



STAFF REPORT

Meeting Date: October 18, 2016
To: Honorable Mayor & City Council
From: Byron Pope, MMC
City Clerk
Subject: Report of Investigation of Tree Removals on Parcels 12 and 13
Attachment: Parrent Smith Investigations Report

Parrent Smith Investigations will be in attendance – Joanne Parrent (in person) and Nic Smith (via telephone) to present their report to the City Council.

Byron Pope
Approved By

A handwritten signature in black ink, consisting of the letters "BP" in a stylized, cursive font. The signature is positioned to the right of the printed name "Byron Pope" and above a horizontal line.

Attachment 1



City of Beverly Hills

**Report of Investigation of
Tree Removals on Parcels 12 and 13**

Parrent Smith Investigations

**Investigators:
Joanne Parrent and Nic Smith**

October 7, 2016



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INTRODUCTION:

Our firm, Parrent Smith Investigations, was retained by the City of Beverly Hills in June 2016 to investigate the removal of trees from arsenic contaminated vacant land known as Parcels 12 and 13 in Beverly Hills on November 21 and 22, 2015. In our contract with the City, we were asked “to find out the truth, whatever it may be, in connection with the events which led to the large tree removals” and “to establish accountability.”

The scope of the investigation included looking at the roles of the Beverly Hills City staff, the California Department of Toxic Substances Control (DTSC), West Coast Arborists (WCA) and the owners of the parcels, the Beverly Hills Land Company (BHLC). We were also asked to investigate whether or not the cutting of trees posed a threat to the health of the residents and visitors to the City.

For this investigation, we formally interviewed forty-one people, including sixteen members of the Beverly Hills staff or former staff, four members of the Beverly Hills City Council, one City Commissioner, one attorney from the City Attorney’s law firm, one environmental attorney formerly with the City Attorney’s law firm, one attorney from the City Prosecutor’s law firm, four employees of West Coast Arborists, one scientist from the Department of Toxic Substance Control, seven residents, two partners of the Beverly Hills Land Company, one employee of the Beverly Hills Land Company and an arborist and a landscaper hired by the Beverly Hills Land Company.

All of the above interviews except those with individuals associated with the Beverly Hills Land Company were recorded and transcripts were prepared and sent to each interviewee to review and sign, under penalty of perjury, as to their accuracy and truthfulness.

The following individuals declined our request to record their interviews: Lyn Konheim and Bob Barth, partners of the BHLC, Eric Finkelstein, employee of the BHLC and Peter Ashley and Jim Ply, employed as consultants for the BHLC. Their interviews were done in the presence of attorneys Steve Madison and Farbod Moridani from the Quinn Emmanuel law firm. The BHLC attorneys refused our request to use a professional stenographer to take notes during the interviews of Konheim, Barth and Finkelstein. We relied on notes taken by one of our investigators for all of the interviews with BHLC principals, employees or consultants.

We requested interviews with two people who refused to be interviewed: former Deputy City Manager, David Lightner, and former City Councilmember, Willie Brien. At the time they refused our requests, Lightner referred to our investigation as an “interrogation” and Brien called it a “witch-hunt.” Lightner subsequently sent us a short



email with some of his thoughts and suggestions on the issues. Brien said he would ask the City to provide him with legal counsel before he would speak to us.

We also gathered some background information on issues that arose, including speaking to the individual whose car was hit by a falling tree in April 2015, to the former City Manager and to an arborist who went out to Lots 12 and 13 in April 2015 to meet Lyn Konheim but who declined to take on the consulting arborist assignment. We did not record those telephone interviews but took notes.

In addition to the interviews we conducted, we reviewed and organized into an Excel document that can be searched by name, from and to, as well as date, all of the documents requested by the *Beverly Hills Courier* in its PRA request.

We also requested additional documents from the City that were not part of the *Courier's* document request. These requests included transcribed voicemails, additional emails and schedules of particular individuals. We also requested records on this property from the DTSC. The additional documents we received provided only limited information not already available from the *Courier's* PRA request.

We also reviewed the reports of those who had conducted previous investigations on this incident, including the report done by Carol Lynch from the City Attorney's law firm, the video of the Town Hall meeting chaired by former Mayor Robert Tannenbaum and numerous articles, most written by Victoria Talbot for the *Beverly Hills Courier*. Our conclusions, however, are based solely on our own independent investigation of the facts.

In order to reach some of our conclusions, we had to make assessments as to the credibility of different witnesses. We tried, as indicated by the large number of witnesses we spoke to, to get as many versions of the events as possible from different individuals involved. In some crucial areas, we had to evaluate the credibility of witnesses since what one may have told us differed from other information we received either from other witnesses or from the written documentation we reviewed. In those cases, we have included in the report the reasons that we believed one witness over another.

The report is divided into two sections, three appendices and four exhibits. The first section, **Narrative Report and Conclusions**, presents, in narrative form, an overview of the issues we were asked to investigate and the conclusions we came to as a result of our investigation. The second section contains our **Recommendations**.

Appendix A: The Trees discusses whether or not all of the trees needed to be removed.

Appendix B: Arsenic Contamination and Public Health discusses whether or not risks to public health might have occurred as a result of the tree removals.



Appendix C: Timeline of Events lists facts and the significant events that led up to and followed the tree removals.

Exhibit 1 contains a list of transcripts of all the interviews that were recorded. The actual transcripts, as well as signed statements attesting to their truth and correctness by each interviewee, are part of the record and will be conveyed to the City.

Exhibit 2 includes a list of interviewees whom we were not permitted to record, as well as telephone interviews that we did not record. Our notes from all those interviews are part of the record and will be conveyed to the City.

Exhibit 3 describes our Project File Master List, which is part of the record and will be conveyed to the City.

Exhibit 4 includes a list of other documents we requested that were not in the Project File Master List. Those documents are part of the record and will be conveyed to the City.

NARRATIVE REPORT AND CONCLUSIONS

This section of our report presents a narrative of the events that led up to and immediately followed the removal of trees by the Beverly Hills Land Company (BHLC) on vacant land known as Lots 12 and 13 (“the Lots”) in Beverly Hills on November 21 and 22, 2015. Our narrative, which is based on our findings from both our extensive document review and numerous interviews, begins after the new owners of the Beverly Hills Land Company purchased the Lots in July 2014. This section also contains our conclusions in regard to who was responsible for removing or allowing the trees to be removed without public notice and without proper oversight by the California Department of Toxic Substances Control (DTSC).

Throughout this report, when we quote from a transcript of an interview, we identify the quote by the name of the interviewee, the page number and the first line of the quote. Quotes from emails are identified by date.

Initial Actions by the New Owners of the BHLC

There is no question that the new owners of the Beverly Hills Land Company, Lyn Konheim, Bob Barth and Stanley Black, purchased Lots 12 and 13 in or around July 2014 with the intention of developing the land into a condominium, commercial or mixed-use space. Before they could develop the Lots, however, the BHLC principals had to overcome two major obstacles. First, they needed the property, which is contaminated with arsenic, to be remediated with no restrictions as to how they could develop the land. The Union Pacific Railroad, a previous owner of the property, had already entered into a Voluntary Cleanup Agreement with the DTSC to clean up the site. But in order to begin a cleanup, the DTSC requires a Removal Action Workplan (RAW) that is based on the future use of the property. If the land is going to be a park, there is one type of cleanup. If it is going to be developed into a site with one or more buildings and underground parking, a different level of cleanup is required.

The second obstacle to a future development of the parcels is, of course, getting the City to re-zone the property – now zoned T-1 for transportation use – to permit commercial and/or residential development.

After purchasing the property in 2014, the BHLC owners began working to eliminate both obstacles. They had what they described as a “meet and greet” get together with then City Manager, Jeff Kolin, and Councilmember Willie Brien in July 2014. Asked about that meeting, Konheim told us, “no plans were discussed then because there were none.” Kolin, however, remembers very specifically that Konheim and Barth talked about wanting to develop “condo/apartment residential units” on the Lots. Kolin remembers telling them that those plans were unlikely to be approved and they were definitely *not* the City’s preference.



The same month, BHLC environmental attorneys met with David Lightner, Deputy City Manager, and Norm Dupont, an environment attorney from the City Attorney's law firm, to discuss the potential cleanup. During the same period, Lyn Konheim also met with then Assistant City Manager, Madhi Aluzri, to discuss what would be required to obtain a change in zoning. Aluzri told us that Konheim:

...had the same kind of questions as from before ...and I said, 'Listen to me, the property right now is Transportation zoned. It has to go through a process and once an application is filed then you can, I suppose, submit a proposal for whatever zone change you want.'" (Aluzri, 6:2)

Aluzri also said that Konheim knew at that time that the community had had an unfavorable reaction to the prior owner's development plans.

While those efforts were going on in the months right after the purchase of the property, Konheim also began working on getting the many trees on the Lots removed. In October 2014, Konheim met with City Arborist, Ken Pfalzgraf, and an arborist Konheim was contemplating hiring (Pfalzgraf cannot remember the name of this arborist). Pfalzgraf had been on a campaign to replace Eucalyptus trees for some time because Eucalyptus trees, with shallow roots, can be unstable and pose a danger to people and property. Replacing Eucalyptus trees was part of the City's Master Tree Plan. Pfalzgraf had supervised the removal of Eucalyptus trees in Beverly Gardens Park in 2008, replacing them with other trees. Konheim told us that Pfalzgraf had educated him on the dangers of Eucalyptus trees. Since there were many Eucalyptus trees on Lots 12 and 13, Konheim would have known that Pfalzgraf would be an ally in his efforts to remove those trees. And, although no one was hurt and the truck was not damaged, in September 2014 a Eucalyptus branch had fallen on a tow truck parked near Parcel 13.

Pfalzgraf, for his part, had complimented Konheim on how good his buildings and grounds looked at his other properties around the City. Pfalzgraf said he knew Konheim was a philanthropist who had "done a lot for the City." Konheim began looking for a consulting arborist who would work well with Pfalzgraf and would prepare a report that would recommend cutting down "hazardous" trees. The first one he brought to Pfalzgraf was not hired.

Six months later, in April 2015, a second tree fell, this one on a car travelling on Santa Monica Boulevard. The driver was unhurt but the car was totaled. After that incident, Konheim stepped up his efforts to get the trees removed. Clearly, however, the motive for removing the trees was not simply safety but also to prepare the land for an ultimate development. Konheim denied he wanted to clear the land for development when speaking to us, claiming his only motive was public safety. He repeatedly told us: "Taking the trees down had nothing to do with development." In fact, during our interview with him, his attorney, Steve Madison, instructed Konheim not to answer our questions about development plans for the property. Nonetheless, the other BHLC property owner we interviewed, Bob Barth, said: "We didn't have any firm plans, and



still don't, but yes, ultimately it will be developed." Barth told us that they had talked to architects to "see what was possible" on the property. Architects he named included "Applebaum in Santa Monica, someone who worked for Richard Meier and Frank Gehry."

In April 2015 Konheim brought a second arborist to the property and again asked Pfalzgraf to meet with him and the arborist. This time it was Bob Wallace, a respected consulting arborist that Pfalzgraf knew well. Wallace had experience working with municipalities in both Malibu and Thousand Oaks, where he had recommended that certain trees be cut for public safety. In Malibu, he had recommended removing three Eucalyptus trees in a park and, in Thousand Oaks, he recommended cutting down a very old Oak tree for public safety reasons. At Pfalzgraf's request, Wallace spoke with us for this investigation. Wallace reported that when he walked the property in April 2015 Konheim told him that he was developing the property commercially and that part of that development involved digging out a certain amount of earth for something underground. Konheim also told Wallace that the development plans meant, "Most of the trees will have to go". Wallace said that he felt that many of the problems with the trees he saw then could have been corrected with "rehabilitative pruning". He declined to take the job for a number of reasons. He had too much work at the time and he could see, having been involved in private/public ownership conflicts before, that this could become a "nightmare." Despite Konheim's repeated calls asking him to take the job Wallace refused.

As evidenced by the above actions shortly after purchasing the property, it seems obvious that, despite their claims otherwise, the BHLC was interested in removing the trees to make the land ready for development. Of course, safety and liability issues were a reason to have at least some of the trees removed. But, knowing Pfalzgraf's feelings about the potential instability of Eucalyptus trees, Konheim claimed that public safety was the only reason to have the trees removed – a reason that would be supported by the City Arborist and ultimately others on the City staff.

June DTSC Meeting and Resident Involvement

On June 17, 2015, the DTSC held a public meeting to discuss the potential cleanup of the contamination on the Lots. The BHLC owners, their attorneys, David Lightner from the City and a number of residents came to the meeting at which the DTSC presented to the public the draft Removal Action Plan (RAW) for the cleanup. This RAW had been seen and discussed by the property owners and the City staff prior to the meeting. In fact, Bob Krug, then the DTSC project manager for the site, wrote an email to the consultant for the railroad in which he said:

I am meeting with the City today to give them a briefing (about the RAW). Another issue is the large trees, the RAW does not mention them. Is the plan to cut them down or clean up around them? This will be a big issue in the public meeting. (Krug email, 4/29/15)



The RAW presented at the public meeting proposed three options for cleanup, one of which was for the land to be developed into residential or commercial space with underground parking. Many of the residents expressed their objections to development on the property. At one point in the meeting, the property owners all walked out. In an email to newly appointed City Manager, Madhi Aluzri, Lightner described the meeting as “tense”.

