STAFF REPORT

TREES AND VIEWS COMMITTEE

Project

Schwarcz View Claim / 18 Wray Avenue

View Claim TRP 13-110

Public Hearing Date

July 8, 2013

Staff

Lilly Schinsing, Administrative Analyst

This staff report supplements the staff report dated June 24, 2013

REQUEST

Review, make modifications as appropriate and approve the resolution for the Fact Finding and Advisory Decision for the restoration of views for 18 Wray Avenue.

PROJECT BACKGROUND

At the June 24 meeting, the Trees and Views Committee made a Fact Finding and Advisory Decision that the following actions be taken to revive the views that existed when the Claimant purchased the property at 18 Wray Avenue in the early 1950's:

- The northern most mature Coast Live Oak (declining), the Plum, the Horsetail Pine, and two small Coast Live Oaks be removed from 10 Wray Avenue; and
- The crown height of the middle and southern most mature coast live oaks be reduced to a level equal to 36 inches below the upper level deck at 18 Wray Avenue; and
- The middle and southern most mature coast live oaks be pruned annually to maintain a height equal to 36 inches below the upper level deck at 18 Wray Avenue; and
- All costs associated with the work be borne by the property owner of 10 Wray Avenue.

DISCUSSION

As the Trees and Views Committee decision at a Fact Finding and Advisory hearing is advisory, meaning that it is not binding and there is no obligation for the property owner at 10 Wray Avenue take action regarding the subject trees at this point in time. However, if legal action is taken to enforce the decision of the Trees and Views Committee regarding the trees between the property owners, there will be a "rebuttable presumption" in the favor of the Trees and Views Committee Decision. A rebuttable presumption is an assumption made by a court, one that is taken to be true unless someone comes forward to contest it and prove otherwise.

Section 11.12.040.C.4 ("Implementation of Decision") requires the Committee to decide upon a percentage that the Claimant should pay towards implementing the Committee's decision, should an agreement be reached between the property owners. The Tree Owner is required to obtain 3 bids for the work and present the bids to the Claimant. The Claimant then is responsible for depositing an amount equal to the percentage of the lowest bid deemed appropriate by the Commission. The Tree Owner would then choose the company to do the wok and pay the difference between the deposit amount and the bid amount of the company they choose. This section is set up to presume that the Claimant will be contributing some amount of the cost to do the work.

At the June 24, 2013 meeting the Committee decided that no percent of the cost to implement the Committee's decision should be borne by the Claimant, and that 100% of the costs should be paid by the Tree Owner. The Tree Owner Eulalie Glaser has since submitted correspondence for the Committee's review regarding the allocation of costs (see **Attachment L**).

It is unusual for the Trees and Views Committee to allocate 100% of the costs to the Tree Owner. From 2010-2011 there were three Fact Finding and Advisory hearings regarding view claims held by the Committee. In all three cases there were conditions of approval that required that if a final agreement was reached the Tree Owner was required to obtain at least three bids for the prescribed work from a Certified Arborist and present all bids to the Claimant. The Tree Owner would then, at their sole discretion, select the company by which they wished the work to be done. The Tree Owner would then pay the difference, if any, between the lowest bid and the bid amount of the selected company. Therefore, in all three cases, the majority of the cost was allocated to the Tree Owner.

Staff recommends that the Trees and Views Committee discuss the rationale regarding the allocation of 100% of the costs to the Tree Owner, from both a fairness and motivational point of view.

CONCLUSION

Staff has prepared a draft Resolution for the Committee to review and approve. As discussed at the June 24, 2013 meeting, Staff has included two Conditions of Approval.

 The first Condition is in regards to the timing and cost allocation of the tree trimming (see Exhibit K, Attachment 2), as specified by the Committee at the June 24, 2013 meeting. Condition of Approval 1 states:

"Within thirty (30) days of the date of any final agreement, the Tree Owner shall obtain at least three bids for the prescribed work from a Certified Arborist and shall present all bids to the Claimant. The Tree Owner will, at his/her sole discretion, select the company by which he/she wishes the work to be done within 30 days of presenting bids to the Claimant. The Tree Owner shall be responsible for paying for 100% of the costs of the work. The authorized work of correction shall be done by an Arborist under the sole direction and control of the tree owner."

