

APPEAL FORM

SEP 25 2023

CITY OF SANTA ROSA
CITY CLERK'S OFFICE

Date Received: _____

Fee: \$ 6996

City Clerk's Office/Rec'd by: L. Wiley

Name of Appellant: The Salvation Army Residences, Inc. dba Santa Rosa Silvercrest

TO THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL:

The above named appellant does hereby appeal to your Honorable Body the following:

The decision of the: (List Board/Commission/Dept.) Planning Commission

Decision date: September 14, 2023

Decision: (approval, denial, other) Denial of Appeal

Name of Applicant/Owner/Developer: The Salvation Army Residences, Inc. dba Santa Rosa Silvercrest

Type of application: (Rezoning, Tentative Map, etc.) Tree Permit Removal Application

Street address of subject property: 1080 Second Street, Santa Rosa. APN: 009-082-003

The grounds upon which this appeal is filed are: (List all grounds relied upon in making this appeal. Attach additional sheets if more space is needed.)

1. See attached.

2.

The specific action which the undersigned wants the City Council to take is: (Attach additional sheets if more space is needed.)

Appeal Planning Commission's Denial of Appeal (Resolution No. PC-2023-021) and Grant Tree Permit to Remove Bunya Bunya Tree

Appeals shall be submitted in writing.....on a City application form within 10 calendar days after the date of the decision. The time limit will extend to the following business day where the last of the specified number of days falls on a day that the City is not open for business.

Applicant's Signature  Date September 22, 2023

The Salvation Army Residences, Inc. dba Santa Rosa Silvercrest, 1050 Third Street, #W110, Santa Rosa
Applicant's Name (type or print) Address 95404

(707) 544-6766 Home Phone Number

ZONING CODE PROVISIONS RELATING TO APPEALS:

NOTE: "DRB" refers to the Design Review Board, "CHB" refers to the Cultural Heritage Board, and "Commission" refers to the Planning Commission.

ARTICLE 20-62 - APPEALS

20-62.030 - Filing and Processing of Appeals

- A. Eligibility.** Any action by the.....DRB, CHB, or the Commission in the administration or enforcement of the provisions of this Zoning Code may be appealed by any aggrieved person in compliance with this Article....
- B. Timing and form of appeal.**
 - 1. General appeals.** Appeals shall be submitted in writing, and filedon a City application form within 10 calendar days after the date of the decision. The time limit will extend to the following business day where the last of the specified number of days falls on a day that the City is not open for business.

20-62.030 - Filing and Processing of Appeals

- 3. Place for filing**
 - c. Appeals from the decisions of the DRB, CHB, or Commission shall be addressed to the Council and filed with the City Clerk.
- 4. Pertinent facts.** The written appeal shall state the pertinent facts of the case and shall specify the following:
 - a. The decision appealed from (e.g., City assigned case number).
 - b. The basis for the appeal.
 - c. The specific action which the appellant wants taken in the appeal.
 - d. Each and every ground upon which the appellant relies in making the appeal.
- 5. Filing fee.** Appeals shall be accompanied by the required filing fee, in compliance with the Council's Fee Schedule.

ATTACHMENT TO APPEAL FORM TO CITY COUNCIL

The Salvation Army Residences, Inc. (Silvercrest)

Over twenty years ago, the City of Santa Rosa agreed with The Salvation Army's request to remove an unsuitable and unsafe Bunya Bunya tree. When a prominent member of the community objected, then the City changed its mind; and since then, has moved in a different direction with respect to its willingness to allow The Salvation Army to decide for itself what risks The Salvation Army wants to bear.

As discussed below, the City is interfering with and taking away The Salvation Army's right to decide which risks it is willing to assume on its own property. The City is attempting to legislate which risks this private property owner is consigned to take – against the property owner's will. The City is forcing The Salvation Army to incur the substantial monetary costs on a regular basis (for an apparently-unlimited time period) that this tree requires to guard against known risks, without just compensation. This amounts to an impermissible taking under the Fifth Amendment of the Constitution.

Even with this regular maintenance, the costs incurred do not buy the property owner freedom from liability and exposure for significant injury and harm to persons and property. It is not mere rhetoric or hyperbole to state that the injuries this tree poses could be catastrophic.

(1) Serious Known and Documented Risk to Health and Safety

The Bunya Bunya tree poses a serious risk of significant personal injury and property damage. In August 2023, Arborist James MacNair performed a Tree Risk Assessment pursuant to industry-accepted methodology. A copy of Mr. McNair's August 24, 2023 Report is attached as Exhibit 1, as is a copy of his curriculum vitae, which is attached as Exhibit 2. Mr. McNair concluded that the risk rating for this tree is *moderate to high*: "Based on this analysis, the risk rating of the tree is moderate to high. It should be noted that a moderate risk is significant and should be carefully considered relative to the risk tolerance of the tree owner and the people exposed to the risk." He noted that the likelihood of cones dropping from the tree is rated as "Probable". The likelihood of impact on people in the areas near the tree in the event of failure is "Medium to High", depending on the actual occupancy rate during the cone production season. The combined likelihood of failure and impact to people in the tree areas during the projected three-year period is rated as "Somewhat Likely to High", depending on the cone crop size. The consequence of a tree part (cone) impacting a person is rated as "Severe" due to the potential for serious injury or death. The risks of upper crown trunk failure and branch failure were not detailed in his report, but he stated that they were likely low.

Mr. MacNair provided additional responses to questions from City Planner Susie Murray in a Memorandum dated September 1, 2023, a copy of which is attached as Exhibit 3.

The tree's falling branches are also hazardous. The branches contain spikes that can penetrate cloth and skin. Arborist Chip Sandborn, who is very familiar with this tree, having inspected it and maintained it over the years, noted in his March 20, 2022 letter to the City of Santa Rosa Planning Department (Exhibit 4) that, "Its branches are heavily weighted with foliage at their distal ends making them prone to failure. Many branches have failed in the past. The leaves fall constantly, they are long (18" +/-) spirals of sharp pointed leaflets capable of inflicting wounds on passersby and are noted to have done so in the past." A copy of Mr. Sandborn's letter is attached. A resident at Silvercrest, who spoke at the Planning Commission meeting on September 14, 2023, relayed how he was struck by a falling branch, which tore his clothing. This resident spoke about how he has witnessed branches and cones falling from the tree and bouncing outward from the tree's radius.

The co-dominant stems at the top of the tree are split risks, which could fall on the power lines, vehicles, and people.

The residents of Silvercrest are of an age where the penetration of their thin skin by a branch can cause thin skin. If they are hit by a cone, it can result in death. If they fall due to being hit by a cone or branch, or because they lost their balance in an effort to dodge a cone or branch, they could die.

The tree also has caused property damage. Mr. Sandborn noted in his January 25, 2008 letter to Silvercrest, "One cone recently landed on the roof of a hard plastic bus stop creating an astounding amount of damage. This occurred shortly after an attempt was made at great expense to the Salvation Army to strip the tree of cones." A cone from this tree fell onto a shed and obliterated the shed. A copy of that letter is enclosed, as is a photograph of the shed that was destroyed in 2006.

The City previously has recognized these hazardous conditions. In March 1999, the City approved the Salvation Army's request to remove the tree, on the condition that one new tree of similar size and shape be planted. A copy of City Planner Frank Kasimov's March 5, 1999 letter to the Salvation Army to that effect is attached. On March 11, 1999, the Planning Department Staff approved the removal of the tree. On March 17, 1999, an appeal of that approval was filed. The April 29, 1999 Staff Report for the Planning Commission Meeting where the appeal was considered stated,

Summary: Staff approved an application filed by the Salvation Army to remove a bunya bunya tree located at Second and Pierce Streets. Bunya Bunya trees, a native of Australia, develop and drop large seed pods, approximately the size of a pineapple. This particular tree is approximately 80 feet tall. The tree is located about 10 feet inside a public sidewalk and partially overhangs the sidewalk and a street. If not properly maintained by removing all of the pods on a regular basis, as often as yearly, the pods pose a potentially hazardous condition because they can fall on pedestrians or vehicles. Removing the pods would cost approximately \$1,500.00 per year. The applicant would like to solve the dangerous situation by removing the tree, since yearly maintenance is cost prohibitive. The City approved the request with the

condition that a tree of similar size and shape be planted in its place. A deodar cedar would be an example. On March 17, an appeal of staff decision was filed.

(Exhibit 5).

The findings of the Planning Commission following the April 29, 1999 public hearing meeting were as follows:

1. The bunya bunya tree is not suitable for its location as it develops pineapple-sized pods which drop if not removed, posing hazards for pedestrians and motorists.
2. The property owner (Salvation Army) has stated that annual maintenance to remove the pods is economically infeasible.
3. The replacement of the tree with a more suitable species for this location is not detrimental to the City.

On May 6, 1999, developer Alan Strachan filed an appeal of the Planning Commission's approval of the tree removal application.

On May 25, 1999, the City Council held a public hearing to consider the appeal, and ultimately passed Resolution No. 23993, which upheld the appeal of the Planning Commission's decision, and denied the application to remove the tree.

The findings of the City Council were as follows:

1. The Bunya-Bunya tree is of significant size and maturity and provides great aesthetic benefit to all persons living in the vicinity.
2. The Bunya-Bunya tree is one of a few existing mature specimens in Santa Rosa and that careless treatment and arbitrary removal of the tree would detract from the quality and attractiveness of the neighborhood.
3. Retaining the mature Bunya-Bunya tree would be consistent with the City's Tree Ordinance in that protection of certain trees is essential to the maintenance of Santa Rosa's aesthetic value and heritage.

At the hearing on September 14, 2023, the Planning Commission members minimized the risk, to the point of almost dismissing the risk. However, these determinations (both in 1999 and 2023) ignore the serious and safety risks posed by the tree. The Council cannot continue to place the importance of subjective aesthetics over the objective significant and known harm, including risk of catastrophic injury or death, that this tree presents to the residents of Silvercrest and to the public. There are several large redwood trees in close proximity to the Bunya Bunya tree (to the east) that aesthetically benefit the neighborhood. The determination that the aesthetic benefits outweigh the ever-present hazardous condition was not supported by the evidence at the September 14 hearing.

The City is Requiring the Owner's Unwanted Continued Exposure to Premises Liability

Civil Code section 1714 imposes premises liability on an owner of property as follows: "Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care of skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself." This tree presents known significant risks. The Salvation Army is attempting to eliminate the risk. No one has proffered a way to fully eliminate the risk – not just amorously "reduce" the risk – other than removing the tree. Were someone to be injured or killed by the tree, the Salvation Army would be exposed to litigation not only for the presence of the tree and the resultant injuries, but it also would be subject to an evaluation in the litigation of its efforts to implore the City to allow it to eliminate the risk. In other words, a plaintiff in a lawsuit could allege that the Salvation Army did not do enough to persuade the City that the tree was hazardous and needed to be removed.

The Salvation Army Residences, Inc. dba Santa Rosa Silvercrest is a non-profit organization who provides housing for low-income senior citizens and objects to being required to continually be exposed to this type of legal liability.

The Maintenance and Mitigation Efforts Will Not Guarantee Safety

The City's arborist, Fred Frey, has recommended cabling of the top of the tree as a mitigation measure, due to the three secondary trunks structure in the upper crown. While possible, this would be expensive, and would require the appropriate equipment to do so. The City apparently uses its Fire Department trucks and ladders to perform maintenance on its Bunya Bunya trees. The Salvation Army does not own such equipment.

Moreover, cabling the tree does not eliminate the risk of cones dropping, which is the great risk. Removing the cones also requires a high lift and climbers in the tree, which is labor-intensive. There is also no guarantee that all cones would be removed even with best efforts to do so.

Putting netting on the tree would be unattractive and would not eliminate the need for regular maintenance to clean out what has fallen into the netting.

Finally, it is unlikely that any arborist or tree maintenance company will be willing to guarantee or warranty that their maintenance efforts will remove the risks of falling cones and branches. It is doubtful that they will execute an indemnity agreement to that effect whereby they agree to indemnify and hold harmless the Salvation Army from injury and damage caused by the tree.

The Costs to Maintain the Tree are Unreasonable

As a non-profit, the Salvation Army Residences, Inc. dba Silvercrest Residences is in the business of providing housing to a vulnerable population, not in the tree maintenance business. The money it spends on the tree should instead be used to benefit needy seniors. The City is requiring ongoing maintenance that will approach six figures if the Salvation Army is forced to continue to incur the costs. The cost to maintain the tree is significant (e.g., approximately \$1,450.00 in 2017; \$3,920.00 in 2019; \$4,600.00 in 2022, etc.). The tree's roots have damaged the sidewalk, resulting in significant cost to the Salvation Army in 2020 to repair (over \$13,000.00). The Salvation Army should not be required to fundraise for these costs (as was suggested by a member of the Planning Commission on September 14, 2023).