Lionel Ephraim and other residents immediately got involved in learning more about the situation. Ephraim examined the CEQA document for the site, a lengthy document mandated by the California Environmental Quality Act prepared by the DTSC that describes the property and its surroundings and is the basis for the RAW. He was shocked to find that the CEQA had a number of glaring inaccuracies. It described the property as flat land without any trees and said there were no residences near the lots, both obviously incorrect. In late July, Ephraim contacted Tedd Yargeau, a Senior Scientist at the agency and now the project manager for the site for the DTSC, and told him about the CEQA’s errors. 286 residents also gathered and signed a petition objecting to the RAW. It was sent to the DTSC. Another resident, Sandra Aronberg, wrote to Councilmember John Mirisch about the June 17th DTSC meeting. She expressed her concern that the property owners had a large project planned for the property and wanted to cut down all the trees.

As a result of the discovery of the CEQA errors, Yargeau pulled the RAW and, on August 11, 2015, notified the property owners, the railroad and the City that nothing could be done on the property until a new RAW with a corrected CEQA was developed.

Konheim and the BHLC owners had hoped the cleanup would move forward quickly with no restrictions on the future land use, paving the way for the development they envisioned. But by mid-August, the cleanup was stalled, and nearby residents were organized and active in opposition to any development on the Lots.

The Santa Monica Boulevard Reconstruction Project

After the RAW was pulled, Konheim and his attorneys began discussing two issues regarding the parcels with City staff. The first was using Parcel 12 as a staging ground for the Santa Monica Boulevard (SMB) reconstruction project. The second was removing the trees on the property for public safety reasons. Both the staging area and the tree removals would make the parcels look more like the “flat land” described in the faulty CEQA and both would move the parcels in the direction of *looking* ready for development (if not actually ready because they would not yet have the contamination cleaned up).

City staff had been working with consultants and preparing for the SMB reconstruction project for some time. According to a report from one consultant, Gruen and Associates, dated July 1, 2015, there were 83 trees lining the North side of the parcels and 13 of those trees were within six inches of the curb. Those 13 trees would have to



be cut down during the reconstruction project because they were too close to the curb and would become unstable during the construction work. The Gruen report, although done by a landscape architect, not an arborist, described most of the trees on the North side of the Lots as being in “moderate” condition.

As part of the SMB reconstruction project, the City was hoping to offer the contractor a “staging ground [for] a construction trailer, employee parking and laydown area for materials.” Given its proximity to where the reconstruction work would be taking place, Lot 12 seemed like an ideal spot. According to City Engineer Mark Cuneo, trees would not have had to be cut for the staging area that was envisioned. However, the City needed both the property owner’s agreement and permission to use the Parcel from the DTSC. Aluzri and Lightner initiated discussions with BHLC attorneys on using Parcel 12 as a staging area. The company was amenable and negotiations for a rental price began.

Meanwhile, Lightner, who had been the point person in the City’s contact with the DTSC, asked Tedd Yargeau whether or not it would be permissible to use Parcel 12 as a staging ground for the reconstruction project. Yargeau replied that, given the arsenic contamination, prior to any remediation or cleanup of the property the City would have to put an asphalt cap on the property so that the soil would not be disturbed while the property was being used as a staging area. Lightner proceeded to inquire about the cost of an asphalt cap.

Tree Removal Preparation and Discussions with City Staff

At the same time as discussions were being held on using Lot 12 as a staging ground for the SMB reconstruction project, Konheim was moving forward on getting the trees on both Lots removed. Prior to the withdrawal of the RAW, on July 10, 2015, Konheim brought a third arborist, Peter Ashley, to meet with City Arborist Pfalzgraf. Pfalzgraf instructed Ashley on the kind of tree reports usually made for the City, showing him samples of his own work. Ashley then prepared a report on the condition of the trees on the parcels, dated August 22, 2015. Konheim had his attorneys review the report and, according to Ashley, some “structural” changes were made. In late September, Konheim asked Pfalzgraf to review the final Ashley report. At that time, he also asked Pfalzgraf for contact information for West Coast Arborists (WCA), the company that does the tree maintenance work for the City. Pfalzgraf gave Konheim the number of Dave Cooper, the Area Supervisor for WCA.

By early October, Konheim had contacted Dave Cooper and Cooper had prepared a proposal for the job of cutting down **all** the trees on the North side of Lots 12 & 13. Cooper told us that Konheim wanted all the trees removed, so he just offered him a flat rate for the work, rather than a per tree cost.

Now, with a plan and a tree removal contractor in place, Konheim needed to get the City on board before he scheduled the date for the removals. On October 6, 2015, the



first step was accomplished when City Arborist Pfalzgraf completed his review of the Ashley report. As Konheim could have expected, Pfalzgraf was largely in agreement with the Ashley Report, which suggested removing all Eucalyptus trees. (For a discussion of the Ashley Report, see Appendix A: The Trees.) Steve Zoet, Pfalzgraf's supervisor, reported to Aluzri that Pfalzgraf recommended that all trees be removed from both parcels for public safety reasons and potential liability related issues. Zoet stated that Pfalzgraf's recommendation had been "substantiated by an independent, professional report", referring to the Ashley report.

Now the staff, led by the City Manager, had to figure out how to accomplish this, given that some of the property on the Lots belonged to the City. Aluzri told Zoet, "Let's discuss approach on how we will get the message out on at least the city trees and why they all have to be removed." In early October, Zoet began working on a memo regarding the tree removals that would go to the City Council.

Aluzri also wanted to be certain about property lines on the Lots and, on October 16, 2015, Pfalzgraf sent an email to Lightner and Zoet with information he had learned from the Engineering staff. He very clearly stated regarding the City's two rights of way on the property: "Bottom line is property line/right of way on North side is 2 feet and 20 feet on the South." In future discussions, however, the City staff only seemed concerned about the 20-foot right of way on the South side of Parcel 13 along Civic Center Drive.

Konheim, meanwhile, was ready to have the trees removed and was apparently becoming impatient with the City. He called Lightner, Zoet and Pfalzgraf numerous times and met with each of them. At one meeting, BHLC attorney Bruce Howard assured everyone that there was no problem with the DTSC – removing the trees would not disturb the soil as long as they did not grind the tree stumps. Zoet later said that they took Howard's word for this because of Howard's long experience as an environmental attorney. No one in the City followed up with the DTSC to find out if removing a large number of trees would disturb the soil. Nor did anyone ask the City Attorney's law firm environmental attorney, Norm Dupont, for his opinion on whether a large tree removal project would disturb the soil.

Instead, the staff seemed focused on getting the BHLC to pay for the simultaneous removal of City trees on the 20-foot right of way, as well as getting the BHLC to pay for replacement trees. Zoet reports on a meeting held between City staff and Konheim on October 23, 2015. He writes that Konheim:

may be moving ahead with the removal of their trees but did agree to incur the costs for removal of all those we identify as well as 24" replacements. Was hopeful for something larger but they raised the issue of the arsenic and concerns that anything larger, if not even with these, may raise some issues given the soil disturbance so we may have to work through that. (Zoet email, 10/23/15)



At this point, in late October, Konheim had offered to cut all the trees on both “his private property” and the City’s right of way on the Civic Center Drive side of the property. The staff involved were assuming that the tree removal work would be done all at once. Aluzri, Zoet, Lightner and Pfalzgraf were also concerned that the residents would be upset unless they planted “replacement” trees – which is what is usually done when trees are removed in the City. They began discussions with Konheim about how large the replacement trees would be. Konheim offered to pay for and plant a number of 24” box trees. At the urgings of the staff, by November Konheim had agreed to plant up to 50 36” box replacement trees on the City’s right of way.

Still, however, no one knew if the DTSC would allow the planting of any replacement trees in the contaminated soil. Lightner contacted the DTSC about the replacement tree planting since he was also contacting Yargeau about using Parcel 12 as a staging ground.

Thus, a month before the trees were actually cut the City staff was aware of the following:

- the BHLC planned to cut down all of their trees on the north side of the parcels
- the BHLC had offered to cut down City trees (that the City identified) on the south side at the same time
- the BHLC had offered to buy and plant 36” replacement trees for the City’s trees and
- planting new trees may or may not be possible because of the arsenic contamination.

In all of this discussion about removing trees and replacing them, both on the City portion of the property on Civic Center Drive and on the BHLC’s property, no one from the City contacted the DTSC to verify Bruce Howard’s contention that removing a large number of trees would not disturb the soil. The only question the staff posed to the DTSC was whether or not tree planting could take place.

Tree Removal Notification to City Staff, City Council and Residents

Regardless of the BHLC’s motivation for the tree removals, whether it was as Konheim insisted to protect people from falling trees or, as we believe to prepare the land for a future development, the City staff, particularly Zoet, encouraged the BHLC to notify the nearby residents of the upcoming tree removals. The company, obviously, did not do so. The BHLC also did not give written notice to the City staff as to the date it intended to cut the trees, although Konheim insists he verbally told Lightner on the Tuesday (4 days) before the trees were cut.

According to Zoet, City staff had encouraged the BHLC to notify the public about the planned tree removals:

We certainly had conversations to that effect in terms of what that process entails with Mr. Konheim and Mr. Konheim's legal counsel... it was our



suggestion... to follow that practice of the City, which was a public notification process of the intent to remove trees.” (Zoet 11:9)

Zoet continued:

We were adamant in not only making sure Mr. Konheim knew of the City's practice in that regard, but to strongly suggest that that might be something he would wish to do as well ... And so to us, I don't think that is necessarily surprising (that the public reacted unfavorably) because there was no real public notification process in all of this.” (Zoet 11:19)

Zoet discussed the reason residents would be upset and why he encouraged the BHLC to notify the nearby residents of their intent to remove trees:

Those trees have been there obviously for many, many years. People have grown accustomed to their presence and afforded some of the residents... a bit of a visual barrier, created a bit of a sound barrier so ...that, certainly should have been an added incentive or motivation, I think we felt on the part of the property owner, Mr. Konheim, to instigate some communication of intent.” (Zoet 43:6)

Zoet also complained that Konheim did not even give the staff enough notice:

I and others impressed time and time and time again (on him) to keep us notified. And then that was never given, never given. I was simply notified on a chance communication from West Coast Arborists to one of my staff ...and that was less than 24 hours notice, never coming directly from the property owner.” (Zoet 49:3)

Zoet insisted that he told Konheim on a number of occasions that even though he wasn't legally required to do so, there should be a public notice when he planned to remove so many trees to explain to residents that it was being done for safety and potential liability reasons. We asked Konheim about that. Konheim said he didn't remember Zoet saying that. We find Zoet more credible in this instance since he spoke to us knowing he was being recorded and knowing he would have to certify his statement under penalty of perjury, whereas Konheim would not agree to being recorded and his attorney would not even agree to having a stenographer/typist make an independent account of our interview.

We also asked Pfalzgraf to help us understand why Konheim went to the trouble of getting an arborist report, but never used the findings in any public notification or outreach. He didn't know.

On November 5, 2015, Konheim wrote to Zoet that the tree removal must be done very soon, saying:

We would work to complete the tree removal in the next two weeks and then immediately arrange the tree planting with our contractor. Working with you and the City's arborist, we can jointly select the species of tree. We expect that



we would be planting between 35 and 50 trees (approximately 35 feet on center) in this 5-foot area on the south side of Parcel 13. (Konheim email, 11/5/15)

The replacement trees promised were only intended for the City's right of way on Parcel 13, not for the other parts of the parcels where trees were being removed.

On the same day, November 5th, Zoet tells Aluzri that he thinks finalizing the process of public notice about the City tree removals will take at least 30 days and he can't see the removals being done before December. The next day, November 6, 2015, Konheim makes multiple calls to Zoet and Zoet writes Aluzri:

By the time we pull the addresses together, distribute by mail and account for the holidays I'd advise that we don't start removal until early December anyway at which time he (Pfalzgraf) will be back available to supervise the operation. I've been having conversations with Lyn (Konheim) to this effect and I think he's more understanding that that's a realistic timeframe. Mahdi, please advise when you're comfortable in notifying CC (city council) and if further revisions are needed to my proposed communication to them. I believe Lyn is interested in doing all tree work, including the removal of "his" trees, at the same time and is willing to wait until the timing and process dictates when that starts. (Zoet email, 11/6/15)

But although Zoet was under the impression on November 6th that Konheim would and should wait until December, after a public notification process, before removing trees, apparently Konheim either changed his mind, was not truthful with Zoet or Zoet misunderstood him. In that week or the following week, Dave Cooper of the WCA said Konheim called to say that "he had the go ahead to go ahead and remove the trees" (Cooper 7:6) and wanted them removed on the 21st and 22nd of November.

We have not been able to determine from our interviews with Zoet and Konheim why Konheim may have changed his mind about waiting for the public process. Konheim denies ever hearing from staff about a public process and only says that he was afraid a tree would fall and harm someone while he was waiting for the City to do their public process.

Also on November 6, 2015, Tedd Yargeau of the DTSC responded to David Lightner on the two questions Lightner posed to him. Regarding using Lot 12 as a staging ground for the SMB reconstruction project, Yargeau required laying down an asphalt cap on the parcel. Regarding the question of planting new trees on the parcels, Yargeau said that depending on the area of the lots where digging would occur, if there is arsenic-impacted soils then the DTSC would require a soil management plan and likely a contractor that is licensed to handle hazardous waste. He offered to review a diagram of the intended plantings with the existing data to determine where those trees would be planted and if the extra steps were warranted. Lightner sent Yargeau a diagram showing where the trees would be planted (on the City's right of way on Lot 13) but he still never asked Yargeau if removing large numbers of trees would disturb the soil or if



a contractor licensed to handle hazardous waste or a soil management plan was required.

