

ORDINANCE NO. 2021-15

AN ORDINANCE OF THE CITY OF AZLE, TEXAS, ADDING ARTICLE 6.08 “TREE PRESERVATION” TO CHAPTER 6 “HEALTH AND SANITATION”; AMENDING SECTION 5, “PRELIMINARY PLATS” AND SECTION 6, “FINAL PLAT” OF EXHIBIT A, “SUBDIVISION ORDINANCE” OF CHAPTER 10, “SUBDIVISION REGULATION”; AND AMENDING SECTION 29, “TREE REQUIREMENTS” OF EXHIBIT A, “ZONING ORDINANCE” OF CHAPTER 14, “ZONING” OF THE CODE OF ORDINANCES, CITY OF AZLE, TEXAS TO ESTABLISH RULES AND REGULATIONS GOVERNING THE PROTECTION OF TREES AND VEGETATION; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Azle is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, trees are of great value in the maintenance of the public health and welfare of the citizens and in the conservation of natural resources; and

WHEREAS, the City Council of the City of Azle has determined that tree preservation continues to be necessary to adequately protect the public health, safety and welfare; and

WHEREAS, the Planning and Zoning Commission of the City of Azle, Texas held a public hearing on August 19, 2021, and the City Council of the City of Azle, Texas held a public hearing on September 28, 2021, with respect to the zoning ordinance and subdivision changes described herein; and

WHEREAS, the City Council believes it prudent to implement regulations regarding the preservation of trees within the City and the City’s extra territorial jurisdiction in order to protect the health, safety and welfare of all of its citizens,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AZLE, TEXAS THAT:

SECTION 1.

Chapter 6 “Health and Sanitation” of the Code of Ordinances, City of Azle, Texas shall be amended to add Article 6.08 “Tree Preservation” to read shown on “Attachment A” attached hereto.

SECTION 2.

Section 5.5, "Form and Content" of Exhibit A, "Subdivision Ordinance" of Chapter 10, "Subdivision Regulation" shall be amended to add subsection 5.5(B)(21) to read as follows:

(21) A tree survey and tree mitigation plan prepared in accordance with the requirements of Article 6.08 "Tree Preservation" of Chapter 6 of the Code of Ordinances, City of Azle, Texas.

SECTION 3.

Section 6.1, "Form and Content" of Exhibit A, "Subdivision Ordinance" of Chapter 10, "Subdivision Regulation" shall be amended to add subsection 6.1(H)(6) to read as follows:

6. A tree survey and tree mitigation plan prepared in accordance with the requirements of Article 6.08 "Tree Preservation" of Chapter 6 of the Code of Ordinances, City of Azle, Texas.

SECTION 4.

Section 29.3, "Tree Requirements" of Exhibit A, "Zoning Ordinance" of Chapter 14, "Zoning" shall be amended to delete subsection 29.3(F) in its entirety.

SECTION 5.

Section 29, "Landscaping" of Exhibit A, "Zoning Ordinance" of Chapter 14, "Zoning" shall be amended to add subsection 29.8 to read as follows:

29.8 - "Maintenance. The owner, tenant and/or their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping. All required landscaping shall be maintained in a neat and orderly manner at all times. Landscaped areas shall be kept free of trash, litter, weeds, and other such material or plants not a part of the landscaping. All plant material shall be maintained in a healthy and growing condition as is appropriate for the season of the year. Plant materials which die shall be replaced with plant material of similar variety and size, within ninety (90) days. A time extension may be granted by the Director of Planning and Development if substantial evidence is presented to indicate abnormal circumstances beyond the control of the owner or his agent. Failure to maintain any landscape area in compliance with this section shall result in the disapproval and revocation of any issued Certificate of Occupancy associated with the occupancy of said area."

SECTION 6.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances, City of Azle, Texas, as amended, except where the provisions are in direct conflict

with the provisions of other ordinances, in which event the conflicting provisions of the other ordinances are hereby repealed.

SECTION 7.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 8.

Any person, firm or corporation who violates, disobeys, omits, neglects, refuses or fails to comply with, or who resists the enforcement of any provision of this ordinance shall be fined not more than Five Hundred dollars (\$500.00) for each offence. Each day that a violation is permitted to exist shall constitute a separate offense.

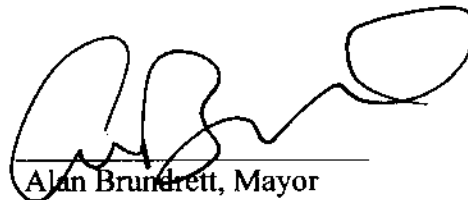
SECTION 9.

All rights and remedies of the City of Azle are expressly saved as to any and all violations of the provisions of the Code of Ordinances, City of Azle, Texas, as amended, which have accrued at the time of the effective date of this ordinance; and, as such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, shall not be affected by this ordinance but may be prosecuted until final disposition by the court.

SECTION 10.

This ordinance shall be in full force and effect from and after its passage as provided by law, and it is so ordained.

DULY PASSED AND APPROVED by the City Council of the City of Azle, Texas, on this the 19th day of October 2021.



Alan Brundrett, Mayor

ATTEST:



Yael Forgey, City Secretary

Attachment A

Article 6.08 – Tree Preservation

Sec. 6.08.001. PURPOSE AND INTENT

The purpose of this Article is to establish rules and regulations governing the protection of trees and vegetation cover within the City of Azle, to encourage the protection of healthy trees and vegetation and to provide for the replacement and replanting of trees that are necessarily removed during construction, development and redevelopment. It is the further purpose of this Article to achieve the following broader objectives:

1. Prohibit the indiscriminate clearing of property.
2. Promote site planning that furthers the preservation of mature trees and natural areas.
3. Maintain and enhance property values and a positive image for the attraction of new residents and business enterprises to the City.
4. Protect healthy protected trees that contribute to noise reduction, air protection, glare reduction, and promote the natural ecological environmental and aesthetic qualities of the City.
5. Promote site planning that is sensitive to the location of existing trees in an effort to save protected trees evenly distributed across the City to reduce the need to overplant public property.
6. Provide for a permitting and enforcement procedure.

Sec. 6.08.002. DEFINITIONS

1. **TREE BOARD:** The Planning and Zoning Commission of the City of Azle is hereby designated as the Tree Board.
2. **TREE MITIGATION PLAN:** A plan that requires replacement of trees or payment of funds into a tree replacement fund for those areas/trees that are subject to tree protection. The mitigation plan shall provide for a 1:1 caliper inch replacement ratio of protected trees removed on a property. Tree replacement may take place on the same lot that tree removal took place or within the development that tree removal took place.
3. **TREE, LARGE:** Any Protected Tree as defined by this Article that has a diameter of twenty-four inches (24") or greater measured at four and one-half (4-1/2) feet above ground.
4. **TREE, PROTECTED:** A tree that is listed within this Article (see Exhibit A) and has a diameter of six inches (6") or greater measured at four and one-half (4-1/2) feet above ground. For a multi-trunk tree, the diameter shall be the total diameter of the largest trunk plus half (1/2) the diameter of each additional trunk (see Exhibit D).
5. **TREE REMOVAL:** Any activity causing the trees to be removed, damaged, cut, injured, or destroyed.
6. **TREE, REPLACEMENT:** A tree of a minimum of two inches (2") in caliper measured at four and one-half (4-1/2) feet above ground, and a minimum of seven-feet (7') in height at the time of planting (see Exhibit I).
7. **TREE SURVEY:** A survey of protected and trees indicating size, type and location of trees, done by a professional land surveyor, civil engineer, landscape architect, or arborist.
8. **TREE TOPPING:** The severe cutting back of limbs to stubs larger than three inches (3") in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

Attachment A

Sec. 6.08.003. APPLICABILITY

The terms and provisions in this Article shall apply to real property as follows:

All projects/developments that have not submitted a plat, construction plans, site plan or building permit, whichever is applicable, as of the effective date of this Article shall be subject to the requirements for tree protection and replacement specified herein. Approval of development plans for compliance with this Article may be by the City Council, Tree Board, or City Staff, whichever is applicable by City regulations. Developer must demonstrate that all options have been considered to preserve as many trees as possible in accordance with this Article.

