



COMMUNITY DEVELOPMENT AGENCY

LONG RANGE PLANNING

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Date: July 18, 2017

To: Board of Supervisors

From: Anne Novotny, Principal Planner

Subject: Planning Commission Recommendations and Agricultural Commission Comments to the Board of Supervisors regarding the General Plan Biological Resources Policy Update, Oak Resources Management Plan, and Oak Resources Conservation Ordinance

Planning staff is requesting the Board provide direction on each of the Planning Commission's (4/27/17) recommendations and the Agricultural Commission's (5/10/17 & 6/14/17) comments. Staff is recommending the Board continue the public hearing to August 29, 2017, or to September 12, 2017, depending on the extent of the Board's direction, for certification of the Environmental Impact Report and adoption of the proposed Project.

The Planning Commission made six recommendations for the Board to consider and the Agricultural Commission provided five comments which are listed below and attached as Exhibit A (Attachment 24B). Staff agrees with the Planning Commission's Recommendations 1 and 5. Staff is not recommending that the Board take action on the other four Planning Commission recommendations, or any of the Agricultural Commission's comments. Recommended changes to the draft ORMP and Ordinance are prepared within this memo. The analysis for each recommendation/comment is included in Exhibit B (Attachment 24C).

Planning Commission Recommendations:

1. Add language to Ordinance Section 130.39.080 (Enforcement) from the ORMP Maintenance and Monitoring Program;
2. Redefine Heritage Oak Tree diameter size to 20 inches (from 36 inches, ORMP Section 6.0, Definitions);
3. Change bi-annual reporting to annual reporting and include expenses and income in Ordinance Section 130.39.090.B (Bi-Annual Reporting – Oak Woodland Conservation Fund Fees);
4. Increase in-lieu fee for Oak Woodland based on acquisition land values in El Dorado County (ORMP, Section 3.0, In-Lieu Fee);
5. Enforcement of mitigation monitoring and reporting needs to be more effectively applied, in light of past performance and (perceived) deficiencies; and
6. Establish long-term funding for Mitigation and Monitoring in perpetuity.

Agricultural Commission Comments:

1. Heritage Oak size should not be less than 36 inches in diameter on Ag zoned lands or AL designated, and 20 inches on other lands;
2. Personal Use Exemption – 8 tree limit per parcel seems impractical and needs more flexibility or criteria depending on the character of the parcel (e.g., size, density, number of dwelling units, number of owners, zoning or land use designation);
3. Site Selection Criteria and Management & Monitoring (M&M) cost in the in-lieu fee seems inadequate;
4. Exclude mitigation CUP trigger in an Ag District or active Williamson Act contracted lands; and
5. Exemption from mitigation for Heritage Trees that are Live Oak species removed from Agricultural properties.

Staff Recommendations:

Planning Commission Item No. 1:

Staff recommends proposed changes to Sections 130.39.080 (Enforcement) and 130.39.090 (Monitoring and Reporting) of the draft Oak Resources Conservation Ordinance as shown below:

130.39.080 Enforcement

A. Fines. As established in ORMP Sections 2.2.1 (Oak Woodland Removal Permits) and 2.3.1 (Oak Tree Removal Permits), fines, shall be issued to any ~~property owner~~ person, firm, or corporation that is not exempt from the standards included in the ORMP who ~~impacts~~ an Oak Resources without first obtaining an Oak Tree and/or Oak Woodland Removal Permit.

1. **Unpermitted Removal of Oak Woodland.** For unpermitted removal of oak woodland, fines may be issued in an amount up to three times the current oak woodland in-lieu fee amount, based on the area of oak woodland removed.
2. **Unpermitted Removal of Individual Native Oak Trees.** For unpermitted removal of individual native oak trees, fines may be issued in an amount up to three times the current market value of replacement trees, including the estimated cost of replacement, and/or the cost of replacement of up to three times the number of required replacement trees.
3. **Unpermitted Heritage Tree Removal.** For unpermitted removal of any Heritage Tree, fines may be issued in an amount up to nine times the current market value of replacement trees, including the estimated cost of replacement, and/or the cost of replacement of up to nine (9) times the number of required replacement trees.

B. Other Penalties. In addition to fines, ~~if an Oak woodland Resource is impacted without an Oak Woodland and/or Oak Tree Removal Permit, in addition to issuing fines and penalties,~~ any and all applications for development of that property shall be deemed

incomplete unless and until the property owner enters into a settlement agreement with the County or all code enforcement and/or criminal proceedings are complete and all penalties, fines and sentences are paid or fulfilled.

~~If individual native oak trees or Heritage Trees are impacted without an Oak Tree Removal Permit, in addition to issuing fines and penalties, any and all applications for development of that property shall be deemed incomplete unless and until the property owner enters into a settlement agreement with the County or all code enforcement and/or criminal proceedings are complete and all penalties, fines and sentences are paid or fulfilled.~~

130.39.090 Mitigation Maintenance, Monitoring and Reporting

Required care, inspection and documentation of replacement oak trees, including acorns, when planted as mitigation for loss of oak woodlands, loss of individual native oak tree(s) or Heritage Tree(s) shall be consistent with all applicable provisions of the ORMP Section 6.0 (Definitions - Mitigation Maintenance, Monitoring and Reporting), including annual monitoring and replacement of any dead trees for a period of seven (7) years from the date of planting.

