

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
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Agenda Number:
Prepared on: 2/25/03
Department Name: Planning and Development
Department No.: 053
Agenda Date: 3/11/03
Placement: Departmental
Estimate Time: 2 hours
Continued Item: YES
If Yes, date from: 12/10/02

GROUP\COMP\Co-wide Programs\Oak Protection\Adoption\Working Group
Program\Board of Supervisors\Hearings\BoS 2-25-03.doc

TO: Board of Supervisors

FROM: Dianne Meester, Interim Director
Planning and Development

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SUBJECT: Oak Tree Protection and Regeneration Program Adoption

Recommendation(s):

That the Board of Supervisors

1. Consider and continue the following to March 25, 2003 for final action:
 - A. Certify the proposed final environmental impact report (EIR), 00-EIR-07, dated April 2001 including the EIR Revisions document (RV1) dated February 13, 2003, which describes the possible environmental effects of the final revised Program and includes errata and the Mitigation Monitoring and Reporting Program for the final Oak Tree Protection and Regeneration Program (Exhibit 3 of Attachment A);
 - B. Approve and adopt the following components of the Oak Tree Protection and Regeneration Program:
 1. The Findings and Statement of Overriding Considerations supporting the Board's final action in adopting the Oak Tree Protection and Regeneration Program (Attachment B);
 2. The Resolution amending the Comprehensive Plan Land Use Element and Conservation Element, Case Numbers 00-GPA-5 and 00-GPA-6 and the amendment to the County of Santa Barbara Environmental Thresholds and Guidelines Manual, p 6-9(Attachment C);
 3. The Ordinance amending Chapter 35 of the County Code by adding Article IX, Case Number 02-ORD-6 (Attachment D);

2. Approve the first reading of the proposed amendments to Chapter 14 of the County Code (Grading Ordinance), Case Number 02-ORD-5 (Attachment E);
3. Set a hearing on March 25, 2003 for the second reading of the amendments to the Grading Ordinance.

Alignment with Board Strategic Plan:

The proposed Oak Tree Protection and Regeneration Programs is consistent with the following adopted Strategic Goals:

- Goal No. 5: A High Quality of Life for All Residents
- Goal No. 4: A Community that is Economically Vital and Sustainable.

Executive Summary and Discussion:

I INTRODUCTION

In the fall of 1997, the public and Board of Supervisors became aware that large numbers of oak trees were being removed to prepare land for new cultivation in the county's agricultural areas. Since that time, at the direction of the Board of Supervisors, Planning and Development (P&D) staff has worked with the public to develop options for oak protection in the rural parts of the county. The program that is the subject of the adoption hearings, which is a variation of the options developed by staff, was developed primarily by a citizens committee formed in 2002 by the County's Agricultural Advisory Committee and environmentalists representing various local groups. The purpose of these hearings is to bring forward the culmination of over five years of effort to arrive at a County program that balances oak tree protection, regeneration and education with the continued expansion of agriculture. The proposed program consists of:

1. a set of policies and actions to protect native oak trees, promote education and regeneration and provide landowner incentives to enhance oak trees, savannas and woodlands, and
2. oak protection program that implement the new policies.

The program would be adopted in the form of amendments to the Conservation Element and Land Use Element of the County's Comprehensive Plan, ordinances to amend Chapters 14 and 35 of County Code and an amendment to the Environmental Thresholds and Guidelines Manual. The program would apply to Agricultural, Mountainous and Resource Management -designated lands inland of the coastal zone and outside the urban boundary line, and is designed to balance agricultural expansion with oak tree protection.

The Oak Tree Protection and Regeneration Program has been the subject of numerous Planning Commission and Board of Supervisors hearings. For thorough discussions of the history, issues, resources, public process, program development and other background, please see the staff reports for these hearings which are available from the Clerk of the Board of Supervisors and from P&D.

II BACKGROUND

As previously noted, in the fall of 1997, the public and Board of Supervisors became aware that large numbers of oak trees were being removed to prepare land for new cultivation in the county's agricultural areas. Moreover, the County did not have any specific regulations for native oak removal with particular standards governing replanting or avoidance when oak removal is proposed. Since that time, at the direction of the Board of Supervisors, Planning and Development (P&D) staff has worked with the public to develop various options for oak protection in the rural parts of the county. The effort began with the Oak Protection Collaborative Process, which met 16 times over more than 14 months in 1998 and 1999 and ended with agreement on how to implement four out of five of its stated goals. The group was unable to agree on a regulatory program but developed a framework for a program. In September of 1999, the Board of Supervisors directed P&D to hold further public workshops and to develop a regulatory program based on the work of the Collaborative Process, a program that would seek to balance oak protection, regeneration and education with the continued expansion of agriculture. After the workshops and development and refinement of a program, an environmental impact report (EIR) was prepared. It analyzed the potential impacts of a proposed program and a range of alternatives on biological, agricultural and other resources.

From May 14 to July 16, 2001, a proposed Oak Tree Protection Program was considered by the County Planning Commission in five hearings. On July 16, the Planning Commission voted to recommend the EIR-identified environmentally superior alternative to the Board of Supervisors, with some changes.

By September of 2001, P&D was prepared to bring the Planning Commission-recommended program forward for consideration to the Board of Supervisors. The Board directed staff to postpone hearings on the Planning Commission recommendation to allow the former Resource Protection Technical Advisory Committee (TAC) an opportunity to incorporate oak protection into their "two-track" program that was emerging at that time. With the mass resignation of the TAC's agricultural representatives in March 2002, the TAC's work prematurely ended without a final recommendation on either the two-track program or on oak protection strategies.

