



PC 9/28/17
#4
Charlene Tim <charlene.tim@edcgov.us>

Planning Commission Hearing, Sept 28, 2017 - General Plan Biological Resources Policy Update, ORMP, and Oak Resources Conservation Ordinance Project

Roger Lewis <re.lewis@comcast.net>

Tue, Sep 26, 2017 at 9:26 AM

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Ms. Anne Novotny

Senior Planner

El Dorado County Community Development Agency

Long Range Planning Division

2850 Fairlane Court,

Placerville, CA 95667

We support the recommendation of the Community Development Services, Planning and Building Department, to the Planning Commission that they forward a recommendation of approval to the Board of Supervisors for changes to the proposed General Plan Amendment to the biological resources policies, objectives, and

implementation measures, and to the proposed Oak Resources Conservation Ordinance that have been made since the Planning Commission hearing on April 27, 2017.

More specifically we support Staff's recommendation for a more streamlined appeal process for in-lieu fees. We believe that the determination of the in-lieu fee to be applied to any given project should be as straightforward and simple to implement as possible. Streamlining the appeal process is a very good start.

Sincerely,

Roger Lewis

El Dorado Sr. Housing, LLC.

854 Diablo Rd.

Danville, CA 94526

9/27/2017

Edcgov.us Mail - PC Meeting--Sept. 28, 2017; File No. 17-0937; Agenda Item #4--Bio Resources/ORMP



PC 9/28/17
#4
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10 pages

PC Meeting--Sept. 28, 2017; File No. 17-0937; Agenda Item #4--Bio Resources/ORMP

Cheryl <Cheryl.FMR@comcast.net>

Tue, Sep 26, 2017 at 7:18 PM

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Commissioners & Char—

I've attached a file that contains my comments on the Biological Resources Policy Update/Oak Woodlands Management Plan.

As an introduction to these comments, I ask that you please forgive my somewhat 'fanciful' treatment of the subject matter. Rest assured the message—and recommendation—is serious, and I hope you will promote the requested action.

Cheryl Langley
Shingle Springs Resident

NOTE: I've attached the *San Mateo Heritage Tree Ordinance* in support of a bulleted comment on page 2.

Char-- Please add these comments to the administrative record; File No. 17-0937; Agenda Item #4. Thank you.



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Who'll Bell the Cat?

This introduction is a little dramatic, I know...but when reasonable suggestions for project improvement and mitigation are continually ignored, you get a little desperate for attention...

And, I think the Planning Commission knows exactly what I'm talking about. Planning Commission recommendations were nearly totally ignored, too—and they were common sense recommendations, at that. Why *were* they ignored? Who's running the show? **Who is the cat?**

These "footprints" lead to identification of the cat—the cat wants to:

- Pay only a nominal in-lieu fee for oak removal—not one based on "real" County land acquisition values;
- Remove up to 100% of the oaks on a project site, minus a review of possible project modification that may accommodate some or all of the existing oaks/woodland;
- Plant acorns to mitigate for the removal of mature oak woodland/individual trees/Heritage Trees;
- Sidestep the Planning Commission and Board of Supervisors for in-lieu fee appeals/reductions; go only before the Planning Director to approve reductions in-lieu fee amounts;
- Have in-lieu fees refunded to the "*current record owner*" including "*any interest accrued thereon*" if unexpended or uncommitted within a specific period of time—while County staff and some Supervisors have made it clear they have *no real desire to purchase conservation easements*;
- Independently develop a project impact assessment and oak mitigation and monitoring plan through the hiring of a "qualified professional" of its choosing;
- Self-monitor mitigation plantings;

- Choose oak mitigation sites through “*private agreements between the applicant and another private party,*” rather than paying for the acquisition of pre-determined, planned, biologically important sites.

