ON MONTEREY BAY - PHASE 1C
SHEA HOMES
PLOT PLAN FOR LOT 105

LOT AREA: 4,949 S.F.
ADDRESS: 408 BUNGALOW DRIVE
CITY OF MARINA, CALIFORNIA



08-18-15 DRAWN: RM 3089.002

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“EXHIBIT H”

August 3, 2015 letter from Mr. Wilson Wendt of Miller, Starr, Regalia Real Estate Attorneys
to City Attorney Robert R. Wellington



**MILLER STARR
REGALIA**

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August 3, 2015

VIA E-MAIL

Robert R. Wellington
City Attorney
City of Marina
857 Cass Street, Suite D
Monterey, California 93940
E-Mail: attys@wellingtonlaw.com

Re: Concerns about Planning Commission hearing appeal of Shea Homes' tree removal permit for two trees located within Dunes Phase 1C site

Dear Mr. Wellington:

Miller Starr Regalia represents Shea Homes in its development of the Dunes Phase 1C site in the City of Marina. We are writing to you because we are concerned about the City's decision to grant an appeal hearing to reconsider a tree removal permit application that the Community Development Director recently approved.

Summary. The City of Marina Tree Committee recently recommended, by a 3-to-1 vote, the approval of an application by Shea Homes to remove two Monterey Cypress trees¹ located on the Dunes Phase 1C site (itself located within the Monterey Bay Development Specific Plan area, formerly known as the University Villages Specific Plan area). The Community Development Director considered this recommendation and approved the tree removal. Thereafter, a dissenting member of the Tree Committee appealed the Community Development Director's determination to the City's Planning Commission.

It does not appear, from a procedural standpoint, that the Planning Commission may hear the appeal. Even assuming, for the sake of argument, that the Planning Commission could hear the matter, its discretion appears to be constrained, separately and independently, by the University Villages Specific Plan and the terms of a 2005 Development Agreement that governs the Dunes Phase 1C site.

¹ The first tree is located within or near Lot 1 of the Final Map for the Dunes Phase 1C site. The second tree is located within or near Lot 109.

Under the applicable specific plan, which takes precedence over conflicting zoning ordinances, trees must be retained only where practicable, and the City, in approving the final subdivision map for the site ("Final Map") and various site and elevation plans, already has determined that retention of the two trees is infeasible.

Meanwhile, the development agreement that governs the Dunes Phase 1C site contractually obligates the City to approve the proposed subdivision plan in its existing configuration, even if tree removal is necessary. Under the terms of the development agreement, Shea has a vested right to remove the subject trees.

Finally, the appellant has argued that the two trees must be retained because previous tree surveys designate them for retention. What previous surveys show is irrelevant, as City law expressly contemplates that the instant tree removal permit application is a means of modifying previously approved tree removals.

The Planning Commission may not hear the appeal. The City's appeal procedures do not provide the Planning Commission with the authority to conduct an administrative review of the Community Development Director's decision.

Where tree removal permits are sought, the Marina Municipal Code provides that the "community development director or designee" may consider and adjudicate the request." (MMC, § 17.51.060(B).) There is no right of appeal set forth in this ordinance.

The Planning Commission does have general rights to hear appeals, but these general rights do not extend to consideration of administrative permits. Chapter 17.56 of the municipal code governs appeals, and provides that the "planning commission shall have the power to hear and decide appeals based on the *enforcement* of the [Zoning Ordinance] or the *interpretation* of the provisions thereof." (MMC, § 17.56.010 [emph. added].) The consideration of a permit application is neither the enforcement nor the interpretation of a zoning provision. The concept of "enforcement" describes the circumstance where an entity or individual violates a code provision (see MMC, § 17.60.020), whereas an interpretation settles an ambiguity in the law (see MMC, Ch. 1.04). The Community Development Director's determination that Shea may remove two trees, while contemplative of zoning restrictions, is a discretionary decision whereby the Community Development Director has outlined Shea's development rights. It does not contemplate a violation of a duty, nor does this determination operate to resolve an existing ambiguity in the municipal code. Where a city allows for an appeal procedure that is not expressly authorized by its ordinance, a city violates the due process rights of interested parties. (See *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1024 [appeal procedures must specifically be authorized by ordinance].)

This is not to say an aggrieved party has no rights of appeal. It is to say that, having no right to an administrative appeal, the proper avenue for the appellant to challenge the Community Development Director's determination is to file a lawsuit with the local superior court under Code of Civil Procedures sections 1085 or 1094.5.

The University Villages Specific Plan restricts the City's discretion to reject Shea's application. Even assuming that the Planning Commission may hear the appeal, it's discretion to reject Shea's application is restricted by the governing specific plan.

The University Villages Specific Plan contains a set of development regulations that address, specifically, the removal of Monterey Cypress trees within the boundaries of its planning area. The Specific Plan provides that such trees shall be preserved only "wherever practicable" given that "development at urban densities is not conducive to avoidance of existing trees." (VUSP, § 5.9, p. 119 [attached hereto as **Exhibit A**].) Thus, in adopting the Specific Plan, the City Council weighed the benefits of tree salvation against the detriments of urban sprawl and, within the Specific Plan area, made the decision to prioritize denser urban development where tree retention was not feasible.²

The City also has determined, previously, that it would be infeasible to preserve the two Monterey Cypress trees at issue. This determination is implicit in (1) the City Council's approval of the Final Map for the Dunes Phase 1C site, which approved the final location of lots, streets, and alleys in the immediate vicinity of the subject trees (see Final Map, Sheets 4 & 7 [development of Lots 1 and 109]); and (2) the Planning Commission's approval of site plans and building elevations for the Dunes Phase 1C subdivision (the "Design Approvals"). (See 5/10/12 Staff Report; 2012 Resolution; Phase 1C Development Plan.) These entitlements and associated documents are attached hereto as **Exhibits B & C**.

