

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
RAINTREE 2051 3RD ST. LLC,)
Appellant(s))
vs.)
SAN FRANCISCO PUBLIC WORKS)
BUREAU OF URBAN FORESTRY,)
Respondent

Appeal No. 16-139

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on August 18, 2016, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the DENIAL on August 05, 2016, of a Tree Removal Permit (denial of request to remove three street trees) at 2051 3rd Street.

PERMIT NO. 771015

FOR HEARING ON October 26, 2016

Address of Appellant(s):

Address of Other Parties:

Raintree 2051 3rd Street LLC, Appellant c/o Richard Price, Agent for Appellant 28202 Cabot Road, Suite 300 Laguna Niguel, CA 92672	N/A
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BOARD OF APPEALS

Date Filed:

AUG 18 2016

**CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS**

APPEAL # 16-139

PRELIMINARY STATEMENT OF APPEAL

I / We, **Raintree 2051 3rd St. LLC**, hereby appeal the following departmental action: **DENIAL of Tree Removal Permit No. 778 364** by the **San Francisco Public Works Bureau of Urban Forestry** which was issued or became effective on: **August 05, 2016**, for the property located at: **2051 3rd Street**.

BRIEFING SCHEDULE:

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: **October 06, 2016, (no later than three Thursdays prior to the hearing date)**, up to 12 pages in length, double-spaced, with unlimited exhibits, with eleven (11) copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day. In addition, an electronic copy should be emailed to: boardofappeals@sfgov.org if possible. RP

Respondent's and Other Parties' Briefs are due on or before: **October 20, 2016, (no later than one Thursday prior to hearing date)**, up to 12 pages in length, double-spaced, with unlimited exhibits, with eleven (11) copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day. In addition, an electronic copy should be emailed to: boardofappeals@sfgov.org if possible.

Only photographs and drawings may be submitted by the parties at hearing.

Hearing Date: **Wednesday, October 26, 2016, 5:00 p.m., City Hall, Room 416**, One Dr. Carlton B. Goodlett Place.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any change to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should submit eleven (11) copies of all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection at the Board's office. You may also request a copy of the packet of materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

If you have any questions please call the Board of Appeals at 415-575-6880

The reasons for this appeal are as follows:

See attached statement.

Appellant or Agent (Circle One):

Signature: Richard Price

Print Name: RICHARD PRICE

BOARD OF APPEALS

AUG 18 2016

APPEAL # 16-139



August 5, 2016

Richard Price
RAINTREE PARTNERS
28202 Cabot Road, Suite 300
Laguna Niguel, CA 92677

Edwin M. Lee
Mayor

Mohammed Nuru
Director

Carla Short
Superintendent

Urban Forestry
1155 Market St., 3rd Floor
San Francisco, CA 94103
tel 415-554-6700

sfpublicworks.org
facebook.com/sfpublicworks
twitter.com/sfpublicworks

Re: Denial letter regarding tree removal application for 2051 3rd Street

Dear Property Owner:

We received your application requesting the removal of three (3) street tree(s) adjacent to **2051 3rd Street**. The application was submitted to facilitate a Board of Appeals review.

Application Background:

Removal permit application #771015 was approved in January of 2014 to remove six (6) trees and plant nine (9) with the condition that the specimens be at least 48" box and 60" if feasible. In the fall of 2015, the project team began a conversation with Urban Forestry to start finalizing planting locations for the new development. As a result of utilities (street lights and on Third Street an existing water line within 2' of the proposed tree locations) the originally proposed nine (9) trees could not all be planted.

Therefore, Urban Forestry required the project to submit a removal application so that this matter could be formally reviewed by the BOA, and as a result removal permit #778364 has been submitted and denied.

The project will request that the BOA approve the "loss" of plantable sites that were originally stated on the site plans and approved by BOA Appeal #14-058. Urban Forestry agrees that the proposed plan is reasonable considering the site constraints like utilities and street lights. The new schematic only allows six new trees to be planted. Two (2) 36" box (reduced from 48" because of water main constraint) on 3rd Street and four (4) 60" box on Illinois.

This Order may be appealed to the Board of Appeals within 15 days of August 5th, 2016.

