

ITEM 10.K.

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** The Honorable City Council

**FROM:** Mary Lindley, Parks, Recreation & Community Services Director 

**DATE:** September 21, 2006 (Meeting of October 4, 2006)

**SUBJECT:** Consider High Street Pepper Tree Maintenance Activity

**BACKGROUND**

The City has a long standing practice of maintaining the Pepper tree grove along High Street in a safe and aesthetically pleasing manner, consistent with standard tree care practices. To that end, and upon the recommendation of three licensed arborist, the City sought the removal of five senescent (aging) trees that were determined to be hazardous.

On June 18, 2003, staff presented the City Council with an agenda report (Attachment A) that recommended the removal of six Pepper trees that were found to be hazardous based on a tree evaluation performed by Kay Greeley (Arborist, ISA). The agenda report included a discussion about replanting new Pepper trees as hazardous trees are removed, and recommended that staff be directed to develop a replanting plan. The City Council continued the item to allow staff time to secure an evaluation and recommendation from a second arborist.

On February 4, 2004, staff returned to Council with an agenda report (Attachment B) that included two additional tree evaluations, and including a detailed discussion about the comprehensive tree evaluation report prepared by Michael Mahoney, a licensed arborist. Based on Mr. Mahoney's report, staff recommended the removal of five trees (by that time, one of the six originally recommended for removal had failed and was removed). Additionally, his report recommended that eleven trees be converted to "veteran" status by heavily pruning them and thereby reducing their canopies, turning them into smaller trees. This is a higher level of maintenance than is typically performed on trees and has never been performed on the Pepper trees on High Street. Of the eleven trees (that are a part of the original plantings), six were to be converted in an expedited manner as they presented a greater hazard risk; the remaining five were to be converted progressively over time. The agenda report and Mr. Mahoney's report discussed and made recommendations regarding a tree

000160

replanting plan. The City Council approved the removal of five trees and directed staff to implement Mr. Mahoney's recommendations.

On March 1, 2004, a legal action was filed against the City alleging that the City violated the California Environmental Quality Act (CEQA) in its decision to remove the five trees. On March 19, 2004, the Superior Court issued a preliminary injunction, prohibiting the City from removing the five trees. On June 16, 2004, the City rescinded its authorization to remove the five trees. Finally, on October 28, 2004, a settlement agreement was executed. Provision 4 of the settlement agreement (Attached C) provides for the continuing performance of routine maintenance (e.g. trimming).

On June 16, 2004, the Council rescinded its earlier action and directed the City Manager to execute a contract with a qualified consultant(s) to prepare a Tree Management Plan and environmental report as outlined in the Agenda Report. The City again retained the services of Mr. Mahoney to draft a Tree Maintenance Plan and the services of LSA to prepare the EIR. Due to workload issues and vacancies in the Parks, Recreation & Community Services Department, the Community Development Department was asked to assist with the completion of the environment review process. The consultant recently submitted the draft EIR, which is currently being reviewed by staff and the City Attorney before public circulation.

## **DISCUSSION**

At their September 20, 2006 meeting, the City Council requested that staff provide an agenda report with information about on-going maintenance of the Pepper trees on High Street, the maintenance parameters included in the Settlement Agreement, and information on why the tree located at 192 High Street (tree number 45) recently lost a large limb. Additionally, Councilmember Mikos requested background information on the City's intent to implement a tree replanting plan.

The previous agenda reports attached to this report clearly state that the City's intent has always been to replace Pepper trees in appropriate spaces along High Street when hazardous trees are removed. Had the City Council's action of June 16, 2004, been implemented, staff would have identified sites along High Street where future Pepper trees could be planted. Additionally, it has been the City's practice to plant new Pepper trees as part of the public improvements constructed on High Street. Over the last 15 plus years, the City has planted approximately 20 Pepper trees along High Street.

Tree maintenance is generally performed by grid (all of the trees on the street are trimmed at one time), or an individual basis as the need arises. Records from our tree maintenance contractor, West Coast Arborist (WCA), show that the City performs routine grid maintenance on the Pepper trees every ten to 18 months on

average, with the exception of the year 2004. In between routine grid maintenance, WCA is called to perform additional maintenance on individual trees when needed. In 2004, there was some uncertainty about what level of maintenance could be performed pursuant to the court injunction and the Settlement Agreement. During that time, trees were handled on an individual, case-by-case basis. Since 2000, routine grid maintenance had been performed on the following dates:

October 27, 2000  
June 28, 2001 (approximately half of the trees)  
August 24, 2001 (approximately half of the trees)  
June 21, 2002  
December 2, 2002  
November 11, 2003  
December 12, 2005

Due to the Court issued injunction and subsequent Settlement Agreement, the City did not implement the recommendations of the proposed Tree Maintenance Plan prepared by Mr. Mahoney, including recommendations related to tree removal and the conversion of certain trees to "veteran" status. The maintenance activity to date has been consistent with the City's routine maintenance practices. This has been a conscious effort on the part of staff to ensure that our practices comply with the Settlement Agreement and cannot be interpreted as overly aggressive or harmful.