The cat has enablers, too. These enablers have done their best to:

- Not incorporate minimum oak tree retention standards into the project;
- Not evaluate a feasible alternative that includes Option A retention standards *within* the project outline, despite numerous requests by the public to do so;
- Claim that Option A imposed a barrier to development when in fact project proponents always had the option of going before the Planning Commission or Planning Director for relief from strict Option A retention standards;
- Define mitigatable oaks at 6” instead of 5” (as in the Public Resources Code), and prepare oak mitigation documents (Notice of Restriction) that require only mitigation of oaks that are 8” or greater in size;
- Not establish performance standards (other than tree *survival*)—and reject using as a benchmark *tree canopy* accomplished over time, claiming it is “*not considered a reliable metric by which mitigation success can be measured*”;
- Establish Heritage Oak size at 36” to limit mitigation of oaks of substantial size, rather than establish a size consistent with communities within the County;
- Cherry-pick information to justify the 36” Heritage Oak size designation, such as stating in the final EIR that San Mateo County designates 48” oaks as Heritage trees, while the San Mateo 48” destination is true only for valley oaks—it does not apply to blue oak (30”), black oak (32”), interior live oak (40”), canyon live oak (40”); (See attached San Mateo ordinance, page 3.)
- Ignore scientific evidence that blue oaks may never reach Heritage Tree status because growth often ceases after the tree reaches 26”, despite great age;
- Eliminate the possibility that long-term funding for Mitigation and Monitoring in perpetuity is established;
- Claim in the EIR that other counties use acorns for mitigation plantings, when in fact they do not (Sacramento and Placer counties, for example);
- Present as successful acorn mitigation plantings in the El Dorado Hills Specific Plan area, while observations of residents—and an arborist’s report—document failure;
- Claim oak mitigation efforts in the County have been successful by showcasing a handful of cases that in fact have either relied on *Option A retention standards*, or the use of 1, 5 and 15 gallon replacement plantings;
- Argue that past County oak mitigation efforts have been successful, while at the same time arguing that past oak mitigation guidelines “*stymied*” oak mitigation efforts, thus, the project is necessary to “*clarify*” mitigation procedures;
- Claim that mitigation efforts have been adequately enforced when in fact examples to the contrary have been presented to staff and remain unresolved for years;
- Establish *personal use* measures that not only allow too much tree removal, but that invite abuse by not restricting use to residentially zoned properties;
- Incorporate “*adaptive management*” and “*contingency plans*” into the project so project mitigation “*requirements*”—and the project itself—can be altered at any time outside of public view;

- Not include protections/penalties to ward off abuse in the form of the “old contractor’s trick” of watering oak trees to hasten their demise—instead allow removal of “*dead, dying or diseased trees*” without mitigation requirements—no questions asked;
- Not guarantee wildlife habitat connectivity;
- Not establish Important Biological Corridors (IBCs) based on a scientific foundation;
- Eliminate the Integrated Natural Resources Management Plan (INRMP);
- Not do a proper analysis of greenhouse gas emissions (GHGs);
- Not move forward with the establishment of an oversight committee (presumably responsible for overseeing mitigation efficacy and in-lieu fee use);
- And more...

So—who’ll bell the cat—and how?

Perhaps all that can be done at this late date is make certain the Board of Supervisors appoints an oversight committee, one responsible for evaluating mitigation proposals, overseeing mitigation efforts, evaluating mitigation efficacy, making recommendations based on mitigation performance, and overseeing the adequacy and use of in-lieu fees.

If such a committee is appointed, it is important to make certain appointed individuals have expertise in the area of responsibility. Biologists, arborists and foresters—including those from state and federal agencies—would most likely be appropriate choices. Perhaps the County’s Fish and Game Commission could serve in this capacity.

The appointment of such a committee is not “reaching,” it is mandated in the *Draft Oak Resources Management Plan Background and Support Information*¹ which specifies under the heading “Administration of the Oak Woodlands Conservation Program” that “**the major components of the administration program will include**” ... “**One or more entities approved by the Board of Supervisors to assist in the management, maintenance, monitoring or restoration of oak woodlands...**” While it sounds promising that such a committee may be established, not a word has been spoken about committee appointment. When County staff was queried about the likelihood of committee appointment, the inquiry was greeted with silence.

Therefore, I ask the Planning Commission to make a recommendation to the Board of Supervisors that an oversight committee be appointed. Such a committee could play an important role in improving project outcome.

I thank you for your attention to this important project. If you require references for any of the statements presented in the bullet points above, I will provide them. (All references have been included in either comments I have submitted to the Board of Supervisors, the Planning Commission, or under the Notice of Preparation, the draft and final EIRs, or attached to this set of comments.)

