

VEGETATION MANAGEMENT PLANS

At the Steering Committee's September meeting, a Work Plan was presented which outlined the proposed topics of discussion for each meeting. Meeting No. 3 focuses on trees on rural lands and the unique tree and canopy management issues that arise in large scale land management, controlling invasive species, trees near structures, and conducting habitat restoration. Section One of this report addresses these topics by examining policy options for authorizing tree removal and replanting requirements as part of larger scale, ongoing land management. Another Work Plan topic for this meeting is how to authorize individual tree removal around existing structures on rural lands and the issues surrounding that. This topic will be discussed in Section Two.

SECTION ONE

A significant amount of land in rural San Mateo County is managed by several government agencies, including State Parks, Mid-Peninsula Regional Open Space District (MPOSD), County Parks and the San Mateo County Resource Conservation District (RCD), or owned by private organizations (Peninsula Open Space Trust (POST), Stanford University). These land owners/managers have unique goals that other smaller land owners generally do not. One primary goal is to implement large scale Vegetation Management Plans. Some of these plans are generally focused upon removing invasive non-native vegetation (particularly eucalyptus) and restoring the subject landscape to pre-colonial conditions. Others provide for ongoing management of lands as open space for recreational, habitat or other purposes, and may provide for a mix of restoration, fire risk management, maintenance or adaptation to climate change. Implementing such a plan raises a number of issues with regards to existing County regulations, which we will outline below. This first question to be address is:

Does a Vegetation Management Plan (VMP) require a permit?

The answer depends on who's doing it and where. First we need to know where the project will occur:

Projects within the Coastal Zone

If the project site is in the Coastal Zone, then the requirements of the Coastal Act (which the County's Local Coastal Program (LCP) implements) are applicable. This means that a VMP will require a Coastal Development Permit. No person, organization, or government entity is exempt from that requirement.

The County's LCP contains several policies which could be applicable to VMPs. The potentially applicable policies are included here with a brief description of how compliance with them may be achieved in a VMP:

Policy 1.25 - Protection of Archaeological/Paleontological Resources.

Based on County Archaeology/Paleontology Sensitivity Maps, determine whether or not sites proposed for new development are located within areas containing potential archaeological/paleontological resources. Prior to approval of development proposed in sensitive areas, require that a mitigation plan, adequate to protect the resource and prepared by a qualified archaeologist/ paleontologist be submitted for review and approval and implemented as part of the project.

(Could be applicable if the VMP will involve grading in areas that may contain cultural resources.)

Policy 7.1 - Definition of Sensitive Habitats.

Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and any area which meets one of the following criteria: (1) habitats containing or supporting “rare and endangered” species as defined by the State Fish and Game Commission.

(Would need a biological evaluation to determine if the area covered by the VMP contained habitat for sensitive species, including migratory birds.)

Policy - 7.3 Protection of Sensitive Habitats.

a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.

b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.

(VMPs must identify and include measures to protect identified sensitive habitat when it occurs within the boundaries of the VMP as well as make the connection that restoring the area to something approximating the “original” condition will create habitat. The VMP will also have to address ongoing maintenance of habitat values created)

Policy 7.4 - Permitted Uses in Sensitive Habitats.

a. Permit only resource dependent uses in sensitive habitats.

(See note under Policy 7.3 above, however VMPs will not be the basis for establishing new land uses, except habitat.)

Policy 7.5 - Permit Conditions.

- a. As part of the development review process, require the applicant to demonstrate that there will be no significant impact on sensitive habitats. When it is determined that significant impacts may occur, require the applicant to provide a report prepared by a qualified professional which provides: (1) mitigation measures which protect resources and comply with the policies of the Shoreline Access, Recreation/Visitor-Serving Facilities and Sensitive Habitats Components, and (2) a program for monitoring and evaluating the effectiveness of mitigation measures. Develop an appropriate program to inspect the adequacy of the applicant's mitigation measures.

(See note under Policy 7.3 above. Also, provisions for appropriate public access must be incorporated into the VMP.)

- b. When applicable, require as a condition of permit approval the restoration of damaged habitat(s) when in the judgment of the Planning Director restoration is partially or wholly feasible.

(This is typically one of the primary purposes of a VMP, so implementing a VMP supports this policy. However, if the primary goals of the VMP are for other than habitat restoration, then the VMP must address this requirement.)

Policy 7.9 - Permitted Uses in Riparian Corridors.