Board of Appeals:

1650 Mission, Room 304 San Francisco, CA 94103 (between Van Ness and
Duboce Avenues)

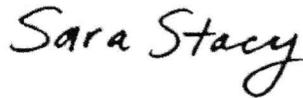
Phone: 415.575.6880

Fax: 415.575.6885

Regular office hours of the Board of Appeals are Monday through Friday from
8am to 5pm. Appointments may be made for filing an appeal by calling 415-
575-6880. All appeals must be filed in person. For additional information on
the San Francisco Board of Appeals and to view the Appeal Process Overview,
please visit their website at <http://sfgov.org/bdappeal/>

Please contact our office if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Sara Stacy". The signature is written in a cursive, flowing style.

Sara Stacy
Urban Forestry Inspector
(415) 641-2675 ph
(415) 522-7684 fax
Sara.Stacy@sfdpw.org

Enclosures: 2013 submitted schematic
2016 updated planting plan
BOA decision 14-058

August 18, 2016

RAINTREE
P A R T N E R S

City and County of San Francisco
Board of Appeals
Attention: Cynthia Goldstein
1650 Mission Street, Suite 304
San Francisco, CA 94103

BOARD OF APPEALS

AUG 18 2016

APPEAL # 16-139

Dear Ms. Goldstein:

Please consider this letter a formal request to appeal the Department of Urban Forestry's denial of submitted tree removal application **#778364**. Raintree Partners has worked closely with the Chris Buck and Sara Stacy in the Department of Urban Forestry for the past several months to resolve a tree planting plan to meet DUF's goals at our property located at 2051 3rd Street & 650 Illinois.

Removal permit application #771015 was approved in January of 2014 to remove six (6) trees and plant nine (9) with the condition that the specimens be at least 48" box and 60" if feasible (BOA Appeal #14-058). In the fall of 2015, the project team began a conversation with Urban Forestry to start finalizing planting locations for the new development. As a result of utilities (electrical, street lights, and an existing water line within 2' of the proposed tree locations) the originally proposed nine (9) trees could not all be planted. Therefore, Urban Forestry required the project to submit a removal application so that this matter could be formally reviewed by the BOA, and as a result removal permit **#778364** has been submitted and denied.

The project will request that the BOA approve the "loss" of plantable sites that were originally stated on the site plans and approved by BOA Appeal #14-058. The new schematic only allows six new trees to be planted. Two (2) 36" box (reduced from 48" because of water main constraint) on 3rd Street and four (4) 60" box on Illinois.

Thank you,

Rick Price
Raintree Partners
949-365-5657
rprice@raintreepartners.com

October 26, 2016

President Daryl Honda
San Francisco Board of Appeals
1650 Mission Street, Suite 304
San Francisco, CA 94103

RE: Project Sponsor's Appeal of Department of Urban Forestry's denial of Tree Removal Application # 778364

Hearing Date: November 16, 2016 at 5:00pm

Dear President Honda and Commissioners:

On behalf of Raintree 2051 Third Street LLC ("Appellant," "Raintree Partners"), the owner of 2051 Third Street (the "Property," "Project"), we write to appeal the Bureau of Urban Forestry's (BUF) denial of submitted tree removal application #778364. Raintree Partners has worked closely with Chris Buck and Sara Stacy in the Bureau of Urban Forestry for the past several months to resolve a tree planting plan to meet BUF's goals at our property located at 2051 3rd Street & 650 Illinois. Raintree understands the recent denial by BUF for removal application #778364 is part of the necessary protocol in order for Raintree to properly resolve changes to its current tree removal permit (#771015), upon which current permit the Board of Appeals was previously involved (BOA Appeal #14-058).

Background

Appellant began the entitlement process on the Project in 2013 to build 92 residential units. As part of the entitlement process Appellant submitted a tree removal permit (which included replacement trees) to the Bureau of Urban Forestry in December of 2013. The Department reviewed and approved

the Appellant's tree removal permit application and subsequently issued tree removal permit #771015 on January 14, 2014.

