



## Council Agenda Report

From: Darren Nash, Associate Planner

Subject: Oak Tree Removal Permit 17-002 (Experimental Station Road – Blue Oak Apartments) - Council consideration of OTR 17-002 request to remove of one oak tree (Tree No. 74) in conjunction with the development of a 142-unit apartment project.

Date: March 7, 2017

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### Facts

1. The Blue Oak Apartment project (formerly the Arjun Apartments) is located at 801 Experimental Station Road; see Vicinity Map, Attachment 1.
2. In June of 2013, the City Council approved Planned Development (PD) 12-005 approving the 142-unit apartment complex on the 12.5-acre site.
3. Concurrent with PD 12-005 the applicants requested that the City Council allow for the removal of three (3) of the 22 oak trees located on the site. The City Council approved Resolution 13-089 allowing for the removal of three trees based on the trees being in poor condition as determined by the Arborist at the time, Michael Bova of Davey Resource Group.
4. Tree No. 74 was originally evaluated by Davey Resource Group as part of the Arborist Report for the entitlement process of the project. The Arborist indicated in the report that the tree was in poor condition (rated 44%), based on the tree having cavities, decay, and past failures.
5. The project is currently under construction and the project Arborist who is now Chip Tamagni of A&T Arborists, is involved with the monitoring and protection requirements of the remaining oaks. Mr. Tamagni has evaluated Tree No. 74 (a 50-inch Blue Oak) more closely, and based on the trees condition "being prone to failure due to disease and decay" is recommending that the tree be removed. See Arborist Letter, Attachment 2.
6. Chip Tamagni, on behalf of MBK homes is requesting that the City Council waive the \$600 oak removal fee and the requirement to plant replacement trees. In his e-mail (Attachment 3) he indicates that per Section 10.01.050.B and G., that the existing disease of the tree is not the fault of the current owner.
7. Planning Staff inspected the site to review the trees. Since the tree was shown to be saved on an approved development plan and the tree shows signs of growth, the Director could not make the determination that the tree is "clearly dead or diseased beyond correction," and therefore, Section 10.01.050.C of the Oak Tree Ordinance would consider the tree "healthy" and require that the City Council make the determination of whether the tree should be removed or not, after consideration of the factors listed in Section 10.01.050.D.

Tree No. 74 – deciduous Blue Oak Tree without leaves during winter



Tree No. 74 – Arborist showing depth of cavity



Tree No. 74 with foliage



## Options

1. Approve Draft Resolution A, approving OTR 17-002, authorizing the removal of Tree No. 74 (50-inch Blue Oak) based on the tree being in poor health, as indicated in the Arborist Report and require the \$600 removal permit fee to be paid, and eight (8) 1.5-inch diameter Blue Oak replacement trees (or a reduced number of larger diameter replacement trees adding up to 12.5-inches) be planted on site at the direction of the Arborist.
2. Approve Draft Resolution A, approving OTR 17-002, authorizing the removal of Tree No. 74 (50-inch Blue Oak) based on the tree being in poor health, as indicated in the Arborist Report and **waive** the \$600 removal permit fee to be paid, and require the replanting of eight (8) 1.5-inch diameter Blue Oak replacement trees (or a reduced number of larger diameter replacement trees adding up to 12.5-inches) on site at the direction of the Arborist.
3. Approve Draft Resolution A, approving OTR 17-002, authorizing the removal of Tree No. 74 (50-inch Blue Oak) based on the tree being in poor health, as indicated in the Arborist Report and **waive** the \$600 removal permit fee to be paid, and **waive** the replanting requirement for eight (8) 1.5-inch diameter Blue Oak replacement trees.
4. Denial OTR 17-002 with findings and require the oak trees to remain and be protected.
5. Refer back to staff for additional analysis.

## Analysis and Conclusions

The applicant has provided a written request that the Council waive the deposit and replacement tree requirement based on his determination that the condition of the tree (disease) is not the fault of MBK homes. See e-mail from Chip Tamagni, Attachment 3.

Section 10.01.050 allows the Council to make exceptions to deposit and replacement requirements under the following circumstances:

- B. Exception to deposit requirements: A property owner may make a written request for authorization to remove a dead or diseased oak tree without the need to provide a deposit if he or she can provide documentation from a Certified Arborist on the City Council's approved list concluding that the tree's death or disease is not their fault.
- G. Exceptions to replacement requirement: A property owner may make a written request for authorization to remove a dead or diseased oak tree without the need to provide the required replacement trees if he or she can provide documentation from a Certified Arborist on the City Council's approved list concluding that the tree's death or disease is not their fault.

