L. PARLIN PUBLIC COMMENT ITEM 44
7/18/17

## Lori Parlin

**From:** Lori Parlin [loriparlin@sbcglobal.net]
**Sent:** Sunday, July 16, 2017 10:42 PM
**To:** 'John Hidahl'; 'Shiva Frentzen'; 'Brian Veerkamp'; 'Michael Ranalli'; 'Sue Novasel'
**Cc:** 'Anne Novotny'; 'Roger Trout'; 'EDC COB'
**Subject:** 7-18-17 BOS hearing - public comment file #12-1203 Biological Resources Policy
**Attachments:** Parlin Biological Resources Policy Update 7-18-17 comments.pdf

Dear Supervisors,

Please review the attached comment on the Biological Resources Policy and consider continuing the hearing and public comment so that staff can take further action to bring the proposed Oak Resources Management Plan into compliance with CEQA.

Thank you,

Lori Parlin

**Biological Resources Policy Update FEIR, file 12-1203, Lori Parlin public comment to BOS- 7/18/17**

Dear Supervisors:

It was brought to my attention that several people had asked about the success and failure rate of the current Mitigation Monitoring Plan for the Oak Woodlands, but there was nowhere to find out whether or not the program was a success. As such, I submitted a Public Records Act (PRA) request on May 19, 2017 to get an answer. During several back and forth emails and phone calls, the staff gave itself two time extensions to answer the request. On July 12, 2017, I received an email stating that 3 CDs full of documents were ready for me to pick up in answer to the PRA. The 3 CDs were filled with about 600 documents, but not one of them was a report of any kind showing which projects were approved using an Oak Woodland Mitigation Monitoring Plan and whether or not they were successful. I would have to wade through the almost 600 documents myself if I wanted to know the status of the Oak Woodland Management Plan.

One would think that everyone would want to know whether or not the current program was successful before making any changes to the program. Why fix something that is not broken? How do we know if it is broken?

Section 15097 of the California Environmental Quality Act (CEQA) regarding Mitigation Monitoring and Reporting states:

"In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program."

Section 15097 goes on to give an example of a reporting program. Their example is the annual report on general plan status required pursuant to the Government Code. It's a great example because most of us are familiar with the annual General Plan status report and could easily apply that example to a tracking report of the County's mitigation plans. But a report like that was not provided as part of the response to the PRA.

The full text of Section 15097 is provided at the end of this document.

**Compliance with CEQA:**

Project applicants are required to provide the County with monitoring reports of their oak mitigations. However, without some type of tracking report published by the County or a

third party, the County appears to be currently out of compliance with CEQA regarding the 2008 Oak Woodland Management Plan. Additionally, there is no provision in the proposed Oak Resources Management Plan to track oak tree mitigations. Realistically, it is impossible to manage something if you are not keeping track of it.

What's worse, according to the July 18, 2017 memo from Long Range Planning with Supporting Information for Staff Report, staff has no intention to begin tracking oak tree mitigation reports:

"The County's current permit tracking system is over 20 years old and does not have a methodology for tracking/identifying permits with oak tree mitigation agreements. The County is in the implementation phase of a new tracking system which will be launched by fall 2018. The new system will have the capability of tracking/identifying development projects with required oak tree mitigation.

In summary, the oak mitigation for new discretionary projects like subdivisions will be implemented through the conditions of approval and final map process as developed with each project. After the new permit tracking system is implemented in fall 2018, the County will have an efficient way to identify and track discretionary and ministerial development projects with required oak tree mitigation monitoring and reporting."

It is unacceptable to rely on a permit tracking system that may or may not be implemented in the future to track and manage the County's Mitigation and Monitoring Plans for Oak Woodlands.

Therefore, I ask that you continue this agenda item and keep public comment open, and direct staff to go back and create a section within the proposed Oak Resources Management Plan to clearly delineate how oak tree mitigations will be tracked by the County and who within the County will be responsible for maintaining that tracking system.

Remember, the tracking report can be as simple as the Annual General Plan Progress Report, but whatever it is, it needs to be done immediately to bring El Dorado County in compliance with CEQA.

**Association of Environmental Professionals 2016**

**CEQA Guidelines**

**15097. MITIGATION MONITORING OR REPORTING.**

(a) This section applies when a public agency has made the findings required under paragraph (1) of subdivision (a) of Section 15091 relative to an EIR or adopted a mitigated negative declaration in conjunction with approving a project. In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

(b) Where the project at issue is the adoption of a general plan, specific plan, community plan or other plan-level document (zoning, ordinance, regulation, policy), the monitoring plan shall apply to policies and any other portion of the plan that is a mitigation measure or adopted alternative. The monitoring plan may consist of policies included in plan-level documents. The annual report on general plan status required pursuant to the Government Code is one example of a reporting program for adoption of a city or county general plan.

(c) The public agency may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" generally consists of a written compliance review that is presented to the decision making body or authorized staff person. A report may be required at various stages during project implementation or upon completion of the mitigation measure. "Monitoring" is generally an ongoing or periodic process of project oversight. There is often no clear distinction between monitoring and reporting and the program best suited to ensuring compliance in any given instance will usually involve elements of both. The choice of program may be guided by the following:

(1) Reporting is suited to projects which have readily measurable or quantitative mitigation measures or which already involve regular review. For example, a report may be required upon issuance of final occupancy to a project whose mitigation measures were confirmed by building inspection.

(2) Monitoring is suited to projects with complex mitigation measures, such as wetlands restoration or archeological protection, which may exceed the expertise of the local agency to oversee, are expected to be implemented over a period of time, or require careful implementation to assure compliance.

(3) Reporting and monitoring are suited to all but the most simple projects. Monitoring ensures that project compliance is checked on a regular basis during and, if necessary after, implementation. Reporting ensures that the approving agency is informed of compliance with mitigation requirements.