These ongoing expenses are unreasonable and are an undue burden for this non-profit.

The City's Policies in Its Tree Ordinance Can Be Met by a Replacement Tree

The intent and purpose of the Tree Ordinance (Chapter 17-24.010 et seq.) can be met by a more appropriate replacement tree. The Staff Report for the September 14, 2023 meeting indicated Staff's opinion that, "The Bunya Bunya tree contributes to the area by providing aesthetic benefits, summer shade, and wildlife habitat." Apparently, the Director focused on Chapter 17-24.040(b)(1) and (3), which state that the Director is to consider in his or her determination "The overall condition of the tree, including any diseases or pests that may be attacking it, the tree's age with respect to its projected lifespan, the area the tree would hit if it, or any substantial part of it, were to fall, its symmetry and aesthetics, its proximity to existing structures, and any interference it has caused with underground or overhead utility lines" and "The number, species, size, and location of other existing trees in the area and the effect the requested action will have on shade areas, air pollution, historic values, scenic beauty, and the general welfare of the City", respectively.

However, the Salvation Army has offered to plant an appropriate replacement tree, *which would meet these components of the Tree Ordinance*. (Although query how much summer shade the tree offers, because the tree is located between the street on one side and a parking lot and garden area on the other, and it is not safe to stand underneath it). A new tree would provide the same if not greater aesthetic benefit and wildlife habitat. The Tree Ordinance's components of windbreaks, filters against airborne pollutants, releasing oxygen would also be satisfied by the planting of a new tree. The Ordinance's components of noise abatement, privacy screening, erosion control, and landslide prevention do not apply here.

Similarly, the factors that the Council considers in Section 17-24.010 auger in favor of approval of removal. A new tree would provide scenic beauty and increase the attractiveness of the area. The factors of erosion control, landslide prevention, decrease in

property values, and increase in construction and drainage costs do not come into play here with the removal of this tree.

As James MacNair indicated at the September 14 hearing, to preserve the genetic material of this particular Bunya Bunya tree, portions of the tree can be planted elsewhere in a more appropriate and suitable location.

There is a small gathering of tall redwood trees in close proximity to this tree. There are other mature trees in the same block. The replacement tree would be more aesthetically pleasing and would provide more summer shade and wildlife habitat.

The removal of this tree is a far cry from “unnecessary” as contemplated by Section 17-24.010.

The Tree is Not a Heritage Tree and is Not on the Approved Street Tree List

In Section 17-24.020 (L), the Tree Ordinance lists several types of trees that the City considers to be “heritage trees”. These include certain types of oak, redwood, bay, madrone, buckeye, Douglas fir, red alder, white alder, and big leaf maple. The non-native Bunya Bunya tree is not on the list. Section 17-24.020(O) and Section 17-24.070 define “Street Tree” and refer to the City’s adoption of a list of approved street trees. A copy of that list is attached as Exhibit 6. Again, the Bunya Bunya tree is not on the list. A private property owner would not be permitted to plant this tree in its current location.

The City’s Action Amounts to a Taking

The denial of the application to remove a hazardous tree amounts to a taking in violation of the state and federal Constitutions and other laws. The Salvation Army cannot use the full area of its garden and parking lot areas. It cannot use the area where the tree is located. The City is depriving the Salvation Army of the use of its own property *without compensation*. This is not a valid exercise of the City’s police power.

The refusal to grant the application to remove this tree is an interference with and deprivation of The Salvation Army’s right to decide which risks it is willing to assume on its own property.

EXHIBIT 1 – James MacNair Report

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August 24, 2023

Michelle Zyromski, Esq.
Zyromski Konicek, LLP
613 Fourth Street, Suite 203
Santa Rosa, CA 95404

RE: Salvation Army Bunya Pine Tree Risk Assessment

Dear Ms. Zyromski:

This report is a tree risk assessment of a mature bunya pine (*Araucaria bidwillii*) growing at the intersection of Second Street and Pierce Street (1080 Second Street). A site visit was completed on 8/23/23 to document the health and structural condition of the tree. Site conditions were also evaluated as part of the risk assignment.

The risk assessment is a visual assessment of the health and structural condition of the tree from the ground level (¹Level 2 Basic Assessment). Tree observations included a visual evaluation of the lower trunk, mid and upper tree crown, foliage vigor and density, observable structural defects, and any other indicator of internal decay.

Documents Reviewed:

Sanford Tree Service Report On Hazard of the Bunya Pine (3/30/22)

Tree Permit Removal Application (8/31/22)

Vintage Tree Care Arborist Report (Fred Frey) (2/5/23)

City of Santa Rosa Denial Letter (3/3/23)

Sharon King (Property Manager) Tree Removal Summary List (8/11/23)

Historical documents dating back to 1985, including various tree removal requests, newspaper articles documenting the tree danger, and history of property damage and injury.

¹ Smiley, E.T., Matheny, N.P., Lily, S. 2017. *Tree Risk Assessment Best Management Practices (Second Edition)*. International Society of Arboriculture, Champagne, Illinois.

TREE OBSERVATIONS/DISCUSSION:

The subject bunya pine is a mature tree with a 66-inch trunk diameter (measured at 4.5 feet) and a 115–120-foot height. The crown spread is 26 feet to the northeast, 18 feet to the northwest, and 20 feet to the southwest. The tree has a single dominant trunk with three secondary trunks forming in the upper crown. The tree is healthy, with normal vigor and foliage density, and no significant pest or disease issues observed.

This Australian tree species is characterized by its large stature (up to 160 feet) and branches produced in whorls with unique small and sharp leaves rotated along the branch. It is also known for producing male and female cones, which can be the size of a football and weigh up to 24 lbs. The female cones are typically produced at two-to-three-year intervals and form at the terminal ends of the branches. Because of the cone weight, the trees are considered highly hazardous when the cones are present with injury and deaths documented in online references.

When growing in public areas, the management recommendation is to create an exclusion zone around the tree to prevent injury and property damage or to physically remove the cones, which, because of the tree's height, requires a high lift and climbers in the tree (a labor-intensive task).

The primary risk with the subject tree is the dangerous cones and the likelihood of severe injury to pedestrians using the sidewalk adjacent to the tree or working in the Salvation Army resident garden below the tree. The three secondary trunk structure in the upper crown is also potentially a significant structural defect. Still, as the Frey and Sanborn reports note, it can likely be mitigated with a cable installation and pruning. The final issue is the risk of branch failure and the sharp leaves capable of moderate injury. Branch failures are common with this species, as shown in the images provided in this report.

The Frey report provides an opinion that the risk rating for the upper crown multiple trunks is low based on risk assessment methodology. While I agree with his assessment of the multiple trunks, the report does not discuss the cone hazard and the severe consequences (severe injury or death) if a cone strikes a pedestrian. While on-site for the tree evaluation, I counted five pedestrians walking below the tree in 45 minutes.

TREE RISK ASSESSMENT METHODOLOGY:

The assessment methodology is based upon the ANSI A300 (Part 9)-2017 Tree Risk Assessment a. Tree Structure Assessment and the 2017 International Society of Arboriculture Best Management Practices (BMP) booklet Tree Risk Assessment (Second Edition). The methodology establishes a systematic process for identifying structural defects and their associated risk. Risk is defined in the BMP publication as "the combination of the likelihood of an event and the severity of the potential consequences."

The current evaluation is a Level 2: Basic Assessment as described in the Best Management Practices publication. This assessment level is a visual inspection of the individual trees with no advanced diagnostic procedures performed. Advanced diagnostic procedures are the next level of assessment and would include root collar excavation and inspection, aerial inspections, and additional decay evaluations.

The likelihood and the severity of the consequences are categorized or quantified to establish a level (magnitude) of risk compared to the tree owner's tolerance for risk. Critical to the assessment is identifying risk targets defined as the property, activity, or people that would be damaged, impacted, or injured by a tree failure.

The final risk rating for a tree is a compilation of risk factors, which are listed as follows:

1. Primary Target Area
2. Tree Part(s) Most Likely to Fail:
3. Likelihood of Failure (Four Categories)
4. Likelihood of Impacting Target
5. Combined Likelihood of Tree Failure Impacting a Target Matrix:

Likelihood of Failure:	Likelihood of Impacting Target			
	Very Low	Low	Medium	High
Imminent	Unlikely	Somewhat likely	Likely	Very likely
Probable	Unlikely	Unlikely	Somewhat likely	Likely
Possible	Unlikely	Unlikely	Unlikely	Somewhat likely
Improbable	Unlikely	Unlikely	Unlikely	Unlikely

6. Consequences of Failure:
 - 6.1. Negligible- Low-value property damage or minor disruption (i.e., traffic) with no personal injury risk.
 - 6.2. Minor- Low to moderate property damage, small disruptions, or minor injury risk.
 - 6.3. Significant- Moderate to high property damage, considerable disruption, personal injury. Disruption of distribution primary voltage power lines.
 - 6.4. Severe- Serious personal injury or death, damage to high-value property, and serious traffic or electrical disruptions.
7. The risk-rating matrix shows the level of risk as a combination of the likelihood of failure and impact and the severity of the failure consequences.

Likelihood of Failure and Impact	Consequences of Failure			
	Negligible	Minor	Significant	Severe
Very likely	Low	Moderate	High	Extreme
Likely	Low	Moderate	High	High
Somewhat likely	Low	Low	Moderate	Moderate
Unlikely	Low	Low	Low	Low

SUMMARY OF RISK RATING FOR THE BUNYA PINE:

Likelihood of Failure (Over the Three-Year Period):

The likelihood of cones dropping from the tree is rated as Probable.

Likelihood of Impact:

The likelihood of impact on people in the areas near the tree in the event of failure is Medium to High, depending on the actual occupancy rate during the cone production season.

Likelihood Matrix (Combined Likelihoods of Failure and Impact)

The combined likelihood of failure and impact to people in the tree areas during the projected three-year period is rated as Somewhat Likely to High, depending on the cone crop size.

Consequences of Failure:

The consequence of a tree part (cone) impacting a person is rated as Severe due to the potential for serious injury or death.

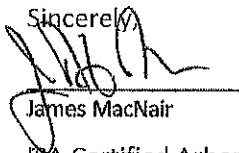
Risk Rating:

Based on this analysis, the risk rating of the tree is moderate to high. It should be noted that a moderate risk is significant and should be carefully considered relative to the risk tolerance of the tree owner and the people exposed to the risk.

The risks of upper crown trunk failure and branch failure are not detailed in this report but are likely low.

Please contact me with any questions or if additional information is required.

Sincerely,



James MacNair

ISA Certified Arborist WE-0603A
ISA Tree Risk Assessor Qualified
ASCA Tree and Plant Appraisal Qualified

Disclaimer:

Unless expressed otherwise, the information in this report covers only those items that were examined and reflected the condition of those items at the time of inspection. The inspection is limited to visually examining accessible items without dissection, excavation, probing, or coring. There is no warranty or guarantee, expressed or implied, that problems or deficiencies of the trees in question may not arise in the future.

Tree Images:



The view of the tree from the north and its location adjacent to the sidewalk, resident garden, street parking, and garden driveway.