The recent Pepper tree failures along High Street involved five trees:

Tree Number/Status	Location	Status
10/ Young Shade	North side, 173 High Street	Limb failure/ trimmed
8/ Mature Shade	North side, 165 High Street	Limb failure/ trimmed
42/ Young Shade	South side near gazebo	Up-rooted/ removed
45/ Senescent	South side, in front of grainery	Limb failure/ trimmed
22/ Senescent	North side, in front of blacksmith shop	Limb failure/ trimmed

The proposed Tree Plan stated that all of the Senescent trees (including trees 45 and 22) had "...conditions of instability that cannot be mitigated" and that these trees "should be removed at the earliest opportunity..." The Plan called for routine maintenance for all Shade trees, including tree 10, 8, and 42. Tree number 45 has a significant amount of decay and based on measurements taken by Mr. Mahoney in 2003, using a Resistograph, a significant proportion of the trunk is hollow. In fact,

when the limb fail, a substantial bee hive was thriving within hollow sections of the tree.

At the City's request, WCA was scheduled to trim the High Street Pepper trees in August, but crew shortages and workload delayed them until September. The tree were trimmed the week of September 25.

**STAFF RECOMMENDATION**

Receive and file.

Attachments: A, B, and C

## MOORPARK CITY COUNCIL AGENDA REPORT

**TO:** The Honorable City Council

**FROM:** Mary Lindley, Parks, Recreation & Community Services Director 

**DATE:** September 21, 2006 (Meeting of October 4, 2006)

**SUBJECT:** Consider High Street Pepper Tree Maintenance Activity

### **BACKGROUND**

The City has a long standing practice of maintaining the Pepper tree grove along High Street in a safe and aesthetically pleasing manner, consistent with standard tree care practices. To that end, and upon the recommendation of three licensed arborist, the City sought the removal of five senescent (aging) trees that were determined to be hazardous.

On June 18, 2003, staff presented the City Council with an agenda report (Attachment A) that recommended the removal of six Pepper trees that were found to be hazardous based on a tree evaluation performed by Kay Greeley (Arborist, ISA). The agenda report included a discussion about replanting new Pepper trees as hazardous trees are removed, and recommended that staff be directed to develop a replanting plan. The City Council continued the item to allow staff time to secure an evaluation and recommendation from a second arborist.

On February 4, 2004, staff returned to Council with an agenda report (Attachment B) that included two additional tree evaluations, and including a detailed discussion about the comprehensive tree evaluation report prepared by Michael Mahoney, a licensed arborist. Based on Mr. Mahoney's report, staff recommended the removal of five trees (by that time, one of the six originally recommended for removal had failed and was removed). Additionally, his report recommended that eleven trees be converted to "veteran" status by heavily pruning them and thereby reducing their canopies, turning them into smaller trees. This is a higher level of maintenance than is typically performed on trees and has never been performed on the Pepper trees on High Street. Of the eleven trees (that are a part of the original plantings), six were to be converted in an expedited manner as they presented a greater hazard risk; the remaining five were to be converted progressively over time. The agenda report and Mr. Mahoney's report discussed and made recommendations regarding a tree

replanting plan. The City Council approved the removal of five trees and directed staff to implement Mr. Mahoney's recommendations.

On March 1, 2004, a legal action was filed against the City alleging that the City violated the California Environmental Quality Act (CEQA) in its decision to remove the five trees. On March 19, 2004, the Superior Court issued a preliminary injunction, prohibiting the City from removing the five trees. On June 16, 2004, the City rescinded its authorization to remove the five trees. Finally, on October 28, 2004, a settlement agreement was executed. Provision 4 of the settlement agreement (Attached C) provides for the continuing performance of routine maintenance (e.g. trimming).

On June 16, 2004, the Council rescinded its earlier action and directed the City Manager to execute a contract with a qualified consultant(s) to prepare a Tree Management Plan and environmental report as outlined in the Agenda Report. The City again retained the services of Mr. Mahoney to draft a Tree Maintenance Plan and the services of LSA to prepare the EIR. Due to workload issues and vacancies in the Parks, Recreation & Community Services Department, the Community Development Department was asked to assist with the completion of the environment review process. The consultant recently submitted the draft EIR, which is currently being reviewed by staff and the City Attorney before public circulation.