Attachment: San Mateo County Oak Tree Ordinance—Heritage Oak sizes defined on page 3

Cheryl Langley—Public Comment—Biological Resources Policy Update/ Oak Resources Management Plan (ORMP); Planning Commission Meeting September 28, 2017; File No. 17-0937; Agenda Item #4

¹ Draft Environmental Impact Report for the Biological Resources Policy Update and Oak Resources Management Plan Appendix C, *Proposed Oak Resources Management Plan (ORMP)*, Appendix A (“Background and Support Information”), page A-40. (Appendix A of Appendix C)

COUNTY OF SAN MATEO
PLANNING AND BUILDING DIVISION
(Excerpt from the San Mateo County Ordinance Code)

REGULATION OF THE REMOVAL AND TRIMMING OF HERITAGE TREES
ON PUBLIC AND PRIVATE PROPERTY
(Ordinance No. 2427 - April 5, 1977)

CHAPTER 1. PURPOSE, FINDINGS, INTENT, AND POLICY

SECTION 11,000. The Board of Supervisors finds and declares that the County of San Mateo is an area of great natural beauty and that its outstanding heritage tree population has been and continued to be an invaluable asset in contributing to the economic, environmental, and aesthetic stability of the County and the welfare of its people and of future generations. The County is a highly desirable residential, business, and recreational area because of its great scenic beauty, its forests, trees and beaches, mountains, proximity to the San Francisco Bay and the Pacific Ocean, its equable climate, its parks and recreational areas, and other natural characteristics. Irresponsible, wanton, and wholesale destruction of heritage trees could, among other things, diminish such beauty, scientific and historical values, adversely affect the environment, reduce property values, detract from scenic highways, and destroy the County's recreational economy.

SECTION 11,001. The Board of Supervisors further finds and declares that it has already passed legislation to regulate the commercial harvesting of forest products in this County and that it does not intend by this enactment to affect that ordinance, but that it is the intention of the Board to control and supervise in a reasonable manner the cutting of heritage trees within the unincorporated area of the County as herein prescribed.

SECTION 11,002. It is further found and declared that, for the above reasons and in order to protect and preserve heritage trees in San Mateo County on both public and private property and to enhance the environment, the economy, and promote the general welfare and prosperity of the County, while respecting and recognizing individual rights to develop, maintain, and enjoy private property to the fullest possible extent, consistent with the public interest, convenience, and necessity, it is necessary to enact this ordinance and regulate the removal of heritage trees in the unincorporated area of San Mateo County. Designation of a heritage tree does not give or intend to give the public access to, or use or enjoyment of, private property.

CHAPTER 2. PRESERVATION OF TREES ON PRIVATE PROPERTY

SECTION 11,050. DEFINITIONS. For the purposes of this part, the following words shall have the meaning ascribed to them in this section:

- (a) "Person" means individuals, firms, associations and corporations, and agents, employees or representatives thereof.
- (b) "County" means the County of San Mateo acting by and through its authorized representatives.
- (c) "Tree" means a woody plant which has the inherent capacity of producing naturally one main erect axis of at least 12 feet, continuing to grow for a number of years more vigorously than the lateral axes.
- (d) "D.B.H." means diameter outside bark, 4 1/2 feet above average ground level.
- (e) "Basal area" means the cross-sectional area.
- (f) "Exotic Tree" means any tree introduced into areas of the County where such trees are not native as a part of their natural distribution.
- (g) "Heritage Tree" means any of the following:

Class 1 shall include any tree or grove of trees so designated after Board inspection, advertised public hearing and resolution by the Board of Supervisors. The affected property owners shall be given proper written notice between 14 and 30 days prior to inspection and/or hearing by the Board.

Class 2 shall include any of the following trees, healthy and generally free from disease, with diameter equal to or greater than the sizes listed:

- (1) Acer macrophyllum - Bigleaf Maple of more than 36 inches in d.b.h. west of Skyline Boulevard or 28 inches east of Skyline Boulevard.
- (2) Arbutus menziesii - Madrone with a single stem or multiple stems touching each other 4 1/2 feet above the ground of more than 48 inches in d.b.h., or clumps visibly connected above ground with a basal area greater than 20 square feet measured 4 1/2 feet above average ground level.
- (3) Chrysolepis chrysophylla - Golden Chinquapin of more than 20 inches in d.b.h.
- (4) Cupressus abramsiana - All Santa Cruz Cypress trees.
- (5) Fraxinus latifolia - Oregon Ash of more than 12 inches in d.b.h.