In subsequent correspondence about public notice for tree removals, Zoet still believes Konheim would wait until after some public notice, but Aluzri begins to just focus on the tree removals on the south side of the parcels. On November 5th, Aluzri said that Konheim could cut “his trees” without notifying the public, but before the City trees could be cut they needed a public process. This is different from Zoet’s assumption that all the tree removals would be done at the same time, after a public notification. Aluzri also said that the City Council should be notified before Konheim removes his trees. The reason seemed only to be that once the tree removals began, residents might contact members of the Council and Councilmembers should know that it was private property and the City couldn’t do anything about it.

Konheim, however, told us that if the City had asked him to stop he would have. Also, regarding notice to the City, Konheim insisted that he told Lightner on the Tuesday before the trees were to be cut on the following Saturday and asked Lightner to tell Aluzri. He also said that Councilmember Brien knew earlier that week that the trees would be removed on the weekend. He said that he asked Lightner to let him know when the whole City Council had been notified.

Lightner refused to speak with us so we could not verify whether, in fact, Konheim told him on the Tuesday before the trees were removed that they would be cut that Saturday. Aluzri insists that neither Lightner nor Brien told him that the trees were being removed that Saturday, and that the first he heard about it was on the Friday morning before the planned removals.

It is clear from Zoet’s reaction to learning on Friday November 20, 2015 that he had no prior knowledge that the trees would be cut the next day. He seemed stunned that there was no coordination with the City’s planned removal of trees on its right of way on the south side of the Lots.

We pressed Aluzri on why, if he did not know until Friday morning that the trees were begin removed the next day, he didn’t notify the City Council promptly that Friday morning. He said he was busy. We reviewed his schedule for that day and found only one meeting. He told us he does other things besides attend meetings and may have been busy preparing a packet for the City Council meeting. We then asked him why he said in the email covering the memo he sent to the City Council that afternoon at 5:20 pm that the trees were being cut “soon”, when he knew they were being cut the next morning. He said he does not know why he said that.

The problem, of course, is that, according to our interviews, three members of the City Council did not know the trees were being cut until the removal had already started or was completed on that weekend. One councilmember did read the email that Friday afternoon and because it said “soon” did not think it meant the next day. Had members



of the Council wanted to ask Konheim to hold off until there was some public notification or had they had questions about the removals (since, unlike other tree removals in the City this involved a very large number of trees on contaminated property), they had no opportunity to ask any questions or make their views known to the City staff or to Konheim since they did not know in advance.

If Konheim did tell Lightner about the tree removals several days in advance, we cannot understand why he would neglect to tell Aluzri that the trees were being cut on the coming weekend. Without being able to speak to Lightner, we cannot offer any facts or even an opinion as to whether he actually knew the trees were being removed before other staff or, if he did know, why he didn't tell Aluzri. If Lightner did know, it seems either terribly irresponsible or an intentional effort to delay notification and help the BHLC bypass oversight or potential interference by members of the Council.

Willie Brien is the other person who, according to Konheim, knew several days in advance that the trees were being removed. Since he will not speak to us, we also could not ask him why he didn't tell Aluzri to notify the other Councilmembers earlier.

For his part, even if he didn't know until morning of Friday November 20th that the trees were being cut the next day, Aluzri wrote to the Council that they were being cut "soon" – either very sloppy language or deceptive language since "soon" can mean anything from a few minutes to a few weeks. It also should be noted that he did not put "high priority" on the email to Councilmembers to alert them to read the email right away. Aluzri admitted that these were mistakes.

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Konheim may have hired West Coast Arborist, the City's tree contractor, simply because he felt that they do good work for the City. Whether or not he knew that they would claim to have a blanket permit for work done in the City, even work for a private entity, we don't know. Nevertheless, if Konheim's aim was to prevent further delays and questions by the City staff that might occur during the permit process, using WCA for his tree removals helped him accomplish that.

A far more serious omission on the part of Konheim and the BHLC was not using a Hazwoper-trained contractor qualified to work on contaminated property. (Hazwoper stands for "Hazardous Waste Operations and Emergency Response". For a fuller discussion of whether the tree removals jeopardized public health, see Appendix B: Arsenic Contamination and Public Health.) According to the WCA employees we spoke with, Konheim did tell them that they had to be careful not to disturb the soil because the property was contaminated. Konheim knew, or his environmental attorneys should have known, that the WCA crews doing the removals were not Hazwoper-trained. The BHLC also made no effort to coordinate with the DTSC regarding the job. (See Cooper 33:10)



On each day of the tree removals, according to WCA area supervisor Dave Cooper and Lot 13 foreman, John Pineda, there were 14 men working on Parcel 12 and a 10-man crew on 13. The crews worked simultaneously, one big crew on each parcel. (Cooper 37:14) There was “one loader on Parcel 12 and one loader on Parcel 13.” (Cooper 37:20) Loaders are large trucks with large tires and big claw-like arms for picking up bulky items, in this case tree branches and parts of tree trunks. There were also four boom trucks on Santa Monica Boulevard (Cooper 39:24). The crews started at 8am and ended at 4pm. (Pineda 3:14) Pineda said they were “told to take down all the trees along the fence on the Santa Monica side.” (Pineda 4:4) “Saturday we did most of all the removals and Sunday was mostly just clean up.” (Pineda 5:3) Cleanup involved: “Cutting the trees into smaller portions so the loader could grab it and put it in the box.” (Pineda 5:12) The 3-4 men on each of the Lots used chainsaws to cut the trunks and large branches into smaller pieces that the loader could pick up. When asked what his crewmembers working on the Lots were wearing, Pineda said, “work attire, work boots, gloves, hard hat, earplugs, glasses.” (Pineda 8:11)

We do not know the exact number of trees that were removed that weekend. The West Coast Arborists’ original estimate was that 95 trees were cut. Later they revised their estimate, claiming only 75 trees were cut. They told us they revised the estimate because they had counted as trees some of the large bushes or shrubs taken down which weren’t really trees.

In December, after the trees were removed, City Engineer Mark Cuneo asked Jeff Bartizal, Supervising Public Works Inspector, to go out to the Lots and measure the fresh tree stumps. Bartizal put his measurements on a copy of the ALTA survey. Cuneo then translated those measurements onto a spreadsheet. The spreadsheet listed 40 trees removed from Parcel 12, 15 of which were partially on the City’s two-foot right of way and 72 trees removed from Lot 13, 27 of which were on the City’s two-foot right of way. Thus, according to Bartizal’s measurements, 96 trees were removed, 42 of which were partially in the City’s right of way. Regarding the size of the trees that were removed, at least 20 of them were 25” in diameter or greater and the largest was 52” in diameter.

We believe that Bartizal’s measurements reflected in Cuneo’s spreadsheet are the most accurate account of the number of trees that were removed.

DTSC’s Prior Knowledge of the Tree Removal

As mentioned above, a contractor trained to work on contaminated property did not perform the tree removal on the property. It was also not done with the knowledge and consent of the DTSC and in a manner consistent with the DTSC’s mandate to protect the public from potential harm. The BHLC’s attorney, Bruce Howard, claims that he spoke with Tedd Yargeau, the DTSC project manager for the site, and that Yargeau told him that cutting down trees was okay as long as they did not grind the tree stumps. Howard communicated that information in a meeting on October 23, 2015, with City



staff, assuring them that the DTSC was okay with the planned tree removals. According to an email that David Lightner sent to us (in lieu of an interview), “The owner of Parcels 12 and 13 assured staff that they consulted with DTSC and had authorization to proceed.” No one on the City staff questioned this information or verified it with the DTSC. They simply took Howard’s word for it.

After the trees were cut, a resident contacted Yargeau and told him that a large number of trees had been removed and there had been machinery (loaders) and workers (2-3 on each lot) with chainsaws on the property during the removal. Yargeau was “stunned.” He said:

I'd been to the property before, so I knew there were some branches overhanging and I knew that the trees, they should have probably been trimmed or taken care of more or less on an annual basis, but I didn't know that ... the intention was to remove all the trees on Santa Monica Boulevard, so certainly I wasn't aware of that.” (Yargeau 27:29)

The environmental attorney from the City Attorney’s law firm, Norm Dupont, was also not consulted by City staff prior to the tree removals. He told us that after he learned about it:

from a hindsight perspective, it was clear that this type of tree cutting activity could involve disturbance to the soils. (Dupont 15:2) ... There had been heavy equipment on the two parcels itself and there was an indication that moving, just even moving with treads or any tire treads, could have the impact of disturbing shallow soils. (Dupont 15:10)

Regarding the communication or lack of communication between Yargeau and Howard, there is no written documentation that has been produced by either party. We asked Yargeau what he recalled about the conversation. He said:

I don't recall having a conversation with Bruce Howard about the cutting... down trees. It certainly might have been limited to trimming but that's it.” (Yargeau 37:13)

We asked Yargeau what he would have required if he had known that a large number of trees were going to be cut. He said:

Certainly if we were providing oversight, let's say everyone was in agreement to all these trees were hazardous, they had to come out right away, we would have taken numerous precautions; air monitoring for one, probably wetting down the soil ... before anyone goes on. Having appropriately trained staff to conduct the work. (Yargeau 43:25)

He said that the normal process would have been to wet down the soil before doing the work:

Because when you're cutting the trees down it's going to fall, it's going to generate dust. (Yargeau 44:20)



Yargeau told us that he later asked Howard why Howard thought that it was okay to cut the trees. Howard sent him an email from Robert Krug, the former DTSC project manager, which he believed to be approval for cutting of the trees. Yargeau clarified: this (email) was something from months prior to that and it had to do... with more or less the non-intrusive site maintenance activities of just trimming bushes, that kind of thing. (Yargeau 48:2)

Although Yargeau recommended that the DTSC take legal action against the BHLC for their actions, other than a temporary cease and desist order, the DTSC's legal department did not pursue that option. According to Dupont, that is not unusual. The DTSC does not have the resources for costly legal actions and does not usually pursue them unless:

There's a demonstrated release of a major contaminant that's impacted people or the environment. (Dupont 20:28)

We also asked Dupont about Yargeau's credibility. He said:

I have no reason to believe that Mr. Yargeau was not honest in what he stated. In my dealings with him he has been fairly straightforward. He will either say, "Yes, that's okay," or, "No, that won't work," or, "Gee, can you give me a more detailed description via e-mail or something else?" (Dupont 13:38)

One person we interviewed suggested that Yargeau had "an agenda", presumably adverse to the BHLC. We asked Dupont's opinion since Dupont, during his long career as an environmental attorney, had had dealings with Yargeau. He said:

I would think Mr. Yargeau's only agenda, based on my dealings with him, was to ensure that things were done in a manner consistent with his agency's mission, which is to make sure that there's no endangerment of human health or the environment. Other than that agenda, following his agency's prescribed mission, statutory mission, I have never had a sense that he had some other agenda. (Dupont 24:30)

The Aftermath

During the weekend the trees were removed and in the days following, residents called City councilmembers and staff to complain and ask why the trees were cut. *Beverly Hills Courier* reporter, Victoria Talbot, became aware of the story, asked questions of councilmembers and staff and *The Courier* published many articles about the tree removals.

At first, the staff did not convey the correct information to residents and the media, which only increased residents' the anger over the situation. As Public Information Manager Therese Kosterman said:

Once the trees were cut there were two key pieces of information that I put out that were not true... the first one was about the permit and I really sort of took it on authority from a number of people, very higher level than me, that they said



that there was a permit so there was a permit. And I should have checked with the Community Development Department, ...I should have double-checked on that. And then the other one (was) about where the City Attorney told me that the DTSC said it's fine." (Kosterman 21:16)

So, residents not only felt that the City had betrayed them by allowing trees, bushes and shrubs that had been there for decades to be cut down without any notice or public comment, they now felt that the City was lying to them about the situation. In response, City Manager Aluzri asked Pamela Mottice to lead a team that would make sure there was no ongoing danger to public health and make sure that all subsequent information about the incident that goes out to the public is correct.

The City Attorney's office was also asked to prepare a report, but City Attorney Larry Weiner was on medical leave and the then Assistant City Attorney David Snow was scheduled for a vacation in December. The City Attorney's law firm tapped Carol Lynch, who had spent most of the last few decades as City Attorney for the City of Rancho Palos Verdes, to step in and prepare a report. Although some of the residents criticized her report as being incomplete, she did bring to the attention of the City and the community the fact that some trees that were removed were partially within the City's two-foot right of way on the north side of the parcels.

Following Lynch's report, residents led by former Mayor, Robert Tannenbaum, organized a Town Hall that delved more deeply into the events and circumstances of the tree removals on the Lots. The group wanted the Council to form a citizen's committee that would investigate the events. When a number of other residents showed up at a City Council Study Session to express their support of Lyn Konheim and oppose the formation of a citizen's committee, the City Council decided to hire an outside independent investigator to investigate the tree removals. In June, Parrent Smith Investigations was selected and we began our investigation at the end of June.

Conclusion

The main question we attempted to answer was: why did this happen – why were so many trees removed from this contaminated property on one weekend in November 2015 when virtually no one in the City knew it was going to happen until the day before? And, who was responsible for it happening in the way that it did?