Staff returned to the Board of Supervisors again on April 9th, 2002 for direction, outlining several options for an oak protection program including the program recommended by the Planning Commission in July 2001 and a further streamlined, simplified version of that program. At the hearing, the County's Agricultural Advisory Committee (AAC) proposed a voluntary program for live oaks and recommended that the Grading Ordinance continue to be used to regulate deciduous oak removal that results in significant environmental impacts or damage. AAC chairman Richard Quandt also indicated that he had been working with representatives of local agricultural and environmental groups to draft a program that could be acceptable to both the agricultural and environmental communities.

On April 9th the Board of Supervisors directed P&D to:

"...develop a voluntary program for the protection of the Coast Live Oaks based on recommendations by the Agricultural Advisory Committee. Working with the Agricultural Advisory Committee and environmental protection groups, develop a consensus definition for 'large scale tree removal' or 'clear cutting.' Develop a voluntary two-year pilot Coast Live Oak Protection and Regeneration

Program.

[And] to develop regulatory protections for the endangered deciduous Valley Oak and Blue Oak with an additional focus on tree regeneration and to return to the Board on June 4th, 2002 with options, including existing regulatory vehicles, to develop an easy to interpret workable regulatory protection program.”

The motion carried unanimously.

On June 4, 2002 the Board considered options for a program to achieve the April direction. The Board requested that the AAC and representatives from environmental groups (since then known as the Oak Working Group) continue to pursue discussions toward a program based on the County’s existing Grading Ordinance. After several meetings, and with assistance from P&D and facilitation by County Counsel, the group finalized a proposal for valley oaks which was presented to the Board of Supervisors at their hearing of October 15, 2002. At that hearing, the Board gave direction on some of the undecided details of the valley oak program. The Board also unanimously

- “identified the Oak Working Group's Valley Oak Protection and Regeneration Program as the preferred Valley Oaks program for CEQA review and directed staff to complete CEQA review and findings for adoption and to return to the Board for action as appropriate;”
- continued the hearing to December 10th for a briefing on live and blue oaks and in order to give the Oak Working Group time to develop a program for these species in addition to valley oaks; and
- expressed appreciation to the members of the Oak Working Group for their efforts.

After the October 15th hearing the Oak Working Group met several more times on live and blue oak protection. The first meeting was with three UCSB oak experts, who presented information about live and blue oak distribution and status and took questions from the group. At subsequent meetings the group successfully finalized a program for live and blue oaks and presented it at the hearing of December 10th. The Board unanimously “endorsed the Oak Working Group recommendations for live and blue oaks and directed staff to complete appropriate CEQA review and findings” and to return in February 2003 “for final adoption of the Oak Protection Program.” The February 25, 2003 hearing was continued to March 11, 2003 for agenda management purposes.

III OVERVIEW OF THE OAK WORKING GROUP’S OAK TREE PROTECTION AND REGENERATION PROGRAM

The Oak Working Group-recommended Oak Tree Protection and Regeneration Program consists of a set of policies and actions (Comprehensive Plan amendments) and new guidelines and regulations to implement these new policies. The program addresses both live oak and deciduous (blue and valley) oak removal, and includes different standards for oak removal directly related to agriculture and oak removal for non-agricultural purposes.

A. COMPREHENSIVE PLAN AMENDMENTS

The proposed new Oak Tree Protection Goal, Policies and Actions would be added as a supplement to the Conservation Element of the Comprehensive Plan. A small text change to the Land Use Element's Environmental Goal is also proposed to the footnote for development.

1. Proposed Conservation Element Amendments (Attachment C, Exhibit 1b)

The proposed Goal, Policies and Actions are intended to

- guide the county's efforts with regard to oak tree protection and regeneration in the rural areas
- prevent further net loss over time of native oaks
- balance the twin objectives of the County to support and encourage agriculture while avoiding or mitigating oak removal
- identify deciduous (particularly valley) oaks as the highest priority for protection and regeneration
- call for incentives including both financial and technical assistance, education, and other positive means of protecting and regenerating oaks while reaffirming the County's policy commitment to provide support for agriculturists and rural landowners.

Most oak removal projects allowed under the Oak Working Group-recommended program, would **not** be required to be found consistent with the goal and policies in order to proceed. This is because the Oak Working Group's program is itself consistent with these proposed policies and with all applicable County policies. Projects that are subject to discretionary permits under the Oak Tree Protection and Regeneration Program (required for large-scale removals) or development projects (e.g. construction of a house) will need to be found consistent with the oak tree protection goal and policies.

OAK TREE PROTECTION GOAL: *Santa Barbara County shall promote the conservation and regeneration of oak woodlands in the County over the long term, and, where feasible, shall work to increase the native oak population and extent of woodland acreage. The highest priority for conservation, protection and regeneration shall be for valley oak trees, valley oak woodlands and valley oak savanna.*

OAK TREE PROTECTION POLICY 1: *Native oak trees, native oak woodlands and native oak savannas shall be protected to the maximum extent feasible in the County's rural and/or agricultural lands. Regeneration of oak trees shall be encouraged. Because of the limited range and increasing scarcity of valley oak trees, valley oak woodlands and valley oak savanna, special priority shall be given to their protection and regeneration.*

Oak Tree Protection Action 1: *Concurrent with the adoption of these amendments, the County shall amend the Santa Barbara County Code to include oak tree protection regulations developed by the Oak Working Group consistent with the Oak Tree Protection Goal and Oak Tree Protection Policy 1, and endorse a voluntary oak conservation and regeneration program.*

The development standards below, which would apply to large-scale oak removal-projects requiring discretionary permits, grading that involves oak tree removal not subject to the Grading Ordinance Guidelines, and development projects, would provide guidance to the applicants during project design and to staff processing permits. They would not apply to tiers 1 – 3 of the Oak Working Group’s program for agricultural deciduous oak removals, tiers 1 – 2 for non-agricultural deciduous oak removals or to live oak removals unless part of a development permit. Development standards are an important tool to help achieve consistency and certainty in the permit process.

