

Public Comment - CAMP Dated 10/28/22

Brianda Negrete



From: Modoc Preserve <modocpreserve@gmail.com>
Sent: Friday, October 28, 2022 1:34 PM
To: Hart, Gregg; Lavagnino, Steve; Supervisor Das Williams; Hartmann, Joan; Nelson, Bob; sbcob
Subject: Respectfully request that you Vote NO on the Modoc Road MUP
Attachments: frank_oak_euc1.jpg

Follow Up Flag: Follow up
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Please acknowledge receipt of this letter. October 28, 2022

Good Day,

We are co-founders of The **Community Association for the Modoc Preserve ("CAMP")**, a grassroots organization dedicated to protecting the Modoc Preserve.

CAMP represents over 4,820 (and growing) individuals who have signed on to **CAMP's** Save The Modoc Road Trees petition

<https://www.change.org/SaveModocRoadTrees>

See link below to some of the over 200 comments that we have received opposing the construction of the Modoc Road Multi-Use Path (MUP):

<https://modocpreserve.com/petition-comments>

Please also note that **CAMP** has over **4,820** petition signers who are opposed to this project compared to the **1474** petition signers in support of the established advocacy and email lists of **COAST+SBBIKE** (MOVE Santa Barbara County) bike coalition's petition for completing the project. That is a 3X differential against this project! You are being asked to vote on a **FMND**. Instead of a **Final MND**, this is a **Faulty MND**. Dozens of legal and biologically backed holes have been punched in the veracity of this incomplete and inaccurate environmental review document. Errors, omissions, failure of analysis, obfuscations, and lack of mitigation measures plague it from beginning to end. No reasonable person would approve it knowing it's flaws. In fact, the reason that a revised **MND** was put out and the public comment period restarted was based on flaws of the **Draft MND**. The major flaws in the revised **MND** have been clearly articulated by the legally backed **CEQA** challenges put forth by **CAMP's** attorneys, **CDFW** (California Department of Fish & Wildlife), **Land Trust of Santa Barbara County (LTSB)** attorneys, and **La Cumbre Mutual Water Company (LCMWC)**. **Land Trust for Santa Barbara County**, the manager of the open space property, continues to be ignored and disrespected by the County in this process...the last entity to be notified of project information despite specifically asking to be notified in a previous attorney letter...and, it continues right up to the present including their attorney's letter being left off of the **BOS** agenda documents for this matter and buried down on Page 289 of the 405 page long comment letter PDF.

In every instance, County staff has chosen to completely ignore these challenges, findings, recommendations...etc...and, is pushing the **FMND** through for a vote unchanged. Why even invite public comment if valid legal and biological issues have been put forth, only to be ignored and flippantly dismissed?

The revised **MND** does not hold water, yet the County Staff is still trying to use this failure of an environmental review document to get your approval for an \$8MM project that is not wanted or needed by the majority of people...including a number of cyclists. All of the environmental review and oversight of the **FMND** environmental document paid for by **SB County Public Works** was done internally by the County for the County. It appears that a planner in the **Public Works** department was responsible for providing the rebuttal comments to these legally backed revised **MND** comment letters with no legal or professional biology

qualifications to do so. Then was signed off as being "Final". So, it comes down to you to be fair and objective with your decision making responsibilities granted to you by the voting public. At a minimum, these challenges have met the threshold of "fair argument" and should trigger a full EIR for this project that could cause irreparable harm to a **legally** protected nature preserve that is **legally** protected with enforcement by the California State Attorney General against development "forever" and "in perpetuity" that could harm this nature preserve. You owe it to the public to request that a more rigorous environmental review be conducted before this project can proceed.

This is part of a letter from CAMP's attorneys sent to the SB County Public Works...dated October 7, 2022...in regards to the revised MND, it points out numerous inaccuracies, discrepancies, deficiencies, obfuscations and omissions in the revised MND concerning Biology (both flora and fauna), Wildlife and wildlife corridors, Soil degradation, and other impacts discussed and/or omitted in the MND in context to CEQA laws and that it should be rejected...

The undocumented and **unmitigated oak tree issue** is only one of many...but, it is very easy for a reasonable person to understand.

Obfuscation of the Presence of, and Impacts on, Native/Special-Status Oak Trees

The FMND still represents to the public and the decision makers that zero (0) Coast Live Oak trees will be removed under the Alignment A scenario. (See FMND p. 41, Table 8 [Tree Removal Summary]; see project web page as of September 27, 2022, despite this error and omission, plus lack of mitigation being documented in the CAMP attorney letter (Venskus Oct. 7, 2022) sent to the County.