(d) Lead and responsible agencies should coordinate their mitigation monitoring or reporting programs where possible. Generally, lead and responsible agencies for a given project will adopt separate and different monitoring or reporting programs. This occurs because of any of the following reasons: the agencies have adopted and are responsible for reporting on or monitoring different mitigation measures; the agencies are deciding on the project at different Association of Environmental Professionals 2016 CEQA Guidelines 165 times; each agency has the discretion to choose its own approach to monitoring or reporting; and each agency has its own special expertise.

(e) At its discretion, an agency may adopt standardized policies and requirements to guide individually adopted monitoring or reporting programs. Standardized policies and requirements may describe, but are not limited to:

(1) The relative responsibilities of various departments within the agency for various aspects of monitoring or reporting, including lead responsibility for administering typical programs and support responsibilities.

(2) The responsibilities of the project proponent.

(3) Agency guidelines for preparing monitoring or reporting programs.

(4) General standards for determining project compliance with the mitigation measures or revisions and related conditions of approval.

(5) Enforcement procedures for noncompliance, including provisions for administrative appeal.

(6) Process for informing staff and decision makers of the relative success of mitigation measures and using those results to improve future mitigation measures.

(f) Where a trustee agency, in timely commenting upon a draft EIR or a proposed mitigated negative declaration, proposes mitigation measures or project revisions

for incorporation into a project, that agency, at the same time, shall prepare and submit to the lead or responsible agency a draft monitoring or reporting program for those measures or revisions. The lead or responsible agency may use this information in preparing its monitoring or reporting program.

(g) When a project is of statewide, regional, or areawide importance, any transportation information generated by a required monitoring or reporting program shall be submitted to the transportation planning agency in the region where the project is located and to the California Department of Transportation. Each transportation planning agency and the California Department of Transportation shall adopt guidelines for the submittal of such information.

**Note:** Authority cited: Section 21083, Public Resources Code. References: Sections 21081.6 and 21081.7, Public Resources Code.

C. LANGLEY PUBLIC COMMENT #44
7/18/17

**Public Comment—Biological Resources Policy Update/ Oak Resources Management Plan (ORMP)**
Cheryl Langley
Board of Supervisors Meeting
July 18, 2017
File No. 12-1203
Agenda Item #44

Thank you for the opportunity to comment on the Biological Resources Policy Update project, Oak Resources Management Plan (ORMP). I have the following concerns regarding the project.

**Omission of Option A Retention Standards**

It is not known why the most obvious alternative—that of including Option A retention standards *within* this ORMP project—was not evaluated as a project alternative. The public repeatedly requested inclusion of Option A.

Omission of this project alternative is especially troubling because it is an alternative that mirrors what was once included in the 2004 General Plan, and was considered a viable approach to oak management until Option B (the in-lieu fee option) was rescinded. Because this ORMP contains an in-lieu fee element (in essence an Option B), it would be an "easy fix" to add Option A to the ORMP project plan to make a viable alternative. And, to those interested in retaining County oak resources, such an alternative would be more acceptable than the ORMP as currently proposed; and with the inclusion of the in-lieu fee program (an Option B equivalent), this alternative would likely satisfy the development community as well.

The evaluation of project alternatives is an important matter. In the court ruling *Citizens of Goleta Valley*, it was determined evaluation of project alternatives and mitigation measures is *"[t]he core of an EIR"* (*Citizens of Goleta Valley v. Board of Supervisors*, *supra*, 52 Cal.3d at p. 564 (*Goleta Valley*). And, while CEQA does not require the project proponent to evaluate *all* possible project alternatives, it does require a focus on alternatives that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen significant effects of the project, even if these alternative would impeded to some degree the attainment of the project objectives, or would be more costly. (Pub. Resources Code, sec 21002 & 15126.6[b]&[c]; CEQA Guidelines, sec. 15126, subd. (d); Citizens for Quality Growth v. City of Mount Shasta (3d Dist. 1988) 198 Cal.App.3d 433, 443-445 [243 Cal.Rptr. 727]; *Kings County Farm Bureau, supra,* 221 Cal.App.3d at p. 733.)

CEQA emphasizes it is important to include ***feasible*** alternatives for analysis in an EIR. **Because the EIR for this ORMP project evaluated only two alternatives—both determined to be infeasible[1]—and omitted a potentially feasible alternative, it is likely the County has "failed to satisfy the informational purpose of CEQA."** In fact, in Kings County Farm Bureau v. City of Hanford, **an inadequate discussion of alternatives in an EIR was determined to be an abuse of discretion**. (Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692, 730-737 [270 Cal.Rptr. 650].)

What is the likelihood that a project alternative that included Option A and Option B was not chosen because—while it had the obvious capability of being a viable project alternative—it was viewed as being more onerous or costly for the development community? After all, inclusion of Option A would require project applicants/County staff to first assess whether the proposed project could be built on a given parcel while meeting oak retention standards. The time and expertise involved in such an evaluation could potentially increase project cost and incrementally delay project buildout. But in the past, **when lead agencies have attempted to narrow the range of reasonable alternatives by defining the objectives so narrowly that there are no feasible alternatives to the project that meet its objectives, the courts have not allowed this**. (*Rural Land Owners Association v. Lodi City Council (3d Dist. 1983) 143 Cal.App.3d 1013, 1025-1026 [192 Cal.Rptr. 325].)*

[1] El Dorado County. 2017. Draft CEQA Findings of Fact, Exhibit A, page 14 of 50.

Clearly, an alternative that *includes* Option A in the ORMP project framework would "*...avoid or substantially lessen...significant effects.*" Without an evaluation of this alternative, the County has not done all it reasonably can to limit the environmental impact of this project.