From all the interviews we did and documents we reviewed, we believe the answer is simply that the Beverly Hills Land Company wanted to remove the trees and didn't want the City or the nearby residents to interfere with that desire. They wanted the trees removed for two reasons: 1) they wanted the land to be flat and ready for remediation and ultimately for development and 2) they didn't want to be liable for a tree falling and harming people or property. There is no question that the BHLC is primarily responsible for having removed trees without notice, without a permit and without the proper precautions to protect public health.



Knowing that many residents were opposed to development on the Lots and knowing that some on the City Council wish to maintain the City's reputation as the "garden city", they planned to remove the trees and shrubs in such a way that it appeared that they were following the rules and procedures that the City required. They obtained an arborist report and used it to justify their claim that they were only removing the trees for public safety reasons. In fact, however, they did not really cooperate with either the City or the DTSC:

- They did not obtain permission or guidance from the DTSC for the tree removal work.
- They did not hire a company with Hazwoper training that knew how to work on contaminated property.
- They obtained an arborist report from a consulting arborist who had never done a large project like that before, then had their attorneys review the report and ask for "structural" changes.
- They never made the arborist report available as part of a public notification process but only showed it to the City Arborist, who they knew would basically concur with the report since he wanted to remove Eucalyptus trees wherever they existed in the City.
- Despite promising to buy replacement trees for the City's right of way on Civic Center Drive, the BHLC knew that the DTSC would not permit digging and planting in many of the areas on the Lots, so this was an empty promise.
- They did not follow the suggestion of the City's Director of Community Services that they participate in a public notification process and do their tree removals at the same time the City removed trees on its right of way on Lot 13.
- They hired West Coast Arborists that performs the City's tree maintenance and attempted to use WCA's blanket permit for the Santa Monica Boulevard's closing rather than getting an encroachment permit.
- They never gave written notice of when the trees would be removed to the City Manager or anyone on the City staff.
- And, as of August 24, 2016, according to Deputy Building Manager, David Yelton, their attorneys are still resisting recommendations for planting trees or shrubs to improve the aesthetic look of the Lots. This also shows they did not really want to plant more trees but only wanted the land cleared.

The City Manager, the City Arborist and the former Deputy City Manager also bear responsibility for why this large tree removal happened in the way that it did.

The City Manager, Mahdi Aluzri, neglected to do the following:

- He did not give the City Council proper notice of the impending large tree removal on the morning he found out the removals were scheduled for the next day, waiting until 5:20pm to notify the Council and then only saying it would happen "soon".



- Knowing there would be objections from residents, he did not try to prevail upon the BHLC to hold off their tree removals until there was a public notification process, but instead assured other staff that the BHLC could cut their trees without any public notice because it was private property.
- Knowing in early October that a large number of tree removals on arsenic impacted soil were being planned, he never bothered to inform any Councilmembers or get their opinion on whether or not to give public notice, or take precautions, given the contaminated soil and the Farmer's Market that is held nearby each weekend.
- At the same time, despite many meetings and extensive discussion by staff, neither he, the Director of Community Services nor the City Arborist notified the Parks and Recreation Commission of the imminent tree removals.
- He did not ask the City Attorney for his opinion on whether the two-foot right of way on Santa Monica Boulevard may have meant that some of the trees the BHLC planned to remove were partially on City property. He, his Deputy City Manager and the Director of Community Services all had the information about the two-foot right of way in an email dated October 16, 2015.
- Knowing that a very large number of trees were being removed, he did not ask his staff to contact the DTSC so that they would ensure that the BHLC would be complying with DTSC requirements when they did the removal work on contaminated property.

The City Arborist, Ken Pfalzgraf, whose main focus was on getting rid of Eucalyptus trees because they can pose a hazard to people and property, also shares some of the blame.

- He did not question the motives of the BHLC for wanting to get rid of *all* of the trees on the property, even though he later stated that maybe 15 or so of those trees ultimately removed did not need to be removed.
- In his review of the BHLC's arborist report, he did not suggest retaining and doing rehabilitative pruning on some of the trees but basically concurred with the report.
- His focus was only on the trees on the Civic Center side, not on the trees on the North side of the lots even though he knew residents would be upset when those were removed.

In Pfalzgraf's defense, he was on leave during the time the trees were actually removed. Had he been there to supervise, he might have tried to save some of the trees or at least the shrubs.

The former Deputy City Manager, David Lightner, neglected to do the following:

- If he, in fact, knew on the Tuesday before they occurred that the tree removals were happening he should have notified the City Manager. He did not.



- When he contacted the DTSC, he did not inform them about the planned removal of a large number of trees or inquire about the process for removing almost 100 trees but only asked about planting new trees on the property.
- When he was told by the DTSC project manager that planting new trees would disturb the soil, he still did not ask the DTSC whether the large tree removal that was planned would disturb the soil.
- Even though he had met on a number of occasions with Norm Dupont, the environmental attorney in the City Attorney's law firm, regarding the contamination on these Lots, he never asked Dupont for his opinion on whether or not a large number of tree removals would disturb the soil.

We feel that the above members of the City staff were more focused on accommodating and pleasing Lyn Konheim than on their duty to inform the Council or on their responsibilities to the City's residents. With such a large tree removal, particularly one done on contaminated property, the staff knew there would be an outcry from residents. Even if there was nothing the City Manager felt he could do to stop the tree removals, it was highly irresponsible not to have consulted with Councilmembers about whether to notify the residents of the change that would be taking place in their neighborhood.

It also seems particularly irresponsible that the City Manager and his staff did not do more to ensure that the work would be done in a way that would protect public health. Both Aluzri and Lightner had long been involved with Lots 12 and 13 and knew or should have known more about the contamination issues. At the very least, they should have consulted the environmental attorney in the City Attorney's office, Norman Dupont, who was also very familiar with those contaminated parcels.

Despite the way it looks with his delays and misleading language in the email that was finally sent to the Council, Aluzri insists that none of what he did was to intentionally keep the information from the Council so that the tree removals could proceed as planned.

We don't know if Lightner intentionally tried to keep the Council in the dark so Konheim could remove the trees without interference. Lightner would not speak to us.

We do not know why either Aluzri or Lightner would have wanted to help Konheim rather than protect and inform the City's officials and residents. But it is clear that Lyn Konheim is a charming and seemingly sophisticated individual who owns other property in the City, has many friends in the City and has a reputation as someone who cares about the City. It is understandable that some on the staff would want to please him. His argument that he was terribly worried someone would die and he would be responsible is compelling. Nonetheless, pleasing property owners or developers, like Konheim, should never be placed above staff's obligations to inform Councilmembers or notify the public and residents, whose lives and property will be affected by their actions.



RECOMMENDATIONS:

Clearly councilmembers, commissioners, residents and staff, who know far more about the City and how it works than we do, will read our report and come to their own conclusions about how to prevent this kind of situation in the future. Nonetheless, below are some suggestions and thoughts, based on our extensive investigation.

In the near future:

- Amend the Tree Preservation Ordinance to include the need for public notification and a hearing on *any* property in the City, not just residential properties. If City staff had considered the original intent of this ordinance – to prevent the removal of a large grove of trees – they would have asked for direction from City Council members and/or Commissioners from the Planning or Parks and Recreation Commission. Instead, the staff only interpreted the ordinance in its very literal sense.
- Consider passing an ordinance that covers how a property owner must maintain contaminated property until it is cleaned up, including fines for violating the ordinance.
- Or, amend the vacant lot ordinance to include precautions that must be followed when dealing with a vacant lot under DTSC jurisdiction due to contamination. (We are aware that the City may now be contracting with the DTSC regarding their oversight of site maintenance activities on Lots 12 and 13 and, if that is the case and there are teeth in that contract, that may be sufficient.)
- Create a central database that is available to all staff and the public that includes all of the City's history and information on any particular property. If such a database had existed, all staff would have known about the relevant easement areas and would have had access to documents like the covenant and maintenance agreement with the BHLC and prior code enforcement issues.
- As was suggested in our interview with Assistant City Manager, George Chavez, find ways for each City department to know more about what the other departments are doing. We believe that there is currently a reorganization process that may be addressing that issue.

Longer term:

The Future of Lots 12 and 13:



It is clear that the owners of the BHLC purchased the property, a prominent part of the City near the Civic Center, in order to develop it into condos and/or retail space. The City must ultimately come to terms with what is an acceptable future use for the land. Before it is cleaned up, it also appears that there will be continued resistance from the BHLC and its attorneys regarding maintenance of the property, particularly when it concerns the aesthetic look of the property and replanting of trees.

Here are some of the issues the City must deal with in determining how to go forward:

- A large number of residents in the adjacent area are opposed to developing the Lots into anything other than a park or green space.
- The BHLC wants the cleanup of the property to have no “deed restrictions”, which means that once it is cleaned up, if they want to put in condos with underground parking and can get the City’s approval for the zone change and their plans, it will already be cleaned up to the level necessary for such a development.
- A cleanup with no deed restrictions, making the Lots suitable for condos and underground parking, will be more costly and will take more time and effort, involving more disruption of the area than a cleanup that would make it safe for a park.
- The DTSC and the responsible party for the cleanup, Union Pacific Railroad, cannot begin the cleanup until they know the ultimate use for the lots because they do not know to what level it needs to be remediated.
- This leaves everything at the current hostile standstill, with each party – the BHLC vs. the residents opposed to development – hoping the other party will eventually give up and go away.

It appears that the only way to break the standoff is for the City to step in and, either in advance of actual plans or with just some conceptual drawings for various options, decide whether or not it is likely to re-zone the area so the owners can go forward with their plans. Traffic assessments and other evaluations of how this area fits into the City’s long-term plans and land-use planning should be undertaken. A public process could be initiated and both the property owner and the residents could be encouraged to voice their arguments.

Until some process like this happens, the angry standoff seems destined to continue.

Staff / Council Relations

The City of Beverly Hills, like other cities with a City Manager/City Council form of government, seems to have a common problem wherein employees often feel that their priority should be to serve those directly in front of them – including developers who are actively pursuing their development goals – rather than consult elected officials. To address that problem, the City might consider instituting a program of education and training for senior staff that would impress upon them that their first responsibility is to

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be accountable to the City's elected officials rather than succumb to pressure from developers or residents who might want them to bend the rules, not verify information given to them or look the other way when actions are taken that might not be in the best interest of the City or its residents.



APPENDIX A: THE TREES

“We’re a City of trees, we really are. We’re a green City. To have approximately a hundred trees being cut down without any notice to the community is pretty shocking for our community.”

Frances Bilak
Chairperson
Parks and Recreation Commission
(Bilak 8:17)

Although not everyone may agree with Commissioner Bilak about how green Beverly Hills is, almost everyone involved with the City – from residents to Commissioners to Council members agree that losing so many trees all at once without any public notice and without any plan to replace the trees was an unsettling event for this community.

The main question we want to address in this section of our report is whether those trees needed to be removed and, if so, why? The fact that they were they removed without any public notice and why that happened is addressed in the Narrative Report and Findings section.

To determine why the trees were removed we asked interviewees about the history of tree maintenance on the lots. We then examined the written assessments of the trees and interviewed three arborists. The arborists we spoke with are Peter Ashley, the consultant hired by the Beverly Hills Land Company, Ken Pfalzgraf, the City Arborist for the City of Beverly Hills, and Bob Wallace, an arborist who was consulted about the property but did not take the assignment. Another arborist, Karl Mellinger, was hired by residents to do a report on the trees. Although we reviewed his report, we did not interview him because his report was completed after the trees that are the subject of this investigation were already removed from the property.

Tree Maintenance

Trees, like all living things, have a life cycle and, at some point, if they are not pruned and maintained, will start dropping branches. And, at another point, whether or not they are maintained, they will die. The job of a City Arborist is to make sure the trees that belong to the City are properly trimmed and maintained so that they will not harm people and property as they go through their life cycle. The trees on Lots 12 and 13 had not been trimmed or maintained regularly, which may have been a reason for the falling branches on Civic Center Drive and the tree failure in April 2015.

On November 4, 2011, the City of Beverly Hills and the Beverly Hills Land Company entered into a Covenant and Agreement Concerning the Landscaping, Fencing and Maintenance of Vacant Properties, specifically those Lots. Eugene St. John, then the owner of the BHLC, signed the agreement for the company. The reason for the



Covenant was because the City had been having a difficult time getting St. John to comply with the City's Vacant Lot ordinance.

In Exhibit B, section 4 of this Agreement, there is a footnote that says:

The City and not BHLC shall maintain trees located within public rights-of-way that are adjacent to Lot Nos. 12 and 13.

Despite that clause, however, the City never maintained the trees on the northern two-foot easement along Santa Monica Blvd. and, until recently, did not begin to maintain the trees on the larger 20-foot right-of-way along Civic Center Drive. The reason for this is that, despite that footnote, City staff felt that the trees were on private property and not City property. The trees on the Lots were not in the City's Tree Master Plan and therefore were not scheduled for regular maintenance by the City.

The last time trees were trimmed by the BHLC was in May 2014 just prior to the sale of the company to the current owners. As far as we know, they had not been trimmed or pruned for years prior to that.

Tree Assessment: The Ashley Report

Prior to the tree removals, the Beverly Hills Land Company hired an arborist to give them a report about the condition of the trees. After at least two consulting arborists declined to do the job, they hired Peter Ashley, the owner of Ashley Consulting Arborists. In his interview, he described himself as a "landscape designer". He is also a Certified Arborist with the International Society of Arboriculture (ISA). His report, prepared for the BHLC, is dated August 22, 2015.