1. Single-Family Residential Subdivision Developments

- a. A developer shall submit an aerial photo of the property showing the tree coverage. An overlay of the proposed development showing all improvements including rights-of-way, easements, lot patterns, etc., shall be superimposed on the aerial photo. This document shall be provided with the submittal of a zoning application. If zoning is not applicable for a property, then this document shall be submitted at time of platting. The aerial photo and plan overlay shall be to the scale of a minimum of 1" = 100' and must be legible and clear to read. The aerial photo shall also be of recent date taken within two (2) years or less of the submittal date. If the scale is impractical for the project, alternatives may be considered by the Development Review Committee. Aerial photographs may be rejected for submittal if it does not meet the above requirements.
- b. A Tree Survey and Tree Mitigation Plan for all areas of soil disturbance and construction activity including all work within rights-of-way and easements shall be submitted with the zoning application. If zoning is not applicable for a property, then this document shall be submitted at time of platting or construction plans, whichever is first.
 - 1) The Tree Survey and Tree Mitigation Plan shall be approved and signed by a certified arborist and licensed surveyor.
 - 2) The information submitted on a Tree Survey and Tree Mitigation Plan shall not be older than two (2) years.
 - 3) The Tree Survey and Tree Mitigation Plan will be reviewed in conjunction with grading plans and these plans must be consistent with each other.
- c. The requirements of a Tree Survey and Tree Mitigation Plan may be appealed to the Tree Board. The Tree Board may recommend that this requirement be modified or waived by the City Council. The City Council shall make the final decision on appeals to the Tree Survey and Tree Mitigation Plan requirements for a single-family residential subdivision development.
- d. In cases of severe drainage issues related to the site, the City Staff and/or the developer may request from the Tree Board and City Council to perform lot grading and pad site preparation in conjunction with or following the clearing of rights-of-way and easements but prior to the issuance of building permit(s). In order for the Tree Board to consider the request for pad site grading in advance of issuance of a building permit, a Tree Survey as defined in this Article, an erosion control plan including erosion control seeded mat placement and a tree removal plan shall be submitted. The erosion control mat shall be placed over all graded areas to remain unimproved for more than five (5) calendar days post grading. The tree removal plan shall reflect the areas for proposed tree removal necessary to provide for a finished pad site and a minimum finished floor elevation of the slab. The proposed pad site shall not exceed the maximum pad site area as defined in this Article. The tree removal in these areas shall be mitigated in accordance with this Article. The Tree Board makes

Attachment A

recommendation to the City Council that they grant permission for advance lot grading. The decision of the City Council is final.

2. Undeveloped Single-Family Residential Lot Owned by Home Builder/Individual Owner

- a. A Tree Survey and protection plan showing all protected trees and all proposed improvements within the lot shall be submitted with a building permit application.
- b. A tree removal permit is required prior to any new construction on an undeveloped lot or additions to existing lots/structures. This permit may be obtained in conjunction with a building permit or as a separate permit. A separate permit must meet all the criteria of this Article and will not be accepted if a building permit is imminent.
- c. All area within the building pad as defined in this Article including driveway and public sidewalk as shown on a site plan approved by the City may be removed and shall be exempt from the tree protection and replacement requirements specified herein. An additional twenty percent (20%) of total remaining protected trees on a lot may be removed without penalty for other construction purposes such as parking, patio, septic tank and lateral lines, swimming pool and deck areas. Any additional tree removal in excess of twenty percent (20%) shall be subject to the tree replacement and mitigation requirements defined herein.

3. Non-Residential Development

- a. A developer/applicant shall submit an aerial photo of the property showing the tree coverage at the time of zoning or specific use permit application, whichever occurs first. An overlay of the proposed development showing all improvements including rights-of-way, easements, lot patterns, etc., shall be superimposed on the aerial photo. This document shall be provided with the submittal of a concept plan for zoning, development plan, zoning exhibit. The aerial photo and plan overlay shall be to the scale of a minimum of 1" = 50' and must be legible and clear to read. The aerial photo shall also be of recent date taken within two (2) years or less of the submittal date. If the scale is impractical for the project, alternatives may be considered by the Development Review Committee. Aerial photographs may be rejected for submittal if it does not meet the above requirement.
- b. A Tree Survey and Tree Mitigation Plan showing all protected trees and all proposed improvements shall be submitted with a planned development zoning change, Specific Use Permit, site plan, plat or engineering plans, whichever comes first.
 - 1) The Tree Survey and Tree Mitigation Plan shall be approved and signed by a certified arborist and licensed surveyor.
 - 2) The information submitted on a Tree Survey and Tree Mitigation Plan shall not be older than two (2) years.
 - 3) The Tree Survey and Tree Mitigation Plan will be reviewed in conjunction with grading plans and these plans must be consistent with each other.
- c. A tree removal permit is required for all non-residential developments and may be obtained in conjunction with a building permit or as a separate permit.
- d. All trees within street rights-of-way, utility or drainage easements, building pads, driveways, and fire lanes as shown on an approved site plan may be removed and shall be exempt from the tree protection and replacement requirements specified herein. An additional twenty percent (20%) of the remaining protected trees may be removed without penalty for parking lots and/or for grading and drainage purposes. Any additional tree removal in excess of twenty percent (20%) shall be subject to the tree replacement and mitigation requirements as defined herein.

Attachment A

4. Requirements for Developed Homestead

The owner of property of ten (10) acres or less that is used for a homestead shall be exempt from the tree protection and replacement requirements specified herein. Developed Homesteads of more than five (5) acres, shall be subject to the requirements of Sec. 6.08.003(5), Agricultural Property. Properties identified on the City Zoning Map or the Future Land Use Map as non-residential shall not be exempt from the requirements of this Article.

5. Requirements for Agricultural Property

- a. No fee shall be charged to make application for a tree removal permit for the removal of protected trees located on real property having an agricultural tax exemption. However, if within any twelve (12)-month period, tree removal permits for the removal of twenty (20) or more protected trees measured ten inches (10") in caliper or greater are issued for the same agricultural property or tract, or any of its portions, the agricultural zoning district classification of such property cannot be changed, nor can an application for approval of a development plan, planned development or zoning amendment relative to such property be made, for a period of sixty (60) months following the most recent twelve (12) month period during which twenty (20) or more protected trees were removed from such agricultural zoned property.
- b. The property owner may request from the Planning and Zoning Department to make an on-site inspection of the property to be cleared and provide the City the purpose and reason for the clearing. If the Director of Planning and Development or his/her designee determines the clearing of land to be for a legitimate, agricultural reason, a tree removal permit may be issued. The decision of the Director of Planning and Development may be appealed to the City Council.

6. Requirements for Municipal/Public Domain Property, Rights-of-way and Easements

- a. All construction and maintenance activities within municipal/public domain property, rights-of-way or easements by the City, franchise utility companies, cable providers, telecommunication providers, and cemeteries shall be in accordance with this Article and may be subject to the requirements for tree protection and replacement specified herein if extensive protected trees are removed for the project.
- b. A tree removal permit shall not be required and trees may be removed within the public right-of-way and franchise utility easements. However, no construction or maintenance activity shall begin until construction plans showing protected trees to be removed and the limit of construction activity have been approved by the Director of Public Services. Franchise utility companies are exempted from this requirement.
- c. A tree removal permit shall be required, and trees may not be removed without a permit, for construction or maintenance activity within private easements for the extraction, collection and transmission of natural gas or other minerals. Franchise utility companies shall be exempted from this requirement.
- d. A list of trees acceptable for planting along streets, within parks or other public areas or for replacement and mitigation is attached to this Article. Trees other than those listed as acceptable may be planted only upon approval of the Development Review Committee.
- e. The City shall have the right to plant, prune, and maintain street trees and park trees within the municipal/public domain property as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public properties. The City may remove or cause or order to be removed any tree or part thereof that is in an unsafe condition, or that by reason of its nature is injurious to sewers, electric power

Attachment A

lines, gas lines, water lines or other public improvements, or which is affected with any injurious fungus, insect or other pest.

