

APPELLANT'S PACKET

William Snow
622 19th Street
Pacific Grove, CA 93950

City of Pacific Grove
300 Forest Avenue
Pacific Grove, CA 93950

June 6, 2017

Dear Members of the City Council,

This letter is an attempt to clarify a few questions and points that came up during the Beautification and Natural Resources Commission meeting held on May 16, 2017.

- There was a question about why we submitted the appeal instead of the homeowner, Tess Dawber. As you know, this process can get to be quite expensive and time consuming. When we began in January 2017, we offered to help share the cost burden as well as time commitment. Tess agreed to pay for and schedule the crane inspection, the certified arborist fees, as well as submit all applications to the City. We agreed that if the permit to remove was denied, we would cover the burden of the appeal expense and accompanying paperwork. Tess is in full support of our appeal, as you can see in her letter to the Beautification and Natural Resources Commission, dated April 5, 2017.
- We understand that it is the mission of the Beautification and Natural Resources Commission, as well as the City Arborist, to protect and maintain the overall tree canopy within the City of Pacific Grove. We are in full support of this mission and do not believe that trees should be removed unless necessary. To this end, we appealed a construction project at 666 Gibson Avenue as the homeowner failed to disclose her plans to remove large limbs from one of the older California oaks on her property, potentially putting the tree in jeopardy. In 2012 when we lived in Carmel Valley, we worked with certified arborist Frank Ono to revitalize a cluster of California oaks on our property. We did not take his recommendation to immediately remove one of the old oaks he thought was hazardous. Just like the tree at 650 Gibson Avenue, Mr. Ono gave this tree a 1-5 year life expectancy. The tree fell one week later, causing substantial damage to surrounding trees and our fence. Luckily, no one was harmed when it fell. We certainly wish we had followed his advice as the damage was extensive. Again, we do not believe that trees should be removed indiscriminately. Our request is not indiscriminate or for aesthetics – it is because the tree is posing an imminent danger to our neighborhood.
- The City Arborist commented during the meeting that many of the letters from concerned neighbors addressed only passing pedestrians or that the homeowners were too far from the potential impact zone to count. We strongly disagree as he did not take into consideration that we all park our cars along 19th Street and are out in front of our

homes, and that we have 8 school-aged children on our stretch of 19th Street between Gibson Avenue Junipero Avenue that run and play up and down the sidewalk area within the potential impact zone. Here are a few quotes from those letters. We believe their fears and concerns are legitimate and should not be ignored or scoffed at:

- "My property is adjacent to the tree in question. I have lived in my house for 40 years and many times this tree has dropped pinecones and branches that have damaged our property and the vehicles of friends and family. I live in fear that this tree will fail when one of our grandchildren is under it." Linda Pagnella
- "I live in fear of this tree falling, damaging property, causing personal injury or death; especially when it is windy, raining or both. This tree is no less a hazard than the tree that killed a visitor in the Butterfly Grove in 2004." Jim Pagnella
- My home at 618 19th Street is directly across the street from the arc of possible impact from any partial or complete collapse of this giant damaged tree. By denying this removal the City has stepped in front of the liability risk from any damage or injuries resulting from the inevitable partial or complete collapse of this tree." Gary Trimble
- "The anxiety of this tree falling is real and the wellbeing of our neighborhood is at stake." Bill & Kirsten Janes
- "This tree needs to be removed to relieve the neighborhood of the stress and fear of it falling as well as relieving the owner of the property the liability it causes. We do not believe this is an outrageous, baseless or even selfish request. It is simply a matter of safety. This city does a fantastic job of protecting trees; we also need to protect the residents." Mario & Michaila Bertolucci

The Commission was misled into believing three certified arborist had inspected the tree in question and that two of those arborists (the City and Three Sisters Trees) believed the tree is safe. This is false. There have been four certified arborists who have inspected the tree, not three. Two were paid for or under an employment contract with the City and two were hired by the homeowner. The City Arborists recommended a "wait and see" approach and the other two have recommended removal for safety concerns. In early January 2017 certified arborist Brian Jacobsen from Smith Tree Services visually inspected the tree with as much depth as that of that the arborist from Two Sisters, and then completed the initial application to remove the tree that was submitted on January 11, 2017. Mr. Jacobson writes on the Permit & Request Application for Tree Permit (TP), "Over-mature tree, leans westward and neighbors are concerned. "Lone-soldier" no longer has support from removed adjacent trees. Tree was topped years ago; stem rot is likely. History of branch failures. HAZARD ABATEMENT." Note that Mr. Jacobson capitalized the words HAZARD ABATEMENT. He has been a certified arborist since 1988 on the Monterey Peninsula (No. WE-0422A).

