



COMMUNITY DEVELOPMENT SERVICES

LONG RANGE PLANNING

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Date: September 12, 2017

To: Board of Supervisors

From: Anne Novotny, Principal Planner

Subject: General Plan Biological Resources Policy Update, Oak Resources Management Plan, and Oak Resources Conservation Ordinance Final Environmental Impact Report (EIR) and Project Adoption

PURPOSE

The purpose of this memo is to recommend the Board continue this matter to October 10, 2017 and direct staff to return to the Planning Commission on September 28, 2017 with the additional modifications to the proposed Oak Resources Conservation Ordinance, pursuant to Government Code 56827.

BACKGROUND

On April 27, 2017, the Planning Commission held a public hearing on the proposed Project and Environmental Impact Report (EIR). The Planning Commission received public comments, approved staff's recommended actions for the Board's consideration, including six additional recommendations for the Board to consider.

On July 18, 2017, the Board held a public hearing to receive comments from the public on the proposed Project and Environmental Impact Report (EIR), and to consider the Planning Commission's additional recommendations. The Board opened the public hearing, took comments from the public, closed the public hearing, deliberated, and voted to approve certain changes and additions recommended by staff. The Board also gave direction to staff on several items, including but not limited to, revisions to the definition of Heritage Tree (Oak Resources Management Plan, Section 6.0) to exclude Live Oaks, and to the personal use exemption (Oak Resources Management Plan, Section 2.1.10). The Board further directed staff to return on September 12, 2017 with the directed changes incorporated into final documents for consideration of approval.

After the July 18, 2017 Board hearing, planning staff also determined that a more streamlined appeal process for in-lieu fees would be more effective if the Planning Commission and Board were removed from the process and the Director was designated as the final arbiter of all

appeals. Staff is proposing to add Section 130.39.080 (In-Lieu Fee Reductions and Appeals) to the proposed Oak Resources Conservation Ordinance.

DISCUSSION

Any modifications that were not previously considered by the Planning Commission must be referred back to the Planning Commission for report and recommendation before final Board approval, pursuant to Government Code 65857 which states in pertinent part as follows:

“The legislative body may approve, modify or disapprove the recommendation of the planning commission; provided that any modification of the proposed ordinance or amendment by the legislative body not previously considered by the planning commission during its hearing, shall first be referred to the planning commission for report and recommendation, but the planning commission shall not be required to hold a public hearing thereon.”

Therefore, staff is recommending that the proposed modifications to the ordinance that were not considered by the Planning Commission during its hearing on the proposed Project be brought to the Planning Commission on September 28, 2017.

With regard to the Board’s direction to staff to exclude Live Oaks from the Heritage Tree definition, and to modify the personal use exemption from 8 trees per parcel to 8 trees per parcel per dwelling unit, has raised the issue of whether these modifications would require further environmental analysis under the California Environmental Quality Act (CEQA).

The exclusion of Live Oaks from the Heritage Tree definition could potentially reduce the amount of mitigation for removal of oak trees because the mitigation for Heritage Trees is 3:1 while the mitigation for non-heritage trees is 1:1. The proposed modification to the personal use exemption could potentially result in the removal of more trees, with no mitigation, if there is more than one dwelling unit on a parcel. To determine whether or not these impacts are significant would require additional CEQA analysis, which is outside the scope of the Dudek contract. An amendment to the Dudek contract would be required.

Rather than delaying the approval of the Project and spending more money now on further CEQA review of the proposed modifications, staff is recommending that the Project be considered without the Board’s proposed exclusion of Live Oaks from the Heritage Tree definition and the proposed personal use exemption modification so that, through actual implementation of the ordinance, the County can determine whether or not such modifications are even necessary. If the Project is approved by the Board without the proposed modifications, Planning staff can then monitor the implementation to see what, if any, implementation problems or unintended consequences are revealed during the course of the application of the ordinance to actual projects. After approximately one year of “stress testing” the ordinance, if it is determined that modifications to the ordinance should be considered, staff will return to the Board with the proposed changes to the ordinance and with the appropriate CEQA analysis at

that time. This proposed course of action will prevent the premature expenditure of County funds for further CEQA analysis before the necessity of the modifications is determined.

STAFF RECOMMENDATION

Staff is recommending that the Board take the following actions:

1. Amend the Board's direction to staff on July 18, 2017 to remove the direction "to revise the Personal Use Exemption to allow removal of 8 trees per parcel, or per dwelling unit per parcel" and remove the direction "to exclude Live Oaks from the definition of a Heritage Tree"; and
2. Direct staff to return to the Planning Commission on September 28, 2017 with additional modifications to the proposed ordinance that were not considered by the Planning Commission on April 27, 2017; and
3. Continue this Item to the Board meeting on October 10, 2017 at which the Board will consider:
 - a. The Planning Commission's recommendation from September 28, 2017 regarding the additional modifications to the proposed ordinance;
 - b. Certifying the EIR; making CEQA Findings of Fact; adopting a CEQA Statement of Overriding Considerations; and approving the Mitigation Monitoring and Reporting Program;
 - c. Adopting a General Plan Amendment to the biological resources policies, objectives, and implementation measures in the General Plan;
 - d. Adopting an Oak Resources Management Plan;
 - e. Approving the establishment of an in-lieu fee to mitigate impacts to Oak Woodland Areas and Individual Oak Trees; and
 - f. Approving an Oak Resources Conservation Ordinance.