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TO: Board of Supervisors

FROM: Peter N. Maurer, Principal Planner

DATE: March 3, 2009

RE: General Plan Implementation Workshop #2
Biological Resource Issues

Background:

On February 3, 2009 the Board approved holding a series of workshops on implementing the General Plan. At that time, staff identified a number of general issue areas. These were general areas of concern or controversy that staff feels need policy guidance and direction or where Board members or the public have raised concerns. One of those is biological resources. The purpose of this workshop is to identify all of the biological resource implementation measures set forth in the plan, discuss different means of addressing them, and determine how staff should approach the work necessary over the next six to eighteen months.

Discussion:

Most of the policies and implementation measures relating to biological resources come from the Conservation and Open Space Element of the General Plan. Many were created as mitigation measures to address impacts of anticipated growth. These measures generally fall into the following categories:

- Rare plants
- Oak woodlands and other natural habitats
- Riparian areas and other aquatic habitats

Attachment 1 contains a list of the seven measures that relate to these issues. Attachment 2 lists all of the policies that led to these measures. There is a great deal of overlap between these measures. For example, measures CO-M and CO-U address both rare plants and oak woodlands. In truth, they are all interlinked, and it is important to understand that relationship. Below is a summary of the measures:

- CO-K – Work with the US Fish and Wildlife Service (FWS) and California Dept. of Fish & Game (DFG) to develop a long-term strategy to implement the ecological preserve and recovery program for gabbro soils rare plants
- CO-L – Develop guidelines for preparing biological reports
- CO-M – Develop an Integrated Natural Resources Management Plan (INRMP)
- CO-N – Update the Important Biological Corridor (-IBC) Overlay land use designation
- CO-O – Develop a riparian setback ordinance
- CO-P – Develop an oak resources management plan and oak tree ordinance
- CO-U – Guidance on addressing biological resource issues for development projects and the INRMP

Of these measures, CO-L has already been adopted and CO-P partially completed. The guidelines for preparing biological study reports was reviewed and approved by the Planning Commission on November 9, 2006. The Oak Woodland Management Plan (OWMP) was adopted by the Board on May 6, 2008, but the oak tree ordinance portion was not included with that. Measure CO-K was initiated immediately after adopting the General Plan, and in fact was on-going prior to adoption. However, this work is still on-going, and will likely take a year or more to complete.

The remaining measures are all interconnected, with the INRMP being the vehicle anticipated to implement these measures. At the time of preparation of this memo, the Board was scheduled to review the RFP on March 3, 2009 to solicit proposals from consultants to prepare the INRMP. As drafted, the INRMP would include the provisions outlined in CO-U, address the connectivity issue of CO-P, review and update the IBC as a means to implement provisions of the INRMP, and consider riparian corridors, which would address CO-O in part. The ordinance provisions of the riparian setback would be contained in the zoning ordinance update (Measure LU-A.) Each individual measure is discussed in more detail below.

Integrated Natural Resources Management Plan – CO-M & CO-U

The INRMP is presently one of the highest priorities for General Plan implementation, along with the zoning ordinance update. However, it is also one of the most expensive, with consultant costs expected to range from \$250,000 to \$500,000.

The INRMP will be a broad-ranging document, addressing the mapping of important natural habitats and development of a habitat protection strategy, consisting of the creation of a conservation fund used to acquire and manage land to offset impacts to native habitat from development. This was identified in the General Plan EIR as a mitigation measure [Measure 5.12-1(d)] that addressed a wide range of impacts, and it is therefore important to proceed with this task.

The County has already expended a great deal of resources toward this implementation measure. In 2006 the Board initially investigated the preparation of a Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP), a joint Federal, State, and local planning process to address habitat conservation issues. The County applied for and received a \$600,000 grant from the US Fish and Wildlife Service (FWS) in 2007 to complete the first year of an HCP/NCCP. The Board later determined that the HCP/NCCP would not be the most appropriate

course of action. FWS rescinded the grant funding when the County chose to conduct a local plan rather than an HCP/NCCP. Since that time, staff worked to revise the scope of work that was prepared for the HCP to address the specific issues listed in CO-M and CO-U.

Two advisory committees have been established to assist staff and the Board in completing this task, the Plant and Wildlife Technical Advisory Committee (PAWTAC) and the INRMP Stakeholders Advisory Committee (ISAC). These committees have met several times, beginning in August 2008, to assist staff in the preparation of a new RFP for the INRMP. On March 3, 2009 the Board approved text for the RFP to conduct the first phase of the program.

The concern about this measure is primarily the cost of developing the program, but also what some of the long-term implications of the resulting program to individual sites that are designated for an urban land use and contain important biological resources. This is especially true for the areas near Cameron Park that have rare and endangered plants. These latter concerns will need to be resolved during the development of the INRMP consistent with the land use goals of the County and the intent of the mitigation measures identified in the EIR and accepted by the County with the adoption of the General Plan.

