

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
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Agenda Number:
Prepared on: 1/12/05
Department Name: County Counsel/CEO
Department No.: 013
Agenda Date: 1/24/05
Placement: Departmental
Estimate Time: 1 hr. 15 min.
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Michael F. Brown, Chief Executive Officer
Shane Stark, County Counsel
William D. Gillette, Agricultural Commissioner

STAFF CONTACT: Alan Seltzer, Chief Assistant County Counsel
Lisa Bodrogi, Agricultural Land Use Planner
Lottie Martin, Oak Tree Specialist

SUBJECT: Consideration of Oak Tree Revisions and Agricultural Study

Recommendation(s):

That the Board of Supervisors:

- 1) Approve revisions to the text amendments initiated July 26, 2005, to the Oak Tree Protection and Regeneration Ordinance (Article IX of Chapter 35 of the County Code);
- 2) Retain previous Board initiation of amendments to the the Oak Tree Protection and Regeneration Ordinance (Article IX of Chapter 35 of the County Code) and Grading Ordinance (Chapter 14) 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 the Oak Tree Protection and Regeneration Ordinance.
- 3) Authorize and approve funding of an Agricultural Resources/Baseline Condition Study describing baseline conditions, threats, and impacts to agriculture that can be incorporated into program and project EIRs concerning agriculture, including proposed revisions to the County's Grading Ordinance.
- 4) Authorize 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 1); 2); and 3) 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:

Summary Discussion of Item 1):

Subsequent to the initiation of the changes to the Oak Tree Protection Program and Grading Ordinances in July 2005, revisions to the Oak Tree Protection and Regeneration Ordinance (Article IX of Chapter 35 of the County Code) have been requested through a Memorandum of Understanding between the County and the Center for Environmental Equality, Santa Barbara County Cattleman's Association, and Coalition of Labor, Agriculture, and Business (MOU); and separately by the Environmental Defense Center (EDC); by the Agricultural Advisory Committee (AAC) and the Oak Tree Specialist.

These changes are contained within Attachment A of this report and are made to Division 1 Definitions (Section 35-906); Division 2 Regulations; and Appendix A – Guidelines for Native Oak Tree Removal. The original changes initiated in July 2005 are reflected by track changes. The updated changes, dated January 2006, that are subsequent to the initiated ordinance are highlighted. A summary of the changes within each sections follows:

Division 1. Definitions:

Terms presently defined but amended:

EXEMPT OAK TREE – Oak trees that are below protected size as herein defined, are voluntarily planted, or naturally occurring seedlings or volunteers that are nurtured for purposes other than mitigation after January 1, 2005, are exempted from protection under this Article.

PROTECTED OAK TREE – A deciduous oak tree four inches or greater in diameter at breast height and a live oak tree eight inches or greater at breast height. Trees that are voluntarily planted, or naturally occurring seedlings that are nurtured for purposes other than mitigation after January 1, 2005, are not considered protected for the purposes of this Article unless credited as pre-mitigation. Replacement trees required as mitigation under Tiers 2, 3 and 4 of this Program, as described in Appendix A to this Article, are protected regardless of size.

These definitions reflect the MOU which requests 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 “began growing after January 1, 2005” are exempt from the Oak Tree Program.

NURTURE – To promote the growth of a tree through means such as watering, weeding, fertilizing or protecting. Protecting may include physically protecting seedlings and/or managing livestock densities and grazing seasons.

Updated at the request of the AAC made at their January 4th, 2006 meeting that managing grazing patterns be considered as a form of nurturing. Managing livestock densities and grazing seasons constitutes nurturing because it represents a conscious effort to employ proper rangeland management practices that promotes the growth of a seedling to the protected height and diameter. The proposed definition of nurture provided herein is based on the study conclusions of Douglas McCreary and Mel George of the California UC Sierra Foothill Research and Extension Center.

New terms defined to provide greater clarification to the ordinance:

NURSERY - Plot of ground where nursery stock is propagated, grown or cultivated for future transplantation.

Added at the request of the Oak Tree Specialist to clarify that “nursery stock” need not be grown commercially. The definition was obtained using an online dictionary.

