

PC 4/27/17  
#9  
12 pages



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## Oak Resources Management Plan--File #12-1203; Agenda Item #9

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Cheryl <Cheryl.FMR@comcast.net>

Wed, Apr 19, 2017 at 8:34 AM

To: gary.miller@edcgov.us, brian.shinault@edcgov.us, james.williams@edcgov.us, jeff.haberman@edcgov.us, jeff.hansen@edcgov.us, charlene.tim@edcgov.us

Commissioners & Char—

I've attached comments for the April 27, 2017 Planning Commission meeting. These comments pertain to the Biological Resources Policy Update/Oak Woodlands Management Plan (ORMP), (File # 12-1203; Agenda Item #9).

I ask the Planning Commission to **not adopt** the ORMP and the accompanying resolution without amendment (and therefore to not adopt actions 1-4). Amendments requested include those described in the attached comments, plus a revision/correction of the greenhouse gas (GHG) emissions analysis referenced in the **Quercus Group** letter dated March 15, 2017, and included in the Legistar file for this project (12-1203) under "Public Comments Rcvd 3-15-17 PC 3-23-17 (1)," page 4 of 20.

Char—please include these comments in the administrative record.

Thank you again—

Cheryl Langley

Shingle Springs resident

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### 2 attachments

 PC\_Meeting\_April.27.2017.Option\_A.FNL.pdf  
209K

 PC\_Meeting\_April.27.2017.PAWTAC.FNL.pdf  
768K

Public Comment—Biological Resources  
 Policy Update/ Oak Resources  
 Management Plan  
 Cheryl Langley  
 Planning Commission Meeting  
 April 27, 2017  
 File No. 12-1203  
 Agenda Item #9

**Request 1: ORMP Project**

**Request to Incorporate Option A Oak Retention Standards  
 Into the Oak Resources Management Plan (ORMP) Project**

**What Are the Option A Retention Standards?**

General Plan Policy 7.4.4.4 Option A oak retention standards are listed below:

**Option A**

The County shall apply the following tree canopy retention standards:

Percent Existing Canopy Cover	Canopy Cover to be Retained
80–100	60% of existing canopy
60–79	70% of existing canopy
40–59	80% of existing canopy
20–39	85% of existing canopy
10-19	90% of existing canopy
1-9 for parcels > 1 acre	90% of existing canopy

**Why Were Option A Retention Standards Not Included in the ORMP Project?**

Apparently the Option A retention standards were not included in the Oak Resources Management Plan (ORMP) project because “County staff stated that the standards are difficult to interpret.”<sup>1</sup> But rather than exclude Option A, some clarifying language could have been added; the future of oak woodlands and County aesthetics are jeopardized by not including these retention standards.

**What is the Potential Impact of Option A Exclusion?**

Under the current project, Option A is replaced with an incentive-based approach. This approach does nothing to ensure oak woodland retention/protection. In effect, it allows 100% removal of oak resources on any given project site.

**Didn’t the 2004 General Plan Policies Allow 100% Removal?**

No. 100% removal was never the intention of 2004 General Plan policies. Option B was a mitigating policy to ensure reasonable use of property—not to allow 100% canopy removal. Policy 7.4.5.2 made this clear:

• **Policy 7.4.5.2 (Existing):** *“It shall be the policy of the County to preserve native oaks wherever feasible, through the review of all proposed development activities where such trees are present on either public or private property, while at the same time recognizing individual rights to develop private property in a reasonable manner. To ensure that oak tree loss is reduced to reasonable acceptable levels, the County shall develop and implement an Oak Tree Preservation Ordinance. ...”*

<sup>1</sup> Final EIR, Chapter 3-4, response 6-2, pdf page 263 of 582.