- a. Within corridors, permit only the following uses: (1) education and research, (2) consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code, (3) fish and wildlife management activities, (4) trails and scenic overlooks on public land(s), and (5) necessary water supply projects.

(Non-native vegetation removal within a riparian corridor could be characterized as a fish and wildlife management activity, provided it is conducted in a manner that protects or improves the corridor and includes necessary maintenance.)

Policy 7.10 - Performance Standards in Riparian Corridors.

Require development permitted in corridors to: (1) minimize removal of vegetation, (2) minimize land exposure during construction and use temporary vegetation or mulching to protect critical areas, (3) minimize erosion, sedimentation, and runoff by appropriately grading and replanting modified areas, (4) use only adapted native or non-invasive exotic plant species when replanting, (5) provide sufficient passage for native and anadromous fish as specified by the State Department of Fish and Game, (6) minimize adverse effects of waste water discharges and entrainment, (7) prevent depletion of groundwater supplies and substantial interference with surface and subsurface waterflows, (8) encourage waste water

reclamation, (9) maintain natural vegetation buffer areas that protect riparian habitats, and (10) minimize alteration of natural streams.

(Depending on the amount of non-native vegetation removal and how it will occur, there may be conflicts with these performance standards. The VMP will need to show how native vegetation removal is minimized, as well as land exposure, etc. Also, if the VMP calls for revegetating areas denuded by grazing or other factors, the revegetation scheme must comport with these requirements.)

Policy 8.5 - Location of Development.

On rural lands and urban parcels larger than 20,000 sq. ft.:

- a. Require that new development be located on a portion of a parcel where the development: (1) is least visible from State and County Scenic Roads; (2) is least likely to significantly impact views from public viewpoints; and (3) is consistent with all other LCP requirements, best preserves the visual and open space qualities of the parcel overall.

(The visual resources policies will require considerable analysis, e.g., characterization of existing scenic values and impacts. The discussion would have to balance/trade-offs of restoring native landscapes versus the short- or long-term changes to the visual landscape.)

Policy 8.6 - Streams, Wetlands, and Estuaries.

- a. Set back development from the edge of streams and other natural waterways a sufficient distance to preserve the visual character of the waterway.
- b. Prohibit structural development which will adversely affect the visual quality of perennial streams and associated riparian habitat, except for those permitted by Sensitive Habitats Component Policies.

(See note under Policy 7.10 above)

Policy 8.9 – Trees.

- a. Locate and design new development to minimize tree removal.
- b. Employ the regulations of the Significant Tree Ordinance to protect significant trees (38 inches or more in circumference) which are located in urban areas zoned Design Review (DR).
- c. Employ the regulations of the Heritage Tree Ordinance to protect unique trees which meet specific size and locational requirements.
- d. Protect trees specifically selected for their visual prominence and their important scenic or scientific qualities.

- e. Prohibit the removal of trees in scenic corridors except by selective harvesting which protects the existing visual resource from harmful impacts or by other cutting methods necessary for development approved in compliance with LCP policies and for opening up the display of important views from public places, i.e., vista points, roadways, trails, etc.
- f. Prohibit the removal of living trees in the Coastal Zone with a trunk circumference of more than 55 inches measured 4 1/2 feet above the average surface of the ground, except as may be permitted for development under the regulations of the LCP, or permitted under the Timber Harvesting Ordinance, or for reason of danger to life or property.

(Collectively, these policies could make the approval of a VMP difficult, but not impossible. Again, the argument would have to be made that the benefits of the VMP outweigh the short-term visual impacts. It will be more difficult to make this argument when the trees are native, but perhaps in the wrong location. A possible solution to the conflicts with the Visual Resources chapter is to amend the relevant policies to include exceptions for VMPs that meet all other criteria.)

Additionally, the performance standards applicable for the different rural zoning districts will apply as well (i.e. – the RM-CZ or PAD performance standards). These performance standards generally mirror the above listed LCP policies and present the same challenges to approving VMPs. One possible solution is to create a new ordinance that specifically addresses VMPs, their intended goals, objectives, methods and definable performance standards by which to analyze them. If such an ordinance is adopted, then key amendments to the various LCP and Zoning Regulation policies cited above will also need to be adopted that exclude VMPs (as defined by this ordinance) from these policies.