Sec. 6.08.004. EXCEPTIONS

A tree removal permit shall be issued and tree protection and replacement requirements shall not be required under any of the following circumstances. The burden of proof as a qualified exemption is upon the remover of a tree.

1. **Approved Plans:** All construction activities for which final construction plans and building permit applications have been submitted prior to the effective date of this Article shall be exempt.
2. **Developed Homesteads:** The owner of property of ten (10) acres or less that is used for a homestead shall be exempt from the tree protection and replacement requirements specified herein. No tree removal permit shall be required.
3. **Diseased Trees:** The tree is diseased, damaged beyond the point of recovery, or in danger of falling as determined by the Development Review Committee prior to the removal of the tree. The removal of a diseased tree by the City or an individual is required to reduce the chance of spreading the disease to adjacent healthy trees.
4. **Public Safety:** The tree endangers the public health, welfare or safety and immediate removal or pruning is required.
5. **Utility Service Interruption:** The tree has disrupted a public utility service due to a tornado, storm, flood or other act(s) of God. Removal shall be limited to the portion of the tree reasonably necessary to reestablish and maintain reliable utility service.
6. **Landscape Nursery:** All licensed plant or tree nurseries shall be exempt from the requirements of this Article as they pertain to those trees planted and growing on the premises of said licensee that are so planted and growing for the sale or intended sale to the general public in the ordinary course of said licensee's business.

Sec. 6.08.005. TREE REMOVAL PERMIT REQUIRED

1. The clear-cutting of land as defined in this Article is prohibited and all permits for tree removal shall be subject to this Article.
2. No grading or tree removal shall take place on any undeveloped property without obtaining a tree removal permit unless exempted by this Article.
3. All trees not listed as a protected tree within this Article may be removed with a tree removal permit.
4. The removal of selected trees from within a densely forested area when done in a professionally accepted manner shall be allowed as a single permit upon approval by the Development Review Committee. Approval will only be granted when it is determined that the selective thinning is being done in a manner that would enhance the environment and likelihood of survival for the remaining trees.
5. Where protected tree removal is allowed through exemption or by a tree removal permit and the root system is intertwined with protected trees which are intended to be saved, the tree shall be removed by flush cutting with the natural level of the surrounding ground. Where stump removal is also desired, stump grinding shall be allowed, or upon approval of the City, a trench may be cut between the two trees sufficient to cut the roots near the tree to be removed, thereby allowing removal of the remaining stump without destruction of the root system of the saved tree.

Attachment A

Sec. 6.08.006. PERMIT REVIEW AND APPROVAL PROCESS

1. Authority for Review: An application for a tree removal permit shall be submitted to the Planning and Zoning Department for building permit purposes or Public Services Department for infrastructure improvements, grading or drainage purposes, whichever is applicable during the construction process.
2. The Development Review Committee shall be responsible for the review and approval of all requests for tree removal permits submitted in accordance with the requirements specified herein.
3. The Development Review Committee may defer the approval of a tree removal permit to the Tree Board for any reason. The decision of the Tree Board shall be final.
4. Any decision made by the Development Review Committee may be appealed to the Tree Board for recommendation to the City Council. The decisions of the City Council shall be final.
5. The City shall establish administrative procedures necessary to facilitate the implementation and enforcement of this Article.
6. A request for a tree removal permit must be submitted and approved prior to the removal of any protected tree in the City unless the tree is exempt under a provision of this Article.
7. All tree removal permits shall be accompanied by a payment made to the City in the amount specified by City Council.
8. Either an aerial photo and transparency and/or a Tree Survey shall be submitted with any tree removal permit as determined by the Development Review Committee and must include the items referenced in this Article.
9. Permits for tree removal issued in connection with a building permit and/or site plan shall be valid for the period of that building permit's or site plan's validity. Permit(s) for tree removal not issued in connection with a building permit or a site plan shall become void one hundred eighty (180) days after the issue date on the permit. Upon expiration, a new permit shall be required.
10. The appropriate body as described herein, being either the Development Review Committee, Tree Board, or the City Council shall consider a tree removal permit based on the following criteria:
 - a. Whether or not a reasonable accommodation or alternative solution can be made to accomplish the desired activity without the removal of the tree;
 - b. The cost of preserving the tree as a factor of the project's cost;
 - c. Whether the tree is worthy of preservation given its age and remaining life expectancy, current health, and any other influential factors as determined by the Planning and Zoning Department and the Parks Department. In the event there is disagreement between the two departments, a disinterested third-party arborist may be retained for a professional opinion;
 - d. The effect of the removal on erosion, soil moisture, retention, flow of surface waters, and drainage systems;
 - e. The need for buffering of residential areas from the noise, glare, and visual effects of non-residential uses;
 - f. Whether the tree interferes with a utility service;

Attachment A

- g. Whether the proposed tree replacement pursuant to the Tree Replacement Requirements hereof adequately mitigates the removal of the tree;
 - h. Any other factors deemed to be in the interest of preserving or protecting the health, safety and welfare of the City of Azle and its citizens.
11. Any tree(s) removed in conjunction with a Tree Removal Permit shall be chipped or hauled off site. Burning of removed tree(s) under a Tree Removal Permit is prohibited.

Sec. 6.08.007. TREE REPLACEMENT REQUIREMENT

1. In the event that it is necessary to remove a protected tree as specified in this Article, the party removing the tree shall be required to replace the protected trees being removed with trees as defined herein (see Article 6.08 - Exhibit A). A sufficient number of trees shall be planted to equal or exceed the diameter (measured at four and one-half (4-1/2) feet above ground level of each tree removed. This mitigative measure is not meant to supplant good site planning. Tree replacement will be considered only after all design alternatives, which could save more existing trees, have been evaluated and reasonably rejected. Said replacement trees shall be a minimum of two-inch (2") diameter (measured at four and one-half (4-1/2) feet above ground) and seven feet (7') in height when planted.
2. At the time of review, the agent responsible for placement, the time of replacement, and the location of the new trees will be determined by the Development Review Committee. The replacement trees shall be located on the same property that trees were removed whenever possible. However, if this is not feasible, they may be placed on a designated property as agreed to by the Tree Board. If the Tree Board approves the planting of replacement trees more than thirty (30) days after the removal of protected trees, the applicant shall provide the Planning and Zoning Department with an affidavit that all replacement trees will be planted within six (6) months. A replacement tree that dies within two (2) years of the date it was planted must be replaced by another replacement tree in compliance with this Article.
3. Mitigation Fee, Credit, and Incentive for Preservation:
 - a. If approved by the Director of Planning and Development or designee, the applicant, in lieu of compliance with this subsection, may pay a Mitigation Fee into the reforestation fund, which shall be a special account administered by the City. The funds shall be used for purchasing, planting, transplanting, and maintaining trees for a period of three years on public property, including public and/or capital improvement projects, street beautification projects, or for acquiring and preserving wooded property. The amount of the Mitigation Fee required shall be \$200 per caliper inch of Protected Trees to be replaced, and \$500 per caliper inch of Large Trees to be replaced. Other eligible uses of reforestation funds shall be to support programs for the public purpose of increasing the tree canopy within the City of Azle and/or educating citizens and developers on the preservation, care, and maintenance of trees. Proceeds from the reforestation fund shall not be used to meet any requirements for preservation, mitigation, landscaping, buffering, streetscaping, or similar requirements of a developer's private property unless approved by the City Council. Voluntary contributions for tree planting shall be placed in the tree fund.
 - b. Whenever a Mitigation Fee is imposed in accordance with this Article, a mitigation fee credit will be given for replacement tree(s), that are at least two inches in diameter at the point on the trunk four and one-half feet above ground, planted on the property for which the tree mitigation fee was assessed or property mutually agreed upon by the town and the person. The calculation for the credit will be done in the same manner as the tree Mitigation Fee assessed against the person and be:

Attachment A

- (1) Fifty percent of the amount of the tree mitigation fee assessed against the person if:
 - (a). The property is a residential structure or pertains to the development, construction, or renovation of a residential structure; and
 - (b). The person is developing, constructing, or renovating the property not for use as the person's residence; or
- (2) Forty percent of the amount of the tree mitigation fee assessed against the person if:
 - (a.) The property is not a residential structure; or
 - (b). The person is constructing or intends to construct a structure on the property that is not a residential structure.
- c. For any Large Tree shown on a Tree Survey that is preserved within a project/development area, a \$500 per caliper inch credit for preservation shall be given that will be counted toward any mitigation fee owed.

