P.C. RESOLUTION NO. 08-408

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CALABASAS TO RECOMMEND APPROVAL OF OAK TREE PERMIT NO. 007-010, REQUESTING THE REMOVAL OF ONE HERITAGE OAK TREE, ONE NON-HERITAGE OAK TREE, AND ENCROACHMENT INTO THE PROTECTED ZONE OF THREE NON-HERITAGE OAK TREES IN ORDER TO CONSTRUCT A 75 UNIT AFFORDABLE SENIOR HOUSING DEVELOPMENT ON A PROPERTY LOCATED AT 4803 EL CANON AVENUE (APN: 2068-004-016) WITHIN THE CT (COMMERCIAL-OLD TOWN) ZONING DISTRICT.

Section 1. The Planning Commission has considered all of the evidence submitted into the administrative record which includes, but is not limited to:

1. Agenda reports prepared by the Community Development Department.

2. The Initial Study, Mitigated Negative Declaration and any supporting documentation prepared by the Community Development Department

3. Staff presentation at the public hearing held on January 3, 2008 before the Planning Commission.

4. The City of Calabasas Land Use and Development Code, General Plan, and all other applicable regulations and codes.

5. Public comments, both written and oral, received and/or submitted at or prior to the public hearing, supporting and/or opposing the applicant's request.

6. Testimony and/or comments from the applicant and its representatives submitted to the City in both written and oral form at or prior to the public hearing.

7. All related documents received and/or submitted at or prior to the public hearing.

Section 2. Based on the foregoing evidence, the Planning Commission finds that:

1. The applicant submitted an application for File No. OAK-007-010 on May 9, 2007.

2. On June 6, 2007, staff determined that the application was incomplete and the applicant was duly notified of this incomplete status.

3. The City arborist reviewed the report and recommended approval with conditions.

4. Notice of the January 3, 2008, Planning Commission public hearing was posted at Juan de Anza Bautista Park, the Calabasas Tennis and Swim Center, Gelson's market and at Calabasas City Hall.

5. Notice of the January 3, 2008 Planning Commission public hearing was provided to property owners within 500 feet of the property as shown on the latest equalized assessment roll.

6. Notice of the Planning Commission public hearing was mailed or delivered at least ten (10) days prior to the hearing to the project applicant.

7. The project site is currently zoned Commercial, Old Town (CT).

8. The land use designation for the project site under the City's adopted General Plan is Business – Old Town (B-OT).

9. The surrounding land uses around the subject property are zoned Residential, Multi Family (R-MF), Commercial, Old Town (CT) and Commercial, Office (CO).

10. Notice of Planning Commission public hearing included the notice requirements set forth in Government Code Section 65009 (b)(2).

<u>Section 3</u>. In view of all of the evidence and based on the foregoing findings, the Planning Commission concludes as follows:

Section 17.26.070 of the Calabasas Municipal Code allows the City Council to approve an Oak Tree Permit provided that the following findings are made:

1. *The request to remove an oak tree or scrub oak habitat is warranted to enable reasonable and conforming use of the subject property, which would otherwise be prevented by the presence of the oak tree or scrub oak habitat. Reasonable use of the property shall be determined in accordance with the guidelines.*

   The proposed project requires the removal of one heritage oak tree with a DBH of 28 inches and one non-heritage oak tree. The proposed structures have been located and designed to minimize impacts to as many oak trees on the site as feasible. The applicant has made a good faith effort to comply with all of the City's applicable development

standards, but construction of the proposed development cannot occur without the removal of these trees. Removal of these trees and replanting of mitigation trees instead is warranted to provide a reasonable and conforming use of the subject property. Additionally, the replanting of mitigation trees can be designated to City owned park land. The City arborist has reviewed and approved the recommended mitigation measures. Given the circumstances, the project meets this finding.

2. *The request to alter or encroach within the protected zone of an oak tree or scrub oak habitat is warranted to enable reasonable and conforming use of the property, which would otherwise be prevented by the presence of the oak tree or scrub oak habitat. In addition, such alterations and encroachments can be performed without significant long-term adverse impacts to the oak tree or scrub oak habitat. Reasonable use of the property shall be determined in accordance with the guidelines.*

   The Oak Tree Report indicates that encroachment activities involving trees No. 8, 9, and10 would not result in significant long-term adverse impacts to the oak trees as long as the proper measures are taken during construction and grading. This conclusion has been confirmed by the City's Arborist. To further ensure that adverse impacts to the trees are minimized, the Oak Tree Report recommends a series of mitigation measures, which have been included as project conditions of approval in the Resolution. Therefore, the project meets this finding.