If the Committee decides to allocate the costs differently, staff recommends that the condition be modified in the following manner:

Within 15 days after the presentation of the bids, the claimant shall deposit with the tree owner an amount equal to [percentage to be determined by the Trees and Views Committee] of the lowest bid. The Tree Owner shall, at his/her sole discretion, choose the company by which he/she wishes the work done and shall order the work done within 15 days after receiving the claimants deposit. The Tree Owner shall pay the difference between the deposit amount and the bid amount of the company she has chosen. The authorized work of correction shall be done by an Arborist under the sole direction and control of the tree owner.

- The second Condition is in regards to removal of trees to restore the view from 18 Wray Avenue (see **Exhibit K, Attachment 2**), as specified by the Committee at the June 24, 2013 meeting. Condition of Approval 2 states:
 - "The plum, casuarina, northern most coast live oak and two small coast live oaks shall be cut to grade level the stumps of the coast live oaks and plum shall be ground to help prevent regrowth as specified in the Arborist Report prepared by Richard Gessner date

stamped May 13, 2013 and supplemental Arborist Report prepared by Richard Gessner date stamped June 14, 2013."

The third Condition is in regards to the reduction of trees to restore the view from 18 Wray Avenue (see Exhibit K, Attachment 2), as specified by the Committee at the June 24, 2013 meeting. Condition of Approval 3 states:

"The crown heights of the middle coast live oak and the southernmost coast live oak shall be reduced to a level which is thirty-six (36) inches below the level of the back deck at 18 Wray Avenue as specified in the Arborist Report prepared by Richard Gessner date stamped May 13, 2013 and supplemental Arborist Report prepared by Richard Gessner date stamped June 14, 2013. The Tree Owner shall arrange for and conduct annual heading and crown reduction of the subject trees. This work shall be conducted in accordance with these conditions of approval. The middle coast live oak and the southernmost coast live oak shall be pruned back to appropriate sized lateral limbs no less than 50 percent the diameter of the parent branch or stem at the cut. Reduction cuts shall consist of branches no greater than four inches in diameter at the point of the cut. Heading and topping cuts shall be avoided where possible. The middle coast live oak and the southernmost coast live oak shall be pruned a maximum of one time every growing season and annually as necessary. Pruning shall maintain seventy five percent (75%) of the existing foliar density and be performed during the months between June and October."

 The fourth Condition requires that all work be performed under the daily supervision of a Certified Arborist.

The Committee has the ability to approve, modify, or delete these Conditions of Approval.

RECOMMENDATION

Staff recommends the Trees and Views Committee take the following actions regarding the attached resolution to remove the plum, casurina, northern most coast live oak and two small coast live oaks and reduce the crown heights of the middle coast live oak and the southernmost coast live oaks located at 10 Wray Avenue, in order to revive the views from 18 Wray Avenue:

- Review the Draft Resolution and the recommended revision to Condition 1 as discussed in the Staff Report; and
- Make any appropriate modifications; and
- Approve the Resolution.

Alternatively, the Trees and Views Committee may:

- Continue the item for additional information and/or project revisions; or
- Modify the Fact Finding and Advisory Decision and direct Staff to return with a modified Resolution.

EXHIBITS

The lettering of Exhibits continues from the June 24, 2013 staff report.