## **DISCUSSION**

At their September 20, 2006 meeting, the City Council requested that staff provide an agenda report with information about on-going maintenance of the Pepper trees on High Street, the maintenance parameters included in the Settlement Agreement, and information on why the tree located at 192 High Street (tree number 45) recently lost a large limb. Additionally, Councilmember Mikos requested background information on the City's intent to implement a tree replanting plan. The previous agenda reports attached to this report clearly state that the City's intent has always been to replace Pepper trees in appropriate spaces along High Street when hazardous trees are removed. Had the City Council's action of June 16, 2004, been implemented, staff would have identified sites along High Street where future Pepper trees could be planted. Additionally, it has been the City's practice to plant new Pepper trees as part of the public improvements constructed on High Street. Over the last 15 plus years, the City has planted approximately 20 Pepper trees along High Street.

Tree maintenance is generally performed by grid (all of the trees on the street are trimmed at one time), or an individual basis as the need arises. Records from our tree maintenance contractor, West Coast Arborist (WCA), show that the City performs routine grid maintenance on the Pepper trees every ten to 18 months on average, with the exception of the year 2004. In between routine grid maintenance,

WCA is called to perform additional maintenance on individual trees when needed. In 2004, there was some uncertainty about what level of maintenance could be performed pursuant to the court injunction and the Settlement Agreement. During that time, trees were handled on an individual, case-by-case basis. Since 2000, routine grid maintenance had been performed on the following dates:

- October 27, 2000
- June 28, 2001 (approximately half of the trees)
- August 24, 2001 (approximately half of the trees)
- June 21, 2002
- December 2, 2002
- November 11, 2003
- December 12, 2005

Due to the Court issued injunction and subsequent Settlement Agreement, the City did not implement the recommendations of the proposed Tree Maintenance Plan prepared by Mr. Mahoney, including recommendations related to tree removal and the conversion of certain trees to "veteran" status. The maintenance activity to date has been consistent with the City's routine maintenance practices. This has been a conscious effort on the part of staff to ensure that our practices comply with the Settlement Agreement and cannot be interpreted as overly aggressive or harmful.

The recent Pepper tree failures along High Street involved five trees:

Tree Number/Status	Location	Status
10/ Young Shade	North side, 173 High Street	Limb failure/ trimmed
8/ Mature Shade	North side, 165 High Street	Limb failure/ trimmed
42/ Young Shade	South side near gazebo	Up-rooted/ removed
45/ Senescent	South side, in front of grainery	Limb failure/ trimmed
22/ Senescent	North side, in front of blacksmith shop	Limb failure/ trimmed

The proposed Tree Plan stated that all of the Senescent trees (including trees 45 and 22 had "...conditions of instability that cannot be mitigated" and that these trees "should be removed at the earliest opportunity..." The Plan called for routine maintenance for all Shade trees, including tree 10, 8, and 42.

At the City's request, WCA was scheduled to trim the High Street Pepper trees in August, but crew shortages and workload delayed them until September. The trees were trimmed the week of September 25.

**STAFF RECOMMENDATION**

Receive and file.

Attachments: A, B, and C

# ATTACHMENT A

## MOORPARK CITY COUNCIL AGENDA REPORT

TO: The Honorable City Council

FROM: Mary K. Lindley, Director of Community Services 

DATE: June 3, 2003 (CC Meeting of June 18, 2003)

SUBJECT: Consider Replanting Plan for High Street Pepper Trees

### SUMMARY

In 2000, the City hired an arborist to evaluate the mature Pepper trees on High Street. The evaluation took into consideration the following elements: target zone, failure potential, and size. From these elements, the arborist rates each tree assigning a hazard rating between 1, a tree presenting no hazard conditions, and 10, a tree with serious hazard conditions. The mature Pepper trees on High Street were assigned hazard rating of between 7 and 9. Of those rated, 6 of them had a rating of 9. The Council is being asked to approved the removal of the trees found to have a hazard rating of 9.

### BACKGROUND

The California Pepper Tree (*Schinus molle*) is native to South America, not California as the name seems to imply. It is a fast growing tree, generally reaching a mature height of approximately 40 feet with an equal crown and root spread. Today, arborist recommend against the use of Pepper trees as a street tree. They are known for invasive surface roots and are generally planted away from streets, sidewalks and curbs; however, this is not the case on High Street.

The arborist noted that the trees have been thinned excessively in an effort to keep the branch height low. This was a practices initiated by the County many years

ago. As a result, the trees have extensive decay, which results in limb and trunk failure. To mitigate the weakened structure of the trees due to the decay, the City has to continue the practice of excessively thinning the trees to minimize the weight of the branches. In some cases the City has hired a tree maintenance company to fill large hollowed out decayed areas with a foam substance to slow the decay process down.

Additionally, the trees are located within the right-of-way along High Street. Approximately half of the dripline area beneath each tree is covered with impervious paving. This condition creates additional stress on the trees.