In fact, guidance for the “**reasonable use**” standard was established under the *Interim Interpretive Guidelines (IIG)*,<sup>2</sup> a guidance document adopted to clarify implementation of Option A and a reasonable use standard. Under the IIG’s “*Reasonable Use Provisions for Development on Existing Legal Lots*,” the guidance provides for relief from Policy 7.4.4.4 retention standard when “...Policy 7.4.4.4 could preclude **reasonable use** of the property or cause substantial inconsistencies with other General Plan policies protective of the environment.” Under such circumstances, the IIG provides a set of findings that, if made, enable the Development Services Director or the Planning Commission to grant relief from strict Option A adherence:

*The **Director** may grant a reduction in the retention requirements **by up to 50 percent** of what is specified in the Option A Retention Table after meeting all the findings herein ... Where the Director cannot grant relief, **the Commission may grant relief**...*<sup>3</sup>

This IIG *reasonable use* guidance shows that multiple measures—in compliance with General Plan Policy 7.4.5.2—were to be taken “**To ensure that oak tree loss is reduced to reasonable acceptable levels.**”

### **Why Weren’t Option A Retention Standards Evaluated as a Viable Addition to the Project Under a Separate Project Alternative?**

Good question. The public requested Option A retention standards be retained within the project, and the Board of Supervisors agreed retention standards should be included in project evaluation.

While members of the public made it clear existing Option A standards were the retention standards they anticipated would be evaluated, a 30% across-the-board retention value was chosen as a project alternative (Alternative 2) for “*all development projects*,” because “...30% is a midpoint between the minimum required under the No Project Alternative and policies that require no retention.”<sup>4</sup> This basis for choosing a 30% retention standard lacks a meaningful relationship to the pre-project oak woodland and its continued viability, unlike Option A retention standards that attempt to retain oak woodland based on the pre-project percentage of oaks on the ground.

### **Is the “No Project Alternative” the Answer to the Public Request for Option A Retention?**

It can be, but there is a second option that was not explored, even though requests were made to incorporate retention standards into the ORMP project. As stated previously, Option A retention standards could be *included* in the project, and would be utilized as an important first step in evaluating development proposals and their impact on oak resources.

While responses to comments in the Final EIR assert the No Project Alternative *is* the Option A alternative, this alternative excludes the currently inoperative Option B. However, under this ORMP, Option B could in effect be reinstated under the proposed in lieu fee program option, or a similar in-lieu fee or conservation option.

Incorporation of both Option A and a functional Option B could yield a viable project alternative, provided PAWTAC is reconvened and tasked with the evaluation of projects requesting exception to the Option A retention standards. (More on the reinstatement of PAWTAC in a later set of comments.)

### **What is the Primary Reason Option A Retention Standards Were Not Included in the Project?**

Option A was not included as a project element because it was argued oak retention at all project sites may mean an increase in development pressure in rural areas of the County.<sup>5</sup> But if Option A and Option B (an in-lieu fee/conservation program) are reinstated within the ORMP project, this notion of rural development pressure becomes

<sup>2</sup> El Dorado County. 2007. (IIG): *Interim Interpretive Guidelines for El Dorado County General Plan Policy 7.4.4.4 (Option A)*. Adopted November 9, 2006; amended October 12, 2007. Available at: [https://www.edcgov.us/Government/Planning/General\\_Plan\\_Oak\\_Woodlands.aspx](https://www.edcgov.us/Government/Planning/General_Plan_Oak_Woodlands.aspx)

<sup>3</sup> *Ibid.* Pages 13 & 14 of 18.

<sup>4</sup> Final EIR, Chapter 3-4, response 8-2, pdf page 399 of 582.

<sup>5</sup> Draft EIR, Chapter 10, pdf page 221 of 270.

unsupportable. Besides, ultimately the Planning Commission and Board of Supervisors have the authority to decide where development does—or does not—occur, regardless of changes in oak policy.

