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Response to Grand Jury Report Form

Report Title: Oak Tree Replacement in Thousand Oaks

Report Date: April 17, 2013
Claudia Bill-de la

Response by: Pena Title: Mayor, City of Thousand Oaks

FINDINGS

- I (we) agree with the findings numbered: FI-03, FI-06, and FI-08
- I (we) disagree wholly or partially with the findings numbered: FI-01, FI-02, FI-04, FI-05, and FI-07
(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

RECOMMENDATIONS

- Recommendations numbered R-01, R-02 (in-part), and R-03 have been implemented.
(Attach a summary describing the implemented actions.)
- Recommendations numbered _____ have not yet been implemented, but will be implemented in the future.
(Attach a timeframe for the implementation.)
- Recommendations numbered _____ require further analysis.
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)
- Recommendations numbered R-02 (in-part) will not be implemented because they are not warranted or are not reasonable.
(Attach an explanation.) *Provided - no time frame*

Date: 6-11-13

Signed: 

Claudia Bill-de la Pena

Number of pages attached 13

**City Council Response to Grand Jury Report
"Oak Tree Replacement in Thousand Oaks"
Dated April 17, 2013**

Pursuant to California Penal Code Section 933.05(a), (b), and (c), the City Council of the City of Thousand Oaks provides the following responses to the findings and recommendations included in the above referenced Grand Jury Report. This response shall also be considered the response of City employees who were directly provided a copy of the Report with a request to respond, specifically the Planning Division Manager, the Senior Planner/Permit Process Supervisor, and the Landscape Maintenance Supervisor. This response also clarifies some facts presented in the Grand Jury Report are included in this response.

BACKGROUND

The City of Thousand Oaks' first Oak Tree Protection Ordinance went into effect in March of 1970. In 1987, the City adopted an Oak Tree Preservation and Protection policy resolution, which was established as an implementation tool for applying the ordinance. The current ordinance and policy resolution reflect various updates and amendments through 2010.

The first oak tree ordinance and resolution were focused on protection of Oak Trees during a period of rapid growth in the City, from 1970 to 1990, that was threatening many oak trees in the Conejo Valley. Emphasis was therefore on protecting indigenous trees and, if trees were permitted to be removed for development, that an adequate number and size of replacement trees were planted in order to maintain the oak tree population within the City.

Today, with the larger tracts and commercial developments largely complete, the oak tree ordinance and resolution more commonly apply to renovation projects and maintenance of the oak forest that has been preserved over the past 45 years. This being the case, the City amended to the ordinance and resolution in 2010 to accommodate maintenance of an oak tree without requiring an onerous permitting procedure. Additionally, in 2010 the City Council amended the ordinance to exempt verified owner-planted oak trees. Native oak trees continue to be subject to the ordinance.

FORMAT OF RESPONSE

The City Council's detailed response to the Grand Jury Report is set forth in the following pages. The response is ordered in the same manner as the report itself – Facts, Findings, and Recommendation.

RESPONSE TO FACTS

The City Council has carefully reviewed the statement of facts in the Grand Jury Report and has the following clarifications/corrections related to Facts FA-02, FA-04, and FA-05. The Grand Jury Report statement of the Fact is presented first, followed by the clarification or correction.

FA-02: "Private individuals are required to comply with the City code including the permit process for oak tree removal or editing."

City Council Clarification: Both public and private parties are required to comply with the City codes, including the permit process, for any activity not exempt from the ordinance. The protection requirements of the Code apply to oak trees that qualify as protected and not exempt by the Oak Tree Ordinance.

FA-04: "The City code requires that: "The condition for removal requires the replacement or placement of additional trees on the subject property to offset the impacts associated with the loss of a tree, limbs, or encroachment into the protected zone of a landmark tree.""

City Council Correction: The City's Oak Tree Ordinance, codified as Title 5, Chapter 14 of the Thousand Oaks Municipal Code, requires that "A condition requiring the replacement or placement of additional oak tree(s) on the subject property or at an appropriate location on public property to offset the permitted removal of the tree(s)..." (TOMC Section 5-14.07(a)).

The replacement requirement only applies to removals of an entire tree, not removal of a limb, or encroachment within the protected zone of an oak tree.

FA-05: *"In practice, private individuals are required to replace one removed or fallen oak tree with two oak trees. This includes an application for a permit, payment for permit, and the follow-up inspection, including sign-off to verify the work was completed properly."*

City Council Correction: See responses to Findings FI-02 and FI-04, in the next section.