The only other option to removing trees that present hazards to people and property is cabling. Cabling is invasive and should only be performed when absolutely necessary and because it requires an additional ongoing expense. Once a tree is cabled, it should be inspected at least annually, if not more often. The cables will need to be tightened and adjusted as the tree grows. Trees in similar condition and size as those on High Street require extensive cabling, which significantly increases the cost of tree maintenance. Additionally, the use of cables can be unsightly and can make more susceptible to decay and disease where the cable is attached to the tree. For these reasons, the City has never cabled any of its trees, but rather removed them when a tree presents a potential risk that cannot be mitigated by more traditional tree pruning methods.

### **DISCUSSION**

Staff is requesting approval to immediately remove the six trees that received a hazard rating of 9 in 2000. These trees have been deemed to have a high failure potential. Because they have an active target zone, a limb or scaffold failure could injure someone walking on the sidewalk or damage a car in the street or an adjacent building, it is important that the hazard be mitigated as soon as possible. This project is exempt under the emergency provision of the California Environmental Quality Act. An exemption has been filed.

The intent is to replace the six trees in locations on High Street, further back behind the sidewalk, where there is more room for mature root system. The exact location of the replacement trees has not been determined yet. The Director of Community Service will coordinate the identification of appropriate locations with the Assistant City Manager and Community Development Director to ensure that future revitalization plans for High Street do not conflict with the replacement trees.

Within the next 12 to 24 months, the City should also remove and replace the 18 Pepper trees that received hazard ratings of 8. To mitigate the significant change that will be created when 18 large trees are removed on High Street, the Council may wish to consider removing the trees in two phases: remove 9 in nine months and the remaining 9, nine months later. Similar to the removal plan for the six trees rated 9, the intent is to replant as many trees as is feasible given the existing and future infrastructure and building improvements along High Street.

The eventual removal of the all trees that are rated 9 and 8 would leave two large mature trees with ratings of 7 and the smaller replacement trees that were planted in the last 6 to 10 years (most of these are on the north side of High Street). These trees have a medium failure potential and with continued aggressive maintenance of these trees, they could remain viable for five to ten years more.

An option the City Council may wish to consider is to select one of the large mature Pepper trees with a hazard rating 7 or 8 to that appears to have some potential for long-term survival and take extraordinary maintenance measures, such as enlarging its planter area and cabling. Such a tree could serve as a historical landmark. However, the Committee should note that even a Pepper tree growing in hospitable surroundings might only be expected to live sixty to two hundred years. The surroundings on High Street are far from hospitable for a Pepper tree. Despite all of the City's effort, it may not net any significant additional years for any of the subject trees.

In addition to the removal of the 6 mature trees, staff plans to remove and replace 2 relatively young trees on the

north side of High Street that have poorly shaped trunks. This action will prevent future conflicts with structures.

**STAFF RECOMMENDATION**

Approve the removal of the 6 Pepper trees on High Street with a hazard rating of 9, and direct staff to develop a replanting plan for the 6 trees as well as a removal and replanting plan for the 18 trees with a hazard rating of 8.

ATTACHMENT BMOORPARK CITY COUNCIL  
AGENDA REPORT

TO: The Honorable City Council

FROM: Mary K. Lindley, Director of Community Services 

DATE: January 26, 2004 (CC Meeting of February 4, 2004)

SUBJECT: Consider Maintenance Plan for the High Street  
Pepper Trees

**BACKGROUND**

On June 18, 2003, the City Council considered a staff recommendation to remove five mature Pepper trees located on High Street. This recommendation was based on a report (Attachment A) prepared by a previous consultant, Kay Greeley, who had served for a period as the City's arborist on specific projects. The report identified the five trees as having a hazard rating of 9 on a scale of 1 to 10 (10 presenting the greatest hazard). Ms. Greeley recommended that the City either remove the five trees or mitigate the hazard by inserting cables. The Council requested a second opinion and more information.

Since the June 2003 meeting, staff has spoken to, and secured the services of, several arborists. This report attempts to summarize all of the information staff has gathered and to provide the Council with a recommendation for addressing the preservation of the Pepper tree theme on High Street.

**DISCUSSION**

The most comprehensive and recent evaluation of the mature High Street Pepper trees was performed by Michael Mahoney. Mr. Mahoney is a licensed arborist with over 30 years of experience. One of the tools he uses to help him evaluate the health and viability of a tree is a Resistograph®. A Resistograph® is used to measure the degree of decay in

internal tree tissue. It does this by measuring and graphing the increase or decrease of resistance to the force of a small needle drilled into a tree.