### **Why is Alternative 2—the 30% Retention Standard—Not as Acceptable as Option A?**

While a 30% oak retention standard sounds appealing at first glance, it is actually more ridged than the graduated retention values in Option A, and is not really protective of oak woodlands. For instance, 30% retention of woodland on a parcel that has only 10% oak canopy coverage equals practically no retention at all. 30% retention on a parcel with 100% coverage equals decimation of the biological function of that oak woodland in terms of wildlife habitat value. Under Option A, retention on a parcel with 100% coverage would be 60% of the existing canopy, and while this, too, represents a serious reduction, the woodland is more likely to retain some value to wildlife.

So why not reinstate Option A and Option B (an in-lieu fee/conservation program) and make a better project that has the flexibility requested by the development community, *and* the protective qualities sought by those interested in protecting oaks and wildlife habitat.

### **Commissioners—please recommend to the Board of Supervisors:**

- The insertion of **Option A** retention standards into the project;
- the inclusion of **Option B** as an in-lieu fee/conservation program to be used when Option A retention standards negate reasonable use of property; and
- reconvene the Plant and Wildlife Technical Advisory Committee (**PAWTAC**) to review projects relative to Option A/reasonable use standards, review project mitigation proposals, oversee mitigation efforts, review the efficacy of mitigation efforts post-implementation, and make recommendations regarding future mitigation efforts. (More on PAWTAC to follow.)

## Request 2: ORMP Project

**Request to Add a PAWTAC Role to the ORMP**  
(PAWTAC = Plant and Wildlife Technical Advisory Committee)  
(ORMP = Oak Resources Management Plan)

Public Comment—Biological Resources  
Policy Update/ Oak Resources  
Management Plan  
Cheryl Langley  
Planning Commission Meeting  
April 27, 2017  
File No. 12-1203

### What is PAWTAC?

#### What is the Plant and Wildlife Technical Advisory Committee (PAWTAC)?

A committee that advises the Planning Commission and Board of Supervisors on plant and wildlife issues. The committee should be formed of local experts who consult with other experts with special expertise on various plant and wildlife issues, including representatives of regulatory agencies. The committee shall formulate objectives which will be reviewed by the Planning Commission and Board of Supervisors.

**Term Limits:** No term; appointed by Board of Supervisors.

**Membership:** Up to fifteen members with appropriate technical qualifications.

**Excerpt Source:** El Dorado County web site, available at:

[https://www.edcgov.us/Government/Planning/Plant\\_and\\_Wildlife\\_Technical\\_Advisory\\_Committee\\_\(PAWTAC\).aspx](https://www.edcgov.us/Government/Planning/Plant_and_Wildlife_Technical_Advisory_Committee_(PAWTAC).aspx)

#### Example of past membership:

Member Name	Organization	Role
Alan Ehrgott / Elena DeLacy (Alternate)	American River Conservancy	Biologist/Administration
Jeremiah Karuzas	US Fish & Wildlife Service	Biologist
Bill Frost	UC Cooperative Extension	Natural Resource Advisor/Certified Rangeland Manager
Dan Corcoran	El Dorado Irrigation District	Environmental Review Manager
Ray Griffiths	Private Volunteer	Ecologist
Sue Britting	CNPS	Biologist
Todd Gardner	CA Dept of Fish & Game	Biologist
Valerie Zentner	El Dorado County Farm Bureau	Administration
Mahala Young	Wildlands, Inc.	Restoration Planner/ Ecologist
Jim Brunello	Private Volunteer	Attorney
Jim Davies	Jim Davies & Associates	Registered Professional Forester

**Excerpt Source:** El Dorado County web site, available at:

[https://www.edcgov.us/Government/Planning/Plant\\_and\\_Wildlife\\_Technical\\_Advisory\\_Committee\\_\(PAWTAC\).aspx](https://www.edcgov.us/Government/Planning/Plant_and_Wildlife_Technical_Advisory_Committee_(PAWTAC).aspx)

### What Role Has PAWTAC Played in the Past?

In the past, PAWTAC was instrumental in developing the Integrated Natural Resources Management Plan (INRMP). It also received presentations on projects such as the wildlife undercrossing between Greenstone and El Dorado roads.