- K. Draft Resolution
- L. Correspondence from Eulalie Glaser, dated July 1, 2013

I:\CDD\PROJECTS - ADDRESS\W\Wray 18\TRP 13-110\tvcsr 7-8-13.docx

SAUSALITO TREES AND VIEWS COMMITTEE RESOLUTION NO. 2013-XX

FACT FINDING AND ADVISORY DECISION FOR RESTORATION OF VIEWS FROM THE RESIDENCE AT 18 WRAY AVENUE (TR 13-110)

WHEREAS, on May 13, 2013 an application was filed by the Claimant June Schwarcz, requesting the Trees and Views Committee to make a Fact Finding and Advisory Decision on restoration of views from her residence at 18 Wray Avenue (APN 064-204-11) that entails the removal of the northern most coast live oak (*Quercus agrifolia*), the plum (*Prunus sp.*), horsetail pine (*Casuarina stricta*) and two small coast live oaks (*Quercus agrifolia*) in addition to the specified pruning of the middle and southern most coast live oaks (*Quercus agrifolia*) located on property owned by Tree Owner Eulalie Glaser at 10 Wray Avenue (APN 064-204-10); and

WHEREAS, the Trees and Views Committee conducted a noticed site visit to both properties on May 30, 2013; and

WHEREAS, the Trees and Views Committee conducted a duly-noticed special public hearing on June 24, 2013 and a duly-noticed public hearing July 8, 2013 at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Trees and Views Committee considered all oral and written testimony on the subject application; and

WHEREAS, the Trees and Views Committee reviewed and considered the information contained in the staff reports dated June 24, 2013 and July 8, 2013; and

WHEREAS, the Trees and Views Committee finds that the project is categorically exempt from California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines.

NOW, THEREFORE, THE TREES AND VIEWS COMMITTEE HEREBY RESOLVES:

SECTION 1. The northern most mature Coast Live Oak (*Quercus agrifolia*), the Plum (*Prunus sp.*), Horsetail Pine (*Casuarina stricta*) and two small Coast Live Oaks (*Quercus agrifolia*) located on the Tree Owner's property at 10 Wray Avenue and shown in Attachment 1 shall be removed.

SECTION 2. The crown height of the middle and southern most mature coast live oaks (*Quercus agrifolia*) located on the Tree Owner's property at 10 Wray Avenue and shown in Attachment 1 shall be reduced to a level equal to 36 inches below the upper level deck at 18 Wray Avenue. The middle and southern most mature coast live oaks (*Quercus agrifolia*) located on the Tree Owner's property at 10 Wray Avenue shall be pruned pursuant to the conditions in Attachment 2.

SECTION 3. This decision is based upon the Findings provided in Attachment 1 and subject to the conditions of approval provided in Attachment 2.

RESOLUTION PASSED AND ADOPTED, at the regular meeting of the Sausalito Trees and Views Committee on the _____ day of _____, 20__, by the following vote:



AYES: Committee Member: NOES: Committee Member: ABSENT: Committee Member: Committee Member: Committee Member:

Lilly Schinsing Adminstrative Analyst

ATTACHMENTS

- 1- Findings
- 2- Conditions of Approval
- 3- Site Map

I:\CDD\PROJECTS - ADDRESS\W\Wray 18\TRP 13-110\trpreso 7-8-13.doc

TREES AND VIEWS COMMITTEE RESOLUTION July 8, 2013 TRP 13-110 10 and 18 Wray Avenue

ATTACHMENT 1: FINDINGS

In accordance with Municipal Code Section 11.12.040.B.4, the Trees and Views Committee makes the following findings with respect to the view claim of 10 Wray Avenue (Claimant's residence) regarding the trees located at 18 Wray Avenue (Tree Owner's property).

11.12.040, C.3 Standards for Resolution of Claims

A. Character of View

- 1. The views from the Claimant's residence include the southern Sausalito hills, Richardson Bay and marinas, San Francisco Bay, San Francisco-Oakland Bay Bridge, and Angel Island. The Claimant seeks restoration of these views, or portions thereof, from the following vantage points of the Claimant's residence: living room, bedroom, and office of the top floor of 18 Wray Avenue.
- 2. There are no obstructions to the above described views other than the northern most coast live oak, middle coast live oak, and southern most coast live oak (Quercus agrifolia), plum (Prunus sp.), horsetail pine (Casuarina stricta) and two small coast live oaks (Quercus agrifolia) located on the Tree Owner's property.
- 3. When the Claimant purchased and built the home in the early 1950's there was a panoramic view from the main living areas inside the residence and on the deck. Historical photographs were provided that document the condition of the views in 1954. The Claimant requests the subject trees on the Tree Owner's property be removed and trimmed to revive some of the views that existed when the Claimant purchased and moved into their residence in the early 1950's.