Sec. 6.08.008. TREE TRANSPLANTATION

The City may request to enter a property following the approval of a tree removal permit, or development plans for a property to inspect the site for any trees marked for removal that may be transplanted. The City will pay all costs associated with the removal and transplantation of designated trees to public parks, public facilities or public rights-of-way.

- A. TREE PROTECTION: A major purpose of this Article is to protect all protected trees, which are not required to be removed, to allow approved construction to occur. The following procedures are required:
1. All construction plans shall include the necessary documents as requested by the Development Review Committee to review the tree preservation plan.
 2. The following activities shall be prohibited within the limits of the critical root zone of any protected tree subject to the requirements of this Article.
 - a. Material Storage: No materials intended for use in construction or waste materials accumulated due to excavation or demolition shall be placed within the limits of the critical root zone of any protected tree. However, this restriction shall not apply to material storage in areas exempt from the tree protection and replacement requirements (e.g., building pad, driveway, patios, parking lot, etc.)
 - b. Equipment Cleaning/Liquid Disposal: No equipment shall be cleaned or other liquids deposited or allowed to flow overland within the limits of the critical root zone of a protected tree. This includes, without limitation, paint, oil, solvents, asphalt, concrete, mortar or similar materials.
 - c. Tree Attachments: No signs, wires or other attachments, other than those of a protective nature, shall be attached to any protected tree. Fencing attached to a tree via "U" nails or bent nails when only at points of tangency with the trees are allowed.
 - d. Vehicular Traffic: No vehicular and/or construction equipment traffic or parking shall take place within the limits of the critical root zone of any protected tree other than on an existing street pavement. This restriction does not apply to single incident access within the critical root zone for purposes of clearing underbrush, establishing the building pad and associated lot grading, vehicular traffic necessary for routine

Attachment A

utility maintenance or emergency restoration of utility service or routine mowing operations.

- e. **Grade Changes:** No grade changes shall be allowed within the limits of the critical root zone of any protected tree unless adequate construction methods are approved by the Development Review Committee or if grading is as directed by the City's drainage inspector.
 - f. **Impervious Paving:** No paving with asphalt, concrete or other impervious materials in a manner that may reasonably be expected to kill a tree shall be placed within the limits of the critical root zone of a protected tree. If a protected tree dies within five (5) years of issuance of a Certificate of Occupancy for non-residential construction or final building inspection for residential construction, due to construction activity or impervious paving around the critical root zone of the tree, the property owner shall submit a mitigation plan and tree replacement in accordance with this Article shall be required.
3. A protected tree shall be considered to be preserved only if a minimum of seventy-five percent (75%) of the critical root zone is maintained at undisturbed natural grade and no more than twenty-five percent (25%) of the canopy is removed due to building encroachment or as recommended by a certified arborist.
 4. The following procedures shall be followed on all types on construction projects (i.e. residential subdivisions, commercial, multi-family, industrial developments, residential builders and municipal/public).
 - a. **Tree Flagging or Marking:** Trees that are shown on an approved plan by the City for preservation/protection shall be flagged with bright fluorescent orange vinyl tape or ribbon wrapped around the main trunk at a height of four and one-half feet (4.5') or more such that it is very visible to workers operating construction equipment. Trees that are marked for preservation/protection shall have protective fencing in accordance with the requirements of this Article.
 - b. **Protective Fencing:** In those situations where a protected tree is so close to the construction area that construction equipment might infringe on the root system or is within twenty feet (20') of the construction area, a protective fencing shall be required between the outer limits of the critical root zone of the tree and the construction activity area. Four feet (4') high protective fencing shall be supported at a maximum of ten feet (10') intervals by approved methods. All protective fencing shall be in place prior to commencement of any major site work involving heavy equipment for construction of utilities and roadways and shall remain in place until all site work has been completed. This provision does not apply to clearing the right-of-way for the purpose of access to the site for site preparation.
 - c. Protective fencing shall not be required for clearing the rights-of-way for the purpose of access to the site. Once the site is accessible by heavy equipment, protective fencing shall be placed in accordance with this Article.

Sec. 6.08.009. TREE PRUNING RESTRICTIONS

No protected tree shall be pruned in a manner that significantly disfigures the tree or in a manner that would reasonably lead to the death of the tree.

1. **Allowed Pruning:** Protected trees may be strategically pruned to allow construction or demolition of a structure. All pruning shall take place in accordance with approved Arboricultural techniques and the recommendations of Exhibit G. Reasonable pruning of trees also may be performed or contracted to be performed by the owner of the tree when unrelated to construction activity.

Attachment A

2. **Required Pruning:** The owners of all trees adjacent to public right-a-way shall be required to maintain a minimum clearance of fourteen feet (14') above the traveled pavement or curb of a public street. Said owners shall also remove all dead, diseased or dangerous trees, or broken or decayed limbs that constitute a menace to the safety of the public. The City shall also have the right to prune trees overhanging within public right-of-way that interfere with the proper spread of light along the street from a street light or interfere with visibility of any traffic control device or sign or as necessary to preserve the public safety.
3. **Tree Topping:** It shall be unlawful as a normal practice for any person, firm, or City department to top any street tree, park tree or other tree on public property. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this Article at the determination of the City.

Sec. 6.08.010. TREE PLANTING RESTRICTIONS

1. **Overhead Lines:** Any required replacement trees shall not be planted within an area such that the mature canopy of the tree will be within ten feet (10') of overhead utility lines.
2. **Underground Utilities:** Any required replacement trees or street trees shall not be planted within five feet (5') of underground public utility lines, including water lines, sewer lines, transmission lines or other utilities. No trees may be planted within five feet (5') of a fire hydrant.
3. **Street Corners:** No street tree shall be planted closer than twenty-five feet (25') of any street corner, measured from the point of nearest intersecting curbs or curb lines.

Sec. 6.08.011. ENFORCEMENT

1. **Permit Required:** No development or grading activity shall commence until all applicable requirements of this Article are met and a notice to proceed or a tree removal permit has been issued for the site.
2. **Acceptance of Improvements:** No acceptance of public improvements shall be authorized until it is determined that all requirements of this Article are met and all fines for violations of this Article have been paid to the City or otherwise disposed of through the Municipal Court. No acceptance of public improvements shall be authorized until all replacement trees have been planted or appropriate payments have been made to the Tree Reforestation Fund.
3. **Certificate of Occupancy:** No Certificate of Occupancy for non-residential construction or final building inspection for residential construction shall be issued until it is determined that all requirements of this Article are met and all fines for violations of this Article have been paid to the City or otherwise disposed of through the Municipal Court. No Certificate of Occupancy shall be issued until all replacement trees have been planted or appropriate payments have been made to the Tree Reforestation Fund.
4. **Notwithstanding the above provisions,** public improvements may be accepted and Certificate of Occupancy may be issued before all trees have been replaced if an escrow account is established by the City in the amount equal to the prevailing rate for installed trees with a two (2) year guarantee, plus fifteen percent (15%) to cover administrative costs.

Attachment A

Sec. 6.08.012. PENALTY

1. Any person, firm, corporation, agent, or employee thereof who violates the provisions of this Article by removing trees without a permit shall be guilty of a misdemeanor and upon conviction hereof shall be fined in an amount not to exceed two hundred and fifty dollars (\$250.00) per caliper inch of the tree(s) removed or damaged not to exceed two thousand dollars (\$2,000) per incident.
2. A person firm, corporation, agent, or employee thereof violates any other provisions of this Article shall be guilty of a misdemeanor and upon conviction hereof shall be fined a minimum of five hundred dollars (\$500.00) but not to exceed two thousand dollars (\$2,000) per incident. The unlawful injury, destruction or removal of each protected tree shall be considered a separate incident and each incident subjects the violator to the maximum penalty set forth herein per tree.

