

**SANTA CRUZ COUNTY PLANNING DEPARTMENT
ADMINISTRATIVE PRACTICE GUIDELINE**

Interpretation No.: OSE-01 (Open Space Easements: Permit Review Procedures for New Construction)
Effective Date: 9/27/13
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Revised:

Questions

When a property is subject to an open space easement, when does new construction require a discretionary site development permit and review by the Open Space Programs Committee (OSPC)? What public notice and permit processing requirements apply, and what are the appeal provisions? What is the composition, nature and role of the OSPC; and what are its review procedures?

Applicable Regulatory Section(s)

§13.10.461, .462, .463 “O” Open Space Easement Combining District, as well as Open Space Easement/Contract Provisions: Approximately 160 parcels are governed by an Open Space Easement Contract. Most of these contracts, beginning in about 1974-75, contain the following provision regarding review of construction proposed on properties subject to an easement, for the purpose of determining whether the construction would be compatible with the easement:

“All new construction shall be reviewed by the Open Space Programs Committee with right of appeal to the Planning Commission. All structures should be compatible with the intent of the contract; specific concerns include the location of the site, screening and landscaping, exterior finishing materials and the colors, and general harmony with the character of the area.”

PRACTICE:

The Open Space Programs Committee (OSPC) consists of the following county staff positions, or their designees from their offices:

Santa Cruz County Assessor
Santa Cruz County Agricultural Commissioner
Santa Cruz County Parks and Recreation Director
Santa Cruz County Planning Deputy Director

The OSPC is advisory to the decision-making body, as to whether proposed new development should be approved, conditionally approved, or denied with respect to its consistency with the intent and provisions of the open space easement that applies to the subject property. Depending on the nature of the proposed project and what type of other discretionary permits may be required, the decision-making body may be the Planning Director or designee, the Zoning Administrator, the Planning Commission, or the Board of Supervisors. A discretionary open space easement development permit will be “packaged” with other discretionary permit(s) required for a project and processed at the “highest level” permit process that is required for the other discretionary permit(s).

EXPLANATION:

Background

The California Land Conservation Act (the “Williamson Act”) was adopted in 1965 to support preservation of agricultural and open space lands, with owners entering into contracts that restricted uses of the lands, and counties reducing property tax assessments. From 1967 to 1970, state bills were adopted that expanded the definition of lands that were eligible for contracts.

County records indicate that prior to 1971, the County operated a program to preserve scenic areas by encouraging particular property owners to enter into a scenic easement, which essentially placed an easement over areas that were considered scenic and a priority for preservation. As part of the program the Board of Supervisors authorized a staff committee named the Scenic Easement Review Committee, whose purpose was to evaluate proposed easements and make recommendations regarding their acceptance by the County. The Scenic Easement Review Committee was composed of the (1) County Assessor; (2) Agricultural Commissioner; (3) Parks and Recreation Director; and (4) the Deputy Planning Director.

On December 15, 1970, the Board of Supervisors adopted the recommendations of the Scenic Easement Review Committee, to re-name the program and use an “Open Space Easement” mechanism rather than the “Scenic Easement” and make it available to owners of open and scenic land. The letter to the Board was signed by each of the members of the Scenic Easement Review Committee, comprised as described in the above paragraph.

On July 27, 1971 the Planning Director forwarded to the Board of Supervisors an information packet that had been prepared by the Committee, which was referred as the “Open Space Easement Review Committee”. The Board approved the material, which included filing requirements and criteria to be used in administering applications for open space easements under the program.

In 1974 the State legislature approved the Open Space Easement Act, which provided that easements may be for a term of years (at least 10 years) or in perpetuity. Like Williamson Act contracts, open space easement contracts automatically renew each year for an additional year unless a notice of nonrenewal is provided. As noted earlier, in about 1974-75 the County began to include within easements/contracts the following provision regarding review of construction proposed on properties subject to an easement, for the purpose of determining whether the construction would be compatible with the easement:

“All new construction shall be reviewed by the Open Space Programs Committee with right of appeal to the Planning Commission. All structures should be compatible with the intent of the contract; specific concerns include the location of the site, screening and landscaping, exterior finishing materials and the colors, and general harmony with the character of the area.”

Composition and Nature of the OSPC

The “Open Space Easement Review Committee” referred to in the 1971 Board letter is determined to be the “Open Space Programs Committee” referred to in the contract statement above. Therefore, the Open Space Programs Committee (OSPC) consists of the following county staff positions, or their designees from their offices:

Santa Cruz County Assessor
Santa Cruz County Agricultural Commissioner
Santa Cruz County Parks and Recreation Director
Santa Cruz County Planning Deputy Director

The OSPC does not serve as an advisory body directly to the Board of Supervisors, but provides a recommendation for consideration of the decision-making body which will be taking action on an application for a discretionary development permit for new construction on property subject to an open space easement.