B. Character of View Obstruction

- 1. The subject trees on the Tree Owner's property obstruct the views from the Claimant's residence as listed below:
 - Southern Sausalito hills: Approximately 25% of the view is obstructed in a standing position
 - b. Richardson Bay and Marinas: Approximately 25% of the view is obstructed in a standing position
 - c. San Francisco Bay: 100% of the view is obstructed in a sitting position; 75% of the view is obstructed in a standing position
 - d. San Francisco-Oakland Bay Bridge: 100% of the view is obstructed in a sitting position
 - e. Angel Island: Approximately 25% of the view is obstructed in a sitting position
- 2. The views are extremely important to the use and enjoyment of the Claimant's residence. The Claimant's residence was designed to highlight the surrounding views. The obstruction of the views by the trees on the Tree Owner's property decrease the Claimant's property value and decrease the views available to the Claimant.

Page 3

- C. Extent of Benefits and/or Burdens Derived from the Growth.
 - 1. The trees obstructing the view are California coast live oaks, one plum and one horsetail pine. Coast live oak is a large and spreading broadleaf evergreen tree. The trees are susceptible to several insect pests and diseases including ambrosia bark beetles Monothrum scutellare and Sudden Oak Death, (Phytophthora ramorum), both of which can be detrimental.

The plum is growing through the crown of the northern most coast live oak tree and the horsetail pine tree.

The middle coast live oak tree has poor structure, codominant stems, poor stem taper, and a cracked stem, but is in good health. Crown reduction, especially on the western most leader, could help the structure by reducing weight while reducing the risk of stem failure.

The northern most coast live oak has sparse foliage that has a yellow hue. Chlorosis, the whitish or yellowish leaf discoloration is caused by a lack of chlorophyll, which is often caused by nutrient deficiencies. The yellowing of the foliage, sparse crown, and sporadic leaf dieback are all indicators of stress and potential root, leaf, or nutrient problems. The tree is declining in health.

The southern most coast live oak tree has a trunk diameter of approximately 24 inches and is about 25 feet tall. There is a large wound on the south side of the tree where a codominant stem failed. The failed stem created a wound that is half the circumference of the original stem. The tree has been pruned in a "windowing" fashion and all the lower foliage has been removed. The tree has poor structure and its potential for failure is increased due to the wound at the base. When wounds encompass greater than 33 percent of the original branch or stem circumference, failure is likely to occur at that point and the limb or stem poses a high risk. When 50 percent or more of the branch or stem is decayed or missing the branch poses a critical risk of failure (Smiley, Fraedrich and Hendrickson, 2007). The stem of the tree has approximately 50 percent of the original circumference of the stem remaining.

The horsetail pine has three main stems, is located behind the middle coast live oak, and has a trunk diameter of approximately 24 inches. The main stems have been previously topped at approximately 30 feet above grade and there are adventitious sprouts originating near the old cuts. There is an old "Artists Conk" (Ganoderma applanatum) growing near the main stem attachments. The horsetail pine is in poor health and has poor structure. There are positive indicators of decay at the ends of the main stems where the tree was topped and in the attachment where the conk is located. One stem is completely dead.

2. The trees are located in the backyard of the property and their lower limbs have been pruned to create a more open understory. The area under the trees is not landscaped and their crowns have been reduced, presumably to provide views from the residence at 10 Wray Avenue. Both trees are growing near the eastern property boundary where the upper and lower properties meet. This corridor of

vegetation appears to have been left to grow wild with many different species of plants growing along the property boundaries.