Peter Ashley, however, is not certified by the ISA in Tree Risk Assessment. In general, an expert's opinion and the conclusions he or she arrives at should be based on some scientific principle and an understandable, scientifically sound and coherent schema. The ISA Tree Risk Assessment Form, which was **not** used in Ashley's report, meets that test and most professional arborists consider it the gold standard for evaluating the potential dangers of trees. The Form uses a very clear matrix of factors such as age, environment, disease, etc. and then weighs that against another matrix of risk factors such as location of potential targets. Another important part of this tree assessment form is the section on "mitigation options," in which an arborist can assess whether or not there are available options for rehabilitating and preserving a tree.

The Executive Summary of the Ashley Report sets forth the assignment, which was: "to observe the existing trees on two (2) adjoining properties ... for safety and liability." So, according to Ashley, he was not retained to evaluate the trees with a view toward restoring or preserving them, but rather only to focus on the issues of liability and safety. Since there is also no discussion of mitigation anywhere in Ashley's report, the purpose of the report seems to be to create a justification for removing trees rather than



to present a scientifically sound assessment of the trees, their risks, methods of mitigating those risks and possible methods of preservation for the near and long term.

Ashley also states in his Executive Summary:

The Eucalyptus are a nuisance, and a long-term liability. In my considered opinion, all of the Eucalyptus species should be removed.

He says that the parcels contain “large, defective trees that are by definition ‘hazardous’.” Nowhere, however, does the term “hazardous” appear on the ISA’s Tree Risk Assessment Form for determining the overall tree risk rating. The US Forest Service and a few other governmental agencies do sometimes use that term to describe trees that pose a risk to persons and property.

Ashley describes the various trees on the property in pages 5-14 of his report and includes multiple photographs of various trees with comments on their observed condition. For example, on page 6, he writes:

They (Eucalyptus trees) also harbor multiple structural defects including weak branch attachments and excessive end weight... trees have either suffered branch failures in the past or harbor hanging limbs now.

But he does not discuss these defects in the context of broader risk assessment, such as to what extent do the limbs overhang streets or whether or not the weak branch attachments and excessive end weight can be managed in the short term by rehabilitative or safety pruning, as consulting arborist, Bob Wallace, pointed out to Konheim when he was on the site in April 2015.

On page 10, Ashley continues:

The vast number of defects of these trees are too numerous to catalog, but a few of them can be observed in the following pages.

Four pages of photographs of defects on trees follow that comment, and then Ashley generalizes from those defects to all the other trees on the Lots. The reason arborists use a formal tree risk assessment protocol in a report is to avoid generalizations like that. Instead of merely stating that there are “defects too numerous to catalog,” when a proper assessment is done, an arborist can, in fact, catalogue and systematically quantify and localize the specific risk points. Failing to catalog the individual tree defects is perhaps appropriate if the end purpose of the assessment is simply to justify the removal of all the trees. It is not appropriate if any attempt at mitigation or retention of any of the trees is contemplated.

Ashley includes photographs of tree failures from other locations (not on Lots 12 and 13 or even in Beverly Hills) including one picture where the location isn’t even identified, to show the potential risks from the trees. City Arborist Pfalzgraf, in his email assessment of October 6th, 2015, initially took issue with using pictures of tree failures from other locations. He later tones down his objections and says that Ashley simply



included these photographs for illustrative purposes. It seems clear, however, that the addition of those photographs was not simply illustrative but was included to visually drive home the point that all the trees must be removed.

In Ashley's Recommendations, he calls for immediately removing four trees – one invasive *Ailanthus Altissima* and three defective Chinese Elms – and removing the defective *Eucalyptus* limbs overhanging the parcels. He then says:

consider removal of all of the remaining *Eucalyptus* species...
and schedule restorative and safety pruning of all trees to remain.

Nothing immediately happened after Ashley turned in his report in late August. Instead, BHLC lawyers reviewed it and, two and a half months later, all of the trees on the North side of the Lots were removed, as well as all shrubs and bushes. If the BHLC owners had been truly concerned about liability and safety, why didn't they remove the four most dangerous trees described in the Ashley Report shortly after they received it? Instead, it appears to us that it was more important to them to remove *all* of the trees than it was to immediately remove those that their arborist identified as the most likely to fail right away.

The cutting down of the shrubs, which did not present a danger to people or property, is a further indication that the primary intention was to clear-cut the site and that safety and liability was only a secondary concern.

Ashley told us that on the day he first walked the parcels with Konheim he also met with Ken Pfalzgraf. Pfalzgraf briefed him on the kind of report that the City Council liked to see and the way Pfalzgraf normally prepared reports. Pfalzgraf also told Ashley about his ongoing desire to remove all of the *Eucalyptus* trees in the City, including those on these parcels.

Ashley admitted to us that he had never before been asked to do a tree assessment this large, and we believe that his report reflects that inexperience.

In conclusion, as we have emphasized above, the Ashley Report is severely flawed for two major reasons. First, it did **not** subject any of the trees to a formal written assessment that included site factors such as soil conditions, common weather patterns, vigor of the trees, presence of pests or any of the other 25 defects and conditions listed on the ISA Tree Risk Assessment Form.

Second, rather than provide a truly independent assessment of the condition of the trees on the property, Ashley produced a report that would please the two people he met when he first took the assignment: his client Konheim, who wanted a specific outcome, i.e. a declaration that all of the trees were dangerous and needed to be removed, and the City Arborist, who had been trying to rid the City of *Eucalyptus* trees for many years.

Tree Assessment: The City Arborist's Comments on the Ashley Report



Lyn Konheim gave City Arborist Ken Pfalzgraf the Ashley Report near the end of September. Pfalzgraf reviewed the report and gave his opinion on it because Ashley's report covered all the trees on the parcels, including those on the City's 20-foot right-of-way on Civic Center Drive. At the time he first reviewed the report, he was attempting to tell his superiors (Zoet and Aluzri) why tree removals needed to take place on the City's portion of the Lots. He felt pressure to get some of the trees on the City's portion removed because some branches had recently fallen and Willie Brien had emailed staff with his concerns about the trees falling. But, in Pfalzgraf's world, before trees can be removed, there has to be a detailed justification for their removal and a plan to replace the trees with new trees. Ashley's report was the first step in the justification for the tree removals. The second step was a plan for replacing the trees.

Pfalzgraf's first comments on Ashley's report came in an email dated October 6th, 2015. In that email assessment, Pfalzgraf agrees with Ashley regarding the need to remove all trees that fall within six inches of the back of the curb and any tree that has a trunk or buttress roots in contact with the curb. He also agrees that all Eucalyptus trees should be removed from the two Lots. He recommends against topping the trees because that would create an "immediate visual blight" and offer no long-term benefit.

Given Pfalzgraf's very vocal dislike of and commitment to removing all the Eucalyptus trees in Beverly Hills, this agreement with Ashley is not surprising. From Pfalzgraf's perspective, it's an honest assessment, but it is also one with an admitted bias against the retention or rehabilitative pruning of any Eucalyptus tree no matter where it is located.

Pfalzgraf made additional comments on Ashley's report in an assessment that he prepared for an October 15th meeting with Zoet and Aluzri. At that meeting, they discussed how many trees needed to be removed from the City's right-of-way on Lot 13, how many new trees they would need to plant and how big those replacement trees would be.

Throughout both of our interviews with Pfalzgraf and in reviewing all of the emails and documents generated by and to him, he consistently underscores the need for "Public Notification". All along, until the time he was on leave in November, he assumed that no tree would be removed until there was a "process" that included notifying the public and a plan for replacing the trees that would be removed. He said in his very first discussion with Konheim and the first arborist Konheim brought to the site:

My point to Lyn and his arborists was...these trees are important to people... So if there's something dangerous about the tree then you need to document it.
(Pfalzgraf 2nd Interview 4:24)

About the staff meetings on the trees, he said:

...it was a discussion of how do we get to a point where there's a plan. ...When we go to have a public meeting or discuss this in front of the Recreation and



Parks Commission or wherever it's going, here's what, here's why and here's what we would do to minimize the loss of trees. (Pfalzgraf 2nd Interview 43:26)

He continually emphasized the need for public notification and for having the backup documentation to justify tree removals:

[W]hen you talk to the public... do your report, make pictures of the conditions you are talking about, *rate those conditions on a data set*, produce frequency distributions and say, '20 percent of the trees have this, 20 percent...' Do a presentation and then meet out on the street the next morning when somebody says, "I don't see that," you walk through with them and say, "Look, there it is, that's what I'm talking about. (Pfalzgraf 2nd Interview 60:25)

Unfortunately, Pfalzgraf did not appear to understand that these Lots were not the same as other areas of the City. Because of the arsenic contamination, the soil could not be disturbed. That meant that after trees were removed, they could not be replaced. So preparing a plan for replacing trees was not practical in this situation. Had Pfalzgraf taken that factor into consideration, perhaps he would have been more willing, in his assessments of the trees and of the Ashley Report, to find a way to save some of the Eucalyptus trees. The email from the DTSC saying that replanting would not be permitted, however, did not come until after Pfalzgraf was on leave in November.

In any case, Pfalzgraf has said that had he been present and overseeing the removals that took place on the North side of the Lots, he would not have removed about 15 of the trees. Pfalzgraf also expressed dismay over the shrubbery that was removed and stated that, had he been there, he would have saved most of the shrubs.

Conclusion

It seems clear to us that many, if not most, of the trees were removed primarily because the BHLC wanted to remove them, not because they all presented a threat to public safety or liability. Because the trees had not been properly maintained in the past, there were many trees on those Lots that needed care. Rather than do any maintenance on those trees, however, the BHLC hired an arborist who would give them a report to justify the removal of all the trees. They made no attempt to save any trees that were not diseased or dangerous, even though their own arborist did recommend that they schedule restorative and safety pruning of any remaining trees. They did the tree removal at a time when the City Arborist – who expected there would be a public notice process and that both City trees and private trees on the lot would be removed at the same time – was out on leave so they would not have to contend with any questions or interference from him. And, they knew that they would not have to replace any of the trees, given the fact that planting new trees would disturb the soil and the DTSC would not allow it.



APPENDIX B: ARSENIC CONTAMINATION AND PUBLIC HEALTH

Perhaps the most serious aspect of this large tree removal is that it was done on contaminated property and was not conducted under the direction or supervision of the DTSC. As part of this investigation, we were asked to determine whether or not the tree removals posed a threat to the health of the City residents, guests and workers who entered these areas.

Unfortunately, we were not really able to answer that question because the BHLC did not follow the DTSC's direction when doing the tree removals. In this section of the report, we will discuss the way the tree removals were done versus how they should have been done. We'll also briefly discuss the potential health risks of arsenic exposure.

Did the Tree Removals Pose a Threat to Public Health?

Had the BHLC followed DTSC's direction for the removal of almost 100 trees and a large quantity of other vegetation from property that was (and is) contaminated with arsenic, it would have been possible to determine accurately whether or not, on the date the trees were removed, arsenic was present in the air or on surfaces external to the cutting area. The DTSC would have required appropriate air monitoring devices to be in place at the time the work was done. Those air monitoring devices would have alerted the Hazwoper-trained workers if winds or other sudden air activity were causing upticks in the levels of circulating arsenic. Then those workers would have taken measures to suppress the dust or suspend the work.

If the BHLC had followed the DTSC's requirement, both the City and the public could have been assured that the tree removals were done safely.

Because they did not do so, we can never know for sure whether or not anyone was exposed to arsenic-contaminated dust. Without monitoring devices in place at the time of the removals, it is not possible to assess the quantity of arsenic contaminated soil that was allowed to escape as fugitive dust emissions. Nor is it possible to determine how much, if any, migrated to the Farmer's market area and was deposited on produce or other goods, that were then removed from the area.

The plan that Tedd Yargeau, project manager for the DTSC, would have recommended would have required that:

- 1) Appropriately trained Hazwoper personnel do the work under the supervision of Hazwoper-trained supervisors.
- 2) Air monitoring devices be in place to determine the dust levels and
- 3) The soil be wetted down *before* any work was performed to suppress the creation of dust.

None of those precautionary measures were taken. (Yargeau 40:29 43:23 44:3)



The primary route of arsenic exposure is ingestion of contaminated soil, by direct hand to mouth activity or by swallowing airborne soil and dust particles that enter the mouth and nose. During this particular incident, there was also concern about possibly ingesting any particulate that may have landed on food or produce at the Farmer's Market. It's important to note that we cannot see particulate unless it is at high concentrations.

The cutting was undertaken without the administrative authority of the DTSC for arsenic contamination. Konheim said that he told the workers to be careful not to disturb the soil and that he was there both days watching to make sure they did not disturb the soil. He also said that Dave Cooper of the WCA knew about the arsenic contamination and knew what to do. However, Dave Cooper has had no training in how to work on contaminated property. Neither he, nor anyone from the WCA (nor the BHLC), checked with the DTSC about appropriate procedures before performing the work.

According to environmental attorney, Norm Dupont, the cutting of a large number of trees and shrubs would have likely disturbed the soil. He said:

from a hindsight perspective, it was clear that this type of tree cutting activity could involve disturbance to the soils....There had been heavy equipment on the two parcels itself and there was an indication that moving, just even moving with treads or any tire treads, could have the impact of disturbing shallow soils.” (Dupont 15:2 and 15:10)

From the photos we've seen when the work was being done, the two loaders appear to be front loaders with front claw attachments. The total weight of equipment like this is about 2300 pounds, including the attachment that was used to pick up the branches and parts of the trees that were topped and the parts of the tree trunks that were cut with chainsaws.