Staff recommends that the Board direct staff to continue working with ISAC and PAWTAC to select a consultant as quickly as possible, and begin work on Phase 1 of the INRMP as approved by the Board. The entire INRMP is expected to require 3000 hours. Staff estimates 600 hours of staff time will be necessary to select and assist the consultant with Phase 1. Until proposals are received from the consultants, it is unknown what the direct costs will be for Phase 1.

Important Biological Corridor – CO-N

The Important Biological Corridor Overlay designation (-IBC) was created as a part of the Environmentally Constrained General Plan (EC) Alternative. Its purpose was to identify areas where development was intended to occur as permitted under the base land use designation, but with specific design criteria that would potentially lessen the impact on biological resources. These criteria are to be incorporated into the zoning ordinance. One of the tasks identified in the work program for the INRMP is to develop the standards and ensure that the overlay is consistent with the INRMP. The implementation measure directs the County to review and update the overlay.

The -IBC overlay was designed based on the land use designations of the EC Alternative. When it was incorporated into the 2004 General Plan, it was not changed in any way to reflect the different land use pattern of that plan. There are a number of inconsistencies that need to be corrected. But perhaps a bigger question is the need for the overlay at all. It was identified as a mitigation measure [Measure 5.12-3(b)], but it could be found, after the implementation of the INRMP, that such a program would not further enhance the protection of biological resources. An analysis of this option would need to be done under CEQA.

Presently, under amended Policy 2.2.5.20 (General Plan consistency review) a higher level of review is required for lots located within the -IBC. This includes review of plans for riparian setbacks and may result in the requirement of biological resource studies for ministerial permits.

There is no critical timeframe associated with this measure other than the initial expectation that it would occur within the first two years after adoption of the 2004 General Plan. Because it is so closely linked with the INRMP, staff recommends that any specific changes to the –IBC overlay be deferred until the INRMP is completed. Staff hours for this task are included in the total for the INRMP.

Gabbro Soils Rare Plants – CO-K

Although listed as a part of the INRMP under Measure CO-M, a separate measure specifically addresses the gabbro soils rare plants. This measure directs the County to work with the California Department of Fish and Game (DFG) and the U.S. Fish and Wildlife Service (FWS) to implement the County's ecological preserve and recovery program. Additionally, the measure would have the County adopt development standards for uses within the preserve sites and fuels management and fire protection strategies. Although this implementation measure was not specifically identified as part of a mitigation measure from the EIR, it was intended to implement several policies, including Policy 7.4.1.1, which was Mitigation Measure 5.12-2(b).

Planning and County Counsel staff have been working with DFG and FWS for several months to resolve the long standing dispute between what the County adopted as its ecological preserve program and the Recovery Plan issued by FWS in 2002. While no resolution has been reached yet, progress is being made, and it is hoped that by years end a conceptual agreement will be reached, and a final resolution accepted within two years. This work is on-going, and will continue to be a high priority for Planning Services staff. At present there are no direct costs to Development Services associated with this effort other than staff resources.

The recent appellate court decision on the Cameron Park Congregate Care project has highlighted the need to resolve this issue as quickly as possible. As a result of the decision that directed the County to have an EIR prepared for the project, staff will be recommending that an EIR be prepared for any development project with rare plants that cannot fully mitigate the impacts to plants without relying on the current fee program as mitigation. This will further frustrate development plans consistent with the General Plan until the programmatic approach to rare plants can be resolved with the agencies.

As resolution to this issue progresses, it will be incorporated into the INRMP as provided by Implementation Measures CO-M and CO-U and their related policies. Implementation of this measure remains a high priority for Development Services, although due to longer-term nature of the work, the time allotted to this measure is sporadic. However, getting this issue resolved is of critical importance for the on-going development of the Cameron Park area, as well as other parts of the county where the rare plants exist. DSD staff has spent approximately 80 hours on this task so far this fiscal year, and that amount of time (150 hours per year) would be anticipated to be necessary to complete this task over the next two years.

Oak Tree Ordinance – CO-P

Measure CO-P consists of two major components, the Oak Woodlands Management Plan, which was adopted in June 2008, and an oak tree preservation ordinance as set forth in Policy 7.4.5.2.

The intent of this policy was to protect oak trees and oak woodlands on land not subject to development permit applications. It was also a mitigation measure [5.12-1(g)].

The policy directs the County to adopt an ordinance that would require a permit for removal of an oak tree with a 6-inch diameter at breast height (dbh) or a multi-trunked oak with an aggregate of 10-inch dbh. Several exemptions have been provided within the policy. Staff began work on a draft ordinance to implement this policy during the preparation of the OWMP, but found that it does not really address the concerns expressed in the General Plan EIR. As proposed in the policy, the ordinance would simply require that a permit be secured prior to removal of a tree, but only states that the County may require a replacement provision for trees removed. Additionally, the exemptions further reduce the effectiveness as a means to protect oak woodlands.