Shortly thereafter, the issuance of permit #771015 was challenged by a third party and the appeal was formally heard by the Board of Appeals on July 2, 2014. The third party challenged the Bureau of Urban Forestry's decision to issue permit #771015 because the permit allowed for two "significant" eucalyptus trees along Illinois Street to be removed contrary to the third party's wish (see Exhibit A for location of eucalyptus trees along Illinois Street). At that time, these eucalyptus trees were characterized as "significant," a technical BUF term, due to i) their proximity to the right-of-way (i.e., within 10 feet) and ii) their large size (i.e., trunk exceeding 12", height exceeding 20', and canopy exceeding 15'). The third party desired that these two eucalyptus trees remain because of their size and ecological value. Raintree applied for the permit for the removal of trees because i) the trees were deemed in poor structural health by a certified arborist (Roy Leggit) and ii) in order to develop the entitled Property. Specifically discussed at the 7/2/14 hearing with the BOA, had the two eucalyptus trees not been removed, it would have been severely detrimental to the project reducing the unit and parking counts by 16% and 20%, respectively.

At conclusion of the hearing, the Board of Appeals elected to modify permit #771015 by upholding the permit but by increasing the size requirements of the replacement trees associated with the permit from 24" box size (BUF standard) to 48" box size, or 60" box size if possible. Officially, the Board of Appeals final decision on July 2, 2014 amended permit #771015 with the following language (see Exhibit B for a copy of the entire permit):

"Revisions Notes: Revised to extend permit, as Board of Appeals jurisdiction suspended the permit. This permit is now valid for 6 months from 7/10/13. Board placed condition that the

replacement trees be of a 48" box size, and if possible of a 60" box size, with size of said replacement trees to be determined by the Department."

Summary of Revised Permit #771015

Based on this conclusion by the Board of Appeals, the revised tree removal permit #771015 is summarized as follows:

Trees to be Removed:		
Location:	Count:	Type:
Illinois Stree Frontage:	2	Eucalyptus
3rd Street Frontage:	3	Liquidambar styraciflua (American Sweet Gum)
		Lophostemon confertus (Brisbane Box)
Total:	6	

Replacement Trees:			
Location:	Count:	Type:	Size:
Illinois Stree Frontage:	5	Magnolia grandiflora (Magnolia)	48" box or 60" if possible (per BOA modification)
		Lophostemon confertus (Brisbane Box)	48" box or 60" if possible (per BOA modification)
3rd Street Frontage:	4		
Total:	9		

Utility Conflict Findings and Proposed Tree Removal Permit

Since the Board of Appeals modified the tree removal permit in July 2014, the Project began full design and construction. As part of the design and construction process Raintree began its site work including physical site reconnaissance to get a clearer understanding of existing subgrade conditions with respect to utility locations. This work included potholing to determine exact locations of City water lines, cable/phone lines, and PG&E gas and electric lines. The results of this potholing uncovered a

series of utility related conflicts and constraints previously unknown by the City and Raintree Partners.

These findings and proposed solutions are summarized as follows and are shown in Exhibit C:

- 3rd Street Frontage Conflicts:
 - o Constraints affecting the size of the proposed replacement trees:
 - Water line (dashed line shown in red running north to south): There is an existing City water line within 2' of the proposed replacement tree locations. By BUF regulations a proposed tree needs to be at least 9" (3' on center) clear of an existing water line. A 48" box tree would not only encroach on but require removal of the existing City water line along the property frontage.
 - Proposed Solution: The Bureau of Urban Forestry is supportive of a 36" box tree with a root barrier along this water line. This maintains the largest size box tree allowed by BUF while maintaining an appropriate clearance from the water line. See Exhibit C for proposed tree planting locations on 3rd Street. This request to reduce the size of replacement trees was formally made to BUF in tree removal permit application #778364, and although BUF is supportive of this solution, the application was denied because it alters original direction by the BOA.
 - o Constraints affecting the count of the proposed replacement trees:
 - Gas line (SW corner of Property): A proposed gas line running perpendicular to the water line at the south end of the property is necessary to supply gas to the Project. This line constricts Raintree's ability to plant within three feet of either side of this gas line.

connection from the splice box and will provide power to the Project. The design and location of these electrical connections shown were proposed and approved by PG&E in 2015. The presence of these electrical vaults and their associated conduit constrict Raintree's ability to plant within the PG&E-required clear areas (shown in red).

- Proposed Solution: The splice box, underground transformer, and conduit contribute to constraints, which result in Raintree's application to remove one proposed tree along Illinois Street. After reviewing all options with BUF and the project landscape architect, Raintree has proposed removal of one of the five replacement trees currently required in Permit #771015 along the Illinois Street frontage. In order to remedy the removal of one of these trees, Raintree is proposing to plant four 60" box trees along this frontage. This request was formally made to BUF in tree removal permit application #778364, and although BUF is supportive of this solution, the application was denied because it alters original direction by the BOA.

