

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
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TO: Board of Supervisors

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SUBJECT: Report on the status of Oak Tree Protection and Regeneration Program

Recommendations:

1. That the Board of Supervisors receive the status report on the Oak Tree Protection and Regeneration Program;
2. Direct staff to take actions required to incorporate any clean-up items recommended by your Board; and
3. Provide staff with direction as appropriate.

Alignment with Board Strategic Plan:

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

- An Efficient Government Able to Respond Effectively to the Needs of the Community
- A Community that is Economically Vital and Sustainable.
- A High Quality of Life for All Residents

Executive Summary and Discussion:

On April 22, 2003, the Board of Supervisors adopted the Oak Tree Protection and Regeneration Program to primarily address removals of deciduous and live oak trees on agricultural and mountainous land in the inland rural areas of the County. One of the components of the program is a review system, whereby the Board of Supervisors would be periodically updated on the status of the program, its effectiveness, and its impact on oak tree habitat in the project area. The first review was slated for two years from the date of adoption. This hearing serves as that preliminary program review.

The status report focuses on the following issues:

- A brief overview of the history of the Oak Tree Protection and Regeneration Program, including program alternatives analyzed in the EIR and the formation and work of the Oak Working Group;
- Effect of the program to date and the number of oak removals subject to the program;
- Voluntary oak tree protection and planting, including implementation of the voluntary California Oak Woodlands Conservation Program;
- Clean up items recommended to provide additional clarity and consistency between implementing documents.

I. PROGRAM BACKGROUND

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. Upon direction from the Board of Supervisors, Planning and Development staff began working with the public to develop a program for oak protection in the rural areas of the County. The effort began with the Oak Protection Collaborative Process made up of the environmental and agricultural communities, which met 16 times over more than 14 months between 1998 and 1999 and ended with agreement on general principles but did not reach agreement on how to regulate oak removal. In September of 1999, the Board of Supervisors directed P&D to hold further workshops and to develop a regulatory program based on the principles and goals of the Collaborative Process. After the workshops and further refinement of the program, an environmental impact report (EIR) was prepared. It analyzed the potential impacts of the proposed program and a range of alternatives on biological, agricultural and other resources.

From May 14 to July 16, 2001, the proposed Oak Tree Protection Program (Alternative 6 in the EIR) was considered by the County Planning Commission in five hearings. On July 16, the Planning Commission voted to recommend the Program to the Board of Supervisors, with some modifications.

In September of 2001, the Board of Supervisors directed staff to postpone hearings on the Planning Commission recommendation to allow the Rural Resource Protection Program Technical Advisory Committee (TAC) an opportunity to incorporate oak protection into their

emerging “two-track” program. The TAC, made up of representatives from agriculture and experts in resource sciences, was formed by the Board in late 2000 to assist the County in the development of a regulatory program to protect natural (wetlands, riparian corridors, and sensitive species) and cultural resources in inland agricultural areas of the County. In the course of the TAC meetings, a two-track system was formulated where landowners with identified resources on their property wishing to expand their agricultural operations could either choose a regulatory permit track or a no-permit management plan exemption. It was envisioned that oak protection could fit neatly into this two-track approach. However, with the dissolution of the TAC, staff returned to the Board of Supervisors again on April 9, 2002 for direction.

At the April 2002 hearing, the Agricultural Advisory Committee (AAC) submitted a memo to the Board that outlined a concept for a voluntary program for live oaks and recommended that the Grading Ordinance continue to be used to regulate deciduous oak removal that results in a “significant environmental impact.” They also indicated that they had been working with environmental groups to develop a program that would be acceptable to both the agricultural and environmental communities. This collaborative effort began the work of what was later referred to as the Oak Working Group. It was made up of three members from the agricultural community and three members from the environmental community.

On April 9th the Board with a 5-0 vote 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 Oaks Protection Program.

“Further directed staff 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.”

From April 2002 until final adoption of the Oak Tree Protection and Regeneration Program on April 22, 2003, the Oak Working Group met regularly to discuss options for an oak protection program that would be acceptable to both the agricultural and environmental communities. The group broadened its focus to address both deciduous oaks and live oaks in an effort to develop a program that was more acceptable to the agricultural community. In doing so, each side made concessions in order to reach consensus on a collaborative program that combined regulatory and voluntary components into a single program. While the program was less restrictive than that which was originally recommended by the Planning Commission, it was recognized that the best chance for success of the program would be found in a compromise approach. The final program was approved by the Agricultural Advisory Committee, which voted unanimously to support the valley oak portion of the program at their October 9, 2002 meeting and at their

January 15, 2003 meeting voted 8 to 1 in support of the live and blue oak portion of the program.