Mr. Mahoney had an opportunity to review the reports written by Ms. Greeley and Mr. Andresen (another arborist hired by the City), and through the City's tree maintenance contractor, West Coast Arborist, he became familiar with the current maintenance practices employed to preserve the trees. Based on historical information about the trees and his independent evaluation, Mr. Mahoney prepared a comprehensive report, which was previously provided to the City Council. Attachment "A" to this report is provided to assist the Council in locating the various tree spaces addressed in Mr. Mahoney's report. To summarize his recommendations, which begin on page 4 of his report, Mr. Mahoney recommends that the City do the following:

- With the knowledge that the life of a tree is not infinite, the City should consider planning for the eventual removal of old, non-viable trees in a manner that preserves, whenever feasible, the overall tree-lined appearance along High Street. To that end, the City needs to develop a policy and plan to remove old trees that present a hazard that cannot be mitigated in a manner that preserves some of the aesthetic value of the tree. Such a plan should address the staggered/phased removal of trees, when feasible. New trees should be planted in locations that better lend themselves to long-term growth and support the health of Pepper trees. The result will be a continuous collection of trees in a progression of different growth stages.
- The City should consider removing the trees in spaces 22, 45, 34, 29, and 26. Then plant new trees in spaces where it is feasible. Rather than planting new Pepper trees in spaces 26 and 29, adjacent to the Metrolink parking lot, a different landscape treatment should be considered.
- The trees in spaces 23, 36, 33, and 31 should be converted to veteran tree status by progressively pruning them to convert them to smaller trees. This is accomplished by carefully pruning away portions of the tree's canopy, while leaving adequate foliage to

support and maintain the health of the tree. Trees in spaces 17, 13, 9, 6, 44, 32, and 30 should receive the same treatment, but in an expedited manner as they present greater problems.

- All remaining trees should continue to receive routine pruning to establish strong structural stability. This includes trees in spaces 16, 14, 8, 48, 47, 46, 43, and 35.
- Perform regular tree evaluations to monitor and note any changes to the health and stability of the mature trees.

Please note that Mr. Mahoney indicates that the original Pepper trees along High Street have performed very well. Considering their age, surroundings, and the species penchant for decay, the City is fortunate to have had the trees survive for as long as they have. He also states that the City's maintenance practices of routine thinning (at least twice a year) have contributed to their long, successful life.

#### Additional Professional Input

Prior to the evaluation performed by Mr. Mahoney, staff hired a third arborist, Mr. Andresen, and sought information from several other professional sources.

Mr. Andresen performed a preliminary visual inspection of the mature Pepper trees on High Street and prepared a report documenting his findings (Attachment B). In summary, he found that the significant structural defects of the trees were predominately in their main trunks. I accompanied Mr. Andresen on his initial inspection of the trees, and he pointed out the numerous tree wounds that have opened the trunks up to decay. While not in the report, Mr. Andresen stated to me that he agreed with the hazard ratings assigned by Ms. Greeley, although for different reasons in some cases. His report recommends that the City consider a more detailed evaluation of each tree to verify its hazard rating and to further determine which trees might make good candidates for cabling. However, based on his inspection and conclusion of the structural defects in the trunks, he does not believe any of the trees with a hazard rating of nine are good candidates for cabling. In his opinion, cabling will not mitigate the

trunk defects he noted. As recommended, the City subsequently hired Mr. Mahoney to perform a detailed tree evaluation.

Our current tree maintenance contractor, West Coast Arborist (WCA), recommended that I contact Ken Pfalzgraf, the staff arborist for the City of Beverly Hills. Mr. Pfalzgraf is very knowledgeable about tree cabling and often speaks to arboriculture organizations on the topic. Staff spoke with Mr. Pfalzgraf and he stated that cabling is not an exact science. There is no guarantee that cabling will prevent tree failures. When a tree's owner cables a tree, it admits to an abnormality that presents a hazard to the public, hence the need for cabling. Implied in this statement is an increase in liability; i.e., the tree's owner is aware of a potentially hazardous condition. Additionally, he stated that cabling a tree changes the wind load impact on it and can lead to failure to its other limbs, which were not cabled.

Staff also consulted with West Coast Arborist (WCA), the City's tree maintenance contractor, and requested that they look at the five High Street Pepper trees with a hazard rating of 9 (according to Ms. Greeley's report) to see if, in their opinion, they could be cabled. A WCA staff arborist stated that in his opinion, none of the five trees would make a good cabling candidate and he would recommend against it. However, WCA will install cables at the City's request. To get an idea of what it might cost to cable a tree that is a good candidate for cabling, WCA provided staff with an estimate. Selecting one of the trees that has a hazard rating of 8, WCA recommends three cables (one 15 foot cable and two 20 foot cables). Based on a limited visual inspection, WCA estimates that for this one specific tree, it would cost \$1,800 to install the cables and approximately \$200 every six months to inspect and adjust the cables to ensure their continued effectiveness. In his opinion, cabling the trees may prolong the life of a tree with a hazard rating of 8 for about two to five years, depending on weather conditions.