MBK recently acquired the parcel. As such, the disease is clearly "not their fault." However, MBK did acquire the parcel from the previous owners, and the tree's condition results from its treatment and from development initiated by prior owners. Thus, MBK acquired the tree and its condition when it acquired the site, and acquired the responsibility to meet the standard deposit and replacement requirements.

Nonetheless, the City Council has full discretion to determine whether the trees warrant removal or not and whether the deposit and replacement trees should be required. If the Council does not approve the removal, the project can move forward with the development. It may be necessary to redesign the buildings in the vicinity of the trees to lessen impacts to the tree.

Since this is a major new development project of 142 apartment units on a 12.5 acre site with an abundant amount of landscape areas, it would seem to make sense to require replacement trees to be planted consistent with Council's requirement for the original tree removals with the project approval.

According to Section 10.01.050.D, there are several factors that the City Council needs to review when considering the removal of a "healthy" oak tree. These factors along with Staff's analysis of each factor are listed below:

*D. If a request is being made to remove one or more healthy oak trees for which a permit to remove is required, the director shall prepare a report to the City Council, outlining the proposal and his recommendation, considering the following factors in preparation of his recommendation.*

1. *The condition of the oak tree with respect to its general health, status as a public nuisance, danger of falling, proximity to existing or proposed structures, interference with utility services, and its status as host for a plant, pest or disease endangering other species of trees or plants with infection or infestation;*

Based on the Arborist indicating that the trees are in poor condition and have low aesthetic value, the trees appear to be good candidates for removal.

2. *The necessity of the requested action to allow construction of improvements or otherwise allow reasonable use of the property for the purpose for which it has been zoned. In this context, it shall be the burden of the person seeking the permit to demonstrate to the satisfaction of the director that there are no reasonable alternatives to the proposed design and use of the property. Every reasonable effort shall be made to avoid impacting oak trees, including but not limited to use of custom building design and incurring extraordinary costs to save oak trees;*

It is possible for the project to be constructed in a manner that could retain the trees. The Arborist concludes that the trees are in poor condition. Given that the tree is currently in poor condition, and furthermore, it is anticipated that there could be further impacts to the trees as a result of construction of the project, removal would seem to be the best option.

3. *The topography of land, and the potential effect of the requested tree removal on soil retention, water retention, and diversion or increased flow of surface waters. The director shall consider how either the preservation or removal of the oak tree(s) would relate to grading and drainage. Except as specifically authorized by the planning commission and city council, ravines, stream beds and other natural water-courses that provide a habitat for oak trees shall not be disturbed;*

The removal of the trees would not result in negative effects on soil retention, water retention or surface water flows for the neighborhood.

4. *The number, species, size and location of existing trees in the area and the effect of the requested action on shade areas, air pollution, historic values, scenic beauty and the general welfare of the city as a whole;*

If the tree is allowed to be removed, 18 other trees would remain on the site.

5. *Good forestry practices such as, but not limited to, the number of healthy trees the subject parcel of land will support.*

The removal of the trees will require replacement trees to be planted on site, unless Council decides to waive the requirement. Additionally; the remaining oak trees on site will be protected.

### **Option 1, 2 and 3:**

Approve tree removals. After taking in consideration recommendation by the project Arborist to remove the trees, and consideration of the factors listed in Section 10.01.050.D (listed above) authorize the removal of the Tree No. 74. Based on the tree removal being part of a new development, require replacement trees to be planted as mitigation to the tree removal. It will be up to the Council to determine if the Applicant's request to waive the fee and/or replanting requirement for the project is warranted.

**Option 4:**

Deny tree removals. The project was originally approved with the preservation of Tree No. 74. It may be necessary to redesign the site plan for the buildings in the vicinity of the tree to lessen the impacts to the critical root zone as suggested by the Arborist.

**Option 5:**

Council may wish to refer the item back to staff for additional analysis.

**Fiscal Impact**

There is not a fiscal impact to the City related to this oak tree removal request. Oak trees can provide value to a property, and be an aesthetic value to the City as a whole. If the Council wishes to waive the \$600 application fee, the time and materials for providing the staff report to the Council would be covered from the General Fund.

**Recommendation**

Option 1. Based on the Arborist's recommendation and the factors listed in this staff report removal of the trees is justified with the planting of new replacement oak trees.

