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28 July 2010

City of Menlo Park  
701 Laurel Street, Menlo Park, CA 94025

*Attention:* Environmental Programs Coordinator

**RE: Appeal of Permit to Remove Heritage Tree at 240 Univ. Drive, Menlo Park, CA**

Dear Menlo Park Environmental Quality Commission Members,

We object to the removal of the larger of the two heritage redwood trees located on the property at 240 University Drive in Menlo Park CA.


We wish to appeal the decision approving the removal of the abovementioned tree and therefore respectfully request a hearing before or with the Menlo Park Environmental Quality Commission and other relevant City Commissions, Departments, Staff, or Council.

We have provided the city a check in the amount of \$150 in payment of the appeals fee.

Sincerely and with best wishes,

  
Drew Endy & Christina Smolke

Drew Endy & Christina Smolke  
228 University Drive  
Menlo Park CA 94025

  
(650) 799-9351 ← mobile  
endy@stanford.edu

12 August 2010

City of Menlo Park  
701 Laurel Street, Menlo Park, CA 94025

*Attention:* Environmental Programs Coordinator

**RE: Appeal of Permit to Remove Heritage Tree at 240 Univ. Drive, Menlo Park, CA**

Dear Menlo Park Environmental Quality Commission Members,

We herewith submit materials supporting our objection to the permit to remove the larger of the two heritage redwood trees located on the property at 240 University Drive in Menlo Park, CA. The submitted materials are organized across five sections:

- (1) That substantive errors or misrepresentations of fact regarding the tree were made before the Menlo Park Planning Commission via the written Staff Report or during spoken testimony before the 12 July 2010 Planning Commission meeting.
- (2) That the project permit holder has not developed or made available evidence of a substantive effort to fully consider or carryout alternative plans for the property.
- (3) That physical harms directly relating to the removal of the tree on adjacent properties are not ameliorated via the currently approved project.
- (4) That a significant number of impacted neighbors object to the removal of the tree.
- (5) That the project permit holder is a professional developer who does not occupy the property as a primary residence, has owned the property for a limited period of time, and has hindered discussion of concerns and moved to intimidate community participation in due public process.

Sincerely,

Drew Endy & Christina Smolke

*Drew Endy & Christina Smolke  
228 University Drive  
Menlo Park CA 94025  
(650) 799-9851*

**Regarding Substantive Errors or Misrepresentation of Facts**

On page 3 of the Planning Commission Staff Report regarding the proposed project, City Staff write,

*"The applicant has submitted an arborist report that surveys the present size, species and health condition of all 12 on-site trees, of which three are heritage size (Attachment D). The applicant is proposing to remove all of the heritage trees, two of which are redwood trees and one of which is a port orford cedar. The redwood trees are located adjacent to one another and measure 52 inches (tree #1) and 15 inches (tree #2) in diameter. Both trees are in good health, except for tree #2 is suppressed by tree #1. **The arborist believes tree #1 is approximately 70 years old** and that the smaller redwood tree is probably a seedling from the larger tree." **(emphasis added)***

The arborist report provided to the applicant by Advance Tree Care, Inc. instead records in summary,

*"Both Trees 1 and 2 are in good health but Tree #2 is heavily suppressed by Tree #1. **It would appear that Tree #1 was growing when the house was first built;** Tree #2 was probably a seedling from Tree #1. **The original house appears to have been built around the trees.** Since the future of Tree #2 is permanent suppression by Tree #1, I would recommend removal of Tree #2." **(emphasis added)***

The original house was built in 1936 and renovated in 1987. An ~70 year old tree would have been planted in 1940, roughly four years after the original construction. Instead, the applicant's arborist represents that the tree predates the original construction on the property. These facts by themselves suggest that the founding developer thought enough of the tree's contributions to the specific property, the surrounding neighborhood, and to the broader Menlo Park "urban forest" (McBride & Jacobs, *Urban Ecology*, 1976, v2, pp1-14) to preserve it.