Summary

In the fall of 2015, the project team began a conversation with Urban Forestry to start finalizing planting locations for the new development. The Appellant is unable to accommodate planting three of the nine trees listed in our existing Permit #771015 and we hereby request these removed from our current permit. The reason for the removal of these three trees is due to existing and proposed utility connections within the public sidewalk as outlined above and shown in Exhibit C. These utilities do not

allow the proper clearances and spacing requirements for new trees as required by DPW and BUF. We also request a reduction in the size requirement for the trees along 3rd Street from 48" box to 36" box due to the named utility conflicts, specifically the existing water line. The trees requested to be removed from the current permit include the following:

- Illinois Street:
 - One (1) Magnolia Grandiflora
- 3rd Street:
 - Two (2) Brisbane Box

Urban Forestry required the Project to submit a removal application so that this matter could be formally reviewed by the BOA, and as a result removal permit #778364 has been submitted and denied. We respectfully request the BOA review and approve and uphold permit #778364 to allow for i) removal of these three trees and ii) a reduction in the size requirement of the replacement trees to 36" box size on the 3rd St. frontage. We will however, commit to planting four 60" box size trees along the Illinois St. frontage of the property, which was the site of the original appeal, and the frontage that was impacted by the removal of the two red ironbark eucalyptus trees. The Bureau of Urban Forestry has reviewed this proposed resolution and their Respondent's Brief will confirm their support for our appeal.

Thank you,

Rick Price
Raintree Partners
25 Taylor Street
San Francisco, CA

Impact to Site Plan



**CITY AND COUNTY OF SAN FRANCISCO
Department of Public Works - Bureau of Urban Forestry
2323 Cesar Chavez Street, San Francisco, CA 94124**

PERMIT FOR PLANTING, MAINTENANCE OR REMOVAL OF SIDEWALK TREES

Pursuant to the provisions of Article 16, Sec. 806 of the Public Works Code, as amended, permission is hereby granted to:

Richard Price
Raintree 2051 Third Street LLC
28202 Cabot Rd # #300
Laguna Niguel CA 92677

This permit specifically grants permission for:

Permit Remove Tree - 2 - Eucalyptus Spp :: Eucalyptus
Permit Remove Tree - 3 - Liquidambar styraciflua :: American Sweet Gum
Permit Remove Tree - 1 - Lophostemon confertus :: Brisbane Box
Permit Plant Tree - 9 - Tree(s) ::

on the sidewalk adjacent to the premises at:

2051 03rd St

aka 650 illinois st.

Permittee agrees to hold harmless the City and County of San Francisco, its officers, agents and employees from any damage or injury caused by reason of the planting or the placement or maintenance of the planter plants. The owner or owners of the respective property shall be solely liable for any damage. Per Article 16: Section 806.5.(b).(1) all work associated with a street tree permit must be completed within six (6) months of issuance, unless an extension has been granted by the Department. This permit must be on site when permission has been granted for removal of a street tree. If a tree species is not specified above, please contact Bureau of Urban Forestry to discuss an appropriate and approved species to plant.

Special Conditions: Section 138.1 of the Planning Code required the planting of eleven street trees. There are two existing Brisbane Box street trees to remain protected during construction. 24" box tree minimum size to be planted. On the Illinois St side of the property 5 trees will be planted and they will be Magnolia grandiflora tree species and on the 3rd St. side of property 4 trees will be planted and will be Brisbane Box trees.

Revision Notes: Revised to extend permit, as Board of Appeals jurisdiction suspended the permit. This permit is now valid for 6 months from 7/10/14. Board placed condition that the replacement trees be of a 48" box size, and if possible of a 60" box size, with size of said replacement trees to be determined by the Department.