#### Proposed Action

Based on Mr. Mahoney's report and the information gathered from other professional arborist sources, staff proposes

that the Council authorize the removal of the trees in spaces 22, 45, 34, 29, and 26. The work would be undertaken in the immediate future. Additionally, it is proposed that staff be directed to identify spaces that can accommodate and support the long-term growth of a Pepper tree to replace the trees removed. New 24-inch Pepper trees would be planted in the identified spaces. Staff does not recommend that the City cable any of the Pepper trees.

Further, it is proposed that the City implement Mr. Mahoney's recommendation to perform the progressive and expedited pruning work to incrementally convert the trees in spaces 23, 36, 33, 31, 17, 13, 9, 6, 44, 32, and 30 to smaller veteran tree status to maximize safety and mitigate risk. This can be accomplished by carefully pruning away portions of the tree's canopy, while leaving adequate foliage to support and maintain the health of the tree. The mature trees would then be evaluated and assessed on a no less than annual basis, and the findings documented.

To address the future management of the Pepper tree collection on High Street, it is proposed that staff implement a phasing plan to remove trees when warranted and plant new trees in spaces that can support them over a long term. Rather than wait until a tree is removed, new tree spaces can be identified now, keeping in mind future improvements and potential development plans on High Street.

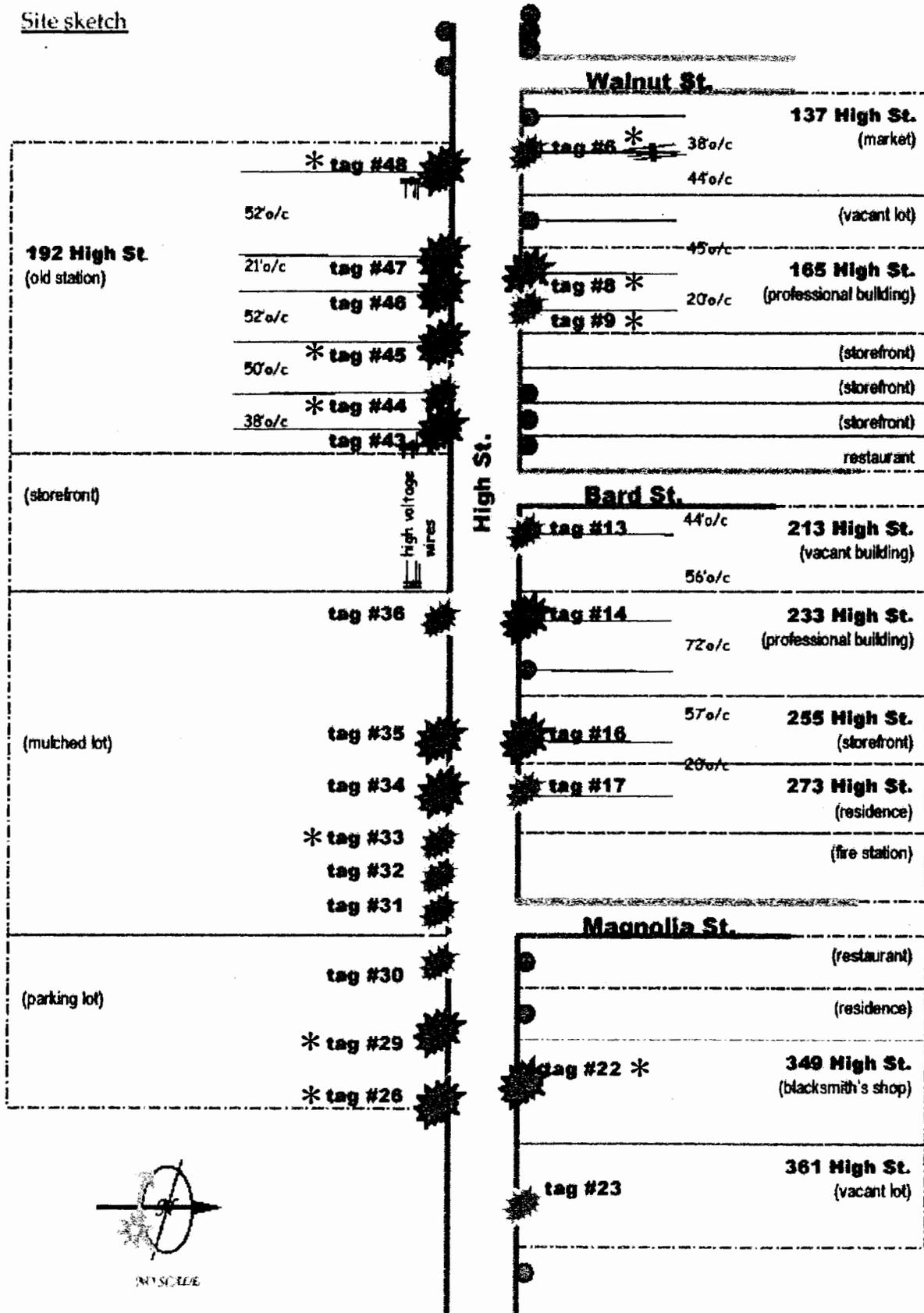
**STAFF RECOMMENDATION**

Authorize staff to remove the High Street Pepper trees in spaces 22, 45, 34, 29, and 26, and direct staff to implement the steps proposed in the Agenda Report.

Attachment A: Tree Map  
B: Steve Andresen Report

Arborist's Report: Selected High Street Pepper Trees - December 2003

Site sketch



\* Denotes Trees Rated 10 and 9 in Ms. Greeley's Report

**Steve F. Andresen / Arborist Services**  
5516 Inspiration Drive ISA~WC 2170  
Riverside, CA 92506  
(909) 788-1829 Fax 788-1667

---

August 20, 2003

Ms. Mary K. Lindley, Director of Community Services  
**THE CITY OF MOORPARK**  
799 Moorpark Avenue  
Moorpark, CA 93201

**RE: ARBORIST LETTER  
CALIFORNIA PEPPERS - HIGH STREET**

Dear Mary,

Thank you for the opportunity to be involved with your project. Please see below my initial findings regarding the California Pepper trees on High Street.

**SCOPE OF WORK**

At the request of City of Moorpark Director of Community Services, Ms. Mary K. Lindley, a meeting and site visit was made on August 5, 2003 to inspect the street trees along High Street. The purpose of the meeting and this subsequent report addresses the visible health and structure of the California Pepper trees and concerns regarding tree stability and possible hazards.