The locations and footprints of the foregoing homes and improvements are situated within the drip-line of the subject trees, and incompatible with their retention (including the retention methods identified by Vaughan Forestry and Land Management). (See 5/14/2015 Shea application for Dunes 1C Tree Removal Permit [attached hereto as **Exhibit D**]; 4/29/2015 letter from Vaugh Forestry and Land Management [attached hereto as **Exhibit E**]; Plot Plans for Final Map Lots 1 and 109, demonstrating encroachment of homes and retaining walls within tree drip-

² The Specific Plan uses the term "practicable," which is a synonym of the word "feasible." The Specific Plan defines neither term, but it bears mention that the Marina Municipal Code defines "feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account *economic, environmental, social and technological factors* as they relate to the area or land under consideration." (MMC, § 17.04.301.)

lines [attached hereto as **Exhibits F & G**].) The possibility that tree retention would be incompatible with buildout of the Specific Plan was known for some time prior to the City Council's adoption of the Final Map. (See, e.g., 5/16/05 Staub Report, showing tree #220, located within or near Lot 1, was in poor health, as indicated in the chart accompanying the report [attached hereto as **Exhibit H**]; 8/10/2007 Staub Report, indicating tree #284, within Lot 109, would not survive construction due to extensive root and canopy removal that would be necessary [attached hereto as **Exhibit I**]; 4/8/05 Tree Disposition Plan by Dahlin Group, indicating tree #220E to be evaluated for removal or transplant [attached hereto as **Exhibit J**].)³

The requirements of the Specific Plan — and its implementation through the Final Map and Design Approvals — narrow the scope of the City's inquiry under Chapter 17.51 of the municipal code. After all, in the hierarchy of land use plans, a specific plan ranks second only to a general plan. (see Gov. Code, § 65450.) Zoning ordinances must be designed and interpreted to be consistent with the edicts of a specific plan. (See Gov. Code § 65455.) Contradictory requirements in a local code must be ignored.

Therefore, in assessing Shea's tree removal permit, the Planning Commission must, in making findings under section 17.51.060(C) of the municipal code, abide by the simple, foregoing standard: within the University Villages Specific Plan area, trees are to be retained only where practicable. Where a finding requirement⁴ conflicts with this overarching standard, it must yield.

The development agreement requires the removal of the subject trees. In 2005, the City adopted a development agreement that addressed buildout within the University Villages Specific Plan area (the "Development Agreement"). The Development Agreement, attached hereto as **Exhibit L**, created a series of vested rights (DA, ¶ 2.1) that, in part, restricted the discretion of the City to deny land use entitlements such as Shea's tree removal permit application.

First, Shea's tree removal application qualifies, under the contract, as a Subsequent Project Approval, which refers to permits sought after the City approved an initial land use entitlement package for the Dunes Phase 1C site. This original package

³ Shea has received bids for the transplant of tree #220, and arborists estimate the cost of relocation would be \$125,000, making this option economically infeasible.

⁴ For the sake of argument, it bears mention that, in fact, the Specific Plan, Final Map, and Design Approvals ensure the City can make the requisite findings. For instance, the Specific Plan's prioritization of urban development on the Phase 1C site is a clearly documented and compelling reasons for the removal or relocation of trees. (See MMC, § 17.51.060(C)(1).) Meanwhile, the City Council's approval of the Final Map and project architecture constitutes a finding that tree removal is necessary to enable the reasonable buildout of the development plan. (See MMC, § 17.51.060(C)(8).)

included, without limitation, the University Villages Specific Plan, the tentative map, and the original tree removal permit (i.e., the "Project Approvals" identified in the Development Agreement). (DA, Recitals J & K.)

Specifically, the Development Agreement provides that the "City may deny an application for a Subsequent Project Approval *only if* such application does not comply with this Agreement or Applicable City Regulations or is materially inconsistent with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Project Approval which is requested by Developer as an amendment to a Project Approval)." (DA, ¶ 2.8.1 [emph. added].)⁵

None of the conditions exist here.

Second, and more importantly, the Development Agreement provides Shea with a contractual, vested right to develop the Dunes Phase 1C site as specifically contemplated in the Final Map and Design Approvals. To this point, the Development Agreement provides as follows:

The permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, the subdivision of land and requirements for infrastructure and public improvements, the general location of public utilities, and other terms and conditions of development shall be governed by the Project Approvals, Applicable City Regulations and this Development Agreement (collectively "Vested Elements"), except as provided in this Agreement.

(DA, § 2.1.1.) Accordingly, Shea has "a vested right to develop the Property in accordance with the Vested Elements" (DA, § 2.1.2.)

The list of vested Project Approvals includes not only the list of entitlements identified in Recital J of the Development Agreement (e.g., the tentative map, etc.), but also all Subsequent Project Approvals. Recital K provides that these latter approvals "shall be deemed to be part of the Project Approvals as they are approved."

The Final Map for Dunes Phase 1C, approved on February 18, 2015, is a Subsequent Project Approval and, pursuant to section 2.1.1 and Recitals J and K of

⁵ The development agreement further provides that if the "City denies any application for a Subsequent Project Approval, City must specify in writing the reasons for such denial and suggest a modification which would be approved. Any modification suggested by the City must be consistent with this Agreement, the Project Approvals and Applicable City Regulations." (DA, § 2.8.1.)

the Development Agreement, immediately became a Vested Element under this agreement. The same holds true for the Design Approvals. Given that the use and development of Lots 1 and 109, as specifically approved by the City, are dependent upon the removal of the two trees (see **Exhibits D-K**), a failure to approve the removal of these trees would render those lots valueless, and inhibit the development of the project in accordance with Shea's vested rights. (See DA, §§ 2.1.1, 2.1.2.)

The Planning Commission therefore would have a contractual obligation, bred from the development agreement and the doctrine of vested rights, to remove the two trees.