RESPONSE TO FINDINGS

The City Council has carefully reviewed the Findings in the Grand Jury Report and has the following responses to each of the eight Findings FI-01 through FI-

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08. The Grand Jury Report statement of the Finding is presented first, followed by the City's response.

***FI-01:** "The private citizens of the City are required to follow the City's permitting process when they cut, remove, or edit an oak tree." (sic)*

City Council Response: Partially Disagree. Private citizens are only required to obtain a permit for certain work performed to a tree that qualifies as a protected oak tree by ordinance standards. Trees that are less than 2" in diameter at 4 ½ feet above grade are not protected and require no permit. Pruning in some cases, such as pruning branches that are less than 2" in diameter and within 5 feet of a structure do not require a permit. Removing deadwood from a tree also does not require a permit. Lastly, trees that are verified by the City as an oak tree planted by an owner of a property are exempt from the protection ordinance and require no permit for any work to or around the tree.

***FI-02:** "The private citizens of the City are required to replace two oak trees for every one removed."*

City Council Response: Partially Disagree. The City generally requires a replacement ratio of 3 oak trees for each healthy oak tree approved for removal on a commercial or industrial zoned property. This removal ratio only applies to oak trees that are a live, non-hazardous, and protected oak tree specimen. This mitigation number may be increased or decreased based on the availability of nursery grown trees. For residentially-zoned properties where a house already exists, the replacement ratio is reduced to 1 replacement oak tree for each removed live, non-hazardous, and protected oak tree specimen. The purpose of the replacement requirement is to ensure the City maintains its oak tree forest in the community.

For removal of a dead or hazardous oak tree, the City requires one (1) fifteen gallon replacement oak tree planted on the property where the tree was removed or the placement of one (1) fifteen gallon size oak a tree on public property.

For oak trees that do not qualify as protected, the oak tree replacement guidelines do not apply.

***FI-03:** "The City is exempted from obtaining permits, when remediation is required for public safety purposes."*

City Council Response: Agree.

FI-04: "The Grand Jury found that the private property owner is required to have a final inspection and sign-off for an oak tree permit, but the City does not."

City Council Response: Partially Disagree. The City does not require final sign-off or inspection of an oak tree permit. Periodic inspections may occur during encroachment activity to or around an oak tree, such as in cases where a City staff person is advised that work is occurring outside the permit parameters or in cases where a significant pruning operation is occurring that precipitates occasional inspections. The City requires an applicant's oak tree consultant/arborist to certify that all work to or around a protected oak tree specimen was performed in accordance with the permit conditions.

For City oak tree permits, a City licensed arborist monitors the work authorized by the permit and coordinates with staff from the Community Development Department. The City licensed arborist certifies that the permit conditions were satisfied.

FI-05: "The Grand Jury found that the City has an undocumented practice of planting replacement oak trees away from the removal site(s) and provided replacement trees to the CRPD."

City Council Response: Partially Disagree. When a non-hazardous City oak tree is removed, the reason for removal is generally to accommodate public infrastructure or for public safety purposes. In most cases, a tree replacement in the same location as the removal site was not feasible due to the improvements occurring in that area or the area was not a suitable location for an oak tree.

In some cases, the replacement trees were provided to the Conejo Recreation and Park District (CRPD) and planted at a park site for public benefit. In other cases, street medians, parkways, and public landscape areas received trees to offset the removal. Due to the physical constraints of infrastructure improvements, as well as evaluating locations to determine the best site for a replacement tree that would provide the most public benefit, a replacement location is typically not immediately available.

The City of Thousand Oaks owns and maintains a diverse urban forest of over 27,000 street trees that is spread out over 54 square miles. City-owned street trees are defined as a designated theme tree or approved replacement tree, planted as a requirement of development or upon city consent and is located within the City's public right-of-way or public service easement. It should be noted

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that 4,200 of the City's street trees are comprised of 10 different Oak species including California native Coast Live Oaks (*Quercus agrifolia*) and Valley Oaks (*Quercus lobata*), most of which were planted by developers.