Additional independent facts and analysis support the conclusion that the tree predates the original construction on the property. For example, an "Eisenhower Era" aerial photograph shows a substantive tree on the property ~1955, less than 20 years following the original construction (Figure 1). Moreover, an annual ring and lumber yield analysis of coastal redwoods would suggest that the tree is between 90 (0.3" annual ring per year) and 270 (0.1" annual ring per year) years old (e.g., Berrill & O'Hara, USDA Forest Service Gen. Tech. Rep. PSW-GTR-194. 2007).



Figure 1. Inset from Hatfield Aerial Survey plate DA 2-8805 taken ~1955. Property and tree noted via white arrows. Photograph courtesy of Robert and Stephanie Lencioni of 216 Univ. Dr., Menlo Park, CA.

That the original house on the property by all facts appears to have been constructed in partnership with a substantial tree already in place, that a significant renovation was undertaken with the tree present and maintained, that the tree remains healthy today, and that human beings have lived on the property since 1936 is inconsistent with written and oral statements by both applicant and Planning Commission staff that a renovation or full redevelopment of the property cannot readily proceed with the tree present.

***Regarding Insubstantial or Missing Alternative Plans***

The applicant commissioned and submitted to Planning Commission Staff three “Area Plan Conceptual Studies” prepared by SDG Architects, each sketching an alternate design that would preserve the tree (Figure 2). In practice, a serious consideration of these rough sketches is not meaningful without accompanying front and side elevations. In addition, the tree has a very low canopy and appears to have not been maintained or pruned for some number of years (Figure 3, left). By contrast, other properties in the neighborhood have successfully integrated multi-story houses in close proximity to significant coastal redwoods given proper maintenance and pruning of the tree canopy (for example, Figure 3, right).

A thoughtful consideration of possibilities might lead to the suggestion that the tree’s canopy be raised in the context of exploring fully developed alternate plans, perhaps allowing for a more substantial structure above ground. Any such renovation might proceed in stages, with pruning of the tree and subsequent evaluation of the tree’s health over a period of time to take place prior to selection or finalization of plans and groundbreaking. Such a course of action could have been initiated when the property was purchased with an apparent eye towards redevelopment ~3 years ago.

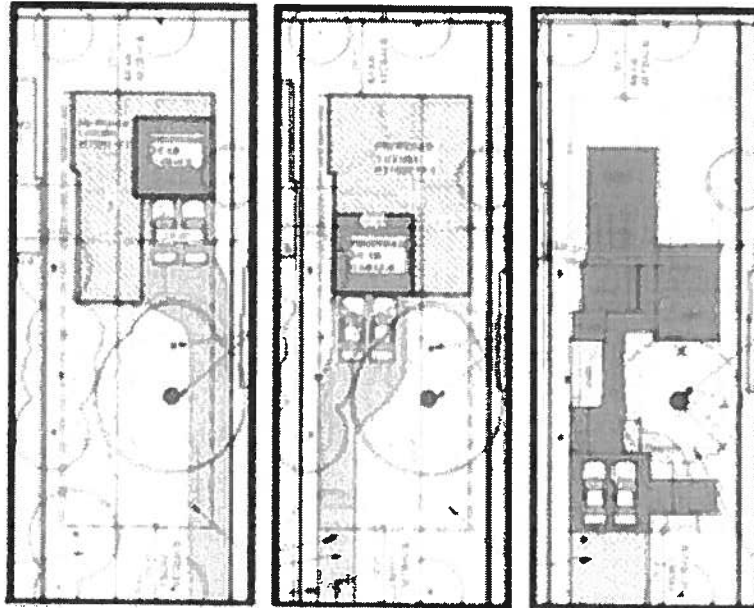


Figure 2. Alternative “Area Plan Conceptual Sketches” submitted by LeMieux. Elevation sketches have not been made available. Alternative designs that consider raising the lower bound of the tree’s canopy have also not been made available.



**Figure 3.** (left) Photograph of 240 University Drive, Menlo Park taken from street. Please note lack of pruning of tree canopy. (right) Photograph of 375 Yale Rd, Menlo Park taken from street. Please note substantial pruning of lower tree canopy, and close proximity of heritage coastal redwood to multistory house.