It is irrelevant that previous maps indicated one or more of the subject trees were to be retained. The appellant has contended that arborists maps have designated at least one of the two subject trees for retention, and that the instant application contradicts these maps. The very function of the instant tree removal permit is to modify previous approvals. As indicated in the Specific Plan, "[r]emoval of any tree that was preserved as part of a previous tree removal permit shall require a new application of a tree removal permit." (VUSP, § 5.9, p. 119.) Therefore, the content of the original 2005 tree removal permit (and arborist maps that designated trees for removal and retention), is irrelevant.⁶

Conclusion. For the foregoing reasons, the Planning Commission does not have the authority to hear an appeal of the Community Development Director's approval of Shea's tree removal permit. Even if it did have the authority, the Specific Plan and development agreement obligate the Planning Commission to approve the tree removal so that buildout may conform with the vested blueprint set forth in the Final Map and the Design Approvals.

Accordingly, we respectfully request that the City take the appeal hearing off the Planning Commission's calendar. If the City disagrees that the Planning Commission cannot hear the appeal, we respectfully request that this letter and its attachments be circulated to the Planning Commissioners, including a bullet point summary of this letter (**Exhibit L**).

Ultimately, the instant tree removal permit, which garnered a recommendation for approval by the majority of the Tree Committee and an approval by the Community

⁶ An understanding of what trees would require removal has changed because, in preparing the Final Map, Shea and the City had a better understanding of the technical requirements needed to complete buildout of the Dunes Phase 1C site (e.g., infrastructure, etc.) and the precise footprints of these project components. At the time of the original project approvals, the City contemplated the completion of a more detailed reports (as evidenced in the Specific Plan Environmental Impact Report, tentative map, and other documents), which have since been prepared.

Robert R. Wellington
August 3, 2015
Page 7

Development Director, would facilitate the construction of a vested development that serves important Specific Plan goals and policies.

Thank you for your time, and please do not hesitate to contact me with any questions.

Very truly yours,

MILLER STARR REGALIA

Wilson F. Wendt

Wilson F. Wendt

WFW:srm

Attachments A - L

cc: Layne Long, City Manager, City of Marina
Theresa Szymanis, Community Development Director, City of Marina
Justin Meek, Senior Planner, City of Marina
Don Hofer, Shea Homes
Wendy Elliot, Shea Homes
Chris Stump, Shea Homes
Sean Marciniak, Esq., Miller Starr Regalia

“EXHIBIT I”

August 3, 2015 Shea Homes Building Permit Application Lot 109

Planning Review

Approvals Needed (select from drop down)

Building:	Yes
Planning:	Yes
Fire:	No
Public Works/Engineering:	Yes
Other Agencies:	MCWD, MRWPCA, MPUSD, FOR A

Project Address:	Lots 106-109
Project Description:	Small Lot Alley (Surf House) Phase 009
Date Received:	8/3/2015
Date Routed:	8/3/2015
Applicant Info:	Chris Stump - chris.stump@sheahomes.com
Contractor Info:	Shea Homes
Architect/Designer Info:	Dahlin Group
Occupancy Group:	R3
Construction Type:	VB

Date Approved	Date Disapproved	Date Need More Info

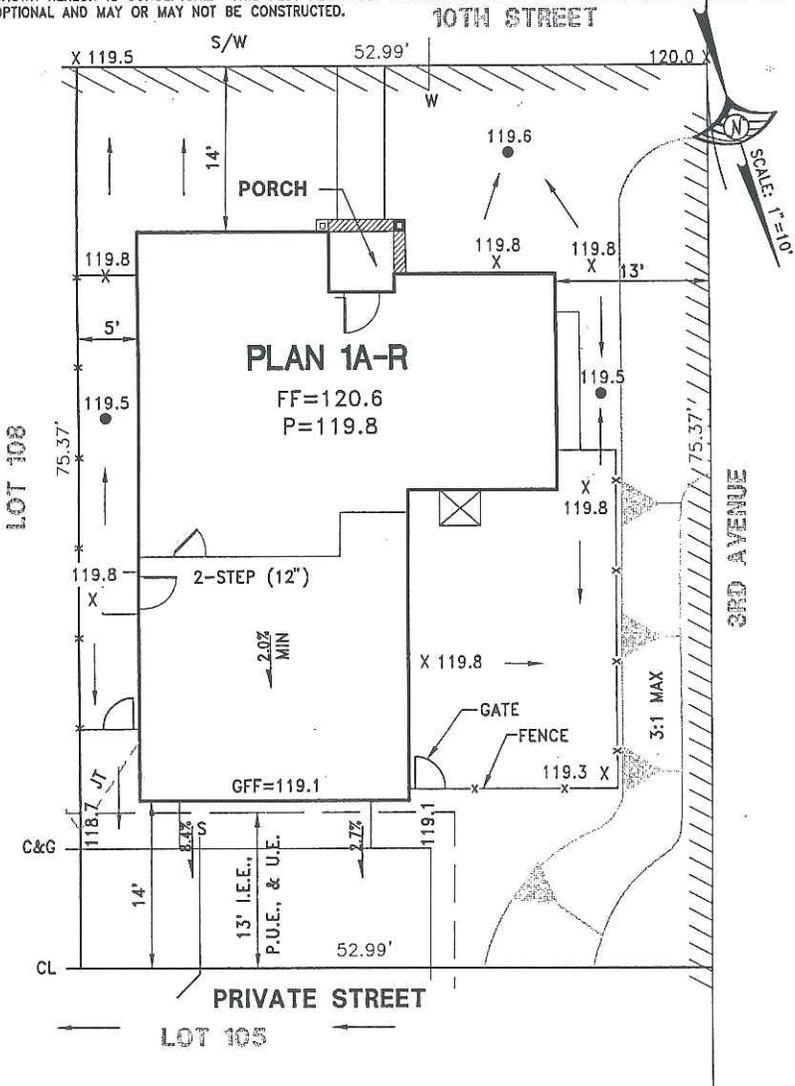


Theresa Szymanis or Justin Meek, Planner

PLEASE MAKE THE FOLLOWING CORRECTIONS ON FOUR (4) COMPLETE SETS OF PLANS FOR FURTHER REVIEW. FAILURE TO CORRECT ALL ITEMS MAY RESULT IN ADDITIONAL PLAN REVIEW FEES.