Vegetation Management Projects Outside of the Coastal Zone

If the project site for a VMP is OUTSIDE of the Coastal Zone, some public agencies (San Mateo County Parks and California State Parks) do not need to obtain County authorization for tree removal. That is because CA Government Code Sections 53090 and 53091 come into play:

ARTICLE 5. Regulation of Local Agencies by Counties and Cities [53090 - 53097.5] 53090.

As used in this article:

- (a) “Local agency” means an agency of the state for the local performance of governmental or proprietary function within limited boundaries. “Local agency” **does not include** the state, a city, **a county**, a rapid transit district, or a rail transit district

whose board of directors is appointed by public bodies or officers or elected from election districts within the area comprising the district, or a district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code.

53091.

- (a) Each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated.

Section 53090 is a bit confusing but the County is not considered a “local agency”, and therefore, is exempt from its own zoning regulations (outside of the Coastal Zone), but must endeavor to implement its General Plan. Within the Coastal Zone, the requirements of the Coastal Act pre-empt this Government Code section.

But what about other agencies, such as MPOSD or the RCD? They are considered a local agency and must comply with the County’s zoning and tree removal regulations. Private property owners such, as POST or Stanford University must also comply with the County’s zoning and tree removal regulations. Many of the policies contained in the County’s LCP (cited above) are mirrored in the Resource Management (RM) zoning district policies, including the prohibition on removing trees over 55” in circumference, except in very limited circumstances.

The County’s Heritage Tree Ordinance apply throughout the county, including the coastal zone, in all zoning districts, except TPZ, and on public or private property. All local agencies required to get a permit from the County, including MPROSD and RCD, as well as private landowners must obtain a tree removal permit to remove a heritage tree, regardless of the purpose of the tree removal.

The relevant policy sections in the RM and PAD zones affecting vegetation management include:

”...when an extensive change in vegetative cover is proposed, it must be demonstrated that the change will provide for minimal adverse impact on microclimatic conditions, and similar protection from erosion as that provided by the existing vegetation...No use or development shall have a significant adverse environmental impact upon primary wildlife or marine resources. Development shall clearly demonstrate a high degree of compatibility with, and minimal adverse impact on, wildlife habitat areas... Wherever possible, vegetation removed during construction shall be replaced. Vegetation for the stabilization of graded areas or for replacement of existing vegetation shall be selected and located to be compatible with surrounding vegetation, and should recognize climatic, soil and ecological characteristics of the region... Removal of living trees with trunk circumference of more than 55 inches measured 4-1/2 feet above the average surface of the ground is prohibited, except as may be required for development permitted under this Ordinance, or permitted under the timber harvesting ordinance, or for reason of actual or potential danger to life or property...With the exception of trails and paths, and related appurtenances, no

structural development shall be permitted where such development will adversely affect a perennial stream and associated riparian habitat.”

Policy Options

Policy Option 1: Create VMP ordinance that incorporates policies from the RM and PAD zoning ordinances and the LCP that provides for a streamlined review process where possible, and is distinct and separate from the tree regulations that apply in urban and suburban areas. The ordinance could include and achieve the following:

- In order to facilitate the implementation of VMPs by the various agencies (MPOSD, Stanford University, POST), the County could create and adopt a new set of regulations that define VMPs, specify the required content, what the performance standards for them should be and the review process various types of VMPs. This could be a separate ordinance but with applicable references within the various zoning districts and the LCP.
- To streamline the process, the new ordinance could be written so that many of these VMP permits are decided at Staff level to shorten the processing time. However, those projects that are sufficiently large to require County CEQA action where the County is the lead agency or those that raise thorny public policy issues will require a public hearing before the Planning Commission.
- Also, the County will need to include specific language in the Significant and Heritage Tree Ordinances that excludes VMPs from those ordinances.
- Because most VMPs will be phased over a number of years and potentially large areas, one way to streamline the process in the Coastal Zone is to issue a “programmatic” CDP. Such a VMP could require ongoing reporting by the permittee to demonstrate compliance with the plan.

Policy Option 2: Create a VMP ordinance that empowers the County to certify management plans prepared by agencies, and require ongoing reporting of activities conducted consistent with the certified plan. Under this scenario, designated agencies that are required to obtain permits for vegetation management could prepare a management plan for County certification that included sufficient detail to enable the public and decision makers to understand the management goals and objectives, and detailed management proposals for given discrete areas within the plan area. Once certified, the land manager could implement the plan while complying with reporting requirements that demonstrate the actions proposed are consistent with the plan. Authorization for VMPs prepared pursuant to certified management plans could be ministerial.