<https://www.countyofsb.org/modocmup>].)

Implementation of Alternative A would require the removal of approximately 48 trees, including **no native** and 48 non-native trees.

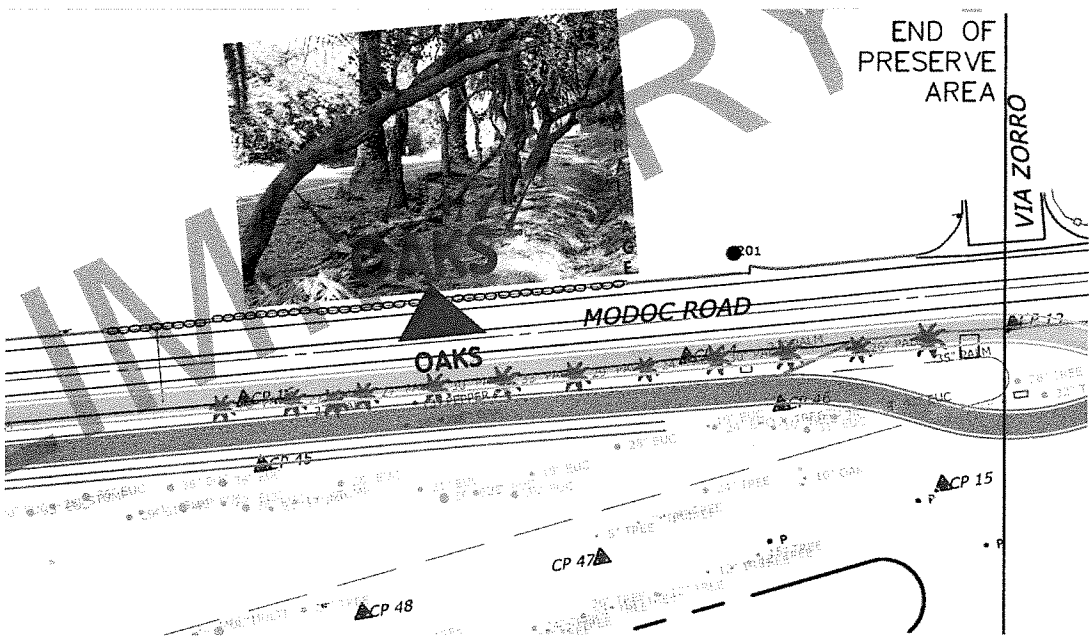


The evidence demonstrates that this statement in the FMND is patently false.

The County's own tree base map for the instant proposed Project identified a stand of 7 oak trees situated over what is now Alignments A and B along Modoc Road just before Via Zorro.

(Exhibit A [Original Tree Base Map, Sheet 3 of 4, Trees Nos. 103-104, 106-108, and 110-111.].) Photographs confirm the presence of the oak trees in this location. See attached.







The MND's error is compounded by the fact that the full complement of Coast Live Oaks that are present along this specific stretch of Modoc Road were identified on the original tree base map but were omitted from the subsequent Alignment Maps.

The subsequent maps even misidentified one oak tree as a eucalyptus tree. (Ibid.) The stand of Oak Trees is clearly in both Alignments A and B and subject to removal by the proposed Project.

When the existence of the stand of oak trees and these other errors were brought to the attention of the senior environmental planner with the County of Santa Barbara, he admitted that the County was aware of this error and subsequently provided a revised tree impact summary noting that 6 Native Coastal Live Oaks may be removed under the proposed Project.

This updated information was not included in, or analyzed in, the MND provided to the decision-makers.

The FMND still indicates that 0 Coast Live Oaks will be removed under Alignment A.

The County staff comment to the Venskus attorney letter even states a mistake was made.

For the record, the omission of 6 Coast live oak trees and required mitigation, has still not been corrected in the FMND.

3. A tree mapping error was made during preparation of the Revised MND, such that approximately one coast live oak tree is located within the grading limits for Alignment A. However, the trees in this area will be avoided should this alignment be selected, as part of development of detailed construction plans.