Planning Commission Item No. 5:

Staff recommends proposed changes to Section 130.39.070 (Oak Tree and Oak Woodland Removal Permits – Discretionary Projects) of the Oak Resources Conservation Ordinance to include a security deposit for on-site oak tree/oak woodland replacement planting.

This section currently requires posting of a security bond or other security instrument when on-site oak resources would be retained. This section could be modified to add a subsection that requires the posting of a security bond or other security instrument when replacement tree planting is undertaken by a project applicant. The security instrument could remain in place until the replanting requirements are fulfilled. This would provide the County with a source of funds for conducting additional tree planting should the project applicant's replacement tree planting efforts be unsuccessful.

Section 130.39.070.F could be added to the proposed Oak Resources Conservation Ordinance as shown below:

F. Security Deposit/Security Instrument for On-Site Oak Tree/Oak Woodland Replacement Planting. If oak tree replacement planting is proposed for a discretionary project, the applicant shall post a bond or other security instrument in an amount that is no less than the current value of required replacement tree(s) and/or acorns, all planting costs plus the cost of maintenance and monitoring, as determined by a Qualified Professional. The term of the security instrument shall be from the date of issuance of an oak tree/oak woodland removal permit to successful completion of the mitigation requirements as determined by a Qualified Professional. The form and amount of the security instrument shall be specified by the permit issuing body and approved by County Counsel. No grading or other on-site work shall be permitted until the security is posted. The security instrument shall be used to assure successful completion of the mitigation requirements.

Other Proposed Minor Changes

After the Planning Commission hearing on April 27, 2017, staff and Dudek identified a few additional changes to the draft ORMP, Oak Resources Conservation Ordinance, and Draft EIR. These proposed changes (highlighted in yellow) are noted on Exhibit D, Summary of Proposed Changes (Attachment 24E). In addition, staff identified a proposed minor revision to Section 130.39.060 of the Oak Resources Conservation Ordinance, as shown below:

130.39.060 Oak Tree and Oak Woodland Removal Permits – Ministerial Development Projects.

B. General Permit Requirements. Application for an Oak Tree or Oak Woodland Removal Permit shall be made by filing a completed application form with the Director. The form shall require the following minimum information:

1. A Code Compliance Certificate, on a form approved by the Director, verifying that no Oak Resources have been impacted within two years prior to submittal of permit application;

Adding this section will clarify the Code Compliance Certificate requirement pursuant to Section 2.2.1 (Oak Woodland Removal Permits) of the ORMP which states: “Under penalty of perjury, a code compliance certificate shall be required to affirm no oak woodlands have been impacted (i.e., cut down) on the property that is the subject of an oak woodland removal permit application within 2 years prior to the submission date of the application.”

Staff also identified the following minor revisions to the draft resolution amending the General Plan policies (Attachment 22F) as shown below.

Add “Objectives and Implementation Measures” to the Resolution Title and the following clause:

ADOPTING AN AMENDMENT TO THE BIOLOGICAL RESOURCES POLICIES, OBJECTIVES, AND IMPLEMENTATION MEASURES IN THE EL DORADO COUNTY GENERAL PLAN

WHEREAS, on September 24, 2012, the Board determined that all the related biological resources policies, objectives, and implementation measures in the General Plan should be reviewed and considered for revisions to ensure that the goals and objectives of the General Plan can be achieved; and

Resolution Establishing an In-Lieu Mitigation Fee

In addition, an additional draft “Resolution Establishing an In-Lieu Mitigation Fee to Mitigation Impacts to Oak Woodland Areas and Individual Oak Trees” has been prepared and is attached as Exhibit E (Attachment 24F). This Resolution will also be included in the adoption package for the Board.

Weber Creek Canyon Important Biological Corridor (IBC)

Another item identified that requires clarification is the definition of the Weber Creek Canyon IBC, which is referred to in the Draft EIR (Chapter 6, Biological Resources, p. 6-79) and in existing and proposed General Plan Policy 7.4.2.9. For clarification, Dudek prepared a map which delineates the parcels contained within the Weber Creek Canyon IBC. The map is included with Exhibit D (Attachment 24E).

Staff Recommendations

Staff recommends the Board direct the following changes to the proposed Oak Resources Conservation Ordinance and draft ORMP:

Planning Commission:

1. Make proposed changes to Sections 130.39.080 (Enforcement) and 130.39.090 (Monitoring and Reporting) of the draft Oak Resources Conservation Ordinance.
2. Modify Section 130.39.070 (Oak Tree and Oak Woodland Removal Permits – Discretionary Projects) of the Oak Resources Conservation Ordinance to include a requirement for a security deposit/security instrument for on-site oak tree/oak woodland replacement planting.

Additional Changes:

1. Make proposed changes to Section 130.39.060 (Oak Tree and Oak Woodland Removal Permits – Ministerial Development Projects), subsection B (as noted above on page 4).
2. Approve the area defined as the Weber Creek Canyon IBC as shown on the map included with Exhibit D (Attachment 24E).

EXHIBITS TO STAFF REPORT TO THE BOARD 7/18/17

Exhibit No.	Legistar File 12-1203 Attachment No.	Document
A	24B	Planning Commission Recommendations from 4/27/17 and Agricultural Commission Comments from 5/10/17 and 6/14/17
B	24C	Staff Memo – Supporting Information
C	24D	Summary of Public Comments Received 3/13/17 – 4/27/17
D	24E	Summary of Proposed Changes (4/27/17 – 7/18/17)
E	24F	Draft Resolution Establishing an In-Lieu Fee to Mitigate Impacts to Oak Woodland Areas and Individual Oak Trees