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Public comment, BOS 9/29/15, item 26,file no. 12-1203

1 message

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Mon, Sep 28, 2015 at 6:18 AM

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Cc: Jim Mitrisin <edc.cob@edcgov.us>

Please read and include the attached comment with the public record for the Biological Policies Update (BOS as item 26, 9/29/15, file no. 12-1203).

thank you – Ellen Van Dyke

Pub Comment BOS_9.29.15.pdf
500K

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DATE 9/28/15
BOS 9/29/15

Dear Supervisors:

The Dudek memo (Attachment 17A) makes it a question as to whether or not retention standards for Oak resources are to be included in the EIR, going so far as to suggest that to do so would incur an additional cost to the consultant's contract (memo page 8, item 7 'Retention Requirements').

As a reminder, the Board's June 22, 2015 vote to proceed with the Project included adding Oak tree retention standards as an alternative in the EIR analysis. Why exactly would this now be considered an *added* cost? Please do not back down on this. Additionally,

- 1) CEQA requires that the Board adopt feasible alternatives that substantially reduce/avoid significant impacts. But according to Dudek memo page 19, none of the alternatives being analyzed (including the retention standards) will have sufficient level of analysis to be adopted unless the contract funding is increased. Why would we have written a contract that does not allow us to meet the basic requirements of CEQA, by providing alternatives that cannot be adopted? Is this correct?

Last page (pg 19) of Dudek memo:

" Dudek's scope of work includes consideration of up to three project alternatives in the EIR, including the no project alternative at a comparative level of detail. Analysis of any additional alternatives and/or of any equal-weight alternatives would necessitate additional time and budget. CEQA requires that the Board adopt all feasible mitigation measures and alternatives that substantially reduce or avoid the project's significant impacts. In other words, if the proposed project is found to result in a significant and unavoidable impact and a feasible project alternative that meets most of the basic project objectives is found to reduce that impact to a less than significant level (while also not resulting in any new or more severe impacts), CEQA directs that the Board should adopt that alternative. Analysis of an equal-weight alternative would include a detailed impact analysis for that alternative, which would provide the necessary environmental review to allow the Board to adopt either the proposed project or the alternative, as appropriate based on the impact analysis.."

The very last sentence of Staff's slide show (Att. 17B) asks the Board if any of the Alternatives should be 'equal weight'. If 'no' this suggests the outcome of this process is indeed predetermined, with no viable alternatives available for adoption at the conclusion of the process.

- 2) The argument is being made that 100% oak tree removal has always been allowed. But many would argue that the public does not support policy allowing 100% removal of oak woodland. It should be an exception to the rule, with preservation encouraged to the extent feasible, per existing policy 7.4.1.6. This policy should be clarified & strengthened rather than deleted.

- 3) Regarding retention requirements constituting a "taking", existing Policy 7.4.5.2 allows for exceptions to the standards if reasonable use of the property would be denied. It balances preservation with reasonable use, and eliminates the prospect of a taking:

Existing General Plan policy (excerpt):

Policy 7.4.5.2 It shall be the policy of the County to preserve native oaks wherever feasible, through the review of all proposed development activities where such trees are present on either public or private property, while at the same time recognizing individual rights to develop private property in a reasonable manner. To ensure that oak tree loss is reduced to reasonable acceptable levels, the County shall develop and implement an Oak Tree Preservation Ordinance that includes the following components:

From the strikethrough version of the policy being proposed:

~~Policy 7.4.5.2 It shall be the policy of the County to preserve native oaks wherever feasible, through the review of all proposed development activities where such trees are present on either public or private property, while at the same time recognizing individual rights to develop private property in a reasonable manner. To ensure that oak tree loss is reduced to reasonable acceptable levels, the County shall develop and implement an Oak Tree Preservation Ordinance that includes the following components:~~

From page 8 of Dudek's memo: "Regarding the property takings concern, Dudek recommends that should a minimum retention requirement be considered, it should include language allowing for exemptions from the requirement in cases where the requirement would restrict reasonable use of the property."

Policy 7.4.5.2 could easily be clarified and strengthened rather than eliminated.

It does not take a lot of vision to predict the 'Significant and Unavoidable' impact of allowing 100% Oak resource removal, yet the decision to adopt policies that exclude retention requirements appears to have already been made, contrary to extensive public requests.

Please revise the Project Description to include Oak retention requirements, or at minimum, include them as an equal weight alternative for possible adoption with the FEIR.

Sincerely,
Ellen Van Dyke, Rescue