

**REPORT TO PLANNING COMMISSION**

Hearing Date: January 24, 2011
File Number: 2010-7844

SUBJECT: **2010-7844:** Appeal of a Decision by the Director of Community Development denying a Tree Removal Permit for one of twelve trees. The property is located at **575 E. Remington Drive** in an R-4/PD (High-Density Residential/Planned Development) Zoning District (APNs: 211-20-041, 211-20-060, 211-20-062)

REPORT IN BRIEF:

Existing Site Conditions Multi-Family Apartments

Surrounding Land Uses

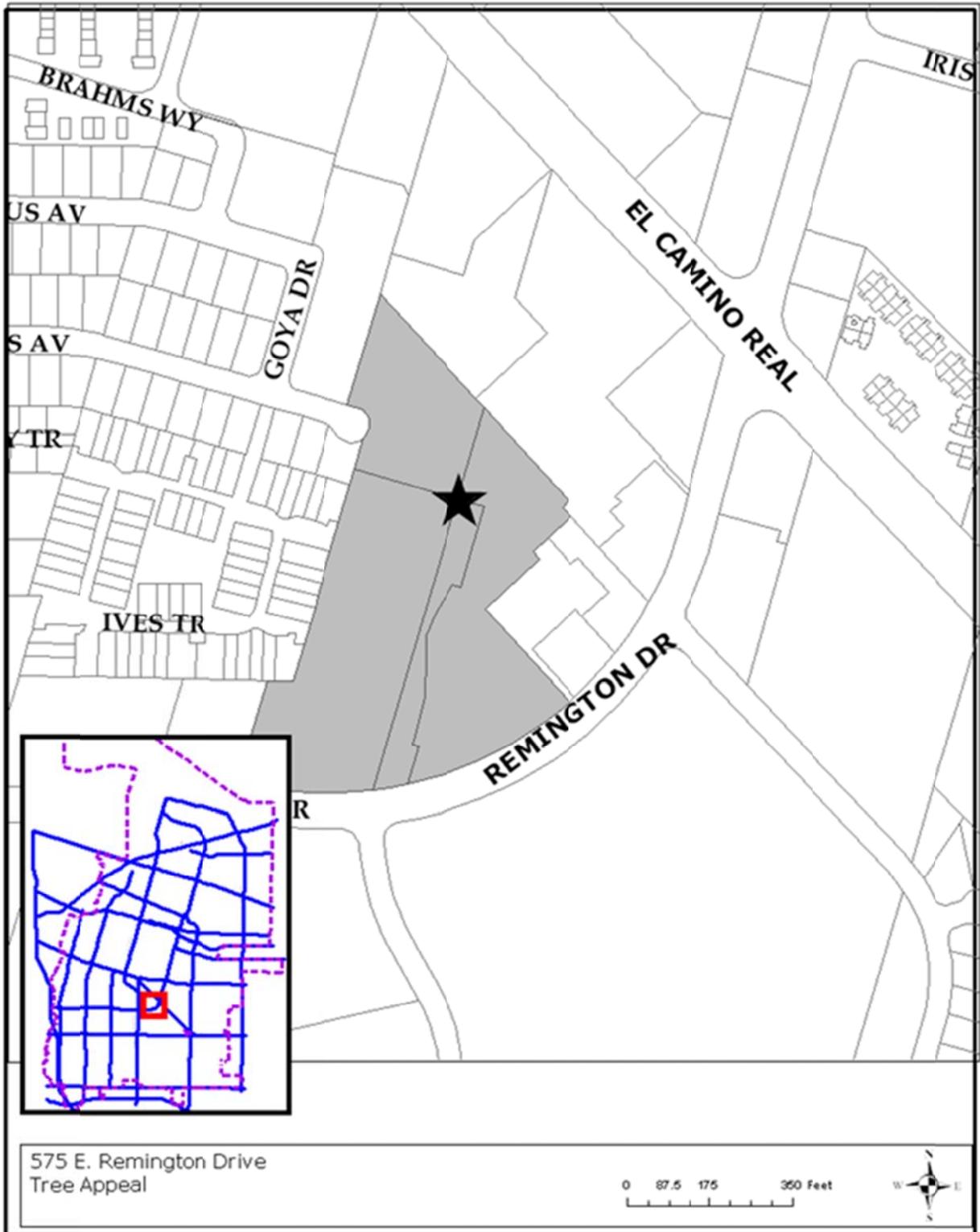
North	Commercial along El Camino Real
South	Townhomes and Orchard Heritage Park
East	Apartments
West	Townhomes and Apartments