The determination that the OSPC is not an advisory body to the Board of Supervisors is supported by the fact that in 1974 the Board of Supervisors adopted an ordinance establishing uniform procedures for the creation and administration of advisory bodies (current Chapter 2.38), and steps were not taken at that time to formalize the Open Space Programs Committee as an advisory body pursuant to that ordinance. One of the declared purposes of the ordinance was to seek the advice, ideas and recommendations of the citizens of the County (see Section 2.38.020), and its provisions were applied to any “advisory board, commission, committee or department advisory group over which the County has appointing authority or jurisdiction.” (See Section 2.38.040.) Furthermore, any advisory body then in existence in 1974 was deemed abolished after six months if not reconstituted pursuant to the requirements of Chapter 2.38 (see Section 2.38.050.)

There are no ordinances, resolutions or other records documenting the establishment of the Open Space Programs Committee (OSPC) as an advisory body to the Board of Supervisors which contains citizens. Therefore the determination that the OSPC is composed of the staff members identified above is supported by the history of county actions taken to comply with that chapter.

OSPC Role, Procedures, and Applicable Permit Processes

As required by the Open Space Easement contract provision, the OSPC conducts a review of proposed new construction on parcels governed by an Open Space Easement contract. The OSPC does not hold regular meetings, schedules meetings only on an as-needed basis, and is not subject to Brown Act requirements.

The project planner will prepare a memo for consideration of the OSPC, and may develop recommendations for consideration by the OSPC. This memo, along with a set of the proposed project plans, will be provided to members of the OSPC at least one week prior to any meeting of the OSPC.

The project planner attends and staffs the OSPC meeting(s), which are recommended to occur at the site of a proposed development. If an OSPC “field trip” or “meeting on site” is not arranged by the staff planner then OSPC members are expected to arrange for their own site visits prior to the OSPC meeting. OSPC meetings are not open to the public, as Committee work is considered to be part of the “staff work” of analyzing the consistency of a proposed project with applicable code and easement requirements. However, any staff memo and brief “action minutes” of OSPC meetings are to become part of the public record that is part of the permit application file.

Once the project planner determines that the proposed project is ready for consideration by the decision-making body, public notice of the project application shall be provided in accordance with the applicable requirements of the “highest level” permit. For example, if a project requires a coastal permit that will be considered by the Zoning Administrator, then the “Level 5” public notice and

permit process is followed. A project considered by the Zoning Administrator would be appealable to the Planning Commission, and then to the Board of Supervisors if further appealed.

If the proposed project usually requires only a ministerial building permit, but requires a discretionary site development permit due to the open space easement, then that permit is processed as an Administrative Site Development Permit under the “Level 4” public notice and process requirements. Due to the language of the easement, any appeal of an Administrative Site Development Permit would be considered by the Planning Commission, and then to the Board of Supervisors if further appealed.

New construction on properties subject to an open space easement that is exempt from building permit requirements is also exempt from a requirement for an Administrative Site Development Permit, unless some other discretionary development permit requirement applies to the project.

Note that the OSPC is not charged with reviewing or ensuring compliance with any and all aspects of an open space easement, but only any provisions that relate to proposed new construction. For example, property owners activities related to landscaping or other activities not subject to a zoning or building code permit requirement are not reviewed by the OSPC. To the extent that a property owner may be undertaking landscaping or other activities that are in violation of applicable open space easement provisions, that would be a considered a violation of the easement and other available remedies to enforce the terms of the easement would be the appropriate remedies to pursue.

Application fees for proposed projects will be as set by the Board of Supervisors in the adopted fee schedule for the type of permit(s) required for the proposed new construction. Generally, this means that an applicant is charged “at cost” for the time and materials needed for staff to process an application. In that the intent of the easement provisions is that a proposed new development NOT be approved unless is it found to be consistent with the purposes of the easement, such a project will usually be determined to be exempt from CEQA. However, there may be another discretionary permit requirement that applies to the project and other reasons that the project involves the potential for significant environmental impact(s), and therefore it is possible that a project is subject to CEQA.

The proposed project will be evaluated and may be subject to conditions of approval in order to ensure consistency with the intent and requirements of the easement/contract, namely: *the location of the site, screening and landscaping, exterior finishing materials and the colors, and general harmony with the character of the area.* The OSPC may forward recommended conditions of approval to be imposed through the discretionary permit approval, or may recommend approval without any conditions, or may recommend denial of the proposed new construction. The recommendations of the OSPC shall be based on ensuring consistency of the proposal with the intent and provisions of the subject Open Space Easement/Contract. The OSPC recommendations are included, along with minutes of the meeting, as an attachment to any staff report that may be prepared in association with review of a proposed project.

Also, in accordance with Chapter 18.10, an Administrative Site Development Permit may be elevated to a higher level, such that it may be scheduled for consideration at a Zoning Administrator public hearing. Any action by the ZA would be appealable to the Planning Commission, and then the Board of Supervisors.

Kathy M. Previsich, Planning Director

Date