## Mitigation Performance

### *El Dorado Hills Specific Plan*

Because there has been criticism of the oak mitigation efforts undertaken within the County—specifically in the El Dorado Hills Specific Plan area—County staff responded by pointing to what they believed was evidence of successful mitigation. They cited results of an Army Corps of Engineers (Corps) evaluation of mitigation performed under a Clean Water Act 404 permit issued for the El Dorado Hills Specific Plan. The Corps required 125 acres of oak mitigation. Staff concluded, "*In 2016, the Corps reviewed the planting efforts and performance and did not require further planting/re-planting.*"[2]

> However, the project did require oak mitigation and monitoring by the Army Corps of Engineers (Corps). In 1991, the Corps issued a 404 permit for the EDHSP that included requirements for 125 acres of oak mitigation and monitoring over five years following planting. The performance standard for oak woodland mitigation success was 70 live trees per acre by the end of the fifth year.
>
> The developer accomplished a majority of the on-site oak mitigation with acorn plantings. To accommodate for expected mortality due to lack of supplemental irrigation and predators, three acorns were planted per location at 200-210 locations per acre on a total of 125 acres in open space. The planting started in the late 1990's and was phased through 2004. A complete census conducted in 2006-2007 counted approximately 7,800 surviving oak plantings, which equates to approximately 62 trees per acre. In 2004, an additional 20 acres were planted for 145 acres total. In 2016, the Corps reviewed the planting efforts and performance and did not require further planting/re-planting.

**Excerpts Source:** Legistar File# 12-1203, 24C; Exhibit B, page 15 of 18.

The excerpt indicates only that the Corps did not require additional planting; this is is not necessarily an *endorsement* of the results. The failure rate in this instance is calculated to be 1,000 trees short of compliance with the Corps goal of 70 trees per acre. Whether or not "*the Corps did not require further planting,*" the mitigation has **not only fallen short in numbers, but mature oaks have been replaced by saplings/acorn planting**. (**NOTE:** The Corps report cited in Staff Memo 24C appears to not have been provided in a recent California Public Records Act request by Lori Parlin on the topic of County oak mitigation efforts, however, the Corps report has been requested from the Corps, but not yet received; thus, the reason the Corps did not pursue the issue of replanting is unknown, and not confirmed.)

Nonetheless, this—County staff contends—provides evidence that the mitigation effort was a success. But additional documentation differs with this conclusion. A 2002 assessment by Wildlands, Inc. of the Serrano oak woodland mitigation survival concluded that the Upper Silva Valley, Lower Silva Valley, and Village D did not meet the standard established for oak survival.

[2] County of El Dorado, 24C –Exhibit B; *E. Past Performance of Oak Mitigation Efforts*, page 15 of 18.

**Oak Woodland**

The monitoring results for the oak woodland monitoring are presented in Table 1.

Table 1. Oak Woodland Survival Results

| Location | Phase | Monitoring Year | # Live Trees | # Dead Trees | Total Trees Observed | Survival Rate | Area Planted | Live Trees/Acre* | Standard Met |
|---|---|---|---|---|---|---|---|---|---|
| Upper Silva Valley | V | 3 | 116 | 157 | 273 | 42% | 3.4 acres | 27 | No |
| Lower Silva Valley | V | 3 | 209 | 103 | 312 | 67% | 4.4 acres | 33 | No |
| Village D | V | 3 | 413 | 308 | 721 | 57% | 9.5 acres | 13 | No |

*This Value Derived As Follows:
(218 trees planted/acre) x (Survival Rate) / Area Planted = Estimated Number of Live Trees/Acre

**Excerpts Source:** Exhibit E, Serrano Oak Canopy Analysis for EDHSP, pdf page 66 of 70; Attachment 1, page 2 of 2; (Wildlands, Inc. 2002 report: *Serrano El Dorado Development Project Wetland and Oak Woodland Mitigation 2002 Monitoring Report*, February, 2003).

In April 12, 2007, Wildlands, Inc.[3] reported the following (oak woodland evaluation for Serrano Phases 1-6):

**CONCLUSIONS**

Overall, the Phase 4 wetlands are readily achieving their performance standards and no remedial actions are necessary at this time. However, the oak woodlands have failed to meet its success criteria's of 70 trees per acre within an overall 125 acres of oak woodland habitat.

**Excerpt Source:** Letter dated April 12, 2006 to Andrea Brown from Sean Munson, Wildlands, Inc. Subject: *Serrano El Dorado Development Oak Woodland Mitigation Project*. April 12, 2006, pdf page 2 of 4, Attachment 2.

Setting these results aside, let's assume for a moment this does represent a "successful" outcome: What exactly were the results—and are residents satisfied with the outcome?

Following is an analysis of one particular site adjacent to Serrano Village D2, in which some trees have been established (as opposed to other sites in the El Dorado Hills Specific Plan Area where oak mitigation sites appear entirely devoid of trees—see photos in C. Langley comments under File #12-1203,"*Public Comment Rcvd 04-19-17 PC 04-27-17*" and titled: "*Request 2: ORMP Project--Request to Add a PAWTAC Role to the ORMP," pages 2-4*). Documentation by Wildlands, Inc. appears to place the planting of mitigation for Village D at 1999 (Phase V development).[4] Below is a satellite view that shows the mitigation site of interest (the bordered area in red includes the area of interest); photos are also provided. This site borders an existing mature riparian strip.

[3] Letter dated April 12, 2006 to Andrea Brown from Sean Munson, Wildlands, Inc. Subject: *Serrano El Dorado Development Oak Woodland Mitigation Project*. April 12, 2006, page 2 of 4.

[4] Exhibit E, Serrano Oak Canopy Analysis for EDHSP, pdf page 61 of 70. (Wildlands 2000 report).


Image Source: https://www.google.com/maps/place/El+Dorado+Hills,+CA/@38.7045308,-121.0806945,23m/data=!3m1!1e3!4m5!3m4!1s0x809a563de75438b5:0xf008e0397cd8d880!8m2!3d38.6857367!4d-121.082167

## Photos of Mitigation Area

Photos—and the satellite image—reveal the area is largely devoid of trees.[5] (Photos taken June, 2015.)