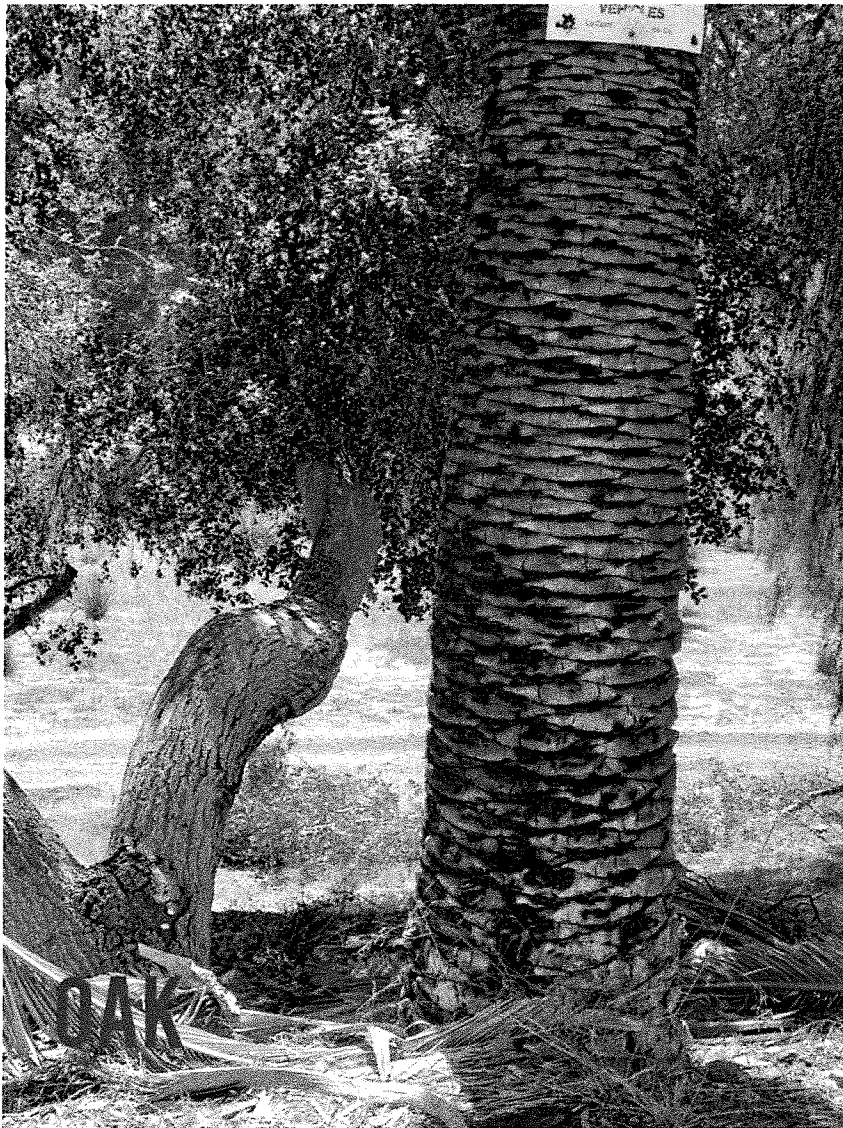


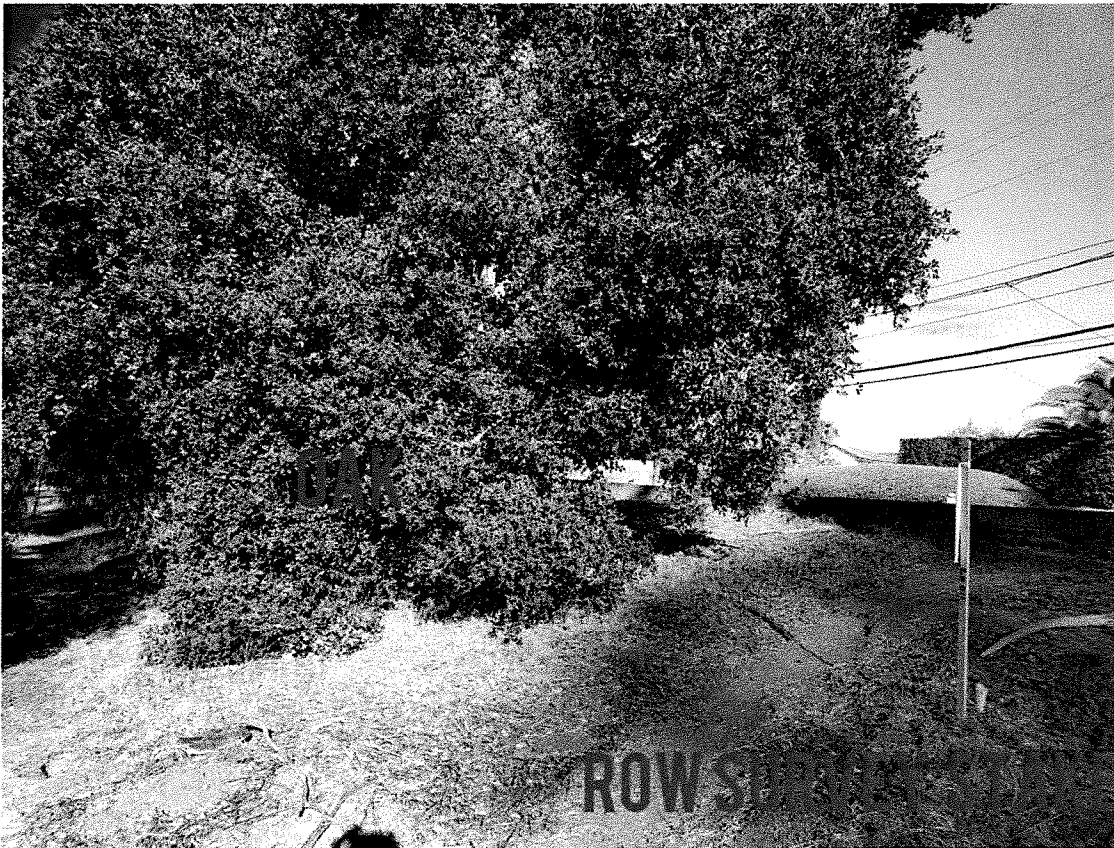
An additional inaccuracy in tree species identification in the MND occurs near Modoc Road and Clara Vista Road. There, the County once again misidentified an Oak Tree as a 33" Eucalyptus Tree.

Since the full complement of oaks trees subject to removal were not identified or addressed in

the MND, the MND fails as an informational document. Moreover, the MND fails to provide mitigation measures for the oak trees that would be removed under Alignment A. For these reasons alone the MND should be rejected.







California Department of Fish and Wildlife (CDFW)

The CAMP attorney letter sent to the County Public Works on October 7, 2022 correctly states: An agency preparing an initial study must consult with all responsible agencies and trustee agencies responsible for resources affected by the project, under PRC §21080.3(a), and CEQA Guidelines § 15063(g). Consultation means the “meaningful and timely process of seeking, discussing, and considering carefully the views of others[.]” (See e.g., Gov’t. Code, § 65352.4.) Thus, consultation is more than just sending a piece of paper to the State Clearinghouse. Here, there is no evidence that the County has consulted with the CDFW on this proposed Project, especially with respect to biological impacts relating to wildlife that are of concern to the CDFW as noted above. It turns out that there was a site visit to Modoc Preserve by two CDFW biologists on October 3, 2022...and, a comment letter sent to the County October 12, 2022... The CDFW (California Department of Fish & Wildlife) comment letter notes a number of issues with the revised MND after the site visit by the two CDFW biologists on October 3, 2022 and despite their concerns and findings that the revised MND was incomplete, County staff states that “*further coordination is not required*”...

Here is the County staff response to this regulatory California State agency. *The Revised MND was uploaded to the State Clearinghouse and provided to the California Department of Fish and Wildlife (CDFW) for review and comment. This is the standard and currently required practice for all CEQA documents, and further coordination is not required. However, County staff met with CDFW representatives Sarah Rains and Kelly Schmoker at the site on October 3, 2022 to discuss their concerns. CDFW provided a comment letter dated October 12, 2022 which is addressed in the response to comments attached to the Final MND. Notably CDFW findings that: <https://drive.google.com/drive/folders/1FZeGVuZAYXpG4GAXDnJSL4BIGnUNy11?usp=sharing> Please review Pages 3-5 in above link to the CDFW comment letter: **1.) Streams...** Comment #1: Impacts to Riparian Resources*

Issue: CDFW has determined that streams, including the drainage ditch identified in the DNMD, subject to Fish and Game Code, section 1600 et seq. may be impacted by the proposed Project.

Specific Impact: The DMND states the Project could result in impacts to streams due to the need to realign a drainage ditch and associated culvert features. County staff comments by arguing with CDFW about the definition of a stream...