MITIGATION – A process of minimizing or compensating for damages to Native Oak Trees, caused by human developments. These activities are designed to decrease the degree of damage and may include restoration, enhancement, replacement, compensation or any other prescribed means.

MITIGATION NURTURING – A prescribed plan for the planting and care of trees planted for mitigation purposes.

Added at the request of EDC to clarify the term “Mitigation Nurturing.” EDC asked for clarification of nurturing as a result of mitigation vs. general nurturing. The definitions were obtained using an online dictionary.

PRE-MITIGATION – Tree protection or improvement actions taken expressly for the purpose of compensating for unavoidable, necessary losses from specific future development actions.

Added at the request of EDC. Definition obtained using an online dictionary.

Division 2. Regulations:

Changes to Division 2 Regulations have been made at the request of the Oak Tree Specialist to bring clarity to the sections of the Guidelines that pertain to coast live oak versus deciduous trees. The intent of these changes is simply to assist users of the document, whether the Oak Tree Specialist, County Planners, or the general public in directing the user to the appropriate section of the document.

Updated changes to Appendix A: Guidelines for Native Oak Tree Removal

Based upon the revisions to the definition for “protected tree” Section III Program Basics Items B and C pertaining to the Deciduous Oak and Live Oak Program has been changed. This change clarifies protected trees are determined by nuturing methods rather than timing (previously referred to “when they began growing”).)

Changes have been made to Attachment 1 and 3 to remove the specific reference to fencing. This change provides greater flexibility to the Oak Tree Specialist in determining appropriate protection methods.

To address the request in the MOU stating: “clarify that EIR text does not have 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 that regeneration of oak trees and do not protect oak habitats or other habitats”, the term “habitat” contained within Attachment 2 of Appendix A has been removed.

It should also be noted that the Agricultural Advisory Committee at their January 4th, 2006 meeting requested that live oaks be omitted from Oak Tree Protection and Regeneration Ordinance (Article IX of Chapter 35 of the County Code). Changes have not been made to the ordinance to reflect this request.

Summary Discussion of Item 2):

The “Program Clean-Up Items” and revisions to the existing Grading Ordinance to remove Appendix A and move it to a separate Chapter of the County Code were included in the initiation adopted by the Board of Supervisors last July. The previously identified “program clean-up items” are as follows:

1. Update the definition of “protected tree” in Article IX to exempt voluntarily planted trees;
2. Add reference to Article IV and Ordinance 661 in Section I.C. of the Guidelines for Native Oak Tree Removal;
3. Add Mountainous Toro Canyon (MT-TORO) to the list of zone districts to which the Oak Tree Protection and Regeneration Program applies;
4. Adopt a fee for projects requiring a discretionary oak tree removal permit under Article IX Decidious Oak Tree Protection and Regeneration; and,
5. Change from dripline to critical root zone when discussing buffer areas and protected trees.

As such no other changes are proposed to the Grading Ordinance or Oak Tree Protection Program as a result of the MOU. Initiation of the proposed revisions addressed in this staff report along with the previously initiated changes will allow the combined changes to proceed through environmental review and adoption.

Summary Discussion of Item 3):

The Memorandum of Understanding requests the authorization and approval of funding of an Agricultural Resources/Baseline Condition Study describing baseline conditions, threats, and impacts to agriculture that can be incorporated into program and project EIRs concerning agriculture, including proposed revisions to the County's Grading Ordinance. The CEO and AAC shall scope, prepare, and direct the study for the County. The Study is to be completed by January 1, 2007, and thus will be undertaken during the current and following fiscal year. Funding (up to \$100,000) shall come immediately from money appropriated to the Agricultural Commissioner for fiscal year 05/06. Additional funding, if required, shall be identified in the fiscal year 06/07 budget.

Summary Discussion of Item 4):

A copy of the Memorandum of Understanding between the County and the Center for Environmental Equality, Santa Barbara County Cattleman's Association, and Coalition of Labor, Agriculture, and Business is attached for your review and consideration prior to execution.

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.

Attachments:

- A) Oak Tree Protection and Regeneration Program
- B) Grading Ordinance
- C) MOU