***Regarding Physical Harms Related to Removal of Tree***

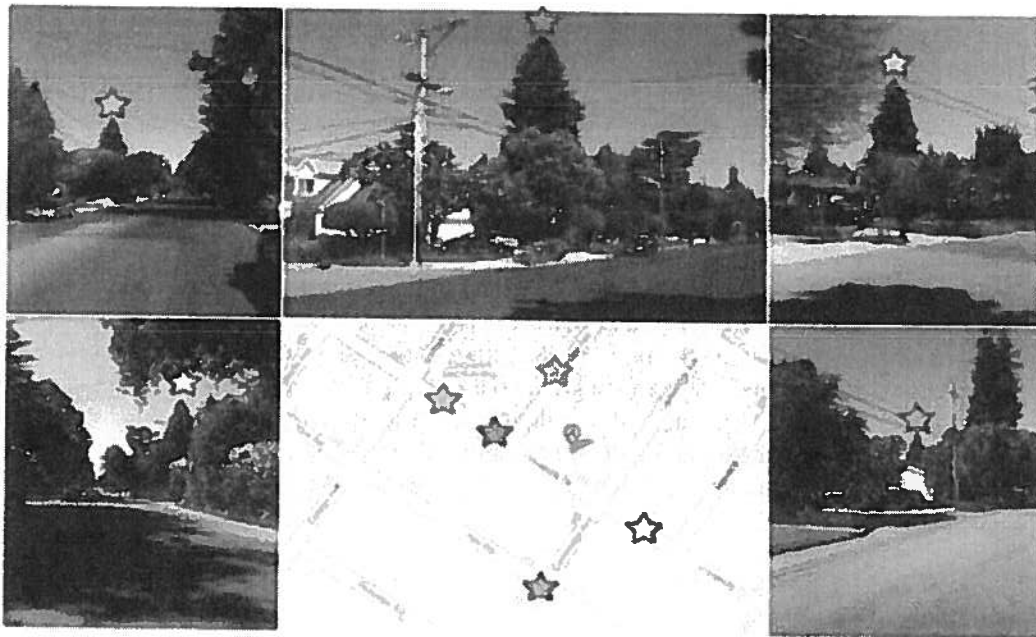
The tree currently approved for removal provides direct shade during high solar load summer months to both the main structure (Figure 4, left) and garage (Figure 4, right) of our property. The proposed replanting plan would not recreate equivalent protection from summer solar load and would likely require use of air conditioning within our main house (as opposed to open windows) and a entirely new ventilation system within our garage. When approached with an expression of these concerns, LeMieux denied that shade was an issue and that we should not care about the temperature in our garage. Given time to make more observations and reflect, we disagree.

***Regarding a Significant Number of Menlo Park Property Owners Objecting***

Given that the tree likely predates most development in the area and has served as a landmark visible from many locations on neighboring streets it should not be surprising that many nearby property owners object to the removal of the tree. A sampling of photographs of the tree from surrounding streets are provided for consideration (Figure 5, bottom of next page).



**Figure 4.** (left) Photograph of tree providing shade to main structure of 228 University Drive, Menlo Park taken from driveway. (right) Photograph of shade provided by tree to garage of 228 University Drive, Menlo Park. Photographs were taken during a typical July afternoon.



**Figure 5.** Assorted photographs of tree now scheduled for removal. The color of star shown above tree corresponds to the location from which the photograph was taken as noted on the street map. Please note that the tree impacts the structure and arboreal form of Allied Arts across several blocks.

***Regarding the Project Being Led by a Professional Developer***

The property under consideration was purchased for \$1,320,000 in June 2007. To our knowledge the owner has not occupied the property during this time. That a significant heritage redwood tree existed on the property would have been apparent in 2007. Moreover, to a professional developer, the impact and implications of a heritage tree on any potential redevelopment or resale of the property would also have been obvious and taken into consideration at the time of purchase.