SECTION TWO

RM and PAD Zones: Tree Removal Near Authorized Structures

The above discussion focuses on large scale Vegetation Management Plans involving numerous trees and other vegetation over a significant land area. But what about rural property owners (public or private) wishing to remove individual trees?

As noted above, the Heritage Tree Ordinance applies to removal of all heritage trees on public and private property in all zoning districts except TPZ. The Significant Tree ordinance is only applicable in urban zoning districts, except with regard to scenic corridors. The significant tree ordinance states, in part:

SECTION 12,020.1. EXEMPTIONS. No permits shall be required under this Part in the following circumstances:

- (b) Tree cutting in the Resource Management (RM or RM/CZ), Timberland Production Zone (TPZ or TPZ/CZ), and Planned Agricultural (PAD) districts, except within 100 feet of any County or State scenic road or highway, as identified in the San Mateo County General Plan, provided that any tree cutting in the RM, RM/CZ, or PAD districts shall be subject to Section 12,020.3.

SECTION 12,020.3. TREE CUTTING IN THE RM, RM/CZ, AND PAD DISTRICTS:

- (a) Within the Resource Management (RM or RM/CZ) District, the criteria of Sections 6324 through 6326.4 shall apply and any permit issued for such area shall constitute a Certificate of Compliance as required by Section 6461 of the San Mateo County Zoning Regulations.
- b) Within the Planned Agricultural (PAD) District, the criteria of Sections 6324 through 6326.4 shall apply, in addition to the requirements, if any, of a Coastal Development Permit.

A Tree Removal Permit, pursuant to the Significant Tree Ordinance is required to remove any tree (over 12" dia.), if it is within 100 feet of a County or State Scenic Road. The area covered by this policy can be less than the boundaries of the scenic corridor, which frequently extend out much farther than 100 feet from a designated road. RM permits are also required for removal of trees within 100 feet of any Scenic Road or Highway that are 55 inches in circumference and greater and must be consistent with the applicable RM policies (removal required for development (house), timber harvesting, or hazard). Outside of any 100 ft. scenic corridor, road or highway buffer zone, any tree **less** than 55" circumference does not require a tree removal permit, but the removal must be compliant with RM regulations, e.g., (canopy, major vegetation removal, etc.)

Thus, trees with circumference equal to or larger than 55 inches, both within and outside of a scenic corridor require an RM permit. RM permits are more expensive and time consuming to process than a regular Tree Removal Permit, creating a hardship for property owners seeking to remove one or more trees. However, the RM ordinance does not require a permit for removal of trees smaller than 55-inches in circumference, even in close proximity to permitted structures, where the land may be developed in a fashion similar to a suburban home site.

The current policies ignore the reality that rural land owners may have trees in close proximity to existing structures just like urban land owners and may want to remove those trees for the same reasons that urban land owners want to remove trees on their urban properties. It may also be the case that rural landowners remove trees that would not be permitted for removal in similar circumstances on an urban property. The current ordinance requires these rural landowners to go through a much longer and more expensive process (RM permit), or for smaller trees, no process at all.

To address these issues, Staff is seeking the Steering Committee's feedback on the following possible changes to the RM, PAD and TPZ zoning ordinances, and the revised Tree ordinances. The changes would allow property owners to obtain tree removal permits instead of RM permits for the removal of up to five trees located within 100 feet of permitted structures, and would reduce the size of trees that require authorization prior to removal, consistent with the size requirements that are part of the final, revised tree ordinance.

TREE CUTTING IN THE RM, RM-CZ, TPZ, TPZ-CZ AND PAD DISTRICTS.

Within the Resource Management (RM), Resource Management-Coastal Zone (RM-CZ), Timber Preserve (TPZ), Timber Preserve-Coastal Zone (TPZ-CZ), and Planned Agriculture District (PAD) zoning districts, a tree removal permit, subject to the criteria contained in Section(s) XXXX of this part, shall be required for the removal of five trees or less and within 100 feet of existing, legal structures. Removal of six trees or more, or trees beyond 100 feet from existing legal structures, or trees within a riparian corridor (as defined in the LCP and determined and mapped by a certified biologist) shall require the issuance of a respective RM, RM-CZ, TPZ, TPZ-CZ or PAD permit.