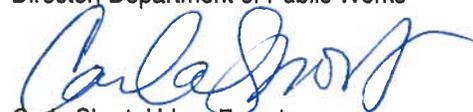
Revision Date: 07/09/2014

Date Issued: 1/14/2014

Permit No: 771015

Approved:

Director, Department of Public Works



Carla Short, Urban Forester

Bureau of Urban Forestry

Exhibit C

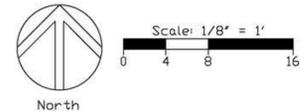
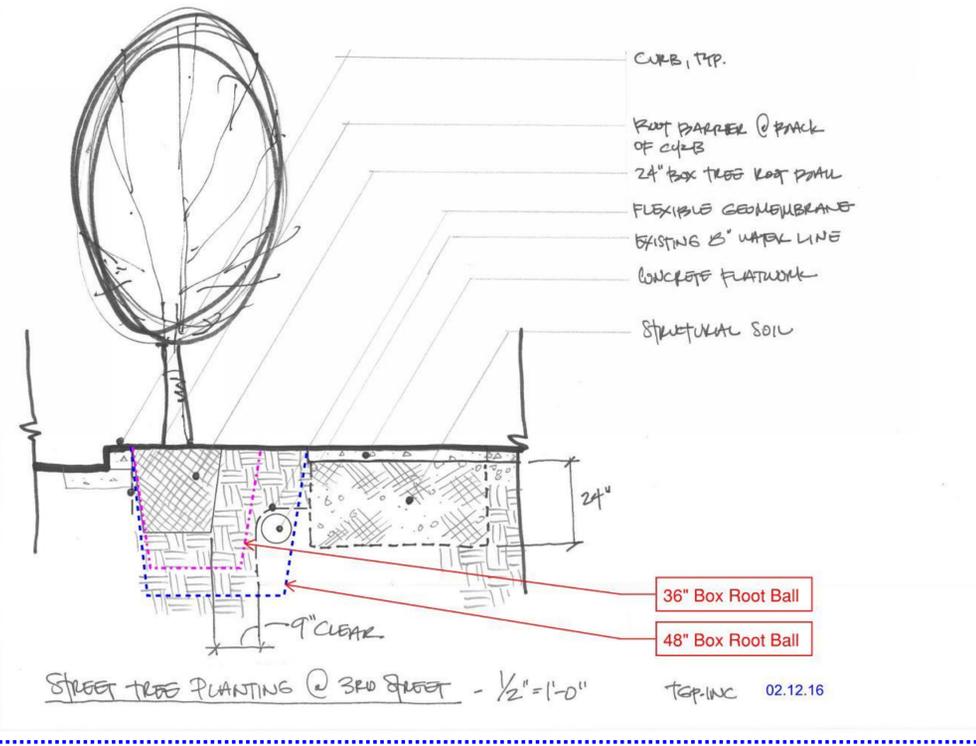
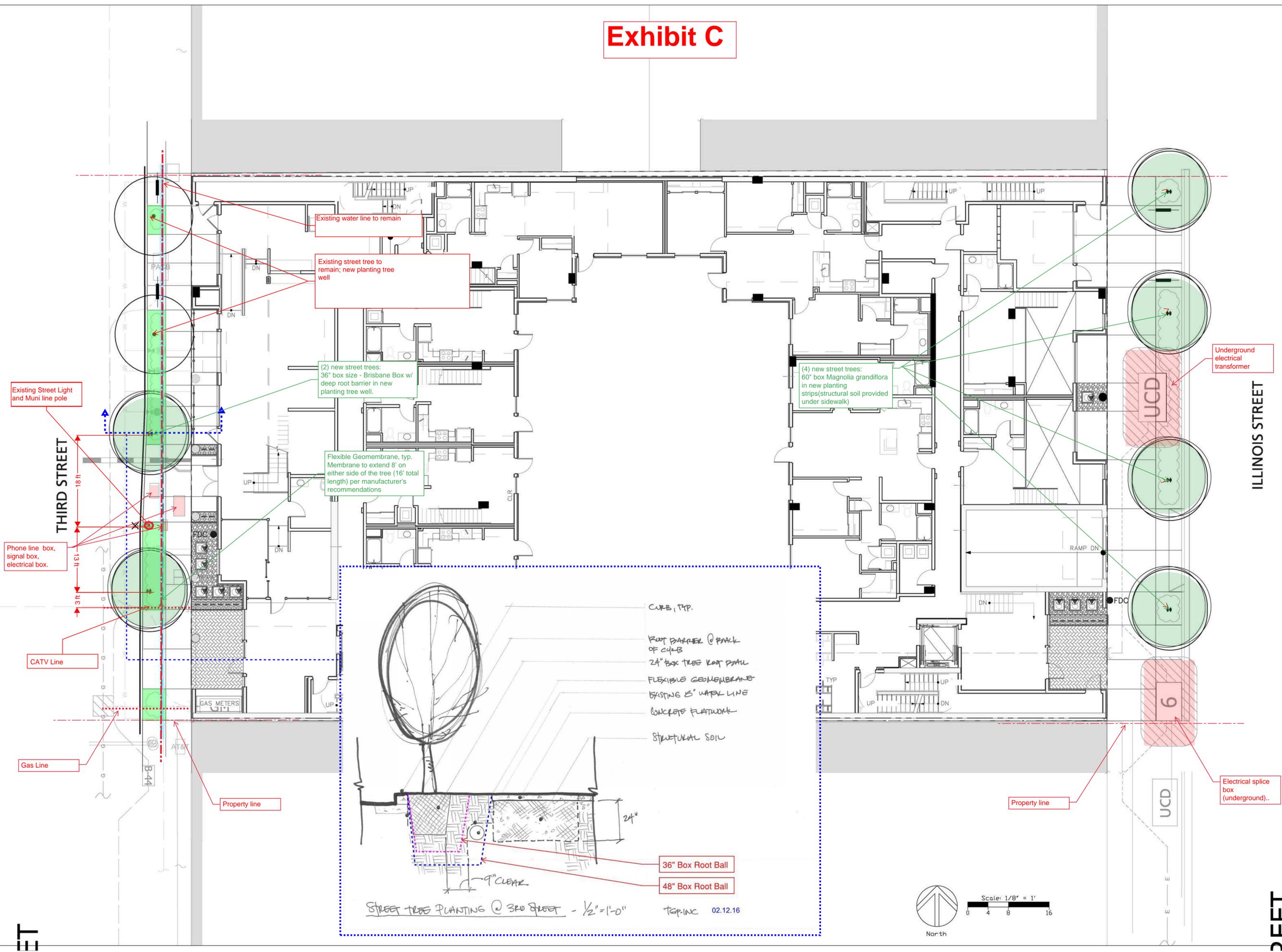
Issue	Date
SD CHECK SET #1	02.05.14
SD CHECK SET #2	02.20.14
DD CHECK SET #1	03.27.14
SITE PERMIT	06.23.14
DD CHECK SET #2	08.29.14
DD CHECK SET #3	10.03.14
DD CHECK SET #1	10.31.14
DD CHECK SET #2	11.26.14
DD CHECK SET #3	12.18.14
DD CHECK SET #4	01.30.15
IMP SET	03.13.15
BID ADDENDUM	05.07.15
STRUCTURAL ADDENDUM	05.28.15
ARCH/MEP ADDENDUM	05.28.15
SFFD PLAN CHECK 1	09.23.15
CONFORMING SET	12.04.15
ASI 3	