### How Could PAWTAC be Used Under This Project?

**If Option A retention standards are reinstated** under the ORMP, the PAWTAC could be used to review projects relative to Option A/reasonable use standards, review project mitigation proposals, oversee mitigation efforts, review the efficacy of mitigation post-implementation, and make recommendations regarding future mitigation efforts.

**If Option A standards are not reinstated**, PAWTAC could still play an important role in reviewing projects and their mitigation proposals, overseeing mitigation efforts, evaluating mitigation efficacy, and recommending adjustments to mitigation efforts to ensure success.

### Here's Why PAWTAC is Necessary...

El Dorado County has a poor record when it comes ensuring oak tree mitigation is performed in accordance with existing guidelines. **PAWTAC could serve to restore the public's trust in County mitigation activities.** This is necessary, because while the fEIR states:

*The county is allowed a presumption that it will comply with existing laws, including its own policies and ordinances (Erven v. board of Supervisors [1975] 53 Cal.App.3d 1004). There is no reason to believe the county will not enforce its own regulations and standards.<sup>1</sup>*

To the contrary, there are several examples that cast doubt on the County's willingness/ability to enforce its "regulations and standards," including those related to oak mitigation. For instance, the following five (5) examples call into question the County's past (and future) performance.

#### **EXAMPLE 1:**

The following photos were taken of **mitigation plantings** by Serrano Village D2 in "tree shelters." (This village was built around 2001-2003.) Photos taken **June, 2015.**



This is a photo of a "tree shelter" around a blue oak; it was probably planted around the time of adjacent village construction (2001-2003). Photo taken June, 2015.

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<sup>1</sup> Final EIR, response 12-11, page 3-437.



Note the low success rate of blue oak plantings, even with tree shelters



The tree shelters in this area (as seen in foreground) are mostly devoid of trees (approximately 12-14 years after planting).

**EXAMPLE 2:**

The following photo was taken of **mitigation plantings** by a Serrano Village. Note the tree shelters (white shelters minus trees) in a swath between the homes in the foreground and on the hill.



Photo taken facing east from Village Green Drive, March 14, 2017.

**EXAMPLE 3:**

The following County road project on Highway 49 south of China Hill Road is the site of failed oak mitigation:



Photo taken March, 2017.

**EXAMPLE 4:**

A former County employee stated in an email dated November 18, 2015, that a road project-related oak mitigation attempt at Green Valley Road / Lotus Bridge was a failure:

*The only trees that survived were the ones on the neighbor's property. They were watered by the neighbors otherwise they probably would [have] died too.<sup>2</sup>*

(As an aside, given these road project/oak mitigation results, it is small wonder the ORMP now exempts road projects from oak mitigation requirements.)<sup>3</sup>

**EXAMPLE 5:**

Project: Macauley Construction Headquarters (PD09-0005), Greenstone Road. From Staff Report E, July 11, 2013, pdf page 3 of 169 (Legistar File # 13-0988):

**Project Issues:** The primary issues with this project are code enforcement, access, sewage disposal and water supply, and requested waivers. Other discussion items include building elevations/materials, fire protection, grading and drainage: landscaping, land use compatibility, lighting, parking, and signs.

**Code Enforcement:** The site was developed prior to submittal and approval of any discretionary application or building and grading permits. As detailed in the CEQA Initial Study, the unapproved grading of the site resulted in the removal of two listed species, removal of native oaks beyond the required General Plan retention requirements, and destruction of a recorded cultural resource site. Mitigations have been proposed to reduce the impacts to the listed species and oak trees to less than a significant level. A subsequent cultural resource report concluded that disturbance of the recorded cultural resource at the site did not affect historical resources as defined under CEQA statutes, guidelines and advisories.

Excerpt Source: Staff Report E of July 11, 2013, pdf page 3 of 169.

Following is an aerial photo of the project site, prior to construction. Note the extent/position of the oak woodland.



Photo Source: Staff Report E, July 11, 2013, pdf page 70 of 169 (Legistar File # 13-0988).