[5] While some individuals have speculated that perhaps these sites *never* supported oak woodland historically, it is easy to forget that large swaths of woodland were cleared for cattle grazing long ago, and that the El Dorado Hills area includes numerous historic cattle ranches.

## Mitigation Performance — a Comparison

### *Stonebriar*

According to a long-time resident of Stonebriar,[6] the trees in the buffer area between Stonebriar and U.S. Highway 50 (US 50) were planted sometime in the late 1990's, around the time of project initiation. This buffer area was originally intended to be a park with walking trails, but the builder, Lewis Homes, did not complete the project.[7] It is likely that because the area was intended to be a park, relatively large tree stock was planted (*presumably* 15 gallon or larger—the initial installation was observed from US 50, but the development plan has not yet been acquired to validate this estimate). Because planting is estimated to have taken place in the late 1990's, these trees—mixed species, including oaks and pines—are estimated to be roughly 20 years old, and likely relatively contemporary with those planted at the Serrano Village D site.

But the results are strikingly different. (The first image shows the park/buffer and the Stonebriar development along US 50; the second image is close-up of the approximate buffer site, outlined in red. Photos of the trees follow; (photos taken July 16, 2017).


Image Source: https://www.google.com/maps/place/El+Dorado+Hills,+CA/@38.7045308,-121.0806945,23m/data=!3m1!1e3!4m5!3m4!1s0x809a563de75438b5:0xf008e0397cd8d880!8m2!3d38.6857367!4d-121.082167

[6] Personal communication, Rusty Everett, July 13, 2017.

[7] Apparently William Lyon Homes, Inc. completed the home building, but did not continue improving the park "buffer" beyond improvements made by Lewis Homes.

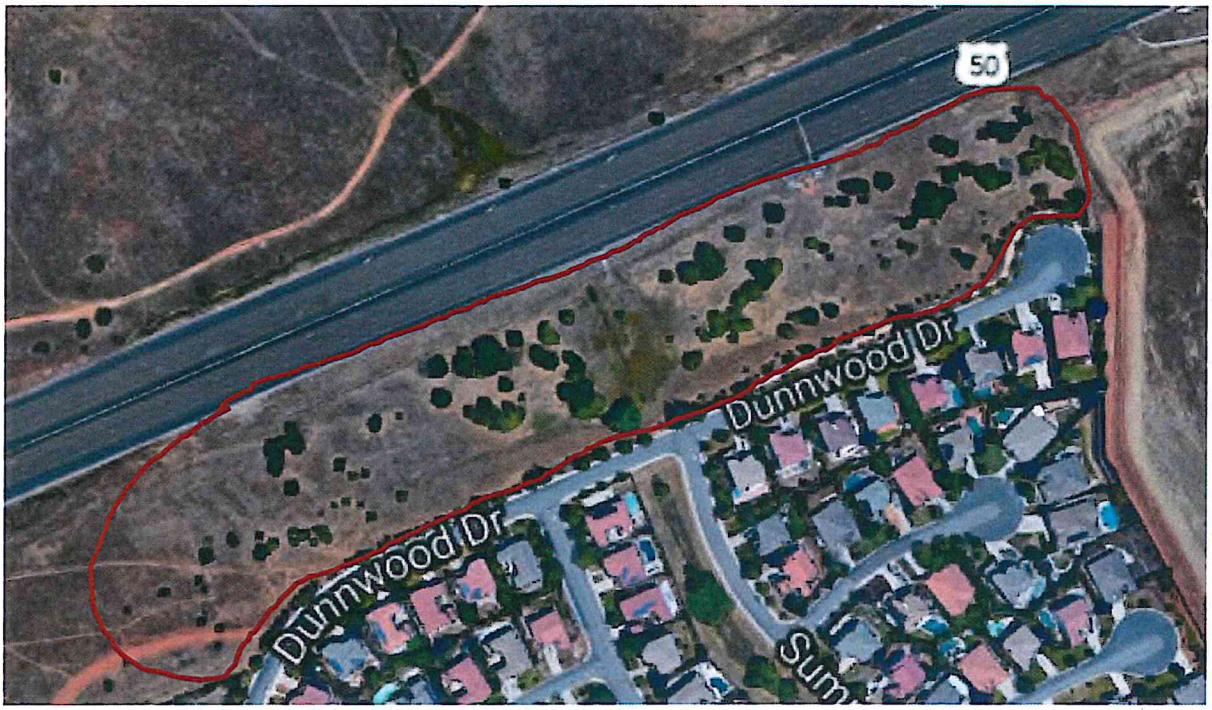
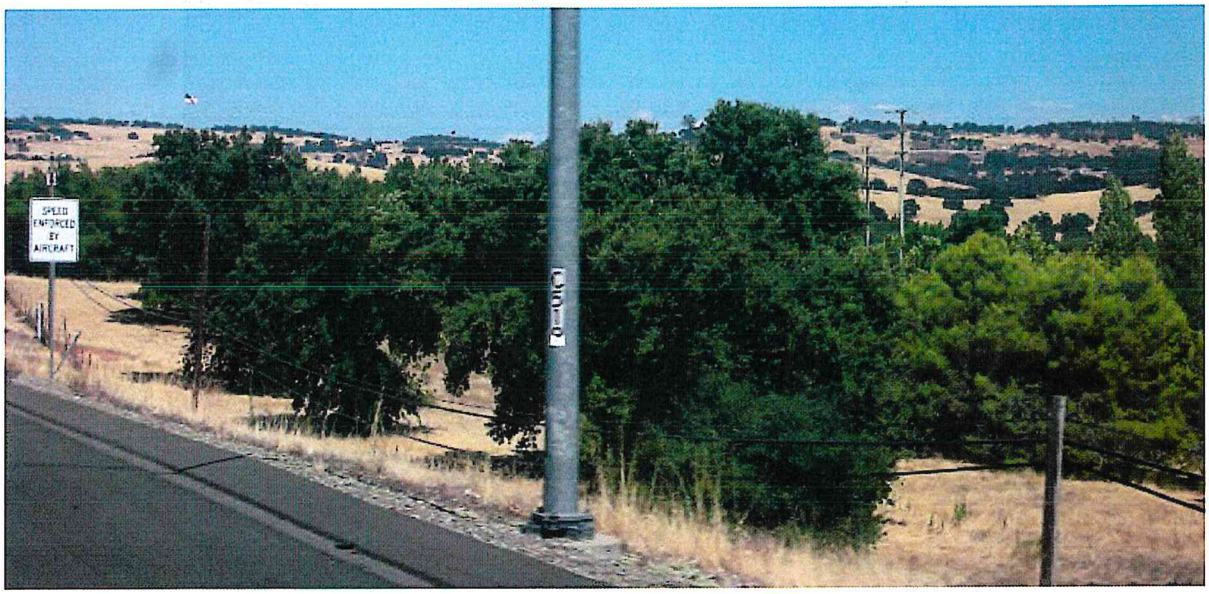