Development Standard 1: Protection of all species of mature oak trees: *All development shall avoid removal of or damage to mature oak trees, to the maximum extent feasible. Mature oak trees are considered to be live oak trees six inches or greater diameter at breast height and blue oak trees four inches or greater diameter at breast height, or live and blue oaks six feet or greater in height. Native oak trees that cannot be avoided shall be replanted on site. When replanting oak trees on site is not feasible, replanting shall occur on receiver sites known to be capable of supporting the particular oak tree species, and in areas contiguous with existing woodlands or savannas where the removed species occurs. Replanting shall conform to the County’s Standard Conditions and Mitigation Measures. (This development standard applies to all oak trees other than valley oaks. Valley oak trees are addressed in Development Standard 2.)*

Development Standard 2: Protection of valley oak trees: *All development shall avoid removal of or damage to protected valley oak trees. Development shall not encroach within six feet of the dripline of any protected valley oak trees. Protected valley oak trees are those valley oak trees two inches or greater diameter at breast height, or six feet or taller in height. Valley oak trees that cannot be avoided shall be appropriately replaced on site. If replanting valley oak trees on site is not feasible, replanting shall occur on receiver sites known to be capable of supporting the valley oaks, and that allow re-planting in areas contiguous with existing woodlands or savannas where the valley oaks occur. All oak tree replanting shall conform to the County’s Standard Conditions and Mitigation Measures.*

Development Standard 3: Restoration of the valley oak tree population: *Where development is proposed within historic valley oak tree habitat (even if no valley oak trees would be removed), mitigation of the loss of historic habitat shall be required, where feasible, through planting of locally obtained valley oaks as part of the project landscaping.*

Policy 2 and the remaining actions are focused on providing incentives, including both financial and technical assistance, and education to encourage landowners to protect and plant oaks. The Oak Working Group-recommended program recognizes that requiring permits and/or replanting for large scale oak removal is not enough to ensure the long term success of native oaks. Programs and funding that make it possible for those who own and work the land to protect and plant oak trees without detriment to their livelihood or reasonable use of their property are essential. Oak Tree Protection Policy 2 and Actions 2 through 5 would help to ensure that these positive aspects are pursued with equal or greater vigor than the regulatory component of the program. Given the historically low level of funding devoted to oak conservation and regeneration in Santa Barbara County, active pursuit of funding is essential to the success of the program, especially towards valley oak trees, savanna and woodlands.

OAK TREE PROTECTION POLICY 2: *The County shall pursue funding for conservation easements, incentive programs and funding or other assistance for landowners to retain and regenerate native oak trees.*

Oak Tree Protection Action 2: *The County shall establish a fund to pursue grants for creating conservation easements, or to acquire property for protection of oaks from willing landowners. These efforts should target the most significant oak resources, especially valley oak woodlands and savanna. The Oak Tree Specialist shall work with other agencies and County departments to prepare a conservation program which will identify priorities for acquisition, funding and other means to preserve selected oak habitat, and outline the steps to achieve the program goals.*

The Oak Working Group did not agree on whether a target amount should be suggested for this fund. At the Board meeting of June 4, 2002 it was suggested that an initial oak conservation fund could be established using half of the funds (\$75,000) set aside this fiscal year in anticipation that hiring new staff to implement the program would likely be delayed to the second half of this fiscal year. This is further discussed under Fiscal and Facilities Impacts.

Oak Tree Protection Action 3: *The County shall support and, where appropriate, directly carry out public education and outreach (e.g. to private landowners) regarding oak trees, management, incentives and other relevant topics, and seek funding for oak tree regeneration projects on public and private land.*

Oak Tree Protection Action 4: *The County shall monitor the Oak Tree Protection and Regeneration Program, particularly the effectiveness of the regulations, and report to the Board of Supervisors initially at two years and five years following adoption of the Program and then again every five years.*

Oak Tree Protection Action 5: *The County shall pursue funding and staffing for an Oak Tree Specialist to assist with regeneration and management plans, seek incentive funding, carry out education and outreach, monitor the program and report to the Board of Supervisors on program effectiveness.*

2. Proposed Land Use Element Amendment (Attachment C, Exhibit 2)

The following change would be made to the “Environment” Goal of the Land Use Element:

“Environment: Environmental constraints on development¹ shall be respected. Economic and population growth shall proceed at a rate that can be sustained by available resources.”

“¹ "Development" means any man-made change to improved or unimproved real property including but not limited to buildings or structures, mining, dredging, filling, grading, excavation, or drilling operations. Sand and gravel operations may be allowed in the same sense as flood control operations are allowed. Neither agricultural improvements nor oak tree removal under the Oak Tree Protection and Regeneration Program are development within the meaning of this Element.”

This amendment would clarify that County policies and regulations applying to development are not applicable to oak tree removal that is addressed under the Oak Working Group’s Program. The

reason for this is so that Land Use Element policies written primarily to guide development would not be applied to oak removal allowed under the program.