Investigator Smith has actually driven a front loader and says that the big dune wheels do usually kick up dirt, especially if the driver must do a lot of rocking back and forth – moving forward to pick something up and moving back to deposit it somewhere.

Between the equipment used and the uninformed workers walking around with chain saws cutting up the felled limbs and trunks this was clearly done without the proper precautions and could have endangered workers. It should not have been taken lightly. There are good reasons for oversight by DTSC.

The state's Occupational Safety and Health Administration (CAL-OSHA) has authority and regulations for air monitoring, among other regulatory tools to protect workers. OSHA also governs training and regulations for Hazardous Waste Operations under 29 Code of Federal Regulations 1910, as well as the California Code of Regulations, Title 8, Section 5192:8. Section 5192 (e)(3)(B) provides that:



Workers on site only occasionally for a specific limited task (such as, but not limited to, ground water monitoring, land surveying, or geophysical surveying) and who are unlikely to be exposed over PELs and published exposure levels shall receive a minimum of 24 hours of instruction, off the site, and the minimum of one day actual field experience under the direct supervision of a trained, experienced supervisor on the site.

The reason for the oversight of these activities is to protect the health and safety of the workers, the public health and the environment, itself. This oversight responsibility is taken seriously by both DTSC and Cal-OSHA and should have been taken seriously by the BHLC and City staff prior to the tree removals.

City of Beverly Hills Air and Surface Sampling

The subsequent sampling that was undertaken from December 5th through December 8th, 2015, by PCR Services Corporation while useful in establishing that it was safe to hold the Farmer's Market at that time is not relevant to the period of the actual tree cutting. That sampling revealed that there was a negative finding as to current levels of contaminated air particulate or settled dust. The air testing and wipe gathering performed from December 5-8 did not detect any arsenic contamination above .25 mg. The sampling was done in six places, three upwind (a fenceline wipe, a utility box wipe and a vegetation wipe) and three downwind (northwest fenceline, yield sign and the northeast fenceline) of the *assumed point of air movement* towards the Farmer's Market. While the air sampling did provide assurance that on the day that those measurements were taken there was no contaminated air, it is not a useful measure to determine the levels of contamination on the day of the tree removals which were on November 21 and 22, twelve days before those measurements were made.

The caveat at the end of the PCR report really underscores the limits of this effort with regards to establishing levels of exposure during the time that maximum exposure was occurring, i.e. during the removal of the trees. It reads:

Although laboratory analysis did not detect arsenic in the air samples, it should be noted that concentrations in the air may be below detection limits. As discussed previously, winds during the monitoring period were generally calm with no significant gusts. Also, at the time of monitoring, no maintenance activities were performed at the site that would generate dust. The calm wind speeds and inactivity at the site may have resulted in arsenic not being detected in air samples during the monitoring period. Wipe test sampling indicates that arsenic levels are below the laboratory detection limit. It is possible that arsenic is present in nearby deposited dust below the analytical detection limit.
(PCR Services Corporation Beverly Hills Arsenic Monitoring Memo, p. 4)

Health Risks of Arsenic Exposure



Arsenic is a naturally occurring element that is present in water, soil, dust, air and food. Levels of arsenic can vary from place to place. The DTSC oversees sites that have a greater than normal amount of arsenic in the soil, sites like Lots 12 and 13 where the risk of developing health problems from exposure to arsenic are greater.

Naturally occurring arsenic is *generally* eliminated from the body, but it can accumulate in certain body organs before it reaches a toxic level. Although arsenic is most often thought of in connection with its lethal poisoning properties, it can have transient health effects that can be quite severe. It's important to also note that individuals and categories of individuals can vary widely in their sensitivity to arsenic. Children, the elderly and persons with compromised immune systems are the most at risk.

The health hazard of arsenic-contaminated soil depends on both the toxicity level of the arsenic and the amount of arsenic to which people are exposed through contact with the soil. The primary route of exposure is ingestion of contaminated soil, by direct hand to mouth activity (children eating dirt) or by swallowing airborne soil and dust particles that enter the mouth and nose.

There have not been adequate scientific studies that assess the hazard of arsenic-contaminated soil to exposed populations. But exposure to arsenic can cause a wide spectrum of adverse health effects. Temporary health effects from exposure to arsenic can occur at relatively low levels of exposure. Symptoms of arsenic exposure include edema, conjunctivitis, liver enlargement, irritation of the mucous membranes and gastrointestinal problems such as vomiting, diarrhea, cramps and pain.

Obviously, we cannot be certain that anyone was exposed to a level of arsenic that would have caused health problems. But, at the same time, because this large tree removal was done without proper precautions, we cannot be certain that anyone was *not* exposed to a level of arsenic that could or did cause temporary adverse health effects.

- For more information on arsenic and the dangers of exposure, The Washington State Department of Public Health Website published a helpful paper entitled: [Report - Hazards of Short-term Exposure to Arsenic-Contaminated Soil \(PDF\)](http://www.doh.wa.gov/CommunityandEnvironment/Contaminants/Arsenic) available at: <http://www.doh.wa.gov/CommunityandEnvironment/Contaminants/Arsenic>



APPENDIX C: TIMELINE OF EVENTS LEADING TO THE NOVEMBER 21-22, 2015 TREE REMOVALS

Background:

Parcels 12 and 13 are two narrow strips of land located just north of Civic Center Drive between Beverly Hills Civic Center and the border with West Hollywood. The Lots are officially comprised of 4 Assessor's Parcel Numbers: APN: 4342-015-038, 4342-015-039, 4342-015-040 and 4342-015-41.

The land was used as railroad right-of-way and is still zoned T-1, for transportation use. The soil is contaminated with arsenic, most likely from pesticides used for weed control by the railroad as well as the historical practice of soaking railroad ties in an arsenic solution to inhibit rot. The previous owner, Union Pacific Railroad, has entered into a Voluntary Clean-up Agreement to remediate the land with the State Department of Toxic Substance Control (DTSC). Until such time as there is an approved cleanup plan for the arsenic contamination, the DTSC is responsible for overseeing activities on the property and making sure that the soil is not disturbed.

The properties have been fenced because the DTSC requires contaminated properties to be fenced and because the City requires that vacant properties be fenced.

Ownership:

The Beverly Hills Land Corporation (BHLC) first acquired the parcels in 1998. Eugene St. John Sr. was then the principal owner of the BHLC. The Beverly Hills Land Corporation is a member of the Beverly Hills Land Company, LLC.

In **2003**, the City indicated an interest purchasing the parcels from the BHLC.

In **March 2005**, the City was in active negotiations with the BHLC and had offered a purchase price for both properties of \$6,000,000. Completion of the sale was predicated on the removal of hazardous substances currently found on both parcels. A Removal Action Plan (RAW) for the cleanup had been developed at that time which included two options: The first option for Parcel 12 was for one level of subterranean parking. The second option for Parcel 12 was to convert the property to a car dealership service facility. For Parcel 13, option one was to convert the property to a passive public park and option two proposed one level of subterranean parking with a Passive Park above. The BHLC, under St. John, made a counter-offer to the City of \$7,500,000, along with other conditions of sale. Soon thereafter the negotiations ended.

In **December 2005**, Eugene St. John Sr. died and his son, Eugene St. John, Jr. took over their companies.



In **2009**, the Beverly Hills Land Company, LLC split to become the Beverly Hills Land Company – Commercial LLC and Beverly Hills Land Company – Residential LLC. At that time, the address of the company changed to the address of the Black Equities Group, LTD., an active California Corporation, 433 North Camden Drive, Suite 1070, Beverly Hills CA 90210. Stanley and Jack Black are owners. Bob Barth is their partner. Eugene St. John, Jr. continued to manage Lots 12 and 13.

In **2010**, the City offered to purchase a portion of the property, the triangular median portion of Lot 13, but the offer was declined. In a letter of **August 10, 2010**, Eugene St. John wrote: “The Beverly Hills Land Corporation expects, however, to submit an application to the City for development of the site in the future. Perhaps the disposition of the Median to the City can be discussed at that time.”

In **2012**, the City again tried to acquire, this time via eminent domain, the triangular median portion of Lot 13. Regina Danner, from the City Attorney’s law firm, represented the City and Walt Hamann of Rincon served as an expert witness in the eminent domain proceeding. The City did not prevail and that portion of the property reverted back to the landowner in 2013.

In **July 2014**, the City was notified that the “majority ownership” of the parcels had been sold to Lyn Konheim. Lyn Konheim is the owner and manager of Buckeye Properties, Inc. Konheim and Black Equities Group purchased and are now the current owners of the Beverly Hills Land Corporation, which owns Lots 12 and 13.

Maintenance and Code Enforcement Issues Prior to 2014:

From **2010** until **May 2014**, the City had difficulty getting the Beverly Hills Land Corporation to comply with the City’s Vacant Lot ordinances.

In **December 2010**, Victor Otten from the Beverly Hills Code Enforcement law firm, wrote to Robert Krug, the DTSC project manager for this site to make sure that the fencing and landscape requirements that the City wanted to enforce as part of its Vacant Lot ordinances – including fencing, irrigation and putting in a 6 foot hedge – would not conflict with the DTSC’s goals of not disturbing the soil. After follow-up in early 2011 by Steve Rosenblit, the City’s Code Enforcement Prosecutor, the DTSC agreed with the City’s recommendations and the BHLC was asked to comply.

In **July 2011**, David Yelton wrote to City Arborist Ken Pfalzgraf asking about the maintenance of the trees on Lots 12 & 13. Pfalzgraf writes, “I understand our responsibility to care for the trees in order to lessen the opportunity for them to be a hazard to pedestrian or vehicular traffic.” At the same time, however, the City had always expected the property owner to maintain those trees.

On **November 4, 2011**, the City of Beverly Hills and the Beverly Hills Land Company entered into a Covenant and Agreement Concerning the Landscaping, Fencing and



Maintenance of Vacant Properties, specifically those four parcels. Eugene St. John signed the agreement for the company.

In **October 2013**, the City's code enforcement prosecutor, Steven Rosenbilt, sent a letter to Eugene St. John of the BHLC notifying him of the City's intent to prosecute for Code violations. At that time, the fence was broken and there were complaints of weeds and overgrowth. After many delays, the BHLC did bring the property into compliance with the codes.

General Timeline Beginning 2014:

2014:

In **March, 2014**, the DTSC was nearing completion on a new Removal Action Workplan (RAW). The agency sent out survey letters to residents and businesses in the area. Depending on the responses to the survey letters, the DTSC determines whether or not to have a public meeting about the upcoming plans for remediating the property.

In **May, 2014**, the BHLC hired a landscape contractor to trim all excessive vegetation (tree branches/bushes) that were overgrown and encroaching into the #2 lane of Santa Monica Blvd (The BHLC obtained permits to for this maintenance). They also did some maintenance on the interior of the parcels.

In **July 2014**, City staff became aware that Lyn Konheim was now the owner or co-owner of the properties.

On **July 8, 2014**, Konheim requested a meeting on July 29, 2014 with himself, then City Manager, Jeff Kolin, Councilmember Willie Brien, Bob Barth and BHLC attorney, Bruce Howard.

Bruce Howard then contacted David Lightner to set up a meeting for **July 17, 2014** to discuss the new RAW that the DTSC was working on. Howard indicated he would be bringing Brian Jacobs from URS, the BHLC environmental consultant. Lightner asked Norm Dupont, an environmental attorney then with the City Attorney's law firm, to be there as well as Ryan Gohlich from the planning department. According to Howard, they planned to discuss the latest draft of the RAW proposed by Union Pacific for the clean up of the Parcels, possible excavation plans for development, such as underground parking and how that would affect the RAW. Howard writes prior to the meeting that, "we would be interested in hearing from the City what its concerns and priorities are, as well." (Ryan Gohlich does not remember attending that meeting.)

On **July 29, 2014**, Lyn Konheim, Bob Barth and BHLC attorney Bruce Howard met with then City Manager Jeff Kolin, Councilmember Willie Brien and other City staff. Konheim and Barth both described that meeting as a "meet and greet". Konheim said Willie Brien introduced them to Kolin, the City Manager, but "no plans were discussed



then because there were none.” Kolin, however, remembers very specifically that Konheim and Barth talked about wanting to develop “condo/apartment residential units.” Kolin remembers telling them that it was unlikely to be approved and that it was definitely **not** the City’s preference.

Also in **July, 2014**, Madhi Aluzri, then the Assistant City Manager, remembers meeting with Konheim. He said Konheim, “had the same kind of questions as from before and I pretty much told him that you have to go through a process to change the zone. And there were some questions, what can you do, what you cannot do and I said, ‘Listen to me, the property right now is Transportation zoned. It has to go through a process and once an application is filed then you can, I suppose, submit a proposal for whatever zone change you want.’” He also said that Konheim knew at that time about the fact that the community had had an unfavorable reaction to the prior owner’s development plans.

On **August 8, 2014**, Bruce Howard thanks David Lightner for meeting with the BHLC twice in July. He asks if the City has “any preliminary thoughts on the issues we discussed” and states that he “would like to keep the ball rolling by meeting with the DTSC and/or UP to discuss the draft work plan.”

On **August 27, 2014**, Bruce Howard again writes to David Lightner. Lightner copies Jeff Kolin and Willie Brien and says, “It sounds like he (Howard) has changed his tune and now plans to let UP and DTSC proceed on the current track without objections from new ownership.” Kolin replies that that is good news.

On **September 26, 2014**, a Parcel 13 Eucalyptus tree fell onto the back of a tow truck. West Coast Arborists were called and they cut it back to the fence line. No one was in the parked tow truck and the vehicle did not sustain any damage.