Image Source: https://www.google.com/maps/place/El+Dorado+Hills,+CA/@38.7045308,-121.0806945,23m/data=!3m1!1e3!4m5!3m4!1s0x809a563de75438b5:0xf008e0397cd8d880!8m2!3d38.6857367!4d-121.082167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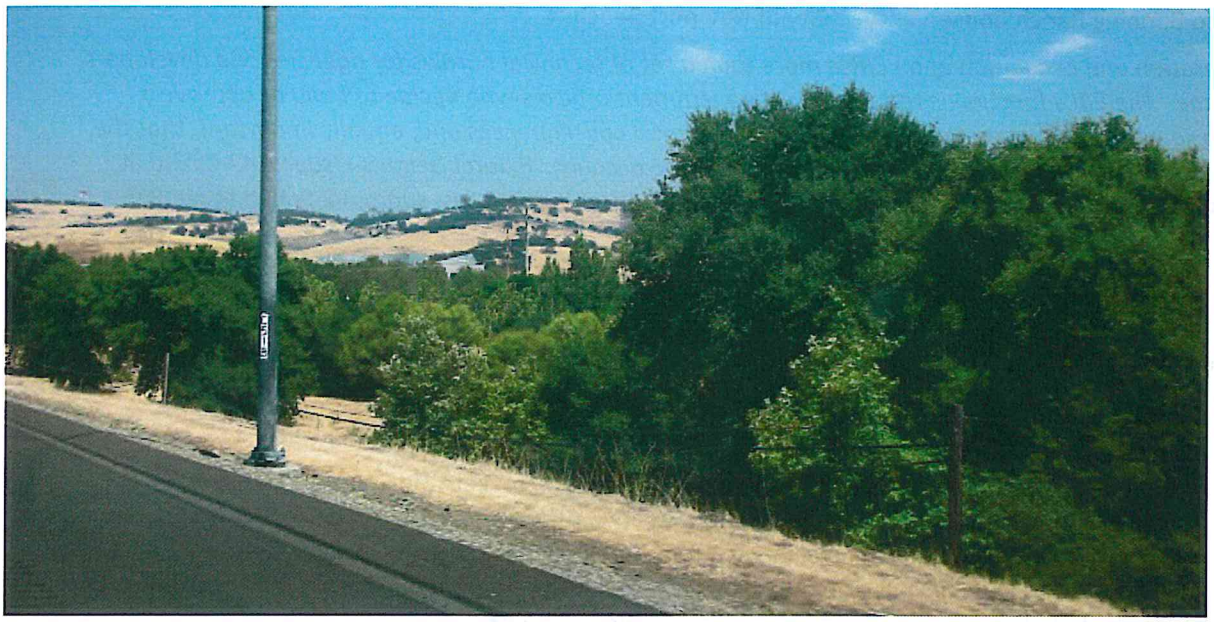

**El Dorado Hills Specific Plan vs. Stonebriar Results**

The question is, then, which tree planting effort produced "viable" results in the (roughly) 20 year period? That is, which result is likely more acceptable/appreciated by residents—especially those living adjacent to these properties? Which result is likely more accommodating to the needs of wildlife? The Stonebriar buffer was established as an asset to the community; the El Dorado Hills Specific Plan mitigation was performed to meet an obligation, with arguably less regard for the end result—it was not planned as a community asset. **But why not**? What is the cost to developers vs the benefit to residents and wildlife of planting larger stock? Are the differences in aesthetics/wildlife habitat worth it? That is, how inviting do we want our communities to be/remain? And finally, **which result should the ORMP be structured to accomplish**?

**Understated Project Impacts**

**The oak mitigation results observed in the El Dorado Hills Specific Plan area are not likely to improve under the implementation of this ORMP**. **ORMP mitigation requirements are less robust than those that prevailed under the 2004 General Plan/Interim Interpretive Guidelines**. Acorn planting, coupled with the planting of saplings—the least expensive route for development projects—is unlikely to yield satisfactory results. Once again, are we satisfied—as residents—with the results? **Are the underwhelming oak mitigation results realized in the the El Dorado Hill Specific Plan to be the County standard?**

Because past mitigation efforts have yielded disappointing results—and even failure in many areas—what ***is*** certain is that there is ***not*** a full understanding of the environmental consequences of this project, because much of the environmental impact lies hidden in the promise of mitigation that will likely not come to fruition. Past performance matters. And yet the Environmental Impact Report (EIR) prepared for this project willingly sidesteps this issue. This is problematic. In the Laurel Heights court ruling, the following was found:

> Because **an EIR cannot be meaningfully considered in a vacuum devoid of reality, a project proponent's prior environmental record is properly a subject of close consideration in determining the sufficiency of the proponent's promises in an EIR.**" "In balancing a proponent's prior shortcomings and its promises for future action, a court should consider relevant factors including: the length, number, and severity of **prior environmental errors and the harm caused; whether errors were intentional, negligent, or unavoidable**; **whether the proponent's environmental record has improved or declined; whether [the responsible entity] has attempted in good faith to correct prior problems..."** (Laurel Heights Improvement Association of San Francisco v. Regents of the University of California (1988) 47 Cal.3d 376, 420 [253 Cal.Rptr. 426.]).