B. OAK PROTECTION GUIDELINES AND REGULATIONS

The Oak Working Group recommendation includes a different protection program for live oaks and for deciduous oaks, as did most of the program alternatives that were reviewed in the EIR and considered by the Planning Commission and Board of Supervisors in recent hearings. For each species category, the program also has different requirements for oak removal that is directly related to agricultural practices and for oak removal that is unrelated to agricultural practices. Tables 1 and 2 below provide the basic program structure and components that would be added to Chapter 14, Grading Ordinance, in the form of guidelines, and regulations contained in Chapter 35 that regulate large-scale deciduous oak tree removals. Following these summary tables is a more detailed description of each program component.

Table 1: Proposed Agricultural Oak Removal Program

| | Live Oaks | Deciduous (valley and blue) Oaks (see Table 3, below for permit triggers) |
|---------------|---|--|
| Tier 1 | Voluntary avoidance, regeneration for up to 15% canopy | Removal of a set number of trees are exempt, based on legal lot size. Avoidance, regeneration are voluntary. |
| Tier 2 | | Removal of a set number of trees based on legal lot size, provided it is below 30/50% ¹ of trees, requires landowner regeneration (Pursuant to Board-adopted guidelines to the Grading Ordinance). |
| Tier 3 | 15% or greater removal of canopy requires an Agricultural Commissioner-approved management plan (Pursuant to Board-adopted guidelines to the Grading Ordinance) | Removal of a set number of trees depending on legal lot size, provided is below 30/50% ¹ of trees, requires Agricultural Commissioner-approved management plan (Pursuant to Board-adopted guidelines to the Grading Ordinance). |
| Tier 4 | N/A | Above Tier 3 limits, or 30/50% ¹ of trees, or for willful violations of Tiers 2 and 3 if so determined by the Ag Commissioner. Discretionary permit required (Pursuant to regulations contained in Chapter 35) |

¹ 30% on lots of 100 or more acres in size; 50% on lots less than 100 acres in size.

Table 2: Proposed Non-Agricultural Oak Removal Program

| | Live Oaks | Deciduous Oaks |
|---------------|--|---|
| Tier 1 | Voluntary avoidance, Regeneration for up to 5% removal of canopy | Removal of one tree allowed regardless of size of legal lot. |
| Tier 2 | 5% or greater removal of canopy requires an Agricultural Commissioner-approved management plan (pursuant to Board adopted guidelines to the Grading Ordinance) | Removal of a set number of trees consistent with the Planning Commission-recommended program (refer to p.13 of this report) are based on legal lot size. Requires landowner regeneration. Avoidance, regeneration self-certified by landowner |
| Tier 3 | N/A | Above Tier 2 limits, and for willful violations of Tier 2, discretionary permit required, pursuant to regulations contained in Chapter 35. |

These fundamental elements (among others) would apply to the entire program:

- The Agricultural Commissioner’s Office, with technical assistance from the Cachuma Resource Conservation District (CRCDD) and an Oak Tree Advisory Committee, will be the administering agency for the majority of the Oak Tree Protection and Regeneration Program. Planning and Development will administer the new provisions in Chapter 35 which will regulate under a permit large-scale removals of deciduous oaks.
- An Oak Tree Specialist would be hired by the Agricultural Commissioner as primary staff for the program. The Oak Tree Specialist would administer the program, assist with regeneration and management plans, seek incentive funding, carry out education and outreach, monitor the program and report to the Board of Supervisors on program effectiveness.
- All permit triggers (numbers or percentages of trees removed) are counted cumulatively over a 30-year period, at which point the cumulative totals “reset” to zero. During the 30 years, as removal numbers cumulatively move from one tier to the next, the process/requirements for removal would similarly change and be governed by the next tier. Cumulative totals of agricultural and non-agricultural removals are tracked separately within the 30-year period.
- The removal thresholds would be based on legal lots or, where applicable, contiguous legal lots under single ownership, and would run with the land and be binding on future owners (e.g. in the case of a lot sale or subdivision).
- Valley and blue oak trees of 4” DBH or greater would count towards the basic numerical removal thresholds in Table 3 and when determining if the 30 and 50 percent of the trees have been removed on-site which would trigger a discretionary permit. Live oak trees of 8” DBH or greater would count towards calculating the number of required live oaks to be replaced.
- Oak removal would be defined as “causing an oak tree to die, be uprooted or removed from the ground by any means, including, but not limited to, cutting, uprooting, poisoning, or burning (unrelated to controlled burns)¹. Excessive pruning or topping, or severing an oak tree’s roots

¹ The Oaks Specialist would be required to work with landowners, APCD, the Range Improvement Association and the Fire Districts to coordinate protocols for controlled burns that protect all native oaks.

enough to lead to the death of the tree, shall also be considered oak tree removal. Death by natural causes (e.g. sudden oak death syndrome) would not be considered a removal.” Nor would removals by a public agency or utility within a public easement across private property.

- Naturally occurring valley, blue, and live oak seedlings/saplings, growing on the parcel and between six (6) inches and six (6) feet in height that are protected and nurtured for five (5) years, may be counted as replacement (mitigation) trees under the Program. Valley oaks shall replace valley oaks removed, blue oaks shall replace blue oaks removed, and live oaks shall replace live oaks removed.

1. Agricultural Oak Removal: Deciduous Oaks Program

The deciduous oaks program is based on a 4-tiered system (see Table 3 below). Requirements that are triggered by agricultural oak removal within tiers 1 through 3 would be adopted as guidelines appended to the Grading Ordinance as Appendix A with a reference added to Section 14-8; those for Tier 4, the discretionary permit tier, would be adopted separately as a new ordinance section in Chapter 35 of the County Code.