2.) Bats

Please review Pages 5-7 of the CDFW comment letter: Issue: Several species of bats have the potential to occur in the Canary Island palm trees,

coast live oak trees, and other non-native trees proposed for removal. **Adequate surveys to detect potential year-round roosting use were not conducted prior to circulation of the DMND to determine if bats currently the trees flagged for removal, for roosting. Therefore, the DMND does not adequately describe the potential for impacts to bats.**

Visual inspections commonly fail to capture bats occupying the site. Single point in time, daytime visual surveys are not appropriate to capture winter roosting/hibernacula, summer roosting, and maternity roosting of the site.

CEQA Guidelines section 15070 and section 15071 require the document to analyze if the Project may have a significant effect on the environment as well as review if the Project will 'avoid the effect or mitigate to a point where clearly no significant effects would occur'. Relying on future surveys, the preparation of future management plans, moving out of harm's way, or mitigating by obtaining permits from CDFW are considered deferred mitigation under CEQA. In order to analyze if a project may have a significant effect on the environment, the Project related impacts, including survey results for species that occur in the entire Project footprint, need to be disclosed during the public comment period. This information is necessary to allow CDFW to comment on alternatives to avoid impacts, as well as to assess the significance of the specific impact relative to the species (e.g., current range, distribution, population trends, and connectivity).

Absent the above requested information, the DMND does not analyze impacts to bats, and the DMND does not provide any alternatives discussion or any avoidance strategies to mitigate the loss of occupied bat habitat. County staff argues that there are no bats...even though residents have seen them for decades...County staff completely blows off CDFW recommendations of even doing a bat survey by a qualified expert. *As noted in Table 7 of the Revised MND, bats have not been reported near the project site. As stated on page 37 of the Revised MND, suitable habitat for bats does not occur near the project site. Trees to be removed do not provide roosting bat habitat, including the eight bat species listed in this comment. Since suitable habitat is not present, bat surveys are not needed. As bats would not be affected, mitigation is also not required.*

3.) Woodpecker and palm removal
Issue: During a site visit, **CDFW staff noted acorn woodpecker (*Melanerpes formicivorus*) nesting cavities and granaries in all the Canary Island palm trees slated for removal.**

Additionally, other bird species were observed entering and exiting large holes in the Canary Island palm trees.

Specific Impact: The loss of habitat for acorn woodpecker and other bird species utilizing the Canary Island palm trees for shelter, refuge, and food storage should be addressed in the DMND.

Why Impact Would Occur: Acorn woodpeckers work together to maintain and defend their acorn store. Granaries and nesting cavities are maintained for several generations. Removal of 29 Canary Island Palm Trees that are being utilized as granaries could result in a significant loss of habitat and forage for many acorn woodpeckers. Removal of coast live oak trees would further limit the availability of acorns in the preserve.

Evidence Impact would be significant: Project activities occurring during the breeding season of nesting birds could result in the incidental loss of fertile eggs, or nestlings, or otherwise lead to nest abandonment in trees directly adjacent to the Project boundary. The Project could also lead to the loss of foraging habitat for sensitive bird species. Here is the County staff response to CDFW biologist's concerns:

5. Acorn woodpeckers are very common in the region and the loss of a few granary trees is not anticipated to affect the local population. Implementation of Mitigation Measure BIO-2 would avoid active bird nests and minimize impacts to migratory birds. No additional mitigation is needed.

Please see Pages 10-15 CDFW recommendations: Attachment A: Draft Mitigation and Monitoring Reporting Plan

CDFW recommends the following language to be incorporated into a future environmental document for the Project. A final MMRP shall reflect results following additional plant and wildlife surveys and the Project's final on and/or off-site mitigation plans.

Here is County staff response to CDFW:

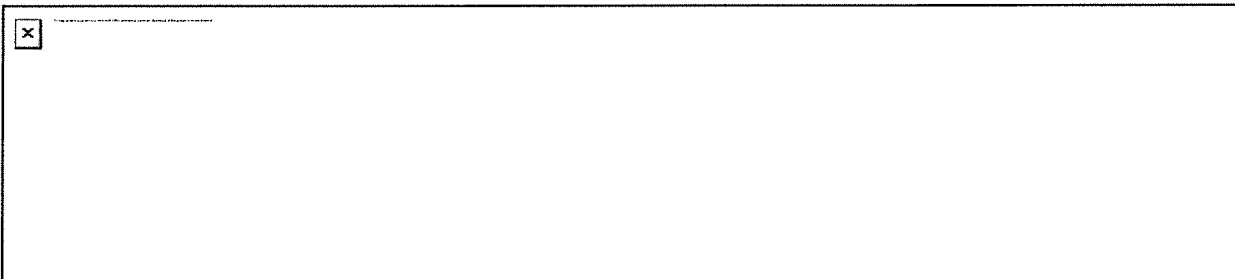
8. A future environmental document is not planned, the Revised MND adequately addresses impacts to biological resources and provides suitable mitigation measures. They basically wave a magic wand and make all of the challenges go away by simply saying that they don't plan on addressing any of the environmental or legal challenges that have been provided during the 30 day public comment period.

This tepid, underwhelming, response doesn't even meet the low expectation of fairness...much less withstand rigorous legal and biological and scientific review by experts...and, easily provides the grounds for which it can be challenged in court by litigation. We appeal once again...please preserve the Preserve for this and future generations to enjoy as undeveloped open space as it was intended when the Conservation Deed was signed in 1999.

Permitted uses in the Modoc Preserve are open space, equestrian, pedestrian, education, and water company uses...

Please reference Permitted Uses Page 3 of 1999 Deed of Conservation Easement:

<https://drive.google.com/file/d/1P4aCTXMO3CzpX1NCa8Nd4dU8LEHo5VcN/view?usp=sharing>



Please reference Prohibited Uses Page 4 & Page 5 of the 1999 Conservation Deed:

No roads or structures are allowed...

Building the 14' wide MUP road, whether it is made of pervious or impervious asphalt, is still a road building project using road building materials incapable of sustaining plant life. **Road construction for anything other than water company access is not allowed in the Preserve.**

The County staff has recommended that Alignment B be approved. CAMP opposes both Alignment A and Alignment B as set forth in the Revised MND dated September 8, 2022, and requests that SB County Public Works place the entire Multi-Use Path (MUP) up onto Modoc Road or let the ATP grant expire so that these funds can be used where they are most needed to increase bike safety in Santa Barbara County. We ask that you and your fellow Board of Supervisors Vote No on Alignments A and B on November 1 or at a minimum, adopt a motion to require a full EIR for the Modoc Road MUP project before proceeding. Respectfully submitted, Warm regards,

Warren & Deb Thomas
Co-Founders CAMP (Community Association for the Modoc Preserve)
<https://modocpreserve.com>

<https://www.facebook.com/modocpreserve>
<https://www.instagram.com/modocpreserve>



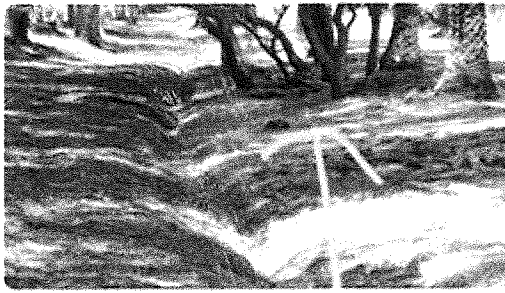
<https://www.twitter.com/modocpreserve>
Preserve the Preserve



Frank Arredondo · Marketplace



Shelly the eucalyptus trees to be removed..



1 hr ago · Like · Reply · Share



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Shelly plan A does not remove any palm trees. It requires restriping the roadway moving traffic away from the bike path. It will require a wall to be placed in. No palms removed.

1 hr ago · Like · Reply · Share



Deb Thomas · Friends



Shelly Cobb: Ooops! , someone is using a yellow arrow in their pic to indicate NATIVE OAKS to be removed as non-native eucalyptus..

Golly gee! Isn't that another problem for Alignment A? County ordinance about removing oak trees or something? Oh well..I guess if they go with alignment A down the palm row, someone will get some nice chunks of oak firewood...:-)

We pointed the oaks out to Meredith Hendricks the other day on our walkabout..she also didn't like the idea of that drainage being messed with..I think it says something in the Deed of Conservation about that...or, the drip lines of the trees...compaction of soil..etc...tricky area it is indeed...:-) (edited)



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Deb: yes. I admit I posted those as the 3 eucalyptus trees. I did not look that closely at the photo I posted. I was using the county plans from aug 11 that indicate those as eucalyptus trees. I stand corrected. I have no problem admitting when I am wrong. Hopefully others can learn from my example.

1 hr ago · Like · Reply · Share