II. ENVIRONMENTAL REVIEW

The Environmental Impact Report for the Oak Protection Program (00-EIR-7) analyzed six alternatives in addition to the original proposed project. The Oak Tree Protection and Regeneration Program that was developed by the Oak Working Group was not included in the initial EIR analysis, as it was not introduced until after the document was prepared. It was subsequently analyzed in a revision to the EIR (00-EIR-7 RV1). The original proposed project consisted of a three-tiered structure conceived by the Collaborative Process, in which a certain number of oak trees could be removed without permits and replacement requirements (Tier 1), a certain level above that could be removed with a non-discretionary permit and replacement plantings (Tier 2), and removals beyond that level would require a discretionary permit with environmental review and customized mitigation measures (Tier 3). The original proposed project included a 50-year removal tracking period, during which time removals are counted cumulatively, replacement ratios of 15:1 for deciduous oaks and 10:1 for coast live oaks, and defined “protected” trees as 4 inches diameter at breast height (dbh) for deciduous oaks and 8 inches dbh for coast live oaks. Additionally, the original proposed project consisted of Comprehensive Plan amendments primarily in the form of new goals, policies, development standards, and actions added to the Conservation Element calling out the importance of oak trees and providing protection for oak trees associated with development projects.

The following is a brief description of each of the alternatives that were analyzed in the EIR and how they generally compare to the original proposed project.

- Alternative 1 - No Project: No new oak tree protection policies or regulations; continued use of the Grading Ordinance on a case by case basis.
- Alternative 2 - Voluntary Guidelines: No new oak tree protection policies or regulations; voluntary guidelines for oak protection, enhancement and regeneration would be made available to the public.
- Alternative 3 - High Land Use Flexibility: A three-tiered structure, with more permissive removal thresholds, lower replacement ratios, shorter tracking period, and a more lenient definition of “protected tree” relative to the proposed project; included the proposed Comprehensive Plan amendments.
- Alternative 4 - Low Removal Thresholds: A three-tiered structure, with a longer tracking period, and more restrictive removal thresholds and definition of “protected tree” relative to the proposed project; included the proposed Comprehensive Plan amendments.
- Alternative 5 - Canopy Retention – Removal thresholds based on the percent of canopy removed, rather than the number of trees; included the proposed Comprehensive Plan amendments.
- Alternative 6 - High Protection for Deciduous Oak Trees: A three-tiered structure with stricter thresholds for deciduous oaks relative to the proposed project, with removals tracked for the life of the ordinance; protection for live oaks would be similar to the proposed

project; included the proposed Comprehensive Plan amendments; became the Planning Commission-recommended program.

III. OAK WORKING GROUP PROGRAM

The Oak Working Group's Oak Tree Protection and Regeneration Program, which comprised the final program adopted by the Board of Supervisors, combined aspects from several of the alternatives analyzed in the EIR, along with several innovative features, in order to develop a program that could receive support from both the agricultural and environmental communities. The regulatory programs analyzed as alternatives in the EIR were based on a three-tiered structure that was conceived during the initial Collaborative Process. Under the original project description, removals under the first tier would be exempt from any requirements, removals under the second tier would require a non-discretionary permit and replanting according to set standards, and removals under the third tier would require a discretionary permit.

The program developed by the Oak Working Group uses a similar tiered structure, but varies it depending on the type of removal (i.e. agricultural or non-agricultural) and tree removed (i.e. deciduous or live oak), such that there are stricter standards for non-agricultural removals and significantly more lenient requirements for live oaks than deciduous oaks.

Program Components

The Oak Working Group's program, in contrast to other regulatory alternatives that were reviewed, minimized permit requirements associated with oak tree removal in order to be less burdensome on landowners. The basic components of the plan are:

- The tiered approach for deciduous oak removals for agricultural purposes reduces the permitting requirements by replacing the non-discretionary permit tier with a landowner regeneration requirement and significantly increasing the removal thresholds that trigger a discretionary permit.
- This is balanced by including an additional tier in which a management plan with replanting is required from the Agricultural Commissioner, though without the burden of obtaining a permit.
- The live oak tree removal structure has been greatly simplified by reducing the tiers to two and removing permit requirements altogether, such that removals under the first tier are exempt and removals under the second tier require a management plan and replacement planting.
- In addition, the group addressed issues related to voluntarily planted trees and identifying mature trees as a liability.