Issues Tree Condition

Environmental Status A Class 4 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Staff Recommendation Deny the Appeal and Deny the Tree Removal Permit for one of the twelve trees

VICINITY MAP



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Low Density Residential	Same	Medium Density Residential
Zoning District	R-4/PD	Same	R-4/PD
Lot Size (s.f.)	176,763	Same	8,000

BACKGROUND:

Two Tree Removal Permit (2010-7843 & 2010-7844) applications were filed by the property owner on November 30, 2010 to remove approximately 21 trees of varying species at Remington Grove Apartments.

File Number	# of Requested Trees to be Removed	# of Trees Approved	# of Trees Denied
2010-7843	Nine Canary Island Pines	1	8
2010-7844	Nine Monterey Pine and three Canary Island Pines (12- total)	11	1

The subject Tree Removal Application 2010-7844 consisted of twelve trees located on the eastern portion of the site (Remington Grove Apartments). On December 6, 2010, the City Arborist inspected the trees and recommended denial of one Canary Island Pine tree. (Attachment C – Site Map). Planning Division staff concurred with the City Arborist’s recommendation and notified the applicant of the decision on December 14, 2010 (Attachment D – Permit Letter). A table of findings for each tree provided by the City Arborist is also included in Attachment D. The applicant appealed the Tree Removal Permit (Attachment E – Appeal Letter) on December 21, 2010.

For the subject application (2010-7844) as shown on the Site Map, tree #17 (Canary Island Pine) was denied for removal while trees #10-16, and #18-21 were approved.

Previous Actions on the Site

The following table summarizes previous planning applications related to the project site.

File Number	Brief Description	Hearing/Decision	Date
2008-0933	Tree Removal Permit for three African Sumac Trees	Staff / Approved	8/27/2008
2004-0377	Tree Removal Permit for six Canary Island Pines	Staff / Denied	5/21/2004
2003-0377	Tree Removal Permit for three Pines	Staff / Approved	6/17/2003
2003-0337	Tree Removal Permit for six trees	Staff / Approved	5/21/2003
2001-0633	Tree Removal Permit for 39 trees	Staff / Approval for 14 & Denial for 25	10/31/2001

Two of the eight denied tree removals of the subject application were also denied as part of the 2004-0377 permit request. The 2001-0633 Tree Removal Permit also appears to have included each of the denied trees that are associated with the current permit applications.

DISCUSSION:

Applicant's Appeal

The applicant has submitted a letter (Attachment E) stating that the removal of the nine trees (2010-7843 & 7844) is justified due to "posing a significant hazard to the existing property and the public." The applicant provided a recommendation from a certified arborist, Carlos Corona, which noted that it is "highly likely that the subject tree will fail in the near future (or it) will create significant structure damage." The applicant has also noted that pruning and thinning out the trees has been helpful but is not a good, long term solution because the trees are too close to the building. He further states that previous pruning has occurred and the same hazards remain, and it would be only a temporary solution of protecting property and people. The applicant has provided photos of the trees as included in Attachment E.

Staff Discussion

Planning staff and the City Arborist have each visited the site. The City Arborist notes that many of the Canary Island Pines are vigorous and have been well maintained. These trees are considered semi-mature and have 30-40 years remaining life expectancy. The inspection also noted that each of the Monterey Pines and three other Canary pines were diseased, damaged or future growth threatened the structure or gas line. Approval was granted for 12 of the requested 21 trees. The nine trees recommended for retention could be routinely pruned. The use of heavy end weights and co-dominant laterals is recommended. Each of the trees recommended for retention are considered to be in "Good" condition by the City Arborist.