**SUMMARY**

My first impression when arriving at the location was the extremely high canopies of the trees. Due to the necessity to maintain the California Peppers as street trees, numerous pruning over the years has had a detrimental impact on the structural character of the trees. Also taking into consideration the age and location of the trees in question, I would recommend the removal of trees that after further inspection is found to have a strong possibility of failure. The importance of taking into consideration the age of a tree in this type of setting is the consideration that damage over the years may not be documented or revealed under normal circumstances.

The option of guying and cabling to prevent limb failure may assist to protect the splitting of a tree at the limb attachment but will not address the more vulnerable areas below the large structural branches. The significant structural defects are in the main trunk and at the tree bases at the soil level where stress can occur from radial movement.



**EFFECTS OF PRUNING**

In picture (1), note how the wound has not properly healed. The pruning cut or flush cut has injured the branch collar and damaged the trees branch defense zone at this location. This zone is responsible for retarding the spread of decay. The size of the limb removed and the age of the tree are also factors contributing to the spread of decay into the heartwood and has weakened the overall tree stability and structure.



**TRUNK DAMAGE**

Whole tree failure can occur in trees with severe trunk damage at the tree base. As seen in picture (2), a very large area of the tree trunk is dead and decayed. The amount of sound wood is not known in this tree but due to age and height, a tree with this condition has a high possibility of failure.

### **CONCLUSION**

Heritage trees have a two-fold impact on a community. The Pepper trees natural beauty and its contribution to the downtown setting is extremely positive. Allowing trees with substantial defects to remain in this setting is however not practicing proper tree management. The high pedestrian usage and traffic along High Street requires special consideration into the probability that tree failure will occur in structural defective trees even though all precautions are taken to improve tree conditions.

### **RECOMMENDATIONS**

My recommendations for the trees on High Street are to further evaluate each tree and remove those considered to be hazardous systematically until all trees with severe damage are removed.

A program aimed at replacing each tree with a specimen size replacement with proper structure and health should be considered in order to reduce the community impact of the large tree removal process.

The twice a year pruning now done to reduce the canopy weight and remove any weakly attached or diseased limbs should be continued on the existing trees.

**High Street – California Peppers**

Steve F. Andresen

August 20, 2003

Page 4 of 4

**QUALIFICATIONS AND LIMITING CONDITIONS:**

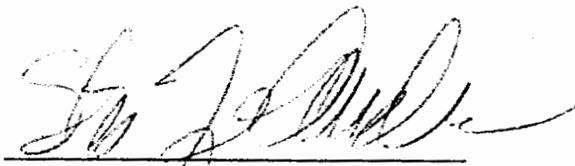
I am a certified arborist in California # WC 2170 with the International Society of Arboriculture and I am qualified to make this report.

My inspection was a visual examination and in most cases will ensure the success of a project such as this. My report is based on the condition of the trees at the time of inspection.