INDICATE TO THE LEFT OF EACH NUMBERED ITEM THE LOCATION OF THE PLANS WHERE THE CORRECTION OR CORRECTIONS MAY BE FOUND. CLOUD ALL REVISIONS ON PLAN SHEETS.

THIS PLOT PLAN IS NOT FOR SALES PURPOSES. THIS PLOT PLAN IS FOR THE PURPOSES OF INDICATING COMPLIANCE WITH ZONING SET BACKS, GENERAL DRAINAGE DIRECTION, AND APPROXIMATE UTILITY CONNECTION. ALL OTHER DATA SHOWN HEREON IS CONCEPTUAL. THIS PLOT PLAN DOES NOT REFLECT AS-BUILT CONDITION, RETAINING WALLS ARE OPTIONAL AND MAY OR MAY NOT BE CONSTRUCTED.



- - VERTICAL DRAIN
- ⊗ - AC PAD
- T4 - UTILITY SERVICE BOXES
- - DRAIN INLET
- ⊞ - STREET LIGHT
- ⊞ - TRANSFORMER
- ⊞ - FIRE HYDRANT
- - TYPICAL MIN 2% SWALE
- W - WATER SERVICE
- S - SEWER SERVICE
- JT - JOINT TRENCH SERVICE
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- IEE - INGRESS/EGRESS EASEMENT
- PUE - PUBLIC UTILITY EASEMENT
- UE - PRIVATE UTILITY EASEMENT
- WE - WALKWAY EASEMENT
- CL - CENTERLINE OF PRIVATE STREET
- GFF - GARAGE FINISHED FLOOR
- /// - RELINQUISHMENT OF ADJUTER'S RIGHTS
- - BUILDING WALL
- - EASEMENT
- - LOT LINE
- - RETAINING WALL

NOTE:
CONSTRUCTION DOCUMENT LOT NUMBER 78

THE DUNES ON MONTEREY BAY - PHASE 1C
SHEA HOMES
PLOT PLAN FOR LOT 109

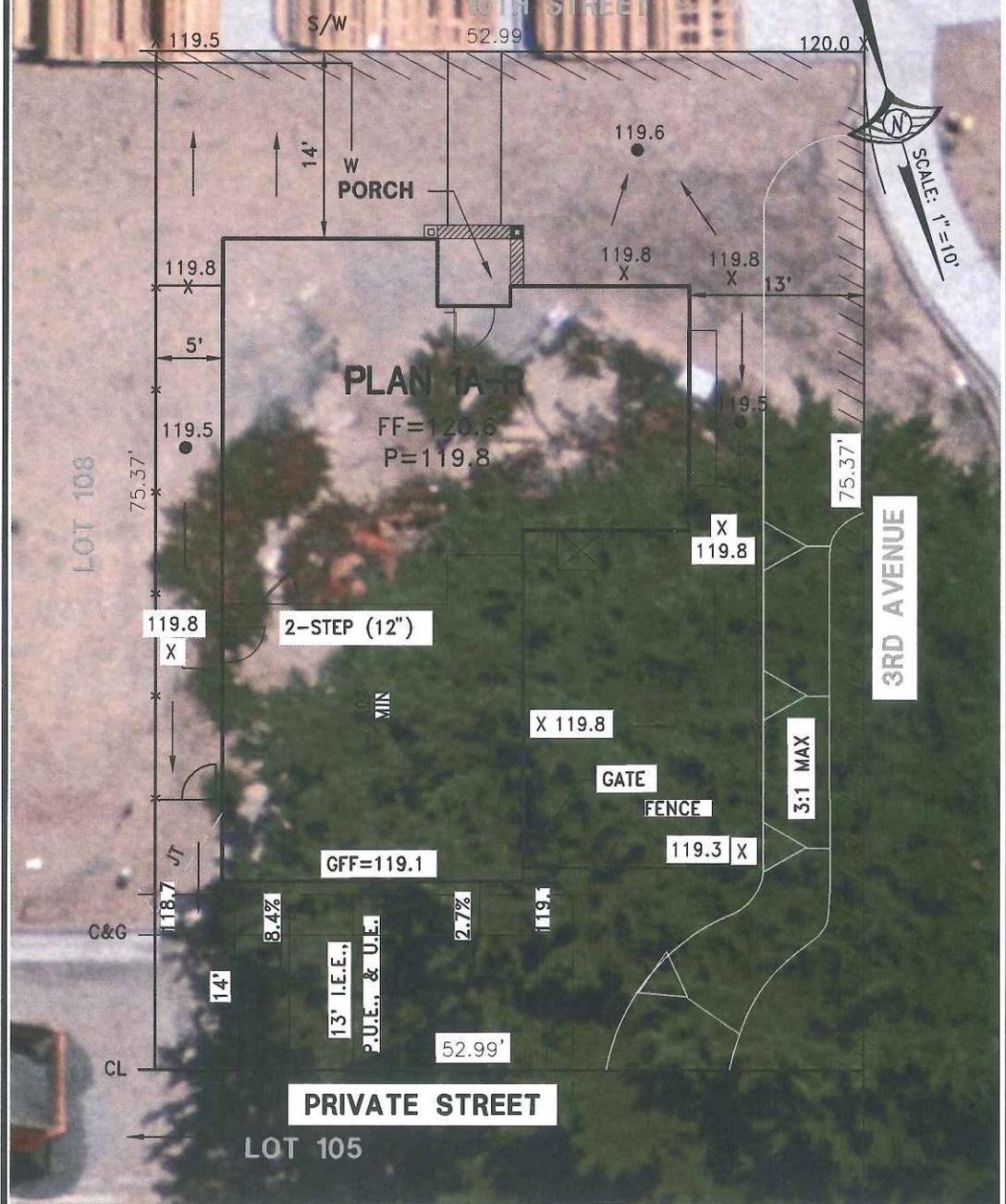
LOT AREA: 3,994 S.F.
ADDRESS: 401 10TH STREET
CITY OF MARINA, CALIFORNIA

WOOD ROGERS
DEVELOPING INNOVATIVE DESIGN SOLUTIONS
4301 HACIENDA DR. STE 100 PLEASANTON, CA 94588
TEL 925.847.1558 FAX 925.847.1557