In regards to voluntarily planted oak trees, the program specifically exempts these trees from being considered "protected" and therefore allows for their later removal without counting towards the removal thresholds or triggering any replanting or mitigation requirement. The program also exempts the thinning of live oak woodlands and forests for rangeland

management/improvement. Thinning 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).”

One of the concerns often expressed by landowners is that the program makes oak trees a liability for landowners and encourages the removal of seedlings and saplings before they become “protected” trees. The Oak Working Group’s program attempts to address this by encouraging the use of naturally-occurring seedlings and saplings to meet the replanting requirements triggered when the removal of protected trees exceeds the established thresholds. It was hoped that this feature would help to reduce the incentive to remove seedlings and saplings before they reach protected size, by placing an emphasis on protecting what exists rather than having to plant new trees that may have a lower likelihood of reaching maturity. Additionally, the established thresholds for removal are such that, depending on the parcel size, a large number of protected trees can be removed during the 30-year tracking period before any mitigation other than landowner self-regeneration is required. For example, on a 200-acre parcel, the landowner can remove up to 16 mature deciduous oak trees before a management plan overseen by the Agricultural Commissioner is required, and up to 42 mature deciduous oak trees before a discretionary permit is required. The allowances are significantly more lenient with respect to live oak trees, where a landowner can remove up to 15% of the live oak canopy before any mitigation is required. Lastly, the program encourages pre-mitigation for deciduous oak trees, whereby the removal thresholds are increased if a landowner either plants trees ahead of time or nurtures existing seedlings and saplings. Under this provision, the replacement ratios are reduced from 15:1 to 10:1, so for every 10 trees that are planted or nurtured for at least 5 years, one additional deciduous oak tree of the same species can be removed under the established thresholds. By reducing the replacement ratios, this provides landowners with an incentive to plant trees or protect existing trees prior to anticipated removals.

In addition to these concerns, one issue that has been raised is the exemption in the program for oak tree removals by the County of Santa Barbara. The County exercises the police power and, outside the Coastal Zone where state law requires the County and other governmental agencies to obtain coastal permits, the County may exempt itself from its inland land use regulations. Thus, section 35-903 of Article IX states that “the provisions of this article do not apply to removal of deciduous oak trees...by the County of Santa Barbara or any district of which the Board of Supervisors is the governing body.” This is consistent with the exemption in the Article III Inland Zoning Ordinance itself, which provides at Section 35-201.2 that the Zoning Ordinance does not apply to “development by the County of Santa Barbara or any district of which the Board of Supervisors is the governing body.” Similarly, section 14-6(a) of the Grading Ordinance makes the grading regulations applicable only to privately owned land.

Program Administration

The Oak Working Group also addressed how the program would be administered. The Group set out the following:

- Identified the Agricultural Commissioner as the administering agency in all cases except for when a discretionary permit is required.
- Created an Oak Tree Specialist position in the Agricultural Commissioner's Office to oversee the program, work with landowners in developing mitigation schemes, and encourage voluntary protection and regeneration efforts.
- The program involves Planning and Development in limited capacities, including:
 - conducting site inspections by grading inspectors in response to neighbor complaints (in which the inspector would report any removals to the Agricultural Commissioner's Office);
 - supporting the Agricultural Commissioner's Office through investigating documented removals and monitoring the effectiveness of the program through aerial photo interpretation;
 - processing permits under the requirements of Article IX of the County Code when removals of deciduous oak trees trigger the requirement for a discretionary permit.

IV. PROGRAM STATUS AND EFFECTIVENESS

Since adoption of the Oak Tree Protection and Regeneration Program two years ago, there has not been much activity in terms of removals. To date, no agricultural projects involving oak tree removal that have been brought to our attention have required any replacement planting, management plans, or discretionary permits as set forth in the program. This is likely attributable to two factors: 1) the pace and level of agricultural conversions from open space/grazing land to intensive cultivation has slowed significantly over the last two years relative to the previous five years in which the County was experiencing significant conversion from open land to cultivated land, especially for vineyards; and 2) the removal thresholds are such that most routine agricultural expansions and operations are exempt from the program, especially in the case of live oaks where the threshold is quite high before any mitigation is required.