- (6) Lithocarpus densiflorus - Tan Oak of more than 48 inches in d.b.h.
 - (7) Pseudotsuga menziesii - Douglas Fir of more than 60 inches in d.b.h. east of Skyline Boulevard and north of Highway 92.
 - (8) Quercus agrifolia - Coast Live Oak of more than 48 inches in d.b.h.
 - (9) Quercus chrysolepis - Canyon Live Oak of more than 40 inches in d.b.h.
 - (10) Quercus garryana - All Oregon White Oak trees.
 - (11) Quercus kelloggii - Black Oak of more than 32 inches in d.b.h.
 - (12) Quercus wislizenii - Interior Live Oak of more than 40 inches in d.b.h.
 - (13) Quercus lobata - Valley Oak of more than 48 inches in d.b.h.
 - (14) Quercus douglasii - Blue Oak of more than 30 inches in d.b.h.
 - (15) Umbellularia californica - California Bay or Laurel with a single stem or multiple stems touching each other 4 1/2 feet above the ground of more than 48 inches in d.b.h., or clumps visibly connected above ground with a basal area of 20 square feet measured 4 1/2 feet above average ground level.
 - (16) Torreya californica - California Nutmeg of more than 30 inches in d.b.h.
 - (17) Sequoia sempervirens - Redwood of more than 84 inches in d.b.h. west of Skyline Boulevard or 72 inches d.b.h. east of Skyline Boulevard.
- (h) "Protected Tree" means a tree specially listed as endangered by either the California Native Plant Society's List as amended or the Federal Register or any tree species designated protected by the Board of Supervisors.
 - (i) "Private Property" means all property not owned by the County of San Mateo or any other public agency.
 - (j) "Public Property" means all property owned by a public entity which is controlled or regulated by San Mateo County.
 - (k) "Trim" means the cutting of or removal of any limbs, branches or roots of trees which will not seriously impair the health of trees.

SECTION 11,051. PERMIT REQUIRED TO REMOVE, DESTROY, OR TRIM TREES.

It shall be unlawful for any person to cut down, destroy, move or trim any heritage tree growing on any public or private property within the unincorporated area of San Mateo County without first obtaining a permit from the San Mateo County Planning Department except as herein provided. The Planning Director may require that a permit for trimming

of a heritage tree in an area defined by the General Plan as urbanized be carried out only by a licensed tree surgeon. A minimal charge shall be made for permits required by this ordinance.

Any area to which a valid Timber Harvesting Permit applies is exempt from this Ordinance.

SECTION 11,052. APPLICATION FOR AND GRANTING OF PERMITS. Any person desiring to cut down, destroy, move or trim one or more heritage trees on public or private property must apply to the San Mateo County Planning Department for a Heritage Tree Removal/Trimming Permit form provided by the Planning Department. Said application shall identify the species, contain the number, size and location of the trees or trees involved, contain a brief statement of the reason for the requested action, and describe any other pertinent information the Planning Director may require. Within 20 working days of receipt of the application, the Planning Director or his authorized representative shall inspect the premises and trees and shall ascertain which trees may be trimmed, cut down, destroyed, moved, or removed; provided however, the Planning Director may upon receipt of the application and such information, maps, sketches and/or photographs as he deems sufficient, make a determination without an inspection; provided further, failure to act within 20 days shall not be deemed approval. If trimming is to be performed by a licensed tree surgeon, the tree surgeon's inspection and decision may be accepted by the Planning Director for purposes of compliance with this section.

If no action on the approved permit is taken within a period of one year from the date of approval, the permit shall be considered void. The determination of the Planning Director in granting or denying the permit or in affixing conditions shall be based upon the following criteria:

- (a) The general health of the tree;
- (b) The anticipated longevity of the tree;
- (c) Whether the tree is a public nuisance;
- (d) Proximity to existing or proposed structures and interference with utility services;
- (e) The necessity of the required action to construct improvements or otherwise allow economic or other enjoyment of the property;
- (f) The number, species, size and location of existing trees in the area;
- (g) The effect of the requested action in terms of historic values;
- (h) The topography of the land and effect of the requested action on erosion, soil retention, water retention, and diversion or increased flow of surface waters.