The City Arborist has met with the applicant on-site and recommended additional measures that could allow for reconsideration of certain trees. It was noted that an excavation of those trees adjacent to structures could show whether roots would cause a significant chance of a problem where root cutting may not be an option. This had been previously demonstrated for tree #11 which had been approved for removal. Although it was felt that certain trees had a natural lean, a recommendation was made for a cabling system on specific trees which would further provide confidence in the stability of the trees.

Environmental Review

A Class 4 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 4 Categorical Exemptions includes minor alteration of land.

FISCAL IMPACT

No fiscal impacts other than normal fees and taxes are expected.

PUBLIC CONTACT

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none">• Published in the <i>Sun</i> newspaper• Posted on the site• 180 notices mailed to property owners and residents adjacent to the project site	<ul style="list-style-type: none">• Posted on the City of Sunnyvale's Web site• Provided at the Reference Section of the City of Sunnyvale's Public Library	<ul style="list-style-type: none">• Posted on the City's official notice bulletin board• Posted on the City of Sunnyvale's Web site

Staff has not received any written feedback regarding the proposal.

CONCLUSION

Discussion: Staff is recommending denial of the appeal because the Findings for tree removal (Attachment A) were not made.

Findings and General Plan Goals: Staff was not able to make the required Findings for the Tree Removal Permit. Recommended Findings and General Plan Goals are located in Attachment A.

Conditions of Approval: Recommended Conditions of Approval are located in Attachment B.

ALTERNATIVES

1. Deny the appeal and uphold the decision of the Director of Community Development to deny a portion of the Tree Removal Permit.
2. Grant the appeal and approve the Tree Removal Permit subject to the conditions in Attachment B.
3. Grant the appeal and approve the Tree Removal Permit with modified conditions.

RECOMMENDATION

Alternative 1. Deny the appeal and uphold the decision of the Director of Community Development.

Prepared By:

Ryan M. Kuchenig
Project Planner
Reviewed by: Steve Lynch, Senior Planner

Approved by:

Trudi Ryan
Planning Officer

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site Map
- D. Letter Denying the Tree Removal Permit, Dated 12/14/2010 City Arborist Table of Findings
- E. Letter from the Applicant including photos of subject trees (also includes private certified arborist report)

RECOMMENDED FINDINGS

Tree Removal Permit

In order to grant a Tree Removal Permit, one or more of the following findings must be met. Based on the additional information, staff was able to make one of the three required findings.

1. The tree is diseased or badly damaged. *(Finding Not Met)*
The subject trees that were previously denied are not diseased or damaged. They have been found to be in good health and condition by the City Arborist.

2. The tree represents a potential hazard to people, structures or other trees. *(Finding Not Met)*
Staff found that those trees recommended for retention do not pose a potential threat to people, structures, or other trees. The City Arborist has noted that routine maintenance with pruning and recommended measures such as heavy end weights could ensure a longer lifespan. In other cases, additional excavation would also need to be demonstrated to indicate that those trees that close to structures are a potential hazard or could not otherwise be pruned.

3. The tree is in basically sound condition, but restricts the owner's ability to enjoy the reasonable use or economic potential of the property, or unreasonably restricts an adjoining property's use or economic potential of the adjoining property. In the event this is the sole basis for the application, the following criteria shall be used to evaluate the application under this subsection *(Finding Not Met)*:
 - a. The necessity of the requested removal to allow construction of improvements such as additions to existing buildings or incidental site amenities or to otherwise allow economic or reasonable enjoyment of property;
 - b. The topography of the land and the effect of the requested action on water retention and diversion or increased flow of surface water;
 - c. The approximate age of the tree relative to its average life span;
 - d. The potential effect of removal on soil erosion and stability where the tree is located;
 - e. Current and future visual screening potential
 - f. A property has sufficient landscaping or is over landscaped
 - g. Allow removal of overgrown, but healthy, trees.
 - h. Any other information the Director of Community Development finds pertinent to the application.

The subject trees are not restricting reasonable use or economic potential of the property or adjoining property. City staff has visited the site and has determined that those trees approved for denial are in good health and have a remaining life expectancy of at least 30 to 40 years with appropriate maintenance and therefore merit preservation.