**QUESTIONS OR COMMENTS:**

If you should have questions or comments regarding this report please feel free to contact me:

Steve F. Andresen  
**Arborist Services**  
5516 Inspiration Drive  
Riverside, CA 92506  
(909) 768-9897  
Fax (909) 788-1667



Steve F. Andresen  
Arborist WC 2170

Date: 8-20-03

000181

COPY

ATTACHMENT C

AGREEMENT

This Agreement is entered into between the City Council of the City of Moorpark ("City") and William L. Whitaker III and James Dale Whitaker ("Whitakers") (collectively referred to herein as the "Parties"). In consideration of the mutual promises and covenants set forth in this Agreement, the Parties hereto agree as follows:

1. Recitals

This Agreement is made with respect to the following facts, which are acknowledged as true and correct by the Parties:

- 1.1 On March 1, 2004 the Whitakers filed an action in Ventura County Superior Court against the City (Case No. SC038803, "Action") alleging that the City violated the California Environmental Quality Act ("CEQA") in its decision to remove five (5) California Pepper Trees from High Street in the City of Moorpark.
- 1.2 On May 19, 2004, the Court issued a preliminary injunction in the Action, prohibiting the City from removing the five (5) California Pepper Trees.
- 1.3 On June 16, 2004, the City rescinded its authorization to remove the five (5) California Pepper Trees.
- 1.4 The Parties agree to resolve the Action under the terms and conditions set forth below.

2. Payment

- 2.1 The City shall pay the Whitakers the total sum of EIGHT THOUSAND and 00/100 DOLLARS (\$8,000.00) ("Payment"), within thirty (30) days of the Action being dismissed with prejudice.
- 2.2 The Parties waive any and all rights to attorneys' fees and costs incurred with regard to the Action.

3. Historical Resources

Through this Agreement, the City acknowledges the County of Ventura's designation of the High Street pepper trees as being historical resources for purposes of CEQA compliance with an anticipated pepper tree management plan.

4. Routine Maintenance

Nothing in this Agreement shall be construed as precluding the City from performing routine maintenance (e.g. trimming) on the High Street pepper trees.

5. Dismissal

The Whitakers shall dismiss the Action with prejudice within ten (10) days of the Effective Date of this Agreement.

6. Waiver and Release

Except for those rights reserved in this Agreement, the Whitakers hereby release and discharge the City and its respective officers, officials, employees and agents from any and all causes of action, damages, demands, debts, losses, liabilities, claims, accounts, reckonings, obligation expenses, rights and demands of any kind or nature which the Whitakers have or had relating in any way to the High Street pepper trees or the Action.

In this connection, the Whitakers waive the provisions of Section 1542 of the Civil Code of the State of California, and any other similar provision or statute of any state or nation, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

7. Remedies

The Parties may pursue any and all available legal and/or equitable remedies to enforce the terms and conditions of this Agreement. In the event of a breach, any forbearance on the part of any Party to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding any subsequent breach.

8. Entire Agreement

This Agreement contains the entire understanding between the City and the Whitakers with respect to the City's February, 2004 decision to remove five (5) California Pepper Trees from High Street. Any prior agreements, promises, negotiations or representations not expressly set forth herein, to the extent they are inconsistent with the terms of this Agreement, are of no force or effect. Subsequent modifications to the Agreement shall be effective only if in writing and signed by all Parties.

9. Severability

Should any non-material provision of this Agreement be held invalid or illegal, such invalidity or illegality shall not invalidate the whole of this Agreement, but, rather, the Agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

10. Section Headings

The section headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents of the sections to which they relate.

11. Choice of Law

This Agreement shall be construed and enforced pursuant to the laws of the State of California. All actions to enforce this Agreement shall be brought in the Ventura County Superior Court.

12. No Presumption Re: Drafter

The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement, and therefore no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

13. Authorization to Execute Agreement

Each party to this Agreement warrants to each other Party that it has authority to enter into, and has lawfully authorized the execution of this Agreement.

14. Effective Date

This Agreement shall be effective when it has been signed by the last Party to execute the Agreement.

15. Counterparts: Facsimile Signature

This Agreement may be executed in counterparts, each of which so executed shall irrespective of the date of its execution and delivery be deemed an original, and all such counterparts together shall constitute one and the same instrument. Facsimile signatures shall have the same force and effect as original signatures.

[the remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written by their signatures.

**WILLIAM L. WHITAKER III**

**JAMES DALE WHITAKER**

William L. Whitaker III

James Dale Whitaker

Date: 10-22, 2004

Date: 10-22, 2004

**CITY COUNCIL OF THE CITY OF MOORPARK:**

By: Steven Kueny  
STEVEN KUENY, City Manager

Date: 10/28, 2004