- During the meeting the City Arborist discussed the direction of the lean and stated that the tree would likely miss our home and land at the corner of our property instead. We disagree. Under OSHA guidelines (derived from Bureau of Land Management guidelines), the potential impact zone is 1.5x the height of the tree. See Appendix (b) which shows an impact zone of 70' and 1.5x (105'), and then review Appendix C which shows the arc of destruction at 80' and 1.5x that (120'). There is additional documentation from OSHA which predicts likelihood of destruction when the tree leans – specifically that the direction of lean is most likely, but also anything at 90° to the lean. Overall, the arc of destruction validates our neighbors concerns as well as ours – the area affected is significantly more than the corner of our fence.
- In Frank Ono's report dated February 13, 2017, he states *"Tree #995 is a 41" diameter Monterey pine ... The tree has a lean of over 17 degrees to the west."* (page 1 of the report). Note that according to FEMA and others (my letter to the city date January 11, 2017), a tree leaning more than 15 degrees from vertical may represent a hazard if the direction of the lean is toward a potential target. Generally, trees that lean more than 15 degrees vertical in this instance should be removed (FEMA). The target for tree #995 is our home, vehicles parked in our driveway and vehicles parked on 19th Street and Gibson Avenue, pedestrians, including slower retirees walking up and down our street, 8 school aged-children living on our stretch of 19th Street, and children in route to Pacific Grove Middle School and Pacific Grove High School. Note attached resident letters to the City regarding their fear of walking and parking their vehicles near this tree.
- Weather – Wind Loading and direction – it was stated repeatedly that we rarely see wind from the east that would put pressure on the tree in the direction of the lean – this is false. Appendix D shows historical data from February of winds from the east multiple times. One of the windstorms in February caused the tree in question to shed many pinecones and several large branches. The tree was originally protected from easterly winds by it's sister trees that were removed approximately 4 years ago.
- The methods used by the city arborist (observation, static measurements) have been proven to be ineffective at estimating likelihood of failure as demonstrated in the American Journal of Botany, article titled *"Mechanical Stability of Trees under Dynamic Load"* 27 July 2006 (<http://www.amjbot.org/content/93/10/1522.full>). The article cites ***"As trees grow, the added biomass develops greater self-loading and the upper parts of the tree are exposed to higher wind speeds creating larger bending moments at its base"***

This is not a young tree, in fact, it's a tree at the very end of its lifecycle, and based on the observed canopy, the stresses at the base must be incredible. The lean of the tree intensifies this stress.

- Lastly, according to the text *"Understanding Tree Law: A Handbook for Practitioners"* by Barri Kaplan Bonapart, a protected tree can be removed if there are safety issues

regardless of the health of the tree. The law always errs on the side of caution when it comes to issues of safety (Bonapart) and we believe, as well as other concerned Pacific Grove residents, that there is a reasonable probability of future harm based on the risks discussed in Frank Ono's report. For these reasons, we are urging the City of Pacific Grove to grant the permit for immediate removal of this tree.

Sincerely,

William A. Snow, III

Appendix A: OSHA Guidelines: *"Field Guide for Danger Tree Identification and Response"*

Retrieved from: <http://osha.oregon.gov/OSHPubs/reserve-trees.pdf>

United States
Department of
Agriculture

Forest Service

Pacific Northwest
Region



United States
Department of
Interior

Bureau of
Land Management

Field Guide for Danger Tree Identification and Response

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Oregon
OSHA

Associated Oregon
Loggers, Inc.