Attachment A

Tree Preservation Exhibits

Exhibit A - Protected Trees

Trees	
Common Name	Botanical Name
Afghan (Eldarica) Pine	<i>Pinus eldarica</i>
American Elm	<i>Ulmus americana</i>
Arizona Cypress	<i>Cupressus arizonica</i>
Bald Cypress	<i>Taxodium distichum</i>
Birds of Paradise	<i>Caesalpinia gilliesii</i>
Black Walnut	<i>Juglans nigra</i>
Buckeye, Texas	<i>Aesculus arguta</i>
Caddo Maple	<i>Acer saccharum var. caddo</i>
Carolina Buckthorn	<i>Rhamnus caroliniana</i>
Cedar Elm	<i>Ulmus crassifolia</i>
Chinese Pistache	<i>Pistachia chinensis</i>
Crepe Myrtle (tree form)	<i>Lagerstroemia indica</i>
Deodar Cedar	<i>Cedrus deodora</i>
Desert Willow	<i>Chilopsis linearis</i>
Eastern Red Cedar	<i>Juniperus virginiana</i>
Eves Necklace	<i>Sophora affinis</i>
Hollywood Juniper	<i>Juniperus chinensis 'Torulosa'</i>
Japanese Black Pine	<i>Pinus thunbergiana</i>
Juniper, Blue Point	<i>Juniperus chinensis 'Blue Point'</i>
Juniper Wichita Blue	<i>Juniperus scopulorum 'Wichita'</i>
Lacebark Elm	<i>Ulmus Parvifolia</i>
Little Gem Magnolia	<i>Magnolia grandiflora 'Little Gem'</i>
Mexican Buckeye	<i>Ungnadia speciosa</i>
Mexican Plum	<i>Prunus mexicana</i>
Oak (Bigelow, Bur, Chinquapin, Durrand, Lacey, Live, Post, Shumard, Southern Live, Texas Red)	<i>Quercus spp.</i>
Pecan	<i>Carya illinoensis</i>
Possumhaw Holly	<i>Ilex decidur</i>
Red Buckeye	<i>Aesculus pavia</i>
Red Cedar	<i>Juniperus virginiana</i>
Redbud	<i>Cercis canadensis</i>
Rose of Sharon	<i>Hibiscus syriacus</i>
Rusty Blackhaw Viburnum	<i>Viburnum rufidulum</i>
Southern Magnolia	<i>Magnolia grandiflora</i>
Texas Ash	<i>Fraxinus texensis</i>
Texas Buckeye	<i>Aesculus arguta</i>
Texas Hickory	<i>Carya texana</i>
Texas Persimmon	<i>Diospyros texana</i>
Thornless Honey Locust	<i>Gleditsia triacanthos</i>
Vitex	<i>Vitex agnus-castus</i>
Wax Myrtle	<i>Myrica cerifera</i>
Western Soapberry	<i>Sapindus drummondii</i>
Winter/Bush Honeysuckle	<i>Lonicera fragrantissima</i>
Yaupon Holly	<i>Ilex vomitoria</i>

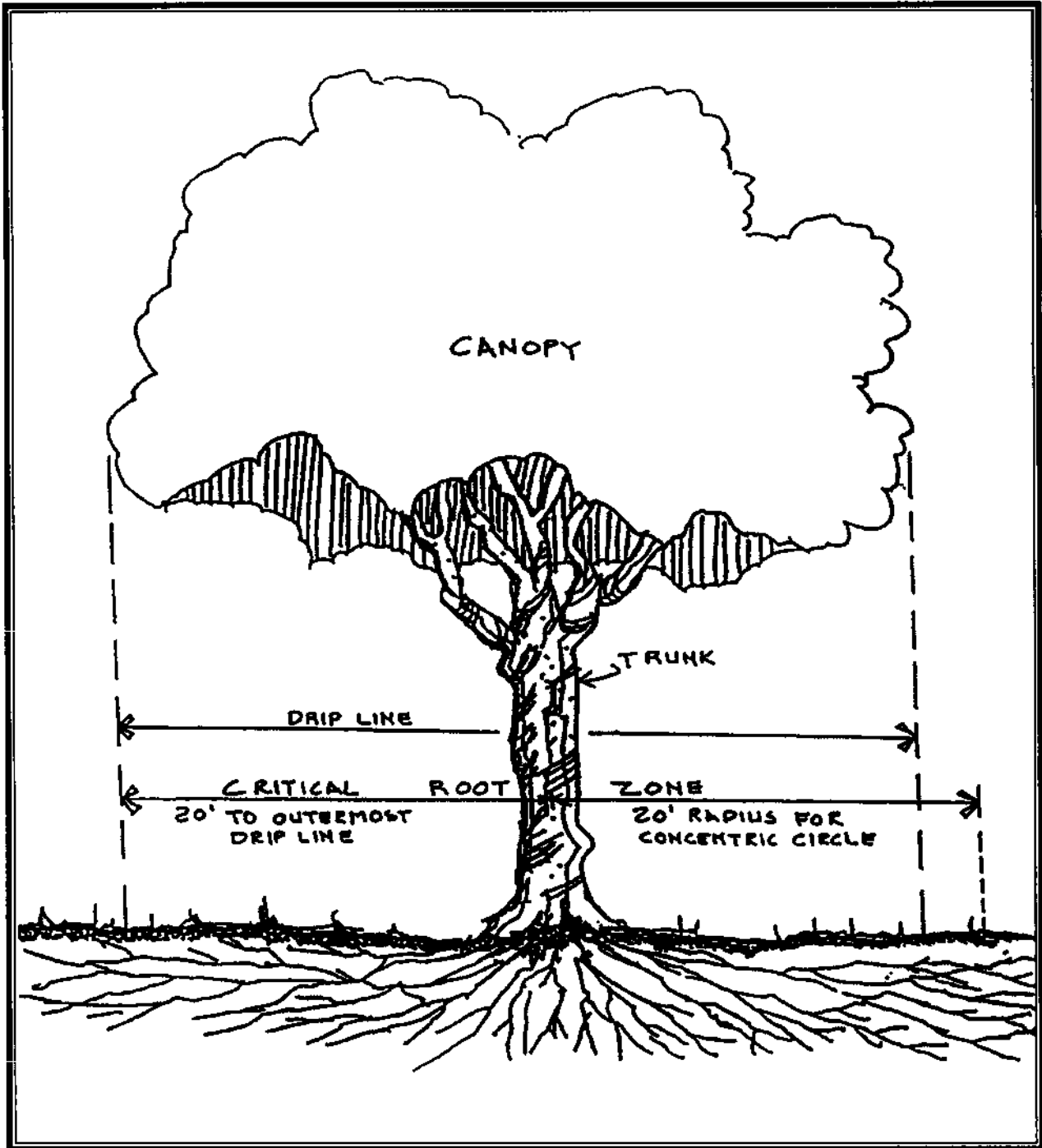
Attachment A

Exhibit B - Construction Plan Requirements

The following shall be required as a part of all construction plans submitted to the City when tree removal or tree protection is required during any phase of site work or construction.

1. A Tree Preservation Detail Sheet shall include the following at a minimum.
 - a. A graphics legend to be used throughout the plans for the purposes of showing the following: Trees to be flagged, protective fencing, trees requiring bark protection, boring, areas of cut and fill impacting protected trees.
 - b. Graphic tree exhibit showing the features of a tree to include the critical root zone, trunk, canopy, drip line and method of caliper measurement (see Article 6.08 - Exhibits C & D).
 - c. Graphic exhibits showing methods of protection to include snow fences, boarded skirts, etc.
 - d. Graphic exhibits showing construction methods to include grade changes, boring, trenching, etc.
 - e. Graphic exhibits showing appropriate pruning practices (see Article 6.08 - Exhibit F).
2. All requirements of this Article shall be shown graphically as needed on the construction plans.

