

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
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Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 12/6/05
Department Name: County Counsel/CEO
Department No.: 013
Agenda Date: 12/13/05
Placement: Administrative
Estimate Time: N/A
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Michael F. Brown, CEO
Shane Stark, County Counsel

STAFF Alan Seltzer
CONTACT: Chief Assistant County Counsel

SUBJECT: Consideration of Oak Tree Program Revisions and Agriculture Study

Recommendation(s):

That the Board of Supervisors set a hearing for January 24, 2006 to consider:

- A. Approving revisions to the Oak Tree Preservation and Regeneration Program initiated July 26, 2005, as text amendments to Chapter 14 and Article IX of Chapter 35 of the County Code, by (i) substituting a provision that exempt oak trees (other than “pre-mitigation” trees) include not only those that are planted, but also naturally occurring seedlings or volunteers that are nurtured for purposes other than mitigation, in place of the initiated provision that Oak trees that began growing after January 1, 2005 are exempt from the Oak Tree Program; (ii) clarifying that EIR text does not have the authority of law and that the Management Plan Standards for Tiers 3 and 4 of the Deciduous Oaks Program and the Live Oak Program are for application to accomplish the regeneration of oak trees and do not protect oak habitats or other habitats; and, (iii) retaining previous Board direction to include “Program Clean-Up Items” and move the existing Grading Guidelines for Native Oak Tree Removal from Appendix A of the Grading Ordinance to a separate chapter of the County Code.
- B. Funding of an Agricultural Resources/Baseline Condition Study, describing baseline conditions, threats, and impacts to agriculture and that can be incorporated into EIRs for programs and projects that have the potential to impact agriculture, including proposed revisions to the County’s Grading Ordinance.
- C. Authorizing execution of a Memorandum of Understanding with appellants in Center for Environmental Equality et al. v. County, Santa Barbara County Superior Court, Cook Division, Case No. 01128385, for dismissal of the Appeal of the judgment in favor of County immediately upon the Board of Supervisors taking the two actions identified in A and B above.

Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with Goal No. 1, An Efficient Government Able to Respond Effectively to the Needs of the Community; Goal No. 4, A Community that is Economically Vital and Sustainable; and with actions required by law or by routine business necessity.

Executive Summary and Discussion:

Litigation Background and proposed MOU. On April 22, 2003, the County enacted the Oak Tree Protection and Regeneration Program (the "Oak Tree Program"). Provisions implemented by the Agricultural Commissioner are found in Appendix A to the Chapter 14 Grading Ordinance. Regulations requiring a discretionary permit for oak tree removals that exceed cumulative, fourth tier level of removals are found in Article IX of Chapter 35 of the County Code. In June 2003, the Center for Environmental Equality, the Santa Barbara County Cattlemen's Association and COLAB ("Appellants"), filed a lawsuit challenging the Program and the EIR prepared for it on various grounds. On November 16, 2004, the Santa Barbara County Superior Court, the Hon. Zel Canter presiding, denied Appellants' petition and complaint, and entered judgment in favor of the County. Appellants timely appealed the judgment. The County and Appellants entered into a Court-approved stipulation to stay the appeal as a result of the Board's July 26, 2005 decision to initiate an SEIR to analyze proposed amendments to Oak Tree Program. The stipulation stays the appeal until 30 days after certification of the SEIR or County's decision not to proceed with the SEIR.

The hearing on January 24, 2006 is to consider action items A and B identified above, and a proposed Memorandum of Understanding ("MOU"), attached, which provides that Appellants shall dismiss their appeal immediately if the Board of Supervisors approves items A and B.

Proposed Revisions to the Oak Tree Program. Planted trees, other than for mitigation purposes, are currently exempt from regulation under the Oak Tree Program. On July 26, 2005, the Board initiated text amendments to the Oak Tree Program Ordinances, one of which expanded the exemption from the Program Ordinances to all trees that began growing after January 1, 2005, whether planted or naturally occurring. Action item A, above, would rescind the initiated exemption for all oak trees that began growing after January 1, 2005. In its place, staff is proposing a more narrow exemption for naturally occurring seedlings or "volunteers" that are nurtured for purposes other than mitigation.

In addition, EIR text does not have the authority of law. Staff will propose additional text to eliminate confusion regarding statements in the challenged Program EIR that have been interpreted to mean that the Oak Tree Program protects sensitive habitats. Management Plan Standards for Tiers 3 and 4 of the Deciduous Oaks Program and the Live Oak Program are for application to accomplish the regeneration of oak trees. While mitigation plan standards require consideration of avoiding fragmentation of oak woodlands and savanna, plans are subject to approval by the Agricultural Commissioner and will need to respond to the particular facts of the parcels involved.