Step 3 - Determine the potential failure zone

The potential failure zone is the area that could be reached by any part of a failed tree. When a tree fails, the tree or its parts may strike other trees and cause them to fail as well. The parts may slide or roll. When a tree is being felled, it may strike other trees or debris on the ground and fling material a considerable distance. This is especially true in dead timber. The qualified person needs to be aware of these situations when determining the potential failure zones.

Total Tree Failure - Potential Failure Zone

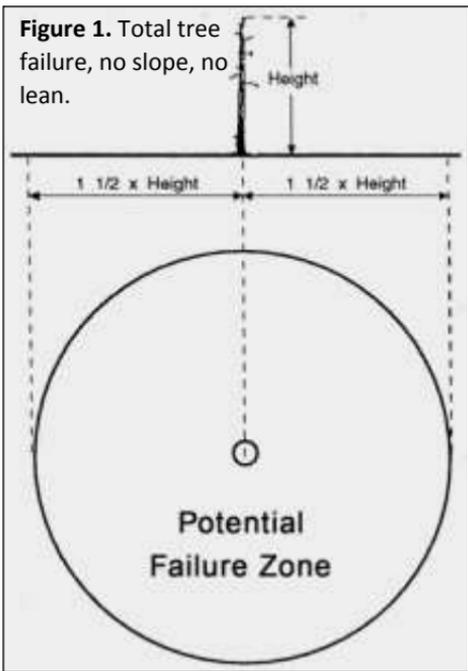


Figure 1. Total tree failure, no slope, no lean.

The failure zone is defined as the area on the ground that could be reached by any portion of the tree that may collapse. When determining the failure zone, the following conditions must be evaluated:

- Ground slope.
- Direction of lean.
- Height of the tree.

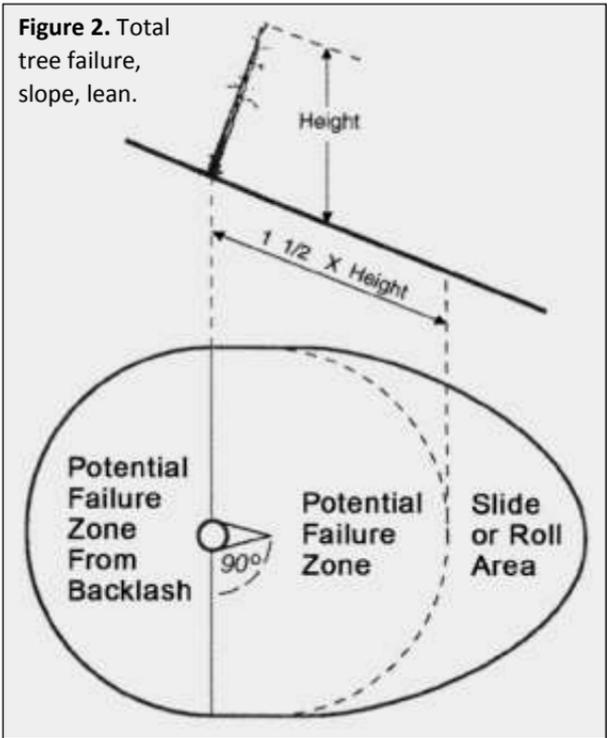
❖ **Level or sloped ground; no discernible lean**

The failure zone is a circle around the tree with a radius of at least 1½ times the total tree height. On sloped ground, the failure zone downhill of the tree may have to be extended whatever distance is necessary to protect people.

❖ **Level or sloped ground; lean in any direction**

The failure zone is an area at least 1½ times the tree height beginning at the tree base then extending towards the direction of the lean and out 90 degrees on either side of the tree from the lean direction.