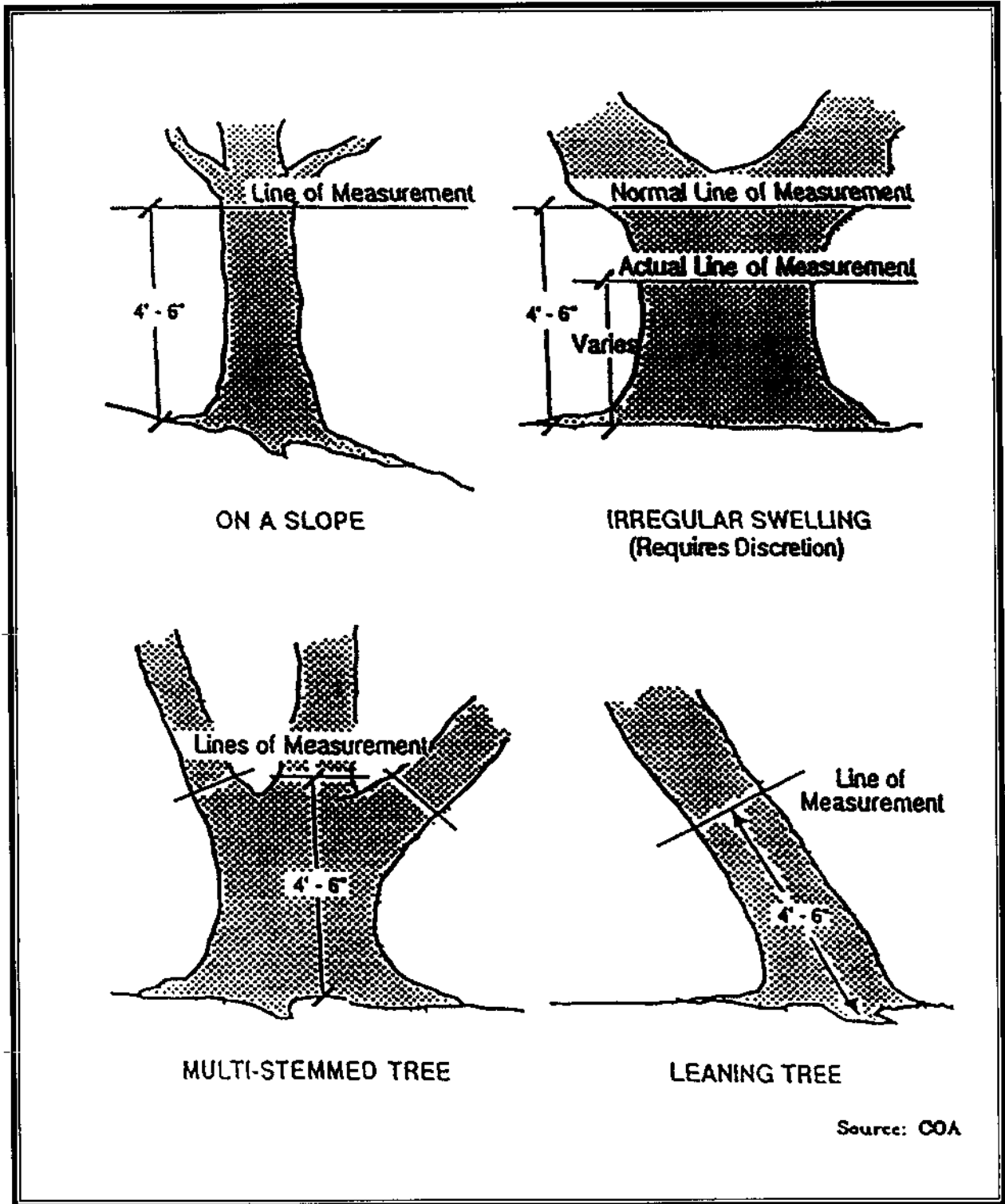
Exhibit C - Tree Exhibit



Critical Root Zone (CRZ): The area of undisturbed natural soil around a tree defined by a concentric circle with a radius equal to the distance from the trunk to the outermost portion of the drip line.

Drip Line: A vertical line run through the outermost portion of the canopy of a tree and extending to the ground.

Exhibit D - Measurement Methods



Diameter Measurement: The diameter of the protected tree shall be measured as shown. The diameter of a multi-trunk tree shall be determined by adding the total diameter of the largest trunk to 1/2 the diameter of each additional trunk.

Exhibit E - Example Builder Site Plan

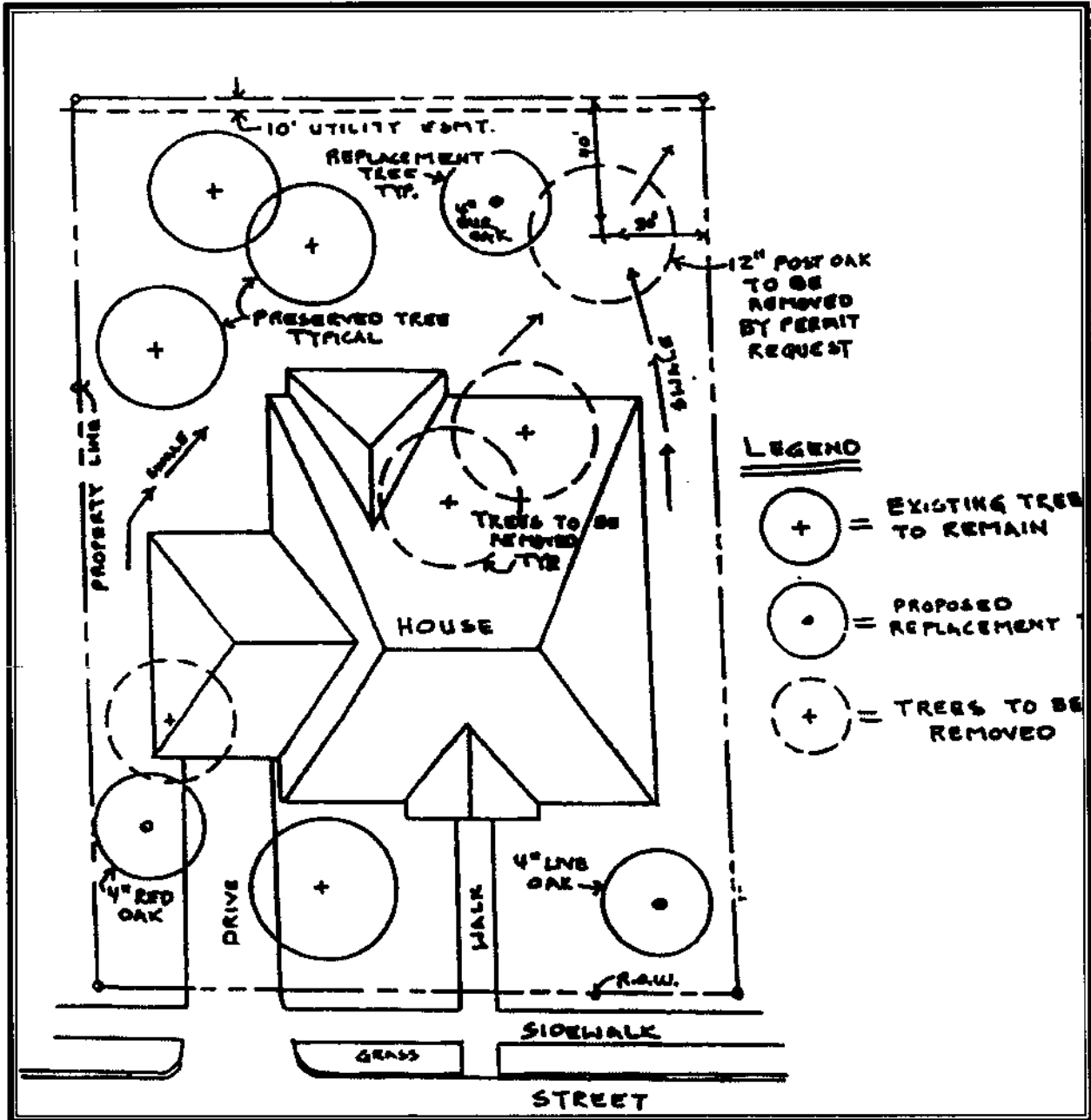
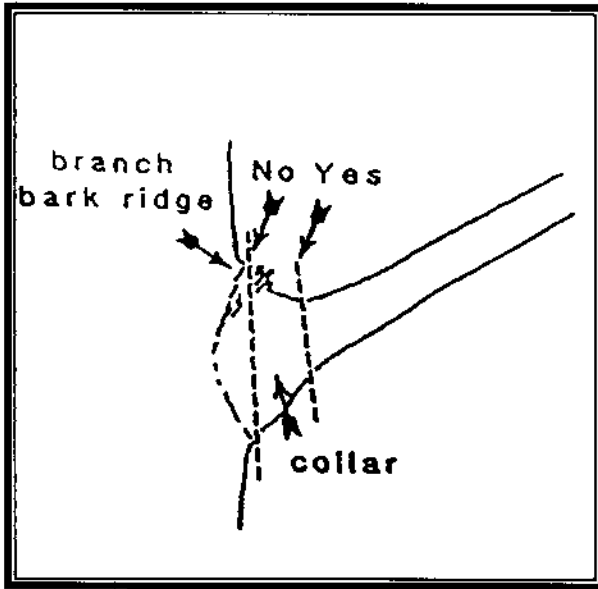
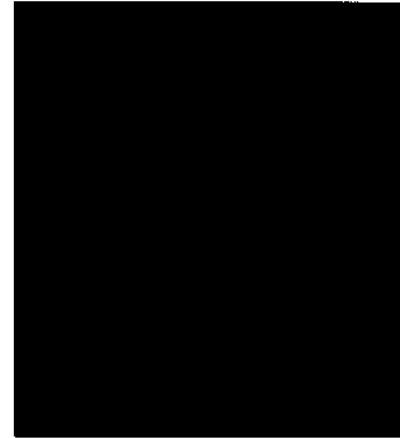