Approve Draft Resolution A, approving OTR 17-002, authorizing the removal of Tree 74 (50-inch Blue Oak) based on the trees being in poor health, as indicated in the Arborist Report and require eight (8) 1.5-inch diameter Blue Oak replacement trees (or a reduced number of larger diameter replacement trees adding up to 12-inches) be planted on site at the direction of the Arborist

**Attachments**

1. Vicinity Map
2. Site Plan
3. Chip Tamagni e-mail
4. Draft Resolution A - Approval the removal of the tree
  - a. A&T Arborist Report

Attachment - 1  
Vicinity Map



Agenda Item No. 8

PRELIMINARY GRADING AND DRAINAGE NOTES

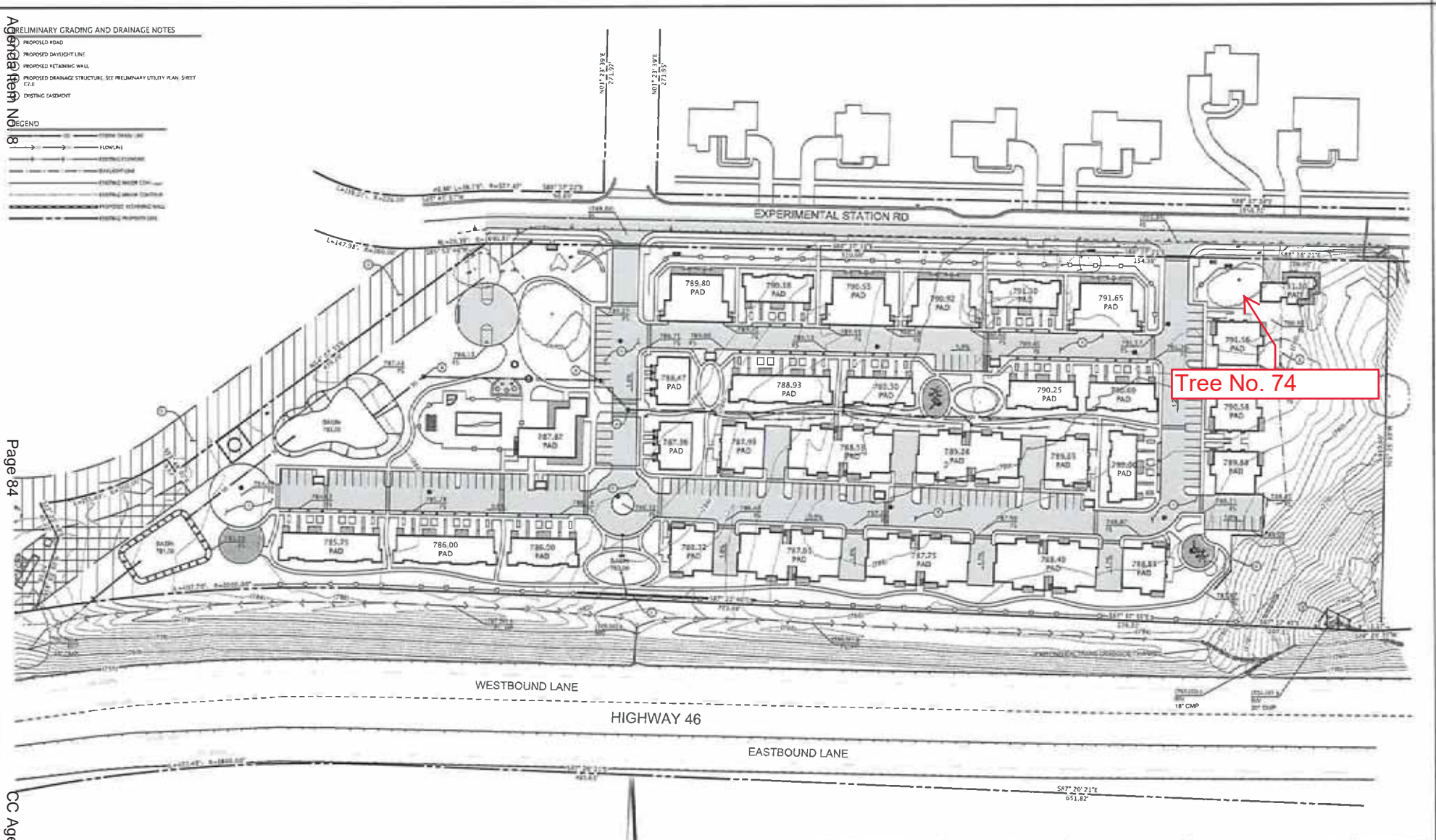
PROPOSED ROAD  
 PROPOSED DAYLIGHT LINE  
 PROPOSED RETAINING WALL  
 PROPOSED DRAINAGE STRUCTURE, SEE PRELIMINARY UTILITY PLAN, SHEET C1.0  
 C&G  
 EXISTING EASEMENT