- 3. The trees provide no wind screening and prevailing winds usually originate in the northwest on the opposite side of the property. There may be some visual screening of the roof tops of the property below but the trees are not providing any privacy because there are other shrubs. Because the residences are far apart and the roads are on the opposite sides of the properties it would not appear the trees are providing much in noise reduction.
- 4. The understory is primarily ground cover with volunteer shrubs growing along the property boundary. There is no effect on the neighboring vegetation that was observed by the certified Arborist except suppressed volunteer shrubs.
- 5. Other than some screening and privacy, no significant beneficial use or economic value were observed by the growth.

D. Appropriate Restorative Actions

Cutting the plum, casuarina, northern most coast live oak and two small coast live oaks to grade level and pruning the middle coast live oak and the southern most coast live oak to restore the original views is the appropriate restorative action. The stumps of the coast live oaks and plum shall be ground to help prevent regrowth.

Reduce the crown heights of the middle coast live oak and the southern most coast live oak to a level which is 36 inches below the level of the back deck at 18 Wray Avenue. Prune back to appropriate sized lateral limbs no less than 50 percent the diameter of the parent branch or stem at the cut. Reduction cuts shall consist of branches no greater than four inches in diameter at the point of the cut. Heading and topping cuts shall be avoided where possible. Prune the middle coast live oak and the southernmost coast live oak a maximum of one time every growing season and annually as necessary. Pruning shall maintain seventy five percent (75%) of the existing foliar density and be performed during the months between June and October.

E. Factors Determining Restorative Action

The removal and/or pruning of the northern most coast live oak, middle coast live oak, and southern most coast live oak (Quercus agrifolia), plum (Prunus sp.), horsetail pine (Casuarina stricta) and two small coast live oaks (Quercus agrifolia) would revive the views for the Claimant, while not significantly affecting the screening or privacy of the Tree Owner property due to the factors stated above.

The property owner at 10 Wray Avenue shall pay the full cost of the tree removal, crown reduction and annual pruning.

TREES AND VIEWS COMMITTEE RESOLUTION July 8, 2013 TRP 13-110 10 and 18 Wray Avenue

ATTACHMENT 2: CONDITIONS OF APPROVAL

- 1. Within thirty (30) days of the date of any final agreement, the Tree Owner shall obtain at least three bids for the prescribed work from a Certified Arborist and shall present all bids to the Claimant. The Tree Owner will, at his/her sole discretion, select the company by which he/she wishes the work to be done within 30 days of presenting bids to the Claimant. The Tree Owner shall be responsible for paying for 100% of the costs of the work. The authorized work of correction shall be done by an Arborist under the sole direction and control of the tree owner.
- 2. The plum, casuarina, northern most coast live oak and two small coast live oaks shall be cut to grade level the stumps of the coast live oaks and plum shall be ground to help prevent regrowth as specified in the Arborist Report prepared by Richard Gessner date stamped May 13, 2013 and supplemental Arborist Report prepared by Richard Gessner date stamped June 14, 2013.
- 3. The crown heights of the middle coast live oak and the southernmost coast live oak shall be reduced to a level which is thirty-six (36) inches below the level of the back deck at 18 Wray Avenue as specified in the Arborist Report prepared by Richard Gessner date stamped May 13, 2013 and supplemental Arborist Report prepared by Richard Gessner date stamped June 14, 2013. The Tree Owner shall arrange for and conduct annual heading and crown reduction of the subject trees. This work shall be conducted in accordance with these conditions of approval. The middle coast live oak and the southernmost coast live oak shall be pruned back to appropriate sized lateral limbs no less than 50 percent the diameter of the parent branch or stem at the cut. Reduction cuts shall consist of branches no greater than four inches in diameter at the point of the cut. Heading and topping cuts shall be avoided where possible. The middle coast live oak and the southernmost coast live oak shall be pruned a maximum of one time every growing season and annually as necessary. Pruning shall maintain seventy five percent (75%) of the existing foliar density and be performed during the months between June and October.
- 4. All work shall be performed under the daily supervision of a Certified Arborist.

