

TO: Brisbane Planning Commission
FROM : Dana Dillworth
RE: Grading Ordinance Revisions RZ-1-13
January 22, 2013

RECEIVED

JAN 24 2012

Comm. Dev. Dept. Brisbane

The staff report makes it sound like, since this was a “collaborative effort between the City staff and Mountain Watch,” that all issues are resolved and this is approved by Mountain Watch. This is not the case. There are some issues that are not within the purview of Mountain Watch. The agenda report fails to mention that this collaboration is the result of a lawsuit because the previous ordinance was not adequate to mitigate certain environmental issues. Because the City Engineer is not qualified for responding to environmental issues, some of the authority given to a civil engineer in this ordinance may still have environmental impacts and there should be mention of the CEQA checklist, prior to the City Engineer being able to issue a permit. When the City Engineer is given the power to require or not require certain components of the process, you deny due process to the Public, (Public’s right to know, notification procedures) and you circumvent CEQA.

There is no reasoning why grading permits aren’t standard throughout the city or what the requirements are for Southeast Bayshore (east of Bayshore upslope of the Lagoon,) Northeast Bayshore (Industrial Way Properties,) Beatty and the Baylands, Sierra Point and Crocker Park. All these areas are either adjacent to lands managed by the HCP, owned/managed by Universal Paragon, or, like Crocker Park, have upslope areas, which might require fully engineered grading.

There is no mention of complying with the new State laws that look at Global Warming and sea-level rise. Again, grading in areas not mentioned, like along the Lagoon, but could also include the center of town, should be included in the Planning Commission’s purview 17:32:220 and be stronger than just making comments and recommendations to the City Engineer. Recent changes in the Planning Commission regulations made them a legislative body, they have the authority to cease operations if it doesn’t comply with the General Plan and things within their purview but not within the ability of geotechnical specialists.

15:01:040 Definitions

9 – City Engineer – implies that the City Engineer or designated agents are qualified, licensed professionals. They should be, and it should be articulated here. But there are many different engineers (as I have learned by the Water Board) and future employees, or interim employees may not possess the ability to make a qualified judgment. This should be clarified.

CE 1.99

13- Clearing and grubbing- doesn't mention how deep "below" the natural ground you mean. Someone could abuse this definition and go 10's of feet below and declare they were just "grubbing."

15:01:050 Precautions imposed by City Engineer

In the report there were mentions of City Engineer/Public Works Director and there may be a time that they are not one and the same. You need to have a provision if this is the case.

15:01:060 Discovery of prehistoric, historic, or unique archeological resources, or human remains.

Please define unique in this context. Shouldn't it be ANY archeological resource? There is also no mention of contacting cultural heritage resource agencies like the Native American Councils when their artifacts are found.

Other conditions that should stop grading (i.e. precautions imposed by the city engineer) but are not mentioned:

- 1.) There is the chance that grading in Brisbane will expose native asbestos rock called serpentine. This should be spelled out as something requiring precaution.
- 2.) Certain water conditions such as artesian effects and springs, which are a Public Resources, require greater acknowledgement than engineering a solution into a nearby waterway. Changing direction of a stream requires different permitting agencies and a City Engineer should not have the burden of making that judgment.

15:01:100 HCP Permission required

HCP notice/permission should also be required of lands that are adjacent to HCP areas, not just lands within the HCP boundary. Coordination of greenways, easements, habitat corridors, water features and the support of protected lands needs to be done before the grading, not after.

15.01.11¹¹⁰ B,3i-- is it just street trees that would require a review by the Planning Commission?

ii- There are also some areas that have Elderberry, Islais Cherry and other trees that are more shrubby and should be protected as resource food for migrating birds and animals.

iii- mention of removal of invasive species and their seed stock should be greater.

15.01.16¹⁶⁰ Application form should include the bonding method.

15.01.18¹⁸⁰ Interim erosion and sediment control plan should also allow the City Engineer to require a dust monitoring system that responds to certain heavy dust conditions on

certain projects. Wind conditions may exacerbate the dust situation. Citizens need records of the site conditions, should there be any claim to the impacts to the town.

There are also laws which state how much Total Dissolved Solids are allowed in the waterways, but there is no mention here.

100 15.01.24²⁴⁰ Security

There should be a provision for 110% of the cost, because sometimes the estimates are low. Also, in the case of DTSC, they will not allow the value of the land to be the security for the project. This is so they don't bolt when unforeseen problems are uncovered. You should have a similar provision based on certain liabilities.

15.01.290 Appeals

This provision should include notice to neighbors and interested public interest groups.

15.01.350 Grading permit, Drainageway alteration

Since there is a Clean Water Act in place, a drainageway alteration should be concurrent with CEQA and other federal laws. A City Engineer should not be able to waive a permit for this condition. Water is a Public Trust Resource the Public has the right to be properly noticed of alterations of THEIR Public resource. This should also include presence of wetland plants and disallow any wetland draining without full Public knowledge.

15.01.470 Fills C) Preparation of the ground:

There should be a provision requiring/ offering the city or non-profit environmental agencies the opportunity to harvest native plants in the removal of vegetation, top soil, etc. This is a resource that shouldn't be squandered.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18