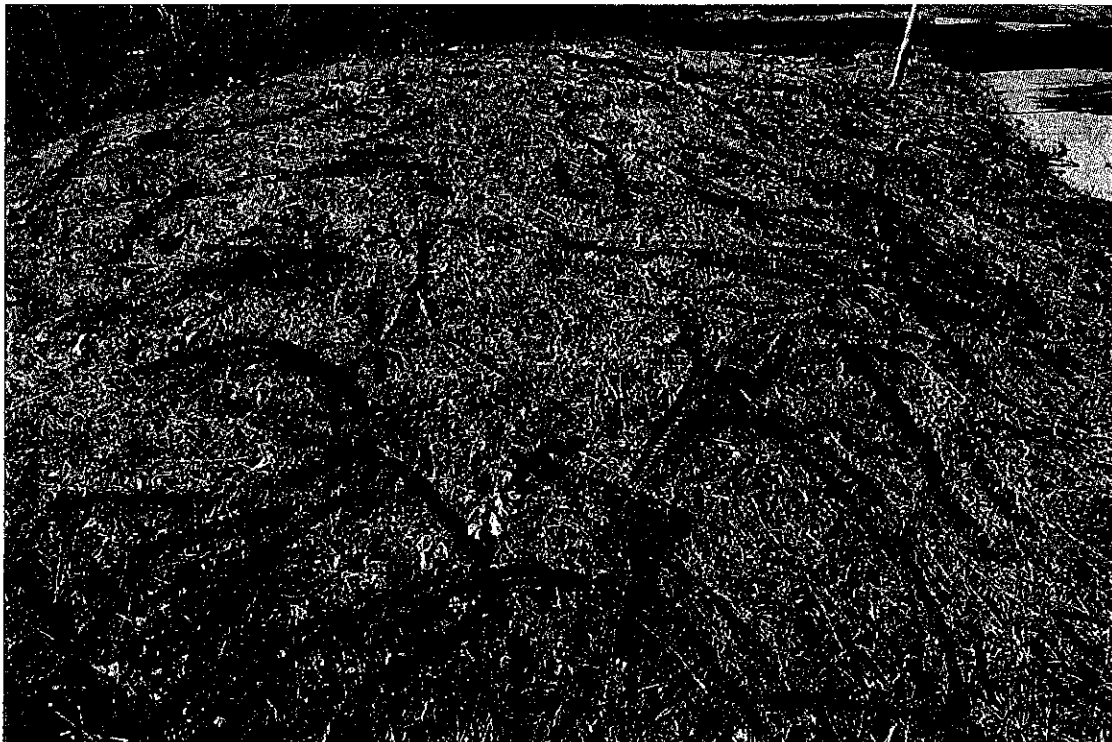
The view of the three secondary trunks formed in the upper crown. This multiple-trunk structure is considered a potential defect.



A close-up view of the secondary trunk union and a partially failed branch (arrow) that is a common issue for this species.



A pedestrian is walking below the tree on Second Street. Five pedestrians were observed walking on this section of sidewalk in 45 minutes.



The sharp leaves of the tree constantly drop.



The extended branches have the characteristic leaf whorl at the end of the branches.



The Bunya pine in Railroad Square with arrows indicating broken branches. The parking lot, sidewalk, and park bench are located beyond the crown edge, reducing the risk of impact from branches and cones.



Web image showing the size of the female cone.

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FIRM QUALIFICATIONS

MacNair and Associates is a professional arboricultural and horticultural consulting firm providing a complete range of landscape management and evaluative services. Clients include landscape architects, attorneys, corporations, government agencies, property managers, and professions within the construction industries.

MacNair and Associates and its predecessor, Horticultural Technical Services, have completed over 2500 projects throughout the Western United States with services ranging from expert witness testimony to specialized landscape management manuals and vegetation studies. MacNair and Associates is known for providing accurate and practical recommendations supported by site-specific technical data and clearly written documentation.

James MacNair, Principal

James MacNair is a consulting arborist and horticulturist (International Society of Arboriculture Certified Arborist WE-0603A, American Society of Consulting Arborist Tree and Plant Appraisal Qualification, and ISA Tree Risk Assessor Qualification.)

Professional experience in the horticultural industry began in 1973 and includes work as a production manager of a viticulture nursery and as owner and vice-president of Skylark Wholesale Nursery. Skylark Nursery was recognized for the introduction and promotion of Mediterranean and California native plants. Mr. MacNair's extensive knowledge of landscape ornamentals has resulted in lectures and articles discussing their appropriate use and care in the landscape.

Mr. MacNair was a regular guest speaker at water conservation conferences throughout the state in the 1980s and has lectured at various colleges and universities. He received a recognition award for exemplary effort in the promotion and implementation of Xeriscape water conservation in the urban landscape.

From 1984 to 1990, James MacNair was a principal partner of Horticultural Technical Services and since 1990 is the principal of MacNair and Associates. Areas of specialization include arboricultural evaluations and risk assessments, expert witness services, tree loss appraisals, landscape planning for sites with special soil or water chemistry problems, irrigation strategies and plant selection for sites using reclaimed water, and irrigation management techniques including the development of computer scheduling software.

From 1991 through 1997, James MacNair was a principal of Irrigation Management Group (IMG), developers of the water conservation software ET Calc™. Mr. MacNair served as a software designer, technical writer, and irrigation management consultant.

In 2010, Mr. MacNair developed the tree/plant appraisal software TreeValue™ for use in the 2007 San Diego County fire litigation cases. He was the lead arborist expert for San Diego Fire Lawyers and supervised the evaluation and documentation of tree and landscape losses for over 200 properties involving 90,000 trees. Advanced database designs, appraisal cost models, electronic field data collection, and GPS locations/mapping procedures were developed as part of this work.

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ARBORICULTURAL and HORTICULTURAL SERVICES

Arboricultural Appraisals and Evaluations

- Use of advanced tree appraisal software (developed by Mr. MacNair) including electronic field data collection, and GPS locations/mapping procedures. Tree appraisals performed using CTLA (Council of Tree and Landscape Appraiser) methods as described in the Guide for Plant Appraisal (10th Edition). Specialized cost models developed and used for analyzing costs for site and landscape remediation.
- Tree evaluations for heritage tree ordinances, including tree preservation, construction protection, mitigation specifications, and long-range tree management programs.
- Tree surveys for evaluation of health and structural conditions, including risk assessment.
- Management programs establishing guidelines for pruning, cultural care, and pest and disease control.

Expert Witness

- Forensic documentation and analysis of tree failures.
- Extensive forensic and claim damage experience in over 20 wildfire cases.
- Appraisals of properties damaged by fire, storm, trespass, or accident. Council of Tree and Landscape Appraisers plant appraisal methods used to determine opinions of value.
- View obstruction reports and recommendations.
- Landscape construction defects.

Site Analysis

- Soil sampling for determination of soil fertility, physical characteristics, and identification of chemistry problems. Site specific recommendations developed for effective use of fertilizers and amendments.
- Review of all environmental parameters likely to affect plant growth. Site analysis provides criteria for appropriate plant selection to ensure successful and functional landscapes.

Landscape Management Manuals

- Performance oriented management specifications for protection and care of the landscape. The Landscape Management Manual provides:
 - Equitable bid evaluations
 - Verification of contract performance
 - Establishment of long-term maintenance program
 - Quarterly task schedules and report formats
 - Documentation of all pesticide and herbicide use
 - Budget analysis and cost projection
- Periodic walk-through evaluations ensure that maintenance is appropriate and allows adjustments in procedures as a landscape matures.

Irrigation Management Programs

- Site specific programs designed to conserve water usage, while promoting plant health. Proper irrigation management reduces incidence of pests and diseases, lowers plant replacement costs, and decreases fertilizer and pruning requirements.
- Site specific procedures for modifying existing irrigation programs. Water requirements are evaluated for maximum conservation of water and reduction of water costs.

James MacNair was a participant in the Department of Water Resource's Landscape Water Management and Master Auditor Training Programs. He has designed computer software (ET Calc™) for calculating landscape water use and irrigation schedules. He was a member of the committee responsible for the publication Water Use Classification of Landscape Species for the Department of Water Resources and the University of California Cooperative Extension.

Plant Selection

- Plant selection for unusual, difficult, or adverse site conditions. Plant selection matrices designed to provide accurate and comprehensive data in an easy to read format. Recommendations are based on extensive field experience and latest horticultural research.
- Review of planting and irrigation plans for cultural compatibility and maintenance efficiency. Pest and disease control, irrigation, fertilization, and pruning requirements are evaluated for minimizing future maintenance costs and optimizing performance.

Plant Procurement Contracts

- The establishment and administration of growing contracts for future projects to ensure availability and quality of plant material. Contract growing protects project quality, without adding to project cost.

Landscape Installation Evaluations

- Plant quality inspections evaluating for proper size, branch structure, root health, and presence of pests or disease. This service assures the installation of quality plants for optimum performance and landscape success.
- Site evaluations to verify conformance to design specifications for plant quality, planting techniques, soil amending, staking, irrigation, and initial maintenance.

Landscape Problem Analysis

- Horticultural evaluation of existing landscape maintenance programs reviewing specific problems or management procedures. Site specific recommendations provided to improve plant health and vigor and protect the landscape improvement asset.

Environmental Restoration and Management

- Complete evaluative and management services for environmentally sensitive projects.
- Vegetation analysis of existing plant species for preservation, revegetation, or management planning.
- Riparian vegetation preservation plans and tree protection guidelines to protect and preserve existing riparian areas and specimen trees during construction and maintenance.
- Revegetation plans for restoring native plant communities. Specifications and procedures developed for specific site requirements. Administration and supervision of seed and cutting collection, propagation and growing contracts, installation, and maintenance.
- Seeding and planting recommendations for effective, long term slope protection and erosion control.

Seminars and Training Programs

- MacNair and Associates is available to provide lectures or training seminars on such topics as assessment of fire damage, fire damage appraisals, plant selection, designing landscapes for maintenance efficiency, water conservation, and landscape management.

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SELECTED ARBORICULTURAL PROJECTS

CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS)- Roadside Vegetation Management Study

- A comprehensive study of Caltrans roadside vegetation management policies and practices, including a detailed inventory of 271 roadside plantings. The study provided an evaluation of Caltrans directives, policies, and procedures as they are implemented through landscape design, construction, and roadside maintenance programs. A cost/benefit analysis was performed comparing four years of maintenance costs associated with the various landscape planting categories.
- The Roadside Vegetation Management Handbook was written for use by Caltrans personnel throughout California. This 350-page management manual covers such topics as irrigation management, plant selection, soil management and fertilization, pruning and tree maintenance, and pest and disease control. Special emphasis was placed on water conservation management practices.

CALIFORNIA DEPARTMENT OF TRANSPORTATION- Broadway Eucalyptus Evaluation and Resistograph Study

- Consulting arboricultural services provided to Caltrans. This project involved a detailed risk evaluation of mature blue gum eucalyptus growing along Hwy 12 (Broadway) in the City of Sonoma. A research project evaluating the effectiveness of the Resistograph™ for detection of internal decay was also performed as part of the evaluation.

CALIFORNIA DEPARTMENT OF TRANSPORTATION- El Camino Real Eucalyptus Evaluation and Resistograph™ Study

- Consulting arboricultural services provided to Caltrans. This project involved a detailed health and structural evaluation of mature blue gum eucalyptus growing along El Camino Real in the City of Burlingame and internal decay analysis utilizing the Resistograph™.

CALPINE CORPORATION- Audubon v. Calpine Wildfire Damage

- Expert witness services assessing the fire damage and claims associated with this 13,000-acre fire. The assignment required extensive damage documentation, repair and mitigation cost analysis, and direct participation in mediation and settlement conferences.

CITY OF EL CERRITO- Landscape Management Plan and Urban Forestry Plan

- This contract was performed in collaboration with Vallier Design Associates of Point Richmond, CA. The project required a review of Government Accounting Standard Board (GASB) requirements as applied to El Cerrito public sites.
- Forty-eight public sites were evaluated and inventoried. Each property was surveyed for the number and condition of trees, landscape characteristics including shrubs and groundcovers occurring, and current maintenance levels and deficiencies. All trees were described using trunk diameter classifications, health and structure ratings, and any potential hazardous conditions observed. Data spreadsheets and site maps were prepared showing inventory results as well as renovation, replacement, and maintenance costs associated with the landscape plantings and hardscape areas.
- A public survey was conducted to obtain public perceptions, use patterns, and maintenance goals for landscape facilities. An Integrated Pest Management plan was prepared for future implementation.
- An Urban Forestry Plan was completed and included a street tree inventory and city street master plan components.

CITY OF HEALDSBURG- Contract City Arborist

- Contract Arborist providing tree evaluations and risk assessments of city parks and public properties including the historic Healdsburg Plaza. Review services for Heritage tree removal requests and projects located within Landscape Improvement Districts.

CITY OF RICHMOND- Hilltop Landscape Maintenance District

- This contract included arboricultural recommendations, ongoing landscape planting and maintenance evaluations, landscape irrigation evaluations, irrigation scheduling recommendations, review of existing landscape maintenance program, and program quality control implementation.

CITY OF SONOMA- Broadway Improvements, City Street and Heritage Tree Inventory, and Sonoma Plaza Tree and Landscape Management Plan

- Species selection and nursery procurement for the Broadway Improvement Project. Computerized inventory for identification and assessment of city street and historic trees. Preliminary report for establishment of a city street tree master plan.
- The Sonoma Plaza Tree and Landscape evaluation documents the health and condition of the historic plants growing at the plaza and provides recommendations for their long-term maintenance and care. The evaluation will include a review of current tree and landscape maintenance practices, drainage problems, and the functionality of the irrigation system.

ELECTRICAL UTILITY AND VEGETATION MANAGEMENT COMPANIES- Consultant and Expert Witness

- Over 40 cases completed for ACRT (utility inspection), Asplundh Tree Company (Utility Tree Service), Davey Tree Expert Company, and Pacific Gas and Electric company.
- Tree failure analysis, electrical line clearance compliance, and tree risk inspections. Reference: California Public Resource Codes 4292, 4293, 4296 and CPUC General Order 95, Rule 35.