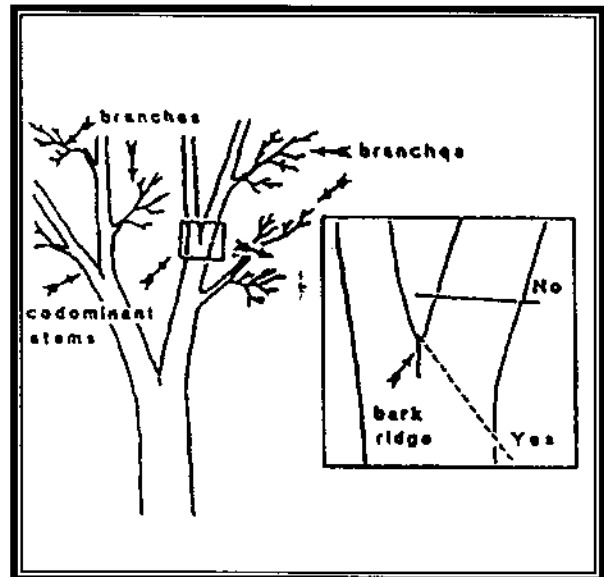
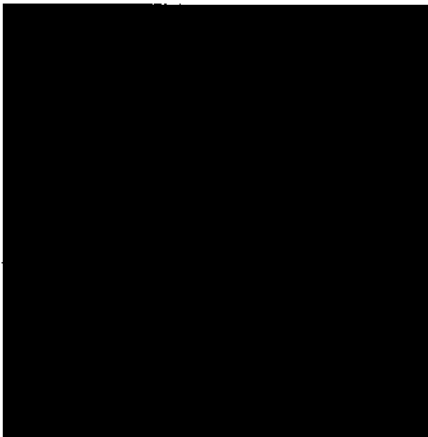
Exhibit F - Tree Pruning Recommendations



TREE PRUNING



TREE PRUNING



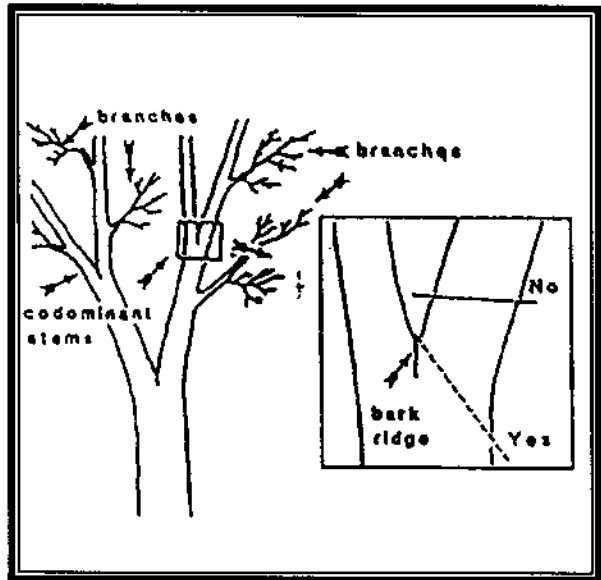
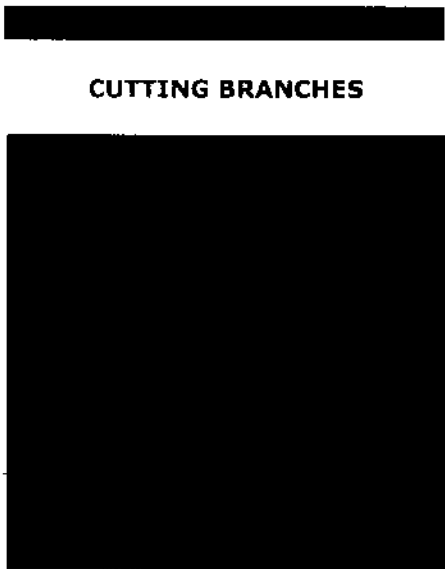
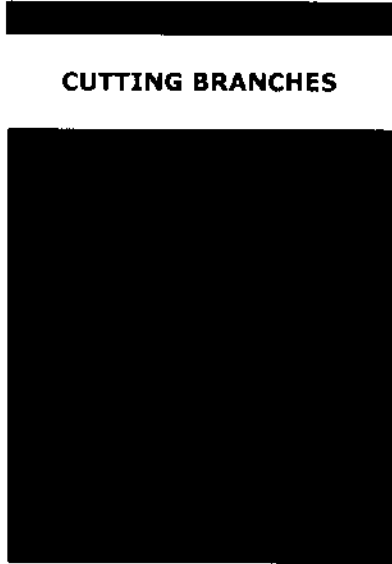
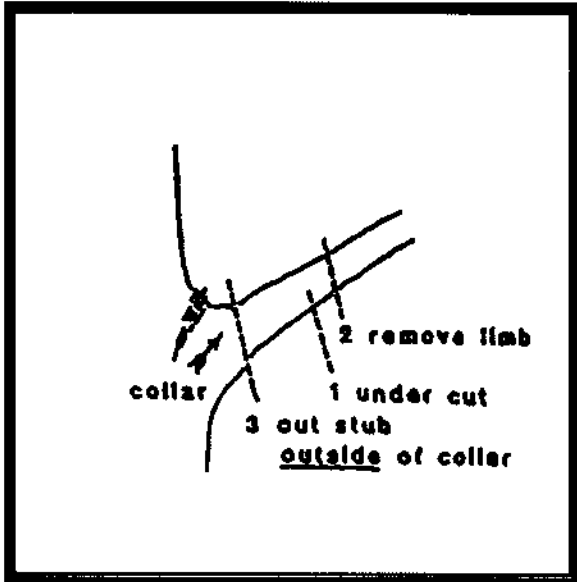