All drawings and written material appearing herein are the property of the architect and may not be duplicated, used or distributed without the written consent of the architect.

LAYOUT PLAN STREET

Sheet Title: _____
Date: _____
Project No. 1331 Drawn By: _____
Sheet Size: 24 x 36





Board of Appeals Case 16-139

February 2, 2017

RE: 2051 3rd Street

Edwin M. Lee
Mayor

Mohammed Nuru
Director

Carla Short
Superintendent

Urban Forestry
2323 Cesar Chavez St.
San Francisco, CA 94124
tel 415-554-6700

sfpublicworks.org
facebook.com/sfpublicworks
twitter.com/sfpublicworks

Brief of San Francisco Public Works

The original appeal 14-058 for 2051 3rd Street, also formerly known as 650 Illinois Street, took place in 2014 and pertained to the removal of two (2) significant red ironbark eucalyptus trees that were on private property but within 10' of the public right-of-way along the Illinois Street frontage of the property. Public Works approved the proposed removal of the two trees despite the protests that were received from the public, based on the poor structural condition of the trees and on the basis that the species is sensitive to construction impacts and the trees would not remain an asset to the developed site.

The resulting Board of Appeals decision 14-058 upheld the permission to remove the trees on the condition that the replacement trees be "of a 48" box size, and if possible of a 60" box size, with size of said replacement trees to be determined by the Department."