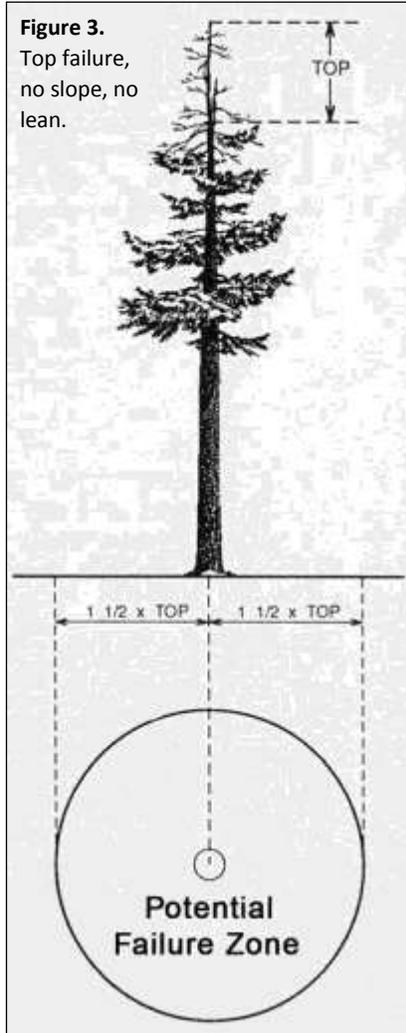
The area behind the lean is not within the failure zone. Be aware that if equipment, lines, moving logs, or falling timber contacts a likely or imminent failure potential tree, the contact could force a backlash opposite to the lean, and create an additional danger during the time of impact beyond the potential failure zone.



On sloped ground where the dislodged section may roll downhill, the potential failure zone must be extended on the downhill side for whatever distance is necessary to protect people.

Tree Part Failure – Potential Failure Zone

The area on-the-ground that could be reached by a dislodged top, branch, slab, or chunk is called the potential failure zone for a part failure. When determining the zone, evaluate the following conditions:



- Ground slope.
- Amount and direction of lean.
- Length of the part that could dislodge.

❖ **Level or sloped ground; no discernable lean**

Determine the length of the part that could dislodge. The failure zone forms a circle around the tree with a radius equal to at least $1\frac{1}{2}$ times the length of the dislodged part. On sloped ground where the dislodged part may slide or roll down hill, the failure zone must be extended on the down- hill side for whatever distance is necessary to protect people.