LETTERMAN DIGITAL ARTS CENTER, PRESIDIO, SAN FRANCISCO- Arboricultural and Landscape Development

- This project provides comprehensive services ranging from development of a historic tree protection program, health and structural evaluations of mature trees, reclaimed water use in the landscape, plant selection review, landscape tree procurement, and preparation of a landscape management plan.
- Over 570 specimen trees were selected and purchased under the direction of Lawrence Halprin and Associates. A tree nursery was established in the Presidio for holding and transplanting of project trees.

PRESIDIO PARKWAY PROJECT, PRESIDIO, SAN FRANCISCO- Growing Contract, Plant Research, Design Review

- Analysis of plant procurement requirements, availability, and best management practices standards for disease prevention (*Phytophthora spp.*).
- Plant research for issues of invasiveness, historical use, and disease susceptibility.
- Serpentine and soil pH tolerance research of plants proposed for use on the Parkway project.

SAN DIEGO FIRE LAWYERS, SAN DIEGO, CA- Old Guejito, Rice Canyon, and Witch Creek Fires: Tree/Woodland Damage Assessments and Appraisals

- The assessment of over 170 properties in San Diego County impacted by the October 2007 wildfires. Services include the inventory and documentation of trees killed or damaged by the fires. Currently over 90,000 trees have been evaluated.
- Specialized database software was created to document tree species, trunk diameters, pre-fire condition, and severity of fire damage. Advanced database, electronic field data collection, and GPS locations/mapping procedures were developed and utilized in the evaluations and damage appraisals. Cost models were developed for analyzing for site remediation requirements and cost of cure opinions of value.

KENWOOD RANCH, KENWOOD, CA- Arboricultural Evaluations, Tree Preservation and Protection Plan, Construction Observation

- Resort project involving the inventory and assessment of native woodlands within the project limits. The tree inventory includes health, structure and risk assessments with detailed project submittal reports and tree protection specifications. Specialized studies involve the impact of the Douglas fir flat-headed borer and recent wildfire impacts.

STERN GROVE FESTIVAL ASSOCIATION, SAN FRANCISCO, CA- Arboricultural Evaluations, Tree Preservation and Protection Plan, Construction Observation

- Evaluation of trees within the project limits of the Stern Grove Concert Meadow. A comprehensive tree protection plan was prepared for this historic site. Tree protection observation was provided throughout the project construction. Detailed resistograph and air spade diagnostic procedures were used for evaluation of a historic eucalyptus tree.

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STONEBRAE COUNTRY CLUB, HAYWARD, CA- Arboricultural Evaluations, Tree Preservation and Protection Plan, Construction Observation, Tree Growing Contract

- Documentation and database management of over 3000 trees. A tree preservation and mitigation plan was prepared as part of the project's conditions of approval as well as ongoing tree protection observation. An oak protection brochure was prepared for use by the Homeowners Association.
- Management of a large tree growing contract designed to provide the project with availability of the specified trees, a high quality standard, and purchased at a competitive cost.
- Post-transplant management of mature coast live oaks (up to 30-inch diameter).

TREASURE/YERBA BUENA ISLANDS REDEVELOPMENT PROJECT- Arboricultural Evaluations, Tree Preservation and Protection Plan, Construction Observation

- Research and development of a Phytophthora disease prevention program for the native plantings on Yerba Buena Island.
- Evaluation and documentation of mature trees identified as candidates for transplanting.
- Tree health and risk assessments of trees within project development areas.
- Tree protection specifications and monitoring.

EXHIBIT 2 – James MacNair’s CV

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Professional Resume for James MacNair

Educational Background

1972- SONOMA STATE UNIVERSITY, Bachelor of Arts, Psychology, graduation with honors.

Subsequent areas of college level study include Arboriculture, Botany, Environmental Science, Irrigation Management, Irrigation with Municipal Wastewater, Plant Ecology, Plant Pests and Diseases, Plant Taxonomy, Soil and Water Analysis, and Viticulture.

Professional Background

1973-1975 **Sonoma Grapevine**, Santa Rosa, California, and **VINEYARD TECHNICAL SERVICES**, St. Helena, California. Production Manager of greenhouse operations producing bench-grafted grapevines and potted foliage crops. Mr. MacNair was responsible for the production of over one million grapevines planted in Napa and Sonoma counties.

1975-1984 **SKYLARK WHOLESALE NURSERY**, Santa Rosa, California. Principal, Vice-president, and Sales Director with responsibilities including marketing, re-wholesale plant purchasing, production, inventory control, and corporate duties. Special emphasis was placed upon the introduction of Mediterranean and California native plants to the landscape trade. Because of his knowledge of the growth habits and cultural requirements of these plants, Mr. MacNair has lectured and written numerous articles on their use in the landscape.

1984-1989 **HORTICULTURAL TECHNICAL SERVICES**, Santa Rosa, California. Principal/Consulting Horticulturist and Arborist. Professional consulting firm providing horticultural expertise to landscape architects, federal, state and municipal agencies, developers, and homeowners associations.

1991-1997 **IRRIGATION MANAGEMENT GROUP**, Union City, California. Principal. IMG specializes in the production of irrigation and horticultural computer software. Mr. MacNair served as software designer, technical writer, and irrigation management consultant.

1990-Present **MACNAIR AND ASSOCIATES**, Glen Ellen, California. Principal/Consulting Arborist, Certified ISA Arborist WE-0603A, ISA Tree Risk Assessor Qualification, ASCA Tree and Plant Appraisal Qualification, and Landscape Horticulturist. Areas of specialization include arboricultural evaluations, software design, expert witness services, tree damage appraisals, irrigation management, plant selection, and landscape management.

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James MacNair
 Articles, Books, Presentations, and Professional Papers

Date	Title	Publication/Conference Proceedings
1977-1980	Plant Profiles- California Native and Mediterranean Plant Introductions- Article Series	California Landscape Magazine (CLCA)
June 1985	Oak Forest- A Lester Hawkins Legacy	Pacific Horticulture
December 1985	Plant Selection- A Pragmatic Approach	Paper and Lecture- 1985 Xeriscape Conference
May 1986	Native Plants for Planting with Oaks	Landscape and Irrigation News
January 1987	Water Conservation in the Landscape- A Horticultural Perspective on the Interaction of Design, Installation, and Maintenance	Paper and Lecture- 1987 Marinscape Conference
July 1991	Roadside Vegetation Management Handbook	California Department of Transportation
February 1991	Water Conservation and Maintenance- The Technical Requirements	Paper and Lecture- 1991 Northern California Xeriscape Conference
February 1992	Estimating Water Use and Irrigation Schedules for Ornamental Landscapes	Paper and Lecture- 1992 Water Efficient Landscaping Conference
February 1992	Water Use Classification of Landscape Species	Project Participant. University of California Cooperative Extension
June 1993	ET Calc User's Handbook	ET Calc- Water Conservation Software for Landscape Design and Maintenance
February 1994	Estimating Water Use in Landscapes	Landscape and Irrigation News
January 1995	Water Conservation in Commercial Landscapes	CAI Magazine
August 1995	Calculating Irrigation Schedules for Overhead Sprinkler Systems	Landscape and Irrigation News
February 1996	Trees for Rhododendron Gardens	American Rhododendron Society

Date	Title	Publication/Conference Proceedings
January 2003	Detection Study Using the Resistograph- Structural Evaluation of <i>Eucalyptus globulus</i>	Study conducted for Caltrans. Presentation to the Annual Tree Failure Conference and the City of Sonoma City Council.
October 2005	Letterman Digital Arts Center- Landscape Construction and Historic Tree Protection.	Presentation to the Bay Area Landscape Supervisors Association.
January 2006	Root Failure- Douglas Fir	Presentation to the CTRFP (California Tree Failure Report Program)
April 2011	Tree Damage Assessment and Appraisal Mediator Orientation	Presentation to mediators assembled for the Witch Creek and Rice Fire litigation cases.
September 2013	WUCOLS Redux- Selecting the Right Plants for California's Future- Plant Water Use Ratings: Inside the Committee Process	Presentation to the WUCOLS 2013 Conference.
January 2015	Wildfire Tree Damage- 2007 Witch Creek Fire	Presentation to the 14 th Annual Pest and Disease Symposium
June 2015, September 2015, November 2015	Irrigating Trees Effectively	Presentations to Trees and Drought- Using Water Wisely Workshop.
January 2018 March 2018	Assessing the Viability and Risk of Fire Damaged Trees	Presentations to the CTRFP (California Tree Failure Report Program)
January 2018 March 2018	Case Study- Woodland Valley Oak Failure	Presentations to the CTRFP (California Tree Failure Report Program)
February 2018	Assessing the Viability and Risk of Fire Damaged Trees	Article Western Chapter International Society of Arboriculture, Spring Edition
April 2018	Appraising Fire Damaged Trees	Presentation to the Western Chapter International Society of Arboriculture Annual Conference, Santa Rosa, CA
May 2018	Appraising Fire Damaged Trees	Presentation to the Northern California Chapter Appraisal Institute 2018 Annual Spring Litigation Conference
January 2021	Impacts of Fire on Tree Structure: Observations from the Field	Western Tree Failure Database Annual Meeting (Webinar Presentation)
April 2021	Impacts of Fire on Tree Structure: Observations from the Field	Educational Webinar for the American Society of Consulting Arborists

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ASSOCIATES
CONSULTING ARBORISTS AND HORTICULTURISTS



MEMORANDUM

DATE:	9/1/2023
TO:	Susie Murray, City of Santa Rosa
CC:	Michelle Zyromski
FROM:	James MacNair
SUBJECT:	1080 2 nd Street Bunya Pine
RE:	Response to 8/30/2023 Email Questions

Following are my responses to questions posed in the 8/30/2023 email from Susie Murray regarding the 8/24/2023 Risk Assessment Report.

- The summary says the likelihood of failure over the three-year period is probable. Can you advise what the current risk for failure is?

Response: The shortest time frame recommended by the Risk Assessment BMPs is one year. I typically use three years as a more realistic time frame to capture weather events and the progression of tree defects. Assuming no female cones are maturing currently, the primary risk is a failure of the closely spaced multiple trunks in the upper crown. I believe Fred Frey's inspection of the upper crown did not observe any fissures at the trunk unions, the presence of decay, or cone development. I don't know if Mr. Frey used a sounding hammer or probe to inspect the trunk attachments. As his report states, "*Multiple stems, especially those similar in diameter, which originate in one location, possess an increased likelihood for failure at the attachment point.*"

Based on his information, the risk of failure in September 2023 is likely currently low, but the risk of failure could change in severe rain/wind events. However, the risk of stem failure is separate from the risk of falling cones.

- Would annual or bi-annual maintenance, including trimming the branches/foliage and removing the cones, minimize the risk?

Response: If the tree is retained, it will require installing a cabling system with reduction pruning and crown cleaning. Cable systems require annual inspection of the hardware, cable tension, and attachment points. With annual cable inspections, cone development could also be monitored. As the female cones are the most severe risk, removing the cones would reduce this risk.

9/1/23

All of this is technically possible, although at a very high monetary cost. The tree is well over a hundred feet tall, requiring a tall lift truck and climbers. The sharpness of the leaves requires protective clothing. There is also no guarantee that all of the developing cones will be found and removed or that this intensive level of maintenance will occur in the future. I have seen many trees where the prescribed work is not consistently followed as site managers and budgets change over the years.

- Does the subject Bunya Bunya (Bunya Pine) produce male and female cones? If so, how frequently are the male cones produced?

Response: Yes, both male and female cones are produced. The literature suggests that the male cones are produced annually (not positive on this). The female cones take around 17 months to mature after pollination, with cones produced every two to three years. The female cones can drop over three months in late fall and winter. The male cones are slender and about eight inches long.

- If that were my tree, how often would you advise that I have the tree evaluated?

Response: As described above, the tree will require annual inspections at a minimum.

- Can you explain how the occupancy rate is calculated?

Response: Here are the official categories for establishing the occupancy rate for target zones.

Constant occupancy indicates that a target is present at nearly all times, 24 hours a day, 7 days a week. Examples of constant occupancy are static, unmovable targets such as buildings or power lines.

Frequent occupancy indicates that the target zone is occupied for a large portion of a day or week. Suburban streets that receive moderate volumes of traffic, car parks for facilities open only during the daytime, sidewalks in shopping areas, and busy delivery areas are examples of frequent occupancy.

