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Date: September 13, 2019

From: Tiffany Schmid, Director, Planning and Building Department

Subject: Director Interpretation - Zoning Ordinance Section 130.39.020.A
Applicability of Zoning Code Chapter 130.39 (Oak Resources Conservation)
to County Road Projects

INTERPRETATION:

County road projects with environmental documents approved prior to November 23, 2017 are exempt from the provisions of Chapter 130.39 (Oak Resources Conservation) in Title 130 (Zoning Ordinance).

DISCUSSION:

Section 130.10.050.A (Record of Interpretations) states that "whenever the Director determines that the applicability or the meaning of any of the provisions of the Title is ambiguous, the Director may issue an official interpretation, Official interpretations shall be in writing, and cite the provision being interpreted, together with an explanation of its meaning or application in the particular or general circumstances that caused the need for interpretation."

The Oak Resources Conservation Ordinance (Chapter 130.39 of Title 130) was approved by the Board of Supervisors on October 24, 2017, and went into effect on November 23, 2017.

Section 130.39.020.A (Effect of Ordinance Changes on Projects or Plans in Progress) states that the County shall apply the standards of 130.10.040.C to projects that were already in progress prior to the enactment of this Chapter.

Chapter 130.10 – Enactment and Applicability of the Zoning Ordinance, Section 130.10.040.C.2 states, "Applications approved prior to the effective date of this Title, or any amendment hereto, may be constructed or used in accordance with the conditions of approval therefore;..." This means that if an application was approved prior to the effective date when the applicable Zoning Code section was amended, the project is only subject to the code requirements that were in place at the time of the application's approval.

Title 130 is generally written to deal with private development projects, not County DOT Capital Improvement Program projects. In this instance, the use of 'applications' in Section 130.10.040.C.2 refers to applications submitted by developers to the Department of Planning and Building. County DOT makes no such applications for its CIP projects. However, it is reasonable that similar to applications for development projects, County road projects that were already approved prior to a change in the zoning ordinance should be exempt from those changes.

County DOT's Greenstone Road Bridge Replacement Project's CEQA environmental document was approved by the Board of Supervisors on July 19, 2016. It is reasonable to interpret that the date that the Board of Supervisors certified the County road project's CEQA document and approved the project per CEQA is similar to a private development's application approval date.

Based on this discussion and rationale, I am making the interpretation that Chapter 130.39 (Oak Resources Conservation) of Title 130 does not apply to any County road project as described in Section 130.39.050 for which the Board of Supervisors certified the County road project's CEQA document that did not rely upon the then future adoption of the pending Oak Resources Conservation Ordinance (Chapter 130.39 of Title 130) for mitigation and approved the County road project prior to November 23, 2017.