Appendix B: Tree Impact zone estimated

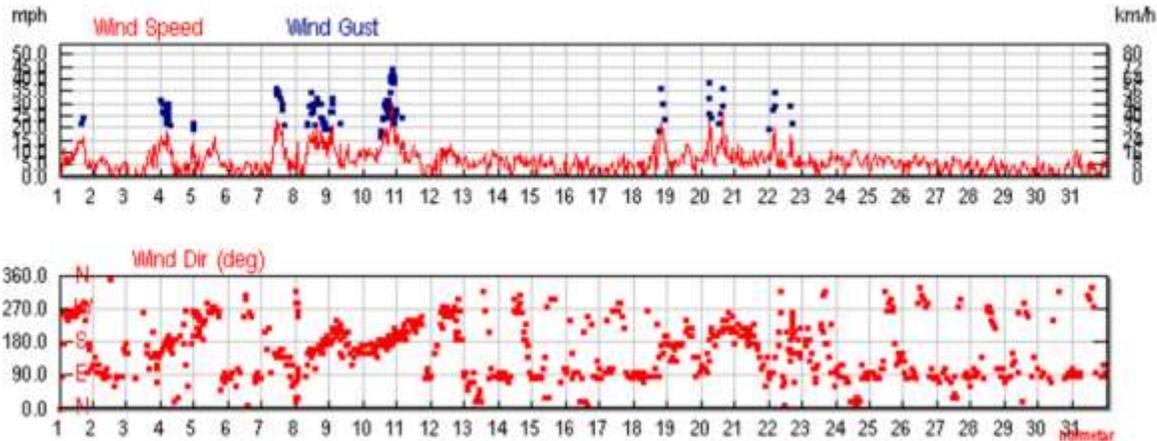


Appendix C: Tree Impact Zone per OSHA Guidelines

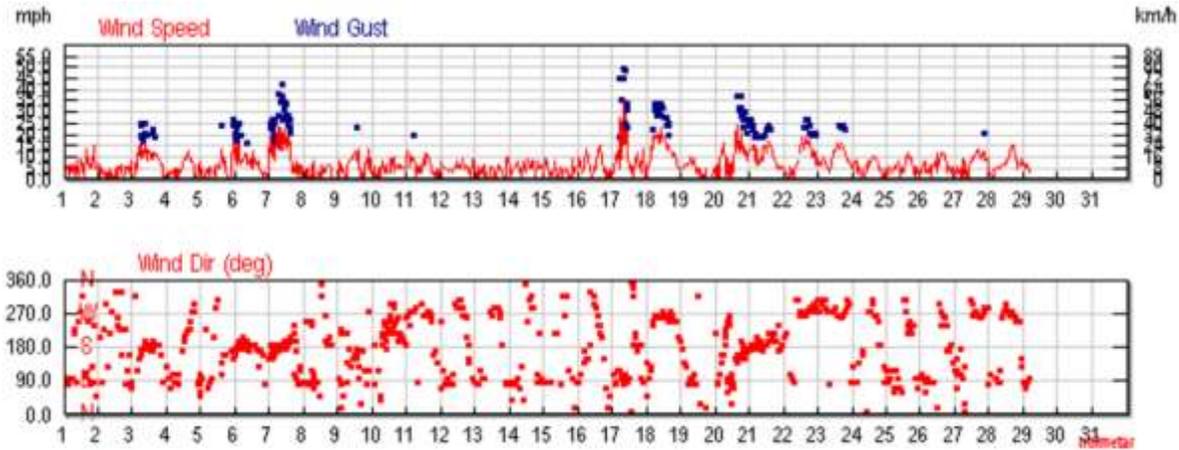


Appendix D: Wind Direction and Speed
Data from Weather Underground site on 31 May 2017
<https://www.wunderground.com/history/>

January 2017



February 2017



NOTE: 90 on the Y axis corresponds to EAST, and the tree leans West/South West, increasing the pressure on the tree.

Teresa Dawber
650 Gibson Avenue
Pacific Grove, CA 93950

April 5, 2017

City of Pacific Grove 300
Forest Avenue Pacific
Grove, CA 93950

Dear Members of the Beautification and Natural Resources Commission,

The purposes of this letter are to outline the steps taken to obtain a city permit to remove a tree from my property, to express my support for the Snow's appeal of the city arborist's decision, and to reiterate my concerns about the safety of the neighborhood.

On January 11 of this year, I submitted a Tree Permit application to remove the mature Monterey pine tree on my property that leans towards 19th Avenue. The city arborist, Mr. Weisfuss, visited the property on January 31. He requested additional information on the condition of the tree.

Mr. Frank Ono, a Certified Arborist, was commissioned to document the condition of the tree. Mr. John Ley assisted in preparing the report. I submitted Mr. Ono's report to the city on February 21, along with letters of support from the neighbors. Mr. Ono's recommendation was for removal. The Tree Permit was denied.

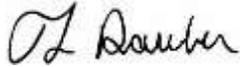
A number of the findings from Mr. Ono's report are highlighted:

- The tree has a tree hazard evaluation form (THEF) score of 10, where a score of 12 represents the most likelihood of failure. The THEF score rates the relative hazard of trees based on probability of failure, size of failure part, and target.
- The tree has a moderate to significant lean towards the street. The street and structures are targets.
- The tree existed as a group of three Monterey pines. The two other Monterey pines were removed three years ago. Trees are protected by surrounding trees and have roots that grow together for stabilization and security. This tree lost protection because the roots are no longer tied together to healthy surrounding trees. The roots of the two removed trees are decaying. Mr. Weisfuss' response to the report notes that soil excavation of the roots was not performed. The procedure was discussed between Mr. Ono and Mr. Ley and excavation was deemed unsafe for the tree.
- The branch attachments are compromised because they were topped years ago. The overextended limbs grow in the direction of the lean.

- The tree is estimated to be over 80 years old. Monterey pines have a life expectancy of 80 to 85 years.

The condition of the tree and the direction of the lean pose a significant threat to the safety of the families who live in the immediate area, the safety of surrounding properties, and the safety of the pedestrians, cyclists and drivers who frequent the area. I fully support the appeal of the city arborist's decision. The other two Monterey pines were removed quickly and without incident three years ago when the city permit was obtained. It is my hope that the Beautification and Natural Resources Commission will grant permission for the removal of this Monterey pine.