Public Works issued tree removal and planting permit no. 771015 to the property owner granting permission for the removal of the two (2) significant trees along

Illinois Street with replacement with five (5) street trees and the removal of four (4) street trees along the 3rd Street frontage of the property with replacement with four (4) street trees. As the project has progressed and site development has occurred, a number of utility conflicts and site challenges have been brought to the attention of Public Works by the project team. We have worked closely together to try to resolve these issues as they have arisen, and when it became clear that the conditions of Appeal 14-058 and Public Works tree removal permit 771015 would not be able to be adhered to, we asked that the Appellant submit a new tree removal application to bring the case back before the Board of Appeals.

Illinois Street

The permit granted permission to remove two (2) significant trees with replacement with five (5) street trees. The Appellant is proposing to eliminate the planting of one of these required street trees due to utility conflicts that are outlined in their brief. The conditions required planting 48" to 60" box size trees. To mitigate the loss of one tree, the Appellant has committed to planting 60" box size trees along Illinois Street, which was the site of the subject tree removal. Our Department believes the planting of four (4) 60" box size trees remains a reasonable mitigation for the loss of the two trees that were removed.

3rd Street

In their brief, the Appellant highlighted the utility and site constraints along their 3rd Street frontage, which has a narrow sidewalk at approximately 8' in diameter. Permit no. 771015 granted permission to remove four (4) trees with replacement with four (4) trees along 3rd Street. Due to utility constraints,

two of the trees cannot be planted, and instead of planting 48" to 60" box size trees, they propose to plant 36" or even 24" box size trees.

The two trees that are proposed to be planted along 3rd Street have come under further review by the PUC's Water Department. The source main water line for the block is located underneath the sidewalk and the PUC will not allow the two trees to be planted as proposed. Both the Appellant and the Bureau of Urban Forestry have been working closely with the PUC to determine what alternatives or variances could be considered to allow at least two of the four required replacement trees to be planted along 3rd Street.

Possible solutions to the 3rd Street constraints:

- Relocate the water line within the existing sidewalk, to be shifted a couple of feet towards the building
- Appellant and PUC suggested the planting of the two trees in above-ground containers
- Install landscaping only, along the curb
- Pay in-lieu fees for any trees required to be planted, which are not planted

The preference of Public Works for the 3rd Street frontage is to have the water line shifted so that two street trees can be planted. If the water line can be moved, the box size will need to be reduced from 36" box size to 24" box size. However, the trees will be catch up in size within one to two years and become the same size at maturity. Public Works has reviewed the possibility of allowing trees to be placed in above ground containers but due to the long term drought

conditions that are predicted for California, Public Works no longer allows trees to be planted in above ground containers because the trees will require supplemental water for the life of the trees. If no replacement trees can be planted along 3rd Street, there appears to be room to require that landscaping be installed in the first sidewalk square from the curb, along most of the 3rd Street frontage of the property.

Summary

The original removal permit granted permission to remove six (6) trees with replacement with nine (9) trees. Only two of the proposed removals were contested along the Illinois Street frontage of the project. No objections were received re: the four (4) trees removed along 3rd Street. The loss of one replacement tree along the Illinois Street frontage, but commitment to plant the four (4) remaining replacement trees as 60" box size trees, is a reasonable modification along Illinois Street.

We are hopeful that the Appellant will be allowed to shift the water line along 3rd Street to allow two of the four replacement trees to be planted. An upcoming site visit may occur between the submittal of our Brief and the hearing on February 8th.

All development is subject to tree planting requirements of one (1) tree per 20' of linear frontage to the public right-of-way. The modified permit would allow for the planting of eight (8) of the eleven (11) required street trees. Our Department will assess in-lieu fees of \$1,906.00 per tree, for each required tree that cannot be planted. It is very typical for a project with this amount of frontage, to

not be able to plant the total number of required trees. At times, some projects may only plant 50% of the required trees and sometimes the reason is beyond the control of the developer (examples: bus zones, narrow sidewalks, street lights, traffic signals, setbacks from intersections, etc.).

We support the Appellants application to modify the number of required street trees to be planted adjacent to their property on the basis that we will assess in-lieu fees at the close of the project and on the basis that the original issue was the removal of two trees along the Illinois Street frontage of the property and four (4) 60" box size trees will still be planted along this frontage.