Table 3: Proposed Agricultural Deciduous Oak Tree Removal Tiers

| Legal Lot Size | Tier 1 Exempt From Regeneration Requirement; | Tier 2 Landowner Regeneration Required; Self-Certification of Compliance | Tier 3 Management Plan Required | Tier 4 Discretionary Permit Required |
|------------------|---|---|------------------------------------|---|
| Less than 50 | 1 | 2 – 3 | 4 – 8 | > 8 |
| 50 – <100 | 2 | 3 – 6 | 7 – 17 | > 17 |
| 100 – <150 | 3 | 4 – 10 | 11 – 26 | > 26 |
| 150 – <200 | 4 | 5 – 13 | 14 – 34 | > 34 |
| 200 – <250 | 5 | 6 – 16 | 17 – 42 | > 42 |
| 250 – <300 | 6 | 7 – 19 | 20 – 50 | > 50 |
| 300 – <350 | 7 | 8 – 22 | 23 – 58 | > 58 |
| 350 – <400 | 8 | 9 – 25 | 26 – 66 | > 66 |
| 400 – <450 | 9 | 10 – 28 | 29 – 74 | > 74 |
| 450 – <500 | 10 | 11 – 31 | 32 – 82 | > 82 |
| 500 – <550 | 11 | 12 – 34 | 35 – 90 | > 90 |
| 550 – <600 | 12 | 13 – 37 | 38 – 98 | > 98 |
| 600 – <650 | 13 | 14 – 40 | 41 – 106 | > 106 |
| 650 – <700 | 14 | 15 – 43 | 44 – 114 | > 114 |
| 700 – <750 | 15 | 16 – 46 | 47 – 122 | > 122 |
| 750 – <800 | 16 | 17 – 49 | 50 – 131 | > 131 |
| 800 – <850 | 17 | 18 – 52 | 53 – 138 | > 138 |
| 850 – 899 | 18 | 19 – 55 | 56 – 146 | > 146 |
| Greater than 899 | 19 | 20 – 58 | 59 – 154 | > 154 |

Removals of deciduous oaks that equal or exceed 30% of all deciduous oaks on legal lots 100 acres or greater, or which equal or exceed 50% of deciduous oaks on legal lots less than 100 acres shall be deemed significant and trigger Tier 4 review.

a. Tier 1: Exempt

Deciduous oak removal that falls within Tier 1 would be exempt from permits, replanting requirements or reporting of removals. However, removals exempt under Tier 1 would count as part of the total number of trees removed during the 30-year removal period for purposes of determining when tiers 2, 3 and 4 apply. Voluntary avoidance and replanting are encouraged, as is consultation with the Oak Tree Specialist on project design to minimize impacts to oak trees and habitat.

b. Tier 2: Landowner Regeneration Required; Self-Certification

In balancing voluntary and mandatory components of the Guidelines, this tier is designed as the predominantly voluntary, self-regulating element. Removals under Tier 2 require replanting at a ratio of 15:1 by the landowner. Spacing and maintenance standards apply. Landowner self-evaluates and determines success or failure. Documentation of oak tree removals at Tier 2 is required through self-certification and notification to the Agricultural Commissioner. Willful failure to notify the Agricultural Commissioner of tree removals or to carry out required replanting would be a violation. Violations trigger Tier 3 management plan or Tier 4 permit, and/or fines, at the discretion of the Agricultural Commissioner.

c. Tier 3: Management Plan Required

This tier, relative to Tier 2, is designed to take a slightly more regulatory approach. Before oak trees may be removed under Tier 3 a management plan would have to be approved by the Agricultural Commissioner. No permits would be required. Management plans must be consistent with prescribed management plan standards and would be approved on a case-by-case basis without additional CEQA review or hearings. Monitoring by the Oak Tree Specialist would be required as a condition of the Management Plan. Violations would trigger a Tier 4 discretionary permit and/or fines.

d. Tier 4: Discretionary Permit Required

Cumulative removals exceeding Tier 3 allowances require separate discretionary review and permit approval from P&D, incorporating a management plan and including CEQA review, a mitigation package and Planning Commission hearing.

“Pre-Mitigation” is an option offered to landowners for deciduous oak removals. For every ten deciduous oak trees voluntarily planted and nurtured for a minimum of five years, or existing oak tree seedlings or saplings six inches to six feet in height and less than 2 inches DBH that have been nurtured for a minimum of five years, one additional deciduous oak tree of the same species could be removed under the thresholds in tables 3 and 4. Documentation of planting pre-mitigation trees or commencing nurturing of naturally-occurring pre-mitigation trees must exist for such trees to be claimed for pre-mitigation credit. Pre-mitigation is intended to encourage landowners to plan ahead for oak tree removal and to increase the chances of survival of replacement plantings.

2. Agricultural Oak Removal: Live Oak Program

Live oak removal for agricultural purposes would also be governed by the Grading Ordinance Guidelines referenced under Section 14-8 of the Grading Ordinance.

The live oak program allows removals based on overall canopy reduction. Once cumulative live oak removals within the 30-year removal period exceed 15 percent of live oak canopy cover, a management plan would have to be approved by the Agricultural Commissioner. Management plans must be consistent with prescribed management plan standards and would be approved on a case-by-case basis without additional CEQA review or hearings. Monitoring by the Oak Tree Specialist would be required as a condition of the Management Plan. Failure to adhere to management plan standards would be a violation that could trigger intervention, fines and/or mandatory assistance to ensure compliance, at the discretion of the Agricultural Commissioner.