In our experience, from our first interactions with both Ms. LeMieux and Planning Commission staff, the now approved project has been and continues to be represented as inevitable. Our initial expressions of concern were dismissed out of hand (e.g., "We shouldn't care about the temperature inside our garage.") or were to be worked out without an actual reconsideration that perhaps the tree should remain. Given time for consideration, we observe that the project (and the resulting conflicts) appears to be driven, in large part, by a desire to install a fully excavated basement that would increase the square footage of structures on the property by ~50%, from ~3,000 to ~4,600sf. Such a basement and associated foundation would likely be directly incompatible with the root structure of the heritage tree.

More troubling, representations by Ms. LeMieux regarding neighbor's opinions of the project and regarding the impact of the tree on neighboring properties have been misleading at best. For example, in remarks before the planning commission, Ms. LeMieux represented that the root system of the tree is damaging the foundations of the immediately adjacent properties. When later contacted directly, the owners of 250 University Drive do not represent that the tree is damaging their property (for the record, the tree is closer to our property; the tree is also not now damaging structures or features on our property). Instead the owners of 250 Univ. Dr. express concern that bordering fruit-bearing trees and shrubbery on the LeMieux property have not been maintained for some time and drop significant leaves and rotting fruit on their driveway (Figure 6). As a related apparent misrepresentation, the impact of the tree on the LeMieux property's structures and their foundations is not evident (Figure 7).

Most troubling is that LeMieux, in representing herself as an engaged and concerned developer, has accused us of wasting taxpayer money in expressing our concerns and appealing the project, and also of causing neighborhood strife. We categorically reject these accusations and apparent attempts at intimidation. Instead, in considering and discussing the project with our actual neighbors, we have met many new and wonderful people.

Below are examples of text taken directly from an email received from Ms. LeMieux following our appeal:

**"The time to voice your opposition to the tree removal was during the planning phase at which time city staff was studying the application, or at the planning commission meeting which is designed to hear concerns from neighbors before they vote on a project. You gave me reason to believe that you understood the reasons necessitating the removal of this tree and now I feel like I have been blindsided. Appealing a project after it has been approved is very uncommon and will cause a significant delay which will cost me and the taxpayers**

**many thousands of dollars.** *The tenants have now moved out, there is no EQC meeting in August so this appeal will not be heard until September which means we can't continue with construction drawings, therefore, by the time we finish the plans and get a permit it will be the middle of the winter - not a good time to dig a basement. **Even if the EQC rules against us, which is unlikely given that we had full staff approval and an unanimous decision from the planning commission, we will appeal that decision to the City Council, further delaying the inevitable.***

*I know you love this tree and the shade it provides, but please think about this from our perspective. As I said in our first meeting, I am willing listen to any reasonable request to mitigate the loss of the tree, but I can't save it. I have already offered to plant more trees, and I have committed to making a donation to "Trees for Menlo", but I don't know what else I can do. We have explored the options for two years and they aren't workable. **We have no viable options and this appeal is a tremendous burden which will create great animosity between neighbors.**" (emphasis added)*

***In closing***

We object to the removal of the tree for the reasons noted above. Ms. LeMieux appears to have spent most of the past 2 years assembling a case making it appear essential that the tree be removed. This work appears to have culminated in a misrepresentation of facts before Menlo Park property owners and also the Planning Commission. As property owners ourselves we gain no satisfaction in any waste of time or resources, public or private. It is surprising to us that an apparently successful developer and respected citizen would first engage the most-likely impacted residents at a point so deep into her project timeline so as to preclude meaningful deliberation and participation. That such a person would then be surprised if the truthfully "blindsided" parties (i.e., those who would be impacted by the removal of the tree) needed the full allowed time and due process to deliberate, assemble materials, and arrive at thoughtful independent and supportable positions is troubling. The fact that the original house was built around the tree and that both the tree and property have done well in partnership for 74 years suggests that there are many viable options for the next 100 years so long as reality is not ignored.