And, according to Banning Ranch Conservancy v. City of Newport Beach:

> *The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account.* (*Laurel Heights I, supra*, 47 Cal.3d at pp. 391-392.)" (*Vineyard, supra*, 40 Cal.4th at p. 449; see *Concerned Citizens, supra*, 42 Cal.3d at pp. 935-936.)

But in this instance—under this project—the public is ***not*** assured the environmental consequences of the project have been taken into account to the extent that they are likely to become evident post-project implementation. In this instance, no one—not the Planning Commission, not the Board of Supervisors, nor the public—are privy to "*a full understanding of the environmental consequences and...assured those consequences have been taken into account.*"

## County Oak Mitigation Performance

This lack of mitigation efficacy—as represented by past mitigation efforts—reveals the County's inability, or lack of will, to follow though and make certain oak mitigation efforts are effective. The absence of response in the EIR to concerns expressed by the public exposes the County's unwillingness to acknowledge and discuss potential unintended adverse environmental consequences, and its unwillingness to propose and develop solutions. There is little reason to suppose oak mitigation will improve, or that an appropriate level of attention will be paid. Examples below illustrate some issues that deserve examination and resolution.

### *Properties Under Notice of Restriction (NOR)*

Following review of a specific February, 2017, *Notice of Restriction (NOR)* [8], the following became evident:

- It is likely Kuehl bill (2004) requirements were violated (Public Resources Code 21083.4).[9] Under this NOR, only trees with a diameter at breast height (dbh) of **eight inches** were inventoried;[10] PRC 21083.4(a) defines oaks eligible for mitigation at **five inches** dbh. (Interestingly, Policy 7.4.5.2 of the 2004/2015 General Plan indicates an *Oak Tree Removal* permit is required for removal of "*any native oak tree with a single main trunk of at least **6 inches diameter at breast height** (dbh)...*") And yet—despite County policy and State law—an eight inch evaluation threshold was used for the NOR.
- PRC 21083.4 may also be violated based upon mitigation solely provided via oak acorn/sapling planting because it is generally understood that plantings are not to exceed one half of the mitigation requirements for a project:

> *1.5 State-level Regulations*
>
> California Public Resources Code (PRC) Section 21083.4 requires a county to determine (as part of its project review required under the California Environmental Quality Act) whether a project may result in conversion of oak woodlands that will have a significant effect on the environment. If it determines that a project may have a significant effect, a county shall require one or more oak woodland mitigation alternatives "to mitigate the significant effect of the conversion of oak woodlands." Alternatives include: 1) conserve oak woodlands, 2) plant an appropriate number of replacement trees and maintain those trees for seven years, 3) contribute to the Oak Woodlands Conservation Fund, or 4) other mitigation measures developed by the County. Plantings shall not fulfill more than one half of the mitigation requirements for a project. Where a county adopts, and a project incorporates, one or more of these mitigation measures, the project is deemed to be in compliance with CEQA as it relates to effects on oaks and oak woodlands. This ORMP incorporates a range of mitigation alternatives that conform to these requirements.

**Excerpt Source:** Draft Environmental Impact Report for the Biological Resources Policy Update and Oak Resources Management Plan, Appendix C, *Proposed Oak Resources Management Plan (ORMP)*, pdf page 9 of 215.

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[8] Notice of Restriction -- Tentative Subdivision Map TM 14-1523; Attachment 3.

[9] **As an aside**, while the ORMP allows for the exclusion of road widening and realignment projects "*...necessary to increase capacity, protect public health, and improve safe movement of people and goods in existing public rights-of-way...*" [9] it is not certain whether this exemption is allowed under PRC 21083.4. The PRC allows exemptions under four circumstances, and it is uncertain whether this exemption fits those requirements. This issue requires further examination.

[10] Notice of Restriction -- Tentative Subdivision Map TM 14-1523, Exhibit A, page 33.

- The NOR states under item 1, page 1 of 2 that "***Said plan may be modified at any time*** *upon agreement of the County and the owner to ensure compliance with General Plan Policy, adopted guidelines, or in compliance with any subsequent policies or guidelines,* ***or modification of the same***."

This language leads to another important issue, one often referred to as "adaptive management."

**Adaptive Management and Contingency Plans**

Just as in the case of the language in the NOR (that indicated a plan "*may be modified at any time*"), documentation for the ORMP ("background and support information") includes this concept as well. Below are excerpts that describe adaptive management and contingency plans.

> **8.3 Adaptive Management**
>
> The success of the ORMP in meeting goals and objectives of the 2004 General Plan will be measured through the Monitoring and Reporting program. The County will implement adaptive management by: 1) revising guidelines for projects as necessary, and 2) revising the ORMP and the mitigation fee. If the Goals of the ORMP are not being met, then the County will review and revise the ORMP as necessary.

**Excerpt Source:** Draft Environmental Impact Report for the Biological Resources Policy Update and Oak Resources Management Plan; Appendix A of Appendix C, *Proposed Oak Resources Management Plan (ORMP)*, page A-39.

> Monitoring Report: A report prepared by a Qualified Professional documenting site observations and replacement planting survival totals for oak resources mitigation efforts. A Final Monitoring Report is one prepared at the end of the 7-year maintenance and monitoring period that summarizes replacement planting survival totals. All Final Monitoring Reports shall contain contingencies or alternatives if the success criteria for replantings, as determined by a Qualified Professional, have not been met at the end of the monitoring term, along with a means to ensure compliance with the replacement planting plan. A copy of the Final Monitoring Report shall be submitted to the County.