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 - — — - BUILDING WALL
 - — — - EASEMENT
 - — — - LOT LINE
 - — — - RETAINING WALL
- NOTE:
CONSTRUCTION DOCUMENT LOT NUMBER 78

THE DUNES ON MONTEREY BAY - PHASE 1C
SHEA HOMES
PLOT PLAN FOR LOT 109 (78)

LOT AREA: 3,994 S.F.
ADDRESS: 401 10TH STREET
CITY OF MARINA, CALIFORNIA

WOOD RODGERS
DEVELOPING INNOVATIVE DESIGN SOLUTIONS
4301 HACIENDA DR. STE 100 TEL 925.847.1558
PLEASANTON, CA 94588 FAX 925.847.1557

07-30-15	DRAWN: SB	3089.002
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“EXHIBIT J”

August 12, 2015 letter from Wellington Law Offices to Mr. Wilson Wendt of Miller, Starr Regalia
(Please note that attachments are included elsewhere within this package)

Copy by email to:
wilson.wendt@msrlegal.com
Original will follow

August 12, 2015

Wilson F. Wendt, Esq.
Miller Starr Regalia
1331 N. California Blvd.
Walnut Creek, CA 94596

Re: Response to Concerns Regarding Appeal
of Shea Homes' Tree Removal Permit.

Dear Mr. Wendt:

This will respond to your letter to City Attorney Robert Wellington on August 3, 2015, (the "Letter") wherein you raised concerns about the matter of the pending appeal for reconsideration of the decision by the City of Marina ("City") Acting Community Development Director ("Director") on July 25, 2015, approving the application of Shea Homes ("Shea") for a tree removal permit for two Monterey cypress trees in Phase 1C of Shea's residential project area within the Dunes on Monterey Bay Development Specific Plan ("Specific Plan"). In response to the appeal filed by Mr. Michael Owen on July 6, 2015 subsequently supplemented by Mr. Owen on July 27, 2015, staff has now scheduled a hearing for August 27, 2015, before the Planning Commission.

The first principal concern raised in the Letter is whether the matter of the appeal is properly before the Planning Commission. For the reasons stated below this matter is properly before the Planning Commission.

The Director's approval of the tree permit is a quasi adjudicatory act. Courts have concluded that the right to appeal from this type of decision is an integral element of the land use process. Section 17.51.060 E.2. of Chapter 17.51 (the "Tree Ordinance") of Title 17 of the Municipal Code (the "Zoning Ordinance") provides that "(i)n the event that a tree removal request is not associated with a development proposal and the city manager or designee grants a tree removal permit, a notice of such action shall be posted on the site *together with information relative to appeal rights.*" [Emphasis added.] By including this reference to appeal rights when it adopted the Tree Ordinance the City Council established a right to appeal a decision to grant a tree removal permit.

As the Letter acknowledges, Chapter 17.56 of the Zoning Ordinance entitled "Appeals" provides the "planning commission shall have the power to hear and decide appeals based on *enforcement* of the [Zoning Ordinance] or the *interpretation* of the provisions thereof." [Emphasis in the Letter.] The Tree Ordinance provides that in response to an application for a tree removal permit the Director is to receive the recommendation of the Tree Committee and upon review to then either approve, deny, or conditionally approve the application. This task necessarily requires the Director to make an assessment of facts provided by the applicant to determine if support for the required findings exists in the record. This process involves an interpretation of the Zoning Ordinance in that the Director is applying facts to bridge the analytical gap to the findings. The characterization in the Letter of the use of the term "interpretation" as restricted here only to the resolution of an ambiguity in the law is, in my opinion, too narrow a construction. Merriam-Webster's defines the use of the verb "interpret" as "to conceive in the light of individual belief or circumstance." The requirement that the Director apply facts in light of the circumstances associated with an application for a tree removal permit to make the findings required by Section 17.51.060 C. is a question of interpretation which vests jurisdiction in the Planning Commission to hear and decide an appeal in accordance with the Tree Ordinance and Chapter 17.56.

Further to the jurisdiction of the Planning Commission, the doctrine of exhaustion of administrative remedies requires that before an issue may be litigated, a plaintiff must raise the issue before the administrative agency or must have exhausted the necessary administrative remedies. Accordingly, for the appellant or the applicant to challenge the Director's decision by either avenue suggested in the Letter, i.e., under Code of Civil Procedure sections 1085 or 1094.5, the matter must be first and fully addressed at the local level.

The second principal concern raised in the Letter goes to the effect of Shea's vested rights to develop its property conferred by the Disposition and Development Agreement, the Specific Plan, and subsequent project approvals including the Final Map for Phase 1C and the approved site plans and building elevations (the "Development Approvals"). For reasons stated below, it is my opinion that in this matter the Zoning Ordinance, inclusive of the Tree Ordinance, is not superceded by the Development Approvals but rather operates in conjunction with them.

As the Letter acknowledges, Section 5.9 of the Specific Plan requires "removal of any tree that was preserved as part of a previous tree removal permit shall require a new application of a tree removal permit." The trees in the vicinity of Lot 1 (Tree #220) and Lot 109 (Tree #284)¹ which are the subject of the tree removal permit approved on July 25, 2015, were previously designated as to be evaluated for removal or transplant (Tree #220) and to be saved (Tree #284).