LEGEND

FORMER DRIVE LANE  
 FLOWLINE  
 EXISTING FLOWLINE  
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Page 84

CC Agenda 3-7-17



PRELIMINARY GRADING PLAN



<p>Ashley Vance ENGINEERS, INC. 1000 Wilshire Blvd., Suite C San Luis Obispo, CA 93401 TEL: 805.762.1100 WWW.ASHLEYVANCE.COM</p>	<p>ARRIO STUDIOS ARCHITECTS 1000 Wilshire Blvd., Suite C San Luis Obispo, CA 93401 TEL: 805.762.1100 WWW.ARRIOSTUDIOS.COM</p>	<p>Arjun Buena Vista Properties, LLC 5000 WASHINGTON FREWATER San Clemente, California 92672 Phone: (949) 433-5875</p>	<p>Buena Vista Apartments 802 Experimental Station Road Paso Robles, California</p>	<p>DATE: 03/21/17          TIME: 10:00 AM          C1.0</p>
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Darren,

Per your request, both property owners (Kleck and Experimental) are hereby requesting that both the deposit requirement and the replacement requirements be waved. The Kleck Road tree obviously has had no impact anywhere near the tree and as I showed you is in obvious decline due to age. The Experimental oak had an old concrete pad 30-40 years old within the crz that has since been removed. Zero root damage occurred as I was present during the demo which is obviously not the reason the tree is in heavy decline. There were old mobile homes in the vicinity but they played no part in the decline of the tree. Excess weight caused the major break about 15 or more years ago. The break allowed decay to infest inside the tree trunk leading to the tree's decline.

Again, no fault of the owners previous or current. I am curious how the planning department would allow development so close to a tree in poor health as stated in the Althouse and Meade Report and at the same time allow the footing at the opposite end of the building to extend into the trunk of a healthy oak tree without asking any questions. Just curious.

Per section 10.01.050 B. (deposit requirement) and G. (replacement requirement), the disease in the trees is of no fault of the owner thereby allowing the owners to avoid financial impacts from diseased tree removal whereas the disease is obviously not their fault.

I am not an employee of the planning department so I feel it is not my responsibility to inform Ron and Andrew Berry about the building envelope as I would not want to mislead them in any way as that is a planning issue and not my area of expertise. With that said, please refer me to the law/ordinance that states that modifying the building envelope would have to go back to the PC because of a diseased tree. In addition, please also cite the section in the ordinance that states that:

"Based on both of these trees being part of previous oak tree preservation/mitigation requirements as part of Development Plans approved by the Planning Commission, both trees need to go to Council for approval of the removal requests."

I sure can't find it so please let me know where that came from. If you cannot, I have to assume this was made up.

Put these on council for the 7th. In the meantime, I am going to pursue other remedies to this bs from Frace.

Chip Tamagni, A & T Arborists

# Attachment 4

## Draft Resolution A

### RESOLUTION 17-xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES  
AUTHORIZING THE REMOVAL OF ONE 50-INCH DIAMETER BLUE OAK TREE  
AT 801 EXPERIMENTAL STATION ROAD (OTR 17-002)  
(MBK HOMES – BLUE OAK APARTMENTS)

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WHEREAS, Chip Tamagni of A&T Arborists on behalf of MBK Homes has submitted a request to remove one oak tree on the Blue Oak Apartment site, located at 801 Experimental Station Road; and

WHEREAS, the trees proposed to be removed is one 50-inch diameter Blue Oak; and

WHEREAS, Chip Tamagni, Arborist has provided information indicating that the tree is prone to failure due to disease and decay, and recommends that the tree be removed to prevent future hazard in Exhibit A; and

WHEREAS, if the tree is approved to be removed, there are eighteen other oak trees on the site that would be preserved; and

WHEREAS, the Community Development Director could not make the determination that the tree is “clearly dead or diseased beyond correction,” and therefore, Section 10.01.050.C of the Oak Tree Ordinance would consider the tree “healthy” and require that the City Council make the determination of whether the tree should be removed or not, after consideration of the factors listed in Section 10.01.050.D; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of El Paso de Robles does hereby:

1. Having considered the factors outlined in Section 10.01.050.D, and the information provided by the Arborist, authorize the removal of the 50-inch Blue Oak tree, based on the tree being in poor health and in danger of falling, as indicated in Exhibit A.
2. Require eight (8) 1.5-inch diameter blue oak tree replacement trees to be plated on site at the direction of the Arborist to mitigate the visual impact of the tree’s removal.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 7<sup>th</sup> day of March 2017 by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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Steven Martin, Mayor

ATTEST:

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Kristy Buxkemper, Deputy City Clerk

Exhibits

A. A&T Arborist Report

# Exhibit A



12-21-16

To: Susan Decarli, City of Paso Robles  
From: Chip Tamagni, A & T Arborists

Re: Experimental Station Blue Oak Tree

This report is in regard to proposing the removal of a 50 inch diameter blue oak tree (*Quercus douglasii*) listed as tree #74 in the original report for the project. The original tree assessment was completed back in 2012 by Mike Bova of Davey Resource Group along with Althouse and Meade Biological and Environmental Services.

Per their report (page 13), the tree was rated at 44% condition which equates to poor on their scale. The report states that it is the largest oak on the property which it is by trunk diameter alone. The tree, prior to 2012 had lost 50% of its canopy in a fairly massive failure due to decay. The report also states, "Cavities in the trunk formed by the loss of primary limbs". The report further states, "The cement in the trunk of the tree shall be evaluated by the project arborist who shall make recommendations regarding its future". In 2013, A & T Arborists was hired by the previous owner to come in and trim the oak trees. During that visit, we noticed the tree had several points of decay in the remaining portions of the tree. At that time of the original report preparation, A & T Arborists played no part in the planning process for this property as we were on site for trimming purposes only. Due to the project changing ownership, no further work (consulting or otherwise) was performed by us.

We were hired by the current owner (MBK Homes) along with Spurrco to perform both removal services for non-protected trees along with providing oak tree monitoring services for the duration of the project. During the past few days, I have looked a lot more closely at this tree (#74). The pruning cuts we made several years ago have hardly begun to heal if at all. This is 100% due to stress. Obvious cavities with decay occur in several places along the remaining trunk. The decay extending deep into

the trunk from the old failed scaffold will most likely contribute to failure in the near future.

It needs to be noted here that the tree was planned to be saved for this project. Critical Root Zone encroachment is listed at up to 50% in the original report. This is excessive from standards that we normally use for oak trees in other projects. 40% is maximum even for very young trees but for over-mature trees such as this one, soil disturbance should be limited to 25% maximum. A building was planned to be located directly under the remaining canopy of this tree. This building is two stories tall so 50% of the remaining portion of the canopy would need to be removed just to fit in the building. The result is that a tree prone to failure due to disease and decay was planned around for this project when in all actuality, it should have been a planned removal from the beginning. We strive to always work with developers in striving to retain quality trees and removing and replacing suspect trees. This is twofold in nature. First, hazard trees can create huge liabilities when they fail. Damaged properties and injuries should always be at the forefront of designing buildings around trees. Healthy trees are just not as prone to failure as diseased trees are. Second, when the tree does fail, there is no mitigation required to replace the tree. We feel that preventing property damage and/or injury while continuation of re-planting trees is paramount for long term success of the urban forest.

Per Section 10.01.050:

D. Except as specifically provided in Section 10.01.065 of this chapter, the director shall not be authorized to approve removal of a healthy oak tree that is six (6) inches or greater DBH. The only oak trees which are six (6) inches or greater DBH whose removal the director is authorized to permit are trees that are in the director's judgment, clearly dead or diseased beyond correction. The extent to which a tree may be diseased shall be subject to evaluation by an Arborist. Based on the recommendation of an Arborist the director may authorize removal of a tree that is diseased beyond correction.

This tree should be removed and replaced with 12½ inches of approximately 1½-1¾ inch trees which would equal to about eight 24" box trees. We would recommend consideration in replacing the trees with either valley oaks or coast live oaks as they grow faster than the blue oaks. There are already blue oaks as part of the mitigation for this project.

Please see the accompany photos that illustrate the condition of the tree

Please feel free to contact us for a site visit or any other pertinent information.

Chip Tamagni

Certified Arborist #WE 6436-A

California State Pest Control Advisor #75850

Certified Hazard Risk Assessor #1209

Cal Poly B.S. Forestry and Natural Resources Management



Tree #74 Being Proposed For Removal