Thinning of live oak woodlands and forests for rangeland management purposes (improvement of foraging opportunities) is exempt from this program. However, if rangeland is converted to cultivated agriculture, resulting in the removal of live oak tree canopy, any thinning of live oak tree canopy prior to the conversion within the 30-year removal period will be added to the landowner's cumulative live oak removal in determining whether a management plan is required. For the purposes of this program, thinning for rangeland management/improvement is defined as "the removal of understory vegetation and/or evenly reducing the canopy cover of a live oak woodland or forest by means of cutting or pruning (where the root system remains in place) without removing contiguous areas of canopy (i.e. removal is scattered across the canopy and no two adjacent protected trees are removed together)."

3. Non-agricultural Oak Removal: Deciduous Oaks Program

Removal of deciduous oak trees for purposes other than agriculture will also be governed by the Grading Ordinance Guidelines pursuant to Section 14-6. For deciduous oak removals on private land outside of the coastal zone and urban boundaries not done as agriculturally-associated earthwork as defined in the Grading Ordinance, the thresholds for the environmentally superior alternative in the EIR would apply. The requirements under each tier have been modified slightly from the environmentally superior alternative by the Oak Working Group.

- a. Tier 1: (Exempt Removals): Removal of one protected deciduous oak on lots of any size would be exempt.
- b. Tier 2: Landowner regeneration would be required similar to the Oak Working Group Program's Tier 2 standards for agriculturally-related removals. Violations would trigger Tier 3 discretionary permits, and/or fines, at the discretion of the Agricultural Commissioner.

Table 4: Proposed Non-Agricultural Deciduous Oak Tree Removals

| Legal lot acreage | Tier 2 removals: Greater than one and less than or equal to: |
|-------------------|---|
| < 50 | 2 |
| 50 – <100 | 3 |
| 100 – <200 | 4 |
| 200 – <300 | 5 |
| 300 – <400 | 6 |
| 400 – <500 | 7 |
| 500 – <600 | 8 |
| 600 – <700 | 9 |
| 700 – <800 | 10 |
| 800 – 899 | 11 |
| Greater than 899 | 12 |

c. Tier 3 (Discretionary Permits): Beyond the Tier 2 numbers, a discretionary review and permit pursuant to new regulations in Chapter 35 would be required, incorporating a management plan and including CEQA review, a mitigation package and Planning Commission hearing.

4. Non-agricultural Oak Removal: Live Oak Program

The Grading Ordinance Guidelines would be the same as for agricultural removals except that 5 percent canopy removal would trigger a management plan requirement, rather than 15 percent. All other aspects of the program would be the same as those for agricultural live oak removals.

5. Oak Removal as Part of Development

The General Plan amendments discussed previously as revised by working group members, would be adopted along with the Oak Working Group’s Program. Development projects within oak habitats would have to be consistent with the Oak Tree Protection and Regeneration Goal and policies (as with all County policies) to be approved. The General Plan amendments would also apply to discretionary oak removal permits required by the Chapter 35 ordinance amendment.

6. Application of CEQA to Oak Removal under the Program

Removal of oak trees in accordance with the Oak Tree Protection and Regeneration Program with the exception of where circumstances where a discretionary permit is triggered, would not require review under CEQA as they have been analyzed in the program EIR and EIR revisions document. Consequently, the Environmental Thresholds and Guidelines Manual has been amended to include a footnote explaining this and referring them to the new Guidelines for Native Oak Tree Removal in Chapter 14, Grading Ordinance. Removal of deciduous oak trees that requires a permit would be subject to CEQA review on a case by case basis and the thresholds manual will be used to help determine what level of review will be required.

C. DISCUSSION

1. Important Differences Between the Oak Working Group Recommendation and Other Options

The Oak Working Group recommendations for oak removal differ in various ways from the other options considered by the Board and Planning Commission. Following are some of the more important differences.

- Most of the earlier alternatives had three regulatory tiers: exempt oak removal (Tier 1), oak removal requiring a simple permit and replacement planting (Tier 2), and removals requiring a discretionary permit (Tier 3). For deciduous oak removal associated with agriculture in the Oak Working Group program, there are four tiers, and two are unique. Tier 2 was designed as a predominantly voluntary, self-regulating tier where the landowner is responsible for tree replacement and no permit is required. Tier 3 requires an Agricultural Commissioner-approved oak management plan but not a discretionary permit. For live oaks, there are only two tiers: exempt removals (voluntary replanting/avoidance only), and management plan required. No permits are required for live oak removal under the Working Group program. The overall proposed program places greater emphasis on and encourages voluntary stewardship by landowners.
- The numbers/percentages of trees that could be removed under each tier are generally higher than those in the Planning Commission recommended program. However, these higher numbers/percentages (i.e. more permissive) still fall within the range of alternatives discussed in the EIR.
- There are different standards for landowners removing oaks to make room for farming and for landowners removing oaks for other reasons. Under previously reviewed options, oak removal was regulated the same on rural lands regardless of the purpose of the removals.
- A removal period (called “permit life” in previous program) of 30 years was arrived at as a compromise between members of the Oak Working Group and because it approximates both a human generation (i.e. family ranch management) and the age at which many oaks reach reproductive maturity. Removal periods discussed in the EIR range from “permanent,” i.e. one-time only allowances, to 10, 25 and 50 years.
- Whereas most other options in the EIR were based on either a numerical permit trigger or a percentage of trees on the site, the Oak Working Group recommendation uses numbers for deciduous oaks (except for the percentage “cap”) and percentages for live oaks.
- Finally, an important feature of the Oak Working Group program is its mandated, regular program reviews. Both the Deciduous Oak Program and the Live Oak Program would be the subject of effectiveness reviews by the Board of Supervisors to determine, among other things, if regeneration is working. There would be an initial review after two years, then a second review after five years and additional reviews every five years thereafter. The Board could initiate program changes depending on the results of the reviews. The Agricultural Commissioner and Oak Tree Specialist would be responsible for providing the pertinent

program data and effectiveness information and bringing the program before the Board of Supervisors for each mandated review.