**Figure 6.** Photograph showing immediately adjacent property at 250 University Drive. The property under consideration and tree are located to the right. Please note the lack of any apparent damage to driveway and other structures. Please also note the significant overgrowth of the property boundary via additional non-heritage plants and trees due to apparent negligence.



**Figure 7.** Four photographs showing the base of the tree and adjacent structure and driveway at 240 University Drive; photographs were taken from 228 University Drive. Please note the lack of apparent damage to immediately adjacent structures. Moreover, neighbors in the building trades who have worked on the property represent that the porch foundation, for example, appears unchanged over the last 20+ years.

**Fotu, Rebecca L**

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**From:** Drew Endy [endy@stanford.edu]  
**Sent:** Friday, August 13, 2010 10:58 AM  
**To:** Fotu, Rebecca L  
**Subject:** additional comment

Dear Rebecca,

We would also like to bring to the attention of the EPC members the concerns of Trees for Menlo regarding what was discussed at the Planning Commission hearing. Specifically, from the 12 July 2010 Planning Commission minutes:

"E. REPORTS AND ANNOUNCEMENTS

Stu Soffer provided public comments, indicating that he was on the steering committee for Trees for Menlo and wanted to comment on the Planning Commission's discussion regarding trees and the payment of a contribution that was previously discussed in the evening. He indicated that he was not supportive of linking a fee (such as to Trees for Menlo) for trees to the use permit as a means of mitigation."

Best,  
Drew

**Fotu, Rebecca L**

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**From:** A Weil [aaweil@sbcglobal.net]  
**Sent:** Monday, August 23, 2010 1:54 PM  
**To:** Fotu, Rebecca L  
**Subject:** Permit appeal: 240 University Drive.

Dear Ms. Fotu,

My wife and I reside at 856 Partridge Ave., around the corner from the Redwood tree which the owners of 240 University Dr. seek to remove. We have lived at the Partridge Street address for 28 years.

The commission is fortunate that the permit to approve the removal of this tree was appealed and that the issue can be revisited. I will not reiterate the comments of my neighbors who have advocated for preserving the "character" of our community, or maintaining Menlo Park as a City of Trees, although I wholeheartedly join in them.

Menlo Park adopted its Heritage Tree Ordinance expressing the City's desire to "protect and preserve the scenic beauty and natural environment of the city", and specifying that the "primary intention of the ordinance is to ensure that there will be a significant population of large, healthy trees over the long term in Menlo Park."

This Redwood is one of the most prominent trees in the neighborhood. It is visible from almost every street in the vicinity. To describe it as majestic does it a disservice. It is one of the healthiest, largest specimens of a native California tree in Allied Arts. It is the only tree of significance on the lot. This tree has been in that location for more than half of the time Menlo Park has been a city. At 70 or 80 years old, it is only at the beginning of its healthy adult life (it could live more than a 1000 years). If the Heritage Tree Ordinance has application to any tree, it must be this one. Its, size, health, species and scenic beauty makes it the exact tree the City's ordinance seeks to preserve.

Looking at the property, it appears that the first developer sought to design around the Tree and almost certainly a creative architect working with an arborist and engineer could develop a structure and foundation system which would preserve the tree, account for its growth and protect its root system. This tree and all its issues were know to the purchaser at the time of its purchase and I imagine that the price reflected the challenges which the lot and tree create. The only possible basis for the removal of this tree would be to permit the construction of a full basement on any development of the property or to just reduce the cost of developing the property in general; neither of which are purposes of the ordinance.

I would assume that the value of this tree if removed must be significant, an arborist could certainly compute the number of board feet of lumber which could be produced. It is unconscionable for an owner to not only deprive the community of this valuable and unique asset but to profit by it as well.

I encourage every member of the commission to view the property and then revisit the purpose and intention of the Heritage Tree Ordinance. This majestic heritage tree should not be sacrificed in aid of poor design and cheaper development costs.

Thank you for considering this letter in your deliberations.