Occasional occupancy describes sites occupied by people or targets infrequently or irregularly. Examples include country roads, low-use footpaths, and low-use sections of parks.

Rare occupancy applies to sites that people do not commonly use. Backcountry trails, fenced areas that are well away from more actively used parts of a site, remote parts of an estate, and gardens that neither workers nor visitors typically pass would all have rare occupancy.

While on-site, I observed five people walking below the tree in 45 minutes. If this rate is representative of typical pedestrian traffic, then I would consider the occupancy rate for the sidewalk to be between the Occasional and Frequent occupancy categories.

EXHIBIT 3 – James MacNair Memorandum

MACNAIR
&
ASSOCIATES
CONSULTING ARBORISTS AND HORTICULTURISTS



MEMORANDUM

DATE:	9/1/2023
TO:	Susie Murray, City of Santa Rosa
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FROM:	James MacNair
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9/1/23

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While on-site, I observed five people walking below the tree in 45 minutes. If this rate is representative of typical pedestrian traffic, then I would consider the occupancy rate for the sidewalk to be between the Occasional and Frequent occupancy categories.

EXHIBIT 4 – Chip Sandborn March 2022 letter

City of Santa Rosa
Planning Department
50 Santa Rosa Avenue
Santa Rosa, Ca
March 30th, 2022



SANDBORN
Tree Service Inc.
Since 1975

RE: Imminent hazard Bunya Bunya (*Araucaria bidwillii*) 66.0" d x 122' h
x 16' spread foliage located at Silvercrest Housing for Seniors
1050 3rd Street Santa Rosa, Ca 95404

Dear Planner,

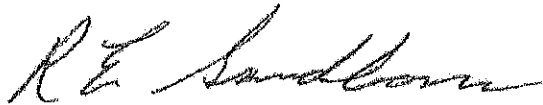
This tree is rooted on the southeast side of Second St. at the corner of Pierce St. Its branches overhang the city sidewalk, the entrance to the Silvercrest parking lot, and a vegetable garden adjacent to that parking lot. It has a straight central leader with two co-dominant stems on the northwest side at 90'h. Co-dominant stems form weak attachments that are prone to failure. As such this tree has poor structure. It has a good vitality with 100± branches radiating out from both forks with an abundance of thick, dark green foliage.

This tree is an imminent hazard for the following reasons. The co-dominant stems are split risks, at risk of failure targeting transmission lines, the city sidewalk and Second Street. Its branches are heavily weighted with foliage at their distal ends making them prone to failure. Many branches have failed in the past. The leaves fall constantly, they are long (18"±) spirals of sharp pointed leaflets capable of inflicting wounds on passers by and are noted to have done so in the past. The tree produces large cones weighing up to 24 lbs. on its uppermost branches. When the tree sheds its cones, which are currently forming, no one and nothing is

safe beneath the tree. I was first called out to look at the tree many years ago when it was 80' tall. A large cone had fallen from the top branches onto the roof a Tupperware shed in the garden. The shed was completely destroyed, the roof driven to the floor and all the sides blown outward. The tree targets the garden which is frequently tended to by residents, the parking area along Second Street, the 12 kv (high tension) power lines on Second Street, the parking lot, and the city sidewalk. Additionally, its roots are raising and breaking the city sidewalk, creating a tripping hazard.

I recommend removal of this tree before the next branch, co-dominant leader, or cone falls in order to abate the imminent hazard that it presents. It is a known hazard with a well-documented history of damage due to cone-fall and branch failure in a high traffic area and is guaranteed to shed more cones in the near future.

Regards,



Chip Sandborn
ISA WE-0177A

EXHIBIT 5 – 1999 Application Documents



CITY OF
SANTA ROSA

DEPARTMENT OF COMMUNITY DEVELOPMENT
100 Santa Rosa Avenue
Post Office Box 1678
Santa Rosa, CA 95402-1678
FAX 707-543-3218

March 5, 1999

Diane Goetzinger
Social Service Director
Salvation Army
1050 3rd Street
Santa Rosa, CA 95404

TREE REMOVAL APPLICATION - 1050 3rd STREET

PROJECT DESCRIPTION: Removal of one 62-inch circumference Bunya Bunya
FILE NO: TR99-014; **APN:** 019-094-018; **ZONE:** R-5-PD

Please be advised that your application has been approved for 60 days from the date of this approval and is subject to the condition listed below:

Plant one new (15 gallon minimum size) tree of similar size and shape to mitigate for removal of the existing tree. Consult a nursery/arborist to determine an appropriate species for planting. Tree shall be appropriately staked and maintained in good health. Tree shall be planted within 60 days of the date of this letter.

We recommend that the property owner verify the licence and insurance of the people who will be removing the trees.

This action is subject to appeal within ten (10) working days from the date of approval. If you have any questions, please call me at 543-3258..

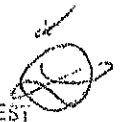
FRANK KASIMOV
City Planner

rm

c: Sandborn Tree Service, Inc., 3294 Sullivan Rd., Sebastopol, CA 95472
Parks, MSCN

RECEIVED

SANTA ROSA SILVERCREST



RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA UPHOLDING AN APPEAL OF THE PLANNING COMMISSION DECISION TO APPROVE A TREE REMOVAL REQUEST FOR A BUNYA BUNYA TREE, LOCATED AT SECOND AND PIERCE STREETS ON THE SILVERCREST RESIDENCE PROPERTY - FILE NUMBER TR99-014

WHEREAS, the Department of Community Development approved a request to remove an 80-foot tall Araucaria bidwillii, Bunya-Bunya tree on March 5, 1999; and

WHEREAS, an appeal of the Department of Community Development's approval was filed on March 17, 1999, and on April 29, 1999, the Planning Commission held a duly noticed public hearing to consider the appeal, at which the Commission heard and considered evidence regarding the proposed tree removal request; and

WHEREAS, the Planning Commission, after due consideration, investigation and study made by itself and on its behalf, and after due consideration of all evidence and reports offered at the public hearing, upheld the tree removal approval action of the Department of Community Development; and

WHEREAS, on May 6, 1999, an appeal of the Planning Commission's approval was filed by Alan Strachan; and

WHEREAS, on May 25, 1999, the Council held a noticed public hearing to consider the appeal, at which time the Council heard and considered all the evidence presented regarding the proposed tree removal request; and

WHEREAS, the Council, after due consideration, investigation and study made by itself and on its behalf, and after due consideration of all evidence and reports offered at the public hearing, found and determined as follows:

1. The Bunya-Bunya tree is of significant size and maturity and provides great aesthetic benefit to all persons living in the vicinity.
2. The Bunya-Bunya tree is one of a few existing mature specimens in Santa Rosa and that careless treatment and arbitrary removal of the tree would detract from the quality and attractiveness of the neighborhood.
3. Retaining the mature Bunya-Bunya tree would be consistent with the City's Tree Ordinance in that protection of certain trees is essential to the maintenance of Santa Rosa's aesthetic value and heritage; and

WHEREAS, the project is exempt from review under the California Environmental Quality Act, Class 4, Minor Alterations to Land, in that it would result in the retention of a mature tree which provides aesthetic benefits to its immediate environment.

NOW, THEREFORE, BE IT RESOLVED that the Council upholds the appeal of the Planning Commission decision to remove the Bunya-Bunya tree located on Second Street near Pierce Street, more precisely described as landscaped property adjacent to a parking lot associated Silvercrest Residence at 1050 Third Street, Assessor's Parcel Number 009-094-014 and denies the application to remove the tree.

IN COUNCIL DULY PASSED this 8th day of June, 1999.


AYES: (5) Vice Mayor Martini; Councilmembers Vas Dupre, Rabinowitsh,
Runyan, Wright

NOES: (0)

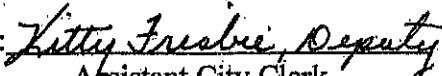
ABSENT: (2) Mayor Condron, Councilmember Evans

ABSTAIN: (0)

APPROVED:


Vice Mayor

ATTEST:


Assistant City Clerk

APPROVED AS TO FORM:


City Attorney

of the trees be planted in the backs of the lots.

THE MOTION CARRIED UNANIMOUSLY TO ADOPT AND WAIVE THE READING OF THE TEXT OF:

RESOLUTION NO. 23992 ENTITLED: RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA APPROVING AND ADOPTING A MITIGATED NEGATIVE DECLARATION FOR THE PROPOSED REZONING OF PROPERTY LOCATED AT 2783 MARLOW ROAD - FILE NO. MJB98-049. (Item 8.7)

MOVED by Vice Mayor Martini, seconded by Councilmember Runyan, CARRIED UNANIMOUSLY TO INTRODUCE AND WAIVE THE READING OF THE TEXT OF:

AN ORDINANCE ENTITLED: ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA AMENDING CHAPTER 20 OF THE SANTA ROSA CITY CODE - RECLASSIFICATION OF PROPERTY LOCATED AT 2783 MARLOW ROAD - FILE NUMBER MJP98-049.

MOVED by Councilmember Evans, seconded by Councilmember Rabinowitsh TO INSTRUCT THE APPLICANT TO CONFORM TO THE PLANNING DEPARTMENT'S DIRECTIVE TO PLANT TREES AS APPROPRIATE TO SCREEN THE EXISTING HOUSES FROM THE NEW DEVELOPMENT.

A brief discussion followed regarding the feasibility of this requirement. Ms. Rasmussen discussed the setbacks, noting that there was plenty of space for the planting of the trees. She explained the process that would be followed in order to ensure that this requirement is met. Prior to the submittal of the Improvement Plans and recodation of the Final Map, the applicant would have to comply with the requirement and show the trees on site. In addition, a notation can be placed in the DAC (Development Advisory Committee) report that a requirement was added to coordinate the placement of the trees with the neighbors.

Mayor Condrón expressed concern regarding adding this requirement at this time in the process.

THE MOTION PASSED BY A 6-1 VOTE (Mayor Condrón opposing).

8.8 PUBLIC APPEAL HEARING - REMOVAL OF A BUNYA BUNYA TREE ON SECOND STREET BY PIERCE STREET

Ron Allen, Senior Planner, made the staff presentation. Mr. Allen displayed a location map showing the location of the tree and the surrounding area. On March 11, 1999, staff approved an application filed by the Salvation Army to remove a bunya bunya tree located at Second and Pierce Streets. The decision was appealed on March 17, 1999, and on April 29, 1999, the Planning Commission denied the appeal, upholding staff decision. On May 6, 1999, another appellant filed an appeal of the Planning Commission decision.

Bunya bunya trees, native of Australia, develop and drop large seed pods, approximately the size of a pineapple, which grow at the top of the tree. This particular tree is approximately 80 feet tall. The tree trunk is located about 10 feet inside a public sidewalk. If not properly maintained by removing all of the pods on a regular basis, as often as yearly, the pods pose a potentially hazardous condition because they can fall on pedestrians, motorists, or parked vehicles. Removing the pods would cost approximately \$1,500 per maintenance.

The applicant would like to resolve the hazardous situation by removing the tree, since maintenance is cost prohibitive and displaces financial resources from helping people in need. The Planning Commission approved the request with the condition that a 36-inch box tree of similar size and shape (such as a redwood or deodar cedar) be planted in its place.

It is recommended by the Planning Commission, the Department of Community Development and the Department of Recreation and Parks that the City Council, by resolution, uphold the Planning Commission decision to approve removal of the bunya bunya tree because of the potential for injury or damage caused by falling pods.

Lisa Grant, Park Maintenance Superintendent, displayed a sample of a mid-size bunya bunya cone, noting that mature cones can weigh between 12 and 22 pounds. She also displayed a sample of the foliage, which is pointed and has scales, which is one of the reasons why the trees are expensive to maintain. She displayed a photograph of the subject tree, pointing out its irregular shape and noting that it has suffered from freezing conditions. She also displayed a photograph of the bunya bunya tree at Courthouse Square which the City maintains via the use of the Fire

ITEM NO. 12

CITY OF SANTA ROSA
DEPARTMENT OF COMMUNITY DEVELOPMENT
STAFF REPORT FOR PLANNING COMMISSION
APRIL 29, 1999

PROJECT NAME

Bunya Bunya Tree

APPLICANT

Salvation Army

LOCATION

Tree located at Second and Pierce Streets
on property associated with 1050 Third Street

PROPERTY OWNER

Salvation Army

ASSESSOR'S PARCEL NUMBER

009-094-018

FILE NUMBER

TR99-014

PROJECT SITE ZONING

R-5-PD

GENERAL PLAN DESIGNATION

Office

APPLICATION DATE

January 28, 1999

APPLICATION COMPLETION DATE

January 28, 1999

PROJECT PLANNER

Frank Kasimov

RECOMMENDATION

Uphold staff decision and deny appeal

PROPOSAL

Appeal of a staff decision approving the removal of a bunya bunya tree.