¹ Lot and tree numbers vary in the several documents related to the Development Approvals and for reference here I've used the same designations as in the Letter.

We agree that Shea has a vested right to develop its property in accordance with the Development Approvals. But in order to do so, by its own timing and design, Shea created a situation such that a tree removal permit is required. In order to obtain the permit Shea is required to establish that the locations of the two trees make it impracticable to preserve or relocate them "to enable reasonable and conforming use of the property (i.e., Lots 1 and 109) which is otherwise prevented by the location of the tree(s)." The characterization in the Letter that the Specific Plan provides that "trees shall be preserved *only* wherever practicable" [emphasis added] is not accurate or descriptive of the requirements of Section 5.9 of the Specific Plan which does not use the adverb "only" with reference to the phrase "wherever practicable." Furthermore, the Tree Ordinance, contrary to the proposition that trees are *only* to be preserved wherever practicable, contains a clear statement of the City Council's intent, set forth at Section 17.51.010 B., to "limit and restrict the removal of healthy and desirable trees in the city."

In accordance with the Specific Plan and the Tree Ordinance, in order to remove Trees #220 and Tree #284, on May 14, 2015 Shea properly applied for a tree removal permit but now takes the position that having applied for the permit, because of its vested rights under the Development Approvals, the City is without discretion to reject Shea's application. I believe this position to be contrary to logic and the Municipal Code.

Having applied for a tree removal permit, Shea, like any other property owner for whom an approved development plan exists, was required to, and did to the satisfaction of the Tree Committee and the Director, establish facts to support the following findings in accordance with Section 17.51.060 C:

1. Clear and compelling reasons exist for the removal of the trees, in that configuration of Lots 1 and 109, and associated housing construction may impair the viability of trees #220 and #284; and
2. The trees proposed for removal do not serve as part of a windbreak system or otherwise play a role in maintaining the existing urban forest, in that the remaining trees and proposed planting(s) in the Dunes project area help to maintain the existing urban forest; and
3. Due to the trees' contribution to the aesthetic beauty of the area, the removal of the two trees would not have a substantial detrimental effect on neighboring property values, in that replacement Monterey cypress trees would be planted onsite; and
4. The removal request is concurrent with development plans for Lots 1 and 109 and the development plans indicate that it is necessary to remove (or relocate) the trees to enable reasonable and conforming use of the properties which are otherwise prevented by the location of the trees.

Letter to Wilson Wendt, Esq.
August 12, 2015
Page 4

To make a claim that Shea is required to apply for a tree removal permit but once having done so the City is without discretion to deny the permit is to assert that in this instance the law requires an idle act. To the contrary, the requirements of the Tree Ordinance and the Specific Plan operate together to balance the developer-applicant's right to the reasonable and conforming use of its property against the City's goal to limit and restrict the removal of healthy and desirable trees.

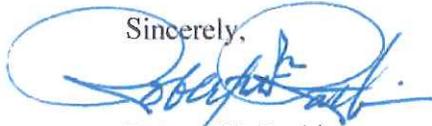
We are in agreement that, provided on appeal Shea provides support for the findings cited above to the Planning Commission, the Zoning Ordinance working in concert with the Development Approvals would secure Shea's development right including removal of trees whose locations prevent the approved development of its property. This is true irrespective of the designation of a tree on a prior map or survey because, as the Letter states, one of the purposes of the Tree Ordinance is to adopt the matter of the removal of a tree to approved development plans.

Mr. Owen, the appellant in this matter, has raised certain questions about the Director's decision including whether the retention methods Mr. Owen claims were implicitly dismissed as infeasible or impractical in that decision are, in fact, viable. As this determination rests upon the Director's interpretation of the facts presented by Shea and by the appellant, as discussed above this is a legitimate basis for an appeal to the Planning Commission.

The appeal is to be on the agenda for the next regular meeting of the Planning Commission on August 27, 2015, at 6:30 P.M. in the Council Chambers located at 211 Hillcrest Avenue, Marina, CA. The Planning Commission will hear the appeal *de novo* and, based upon substantial evidence, may affirm or reverse, wholly or partly, the Director's decision, may modify the decision, or make such order as may be appropriate. In accordance with Section 17.56.040 the decision of the Planning Commission is appealable to the City Council. Notice will be given to both parties and notice of the Director's action and information relative to the appeal is posted on the trees. As requested, the Letter together with its attachments including the bullet point summary will be provided to the Planning Commissioners and to Mr. Owen along with a copy of this letter.

Thank you for your courtesy and attention to this letter. Please feel free to contact me with any questions or should you wish to discuss any of these matters.

Sincerely,



Robert W. Rathie

RWR:ms

cc: City Manager
Acting Director, Community Development Department
Sr. Planner
Mr. Michael Owen

“EXHIBIT K”

August 19, 2015 Peer Review of Preliminary Forester/Arborist Evaluation

Frank Ono
International Society of Arboriculture
Certified Arborist # 536
Society of American Foresters Professional Member 48004
1213 Miles Avenue
Pacific Grove CA, 93950
Telephone (831) 373-7086

August 19, 2015

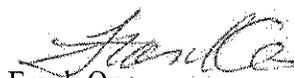
Theresa Szymanis, AICP
Planning Services Manager
Community Development Department
Marina, CA 93933

RE: Peer Review - Preliminary Forester/Arborist Evaluation for University Village
Phases 10 and 18 (Lots 295, 78, 86, and 93).

Ms. Theresa Szymanis;

You requested a peer review of an arborist report prepared for Shea Homes, by Vaughan Forestry & Land Management. The report discusses potential effects to the 4 cypress trees due to required grading and construction activities. Of prime concern is the cypress #2 listed in the report. Review of the report finds the report regarding this trees to have merit with the design as presented. The following peer review report discusses my findings of the peer review.