While the Agricultural Commissioner's Office is the administering agency for the bulk of the program, it has been unable to hire an "Oak Tree Specialist" due to budgetary constraints, which the Oak Working Group's program identified as the individual responsible for overseeing the program, working with landowners, and conducting education and outreach activities. In lieu of filling the position, the Agricultural Commissioner's Office has been working together with Planning and Development staff to implement the program. This has primarily taken the form of responding to inquiries, providing information to the public, and investigating claims of oak removals.

There have been only two cases brought to the attention of Planning and Development and the Agricultural Commissioner's Office in which farmers were planning on removing oak trees as part of an agricultural project. In both cases the trees in question were coast live oaks and the

number of trees proposed for removal were well below the thresholds triggering mitigation. And in both cases, the landowner voluntarily called the department for information prior to the removal, rather than after the fact. There was a recent third case in which a neighbor filed a complaint with Planning and Development regarding oak tree removals. Investigation into the complaint identified a number of live oak trees of protected size that had been removed. However, the number of trees was less than 15% of the total oak tree canopy on the property, so no mitigation requirements were triggered. Staff estimates that these three projects resulted in the removal of approximately 70 to 80 mature live oak trees.

Several additional phone call inquiries have been received by Planning and Development and the Agricultural Commissioner's Office, primarily from landowners wanting to know how the program impacts them. In most cases the land in question was residentially zoned so it was explained that the program did not apply. Most recently, a landowner on agriculturally-zoned land in Los Olivos called to ask if he could remove an oak tree in his front yard that had been partially blown over in the recent storms and was posing a safety hazard. In accordance with the program's definition of removal, it was explained that removals in such circumstances were exempt and would not require any type of mitigation.

The program's apparent lack of activity in the last two years could signal that either: 1) the program is working as it was designed, in that it was developed to provide landowners with flexibility and allow them to engage in their normal agricultural activities without being overly hindered, while at the same time having sufficient restrictions in place to prevent more significant levels of oak tree removals from occurring without some level of mitigation and oversight; or 2) landowners are not expanding their agricultural operations due to either market forces or the presence of the program and the costs associated with mitigating oak removals. In addition, an unintended consequence of the program that some have cited is that landowners are not voluntarily planting oak trees and are removing oak seedlings in order to avoid future regulation under the program. It is difficult to draw more concrete conclusions at this early stage of program implementation. Additional time and study is necessary to effectively evaluate the program's impacts on both landowners and the County's oak resources, and whether or not it is achieving the dual goals of oak regeneration and protection.

V. VOLUNTARY PROGRAMS

The California Oak Woodlands Conservation Act of 2001 established the Oak Woodlands Conservation Program, to be administered by the Wildlife Conservation Board, and appropriated \$10 million for the long term voluntary protection and restoration of oak woodlands throughout California. In order to qualify for the funds, the Act requires that local jurisdictions adopt an Oak Woodlands Management Plan in the form of a resolution.

The Oak Protection and Regeneration Program satisfies the requirements of the management plan and on June 1, 2004, the Board of Supervisors adopted the Resolution (#04-157), which allows private landowners, local government entities, and non-governmental organizations within the County to submit grant proposals to the Wildlife Conservation Board. This presents

an excellent opportunity to expand the voluntary incentives available for landowners in the County to protect and restore native oak woodlands. Santa Barbara County is one of only a handful of jurisdictions to become eligible for the grant funding. The County's Oak Tree Protection and Regeneration Program specifically exempts voluntarily planted trees from being considered "protected" trees, which means they can be removed at any time without triggering any mitigation requirement. Therefore, the two programs complement each other and provide landowners with an opportunity to enhance or restore oak resources on their property without having to worry about future regulatory implications.

Unfortunately not many people are aware of this opportunity, so no applications for grant funding have been submitted to date. County staff is currently working with one landowner to develop an oak enhancement and restoration proposal for submittal to the Wildlife Conservation Board. According to the program manager at the Wildlife Conservation Board, the Board is very interested in seeing some of the money go towards projects in Santa Barbara County.