<sup>2</sup> Personal email communication, November 18, 2015.

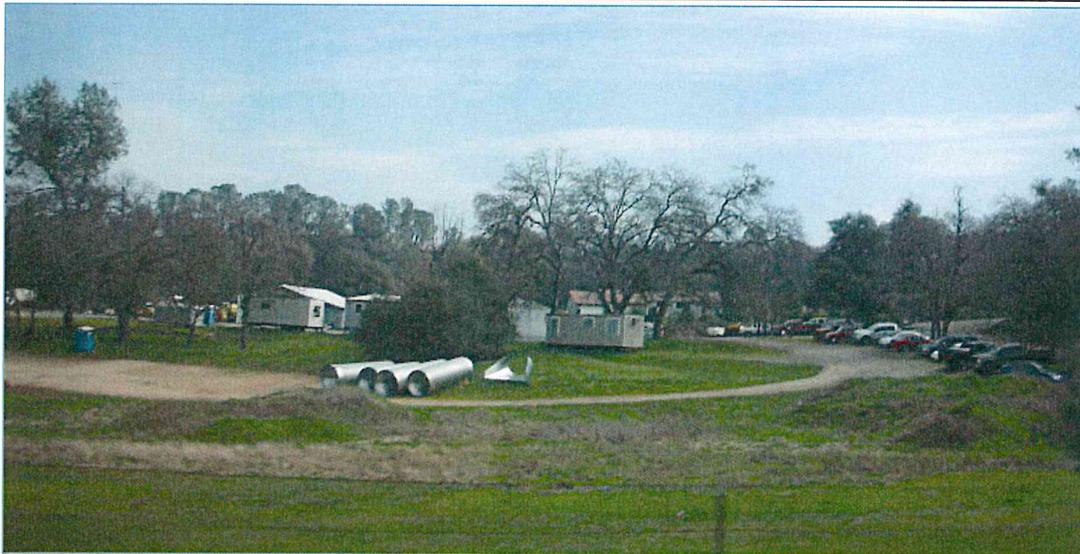
<sup>3</sup> Draft EIR, page 6-55.

Below is a photo of the site taken sometime prior to July 2013, after some construction. Note the majority of the oak woodland has been removed.



Photo Source: Staff Report E of July 11, 2013, pdf page 11 of 169 (Legistar File # 13-0988).

Below is a photo of the site taken on March 15, 2017. Note it appears no oak restoration has taken place.



View from the ground: Photo taken March 15, 2017. (Facing east from Greenstone Road)



View from the ground: Photo taken April 10, 2017. (Facing north from Greenstone Cutoff)

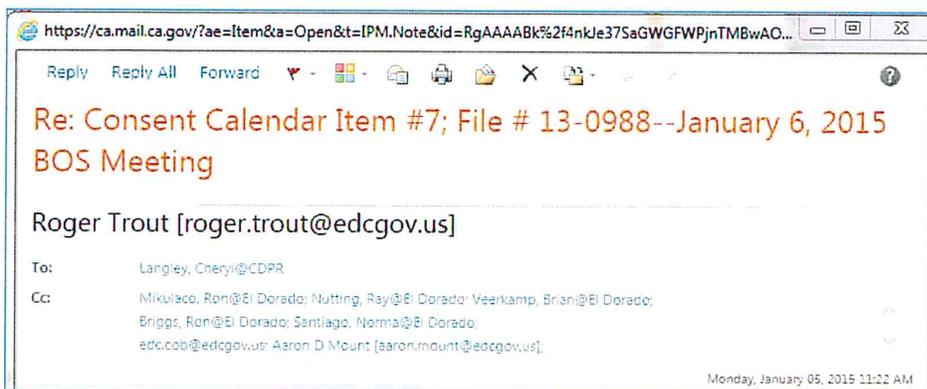
Despite directives provided in the arborist's report—and assurances by Roger Trout that progress on tree mitigation was being made as of January, 2015—it appears no oak replanting has taken place. Here's the arborists recommendation:

#### **Mitigation and Replanting**

Under Option A, the project applicant shall also replace woodland habitat removed at 1:1 ratio. Woodland replacement shall be based on a formula, developed by the County, that accounts for the number of trees and acreage affected, as per El Dorado County's "GENERAL PLAN POLICIES RELATED TO OAK WOODLANDS" document. Using the formula of 200 one gallon trees per acre, it has been determined that 119 trees will need to be planted after construction, and prior to receiving a final on the property's building permit. Please install (5) 24" box blue oaks, (5) 24" box black oaks, (75) 15 gallon blue oaks and (34) 15 gallon black oaks.

Excerpt Source: C. Dykstra Tree Report, September 21, 2012, pdf pg. 152 of 169.

Below is an excerpt from the correspondence with Roger Trout regarding oak mitigation efforts on this site:



Cheryl,

Thank you for your email and comments on the item. I understand your point of view and apologize if the conditions and staff report were not clear on the oak tree mitigation aspect of the project.

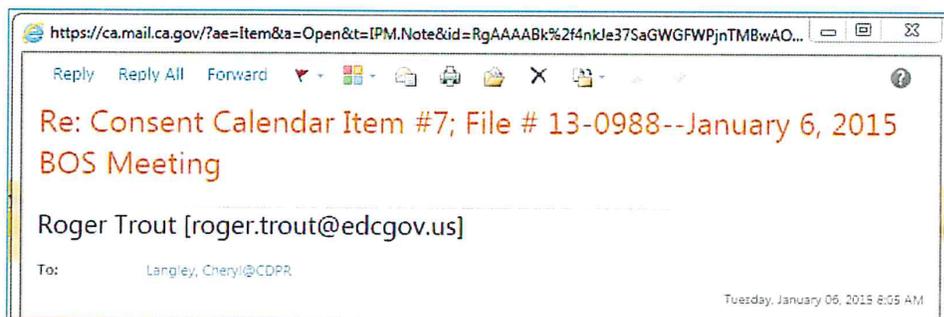
The applicant is required through Condition 1 and 3 to complete full mitigation in Phase 1 for all oak trees previously removed.

The information to clarify that point is in the staff report attachment. See the the Chad Dykstra, Arborist Report, page 150 to 169 of Attachment (E) in Legistar. In that report we identified that 26,000 square feet of oak canopy had been removed. Conditions 1 and 3 requires all of that to be replaced with any Phase 1 building permit.

I see now the condition is not clear unless you had the report to compare it with. The condition/mitigation measure allows some discretion to the Development Services Director (me) to allow some phasing of completion of the oak tree planting, but no such request has been made and I have no reason to allow the replanting to be phased.

...

Following is an excerpt from a second piece of correspondence from Roger Trout that implies the oak mitigation will soon be accomplished; this is **January of 2015**, but it appears no oak mitigation has been performed to date (see photos dated March 15, 2017 & April 10, 2017):



Cheryl,

...Our staff-Board discussion was that they wanted the oak tree mitigation done with Phase 1 so we amended condition 1 to add the statement about the oak trees. We should have also amended condition 3, but I think the issue was fresh in our minds so we didn't see the need. A year or so later and things are not as fresh. So thank you for asking a really good question. I have also clarified the matter with the applicant over the telephone yesterday, just to ensure we get the oak tree mitigation in the ground soon. Looks positive.

### Why We Need PAWTAC

The examples provided reveal why an oversight committee is necessary. (Additional examples of the County not enforcing "regulations and standards" can be provided upon request.) **Establishment of a PAWTAC with oversight authority would serve to restore the public's trust in County mitigation activities.**

### Commissioners—

**Please recommend to the Board of Supervisors that PAWTAC be reconvened** and serve in the capacity of reviewing projects and their mitigation proposals, overseeing mitigation efforts, reviewing the efficacy of mitigation efforts post-implementation, and making recommendations regarding future mitigation.