Sincerely,



Frank Ono
Certified Arborist #536

The following report is based on a visual inspection of tree condition and for obvious defects. It is not intended to constitute a complete health and hazard evaluation. Further investigation would be required to more definitively evaluate the health and hazards posed by the subject trees, some of which may not be disclosed by visual inspections. Investigations include but are not limited to core samples, root crown excavation, and visual inspection of the entire trees by climbing. Please be advised that healthy trees and/or limbs may fail under certain conditions, and that the above recommendations are based on industry standards of tree care. This report is made with the understanding that no representations or warranties, either expressed or implied are made that any trees referred to in the report or located on or adjacent to the subject property are sound or safe. Acceptance and use of this report constitutes the acknowledgement of the following stated facts and that the Client shall pay to Consultant consulting fees in accordance with the Fee Schedule attached hereto and made a part hereof as Exhibit A for the services actually performed and shown on such statement within thirty (30) days after receipt thereof.

Peer Review - Preliminary Forester/Arborist Evaluation for University Village Phases 10 and 18 (Lots 295, 78, 86, and 93)

ASSIGNMENT/SCOPE OF WORK

I am requested to perform a peer review of the Preliminary Forester/Arborist Evaluation for University Village Phases 10 and 18 (Lots 295, 78, 86, and 93). I am to evaluate the report findings regarding overall health of the trees and applicable required findings for Approval of a Tree Permit in Section 17.51.060.C of the City of Marina Tree Removal, Preservation and Protection Ordinance.

LIMITATIONS OF THE ASSIGNMENT

The peer review evaluates the report findings in comparison with findings from my site review regarding overall health of the trees and the applicable required findings for approval of a tree permit as required by section 17.51.060.C of the City of Marina Tree Removal, Preservation and Protection Ordinance. Based on the findings of the peer review the City of Marina may decide to unconditionally accept the report; accept it in the event that its authors improve it in certain ways; reject the report, but encourage revision and invite resubmission; or reject the report outright. The findings of this report are limited to a visual assessment of the trees and utilized with information found and compared to at the site. No tests such as a complete root collar examination or climbing of the tree are made as part of the peer review.

Disclosure Statement

It is important to note that Urban Foresters/Arborists are tree specialists who use their education, knowledge training and experience to examine trees, recommend measures to enhance their health and beauty and to attempt to reduce the risk of living near trees. Clients may choose to accept or disregard the recommendations of the arborist or to seek additional advice. Trees and other plant life are living, changing organisms affected by innumerable factors beyond our control. Trees fail in ways and because of conditions we do not fully understand. Urban Foresters/Arborists cannot detect or anticipate every condition or event that could possibly lead to the structural failure of a tree. Conditions are often hidden within the trees and below ground. Urban Foresters/Arborists cannot guarantee that a tree will be healthy or safe under all circumstances, for any specific period or when a tree or its parts may fail. Further, remedial treatments, as with any treatment or therapy, cannot be guaranteed. Treatment, pruning, bracing and removal of trees may involve considerations beyond the scope of the arborists skills and usual services such as the boundaries of properties, property ownership, site lines, neighbor disputes and agreements and other issues. Therefore, urban forester/arborists cannot consider such issues unless complete and accurate information is disclosed in a timely fashion. Then, the urban forester/arborist can be expected, reasonably, to rely upon the completeness and accuracy of the information provided. Trees can be managed but not controlled. To live near trees, regardless of their condition, is to accept some degree of risk. The only way to eliminate all risk associated with trees is to eliminate all trees.

Hazard/hazard potential: For the purposes of this evaluation and/report, a tree or tree part that presents a threat to humans, livestock, vehicles, structures, landscape features or other entity of civilization from uprooting, falling, breaking or growth development (e.g., roots). While all large landscape trees in proximity to such targets present some degree of hazard regardless of their condition, such inherent hazard is not intended as within this definition and its usage in this evaluation and report.

Inspection limitations: The inspection of trees consisted solely of a visual inspection from the ground. While more thorough techniques are available for inspection and evaluation, they were neither requested nor considered necessary or appropriate at this time.

As trees and other plant life are living, changing organisms affected by innumerable factors beyond our control, Frank Ono (dba F. O. Consulting) and its personnel offer no guarantees, stated or implied, as to tree, plant or general landscape safety, health, condition or improvement, beyond that specifically stated in writing in accepted contracts. This report is based on a visual inspection of tree condition and for obvious defects. It is not intended to constitute a complete health and hazard evaluation. Further investigation would be required to more definitively evaluate the health and hazards posed by the subject trees, some of which may not be disclosed by visual inspections. Investigations include but are not limited to core samples, root crown excavation, and visual inspection of the entire trees by climbing. Please be advised that healthy trees and/or limbs may fail under certain conditions, and that any recommendations given are based on industry standards of tree care.

BACKGROUND

The applicant is Shea Homes who have enlisted and received an initial review of potential construction impacts (as well as a protection plan) regarding four Monterey cypresses. The initial review was prepared by Vaughn Forestry and Land Management. My understanding is that Shea homes desires removal of cypresses because of planned construction occurring within the trees driplines and critical root zones. At issue is Cypress #2 in which the City of Marina Planning Services Division has requested a peer review of the initial review report.