**Excerpt Source:** Draft Environmental Impact Report for the Biological Resources Policy Update and Oak Resources Management Plan, Appendix C, *Proposed Oak Resources Management Plan (ORMP)*, page 30.

While the terms "adaptive management" and "contingency plans" seem to imply something innocuous and "practical," in the context of oak tree mitigation efforts this "flexibility" can be misused and misapplied, either intentionally or inadvertently. And, importantly, t**his language implies the ORMP itself can be changed at any time**, for currently unidentified purposes. **This in practical terms negates the EIR for this project, because it is not known how mitigation may be applied to any given (or *every* given) project. Thus, potential adverse impacts cannot be estimated because the mitigation measures are not defined. This lack of definition means mitigation proposed under the project is rendered meaningless**.

**Where From Here?**

The Serrano mitigation, roadside mitigation, etc.—that has either resulted in substandard results, or failure—is not being corrected (these results are documented in C. Langley comments under File #12-1203,"*Public Comment Rcvd 04-19-17 PC 04-27-17"* and titled: "*Request 2: ORMP Project--Request to Add a PAWTAC Role to the ORMP").* That is, projects absent required oak mitigation are not being required to effectively mitigate impacts; poor results exhibited at many sites appear to go unacknowledged. And, significantly, **no adjustment to mitigation approach is presented under this project—in fact, mitigation requirements have been weakened under this plan when compared to those under**

**the 2004 General Plan/Interim Interpretive Guidelines**. And—a fundamental weakness in the existing plans was not corrected—that of allowing the planting of acorns in lieu of larger container specimens.[11]

**Until the County insists on correction of the existing sites that have yielded substandard results—and learns from past failures/inadequate outcomes—why would residents believe there will be effective mitigation under this project?** That is, if the County does not correct what is wrong now, how are residents to be assured the project/County will produce effective results as the project moves forward?

## What Would Help Make this a Better Project?

1. **Reinstate Option A retention standards. Oak retention is the single most important goal**. Evaluate projects through the "lens" of Option A oak retention first, before moving to the next step (Option B).

2. **Reconvene a PAWTAC-like committee** (Plant and Wildlife Technical Advisory Committee) to oversee mitigation development proposals, mitigation implementation and efficacy, and to oversee the use and application of in-lieu fees.

    - It is apparent the County's mitigation efforts have largely failed to produce the desired results. And, the *Draft Oak Resources Management Plan Background and Support Information* [12] specifies under the heading *"Administration of the Oak Woodlands Conservation Program"* that ***"the major components of the administration program will include"*** a County maintained database and ***"One or more entities approved by the Board of Supervisors to assist in the management, maintenance, monitoring or restoration of oak woodlands*** *acquired for any purpose authorized under this ORMP."* **So please reconvene a PAWTAC-like committee under this directive and include in the committee's tasks the tasks listed above.**

3. **Improve the language that directs in-lieu fee use**. Revise language to ***"all revenues received shall be dedicated to land conservation or natural land stewardship."*** This language provides some flexibility while keeping the use of funds focused.

    - The current wording for unexpended in-lieu fees is: ***"the County shall refund to the then current record owner...the unexpended or uncommitted portion of the Oak Resources Fees, and any interest accrued thereon, for which need cannot be demonstrated"*** [13] And, for those fees for which ***"...the administrative cost of refunding the unexpended revenues exceed the amount to be refunded, the County...may determine that the revenues shall be allocated for some other purpose for which fees are collected."***[14] This language can lead to funds being forfeited that could reasonably be used for the purchase of conservation easements, or habitat improvement.

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[11] While there is validity to the issue that acorn planting supports health taproot development—and Dudek cites McCreary to support the contention that acorns will be effective—McCreary also warns of *"a whole host of factors"* that will adversely impact such plantings, especially at remote planting sites, and says an effective strategy is *"...growing oak seedlings in containers and then planting them out."* Thus, the TreePot 4 is a better [minimum] size for mitigation sites. Acorn viability issues are described in comments provided by C. Langley in Legistar file # 12-1203, *"Public Comment Rcvd 04-19-17 PC 04-27-17"* document titled: *"Request 5: ORMP Project—Request to Eliminate Acorns as Tree Replacement Mitigation."*

[12] Draft Environmental Impact Report for the Biological Resources Policy Update and Oak Resources Management Plan Appendix C, *Proposed Oak Resources Management Plan (ORMP)*, Appendix A (*"Background and Support Information"*), page A-40. (Appendix A of Appendix C)

[13] Draft Environmental Impact Report for the Biological Resources Policy Update and Oak Resources Management Plan Appendix C, *Proposed Oak Resources Management Plan (ORMP)*, Appendix B ("Fees Nexus Study"), page 52 of 81 (pdf page 155 of 215). (Appendix B of Appendix C)

[14] Draft Environmental Impact Report for the Biological Resources Policy Update and Oak Resources Management Plan Appendix C, *Proposed Oak Resources Management Plan (ORMP)*, Appendix B ("Fees Nexus Study"), page 53 of 81 (pdf page 156 of 215). (Appendix B of Appendix C)

In addition, other language indicates the in-lieu fees will be used for the following purposes: ***"A portion of the funds shall also be used for ongoing monitoring and management activities, including but not limited to fuels treatment, weed control, periodic surveys, and reporting."***[15] **Please modify this language to direct funds in a manner that supports natural land stewardship**.