The City takes great pride in maintaining its urban forest. Only City staff or an authorized City agent is permitted to trim City street trees, which must be trimmed to both City and International Society of Arboriculture standards. The 'topping' of City street trees is strictly prohibited and they may only be removed if the tree is found to meet the City's strict removal criteria by one of the City's three certified arborists. Conditions that can cause a City arborist to justify the removal of a street tree are typically safety related and include when a tree is dead or dying; creating a hazardous structural or sight distance condition that cannot be corrected through trimming, root pruning, or some other form of corrective action; or if the tree is damaging the City's infrastructure and the cost of repairs is greater than the value of the tree or the repairs will jeopardize the stability of the tree.

When a City street tree is removed that is not protected by the Oak Tree ordinance, the tree is typically replaced on site at a ratio of one to one with either an appropriate 15-gallon or 24-inch box size tree. Occasionally, conditions exist within the City's public right-of-way or public service easement that simply makes it impractical to plant a replacement tree in the same location or at a nearby location. When restrictive conditions exist at the subject site, the City will make every effort to perform its due diligence and identify alternative planting locations, especially when the subject tree is an Oak species. Additionally, when the subject tree is either a naturally germinated Valley or Coast Live Oak, the City will explore all options and, when necessary, undertake extraordinary efforts to either save the tree or replace it with a tree(s) that exceed requirements.

In an effort to continuously improve maintenance operations and administrative procedures, the City has added new activity codes to the Public Works Department's MaintStar work order program, allowing the City to track and quantify work specifically relating to all Oak specie street trees. Additionally, the Public Works Department has created a new Standard Operating Procedure (SOP) that requires Public Works staff to follow specific guidelines when evaluating the possibility of trimming any naturally germinated heritage Oak tree and/or removing any Oak tree. The new SOP for Oak tree trimming and/or removal is as follows:

1. The subject Oak tree(s) shall be evaluated by a City arborist and the arborist's findings shall be documented within the MaintStar work order program. It should be noted that if the City arborist or an authorized

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City agent determines that the subject Oak tree(s) constitutes an immediate hazard to the public, the City may take appropriate and immediate action to address the hazardous condition.

2. Planted Oak tree(s) that need to be trimmed - If the City arborist determines that the subject Oak tree(s) need to be trimmed, City staff may proceed as necessary and all work must be documented within the MaintStar work order program.
3. Naturally germinated heritage Valley or Coast Live Oak tree(s) that need to be trimmed - If the City arborist determines that the subject Oak tree(s) need to be trimmed, an Oak tree permit shall be acquired from the Community Development Department prior to the commencement of any work. All work must be documented within the MaintStar work order program.
4. Planted Oak tree(s) that need to be removed - If the City arborist determines that the subject Oak tree(s) needs to be removed, an Oak tree permit shall be acquired from the Community Development Department prior to the commencement of any work. All work must be documented within the MaintStar work order program.
5. Naturally germinated heritage Valley or Coast Live Oak tree(s) that need to be removed - If the City arborist determines that the subject Oak tree(s) need to be removed, the City must consult with a Registered Consulting Arborist (RCA) who must conduct either a Level 2 or 3 inspection depending on the circumstances. If the RCA disagrees with the City arborist the RCA's evaluation and recommendations supersedes the City Arborist's. If the RCA determines that the subject Oak tree(s) needs to be removed, the RCA's report must be forwarded to the Public Works Director or his designee for authorization. If the Public Works Director or his designee authorizes the removal of the subject tree an Oak tree permit shall be acquired from the Community Development Department prior to the commencement of any work. All work must be documented within the MaintStar work order program.

Exhibit "A" includes photos of City oak tree planting locations and maintenance efforts as wells as various awards recognizing the City's tree preservation efforts.

FI-06: "The Grand Jury found that the Lang Ranch Dam, the Knolls Apartment site, the Thousand Oaks Library, Teen and Senior Centers, the Children's Library

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extension and the Conejo Creek Park projects required the removal of 128 oak trees.”

City Council Response: Agree. A cumulative total of 128 oak trees were approved for removal among the six referenced projects. The vast majority (117) of these tree removals were associated with two of the projects - the Lang Ranch Dam (60 trees) and the Knolls Apartments (57 trees), both of which were approved about 20 years ago. The Lang Ranch Dam was a required public safety project to insure flood protection to residents and businesses downstream in the central part of Thousand Oaks. The Knolls apartment project was built pursuant to a Stipulated Judgment to settle a lawsuit brought against the City in Federal District Court by the Lang Ranch property owner. Although the Judgment required approval of The Knolls apartment project, necessitating the tree removals, it also provided the City with an additional 750 acres of open space and reduced the overall approved development density in the Lang Ranch area by approximately 2,000 dwelling units. The removal of the 128 trees in all six projects mentioned was mitigated by the planting of 379 replacement oak trees.