Sincerely

Arthur and Alice Weil

**Fotu, Rebecca L**

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**From:** Stephne Lencioni [slenci@hotmail.com]  
**Sent:** Monday, August 09, 2010 9:05 AM  
**To:** Fotu, Rebecca L  
**Subject:** Permit appeal: 240 University Drive.

Dear Ms. Fotu,

We would like to voice our support of the appeal filed by Drew and Christina Endy that seeks to overturn the Planning Commission's decision to permit removal of the heritage redwood tree at 240 University Drive.

As neighbors who have lived in our home at 216 University Drive for over 30 years, we appreciate and want to protect the character and ambience of our Allied Arts neighborhood. Part of this character is the diverse landscape of mature trees, most of which are many decades old. The redwood tree at 240 University is robustly healthy and the tallest tree on our block. Removing it, would not only change the look and feel of our neighborhood, but would undoubtedly have an environmental impact. It certainly would change temperature and lighting to surrounding homes, based on the shade that it creates.

Our understanding is that the owner of 240 University Drive, who does not live in our neighborhood, wants to remove the tree in order to build a new development home. Apparently the owner states that she has tried to come up with a design to rebuild around the tree, without success. While, as property owners ourselves, we understand the desire to have control over our property and what we build on it, we would respectfully submit that the owner must have understood that this property included a heritage tree at the time of purchase. Knowing many other homes and buildings have been designed around mature trees, we believe that this tree could be accommodated for as well by a good architect. Yes, it would not be a "cookie-cutter" design and would take more ingenuity and creativity... and perhaps therefore incur more cost. However, again, this owner should have understood these constraints when the property was purchased.

We ask that Menlo Park Environmental Quality Commission stand by the heritage tree protection ordinance that is in place. If a beautiful, old, healthy tree such as this one is allowed to be removed for development purposes when alternatives surely exist, what is the point of having an ordinance? If Menlo Park is to truly remain "the city of trees", we must protect these heritage trees for the generations that follow.

Sincerely,  
Stephne and Bob Lencioni

**Fotu, Rebecca L**

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**From:** Vera Goupille [vgoupille@gmail.com]  
**Sent:** Thursday, August 12, 2010 9:10 PM  
**To:** Fotu, Rebecca L  
**Subject:** 240 University

Dear Ms. Fotu,

We would like to voice our support of the appeal filed by Drew and Christina Endy that seeks to overturn the Planning Commission's decision to permit removal of the heritage redwood tree at 240 University Drive.

As neighbors who have lived in our home at 879 Partridge Ave for 19 years, we appreciate and want to protect the character and ambience of our Allied Arts neighborhood. Part of this character is the diverse landscape of mature trees, most of which are many decades old. The redwood tree at 240 University is robustly healthy and the tallest tree on our block. Removing it, would not only change the look and feel of our neighborhood, but would undoubtedly have an impact, especially since there are so few trees near that area. It certainly would change temperature and lighting to surrounding homes, based on the shade that it creates.

Our understanding is that the owner of 240 University Drive, who does not live in our neighborhood, wants to remove the tree in order to build a new development home. Apparently the owner states that she has tried to come up with a design to rebuild around the tree, without success. While, as property owners ourselves, we understand the desire to have control over our property and what we build on it, we would respectfully submit that the owner must have understood that this property included a heritage tree at the time of purchase. Knowing many other homes and buildings have been designed around mature trees, we believe that this tree could be accommodated for as well by a good architect. Yes, it would not be a "cookie-cutter" design and would take more ingenuity and creativity... and perhaps therefore incur more cost. However, again, this owner should have understood these constraints when the property was purchased.

We ask that Menlo Park Environmental Quality Commission stand by the heritage tree protection ordinance that is in place. If a beautiful, old, healthy tree such as this one is allowed to be removed for development purposes when alternatives surely exist, what is the point of having an ordinance? If Menlo Park is to truly remain "the city of trees", we must protect these heritage trees for the generations that follow.

Sincerely,

Vera and George Goupille  
879 Partridge Ave  
Menlo Park, CA 94025  
(650) 326-9232