SUMMARY

Staff approved an application filed by the Salvation Army to remove a bunya bunya tree located at Second and Pierce Streets. Bunya bunya trees, a native of Australia, develop and drop large seed pods, approximately the size of a pineapple. This particular tree is approximately 80 feet tall. The tree is located about 10 feet inside a public sidewalk and partially overhangs the sidewalk and a street. If not properly maintained by removing all of the pods on a regular basis, as often as yearly, the pods pose a potentially hazardous condition because they can fall on pedestrians or vehicles. Removing the pods would cost approximately \$1,500 per year. The applicant would like to solve the hazardous situation by removing the tree, since yearly maintenance is cost prohibitive. The City approved the request with the condition that a tree of similar size and shape be planted in its place. A deodar cedar would be an example. On March 17, an appeal of staff decision was filed.

ITEM NO. 12

**CITY OF SANTA ROSA
PLANNING COMMISSION**

TO: PLANNING COMMISSION
SUBJECT: APPEAL OF A STAFF DECISION APPROVING REMOVAL OF A BUNYA
BUNYA TREE
AGENDA ACTION: RESOLUTION

ISSUE(S)

Should the Commission uphold a staff decision approving removal of a bunya bunya tree located at Second and Pierce Streets?

BACKGROUND

1. Surrounding Land Uses

North: Residential
South: Lab and office
East: Residential and Santa Rosa Creek
West: Church and senior apartments

2. Existing Land Use - Project Site

Parking lot.

ANALYSIS

1. Project Description

Removal of an 80 foot tall bunya bunya tree located at Second and Pierce Streets. The tree overhangs a public sidewalk and street. The tree trunk is located about 10 feet inside the sidewalk. Staff approved the tree removal on March 11, 1999, because the tree poses a hazard to people and vehicles, with the condition that a 15-gallon tree of similar size and shape (i.e., a deodar cedar) is planted in its place. The staff decision was appealed on March 17, 1999.

2. General Plan

Office.

3. Zoning

North: C-2-P
South: R-4
East: R-4
West: R-5-PD

ITEM NO. 12

4. Parking

Not applicable

5. Environmental Review

Exempt Class 4 - Minor Alterations to Land.

6. Comments/Actions by Other Review Boards/Agencies

Not applicable.

7. Neighborhood Comments

The appeal was filed by Nora Meisner and Frances J. Cromwell in response to the article in the Press Democrat. One comment of concern for the tree was otherwise received.

8. Public Improvements/On-Site Improvements

Not applicable.

9. Issues

The main issue is can the tree be saved or should it be removed?

If there were a way to successfully cost effectively remove each pod to eliminate the potential for it falling and injuring someone or damaging a vehicle, the tree could be saved. The cost of maintaining the tree is estimated at about \$2,900 in the first year to remove dead growth and pods and about \$1,500 in subsequent years. This estimate was given by Sandborn Tree Service. The City's Parks Department has indicated that these estimates seem reasonable.

The property owner prefers to remove the tree at a one-time cost. The City does not maintain trees on private land. (It would cost the City approximately the same to maintain the tree if it were on City property.)

The appeal states that in 100 years, no one has been hit by the seed pods. This statement has not been substantiated, and there is always a potential for the pods to hit someone.

The appeal also states that the roots do not penetrate the sidewalk. This is true.

The appeal states that the cost of removal of the tree would take care of the cost of trimming (maintaining) the tree for at least three years. We understand that removing the tree would cost about \$4,000. This would cover maintenance for two years and part of the third year. The question is how would the remaining years be funded, and who would pay for removal when time for removal has arrived?

The appeal is attached.

ITEM NO. 12

The tree poses potential hazards and, unfortunately, without a commitment for proper long term maintenance, the most appropriate action is removal. The City's tree ordinance (City Code Chapter 17-24) states in part (at Section 17-24.040(B)) that in determining the acceptability of a requested tree removal, the Director of Community Development shall consider (among other things) the area of the tree, or any substantial part of it, would hit if it were to fall. In this case, it is possible, if not likely, that the area that the pods would fall would include the public sidewalk and street.

10. Processing Time

This application will be considered by the Planning Commission 43 days from the time the appeal was received.

11. Child Care Action Plan

The Child Care Action Plan is not applicable to the tree removal.

RECOMMENDATION

It is recommended by the Department of Community Development that the Planning Commission, by resolution, uphold staff decision to approve removal of the bunya bunya tree because of the potential for injury or damage caused by falling pods.

RESOLUTION NO. 9507

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ROSA DENYING AN APPEAL OF COMMUNITY DEVELOPMENT STAFF DECISION TO APPROVE A TREE REMOVAL REQUEST FOR A BUNYA BUNYA TREE SUBJECT TO REPLANTING A NEW TREE SIMILAR IN SIZE AND SHAPE, LOCATED AT SECOND AND PIERCE STREETS ON THE SILVERCREST RESIDENCE PROPERTY, 1050 THIRD STREET, ASSESSOR'S PARCEL NUMBER 009-094-014, FILE NUMBER TR99-014

WHEREAS, Department of Community Development Staff approved a tree removal request for a bunya bunya tree on March 5, 1999; and

WHEREAS, an appeal of staff's decision was filed on March 17, 1999; and

WHEREAS, on April 29, 1999, the Planning Commission held a public hearing on the aforementioned appeal; and

WHEREAS, the Planning Commission heard and considered evidence regarding the proposed tree removal request; and

WHEREAS, the Planning Commission, after due consideration, investigation and study made by itself and on its behalf, and after due consideration of all evidence and reports offered at said meeting, does find and determine the following:

1. The bunya bunya tree is not suitable for its location as it develops pineapple-sized pods which drop if not removed, posing hazards for pedestrians and motorists.
2. The property owner (Salvation Army) has stated that annual maintenance to remove the pods is economically infeasible.
3. The replacement of the tree with a more suitable species for this location is not detrimental to the City.

NOW, THEREFORE, BE IT RESOLVED that the appeal be denied and the removal of the bunya bunya tree be approved subject to replanting a new 36 inch box tree of similar size and shape on Second Street near Pierce Street, more precisely described property associated with the Silvercrest Residence at 1050 Third Street, Assessor's Parcel Number 009-094-014.

REGULARLY PASSED AND ADOPTED by the Planning Commission of the City of Santa Rosa on the 29th day of April, 1999, by the following vote:

Ayes: (4) (Blanchard, Cummings, Dias, Edwards)
Noes: (0)
Abstentions: (0)
Absent (3) (Carlile, Johnson, Denietolis)

APPROVED:


ACTING CHAIRMAN

ATTEST:


SECRETARY

PLANNING COMMISSION MINUTES
REGULAR MEETING
April 29, 1999

The Planning Commission meeting of the City of Santa Rosa was called to order at 4:10 p.m. in the City Council Chamber at Santa Rosa City Hall, 100 Santa Rosa Avenue, Santa Rosa, California, with Chairman Denietolis presiding. Present were Chairman Denietolis and Commissioners Blanchard, Cummings, Dias, and Edwards. Commissioners Carlile and Johnson were absent. Also present were Assistant City Attorney Bruce Leavitt, Community Development Department Director Wayne Goldberg and Deputy Director Chuck Regalia. Recordings are on file in the office of the Department of Community Development. The Agenda was duly posted for public review at City Hall on Monday, April 26, 1999.

1. CALL TO ORDER

Chairman Denietolis called the meeting to order at 4:10 p.m.

2. ROLL CALL

Present: Commissioners Blanchard, Cummings, Dias, Edwards and Chairman Denietolis.

Chairman Denietolis was present at roll call, but left the meeting at 4:10 p.m. as noted below.

Commissioners Carlile and Johnson were absent.

3. APPROVAL OF MINUTES

No minutes were submitted for approval.

4. PUBLIC APPEARANCES

None.

5. PLANNING COMMISSIONER'S REPORT

Commissioner Blanchard noted that at the Planning Commission meeting of April 22, 1999, the Planning Commission voted to approve a Variance for the Kort property at 1151 Humboldt Avenue, File Number MNJ98-054, but the motion failed due to the lack of the required majority. A member of the Planning Commission voting in the majority on this application may move to reconsider this action, and Commissioner Blanchard's was a majority vote.

Motion: Commissioner Blanchard moved and Chairman Denietolis seconded motion to reconsider the Kort Variance at the next regular Planning Commission meeting on May 13, 1999, noting that the applicant has requested that the item be reconsidered. The motion carried with the following vote:

Ayes: (3) (Blanchard, Edwards, Denietolis)
 Noes: (2) (Cummings, Dias)
 Abstentions: (0)
 Absent (2) (Carlile, Johnson)

6. DEPARTMENT REPORT

Deputy Director Chuck Regalla reported that during the Planning Commission's recent discussion regarding the Amy's Kitchen expansion, Jim Hummer raised the issue of the interface between the Air Center's residential uses and the business park uses adjacent to the east. He has requested that all Conditional Use Permits for new uses or for changes of use be subject to a public hearing before the Planning Commission.

Motion: Commissioner Cummings moved and Commissioner Edwards seconded a motion to amend the adoption of a resolution initiating Policy Statement modification to the Air Center and Northpoint Business Park PCS requiring Planning Commission public hearings in some circumstances. The motion carried with the following vote:

Ayes: (5) (Blanchard, Cummings, Dias, Edwards, Denietolis)
 Noes: (0)
 Abstentions: (0)
 Absent (2) (Carlile, Johnson)

7. STATEMENTS OF ABSTENTIONS BY COMMISSIONERS

None.

Chairman Denietolis left the meeting at 4:10 p.m., after appointing Commissioner Blanchard to act as Chairman in the absence of Vice-Chairman Carlile.

8. CONSENT AGENDA

None

9. PUBLIC HEARING - CONDITIONAL USE PERMIT/DEVELOPMENT PLAN - Garage in R-1-2/6 District - Address 1401 Maureen Drive - File Number CUP99-006

City Planner Frank Kasimov explained that this is a proposal to adopt a development plan that allows a garage on the property and adopts the R-1-6 district regulations for the property.

The applicants submitted a request for a garage on their property. Because the property is zoned R-1-2/6, a development plan is needed for any development. A development plan was not adopted with the pre-zoning because the zoning was established as part of a large annexation, the South Dutton and Environs Annexation (approximately 211 acres). A development plan must be approved by the Planning Commission. Staff recommends that in addition to allowing the requested garage, the development plan also incorporate the R-1-6 district regulations so that the applicant can make other changes consistent with single-family residential regulations without Planning Commission involvement. The applicant has no future plans for this property other than as a single-family house.

Mr. Kasimov confirmed for the Commission that the project is conditioned to obtain clearance from the County Health Department, with regards to the septic system expansion area, or connect to City Sewer.

Robert Gordon of 1401 Maureen Drive, the applicant, confirmed that the proposed garage will be used as recreational vehicle, boat and automobile storage, and noted that the garage would be placed thirty feet from the back fence.

Acting Chairman Blanchard opened the public hearing.

There being no one wishing to speak, Acting Chairman Blanchard closed the public hearing.

Resolution Number 9504: Commissioner Dias moved and Commissioner Edwards seconded a Resolution Approving a Development Plan For 1401 Maureen Drive - Assessor's Parcel Number(s) 043-112-033 - File number CUP99-006, and waived the reading of the text. The motion carried with the following vote:

Ayes: (4) (Blanchard, Cummings, Dias, Edwards)

Noes: (0)

Abstentions: (0)

Absent (3) (Carlile, Johnson, Denietolis)

10. CONTINUED PUBLIC HEARING - DENSITY BONUS ORDINANCE - Citywide - File Number 91-3017

Acting Chairman Blanchard inquired of staff whether it was appropriate that this item be considered today, as three of the Commissioners are absent.

Deputy Director Chuck Regalia responded by noting the following:

- This issue has not changed from when it was discussed at the March 11, 1999 Planning Commission study session. The Commissioners who are absent today were present for the study session.

- If this item is continued, the absent Commission would bear the responsibility to read the minutes and listed to the audio tape of the item in order to be eligible to vote on it.
- It would be appropriate to hold the public hearing, and bring the public comments under consideration when deciding whether to take final action on this item at this meeting.

The Commission agreed to hold the public hearing, and unless new issues are introduced by the public speakers, to take final action on this item.

City Planner Maureen Rasmussen stated that in response to the State's finding that a shortage of housing exists in California, each local jurisdiction is required to adopt a Density Bonus Ordinance. On January 14, 1999, the Planning Commission previewed the Density Bonus Ordinance and agreed that a study session should be held.