Advisory Notes

Advisory notes are provided to inform affected parties of Sausalito Municipal Code requirements, and requirements imposed by other agencies. These requirements include, but are not limited to, the items listed below.

1. Pursuant to Municipal Code Section 11.12.040.B, in the event litigation is required to enforce the decision of the Trees and Views Committee the party bringing any private civil action must promptly notify the City of Sausalito's Community Development Department in writing of such action.

Page 6

- 2. An encroachment permit shall be obtained from the Department of Public Works prior to use of the public right-of-way for non-public purposes (e.g., materials storage, debris box storage) including any and all tree removal activities.
- 3. Pursuant to Municipal Code Section 12.16.140, the operation of construction, demolition, excavation, alteration, or repair devices and equipment within all residential zones and areas within a 500 foot radius of residential zones shall only take place during the following hours:

Weekdays - Between 8:00 a.m. and 6:00 p.m.

Saturdays – Between 9:00 a.m. and 5:00 p.m.

Sundays – Prohibited

City holidays (not including Sundays) – Between 9:00 a.m. and 7:00 p.m.

I:\CDD\PROJECTS - ADDRESS\W\Wray 18\TRP 13-110\trpreso 7-8-13.doc

Subject:

FW: Trees and View Committee Decision

From: Leland Kelson [mailto:lekelson@comcast.net]

Sent: Monday, July 01, 2013 2:13 PM

To: Lilly Schinsing

Subject: RE: Trees and View Committee Decision

Dear Lily:

I feel terrible about missing the meeting on June 25th. I was out of town at my step-daughter's wedding at my partner's home. It was a fairly large affair, about 60 people from all over the country. We had close family staying with us and needless to say, it was a tremendous amount of work for us. I was so exhausted I could hardly stand up, let alone drive an hour to Sausalito.

I totally forgot about the meeting until I received your email – I was devastated!

I would like to propose a compromise on the costs: I will take responsibility for the removal of the casuarinas tree (Australian pine) and the two small live oaks. It is only fair that the resident at #18 take some responsibility also and cover the costs of removal of the struggling oak nearest her property as well as the trimming of the middle tree.

I also request that the work be delayed until August when I will be back in Sausalito, on a date to be determined.

Thank you for being so helpful and kind.

Sincerely,

Tyke

On Jun 25, 2013, at 13:56, Lilly Schinsing < <u>LSchinsing@ci.sausalito.ca.us</u>> wrote:

<image001.gif>

Hi Tyke,

Last night the Trees and Views Committee held a meeting regarding the View Claim submitted by the owner of 18 Wray Ave regarding the trees on your property at 10 Wray Avenue.

The Committee decided to approve an advisory decision which will state the following:

• The northern most mature Coast Live Oak (the declining one), the Plum, the Horsetail Pine, and two small Coast Live Oaks should be removed.



- The crown height of the middle and southern most mature coast live oaks should be reduced to a level equal
 to 36 inches below the upper level deck at 18 Wray Avenue. The middle and southern most mature coast live
 oaks shall be pruned annually to maintain that height.
- All costs associated with the work should be borne by you, the property owner of 10 Wray Avenue.

This decision will be formalized in a resolution on July 8 at 6:30pm. I recommend that if you disagree with this decision you or a representative appear before the Committee at that time to discuss your concerns. You may also send me a letter (via email or mail) by July 1 that I would forward to the Committee.

This is an advisory decision, which means that it is not binding. However, if legal action is taken regarding the trees between you and the 18 Wray Ave property owner, there will be a "rebuttable presumption" in the favor of the Trees and Views Committee Decision. A rebuttable presumption is an assumption made by a court, one that is taken to be true unless someone comes forward to contest it and prove otherwise.

Please confirm receipt of this email and please let me know if you have any questions.

Lilly Schinsing

Administrative Analyst

Administration Department

City of Sausalito | 420 Litho St. Sausalito CA 94965

phone: 415.289.4134

email: LSchinsing@ci.sausalito.ca.us