2. Potential Program Effects on Agriculture

Staff's report to the Planning Commission on the originally proposed version of the oak protection program included a discussion of potential program effects on the economics of farming, on agricultural lands and practices, and on agricultural expansion opportunities. Staff has conducted the same level of analysis for the Oak Working Group's proposal and has found that the Oak Working Group's program has even a lesser impact on agricultural operations than the originally proposed program because it includes more voluntary components and allows more oak removal with less County oversight. In summary, effects would be relatively minor because, in part:

- Routine agricultural operations generally do not involve enough oak removal to require management plans or permits.
- The program is designed to exempt, or at the most require landowner regeneration to compensate for, oak removal done to prepare for most agricultural conversions. Out of nearly 8,000 acres of crop installation in the late 1990s analyzed by staff, the great majority of agricultural expansion, whether large- or small-scale, did not remove oak trees in numbers sufficient to trigger the program and thus would not require County review of any kind for their oak removal. In addition, relatively slight modifications to most agricultural expansion projects could render them exempt that might otherwise require review.
- In the vast majority of cases where farm maintenance involves higher levels of removal, and in over 90% of agricultural expansion acreage, only landowner regeneration or a management plan would be required.
- Discretionary-level oak removal is usually done in the context of converting either large areas or heavily wooded areas of uncultivated land to cultivated land. The cost of management plans or permitting and mitigation would not be a major addition to the expense and time involved in planning most conversion projects of the size and scope involving large scale removal of protected oaks.

V SUMMARY OF PROGRAM ENVIRONMENTAL REVIEW UNDER CEQA

There have been changes subsequent to the original program as a result of Board of Supervisors direction during public hearings and the work of the Oak Working Group, resulting in revised amendments to the Conservation Element and ordinance amendments to County Code Chapter 35, Article IX, and the addition of Guidelines to the Grading Ordinance (Chapter 14 of the County Code). The amendments to the Land Use Element, Environmental Thresholds and Guidelines Manual remain as in the originally proposed program. The EIR Revision document (RV1) examines the revised environmental effects of the program modifications (Attachment A). The EIR revision document also provides minor text changes and clarifications to the proposed Final EIR (00-EIR-07).

CEQA Guidelines Section 15088.5 describes the circumstances under which a lead agency is required to recirculate an EIR when new information is added to the EIR after public notice is given of the availability of the draft EIR for public review and the close of the public comment period on the draft EIR, but before EIR certification by the project decision-makers. According to Guidelines Section 15088.5(a), “information” can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of meaningful opportunity to comment on substantial adverse project impacts or feasible mitigation measures or alternatives. Section 15088.5(b) states “recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications to an adequate EIR.”

The EIR Revisions document, RV1, concluded that the Program changes recommended by the Oak Working Group and endorsed by the Board of Supervisors would not result in any new significant environmental impacts nor would they result in a *substantial increase* in the severity of any environmental impact originally analyzed in the proposed Final EIR. Therefore, pursuant to CEQA Guidelines Section 15088.5(b), the proposed revisions described in the EIR revisions document have not been recirculated for additional public comment. The proposed Final EIR for the Oak Tree Protection and Regeneration Program has been amended by this revision document, together identified as 00-EIR-07 RV1.

VI PROGRAM CONSISTENCY WITH ADOPTED PLANS AND POLICIES

The Oak Tree Protection and Regeneration Program has been evaluated for consistency with the adopted plans and policies of the County’s Comprehensive Plan, and with other applicable laws and policies, including the County’s Williamson Act Uniform Rules and Right to Farm Ordinance. The complete policy consistency analysis is included in RV1(Attachment A). With respect to the applicable policies in the County’s Comprehensive Plan, the proposed Oak Tree Protection and Regeneration Program is found consistent.

IV SUMMARY OF ACTIONS REQUIRED BY THE BOARD OF SUPERVISORS

The attachments to this staff report contain the required environmental analysis, resolutions and ordinances that must be approved by the Board of Supervisors in order for the County to adopt the Oak Tree Protection and Regeneration Program.

- Environmental Impact Report 00-EIR-07 RV1
- Resolution adopting the proposed amendments to the Conservation Element and the Land Use Element of the Comprehensive Plan and the amendments to the County’s Environmental Thresholds and Guidelines Manual (Attachment C).

This resolution contains the amendments (00-GPA-6 and 00-GPA-5) to the Conservation Element (additions to the text and a separate supplement) and Land Use Element (footnote) of the Comprehensive Plan, and to the Environmental Thresholds and Guidelines Manual (footnote), as previously discussed.