Thank you for your attention to my concerns for the safety of the neighborhood. Sincerely,

A handwritten signature in cursive script, appearing to read "Teresa Dawber".

Teresa Dawber

Catherine Snow
622 19 Street
Pacific Grove, CA 93950

City of Pacific Grove
300 Forest Avenue Pacific
Grove, CA 93950

February 10, 2017

To Whom It May Concern:

This is my second letter to the city regarding a large Monterey Pine located on my neighbor's property at 650 Gibson Avenue. I am writing once again to ask that this tree be removed in an attempt to be proactive and to avoid the catastrophic consequences of it falling and landing on our home, vehicles, and the people who may be in our home, in cars, or on the street.

We live in the house directly across from 650 Gibson Avenue, in a two story historic home with much of the top floor built in the early 1900s. My husband and I have two school-aged children who attend Pacific Grove Middle School and Pacific Grove High School. Our bedrooms are located on the second story of our home, and from the windows we look out at the large canopy of this tree, which has a substantial lean toward our house. Were this tree to fall, there is little doubt in my mind that it would fall on our home and in so doing, would hit our bedrooms, with parts of the heavy canopy landing on our vehicles parked in front of our house. I think about this tree every single day and live in constant fear of it failing. During storms I am terrified. As I get into our car each day to drive my children to school, it is all I can think about until I have successfully backed out.

As the owner of one of PG's historic properties, I understand the importance of maintaining the ambiance of the city. My husband and I have worked diligently to maintain our property and realize what an asset mature trees are to the landscape of the city. I would definitely consider myself to be in the pro-tree camp. However, this particular tree has a very high risk of causing significant damage to people and property should it fall. Please do the right thing and allow this tree to be removed before a preventable tragedy occurs.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Snow', written in a cursive style.

Catherine Snow

City of Pacific Grove
300 Forest Avenue
Pacific Grove, CA 93950

To whom it may concern:

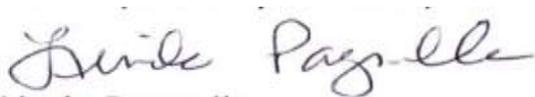
I am writing in support of the tree removal permit for the Pine Tree at 650 Gibson Avenue. My property is adjacent to the tree in question. It is located approximately 15 feet from my property line. I have lived in my house for 40 years and many times this tree has dropped pinecones and branches that have damaged our property and the vehicles of friends and family.

Our street is used by many as a route to Pacific Grove High School and everyday many student s walk under this hazard.

This tree is at least 80 years old and is not in good health as evidenced by the hundreds of woodpecker holes. I urge you to take a proactive approach to dealing with this tree. The owner has done all she can do to make this tree safe.

I live in fear that this tree will fail when one of our grandchildren is under it. It is not a question of **if** this tree will fail but **when** will it fail. I only hope no one will be killed by its mass. I would hope the city would agree that the loss of human life would be more tragic than the loss of this tree!

Thank you for your time,

A handwritten signature in cursive script that reads "Linda Pagnella". The signature is written in black ink on a white background.

Linda Pagnella
615 19th Street
Pacific Grove, CA 93950

Friday, February 10 , 2017

City of Pacific Grove
300 Forest Avenue
Pacific Grove, CA 93950

Subject: Pine Tree at 650 Gibson

I live in fear of this tree falling, damaging property, causing personal injury or death; especially when it's windy, raining or both. It has over several years gotten worse in regards of its lean angle and the loss of limbs. On more than one occasion I have had limbs drop off and land within six feet from where I was standing. The last time this happened the limb was over six feet in length.

The invasive roots have damaged the street to a point that cars scrape when attempting to park. This is the second time the roots have damaged 19th Street. I don't park under this tree and urge anyone who will listen not to park under this tree.

This tree is 80 years old and is not in good health as evidenced by the hundreds of woodpecker holes. The two unhealthy sister trees have already been removed which is going to expose this tree to more influences from winds. The root structure is now compromised because of the removal of the sister trees. Their entangled roots will continue to rot and decompose, weakening support of this tree.