Other provisions of this policy address discretionary project approvals, commercial firewood cutting, and penalties for not acquiring permits prior to tree removal. Any oak tree removal associated with a discretionary permit is already covered under the OWMP. There may be some benefit to oak woodland resources in regulating commercial firewood cutting, and assessing penalties on an individual attempting to avoid the oak protection provisions of the OWMP and other General Plan policies. However, as a whole this policy does not appear to accomplish what was intended when it was adopted. Staff suggests that an amendment to this policy be processed, after the Board discusses what its goals are with regard to oak tree protection. The County has attempted to address this issue in the past, and there is a wide range of opinions on how and where such protections should be applied. In some cases, individual tree protection ordinances address more aesthetic concerns, rather than larger, biological resource issues.

Preparation and adoption of a tree ordinance is expected to take approximately 300 hours of staff time. A general plan amendment would necessitate revisiting the General Plan EIR and preparing an addendum or supplement. That would probably require 150 hours or more of staff time.

Riparian Setback Ordinance – CO-O

This measure is intended to implement Policies 7.4.2.5 and 7.3.3.4, which direct the County to establish setbacks from streams and other bodies of water, including wetlands. Policy 7.3.3.4 set forth temporary standards of a 100-foot setback from lakes and perennial streams, and a 50-foot setback from intermittent streams and wetlands. While neither the implementation measure nor the policies were specifically identified as mitigation measures in the EIR, both policies were referenced as means to reduce the impact to water resources. The setbacks were incorporated into Interim Interpretive Guidelines adopted by the Planning Commission on June 22, 2006. These guidelines apply to discretionary project approvals and those ministerial permits that fall into the General Plan consistency review requirements of Policy 2.2.5.20.

The Guidelines provide for modifications of the setback if it can be demonstrated that a different setback would adequately protect the riparian resource, based on a review by a qualified biologist or other specialist. Since their adoption in 2006, there has not been significant controversy over the provisions contained in the guidelines. It is staff's intent to review these and incorporate them into the update of the zoning ordinance, either as a part of the zoning

ordinance update or as a separate ordinance. Prior reports showed an estimated 120 hours of staff time to complete this task.

Summary:

As discussed above, there is significant overlap between the various policies and implementation measures related to biological resources. As a whole, they are intended to provide a comprehensive set of protective measures of the county's natural resources, while accommodating the anticipated and desired growth in housing and economic activity set forth by the General Plan. The controversy arises when these measures affect the development potential of some sites designated for higher intensity urban or suburban uses. Each of these measures has the potential to increase costs of development, either in terms of impact fees, reduced density, or in set asides. However, addressing the resource issues in a programmatic way will streamline the process and provide greater certainty than looking at them at a project by project basis, and will protect the county's natural resources from greater fragmentation at a landscape level.

A summary of the recommendations of staff discussed above are as follows:

1. Continue to support Development Services' and County Counsel's efforts to work with FWS and DFG to update the County's ecological preserve program for gabbro soils rare and endangered plant species. This would include approximately 150 staff hours annually (at Principal Planner level) plus utilization of GIS resources available in DSD over the next two years.
2. Allocate sufficient funds and staff resources to begin the mapping aspect of the INRMP. This should be one of the highest General Plan implementation priorities for Development Services, along with the zoning ordinance update and County-wide rezoning for General Plan consistency. \$250,000 is presently budgeted for this effort although it is unknown how much this first task will cost compared to development of the entire program. DSD would dedicate approximately $\frac{3}{4}$ of one FTE (Senior Planner) to this task.
3. Include, as a part of the INRMP scope of work, a review of the –IBC overlay designation. Once review of that is complete, the County should consider whether the overlay serves the purpose it was intended, and amend the General Plan to either revise the land use map to correlate with the base land uses, or amend the policy as appropriate.
4. Direct staff to continue to utilize the Interim Interpretive Guidelines for Policy 7.3.3.4 as it relates to riparian setbacks. As funding and staffing allows, convert these guidelines into the form of an ordinance to be added to the zoning ordinance, Title 17. Staff time necessary to complete this task is 120 hours.
5. Defer doing any work on the oak tree preservation ordinance until the INRMP is completed, then determine if such an ordinance would provide the intended benefits. If, after such an analysis is completed, it is determined that the ordinance would provide only minimal additional protection, initiate a General Plan amendment to modify Policy 7.4.5.2 as needed.

Attachments:

1. List of Implementation Measures Related to Biological Resources
2. List of Policies Related to Biological Resources
3. Biological Resources Timeline

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