On **October 17, 2014**, Lyn Konheim meets with Ken Pfalzgraf, the City Arborist, about the trees on the parcels. Konheim brought with him an arborist he wanted to hire to do an assessment of the trees on the parcels. Pfalzgraf doesn’t remember this arborist’s name.

2015:

On **April 10, 2015**, a tree fell from Lot 13 onto a car traveling east on Santa Monica Blvd. The owner was not injured, but his car was totaled. The BHLC’s insurance company subsequently compensated him for the loss.

On **April 15, 2015**, Robert Krug of the DTSC told David Lightner that the Draft RAW would be complete at the end of May and they were ready to have a public meeting.

On **April 16, 2015**, Pfalzgraf met with Konheim again regarding the trees on the Lots. Once again, Konheim brought an arborist to meet with the City Arborist. They met on



the Lots and Martin Richter was with Pfalzgraf. The arborist Konheim brought, Bob Wallace, was well known to Pfalzgraf. Wallace recalled that Konheim told him that he was developing the property commercially and that part of that development meant that “most of the trees will have to go”. He did not remember any discussion of falling limbs or trees and did not recall any great anxiety about safety.

On **April 17, 2015** and **April 20, 2015**, Konheim placed two calls to Lightner. Konheim said he believes those calls were “probably about the tree falling.”

On **April 21, 2015**, Lightner wrote an email to Konheim in which he said, “Lyn, as I mentioned on the phone, I do not have a copy of the townhouse concept for the properties that you asked about.” Asked about that email, Konheim said he thought at the time that the City or perhaps the previous owner had done a concept drawing and he was curious about what there was, if anything.

On **April 29, 2015**, Bob Krug, then the DTSC project manager for the site, wrote to David Hodson of CH2M Hill, UP’s consultant for the cleanup of the Lots, and said, “I am meeting with the City today to give them a briefing. Another issue is the large trees, the RAW does not mention them. Is the plan to cut them down or clean up around them? This will be a big issue in the public meeting.”

May 2015: In June 2013, the City had entered into a \$1.9 million dollar contract with Psomas for the design of the Santa Monica Blvd. Reconstruction project. Planned construction for this project was originally to commence in the spring of 2015. In May 2015, correspondence among the Psomas consultant, Chuck Heffernan, and Dean Howell of Gruen Associates copying David Lightner and Mark Cuneo, discusses the need to cut down 12-13 trees on Parcels 12 and 13. Ken Pfalzgraf was consulted and he said that if the tree "flare" is touching the back of curb, then it should be removed. The consultants also discuss the possible use of Parcel 12 as a good staging ground for a construction trailer/office and some vehicles and materials when the construction phase starts.

On **June 4, 2015**, BHLC attorney, Bruce Howard discusses delaying the RAW and the public meeting. He writes to Bob Krug, “Bob, I have discussed this with BHLC. Their current plan is to have one floor of subterranean parking on both Lots 12 and 13, to a depth of 12 bgs.” The RAW was not delayed but reworded to reflect that it was “in a conceptual planning stage for development as a number of potential development scenarios are and will be evaluated.... Any redevelopment plan proposed by the land owner will require approval by the City of Beverly Hills.”

On **June 17, 2015**, the DTSC held the public meeting on the new RAW. Tedd Yargeau was there, who was returning as the project manager for DTSC since Robert Krug was transferring to another office. Several representatives of the BHLC attended, including Lyn Konheim, Bob Barth and their attorneys. When residents wanted to know the development plans of the property owners and expressed their opposition to building



commercial and/or residential buildings on the property, residents reported that the BHLC representatives all walked out of the meeting. David Lightner, in an email to Madhi Aluzri that night, characterized the meeting as “tense”.

Konheim said his group may have all left the meeting at some point, but he wasn’t sure why.

In the email to Aluzri that night, Lightner also said he had spoken to a BHLC partner at the meeting who said the BHLC would fight DTSC proposals for deed restrictions of any kind.

No one we interviewed from the BHLC remembered that conversation but Konheim said they were interested in cleaning up the property to the point where there are no restrictions. For example, they would submit plans for building 3-office commercial development so that it could be completely cleaned up to DTSC standards. That doesn’t mean they are firmly committed to the particular project they submit. They can change their minds. But, he said, “Eventually there will be development on the lots.”

On a **June 25, 2015**, Dean Howell continues the discussion with Lightner and Cuneo about removing trees from the parcel for the SMB reconstruction project. He says, “We do not have a tree survey, but there is a mixture of large shrub/trees and mature trees along the edge of these parcels. There is also shrub/hedging material. It is my understanding that the hedge planting material would not need to be removed unless Chuck thinks staging will affect these plants. I don't know how many trees will remain along the edge of the street, but I can do a brief survey of the trees...”

On **June 28, 2015**, resident Sandra Aronberg writes to Councilmember John Mirisch expressing her concerns after the June 17th meeting that the property owners have a “large project” planned for the Lots. In a prescient statement, she writes: “...I would hate to see the trees touched at all. I would prefer leaving things alone but really am concerned they will harm or remove the trees unless they get specific direction to save them if they do any action.... I don't want that area to be touched without a lot of discussion.”

By the end of **June, 2015**: 1) Residents were worried about the removal of trees and the development plans for the Lots by the property owners and had put at least one Councilmember on notice about possible tree removals. 2) The DTSC was aware that the property owners wished to develop the property and that residents were opposed to development and tree removals and 3) Some members of City staff were discussing and contemplating 12-13 tree removals from the parcels to facilitate the SMB reconstruction project.

On **July 1, 2015**, Dean Howell and Amy Sheldon of Gruen Associates wrote a memo after surveying the number of trees on the North Side of Lots 12 and 13. They wrote:
Between Alpine Drive and Sierra Drive, approximately 83 trees were observed



- 13 of these trees are located within 6" of the back of the curb
- The trees range in size from 10' to 50'-60' in height
- Most of the trees and shrubs observed were in moderate condition

Copied on this memo were David Lightner, Mark Cuneo and Aaron Kunz.

On **July 2, 2015**, Lightner thanks Howell: "This is very helpful and will allow us to have the tree-removal and contractor-staging conversation with the property owner."

On **July 10, 2015**, Konheim brings arborist Peter Ashley to the Lots and they meet with City Arborist, Pfalzgraf.

In late **July**, resident Lionel Ephraim contacted Tedd Yargeau, the DTSC project manager, and told him about errors in the CEQA document. It described the property as flat land without any trees and said there were no residences near the Lots. Both were obviously incorrect. Residents also gathered a petition objecting to the RAW. It was signed by 286 people and sent to the DTSC.

On **August 6, 2015**, Madhi Aluzri tells Steve Zoet that Willie Brien told him that a branch fell from one of the trees on Parcel 13. He says that since the trees are in the southerly 20-feet of the parcel they are City owned. He directs Zoet to "make sure that those unsafe are removed."

On **August 11, 2015**, Yargeau notifies Lightner and Brian Jacobs, the BHLC consultant, that the Draft RAW has been withdrawn due to "numerous inaccuracies" in the CEQA. The formal letter suspending the RAW was sent on **September 4, 2015**.

On **August 11, 2015**, BHLC attorney, Bruce Howard, contacts Yargeau asking for the comments identifying the deficiencies in the CEQA. Yargeau asks Ephraim, who had verbally given Yargeau comments on the CEQA, for written comments identifying the deficiencies that he could send to Howard. A few days later Ephraim sends Yargeau written comments on the deficiencies in the CEQA, as well as a picture showing the trees on the property.

Also on **August 11, 2015**, Konheim has a phone conversation with Pfalzgraf about the trees on the Lots. Pfalzgraf appears aware that Konheim wants to remove all the trees since he writes that he met with Konheim's arborist to discuss "community reaction to removal of all of the trees."

On **August 21, 2015**, Konheim and his attorney, George Milstein, meet with Aluzri, Lightner and others from the City about the SMB Reconstruction project. The City asks if the BHLC will allow them to use Parcel 12 as a staging area for the work to be done on the project.

On **August 22, 2015**, Consulting arborist Peter Ashley completes his report for the BHLC on the trees on Lots 12 and 13. The report recommends that 3-4 trees be



immediately removed and that the owners also “consider removing” all of the Eucalyptus trees on the lots.

Konheim stated that the arborist report was first sent to his attorneys and, after their review, they asked for changes in the report. He said the changes were regarding where things were placed in the report and nothing regarding the content or intent was changed.

On **August 23, 2015**, Chuck Heffernan writes to Lightner and Cuneo about a number of things for them to discuss with the Lots 12 and 13 property owner, including use of Parcel 12 for “construction trailer, employee parking and laydown area for materials.”

On **August 28, 2015**, Lightner writes an email to George Muhlsten and Konheim, copying Aluzri, in which he discusses the “encroachments” on the Lots from the storm drain rehabilitation part of the SMB reconstruction project.

In **September, 2015**, Pfalzgraf gives West Coast Arborists (WCA) contact information to Konheim and tells Dave Cooper that Konheim will be calling. In late September, Konheim calls Cooper and they walk the parcels. Konheim wants everything on the North side of the parcels cut. Cooper tells Konheim that he will give him a lump sum price for the project. Cooper said, “That way I don't have to identify exactly how many trees, but there's also a lot of bushes involved as well.” Konheim was fine with that.

By early **October, 2015**, Cooper had prepared a proposal for Konheim for the tree cutting.

By **October 1, 2015**, Aluzri and the BHLC representatives were discussing terms for the rental of the property as a staging ground for the Santa Monica Boulevard Reconstruction project. In these discussions, both Aluzri and the BHLC representatives we spoke with said that they did not discuss the trees being cut.

On **October 6, 2015**, Pfalzgraf writes a summary of the Ashley Report. Zoet writes to Aluzri, “it is his (Pfalzgraf's) recommendation, substantiated by an independent, professional report, to remove all trees from both parcels for public safety reasons. We recommend that the property owner remove all of the trees on parcels 12 and 13 for public safety reasons and potential liability related issues. Please advise if you have any questions.” Aluzri replies, “Let's discuss approach on how we will get the message out on at least the city trees and why they all have to be removed.”

Starting **October 7, 2015**, in emails and voicemails to City staff, Konheim indicates that he is very upset about limb and tree failures. With Pfalzgraf, he stops by Aluzri's office to talk about the trees.

On the same day, Aluzri and Zoet discuss the need to notify the City Council and a plan to notify residents about the trees on the City's right-of-way on Civic Center Drive.



On **October 16, 2015**, Pfalzgraf writes an email to Lightner and Zoet about the property lines on the lots. He states: “Bottom line is property line/right of way on North side is 2 feet and 20 feet on the South.”

On **October 19, 2015**, Lightner and Alurzi ask Pfalzgraf how many trees would be left on the City’s right-of-way if Pfalzgraf’s recommendations are followed. Pfalzgraf replies that about 70 trees would be left.

On **October 21, 2015**, Konheim calls Aluzri, saying Aluzri would be aware of what his call was regarding.

On **October 23, 2015**, there is another meeting about the trees with Konheim and City staff. According to an email from Zoet to Pfalzgraf, Konheim wants to walk the site with Pfalzgraf again just so he has a better understanding of what the finished approach would look like. Zoet writes about the meeting, “Sounds like they may be moving ahead with the removal of their trees, but did agree to incur the costs for removal of all those we identify as well as 24" replacements. Was hopeful for something larger but they raised the issue of the arsenic and concerns that anything larger, if not even with these, may raise some issues given the soil disturbance....”

On **October 29, 2015**, Konheim is again at City Hall for a meeting about the trees. After that meeting, at 6:36pm, Zoet writes an email to Aluzri in which he says that no one can initiate anything “until we get a better understanding of what processes and practices will need to be taken as a result of the notice that the property is under regarding the arsenic findings.” He indicates that “we’ll be in a holding pattern” until they hear from the DTSC.

On **November 5, 2015**, Konheim writes to Zoet about the urgency of getting the trees cut. He says: “Given the hazardous nature of these trees and the coming EI Nino conditions, we think this needs to be done very soon... As we discussed, Beverly Hills Land Company also is willing to plant at our cost 36 inch box trees within the first 5 feet from the curb line on the City right of way in connection with the tree removal. We would work to complete the tree removal in the next two weeks and then immediately arrange the tree planting with our contractor. Working with you and the City's arborist, we can jointly select the species of tree. We expect that we would be planting between 35 and 50 trees (approximately 35 feet on center) in this 5 foot area on the south side of Parcel 13.”

Zoet responds to Konheim: “We too would like to effect a plan that lessens the City's liability associated with the site...but can only proceed when given direction to do so and a public notice precedes any action on our part. Getting the issues worked out regarding the ability to plant trees is critical to that public message and will, hopefully, lessen public criticism for all involved so having that component worked out in advance is critical, regardless of the time it takes for us to get there.”



Zoet emails Aluzri: “he (Konheim) wants to complete the tree removal in the next couple of weeks though it will take us that amount of time just to get all the addresses and materials together for the public noticing process. We also have to get this scheduled with WCA for the removals, acquire the trees and arrange for their planting, etc. Honestly can't see beginning this sooner than 30 days out and that requires us starting the process now.”

Aluzri responds to Zoet, asking him to set up a meeting with Konheim to go over the schedule for the removal of trees. Aluzri says that Konheim can remove “his trees” before we talk to the residents after the City Council is notified and that Konheim is already calling both Willie Brien and Julian Gold about this.