- Ordinance amendments (02-ORD-5 and 02-ORD-6) adding the Oak Tree Protection and Regeneration Program to the Grading Ordinance, Chapter 14, and to Chapter 35 of the County Code (Attachments E and D, respectively):
 1. Native oak tree removal would be added to Section 14-6 for non-agricultural purposes and as an additional agricultural practice to Section 14-8 of the Grading Ordinance;
 2. The provisions of the Oak Tree Protection and Regeneration Program, governing the live oak program, tiers 1 – 3 for agricultural deciduous oak tree removal and tiers 1 – 2 for non-agricultural deciduous oak tree removals, would be incorporated as an appendix into the Grading Ordinance as Guidelines for Native Oak Tree Removal;
 3. Triggers and permit procedures for Tier 4 agricultural removals of deciduous oaks and Tier 3 non-agricultural removals of deciduous oaks, requirements etc. would be added to Chapter 35 as Article IX.

These amendments codify the Oak Tree Protection and Regeneration Program. Additionally, the Administrative Fine Ordinance will be amended to add the Agricultural Commissioner to the list of persons authorized to impose fines under Chapter 14, Grading Ordinance. This amendment is part of a package of several amendments to that ordinance which has been prepared by Planning and Development and will be brought before the Board of Supervisors in April 2003.

Mandates and Service Levels:

State Law mandates the preparation of a Conservation Element. Its purpose is to identify goals and policies that protect resources within an agency's jurisdiction. The County's 1979 Conservation Element identified oak trees and woodlands as ecological communities that merit preservation throughout the County. The Oak Tree Protection and Regeneration Program will clarify and refine how oaks are protected by the County. In addition, the Program is consistent with the California Board of Forestry's policy that local governments develop programs to protect native oaks.

Implementation of the Oak Tree Protection and Regeneration Program should on balance have a neutral or positive effect on service levels. Spelling out the number or amount of trees that can be removed under each tier allows property owners to make more informed decisions about removing trees. This will likely reduce the amount of staff time devoted to this issue. The program requires hiring an Oak Tree Specialist whose responsibilities would not only include processing permits and monitoring, but also outreach and education, which could positively influence service levels.

Consistency with the Five Year Work Program:

The Oak Tree Protection and Regeneration Program is included in Comprehensive Planning's five-year work program and was scheduled to be completed in Fiscal Year 01-02. The postponement of Board of Supervisors hearings on the Oak Tree Protection and Regeneration Program have pushed projected completion of the program to fiscal year 02/03, which has resulted in the delay of other projects scheduled to be worked on this fiscal year.

Fiscal and Facilities Impacts:

The County's adopted FY 02/03 budget includes an allocation of \$150,000 to the Agricultural Commissioner's Office for implementation of an Oak Tree Protection and Regeneration Program. These funds are budgeted in the Resource Protection program on page D-218 of the County's FY 02/03 budget.

The Planning and Development FY 02/03 adopted budget includes approximately \$45,000 for training and initial implementation for the Oak Tree Protection and Regeneration Program. Those funds are budgeted in the Mitigation and Resource Management Program on page D-262 of the County's FY 02/03 budget. Those funds have been expended instead on assisting the Oak Working Group with program development and on completing the hearings on the project. Initial public education and outreach about the program and training of Planning and Development and Agricultural Commissioner's Office staff will still be necessary this fiscal year if the program is adopted in March 2003. As funds for this work have been expended on additional program development and hearings as directed by the Board, Planning and Development could shift funds from other work efforts in the Five-Year Work Program to cover training and initial public outreach, or the Board could allocate additional funds to Planning and Development. One source might be the funds included in the Agricultural Commissioner's budget this year for staff to administer the program as a specialist will likely be hired next fiscal year.

As part of the budget process, the Board may also want to consider the suggestion by Supervisor Marshall of taking half of this current fiscal year's allocation in the Agricultural Commissioner's budget for implementation (\$75,000) to establish an initial conservation fund toward future conservation easements or to provide grants to landowners undertaking voluntary conservation or regeneration projects.

After this year, the cost to implement the Oak Tree Protection and Regeneration Program is expected to be approximately \$150,000 per year, the majority of which are the salaries of the approximately 1.5 full-time employees: an Oak Tree Specialist and .5 FTE of administrative and other support, planned to be in the Agricultural Commissioner's office. Most of the salary of the Oak Tree Specialist and other administrative costs, as well as the costs of providing low- and no-fee services (such as technical assistance to landowners, general oak education and regeneration projects) are recommended to be paid for out of the County General Fund. A portion of this would be recovered by permit fees and grants from public and private outside sources. Because relatively few oak removal projects are expected to require permits or enforcement, a staff of one specialist and .5 FTE of administrative support is likely to be sufficient to administer the program.

Special Instructions: None

Concurrence: County Counsel

Attachments:

- A. Final EIR (00-EIR-007) and EIR Revisions document RV-1 including MMRP, dated February 13, 2003, together know as 00-EIR-007 RV1. Exhibit 1: The Oak Working Group Recommendation for the Oak Tree Protection and Regeneration Program
- B. Findings and Statement of Overriding Considerations
- C. Resolution adopting Comprehensive Plan Conservation Element amendments Case Number 02-GP-6 (Exhibit 1a and 1b), Comprehensive Plan Land Use Element amendments Case Number 02-GP-5 (Exhibit 2), and amendments to the County's Environmental Thresholds and Guidelines Manual (Exhibit 3)
- D. Ordinance amending Chapter 35, Case Number 02-OA-6
- E. Ordinance amending Chapter 14: Grading, Case Number 02-OA-5

xc: Oak Protection and Regeneration Working Group
William Gillette, Agricultural Commissioner, for distribution to the Agricultural Advisory Committee (13 copies)