FI-07: “The Grand Jury found no report or documentation of two-to-one replacement of oak trees removed by the City, as required of private property owners.”

City Council Response: Partially Disagree. When an oak tree permit is processed for removal of oak trees in conjunction with a development permit for any City project, that oak tree permit documents the required tree replacement ratio for each tree removal (generally 3 to 1 ratio). If there is a City project that does not require a development permit, such as a street widening project, the mitigation is provided by the City’s landscape maintenance department and is typically provided at a higher replacement ratio than normally required. An example is the current Erbes Road widening project, where the City is providing a 5 to 1 replacement ratio.

As mentioned above in Findings FI-02 and FI-04, the City’s tree replacement ratio is generally 3 to 1 for commercial and industrial zoned properties and 1 to 1 on residential properties. The city does not inspect nor document that a replacement tree was planted, rather relies on confirmation from the owner of the property. However, in most cases, homeowners elect to donate an oak tree rather than burden the property with another oak tree. In those cases, staff coordinates the donation efforts with the Conejo Recreation and Park District.

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Finding number 05 expands on the City's on-going oak tree replacement and planting program.

***FI-08:** "The Grand Jury found that in April, 2010, the City Council modified an ordinance that allows private property owners to remove an oak tree if they can document the original planting of the tree."*

City Council Response: Agree. The City's oak tree ordinance, codified as Title 5, Chapter 14 of the Thousand Oaks Municipal Code, and its corresponding Oak Tree Preservation and Protection Guidelines policy (Resolution 2010-14), was amended in 2010 and changed several aspects of the previously existing protection standards and permitting procedures.

One of the more significant changes involved exempting "owner-planted" oak trees from the ordinance. Owner-planted trees are those placed in the ground by any owner of the property, both private and public property owners, including the City. If the tree is verified as an owner-planted tree, the current owner of the tree may encroach upon the tree as they choose, without requiring any permit, evaluation, or mitigation by the City.

RESPONSE TO RECOMMENDATIONS

The City Council has carefully reviewed the Recommendations in the Grand Jury Report and has the following responses to each of the three Recommendations R-01 through R-08. The Grand Jury Report statement of the Recommendation is presented first, followed by the City's response.

As a general statement, the City's Oak Tree Ordinance and the implementation of it are an expression of local public policy adopted through the legislative process.

***R-01:** The City and private property owners shall be required to follow similar permitting procedures.*

City Council Response: This recommendation is current practice and has been implemented.

***R-02:** The City shall publish and/or post, via website, a list of all on-going oak tree removal and replacement permits and exempted City oak tree projects. This data shall include the address, permit number and the planned installation location(s). When more than three (3) oak trees area involved in a removal project, this information shall be posted in local newspapers and/or online thirty*

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days prior to the removal. In addition, this recommendation shall apply to oak trees donated to the CRPD by the City.

City Council Response: The City publishes information about entitlement applications for various development projects on the City's website. If an Oak Tree Permit is processed in conjunction with that entitlement, the information about the permit is published as well. However, as with both public and private party applications, administrative Oak Tree Permits are not posted on the website. For projects involving removal of more than 3 healthy oak trees that are protected by the ordinance, notification of the application is posted on the City's website. The portion of recommendation has been implemented.

Since the City does not immediately know the location of a replacement tree, posting this information is not possible. This portion of the recommendation will not be implemented since it is not warranted and not reasonable.

In most cases, a City oak tree is not located on a parcel with an associated address. Typically, these trees are located in landscape areas within or adjacent to rights-of-way.

Requiring posting for a period of 30 days is not practical since the purpose of the removal, in the majority of cases, is to perform remedial work for public safety purposes. This recommendation is also more onerous than that required for private parties, which appears inconsistent with the intent of the Grand Jury Report and above recommendation R-01 which calls for parity between public and private procedures. This portion of the recommendation will not be implemented since it is not reasonable.

R-03: *Replacement oak trees, where possible, shall be planted to replicate an oak forest-like habitat.*

City Council Response: Due to the typical size of publicly owned landscape areas and medians available for planting oak trees, planting trees to simulate an oak grove is rarely feasible. However, when possible, such as in the case of the oak trees planted at the 401 Hillcrest site (see photographs in Exhibit A), the City makes every effort to create a grove-like setting. This recommendation has been implemented.