<u>Section 4.</u> In view of all of the evidence and based on the foregoing findings and conclusions, the Planning Commission hereby recommends approval of File No. OAK-007-010 subject to the following agreements and conditions:

I. INDEMNIFICATION AGREEMENT

The City has determined that City, its employees, agents and officials should, to the fullest extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuit, expense, attorney fees, litigation expenses, court costs or any other costs arising out of or in any way related to the issuance of this Oak Tree Permit, or the activities conducted pursuant to said permit. Accordingly, to the fullest extent permitted by law, the Thomas Safran Associates shall defend, indemnify and hold harmless the City, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, the issuance of this OAK-007-010, or the activities conducted

pursuant to this OAK-007-010. Thomas Safran Associates shall pay such obligations as they are incurred by City, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the City reasonably determines necessary to protect the City from exposure to fees, costs or liability with respect to such claim or lawsuit.

II. CONDITIONS OF APPROVAL

1. The applicant shall provide a 48-hour notice to the City and the applicant's oak tree consultant prior to the start of any approved work within the protected zone of and oak tree.

2. Prior to construction, all oak trees shall be fenced at the edge of the protected zone to the extent possible in accordance with the Oak Tree Preservation and Protection Guidelines.

3. All approved pruning shall be performed by a qualified arborist under the direction of the applicant's oak tree consultant. The arborist shall use the Pruning ANSI A300 Standards adopted by the Western Chapter of the International Society of Arboriculture. The same arborist shall, at the direction of the City Arborist, remove the ivy that is growing into the branch structures of the oaks as recommended in the Oak Tree Report.

4. No construction materials, debris or vehicles shall be stored within the protected zone of any oak tree at any time.

5. Unless specifically approved by the City, no planting or irrigation shall be placed within he protected zone of any oak tree.

6. All future drainage shall be directed away from the drip line of oak trees. The area beneath the drip line shall remain dry at all times.

7. At the completion of construction, the applicant shall place three inches of approved mulch throughout the drip line of each oak tree.

8. Within ten (10) days of the completion of work, the applicant's oak tree consultant shall submit written certification to the Planning Division. This certification shall describe all work and whether such work was performed in accordance with the above permit conditions.

9. The oak removals shall be replaced on an inch for inch basis with at least 50% of the replacement trees Quercus lobata (Valley Oak).

10. The Oak Tree Consultant shall be on-site and monitoring the removal of any oak trees. Further, they should be present whenever any work is performed within the protected zone of any oak tree.

11. The precise line of a vertical cut must be staked by the surveyor before beginning excavation.

12. The first three feet of the excavation within the drip line of an oak must be dug by hand. No mechanical equipment can be used in the first 3' of excavation.

13. Roots encountered should be cut clean with a hand held pruning saw and treated with an appropriate fungicide. Roots should be cut at a 45 degree angle pointing downward. Do not seal the cut ends of the roots.

14. After reaching a depth of 3' mechanical equipment may be used to complete the excavation under the direct on site supervision of the Arborist who shall be present during all excavation within the drip line of any oak tree. No mechanical equipment that would conflict with the branch structure may be used. No pruning may be performed to accomplish the excavation.

Section 5. All documents described in Section 1 of PC Resolution No. 08-408 are deemed incorporated by reference as set forth at length.

PLANNING COMMISSION RESOLUTION NO. 08-408 PASSED, APPROVED AND ADOPTED this 3rd day of January, 2008.

Mark Sikand, Chairperson

ATTEST:

Maureen Tamuri
Community Development Director

APPROVED AS TO FORM:

City Attorney

Planning Commission Resolution No. 08-408 was adopted by the Planning Commission at a regular meeting held January 3, 2008, and that it was adopted by the following vote:

AYES: Chair Sikand, Vice Chair Mueller, Commissioners, Klein, Fritz, Shumacher.

NOES:

ABSENT: Commissioner Brown

ABSTAINED:

"The Secretary of the Planning Commission shall certify the adoption of this Resolution, and transmit copies of this Resolution to the applicant along with proof of mailing in the form required by law and enter a copy of this Resolution in the book of Resolutions of the Planning Commission. Section 1094.6 of the Civil Code of Procedure governs the time in which judicial review of this decision may be sought."