



**ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

**STAFF REPORT –
FAIRVIEW VIEW & SUNLIGHT ORDINANCE -
CEQA ANALYSIS & ENVIRONMENTAL REVIEW**

TO	Members of the Planning Commission
HEARING DATE	November 7, 2011

GENERAL BACKGROUND INFORMATION

PROPOSAL: Re-evaluation of environmental analysis and decision for the Fairview View & Sunlight Ordinance

APPLICANT: County – Initiated

ZONING: Not applicable

GENERAL PLAN: Fairview Area Specific Plan

STAFF RECOMMENDATION

Staff recommends that the Commission accept the staff report and analysis, take public comment, find that the Initial Study prepared for the Ordinance is adequate and appropriate, and recommend to the Board of Supervisors adoption of the Negative Declaration for the proposed Fairview View and Sunlight Ordinance (by approval of the attached Resolution).

PREVIOUS PLANNING COMMISSION CONSIDERATION

On April 18, 2011, the Planning Commission approved by unanimous vote a View and Sunlight Ordinance for the Fairview area of unincorporated Alameda County, to be sent to the Board of Supervisors. Beginning upon the date the Ordinance becomes effective, the Ordinance would establish the right of property purchasers in the Fairview area to the same views and degree of sunlight available at the time of the purchase of property. A process would be established such that, if a landowner believes and can demonstrate that his/her views and sunlight have been compromised by the growth of vegetation or trees since the purchase of the property, the landowner would be able to negotiate with the owner of the vegetation to trim the vegetation back to a mutually acceptable level. If this does not work, the Ordinance specifies increasingly more complex methods of resolving the issue, including mediation, arbitration and legal action. The Ordinance requires that no trees be planted that are designed to grow to such an extent that they would block views; otherwise, the Ordinance specifies no level of trimming, cutting or planting, leaving the detail up to the involved parties.

Staff originally suggested, and the Planning Commission found, that this project is exempt pursuant to CEQA Guidelines Section 15061(b)(3), which provides that a project is exempt if "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." This conclusion was made given that the proposed Ordinance does not impact any trees in their present state at the time of approval of the Ordinance, and impact on future tree growth is foreseen to not result in a significant effect on the environment.

However, concerned members of the public urged Staff to prepare an environmental analysis pursuant to the California Environmental Quality Act (CEQA) that would more specifically examine the possibility of an environmental impact. Staff has prepared an Initial Study (IS) for the draft Ordinance which recommends that the Planning Commission find in favor of adopting a Negative Declaration, which is a statement that the Project will have no significant environmental effect. This Initial Study was properly noticed and circulated for review for a period of 22 days, slightly longer than the minimum required by the CQA Guidelines.

STAFF ANALYSIS

The Initial Study that staff prepared for the Ordinance (both IS and Ordinance attached) looked at the full range of possible effects the Ordinance and its provisions for tree-trimming (the only physical activity *implied* in the Ordinance) could have on the environment; only two of these effects stood out as being potential issues of concern, while the remainder would obviously be unaffected by any action taken under the Ordinance. These categories of impacts included Aesthetics and Biology given that the trimming of a tree could change both its appearance and its viability as a biology resource.

Concerning these impacts, the Ordinance makes no specific requirement that any vegetation be altered, neither trimmed nor removed. It specifies only that the involved parties make an attempt to resolve their vegetation vs. view dispute in a prescribed way, beginning with simple steps and advancing to increasingly more complex methods. No specific outcome is required, and thus the Ordinance itself has no more impact at a given moment in time than if it were not in effect.

Second, and even more importantly, the Ordinance is written such that it requires involved parties to consider the trimming of vegetation back to a condition only *as it was at the time of Ordinance adoption*, meaning that the existing setting – the condition of landscaping throughout the Fairview area at the time of Ordinance adoption – is in effect a "grandfathered" condition not subject to negotiation under the process in the Ordinance, and would not change as a result of negotiations pursuant to the Ordinance. The definition of a significant physical impact under CEQA is based exclusively on the change compared to the existing setting, not on projected future tree growth. Therefore, as far as CEQA is concerned, no change, and no significant impact, would ever occur. This would not prevent the involved parties from reaching an agreement to remove more vegetation than that which existed at the time of Ordinance adoption – but it would not be related to the requirements of the Ordinance.

No comments on the Initial Study have been received, either by letter or by e-mail, as of the date of the writing of this analysis.

CONCLUSION

The Initial Study prepared and circulated for the drafted Fairview View and Sunlight Ordinance shows that the initial approval of the Planning Commission, in which it found that the Ordinance was Categorically Exempt from CEQA under CEQA Guidelines Section 15061(b)(3) (the General Rule) was in essence correct, that the proposal would have no significant impact on the environment. The Initial Study and reasoning provided above in this report further support that position and the Planning Commission's original rationale.

Staff recommends that the Commission accept the staff report and analysis, take public comment, and unless evidence is presented that makes a fair argument that this ordinance would significantly affect the existing setting in the Fairview Area, find that the Initial Study prepared for the Ordinance is adequate and appropriate, and recommend that the Board of Supervisors adopt a Negative Declaration for the proposed Fairview View and Sunlight Ordinance (by approval of the attached Resolution).

ATTACHMENTS

1. Fairview View and Sunlight Ordinance as approved by the Planning Commission on April 18, 2011
2. Draft Initial Study circulated for review
3. Draft Resolution in support of the Initial Study and Negative Declaration for November 7, 2011.

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