

ATTACHMENT G

Appeal of Parks and Recreation Advisory Commission Decision
Concerning Tree Permit

CITY OF OAKLAND
OFFICE OF PARKS & RECREATION

TREE REMOVAL PERMIT APPEAL FORM

1. Date: May 5, 2011
2. Appellant's Name: Knowland Park Coalition (Friends of Knowland Park, California Native Plant Society, California Native Grasslands Association)
3. Appellant's Address: 10700 Lochard St.
City, State & Zip: Oakland CA 94605
Telephone #: (510) 636-0165
4. Tree Removal Permit Number: T09-00019
5. Address of Tree Removal: Oakland Zoo, 9777 Golf Links Rd.
6. Basis for Appeal: The trees to be removed are part of a project that is under appeal to the City Council. Removal is premature, pending further action by that body. Objections to the Project are outlined in the Planning Appeal documents, and are summarized in the attached document.

I HEREBY CERTIFY UNDER PENALTY OF PERJURY, THAT I AM THE OWNER OF:

- THE REAL PROPERTY DESCRIBED IN (5) ABOVE, OR
N/A
- REAL PROPERTY ADJACINING AND/OR CONFRONTING THE REAL PROPERTY DESCRIBED IN (5) ABOVE.

Signature: T.M. Nelson - K.P.C. Date: 16 May 2011

FOR OFFICE USE ONLY

Appeal Hearing Date: _____

Received By: Robert Zahn

Appeal Fee Paid: 50.00

Receipt #: OK# 1800

Note: Appeals must be heard by the tree committee at its next scheduled meeting.

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May 16, 2011

To: Oakland Public Works Agency, Tree Section
7101 Edgewater Dr., Oakland CA 94621

From: Friends of Knowland Park
California Native Plant Society
California Native Grasslands Association

RE: Tree Permit T09-00019

According to the Tree Permit, removal of these trees is necessary "for the proposed construction at the Oakland Zoo, a City-owned property (and thus City-owned tree removal), of (a) a new veterinary hospital, (b) paving of the steep portion of an existing dirt maintenance road that travels uphill from the veterinary hospital to an area where it levels off near the southwest corner of the planned California Exhibit and (c) a perimeter fence around the California Exhibit and Ecological Recovery Zones, consistent with the amended Zoo Master Plan."

In addition, as explained by the Public Works Agency, the initial application "requested removal of fifty-two (52) trees and the preservation of one hundred and ten (110) trees." However, we learn, that the "request was changed by the applicant to only include those trees affected by work proposed for the Phase I development described above."

In view of the fact that the entire Project for expansion of the Zoo has not been approved, we therefore believe that the removal of any trees ostensibly necessitated by the proposed project is inappropriate, arbitrary and unreasonable. In the event that the Project is approved at a later date, a revised application could be submitted to the Public Works Agency.

The Public Works Agency should be aware that a formal regulatory or administrative challenge of the Project is in progress.

This challenge is based in part on the City's failure to comply with the California Environmental Quality Act (CEQA) and federal environmental laws in analyzing the impacts of the proposed Amendment to the Oakland Zoo Master Plan ("the Project"), including the removal of trees required by this Project. In particular, the City did not require a full environmental impact report (EIR) despite significant new and substantially more severe impacts than the Zoo's original plan. It is also noted that the original plan was never submitted for review in a full EIR.

For this reason, we believe that approval of the tree permit (specifically for removal of trees in Knowland Park associated with the new proposed Project) is premature and should not be granted. In our opinion, approval of a tree removal permit before approval of the entire Project would circumvent appropriate public process and legal review. The East Bay Zoological Society has not demonstrated the necessity for removal of these trees at this time, and therefore the approval of their application is not supported by substantial evidence.

Friends of Knowland Park, California Native Plant Society, and California Native Grasslands Association are appealing the Planning Commission decision to approve the Amended Oakland Zoo Master Plan, including the removal of trees required by this Project, on the following grounds:

1. The decision is not supported by substantial evidence.
2. The decision constitutes an abuse of discretion because the Planning Commission failed to require the preparation of a full environmental impact report (EIR) as mandated by the California Environmental Quality Act (CEQA) and the rules and regulations of the Federal Environmental Protection Agency (EPA).
3. The decision was based on misstatements and misrepresentations of law and fact by responsible City agencies and administrators, for example:
 - (a) The Oakland Planning Department's Staff Report concludes that "An EIR would not result in additional or better analysis, different mitigations, or different conclusions" than had already been performed under the draft SMND/A (see audio-visual presentation, part V, paragraph 0). Since state law and federal law expressly distinguish between the public rights and governmental procedures required for each level of environmental review applicable to a proposed project (for example, as noted in the Staff Report, the extended public comment period provided for an EIR), the Commission's decision approving the Project constitutes an admission that the agency is unwilling or unable to meet its obligations under those laws.
 - (b) The Parks and Recreation Advisory Commission (PRAC) recommended approval of the Project despite declarations by its members at a public hearing that it had neither the time nor the expertise to conduct a meaningful review of the Project.
 - (c) The Friends of Knowland Park was falsely accused of willfully doctoring a photograph submitted in support of its opposition to the Zoological Society's application.
4. The Project is inconsistent with fundamental elements of the Oakland General Plan.
5. The Planning Commission failed to comply with mandatory procedures of CEQA by failing to make all documents referenced in the Subsequent Mitigated Negative Declaration/Addendum (SMND/A) available for public viewing.
6. The Friends of Knowland Park, as a group of interested private citizens and park users, was unfairly and improperly held to an unreasonable standard for failing to formally critique the professional document commissioned by the Zoological Society that rebutted FOKP's alternative design concepts. Those concepts were expressly developed and submitted by the Friends of Knowland Park merely to suggest the range of alternatives that might be explored were a full EIR to be prepared – not to substitute for a legally-mandated study of alternatives.

These and other bases for appeal are detailed in the public record for this Project, including the pending appeal of the Planning Commission's decision to the City Council, and need not be repeated here. Instead, the relevant documents are incorporated here by reference. Please see the following, from Oakland City Staff Reports:

Regarding the SMND/A, dated February 2011:

1. Email stream from California Native Plant Society (CNPS), dated April 28, 2010
2. Letter from Sierra Club, dated May 16, 2010

3. Comments submitted by Friends of Knowland Park, dated March 14, 2011
4. Comments from the California Native Plant Society, dated March 14, 2011
5. The CNPS Rare Plant Program Ranking System, labeled "Exhibit A"
6. Letter from California Native Grasslands Society (fax), dated March 13, 2011
7. Letter from Sierra Club, dated March 14, 2011
8. Letter from Golden Gate Audubon Society, dated March 15, 2011
9. Letter from Shute, Mihaly, and Weinberger, LLP, dated March 14, 2011.

Regarding the City responses to the above-listed comments:

10. Comments submitted by Friends of Knowland Park, dated April 27, 2011
11. Letter from California Native Plant Society, dated April 26, 2011.
12. Letter from California Wildlife Foundation & California Oaks, dated April 26, 2011