Konheim confirmed with us that he may have spoken to Willie Brien about cutting the trees around this time, but says he did not speak with Julian Gold.

On **November 6, 2015**, Konheim makes multiple calls to Zoet.

On the same day, Yargeau of the DTSC responds to Lightner on two questions. Regarding using Lot 12 as a staging ground for the SMB reconstruction project, Yargeau says that laying down an asphalt cap covering the entire parcel or the portion that is to be used as a lay down area for construction would work as an interim remedy. Regarding the question of planting new trees, Yargeau says that depending on the area of the lots where digging would occur, if there is arsenic impacted soils then DTSC would require a soil management plan and likely a contractor that is licensed to handle hazardous waste. He offered to review a diagram of the planned plantings with the existing data to determine if these extra steps are warranted.

On the same day, Zoet writes Aluzri, “By the time we pull the addresses together, distribute by mail and account for the holidays I'd advise that we don't start removal until early December anyway at which time he (Pfalzgraf) will be back available to supervise the operation. I've been having conversations with Lyn (Konheim) to this effect and I think he's more understanding that that's a realistic timeframe. Mahdi, please advise when you're comfortable in notifying CC and if further revisions are needed to my proposed communication to them. I believe Lyn is interested in doing all tree work, including the removal of "his" trees, at the same time and is willing to wait until the timing and process dictates when that starts.”

But although Zoet is under the impression at this time that everyone, including Konheim, would and should wait until December, after there was time for a public notice, apparently Konheim is not. Shortly thereafter, in the first week or in the second week of **November, 2015**, Konheim calls Cooper of WCA and said, “he had the go ahead to go ahead and remove the trees.” He also said he had a specific date of the 21st and 22nd he wanted it done.” (Cooper 6:18 and 7:6).



On **November 17, 2015**, the Tuesday before the trees were cut, there are a series of calls and emails. At 7:57 AM, Konheim calls Zoet. At 8:31am, Zoet emails Aluzri and Lightner asking what he should say to Konheim. At 8:33am, Aluzri asks Zoet to go ahead and finalize the memo and Aluzri will get it to the City Council. At 8:34am, Lightner replies to Zoet, copying Aluzri, asking Zoet to tell Konheim that he, Lightner, is in touch with the DTSC about the planting, having sent some plans over and is awaiting an answer. At 8:35am, Lightner sends another email to Aluzri and Zoet: "Lyn asked to be notified once the memo has gone to the City Council." At 10:12am, Zoet writes to Aluzri and Lightner that he'll update the memo.

Konheim recalls telling Lightner that day that the trees were being cut on the coming weekend and claims that he told Lightner to tell Aluzri. He maintains that he would have stopped right then if the City had told him to do so.

On **November 18, 2015**, Yargeau notifies Lightner that most of the locations where the City wants to plant replacement trees have high levels of arsenic impacted soil. He says it would have to be considered an interim remedy with public notification and a new CEQA. He also says that Union Pacific should take the lead on both that and the proposed use of Lot 12 for construction storage. Lightner then advises Konheim of the DTSC's requirements for planting replacement trees. According to what Lightner told Carol Lynch during her later investigation, Konheim told Lightner that he planned to proceed with his tree removals pursuant to discussions with DTSC.

On **November 20, 2015**, early in the morning, Justin Menzel of West Coast Arborists emails the Urban Forest Department with a "heads up" that all the trees and bushes along Santa Monica Boulevard are being removed that weekend for the landowner. He says, "It has gone through the proper channels at the city."

At 5:20pm that afternoon, Aluzri sends an email with a memo from Zoet notifying the City Council of the tree removals. In the email, Aluzri says the tree removals will be happening "soon."

On **November 21-22, 2015**, the BHLC engages the WCA to remove approximately 96 trees from the north side of Lots 12 and 13, along Santa Monica Boulevard.

Residents call Aluzri and some Councilmembers. Aluzri sends Nancy Hunt-Coffey, who was working at the library that Saturday, to check on the tree removals and make sure they were only cutting the trees on the North side of the parcel.

On **November 23, 2015**, staff takes calls from residents upset about the tree removals. Zoet and Aluzri continue to discuss plans to remove trees on the South side of Parcel 13. Meanwhile, Code Enforcement contacts Konheim about repairing the fence. Konheim tells Michael Manoaat that Aluzri and Lightner knew about the tree removals.



On **November 24, 2015**, residents contact Yargeau of the DTSC and tell him about the large number of tree removals. He is “stunned”.

On **November 25, 2015**, Aluzri tells the *Courier* that it was the City’s understanding that only grinding the tree stumps would disturb the soil, not cutting down trees. The same day, DTSC issues a cease and desist order to BHLC, requiring that no further work be done on the Parcels without prior DTSC approval.

On **December 1, 2015**, Aluzri asks Zoet to tell him “where we got the impression” that only grinding the tree stumps would disturb the soil. Zoet replies that it was conveyed in an October 23, 2015 meeting with Konheim and BHLC attorney, Bruce Howard. Howard assured them that removing trees but not grinding the stumps did not require DTSC approval. At that night’s City Council meeting, several residents complain about the tree removals and the dust in the air when the removals were done. There is particular concern that the Farmer’s Market might have been affected.

On or about **December 2, 2015**, Aluzri asks the City Attorney’s Office, under Carol Lynch, and City Staff, under a team led by Pamela Mottice, to review what happened, analyze any mistakes that were made, and make recommendations for how City systems and procedures can be improved.

On **December 3, 2015**, Yargeau emails the BHLC that they need to take action to replace or repair the existing fence and spray both Parcels with a binding substance, such as Soil-Sement, to prevent dust from leaving the Parcels. The City, meanwhile, retains consultants to conduct tests on soil samples taken on and adjacent to the Parcels.

On **December 14, 2015**, David Yelton sends a letter to West Coast Arborists reprimanding the company for not obtaining the permits from the City that were required for the tree removal work that was performed November 21-22, 2015.

2016

At the **January 5, 2015** City Council meeting, Assistant City Attorney Carol Lynch’s report on the tree removals is an Agenda item.

On **January 27, 2015**, a Town Hall meeting to discuss the tree removals is held, chaired by former Mayor, Robert Tannenbaum.

On **February 18, 2015**, at the City Council study session, residents appear to speak on behalf of Lyn Konheim and against having a citizen’s committee to investigate the tree removals. The Council decides to hire an outside, independent investigator instead of the citizen’s committee.



On **June 24, 2016**, Parrent Smith Investigations, begins their investigation, meeting with their Council liaisons, Lili Bosse and Nancy Krasne.

On **June 25, 2016**, resident Lionel Ephraim informs the City that he has spoken to CAL OSHA about what is required of everyone who enters Lots 12 and 13. Since the DTSC lists Lots 12 and 13 as an "Uncontrolled Hazardous Waste Site" due to elevated arsenic levels, this listing places the property under the jurisdiction of California OSHA, specifically California Code of Regulations, Title 8, Section 5192. Section 5192 (e)(3)(B) provides that:

Workers on site only occasionally for a specific limited task (such as, but not limited to, ground water monitoring, land surveying, or geophysical surveying) and who are unlikely to be exposed over PELs and published exposure levels shall receive a minimum of 24 hours of instruction, off the site, and the minimum of one day actual field experience under the direct supervision of a trained, experienced supervisor on the site."

In a letter to the City Manager, residents questioned why the City staff had not looked into this previously.

On **August 24, 2016**, David Yelton, who had taken the lead for the City in dealing with Lots 12 and 13, made a presentation to residents about what the City wants to do to make the parcels both safe and look good. In that meeting he said that he is getting "pushback" from the BHLC. He said he is spending a lot of time dealing with BHLC attorneys who are resisting what the City wants the company to do regarding landscaping, maintenance and replacement of trees and greenery. The BHLC had been invited to attend this meeting but declined, although an associate from their attorney's office was present to take notes.

In **September, 2016**, the DTSC attempts to contract with the BHLC about oversight for site maintenance on the contaminated parcels. When the BHLC declines to sign the maintenance contract proposed by the DTSC, the City of Beverly Hills steps in. At the time of this writing, the contract was negotiated, was at the DTSC contracts unit and not yet signed by both parties. The Scope of Work includes:

DTSC to provide Industrial Hygienist support and technical consultation to the City of Beverly Hills during routine site maintenance activities to be conducted by the property owner, Beverly Hills Land Company (BHLC). The City of Beverly Hills has requested DTSC's support to ensure that the site maintenance operations will be carried out by BHLC in a manner consistent with the DTSC's guidelines, and to ensure that the community can be assured that the maintenance operations will be carried out in a manner that is safe for the community. DTSC's oversight will be for the initial site maintenance and intermittently afterwards for other site activities. This oversight will also include ambient air monitoring during initial site maintenance activities. To be included as part of the site maintenance scope of work to be completed by BHLC, the following work is to be included:

PARRENT SMITH INVESTIGATIONS



- A. Removal and replanting of dead shrubs and vegetation
- B. Missing shrubs and vegetation to be replanted
- C. Ground covered drip irrigation system exposed and repairs/replacement completed

On **October 7, 2016**, Parrent Smith Investigations delivered this report to the City.



EXHIBIT 1

The individuals below were interviewed, their interviews recorded and a transcript of their interview was prepared by a professional transcriptionist. Each of them were then asked to review the transcript and sign a statement attesting to the truth of the statements they made and the accuracy of the transcript. The transcripts, as well as any corrections and signed statements attesting to their truth and correctness by each interviewee, are part of the record and will be conveyed to the City as part of this report.

Beverly Hills City Councilmembers interviewed:

Bosse, Lili
 Gold, Julian
 Krasne, Nancy
 Mirish, John

Beverly Hills City Commissioner interviewed:

Bilak, Frances Chairperson, Recreation and Parks

Beverly Hills City Staff or former staff interviewed:

| | |
|---------------------|--|
| Aluzri, Mahdi | City Manager, previously Assistant City Manager |
| Chavez, George | Assistant City Manager, Director of Public Works Services |
| Criscillis, Rebecca | Urban Forest Inspector |
| Cuneo, Mark | City Engineer |
| Dupont, Norm | Environmental attorney, formerly with City Attorney's law firm |
| Gohlich, Ryan | Assistant Director of Community Development / City Planner |
| Hunt-Coffey, Nancy | Director, Community Services Department |
| Kearney, Kevin | Senior Management Analyst |
| Keene, Susan | Director of Community Development |
| Kosterman, Therese | Public Information Manager |
| Kyriazi, Linda | Secretary, Community Services Department |
| Lynch, Carol | Assistant City Attorney, City Attorney's law firm |
| Manoat, Michael | Code Enforcement Officer |
| Otazu, Nestor | Code Enforcement Manager |
| Pfalzgraf, Ken | Parks and Urban Forest Manager |
| Richter, Martin | Urban Forest Inspector |
| Rosenblit, Steven | City's Code Enforcement Attorney |
| Yelton, David | Deputy Building Official, Department of Community Development |
| Zoet, Steve | Former Director, Community Services Department |



Beverly Hills Residents interviewed:

Aronberg, Chuck
Aronberg, Sandra
Ephraim, Lionel
Gallup, Marilyn
Lipofsky, Lou
Tannenbaum, Robert
White, Thomas

DTSC staff interviewed:

Yargeau, Tedd

West Coast Arborist staff interviewed:

| | |
|---------------|------------------------|
| Cooper, Dave | WCA Project Manager |
| Montes, Jesus | WCA Project Foreman |
| Naveja, Jose | WCA Project Supervisor |
| Pineda, John | WCA Project Foreman |

EXHIBIT 2

Below are the interviewees that we were not allowed to record or, in three cases, shorter telephone interviews that we did not record. Also listed below are individuals who refused our request for an interview. Our notes from all of those interviews and from our communications with the two individuals who refused to be interviewed are part of the record and will be conveyed to the City as part of this report.

Beverly Hills Land Company owners or employees:

Barth, Bob, owner
Finkelstein, Eric, employee
Konheim, Lyn, owner

Beverly Hills Land Company consultants:

Ashley, Peter
Ply, Jim

Former City of Beverly Hills City Manager:

Jeff Kolin

Consulting arborist contacted by the Beverly Hills Land Company:

Wallace, Bob

Individual whose car was hit by a tree that fell on Santa Monica Blvd in April 2015:

Robert J. Diwa

Individuals who Refused our Request for an Interview:

Brien, Willie:

He was reached by telephone, but declined to be interviewed. Notes from the telephone conversation are part of the record.

Lightner, David:

He declined to be interviewed but left a telephone message and sent us an email. Notes from the telephone message and the email are part of the record.



EXHIBIT 3

The Project File Master List lists and describes documents from the *Beverly Hills Courier* PRA document requests. It sorts the documents by PRA number, by date, by time, by, in the case of emails or letters, who from, who to, and up to 15 additional people who may be copied on a document. The Project File Master List also includes a “comment” column in which Nic Smith noted significant information in the documents as he reviewed them.

The Project File Master List is part of the record and will be conveyed to the City as part of this report.



EXHIBIT 4

Below is a list of documents we requested that are not included in the Project File Master List. Those documents are part of the record and will be conveyed to the City as part of this report.

City of Beverly Hills additional document requests:

We requested transcribed voicemails of David Lightner, Madhi Aluzri and Steve Zoet.

We requested the schedule of Madhi Aluzri

We requested additional email searches in the following names: Bob Barth and Lyn Konheim

DTSC PRA request:

A very large set of documents were returned from our PRA request to the DTSC, including emails and documents.