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MEMORANDUM

DATE: April 28, 2008
TO: Board of Supervisors
FROM: Peter N. Maurer, Principal Planner
SUBJECT: Comments on the Draft Oak Woodlands Management Plan

Background:

The draft Oak Woodland Management Plan (OWMP) and an initial study and draft negative declaration for the proposed OWMP were distributed for public comment on February 11, 2008. The County received comments from 16 individuals and interest groups, some of which were quite lengthy. The purpose of this memo is to comment on those letters in order to provide additional information for your Board. CEQA does not require that the County respond in writing to comments received on a negative declaration, but staff believes a written report addressing the issues raised would be helpful in your deliberation.

The comment letters address concerns about the policy choices your Board made in developing the OWMP, and raise concerns about the adequacy of the environmental analysis. Rather than respond to each individual commenter, since many of the letters raised similar concerns, we have grouped the responses around seven major issues raised in the letters. You have previously received copies of the comment letters which were submitted prior to the April 1, 2008 hearing.

Discussion:

General Comments: Many of the letters appear to reflect a misunderstanding of the purpose of the OWMP and where we are in the process. The OWMP is intended to implement existing Policy 7.4.4.4 and the oak woodlands portion of the Integrated Natural Resources Management Plan (INRMP) as required by Policy 7.4.2.8, as adopted by the 2004 General Plan. It is also intended to satisfy the terms of the settlement agreement for the General Plan litigation. It is not intended to amend the policies, nor revise the land use pattern adopted as a part of the 2004 General Plan. Many of the letters challenge the OWMP because it allows the removal of oak woodlands. The General Plan EIR found that there would be significant and unavoidable impacts to oak woodlands, including loss and fragmentation, from the planned growth considered under the General Plan.¹ Findings of overriding consideration were adopted,

accepting that development in the community regions and rural centers would have an impact.² The mitigation measures adopted addressing oak woodlands were intended to reduce the impact, but it was acknowledged that the impact could not be avoided or reduced to a less than significant level. The General Plan and its EIR were found by the court to adequately address these issues.

This OWMP implements the mitigation measures articulated in Policies 7.4.4.4 and 7.4.2.8 (as they relate to oak woodland habitat) along with the applicable provisions of Implementation Measures CO-M, CO-P, and CO-U. As stated in the EIR, the most effective mitigation for the inevitable loss of oaks due to continued development within the county is the preservation of large areas of oak woodland habitat, rather than isolated stands within the urbanized areas of the County.³

The following discussion identifies the key issues in the recent comment letters. A summary of the concern is provided in italics with the County's response following.

1. An EIR should be prepared for adoption of the OWMP

The OWMP does not fully mitigate for the loss of oaks, therefore it needs and EIR instead of a negative declaration.

Response: This comment is raised frequently in the letters and demonstrates a misunderstanding of CEQA, the purpose of the OWMP, and the findings made with adoption of the General Plan and certification of its EIR. This OWMP has no independent impact on biological resources. The impacts to the woodlands caused by the ongoing development in the county were previously considered and overridden in the 2004 General Plan EIR. This OWMP is being developed to determine the location of the oak woodlands the County will seek to acquire in rural areas to offset the loss of woodlands in areas designated for urban growth.

2. Connectivity and reliance upon the Important Biological Corridor (IBC)

The PCAs are not interconnected, which reduces their effectiveness for protection of the habitat values of the oak woodlands that will be protected under the provisions of the OWMP. Additionally, due to the fact that standards have not been developed for the IBCs, they do not provide an effective corridor for the connectivity that is believed to be necessary for an effective program.

Response: The purpose of the OWMP is to adopt a strategy to protect, by setting aside in perpetuity through the acquisition of conservation easements, large expanses of intact oak woodland habitat. Each of the separate areas designated as Priority Conservation Areas (PCAs) contains sufficient land area to support self-sustaining oak woodland that contains sufficient genetic diversity for that area. Connectivity between the PCAs is not necessary to protect the oaks or the woodlands within each PCA. Connectivity between the various habitat types, including oak woodlands, will be addressed as the other components of the INRMP are developed, which will look at the whole ecosystem. The purpose of the OWMP is to protect the oak trees within large stands. The INRMP will look at the full ecosystem and all of its components. Again, it is important to point out that the EIR recognized that fragmentation and loss of oak woodland would occur within the community regions and rural centers. The best

way to mitigate that impact, to the extent possible under the land use pattern adopted with the General Plan, was to identify and protect larger areas of woodland outside of the urban core.