In addition to the Oak Woodlands Conservation Program, during adoption of the County's Oak Tree Protection and Regeneration Program, the Board of Supervisors appropriated \$75,000 for an incentive fund to support voluntary oak protection or restoration projects. This money is still identified in the County's budget, though its future is uncertain given the current budget constraints. None of the money has been allocated to date. This is partly due to the lack of an "Oak Tree Specialist" who could engage in outreach and education efforts to inform landowners of the funding opportunities available to them.

Lastly, Planning and Development has previously funded some voluntary oak tree planting and restoration projects through interest accrued from the existing Planning and Development mitigation trust fund (#1392), collected from a variety of projects as mitigation for various biological impacts and for open space monitoring. In 1998 the Board of Supervisors approved close to \$5,000 to fund a pilot oak restoration project on a Santa Ynez Valley cattle ranch, the goal of which was to plant 200 valley oak seedlings to offset the lack of natural regeneration. Monitoring reports have indicated that the project has been successful, with high survival rates. Then in 2000, the Board of Supervisors allocated \$5,000 to fund a native oak planting and valley oak woodland restoration project with educational components at the Dunn School in Los Olivos, in which approximately 100 native oak seedlings and 500 native understory plants were planted in a seven-acre area of the campus. This project has also seen positive results.

Through the use of these funding mechanisms, the County could strengthen the voluntary incentive-based opportunities for oak tree protection and regeneration.

VI. PROGRAM CLEAN-UP ITEMS

Since adoption of the Oak Tree Protection and Regeneration Program, several items have been identified by County staff and interested parties that need to be added or amended in order to ensure clear and consistent implementation of the program. These items were part of the original

intent of the program, but were simply inadvertently left out or not made explicit enough. Below is a list of the clean-up items that have been identified to date:

1. Update the definition of “protected tree” in Article IX to exempt voluntarily planted trees: this exemption is included in the Grading Ordinance Guidelines for Native Oak Tree Removal, but was inadvertently left out of Article IX. The ordinances should be very clear that voluntarily planted trees are exempt under the program.
2. Add reference to Article IV and Ordinance 661 in Section I.C. of the Grading Ordinance Guidelines for Native Oak Tree Removal: the current guidelines only refer to the development permit process set forth in Article III, whereas the same would apply to Article IV and Ordinance 661 as well.
3. Add Mountainous Toro Canyon (MT-TORO) to the list of zone districts to which the Oak Tree Protection and Regeneration Program applies: the Grading Ordinance and Article IX currently only list Mountainous Goleta, but the intent was that the program applies to all mountainous zone districts. MT-TORO was added through the Toro Canyon Plan after the Oak Tree Protection and Regeneration Program was adopted.
4. Adopt a fee for projects requiring a discretionary oak tree removal permit under Article IX Deciduous Oak Tree Protection and Regeneration. Staff anticipates that a fee schedule similar to that required for a major conditional use permit is appropriate.
5. Change from dripline to critical root zone: the program uses both the dripline and the critical root zone of a tree when discussing buffer areas around protected trees; the program should consistently refer to the critical root zone to ensure consistency throughout the program in terms of our handling of oak trees, especially since the critical root zone has become the more industry-accepted measure for identifying buffer areas.

Mandates and Service Levels:

The two-year status report on the Oak Tree Protection and Regeneration Program is not mandated by state law, but it is identified as a program component in the County’s Grading Ordinance and Article IX of Chapter 35 of the Santa Barbara County Code. Development of this status report will not affect service levels of either the Agricultural Commissioner’s Office or Planning and Development.

Fiscal and Facilities Impacts:

Work on the periodic status reports for the Oak Tree Program and Regeneration Program will not require the augmentation of the Agricultural Commissioner’s or Planning and Development’s budgets with additional funds. Development of the first status report and initial monitoring of the effectiveness of the program was anticipated in Planning and Development’s budget as identified on page D-286 of the County budget book. Additional direction from your Board

regarding program changes is not currently planned for in Planning and Development's budget, and is therefore not funded. Long term implementation and monitoring is the responsibility of the "Oak Tree Specialist" position located in the Agricultural Commissioner's Office. However, this position has remained unfilled due to budget constraints. The position is unfunded in the submitted budget for the 2005-2006 fiscal year. Without funding, the Agricultural Commissioner's Office will not have the staffing or budget to fully implement the program, prepare future status reports, or monitor the effectiveness or impact of the program.

Special Instructions:

Clerk of the Board is to be responsible for legal noticing of this agenda item.

Concurrence: N/A