During the study session the issues of Rezoning, density bonuses less than 25%, off-site targeted units, concurrent construction of market rate and targeted units, housing authority maintenance fees, and range of income categories were discussed.

The conclusions reached during the study session are as follows:

- Housing developments shall be consistent with the zoning on the project site. Rezonings may be required.
- Density Bonuses may be less than 25% over the density allowed, however, the calculation for the minimum number of targeted units will always be based on 25% over the density otherwise allowed by the General Plan land use designation.
- The requirement for off site targeted units is consistent with the State Law. Off site units may be located in a different geographical area providing the area does not have an overconcentration of a specific type of unit. No change is needed.
- The local ordinance is clear in requiring concurrent development of market rate and targeted units. No change to the local ordinance is needed.
- The local ordinance requires the collection of fees to offset the administrative, monitoring and/or enforcement costs.

The Density Bonus Ordinance is designed to encourage development of very low and lower income and senior units. Cities are prohibited from offering a density bonus or any other incentive that would undermine the legislative intent. Income categories may not be broadened.

Staff recommends that the Planning Commission recommend to the City Council adoption of the Density Bonus Ordinance as written.

Acting Chairman Blanchard opened the public hearing.

Anne Seeley, of 4370 Raymonde Way, expressed concern that the City's resources (land, water supply, wastewater disposal capacity, parks development) are equitably apportioned. With every Planning Commission housing policy formulated, Ms. Seeley suggests the following guidelines:

- Required concurrent development of affordable units with the market rate units.
- Require developers, their representatives and Realtors to disclose to new home buyers that the City's policy is to include lower income units in every new housing developments.
- Integrate rental and low income for-sale units in each phase of a development.

Ms. Seeley concluded by asking the Planning Commission to address the procedure for ensuring concurrent construction of those density bonus and targeted units that are allowed to be built off-site.

There being no one else wishing to speak, Acting Chairman Blanchard closed the public hearing.

Ms. Rasmussen responded to concerns of the public speaker and the Commissioners by explaining that:

- The City will require concurrent applications for the required low-income housing along with the market rate housing for developments.
- The Density Bonus Ordinance is itself the City's response to the state's requirement to equitably apportion the City's resources.
- It is contingent upon the developer to notify buyers of property of low income housing within the development.
- The City is unable to predict which developments will be constructed on which sites, and this makes it difficult to draft a density increase noticing procedure for every future homeowner. The Planning Commission will have to make noticing conditions on a case by case basis.

Commissioner Edwards stated that the ordinance will accomplish the desired results, however, the City must be more insistent that the construction of the required low income housing be prior to or at least concurrent with the market rate housing.

Commissioner Dias indicated her agreement with Commissioner Edwards, noting further that this type of legislation should be the City's prerogative rather than the state's. If the state didn't require the City to permit off-site low income housing, she would agree with Ms. Seeley in not allowing it.

Commissioner Cummings also indicated his concurrence with Commissioner Edwards and stated that the notification of density increase should be on the title search.

Assistant City Attorney Bruce Leavitt clarified portions of the proposed Density Bonus Ordinance related to timing of occupancy of targeted units.

The Planning Commission concurred that it would take final action on this item at this meeting rather than continue it to a future meeting.

MOTION: Commissioner Cummings moved and Commissioner Edwards seconded a motion to adopt the Density Bonus Ordinance. The motion carried with the following vote:

Ayes: (4) (Blanchard, Cummings, Dias, Edwards)
 Noes: (0)
 Abstentions: (0)
 Absent (3) (Carlile, Johnson, Denietolis)

Ms. Rasmussen stated that the Resolution recommending that the City Council adopt the Density Bonus Ordinance would be included as a consent item at the next regular Planning Commission meeting on May 13, 1999.

11. PUBLIC HEARING - CONDITIONAL USE PERMIT - REDWOOD OIL - 459 Yolanda Avenue - File Number DR98-144

City Planner Mark Wolfe reported that this is a request for a Conditional Use Permit for revised site plan and new canopies for existing cardlock fueling and fuel delivery facilities.

The applicant proposes to relocate the existing cardlock fueling improvements at 459 Yolanda Avenue. The improvements related to this use currently include a pump island with a canopy, a bank of fuel pumps without a canopy, and an uncovered fuel delivery area. New improvements would consist of two covered fueling islands and a covered fuel delivery area. The changes have been proposed in order to improve on site circulation and comply with recently enacted legislation concerning underground fuel storage tanks. One existing warehouse on the site would be demolished, and a 120 square foot storage building would be added. Full street frontage improvements with an 8' landscape strip would be installed along Yolanda Avenue. The project has been favorably reviewed by the Design Review

Board. Staff has not identified any major issues in connection with this proposal, and is recommending approval.

Matt Donahue of RHL Design Group, 1137 North McDowell Boulevard in Petaluma representing the applicant noted that this project was commenced in response to EPA requirement to upgrade the underground storage tanks by December 22, 1998, and as the plant has been shut down since that date, the applicant is eager for the Planning Commission's vote of approval for this item.

Acting Chairman Blanchard opened the public hearing.

There being no one wishing to speak, Acting Chairman Blanchard closed the public hearing.

Resolution Number 9505: Commissioner Dias moved and Commissioner Edwards seconded a Resolution Approving and Adopting a Negative Declaration for Redwood Oil Cardlock Fueling and Delivery Facilities Located at 459 Yolanda Avenue - Assessor's Parcel Number(s) 044-041-030 -File number DR98-166 and waived the reading of the text. The motion carried with the following vote:

Ayes: (4) (Blanchard, Cummings, Dias, Edwards)
 Noes: (0)
 Abstentions: (0)
 Absent (3) (Carlile, Johnson, Denietolis)

Resolution Number 9506: Commissioner Dias moved and Commissioner Edwards seconded a Resolution Making Findings and Determinations and Approving a Conditional Use Permit for Redwood Oil Cardlock Fueling and Delivery Facilities - Located at 459 Yolanda Avenue - File Number DR98-144 and waived the reading of the text. The motion carried with the following vote:

Ayes: (4) (Blanchard, Cummings, Dias, Edwards)
 Noes: (0)
 Abstentions: (0)
 Absent (3) (Carlile, Johnson, Denietolis)

12. PUBLIC HEARING - APPEAL OF STAFF DECISION - TREE REMOVAL - Bunya Bunya Tree - 2nd and Pierce Streets - File Number TR99-014

City Planner Frank Kasimov stated that this item is an appeal of a staff decision approving the removal of a bunya bunya tree.

Staff approved an application filed by the Salvation Army to remove a bunya bunya tree located at Second and Pierce Streets. Bunya bunya trees, a native of Australia, develop and drop large seed pods, approximately the size of a pineapple. This particular tree is approximately 80 feet tall. The tree is located about 10 feet inside a public sidewalk and partially overhangs the sidewalk and a street. If not

properly maintained by removing all of the pods on a regular basis, as often as yearly, the pods pose a potentially hazardous condition because they can fall on pedestrians or vehicles. Removing the pods would cost approximately \$1,500 per year. The applicant would like to solve the hazardous situation by removing the tree, since the cost of yearly maintenance is prohibitive. The City approved the request with the condition that a tree of similar size and shape be planted in its place. A deodar cedar would be an example. On March 17, an appeal of staff decision was filed.

The applicant for the tree removal permit, Auxiliary Captain Gene Lantz of the Salvation Army, 1050 Third Street, explained that he has received numerous complaints from citizens that were nearly hit with the bunya bunya pods, and that the automobile of at least one tenant of the Salvation Army's Silvercrest residence has been damaged by falling pods. The Salvation Army has rejected alternatives such as regular removal of the pods, or nets to catch the pods, as economically unfeasible.

Acting Chairman Blanchard opened the public hearing.

Clyde Smith of 200 Pierce Street, indicated his opposition to the removal of the tree, stating that he lives near the tree in question, and that in the many years he has lived in the neighborhood, he has seen only one pod fall, and feels that the tree would pose no danger if it were properly maintained.

Alan Strachan of 218 Jean Drive also stated his opposition to the removal of this tree and expressed his concern that many of the City's large, mature trees have been removed for safety reasons or because they interfere with a sidewalk or power lines, and that it is difficult to get approval to plant larger size trees. Mr. Strachan noted that the City should review its policies on tree planting and removal.

Winter Kempton of 2265 McBride Lane, apt. H indicated her support of the staff decision, noting that, while trees are beneficial, the safety of citizens and the liability of the Salvation Army are more important.

Audrey Smith of 200 Pierce Street stated that most people walk on the other side of the street from the tree, out of the way of falling pods.

There being no one else wishing to speak, Acting Chairman Blanchard closed the public hearing.

Captain Lantz stated in response to the public speakers that the Salvation Army does not have the equipment that the City has to maintain the subject tree.

Park Maintenance Superintendent Lisa Grant, in response to inquiries of the Planning Commission, noted that:

- The bunya bunya tree is native to Australia, though not uncommon throughout California, and it is not known whether Luther Burbank or McDonald had a hand in bringing them to Santa Rosa.
- There are two bunya bunya trees on City property and they are on a two year cycle of deconing. As the City's tree equipment is not tall enough to reach the top of these trees, the Parks Department uses the Fire Department's hook and ladder to decone the tree, at a cost of approximately \$1,500.
- On at least one occasion, the City has contracted on a one-time basis to have the tree thinned only (not deconed), also at a cost of approximately \$1,500.
- Topping the bunya bunya tree is inappropriate, and it is not known whether there is a spray that is effective for deconing this tree. Spraying the tree would also be a physically difficult task.
- A bunya bunya tree in Courthouse square was removed as a consequence of frost damage.

Commissioner Dias indicated that she was reluctant to have this tree removed, and expressed her regret that the tree canopy over Hidden Valley is gone. However, she stated her support for upholding the staff decision due to the liability of the Salvation Army.

Commissioner Edwards stated that because of property damage due to falling pods, she is in favor of removing the tree.

Commissioner Cummings noted that the Salvation Army provides much needed benefits to the community, and he will vote to uphold the staff decision.

Acting Chairman Blanchard reported that, for safety reasons, many trees have had to be removed from the campus of Santa Rosa Junior College. This is regrettable, but unavoidable. He also is reluctant to lose this bunya bunya tree, but does support the staff decision.

Resolution Number 9507: Commissioner Cummings moved and Commissioner Edwards seconded a Resolution Denying an Appeal of Community Development Staff Decision to Approve a Tree Removal Request For a Bunya Bunya Tree Subject to Replanting a New Tree Similar in Size And Shape, Located at Second And Pierce Streets on The Silvercrest Residence Property, 1050 Third Street, Assessor's Parcel Number 009-094-014, File Number TR99-014, amended in the second to last paragraph to replace "a new 15-gallon tree" to "a new 36 inch box tree", and waived the reading of the balance of the text. The motion carried with the following vote:

Ayes: (4) (Blanchard, Cummings, Dias, Edwards)
 Noes: (0)
 Abstentions: (0)
 Absent (3) (Carfile, Johnson, Denietolis)

13. PUBLIC HEARING - CONDITIONAL USE PERMIT - CORAZON PRESCHOOL/DAYCARE - 1235 West Steele Lane - File Number CUP99-029

City Planner Frank Kasimov presented this request for a bilingual child daycare facility for 32 children ages 3-5. The property is located on West Steele Lane between McBride Lane and Range Avenue. There is a preschool/daycare use on the adjacent property to the east with 39 children.

Mr. Kasimov reviewed the neighborhood meeting and the traffic study and accident history of the area.

Bob Crose of 1153 Wikiup, the applicant, introduced his wife in the audience as the co-applicant, and stated that he concurred with Mr. Kasimov's report and recommendation, and noted that they had previously used the property as a school for emotionally disturbed adolescents, which was operated without complaints for over two years. There are many uses allowed on the property without a Use Permit, which would generate more traffic than the proposed preschool.

Acting Chairman Blanchard opened the public hearing.

Dan Swenson, of 50 Santa Rosa Avenue, an attorney representing the owners of The Children's Learning Center, a preschool adjacent to the proposed site, distributed information containing a traffic study, noting that the traffic in this area is unsafe and that steps must be taken to make the site safer.

Walter Laabs of TJK Transportation, 141 Stony Circle, noted that he had been engaged by the owners of The Children's Learning Center to conduct a traffic study for the intersection of Range Avenue and West Steele Lane. The rate of collisions at this intersection is higher than normal, and would be even higher with increased traffic.

Leo Zakharoff of 3101 Brush Creek Road spoke in opposition to the proposed use and expressed concern that the area is saturated with preschools.