This tree is no less a hazard than the tree that killed a visitor in the Butterfly Grove in 2004.

It ' s not a matter of if this tree is going to be an issue - it is only a matter of when.

You should take a proactive approach to dealing with this hazard before there is a regrettable event and let the homeowner remove this tree!

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

Jim Pagnella
615 19th Street
Pacific Grove CA, 93950
831.596.6152

City of Pacific Grove 300
Forest Avenue Pacific
Grove, CA 93950

To Whom it may concern:

We are very concerned regarding the tree on the 600 block of 19th street. My wife and I have lived in this neighborhood for over 22 years. Trme after time we comment to each other "is this the day the tree falls".

We are concerned for the children that live in the neighborhood as well as the students that use 19th Street that travel to and from school. The tree has obviously lived its full life and is not in good health.

We believe this tree should be removed as soon as possible. The anxiety of this tree falling is real and the well being of our neighborhood is at stake.

Sincerely

Bill & Kirsten Janes



614 19th Street
Pacific Grove, CA 93950

Gary Trimble
618 19th Steet
Pacific Grove, CA
ph: (209) 968-9675

Mailing: POB 576466
Modesto, CA 95357

February 9, 2017

City of Pacific Grove
300 Forest Ave.
Pacific Grove, CA 93950

Regarding: Giant Pine Tree at the rear of 650 Gibson Ave, request for removal.

Dear Sirs;

My home at 618 19th street is directly across the street from the arc of possible impact from any partial or complete collapse of this giant damaged tree.

The unsightly condition and inevitable partial or complete collapse of this tree is obvious. A re-inspection and permit to remove this tree is imperative.

This tree is a hazard and legal liability for both the homeowner and the City of Pacific Grove. A year or so ago two similar trees were removed from this immediate area. They were an obvious danger and the homeowner was granted a permit to remove them. The homeowner was denied a permit to remove this third tree.

By denying this removal the City has stepped in front of the liability risk from any damage or injuries resulting from the inevitable partial or complete collapse of this tree.

It is in the interest of everyone that this tree be removed. In view of the repeated written requests to the city for this removal: delay will be difficult to defend when the damage is done.

Gary Trimble

Mario and Michaila Bertolucci
610 19th St
Pacific Grove, CA 93950

April 3, 2017

City of Pacific Grove
300 Forest Ave
Pacific Grove, CA

To Whom It May Concern,

We are writing this letter to express our concern regarding the tree on the east side of the 600 block of 19th Street, located on the property of 650 Gibson Ave. This tree has, what appears to be, a severe lean over the street and ultimately people's homes. Because of this lean, we avoid being within its reach at all times. When going for a walk, we always head north as we are fearful it will fall on us or one of our small children.

In addition, we have anxiety about parking under the tree. If not for our car, but the safety of getting in and out of the car with our children. Parking on this block of 19th Street is already limited and because of the fear of being near the tree visitors often have to park along other streets.

Furthermore, since purchasing our home four years ago, we have already witnessed one or two of the trees directly adjacent to the tree in question, fall and hit a neighbors' house. Fortunately, it caused minimal damage and no one was under the tree when it fell. However, the removed sister trees can no longer help support the weight of the leaning tree as the roots are rotting away. It is only a matter of time for this tree to fall given the strong winds and damp soil that we have been experiencing this year. During our winter walks, we noted many healthy pines that uprooted and fell due to saturated soil and high winds.

Moreover, it is not as if this is a beautiful tree, adding to the charm of Pacific Grove. Instead it is a bit of an eyesore. It has clearly been topped off at some point, causing the weight of the limbs to become unbalanced and ultimately giving it the looming lean. We feel confident, once the tree is removed, it can be replaced by another native tree that can be cared for and nourished to become a healthy, safe, adult tree.

This tree needs to be removed to relieve the neighborhood of the stress and fear of it falling as well as relieving the owner of the property the liability it causes. We do not believe this is an outrageous, baseless or even selfish request. It is simply a matter of safety. This city does a fantastic job of protecting trees; we also need to protect the residents.