Exhibit G - Preferred Survey Nomenclature and Legend

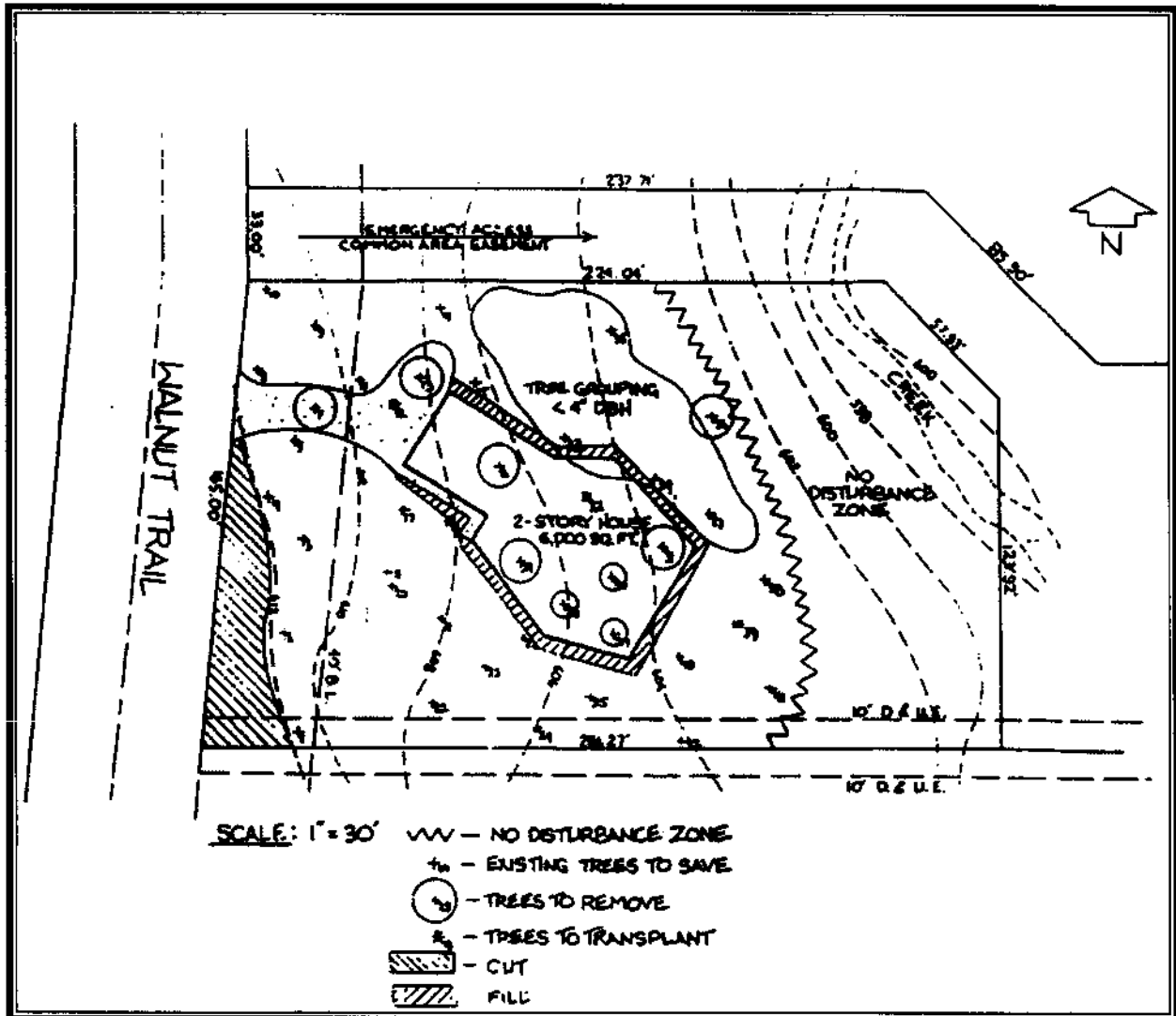
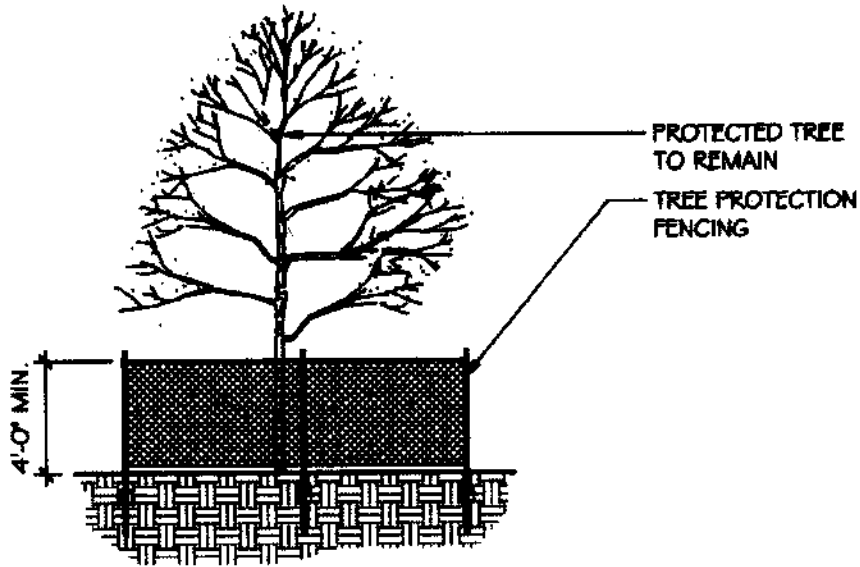


Exhibit H – Tree Protection Fencing



NOTE: TREE PROTECTION FENCING SHALL BE PLACED AT OR BEYOND THE DRIP LINE OR CRITICAL ROOT ZONE, WHICHEVER IS GREATER.

Attachment A

Exhibit I - Replacement Tree List

Large Trees (above 35 feet)		
	Common Name	Botanical Name
*	Afghan (Eldarica) Pine	<i>Pinus eldarica</i>
*	American Elm	<i>Ulmus americana</i>
*	Arizona Cypress	<i>Cupressus arizonica</i>
	Bald Cypress	<i>Taxodium distichum</i>
	Black Walnut	<i>Juglans nigra</i>
*	Buckeye, Texas	<i>Aesculus arguta</i>
*	Oak (Bigelow, Bur, Chinquapin, Durrand, Lacey, Live, Shumard, Southern Live, Texas Red)	<i>Quercus spp.</i>
*	Caddo Maple	<i>Acer saccharum var. caddo</i>
*	Cedar Elm	<i>Ulmus crassifolia</i>
*	Chinese Pistache	<i>Pistachia chinensis</i>
	Deodar Cedar	<i>Cedrus deodora</i>
*	Eastern Red Cedar	<i>Juniperus virginiana</i>
*	Lacebark Elm	<i>Ulmus Parvifolia</i>
*	Pecan	<i>Carya illinoensis</i>
	Red Cedar	<i>Juniperus virginiana</i>
	Southern Magnolia	<i>Magnolia grandiflora</i>
*	Texas Ash	<i>Fraxinus texensis</i>
*	Texas Hickory	<i>Carya texana</i>
*	Thornless Honey Locust	<i>Gleditsia triacanthos</i>
*	Western Soapberry	<i>Sapindus drummondii</i>
*Low or low-med water demand (Taken from Texas A&M drought tolerant Smartscape (TM) list)		

Attachment A

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	Bald Cypress	<i>Taxodium distichum</i>
	Black Walnut	<i>Juglans nigra</i>
*	Buckeye, Texas	<i>Aesculus arguta</i>
*	Oak (Bigelow, Bur, Chinquapin, Durrand, Lacey, Live, Shumard, Southern Live, Texas Red)	<i>Quercus spp.</i>
*	Caddo Maple	<i>Acer saccharum var. caddo</i>
*	Cedar Elm	<i>Ulmus crassifolia</i>
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	Deodar Cedar	<i>Cedrus deodora</i>
*	Eastern Red Cedar	<i>Juniperus virginiana</i>
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	Red Cedar	<i>Juniperus virginiana</i>
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