Action item A retains the previous amendments to implement "Program Clean-Up Items" and move the existing Grading Guidelines for Native Oak Tree Removal from Appendix A of the Grading Ordinance to a separate chapter of the County Code.

Because of the narrowed scope of the Program revisions, staff believes that evaluation of the potential environmental impacts of these revisions could be accomplished under CEQA with an Addendum or

Negative Declaration. Accordingly, there would be no analysis of or proposal to remove coast live oaks from protection under the Program.

The following chart reflects differences between the existing Oak Program, the July 26, 2005 initiated revisions, and the revisions suggested for public hearing on January 24, 2006.

	<u>Current Oak Program</u>	<u>Board-Initiated Revisions (7/26/05)</u>	<u>Proposed Revisions to be Initiated Under MOU</u>
1.	<p>Valley Oaks – protected by 4-tier program.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> • voluntarily planted trees 	<p>Valley Oaks – protected by 4-tier program.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> • voluntarily planted trees • trees that began growing after 1/2005. 	<p>Valley Oaks – protected by 4-tier program.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> • voluntarily planted trees • seedlings occurring naturally (volunteers) that a landowner specifically nurtures. [Note: Mitigation trees retain protection.]
2.		<ul style="list-style-type: none"> • Initiate staff proposed “program cleanup items” • Move the existing grading guidelines for native oak tree removal from Appendix A of the Grading Ordinance to a separate chapter of the County Code. 	<p>Same.</p> <p>Same.</p>
3.	<p>Coast Live Oaks – protected by 15% canopy removal trigger</p>	<ul style="list-style-type: none"> • SEIR to study alternative proposal to eliminate coast live oaks protection from the Oak Tree Program. 	<ul style="list-style-type: none"> • Retain current Coast Live Oaks protection and 15% canopy removal trigger • No analysis of any alternative proposal for eliminating coast live oaks from the Oak Tree Program protections.
4.	<ul style="list-style-type: none"> • CEQA: Program EIR subject to pending legal challenge 	<ul style="list-style-type: none"> • SEIR for Board initiated revisions 	<ul style="list-style-type: none"> • ND likely for MOU-initiated program revisions

The Proposed Agricultural Resources/Baseline Condition Study. Action item B is for the approval and funding of an Agricultural Resources/Baseline Condition Study (“Study”), describing baseline conditions, threats, and impacts to agriculture that will be incorporated into an EIR for proposed revisions to the County’s Grading Ordinance. The CEO and Agricultural Advisory Committee would scope, prepare and

direct the study for the County. Partial funding (\$100,000) would come immediately from money appropriated to the Agricultural Commissioner. The purpose of the study is for use in informing programs and projects that potentially affect agriculture and, in particular, proposed revisions to the County's Grading Ordinance that may be considered by the Board.

Under the MOU, the Study is to be completed by January 1, 2007, subject to delays occasioned by causes beyond the control of the County or reasonably required to make study revisions. The agreement to complete the Study would be enforceable by Appellants by writ of mandate subject to the provisions of Code of Civil Procedure section 1021.5. Therefore, in any such action, Appellants would be entitled to reasonable attorney fees and costs as determined by the Court if they prevailed. The MOU also makes clear that the County retains authority over the content of the Study, and nothing in it is deemed to be a waiver or infringement of the County's police power, or commits the County regarding ultimate approval of any legislation. Indeed, the MOU makes clear that any proposed legislation that is informed by the Study will require complete and legally sufficient environmental analysis as well as compliance with all applicable laws.

Mandates and Service Levels: Amending the Oak Tree Program, funding the Agriculture Study and resolving litigation by MOU is discretionary to the Board.

Fiscal and Facilities Impacts: Drafting and processing the proposed revisions to Oak Tree Program Ordinance amendments will reduce the staff work previously authorized for the July 26, 2005 initiated text amendments. Because environmental review of these amendments should be accomplished with a Negative Declaration or Addendum, the cost of the SEIR (estimated to exceed \$200,000) will not be incurred. Partial funding of the Agriculture Study (\$100,000) would come from money already appropriated to the Agricultural Commissioner.

Special Instructions: Clerk of the Board to publish legal notice in a newspaper of general circulation 10 days before the Board hearing.

Concurrence: P&D

Attachment: Proposed MOU