**RECOMMENDED
CONDITIONS OF APPROVAL AND
STANDARD DEVELOPMENT REQUIREMENTS
JANUARY 24, 2011**

Planning Application **2010-7844, 575 E. Remington Drive**
Tree Removal Permit to allow the removal for twelve trees
located throughout Remington Grove Apartments.

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

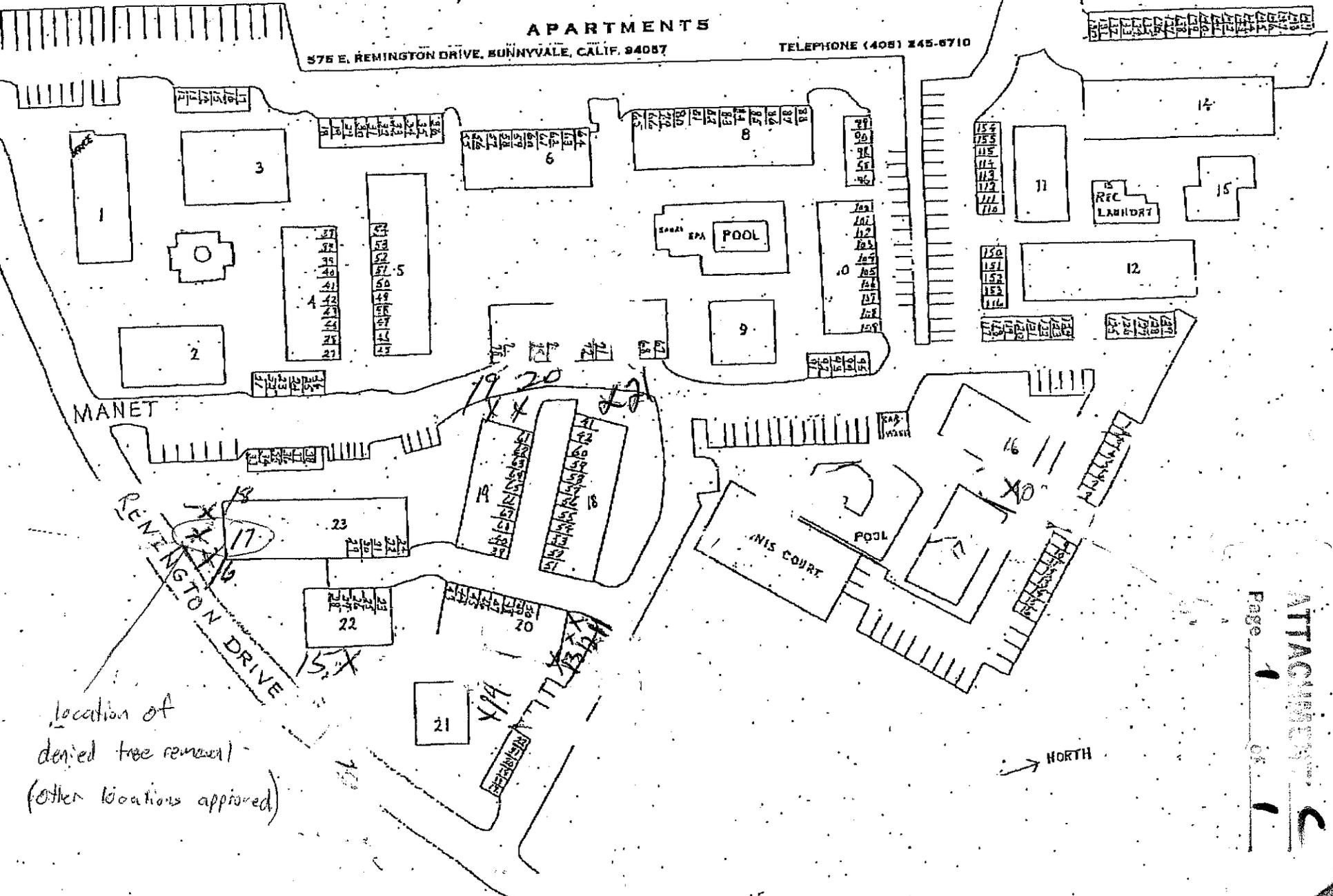
1. Twelve replacement trees, a minimum of 15-gallon size, shall be planted anywhere on the property within 90 days of removal of the subject tree. If a replacement tree is not planted, an in-lieu fee of \$230.00 shall be paid to the City within 90 days of removal of the subject tree to allow a tree to be planted on City property.