Winter Kempton of 2265 McBride Lane, Apt. H., spoke in favor of the proposed preschool because it offers a bi-lingual immersion program, a benefit that the nearby preschools do not offer, and which will give preschoolers a head start on being more employable when they become adults.

Will Alban spoke in favor of the proposal, stating that the proposed location is appropriate for the proposed use.

There being no one else wishing to speak, Acting Chairman Blanchard closed the public hearing.

Discussion ensued among the Commissioners, with Commissioner Edwards pointing out that the traffic study distributed by Mr. Swensen reports that there has been 1.18 traffic accidents at the intersection of McBride Lane and West Steele Lane per million vehicles.

Commissioner Cummings noted that the proposed preschool offers a much needed bilingual program, and that the site has previously been used as a daycare.

Acting Chairman Blanchard stated that a letter had been received opposing the preschool because of traffic concerns. Notwithstanding that the site may not be an absolutely ideal spot for childcare, there are apartments full of children and business with working parents around the neighborhood who will need this daycare.

Resolution Number 9508: Commissioner Cummings moved and Commissioner Edwards seconded a Resolution Making Findings And Determinations And Approving a Conditional Use Permit For Corazon Preschool-daycare - Located at 1235 West Steele Lane - File Number CUP99-029 and waived the reading of the text. The motion carried with the following vote:

Ayes:	(3)	(Blanchard, Cummings, Edwards)
Noes:	(1)	(Dias)
Abstentions:	(0)	
Absent	(3)	(Carlile, Johnson, Denietolis)

Acting Chairman Blanchard declared a recess at 6:10 p.m., reconvening at 6:15 p.m.

14. PUBLIC HEARING - CONDITIONAL USE PERMIT - BILL'S MARKET - 1500 and 1520 Humboldt Street - File Number MNP98-046

Senior Planner Ron Allen reported that this is an application to restore Bill's Market at 1500 Humboldt Street and to add a 1,009 square foot, three bedroom residential dwelling unit with covered parking as a second level over an existing market storage area. The proposal also includes developing the adjacent vacant parcel to the north at 1520 Humboldt Street with a 1500 square foot single-family residential structure with covered parking and a 668 square foot second dwelling unit. Required uncovered parking for the dwelling on the market property, (1500 Humboldt) would be accommodated off site with the development of the primary and second dwelling units located on 1520 Humboldt Street.

The project has been redesigned to comply with City parking requirements, the preservation of Heritage oak trees and aesthetic considerations relating to the architectural integration of the proposed second level dwelling over the market as suggested by the Design Review Board. The General Plan allows "Mom and Pop" retail uses in residential neighborhoods and encourages mixing residential and neighborhood retail uses. Humboldt Street at this location is within the City operated Santa Rosa Junior College residential permit parking program. Restricted street parking conditions has served to provide adequate street parking for residents of the area and users of this neighborhood grocery store.

David Columbo, the project's applicant and architect, stated that the applicant concurs with staff's report and recommendation.

Commissioner Dias commended the architect for blending in the residences with the store.

Acting Chairman Blanchard opened the public hearing.

Allen Gruber, owner of 715 McConnell Street, expressed his appreciation of Bill's Market and its owners, and noted his concern that the privacy of the backyard at 715 McConnell would be compromised by a window in the proposed second story unit, and noted that he would like assurance that the noise of the cooling systems will be addressed.

There being no one else wishing to speak, Acting Chairman Blanchard closed the public hearing.

Mr. Columbo responded to comments of the public speaker by explaining that the rear windows have been redesigned to be 4' 8" high, and that, if that were inadequate he will work with Mr. Gruber during design review to establish a mutually agreeable design of the window and to dampen the sound of the condensing units. Mr. Columbo noted that one walnut tree will be removed, and all of the existing oak trees will be preserved.

Mr. Allen confirmed that the approval resolution contains conditions regarding baffling the condenser unit sound and re-designing the dwelling unit's second story windows so as to respect the privacy of the adjacent property.

Commissioner Dias indicated that although this site is zoned R-1, this item presents an example of where Mixed Use zoning, a zoning district that has been discussed but not implemented, could be put to use.

The Commission concurred and requested that staff study the implementation of Mixed Use zoning and report back to the Planning Commission.

Resolution Number 9509: Commissioner Dias moved and Commissioner Edwards seconded a Resolution Adopting a Mitigated Negative Declaration For The Bill's Market Mixed Neighborhood Retail And Residential Use Project Located at 1500 Humboldt Street, Assessor Parcel No. 180-460-068. - File No. CUP98-274 and waived the reading of the text. The motion carried with the following vote:

Ayes: (4) (Blanchard, Cummings, Dias, Edwards)
 Noes: (0)
 Abstentions: (0)
 Absent (3) (Carlile, Johnson, Denietolis)

Resolution Number 9510: Commissioner Dias moved and Commissioner Edwards seconded a Resolution Making Findings And Determinations And Approving a Conditional Use Permit For Bill's Market Mixed Use Dwelling Unit Addition on 1500 Humboldt Street, File No. MNP98-046 and waived the reading of the text. The motion carried with the following vote:

Ayes: (4) (Blanchard, Cummings, Dias, Edwards)
 Noes: (0)
 Abstentions: (0)
 Absent (3) (Carlile, Johnson, Denietolis)

Resolution Number 9511: Commissioner Dias moved and Commissioner Edwards seconded a Resolution Approving a Conditional Use Permit for the Nijjar Second Dwelling Unit Located at 1520 Humboldt Street - Assessor Parcel Number 180-460-069, File No. CUP98-275 and waived the reading of the text. The motion carried with the following vote:

Ayes: (4) (Blanchard, Cummings, Dias, Edwards)
 Noes: (0)
 Abstentions: (0)
 Absent (3) (Carlile, Johnson, Denietolis)

15. PUBLIC HEARING - CONDITIONAL USE PERMIT - COMFORT SUITES HOTEL - 200 Fountaingrove Parkway - File Number MNP97-057

Senior Planner Ron Allen stated that this is a request to develop an 81 room, 3 story hotel building on a vacant 4.6 acre hillside site on the south side of the intersection of Fountaingrove Parkway, a scenic road, and Round Barn Boulevard.

The proposed 81 room hotel development would occupy a visually prominent site, one parcel removed and up the hill from the intersection of Fountaingrove Parkway and Mendocino Avenue. The Fountaingrove Ranch Policy Statement contains design requirements for new retail developments in the Fountaingrove Ranch Planned Community. The proposed hotel would be sited adjacent to a Scenic Road, (Fountaingrove Parkway) and near a historic landmark, the Fountaingrove Round Barn. The Design Review Board considered the hotel proposal in light of the applicable design requirements of the General Plan, the Fountaingrove Ranch Policy Statement and other City design policies. The applicant requested to freeze project processing in order to conduct a series of design modifications to the project in an attempt to resolve substantial design issues. In March a traffic analysis was provided and the hotel project was scheduled for Commission review.

Lee Gage of 7636 North Ingram, Suite 107, Fresno, stated that he is the architect for the project, and noted that the project design has been revised according to the Design Review Board's recommendations. The design team includes a landscape architect and an arborist, who are working with the architect to preserve as many trees as possible. Preparation of this project has included obtaining a current topographical and archeological analyses of the site, as well as a traffic study. Mr. Gage pointed out the applicant intends to develop the easterly portion of the site at a future date.

In response to an inquiry from Commissioner Dias, Mr. Gage stated that, although the site is lower than the oak tree near the port-cochere, he would work with the landscape architect to preserve it by means of a retaining wall.

Acting Chairman Blanchard opened the public hearing.

There being no one wishing to speak, Acting Chairman Blanchard closed the public hearing.

Mr. Allen stated in response to traffic concerns of the Commissioners that, while the existing traffic is heavy, this particular project did not warrant a condition requiring a traffic signal. Arterial Vascular Engineering has been conditioned to install a signal light at the intersection of Fountaingrove Parkway and the upper loop of Round Barn Boulevard when they proceed with their next major construction phase.

Discussion ensued regarding the need for a computerized visual analysis of this project that includes views of the proposed landscaping and building with surrounding structures, with views from the site itself, from Fountaingrove Parkway heading uphill, and from Fountaingrove Parkway heading downhill, and to continue this item for thirty days in order to allow the applicant time to complete the analysis.

Motion: Commissioner Cummings moved and Commissioner Edwards seconded a motion to continue this item to the Planning Commission meeting of May 27, 1999.

Ayes: (4) (Blanchard, Cummings, Dias, Edwards)
 Noes: (0)
 Abstentions: (0)
 Absent (3) (Carlile, Johnson, Denietolis)

16. ADJOURNMENT

Acting Chairman Blanchard adjourned the meeting at 7:25 p.m. to the study session to be held in Conference Room number 7 at Santa Rosa City Hall on Thursday, May 13, 1999 at 3:00 p.m., and then to the regular Planning Commission Meeting to be held in the City Council Chamber at Santa Rosa City Hall on Thursday, May 13, 1999, at 4:00 p.m.

PREPARED BY:


 Tamara Taylor, Recording Secretary

APPROVED BY:


 Acting Chairman Blanchard

ATTEST:

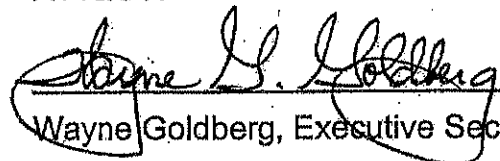
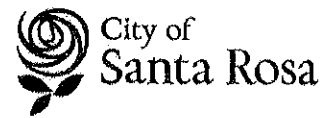

 Wayne Goldberg, Executive Secretary

EXHIBIT 6 – List of Approved Street Trees

RECREATION & PARKS DEPARTMENT
STREET TREE LIST



*Tree specie selection determined by planter strip width.

*Property owners are responsible for the maintenance and irrigation of street trees.

*Questions? Call 543-3770

<p>2' - 3' Planter 20'-25' tall</p>	<p>Acer buergeranum (Trident Maple) * Acer campestre (Hedge Maple) * Acer davidii (David's Maple) * Acer ginnala (Amur Maple) * Acer negundo 'flamingo' (Flamingo Box Elder) * Cercis canadensis (Eastern /'Texas' Redbud) * Cercis occidentalis (Western Redbud) * Crataegus phaenopyrum (Washington Thorn) * * Lagerstroemia fauriei 'varieties' (Crape Myrtle) * * Photinia fraseri * * Tristania laurina 'Elegant' *</p>
<p>3' & 4' Planter 4 x 4 wells 25-30' tall</p>	<p>Acer rubrum 'smaller varieties' (Red Maple) * Carpinus betulus 'Fastigiata' (Pyramidal European Hornbeam) Chionanthus retusa (Chinese Fringe Tree) * * Koelreuteria paniculata (Goldenrain) * Koelreuteria bipinnata (Chinese Flame) * Laurus nobilis (Sweet Bay) * Magnolia 'Little Gem' or 'St. Mary' * Malus 'sterile varieties' (Crabapple) * Prunus cerasifera (Purple Leaf Plum) *</p>
<p>4' & 5' Planter 30'-40' tall</p>	<p>Acer rubrum 'varieties' (Red Maple) * Aesculus carnea (Red Horsechestnut) * * Alnus cordata (Italian Alder) Chitalpa tashkentensis (Chitalpa) * Ginkgo biloba 'Saratoga' (Saratoga Ginkgo) * Pistacia chinensis (Chinese Pistache) * Pyrus calleryana 'varieties' (Flowering Pear) * *</p>
<p>5' & 6' Planter 40'-45' tall</p>	<p>Acer freemanii (Autumn Blaze) * Acer pseudoplatanus (Sycamore Maple) * Celtis occidentalis (Common Hackberry) Fraxinus holotricha 'Moraine' (Moraine Ash) * Sapium sebiferum (Chinese Tallow) * Washington robusta (Mexican Fan Palm) *</p>
<p>6' & 8' Planter 50' tall</p>	<p>Aesculus californica (California Buckeye) * Celtis australis (European Hackberry) Ginkgo biloba 'Autumn Gold' (Autumn Gold Ginkgo) * Magnolia grandiflora 'Samuel Sommer' or 'Russet' (Southern Magnolia) * * Quercus ilex (Holly oak) * Quercus suber (Cork oak) *</p>
<p>>8' Planter 50'-60' tall</p>	<p>Platanus acerifolia (London Plane Tree) Quercus agrifolia (Coast Live Oak) * Quercus lobata (Valley Oak) Quercus rubra (Red oak) * Ulmus parvifolia (Lacebark Elm) Zelkova serrata (Sawleaf Zelkova)</p>

*=Evergreen * =Flowering * =Fall Color