

Tom Infusino

From: Tom Infusino <tomi@volcano.net>
Sent: Wednesday, January 10, 2024 5:17 PM
To: 'Nate Berner'
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Subject: RE: Oak Ordinance Comments, on Hardwood Advisory Committee Agenda for 1-11-24

1-10-24

Dear Hardwood Advisory Committee,

Thank you for your work on the oak ordinance. As you know, CPC members have expressed many concerns about the proposed oak ordinance in past communications. You have exercised your discretion regarding those concerns. The version of the ordinance presented to the Board of Supervisors in November reflects this.

Nevertheless, there remain two issues which the proposed draft oak ordinance does not sufficiently address as directed by the 2019 General Plan. These issues are mitigating oak woodland impacts using locations in Calaveras County, and identifying penalties for the premature removal of oaks without authorization. We hope that you will address these issues before sending the draft ordinance to the Planning Commission.

1) Please ensure that mitigation is secured on lands in Calaveras County.

The biggest problem with the oak ordinance is that it continues to allow developers to simply contribute to the Oak Woodlands Conservation Fund, which is administered by the State's Wildlife Conservation Board, which is prohibited from using funds to mitigate the impacts of the project which generated them. In other words, any mitigation money paid by project developers would not be used to protect that project's oaks or any other oak woodlands in the county. Instead, local mitigation money (in the form of grants) would pay to preserve oaks or provide planning grants elsewhere in the state. In addition, this makes the draft oak ordinance inherently contradictory, as it says, "The mitigation of oak woodlands shall take place within Calaveras County." **Please remove from the ordinance the option of paying into the State's fund.**

This issue has gone to the Board of Supervisors twice, and each time the Board has made it clear that the Board wants local oak woodland impact mitigation funds spent in Calaveras County, and oak woodland conservation easements secured for mitigation to be located in Calaveras County. In July of 2019, the Board of Supervisors reviewed the 2019 General Plan Update. They were focused on prompt plan approval and rarely changed policies. Instead, the Board Chair repeatedly urged Supervisors to recognize that the general plan is a living document, and could be refined after adoption. Nevertheless, when the subject of oak woodland mitigation came up, the Board did change the wording of the provision to ensure that the lands secured to mitigate oak woodland impacts would be located in Calaveras County. At least one Supervisor called attention to this requirement when the Board reviewed the Draft Oak Ordinance in November of 2023.

As an alternative, please ensure that there is no net loss of local funds associated with payments of mitigation fees to the State's Oak Woodland Conservation Fund. The County could achieve this by annually monitoring the payments made to the State's fund by Calaveras County project proponents. Then the County, local property owners, or local non-profit groups could seek grants of at least that much each year from the State's fund to protect oaks in Calaveras County. This provides the development community with the ease and flexibility of making payments to the State's fund, while ensuring that at least that much money is in turn spent in the County

to mitigate the loss of oak woodlands. Of course, there is no guarantee that local entities would be successful in securing these competitive grants. If after five years of implementing this option, local entities proved unable to secure such grants, then the option of making mitigation payments to the State should be removed as discussed above.

2) Please clearly address the penalties for the premature removal of oaks in anticipation of a subsequent discretionary development application.

General Plan provision COS-4D says pre-development removal will be addressed in the oak ordinance. It says, “Develop local mitigation measures pursuant to PRC §21083.4(b)(4) in addition to the mitigation measures provided in Public Resources Code Section 21083.4(b)(1-3) to facilitate the environmental review process relative to mitigating significant direct and cumulative impacts to oak woodlands in conjunction with discretionary project approval and address pre-development removal of oaks.” The intent of this provision is to create investigation mechanisms and penalties to discourage parties from evading application of the oak ordinance to a subsequent discretionary application for development by simply prematurely removing oaks without permission or under an exception to the ordinance.

Nevertheless, the draft ordinance does not address the pre-development removal of oaks. It is merely re-states that, “The purpose of Implementation measure COS-4D is to facilitate the environmental review process relative to mitigating significant direct and cumulative impacts to oak woodlands in conjunction with discretionary project approval and to address pre-development removal of oaks.”

Please clearly address the premature removal of oaks in anticipation of a subsequent development application in the oak ordinance. As an alternative, the unlawful pre-development removal of oaks could be addressed in a separate ordinance. For example, El Dorado County has a separate stand-alone ordinance that addresses nothing but the pre-development removal of oaks. If there is a location in the Calaveras County Code that deals with penalties for violations, that could be a good place to put such a stand-alone ordinance. Such a sperate ordinance can be very useful as it clearly distinguishes between oak woodland impact mitigation that must be roughly proportional to the impact, and oak ordinance violation penalties that must be significantly larger to ensure that there is a sufficient incentive for ordinance compliance, and a sufficient disincentive for ordinance violations.

If you place these penalty provisions in a separate location, please reference these important provisions in the oak ordinance. A penalty provision is intended to deter potential violators. To work, a deterrent must be well known to the potential violators. Hiding the penalty provisions in the unexplored bowels of the County Code would not provide sufficient warning to potential violators. In addition, please prominently mention the severe penalties in any and all Planning Department’s educational materials about the oak ordinance.

We at the CPC appreciate your efforts in drafting the oak ordinance. We hope that by working together we can craft an effective and functional ordinance for all concerned.

Sincerely,

Tom Infusino, Facilitator
Calaveras Planning Coalition