3. Biological values/differing types of oak woodlands

Not all of the woodlands are of equal value (valley oak woodland is less prevalent and more sensitive) and there is no mechanism to ensure that woodland protected is of equal or greater biological value as that lost.

Response: The valley oak woodland habitat type is the least common of the oak woodlands in El Dorado County, comprising only one percent of the total oak woodland habitat in the county. Because of that, it is considered a sensitive habitat. It is fairly evenly distributed throughout the lower elevations of the county, and is usually found in small stands. The PCAs have been selected to maximize the amount of valley oak woodland that is contained within them. Ten percent of the PCA woodland type is valley oak woodland, so a greater proportion of the oaks that are protected will be valley oaks.

The OWMP provides for two means of establishing off-site mitigation: payment of the in-lieu fee for future acquisition of conservation easements in the PCAs or acquisition of a conservation easement by an applicant to off-set the loss of oak canopy caused by the development project. The latter method requires a biological assessment to determine if the acquired off-site mitigation area is of equal or greater biological value. While such an assessment does not occur with each individual project when in-lieu fees are collected, the establishment of the PCAs was based on the analysis made that identified the best areas, based on habitat, location, and extent of oak woodland, for large-scale oak woodland protection. Additionally, the County will monitor the acquisition program and provide annual reports to the Board and public. These reports will identify the acreage of oak woodland that is lost due to development, the acreage conserved through easements, the quality of those woodlands, and any management activities necessary to improve the woodland habitat.

4. Fee Amount/Calculation.

The fee amount is now too low to adequately achieve the conservation goals directed in the General Plan. Alternatively, the proposed in-lieu conservation fund fee amount is too high, in particular the conservation easement percentage of the fee title (recommended to be 80% by the economic consultant hired by the County, reduced to 40% by the Planning Commission).

Response: In his review of local conservation easement values relative to fee title values, the economic consultant hired by the County found that drivers for easement costs are the zoning type and development potential on the property as valued by a qualified appraiser (MAI certified) for purchase of the development rights. The Planning Commission recommended a 40% value of conservation easement relative to fee title value. This is a compromise between the 25% requested by some commenters and the staff-recommended 80% of fee title value. The 40% value of conservation easement relative to fee title value is defensible, as arguments can be made for both sides, if the County commits to an annual review of the OWMP management (oaks removed, oaks planted, conservation easements acquired). Such an annual review will provide for adaptive management if the fee collected is inadequate to conserve oaks, or if the fee collected is higher than necessary, but allows the Board discretion in adjusting the fee. With an

adaptive management plan, and an annual review and report to the Board of Supervisors regarding the success or failure of the OWMP, the percentage could be corrected if there are no willing sellers at a rate that is too low.

In a related matter, at the Board of Supervisors hearing of April 1, 2008, a concern was expressed regarding the provision in the draft ordinance that automatically modified the fee. The Board direction was that this be changed to make the adjustment optional. Due to concerns expressed by the public that once the fee is set, it will remain locked in place even if it is too high or low to accomplish the purpose, staff suggests that the ordinance provide for an annual review, but that modification of the fee remains at the discretion of the Board. Also, since any adjustment would not be done automatically, the formulas provided in the original draft would no longer be necessary. Recommended modifications to the draft ordinance language for Section 17.72.990 is attached to this memo.

5. Measurement of oak canopy vs. woodland

By measuring the lost oak canopy rather than the total woodland lost, the amount of woodland that is protected is reduced, thereby reducing the effectiveness of the mitigation.

Response: This comment really again questions the adequacy of the fee, since the tree canopy removed is used in the OWMP only as a unit of measurement to determine how large a fee a developer must pay toward the purchase of oak woodland conservation easements. A unit of measure is needed to determine the extent of oak tree loss, and the Board of Supervisors determined, as a matter of policy, that oak tree canopy was the most efficient means to make that measurement. Other jurisdictions have used inches of tree trunk diameter, number of trees, and other units of measure in calculating an appropriate in-lieu fee. In fact, the original mitigation for the 1:1 on-site replacement was for a combined diameter of replacement trees equal to the diameter of the removed trees.⁴

Oak tree canopy and oak woodland have different, distinct meanings. However, the 2004 General Plan and CEQA document did not always differentiate between the two, and there was no specific standard with regard to the amount of woodland that was intended to be protected by the mitigation measures that resulted in Policies 7.4.4.4 and 7.4.2.8 and the associated implementation measures. The extent of oak tree canopy within a given woodland may vary as well, from as low as ten percent to as much as one hundred percent of the canopy. While this may in some circumstances lead to less woodland being conserved than if the habitat lost was measured by the total woodland, the County recognized this fact when adopting the General Plan and making the findings of overriding consideration that there would be a significant and unavoidable impact on oak woodland habitat.⁵

6. Priority Conservation Area (PCA) Size/Location.

The PCAs should not be limited to 500 acre parcels (limited in size), or be located only in rural locations and therefore isolated (particularly in regards to the oak woodlands in the north/south corridor along Highway 50 for wildlife habitat connectivity), and cover too little of the existing oak woodlands.