In order to justify tree removal in the City of Marina, the following are required findings for approval of a tree removal permit as taken from Chapter 17.51 of the Marina Municipal Code, which are required prior to approval or conditional approval of a tree removal permit:

1. The tree is in poor condition and is in danger of falling within proximity to existing structures, high pedestrian traffic areas such as parking lots, playgrounds and pedestrian walkways, or interference with utility services that cannot be controlled or remedied through reasonable preservation and/or preventive procedures and practices; or
2. The tree is host to a plant, or insect, or other parasitic organism which endangers other adjacent healthy trees; or
3. The location of more than three trees conflicts with the construction of street or sidewalk improvements, storm drain, traffic signals or signs; or
4. The number of trees on the site is in excess of the number of healthy trees the site is able to support, based on such considerations as tree species, growth

- characteristics, general health of the stand, tree age, solar orientation and soil condition; or
5. The applicant outlines other clearly documented and compelling reasons for the removal or relocation of a tree which do not include the elimination of falling leaves or shade, or improving a view; and
 6. The tree does not serve as part of a windbreak system, or assist in drainage or in the avoidance of soil erosion, or serve as a component of a wildlife habitat, or otherwise play a prominent role in maintaining the existing urban forest; and
 7. Due to the tree's contribution to the aesthetic beauty of the area, the removal would not have a substantial detrimental effect on neighboring property values; and
 8. If the removal request is concurrent with development plans for the property and the development plans indicate that it is necessary to remove or relocate the tree to enable reasonable and conforming use of the property which is otherwise prevented by the location of the tree.

The following are observations of the review of the report with respect to cypress #2 and from my recent site visit:

- The number, species, size, location of each tree potentially affected tree proposed for removal or removal by the project of each tree are adequately identified on-site. Four mature Monterey cypress (*Hesperocyparis macrocarpa*) are found planted on site. Tree # 2 is located along 3rd Avenue. The tree requires construction within its driplines.
- Size, species, health, and impacts anticipated by proposed development, and whether the tree is proposed for preservation or removal are discussed within the report. Tree #2 is 70+” diameter cypress in good health and structural condition. Construction as planned around this tree involves significant grade changes, root pruning requiring severe canopy reduction to safely facilitate the planned development. Planned development includes a private street, alley for turnaround purpose, and yard fencing, all indicated well within the dripline of the tree. Additionally, a manhole is located within the trees roots zone to be raised to accommodate new grade fill. A significant amount of the trees roots will be impacted by construction, soil cut and fill, and soil compaction. The crown will also need large significant limb removal to accommodate development under the tree and balance the tree from limb removal on the south east side of the tree.

- The site plan identifies the location of the tree on an on-site map with its location in relation to proposed development addressed by the report. The tree does not have a numbered tag attached to the tree keyed to the report, however it is readily identifiable once its location is known.
- My site visit shows the existing tree is individually planted which does not serve as part of a windbreak system. Additionally, its presence and location (cypress tree #2) proposed for removal or retention by the report does not appear to assist in drainage or avoidance of soil erosion, because it is a stand-alone tree, soils around retained trees is addressed through adequate soil retention methods which will serve to compromise the tree.

CONCLUSION

Based on my review of the report and subsequent site visit; the report appears acceptable. Statements made by the report are pertinent to the required findings for tree removal and/or retention. The report also states that tree #2 would be effected by the construction of the design in particular development for lot #78; it makes references so in order to not impact the tree, a design change or no development should occur near the tree for its safe and aesthetic retention. The report adequately addresses both tree's chances for long term survival and aesthetic features which will be questionable after required pruning and grading.

Sincerely,



Frank Ono
Certified Arborist #536

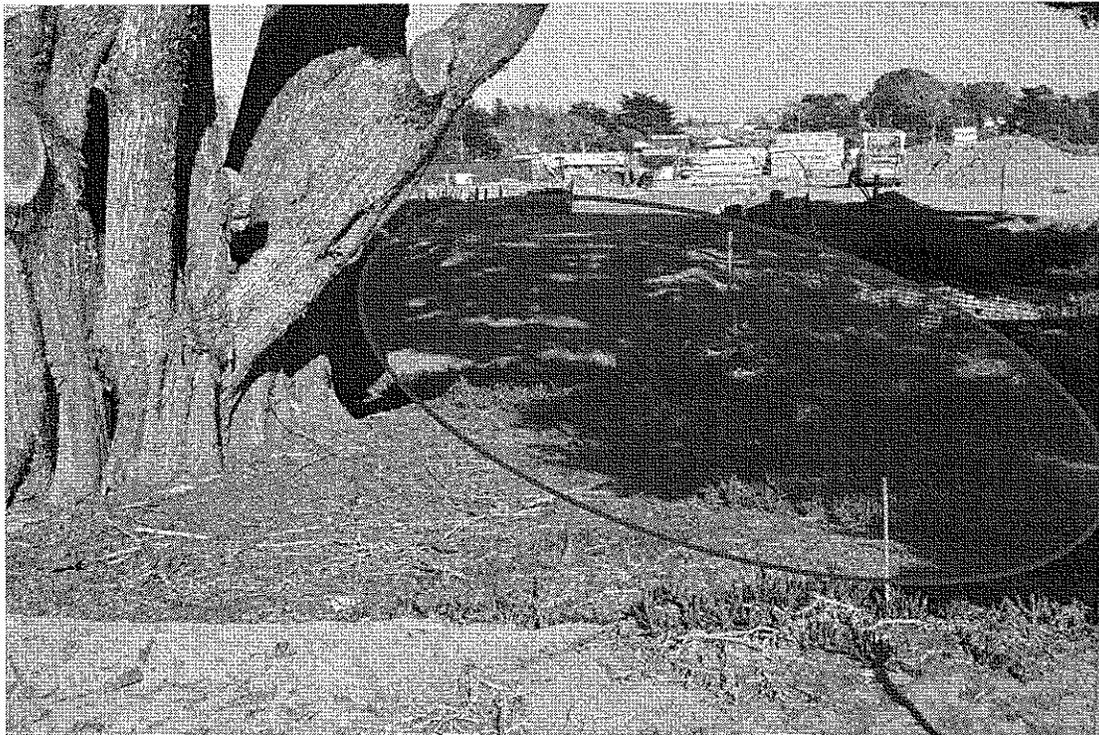
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PHOTOGRAPHS

Tree #2



Tree #2 area of construction



General areas of root disturbance