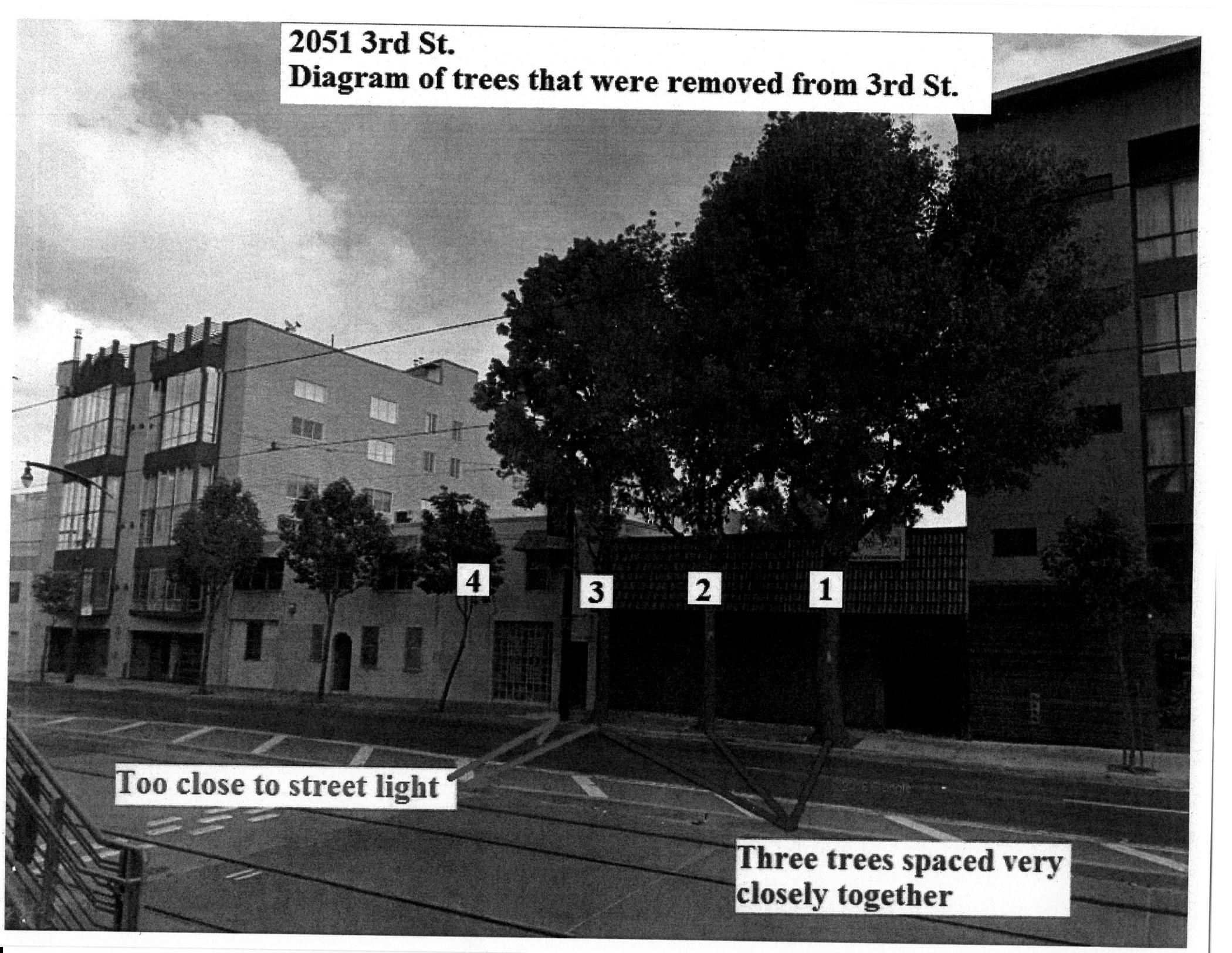
Sincerely,

A handwritten signature in black ink, appearing to read "Chris Buck". The signature is fluid and cursive, with the first name "Chris" being more prominent than the last name "Buck".

Chris Buck
Urban Forester
Bureau of Urban Forestry

2051 3rd St.

Diagram of trees that were removed from 3rd St.



4

3

2

1

Too close to street light

Three trees spaced very closely together

**2051 3rd St.
Proposed planting sites**