Response: The PCAs, as adopted by the Board of Supervisors on June 25, 2007, are large expanses (of at least 500 acres) of oak woodlands, which overlap with parcels that are 40 acres or greater in size. The OWMP is not a plan to address wildlife connectivity issues. Wildlife connectivity issues, including the north/south Highway 50 corridor of concern, will be thoroughly addressed in the INRMP. The General Plan EIR found that there would be significant and unavoidable impacts to oaks from development, which would include the Highway 50 corridor, and findings of overriding consideration were adopted recognizing that other important planning goals and objectives needed to be taken into consideration.⁶

As discussed above, there is no requirement to adjust the adopted land use pattern, which is the cause of the fragmentation and limitation to connectivity. The General Plan concentrates land development within the community regions and rural centers where oak woodland impacts and fragmentation are most likely, so potential PCA designations were removed from these areas, as well as from land uses designated for commercial and industrial development. Additional oak woodlands were removed as potential PCAs where the 2004 General Plan designates Low Density Residential (LDR) land use. Some of these removed land uses, where growth is designed to transpire, occur along Highway 50. It is not economically feasible or desirable to restrict all growth from occurring, and to include all existing oak woodland in the PCAs; the reduced acreage of existing oak woodlands in the PCAs was found by the Board of Supervisors to be adequate for mitigation purposes.

The OWMP is the mitigation to address impacts to oaks from development – to develop a plan to protect “large expanses” of oaks (as required to be mapped per the INRMP) that the County decides as policy are the most valuable (hence, the PCAs). In addition, the OWMP is a plan to protect oak species – not other species’ habitat, which will be addressed in the INRMP. The 500-acre size of the PCAs allows for genetic diversity and sustainability of the oak species, and provides a large expanse for dependent species.

7. OWMP Conformity with the Integrated Natural Resources Management Plan (INRMP).

The OWMP is not in conformance with the INRMP; the OWMP is a subset of the INRMP and must be consistent with that plan. The OWMP should be developed concurrently with the INRMP because a delay in addressing the issue of fragmentation of oak woodland habitat now will result in a lost opportunity to mitigate the impacts of development on oak woodland fragmentation. Failure to comply with the elements of the INRMP related to oak woodland conservation prior to implementing Option B and off-site mitigation violates the Settlement Agreement.

Response: The OWMP addresses mitigation for impacts to oaks caused by development. As a subset of the INRMP, the OWMP addresses protection of large expanses of oak woodlands, therefore providing protection of oak species (not habitat for other species, which includes connectivity; that will be addressed in the *Integrated* Natural Resources Management Plan). The County has begun the development of the INRMP, by providing an initial inventory of biological resources. This map, which was reviewed and accepted by the Board of Supervisors on April 1, 2008, includes the PCAs. It has yet to be determined, however, what constitutes “Important Habitat” as indicated in Policy 7.4.2.8. It was recognized in the General Plan EIR that there would be fragmentation, and significant and unavoidable impacts to oaks and wildlife habitat. It was also recognized that Policy 7.4.4.4 would not fully mitigate the impacts of development on

oak woodland fragmentation. There was no requirement in the General Plan, the General Plan EIR, or the Settlement Agreement, to develop the OWMP concurrently with the INRMP. The County is complying with the Settlement Agreement by proceeding with the adoption of the OWMP, which will be incorporated into the INRMP.

¹ El Dorado County General Plan EIR, Response to Comments, Section 4.1 Master Responses, Pg.4.1-50

² Resolution Certifying the EIR, Exhibit A, CEQA Statement of Overriding Considerations, pp 2, 123, and 127

³ El Dorado County General Plan EIR, Response to Comments, Section 4.1 Master Responses, pg 4.1-51

⁴ Ibid

⁵ Resolution Certifying the EIR, Exhibit A, CEQA Statement of Overriding Considerations, pp 2, 123, and 127

⁶ Ibid