The Planning Director may refer the application to another department, committee, or person for report and recommendation.

In granting a Heritage Tree Removal/Trimming Permit, the Planning Director may attach reasonable conditions to insure compliance with the content and purpose of this ordinance, such as, but not limited to, requiring replacement of trees removed with plantings acceptable to the Planning Director. If a permit is denied or conditions attached, the Planning Director shall provide the applicant with a written statement of the reasons for said denial or conditions based upon the above standards.

The Planning Director shall give priority to those applications based upon imminent hazard.

SECTION 11,053. EMERGENCIES. If an emergency develops which requires immediate response for the safety of life or property, action may be taken by seeking oral permission of the Planning Director, notwithstanding other provisions contained in this chapter. If the Planning Director is not available and action must be taken, the Planning Director shall be notified within a reasonable time thereafter. Such emergencies shall be exempt from Heritage Tree/Trimming Permit procedures.

SECTION 11,054. PRESERVATION AND MAINTENANCE OF EXISTING TREES.

- (1) When proposed structures or developments encroach into the dripline area of any heritage tree, special construction to allow irrigation and aeration of roots, as determined by the Planning Director, may be required with respect to any application for a building permit.
- (2) The existing ground surface within the dripline of the heritage tree shall not be cut, filled, compacted, or paved without having first obtained permission of the Planning Director. Tree wells or other techniques may be used where advisable. Excavation adjacent to such trees, where material damage to the root system will result, shall be allowed only after obtaining a permit as provided under Sections 11,051 and 11,052.
- (3) All applications for building permits, use permits, variances and other applicable permit applications shall be accompanied by a scaled plot plan indicating the location, size and species of heritage trees as defined in this Ordinance, which may be impacted upon by said permit execution.

SECTION 11,055. BUILDING PERMITS. When any building permit is applied for pursuant to the San Mateo County Ordinance Code and a proposed structure would require the cutting down, destruction, moving, removal, or trimming of one or more heritage trees, the Building Inspection Section of the Building Construction and General Services Department shall refer the matter to the Planning Director who shall take into consideration the provisions of this Ordinance before signing the building permit.

CHAPTER 3. PRESERVATION OF HERITAGE TREES - ENFORCEMENT

SECTION 11,100. NOTIFICATION. Any person who owns or controls a heritage tree shall give 60 days notice to the County of San Mateo of intent to sell lands upon which those trees are growing if such lands are contiguous to an existing County park.

SECTION 11,101. CUTTING, STRIPPING AND KINDRED ACTIONS FORBIDDEN. Any person who willfully strips off bark from, trims, cuts burls, branches or leaves from, defaces or gouges any part, or destroys by fire any Heritage Tree located in the unincorporated area of San Mateo County without having first received authority under the provisions of the County Timber Harvesting Ordinance or under provisions of this Part is guilty of a misdemeanor and is punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or by imprisonment in the County jail for not less than 25 nor more than 150 days, or by both such fine and imprisonment.

CHAPTER 4. APPEALS

SECTION 11,150. APPEALS. The applicant, or any other person, who is aggrieved by the issuance or non-issuance of the permit or any conditions thereof may appeal as set forth below. A statement by the appellant shall be required indicating how he is aggrieved or adversely affected by the decision. At the time the appeal is heard, the Planning Commission shall rule upon the appellant's standing as an aggrieved party. If the Planning Commission rules that the appellant is not aggrieved, all further proceedings shall be stayed except that the appellant may appeal the Planning Commission decision on standing to the Board of Supervisors as herein provided.

- (1) Permits considered and acted upon by the Planning Director may be appealed to the Planning Commission by filing a written Protest with the Secretary of the Planning Commission within ten (10) days of issuance or denial of said permit. The Planning Commission shall render a decision on the appeal within fifteen (15) days of public hearing. The Planning Director shall notify the affected parties of said action in writing.
- (2) Permits considered and acted upon by the Planning Commission may be appealed to the Board of Supervisors by filing a written protest with the Secretary of the Planning Commission within (10) days from issuance or denial of said permit. The Board of Supervisors shall hear such appeal within sixty (60) days, and render a decision within fifteen (15) days following such hearing. The decision of the Board of Supervisors shall be final. The action taken by the Board of Supervisors shall be reported to the affected parties in writing.

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