Thank you,



Mario and Michaila
michailag@hotmail.com

City of Pacific Grove
300 Forest Avenue
Pacific Grove, CA 93950
February 13, 2017

To Whom it May Concern:

My name is Lloyd Parker,
I live at the corner of Pine Ave
and 19th Street and as a retired
Senior, I walk up and down
19th St. frequently.

I need to express my concerns
regarding the large tree at
650 Gibson Avenue.

My hope is that you will
prevent a catastrophe by removing
the fore-mentioned tree.

It appears to be a disaster
waiting to happen.

Thank you for your kind
attention.

Sincerely
Lloyd Parker

Catherine & William Snow
622 19th Street
Pacific Grove, CA 93950

Albert Weisfus
City Arborist
Community & Economic Development Department
300 Forest Avenue
Pacific Grove, CA
93950

January 11, 2017

RE: 75 Foot Leaning Monterey Pine Located at 650 Gibson Avenue, Pacific

Grove Dear Mr. Weisfus:

In early 2016, we met in front of 650 Gibson Avenue to discuss our continued concerns regarding a large Monterey Pine, approximately 75 feet in height, top heavy, and with a calculated lean of greater than 15 degrees. In prior years the tree has been topped, roots exposed and removed to install a sidewalk, and roots cut and exposed to repair the street. In addition, the tree was once in a cluster and now stands in isolation after two other neighboring trees have fallen and/or been removed. We believe this presents a hazard unto itself.

There is a reasonable probability of future harm based on the risk of tree and limb failure and resulting damage to property and/or life.

At this time, we are asking for immediate tree removal.

As cited:

- o A tree leaning more than 15 degrees from vertical may represent a hazard if the direction of lean is toward a potential target. Generally, trees that lean more than 15 degrees vertical should be removed (1, 2). The target is currently our home and upstairs bedrooms, automobiles parked in our driveway and along 19th Street, pedestrians on our frequently traveled stretch of 19th Street - a route commonly used by Pacific Grove Middle School and High School Students on their way to and from school - as well as other pedestrians, including slower retirees walking up and down the street. There have been numerous deaths across the country just in the past few months from trees falling (3,4,5) and we believe based on the sheer size of this tree, failure would be catastrophic.
- o A protected tree can be removed if there are safety issues regardless of the health of the tree (6). The law always errs on the side of caution when it comes to issues of safety and we believe there is a reasonable probability of future harm based on the risk of tree and limb failure (6). In the landmark case Coats v. Chinn, a California court ruled that ". . . there is a distinction between the 'health' of a tree and its structural stability" and "the species of a tree and its known characteristics can create the potential for liability even in the absence of other visible or known defects or problems (7)." However, there ARE known defects with the tree in question making it structurally unsound, including: root upheaval and removal, topping, leaning, and the

removal of trees from the neighboring area, causing this one to stand in isolation (resulting in loss of windshield, among other things).

If you have any questions or comments, you may reach us at 650-315-3707 or (650) 544-5460.

Sincerely,

Catherine C. Snow

William A. Snow , III

cc: Teresa Dawber
650 Gibson Avenue
Pacific Grove, CA 93950

Daniel Gho
Pacific Grove Superintendent of Public Works
City of Pacific Grove
300 Forest Avenue
Pacific Grove, CA 93950

1. How to Recognize and Prevent Hazard Trees. Tree City USA Bulletin. Bulletin No. 15 Chapter 3 Appendix - Storms
2. How to Recognize and Reduce Tree Hazards : Leaning or Lopsided Trees. Tree City USA Bulletin 15
3. 4 Killed After Tree Falls On Mobile Home During Storm, January 3, 2017. Emily Shapiro ABC News
4. Man Dies After Tree Crashes Onto House During Violent Storm, October 21, 2016. Peggy Lee. The News Station 16 WNEP
5. Savannah Man Killed After Tree Falls on Wylly Avenue Home. WTOC News Live
6. Understanding Tree Law: A Handbook for Practitioners; Barri Kaplan Bonapart
7. Coates v. Chinn, 51 Cal.2d 304