Remington Grove

APARTMENTS

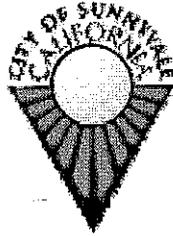
575 E. REMINGTON DRIVE, SUNNYVALE, CALIF. 94087

TELEPHONE (408) 245-6710



2010-7844
Site Map

location of
denied tree removal
(other locations approved)



December 14, 2010

Sent Via E-mail to: steve@remingtongrove.com

Louis & Steve Pavlina
596 E. El Camino Real, #1
Sunnyvale, CA 94087

Subject: Tree Removal Permit – 575 E. Remington Drive
File No.: 2010-7844

Dear Louis and Steve Pavlina:

The Department of Community Development has reviewed your application for a Tree Removal Permit for **nine (9) Monterey Pine trees and three (3) Canary Island Pine trees** located at the above referenced address.

Approval is granted for removal of **nine (9) Monterey Pine trees and two (2) Canary Island Pine trees**, specified as #10-16 & 18-21, as specified in the application. The Department of Community Development has **denied** your request for removal of the **one (1) Canary Island Pine tree**, specified as #17, in the application. In order to grant a tree removal permit, at least one of the following findings is necessary: (1) the tree is not healthy, (2) it represents a potential hazard, or (3) it unreasonably restricts the use of your property or your neighbor's use of their property. Based on an examination of the subject tree, none of these findings can be made. Please refer to the ISA Pruning Guidelines at <http://www.treesaregood.com> for information on safe pruning techniques to avoid damaging the tree. We strongly recommend consulting a Certified Arborist for pruning assistance.

The Sunnyvale Tree Preservation Ordinance was adopted to protect the diversity of trees in Sunnyvale. Trees are a valuable asset to the community in terms of aesthetics, protection of habitat, and enhancement of economic value of property and may be removed only under the circumstances noted above. The tree is not diseased or damaged and has approximately 30-40 years of remaining life expectancy. The subject tree also does not appear to be posing a hazard to the site and surrounding structures. The tree has a natural lean and no apparent root damage has been caused.

You may appeal this decision to the Planning Commission by filing a written appeal within fifteen calendar days of the date of this notice. There is a \$142.00 filing fee for the appeal.

According to the Sunnyvale Municipal Code, Section 19.94.080, any tree removed is required to be replaced. To replace the trees approved for removal, the City requires that **one (1) 15-gallon tree for every removal (11 approved) of any suitable medium or large-sized species** be planted anywhere on the site where it can grow to maturity

December 14, 2010
Louis and Steve Pavlina
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unimpaired. You may refer to the City's website *Trees.inSunnyvale.com* for information regarding appropriate trees for the site. Please **complete and mail the enclosed Tree Replacement Postcard** to let us know when the replacement tree has been planted.

If you do not wish to plant the replacement tree, or do not have room for the replacement tree, a \$247.00 in-lieu fee for each replacement tree not planted shall be paid to the City of Sunnyvale. Funds are used to plant trees on public property within the City. Checks shall be made payable to the City of Sunnyvale (please include your driver's license number on the check), and are due **within 90 days of the date of removal** of the subject tree. Please include "Attn: Planning Division" on the envelope.

This Tree Removal Permit is valid for a year from the date of issuance. **The permit must be displayed in a location visible from the public right-of-way during tree removal.** If you need assistance with replacement tree selection, you may consult with the City Arborist, Steve Sukke, at (408) 730-7505. If you have any questions regarding this permit, please contact me at (408) 730-7431. Thank you for your cooperation.

Sincerely,



Ryan M. Kuchenig
Project Planner

**Attachment E for Project 2010-7844 contains
many photographs.**

**Copies of photographs are available for public
viewing at City Hall. (Photos not included on
website as file size was too large.)**

Remington Grove

APARTMENTS

ATTACHMENT E
Page 1 of 28

575 E. REMINGTON DRIVE, SUNNYVALE, CALIF. 94087

TELEPHONE (408) 245-6710

December 21, 2010

Attn. Ryan Kuchenig, Associate Planner
Dept. of Community Development
City of Sunnyvale
456 W. Olive Ave.
Sunnyvale, CA 94088-3707

Subject: **Tree Removal Permits: City File Numbers 2010-7843 and 2010-7844**

Dear Mr. Kuchenig:

In response to the letters (copies attached) dated December 14, 2010, from the City of Sunnyvale pertaining to two Tree Removal Permits (City File Numbers 2010-7843 and 2010-7844); **this letter was filed with the City of Sunnyvale on December 21, 2010, to request its Planning Commission to appeal the decision by the Planning Department that denied the removal of nine (9) Canary Island Pine Trees** from the property located at 575 E. Remington Drive, Sunnyvale, CA. (APN's: 211-20-041, 211-20-060, and 211-20-062). The required filing fee of \$284.00 (\$142.00 per tree removal permit) was paid December 21, 2010, by check, # 4582, copy attached.

In support of this appeal, attached, please find the following:

1. Additional photos of the subject nine trees, Trees # 1, 3, 4, 5, 6, 7, 8, 9, and 17 that provide more views of these trees and their high or severe potential hazards to the property, buildings, and the public; and
2. The nine (9) tree reports by the certified arborist, Carlos Corona, # WE-8243A (that were attached to the original tree removal applications) that read, "**It is highly likely that the subject tree will fail in the near future [or it] will create significant structure damage, posing a significant hazard to the existing property and the public.**"

Based on this information, it is irrational and irresponsible to "wait and see" if something will happen. It will happen; it is just a matter of time before the trees fail and/or cause damage to structures and/or the public.

Although pruning and thinning out trees was and can be helpful, it is not a good, long-term solution because:

1. The trees are too close to the buildings;
2. Pruning and thinning out trees was already performed (early 2008) and the same hazards still remain; and
3. It is only a temporary (but unreliable solution) of protecting property and people.

For these aforesaid reasons, I submitted this letter to request an appeal of the decision that denied the removal of nine (9) Canary Island Pine Trees.

Sincerely,

Steve Pavlina

Attachments



WE-8243A

ARBOR EXPERTS

" PROFESSIONAL TREE SERVICE "

1666 FARRINGTON DR. SAN JOSE, CA. 95127

LIC.# 780521

TEL: (408)254-7757
www.arborexperth.net

TEL: (650)212-2800

FAX: (408)254-1245
arborexperth@sbcglobal.net

CLIENT:

Name: REMINGTON GROVE APARTMENTS

Date: 11-22-2010

Address: 575 E. REMINGTON DR.

Wk. Phone: (408) 738-1553

SUNNYVALE, CA. 94087

Wk. phone: (408) 245-6710

Species: Canary Island Pine (Pinus canariensis)

Fax: (408) 738-1922

Tree location: Tree #17 / Next to building 23

Circumference: 79" at 4.5' ft. above natural grade # of trunks: 1 Height: 62'

Crown spread: 28' Crown ratio: 80%

Form: Excurrent Decurrent Symmetrical Minor asymmetry Major asymmetry

Age Class: Young Semi-mature Mature Over-mature

Foliage Color: Normal Chlorotic Necrotic

STRUCTURE: Poor taper: branches Bow,sweep _____ Codominant forks _____

Multiple attachments: 1 Included bark: _____ Excessive end weight: branches

cracks/splits _____ Wounds/seam _____ Cavity _____

Conks/mushrooms _____ Bleeding/sap flow: trunk _____ Suspected root rot: _____

Dead wood/stubs _____ Decay _____ Previous failure _____

Vigor class: Excellent Average Fair Poor

Expose roots: Severe Moderate Low

TREE CONDITIONS:

Subject Pine tree is growing very close to the building, the roots of the tree present a high potential hazard, due to the inadequate location where the tree is growing.

It is highly likely that the subject tree will fail in the near future, posing a significant hazard to the existing property and the public.

Failure potential: low medium high severe

Tree part most likely to fail: Branches

Hazard abatement: Remove subject tree and replace with a 15 gallon tree at a different location on the property.

CARLOS CORONA
Certified Arborist # WE-8243A