4. **Make mitigation requirements more robust**:
    - **Require planting of larger stock**; make TreePot 4 the *minimum* size utilized.
    - **Require annual monitoring *and* replacement of dead/dying trees (for both oak woodland mitigation and individual tree/heritage tree mitigation efforts).**
    - **Eliminate acorn mitigation**; designate **TreePot4** the minimum size used for mitigation planting. **(TreePot 4 is a gallon size container equivalent, tapered to accommodate taproot growth.)**
5. **Improve mitigation/monitoring reporting**:
    - **Require annual reporting** for native oak tree/heritage tree replacement (as well as woodland replacement)
    - **Require annual reporting of mitigation efforts/results. Provide results in a staff report presented to the BOS in a regularly scheduled meeting, open to public comment.** Provide reports that include the following:
        - Locations of mitigation sites and mitigation results (ongoing/complete)
        - The purchase (and location) of conservation easements
        - Acquisition (and location) of deed restrictions
        - Other pertinent information relative to mitigation efforts conducted under the ORMP

Mitigation monitoring and reporting should be annual for woodlands *and* individual trees/heritage trees (see excerpt below). Site evaluation *only at the end of seven years* for individual oak trees and heritage oaks will prove inadequate. (That is, if a monitoring report is not required annually, realistically, who will evaluate the site(s) for tree loss?)

Replanting expeditiously (on at least an annual basis) will provide the best results in terms of timely oak tree/woodland replacement. However, if annual evaluation/reporting is not required, it is likely mitigation sites will be evaluated only at the end of the seven year period (see "*Individual Native Oak Tree and Heritage Tree Mitigation*" below).

2) Monitoring reports documenting the success of Replacement Tree planting submitted to the County at the following intervals:

- Oak Woodland Mitigation: Annually and at the conclusion of the 7-year period after planting (see Section 6.0, definition of "Monitoring Report").
- Individual Native Oak Tree and Heritage Tree Mitigation: At the conclusion of the 7-year period after planting (see Section 6.0, definition of "Monitoring Report").

**Excerpt Source:** Draft Environmental Impact Report for the Biological Resources Policy Update and Oak Resources Management Plan, Appendix C, *Proposed Oak Resources Management Plan (ORMP)*, page 30.

The Mitigation Monitoring & Reporting Program associated with this project has committed only to preparing and presenting to the Board of Supervisors **an annual report on the implementation status of the General Plan.** "*This annual report will include information on the status of the Oak Resources Conservation Ordinance and its implementation.*" [16] But how much detail regarding the efficacy of oak mitigation efforts can the Board of Supervisors and the public expect in such a report? (Apparently the report will only include the quantity of

[15] : Draft Environmental Impact Report for the Biological Resources Policy Update and Oak Resources Management Plan Appendix C, *Proposed Oak Resources Management Plan (ORMP)*, Appendix A ("*Background and Support Information*"), page A-39. (Appendix A of Appendix C)

[16] El Dorado County. 2017. Draft Mitigation Monitoring and Reporting Program, Exhibit C, page 3 of 3.

permits and inches/acres approved for removal—see below.) This report is not a new tool, and its coverage of the topic is likely to be cursory. How effective has it been in diagnosing and correcting failed oak mitigations in the past? Exhibit D outlines the minimal information that may be presented in this annual report.

**130.39.090 Monitoring and Reporting**

A. **Annual Monitoring and Reporting – Oak Tree/Oak Woodland Removal Permits and Enforcement Actions.** The County shall monitor all Oak Tree and Oak Woodland Removal Permits and any enforcement actions on an annual basis. The County shall provide the results of this monitoring to the Board of Supervisors in the form of an annual report. The report shall include the quantity of permits issued and estimated inches/acres approved for removal during the reporting year.

**Source:** Legistar file# 12-1203, document 22I, Exhibit D, page 13 of 13 (File # 12-1203).

## Supervisors—

In closing, I ask the Board of Supervisors to **not adopt** the ORMP as currently proposed. **I ask you to make inclusion of Option A retention standards a priority**, whether that means adding Option A to the existing project, or denying this project and relying on the "reasonable use" clause to accommodate projects that are unable to meet Option A retention standards. I also ask for a reconvening of a PAWTAC-like committee to assist with the development and oversight of mitigation efforts and in-lieu fee use. I request amendments that will improve oak mitigation efficacy, and request the strengthening of mitigation standards and mitigation reporting that have been described in my comments to the Board, the Planning Commission, and in comments submitted during the EIR process.

**Attachments included:**

- Extract of Exhibit E, Serrano Oak Canopy Analysis for EDHSP; Wildlands, Inc. 2002 report: *Serrano El Dorado Development Project Wetland and Oak Woodland Mitigation 2002 Monitoring Report*, February, 2003.
- Letter dated April 12, 2006 to Andrea Brown from Sean Munson, Wildlands, Inc. Subject: *Serrano El Dorado Development Oak Woodland Mitigation Project*. April 12, 2006, pdf page 2 of 4.
- Notice of Restriction—oak mitigation, Shingle Springs

WILDLANDS, INC.

# Serrano El Dorado Development Project
# Wetland and Oak Woodland Mitigation
# 2002 Monitoring Report

Prepared for:
Serrano Associates, L. L. C.
4525 Serrano Parkway
El Dorado Hills, CA 95162

Prepared by:
Wildlands, Inc.
5910 Auburn Blvd., Suite 17
Citrus Heights, CA 95621
(916) 331-8810

February, 2003

# RESULTS

## Wetlands

The Village H mitigation area consists of three wetlands (Wetland 1, 2 and 3). The survey was conducted in August, when the basin of Wetland 2 was dry (Figure 3). However, the site showed evidence of ponding for a seasonal wetland so meets the jurisdictional requirements.

The relative percent cover of plants classified as obligate wetland, facultative wetland, and facultative in the seasonal and emergent marshes of Wetland 1 is 96%. Dominant vegetation in this wetland consists of *Scirpus acutus*, *Typha* sp., *Salix* sp., *Populus fremontii*, *Juncus effusus*, *Xanthium strumarium*, *Mentha pulegium*, and *Polygonum* sp. The open water area is less than 50% vegetated. The site meets the requirements for a jurisdictional wetland.

The relative percent cover of the plants classified as obligate wetland in the seasonal and emergent marshes in Wetland 2 is 92%. Dominant vegetation in this wetland consists of *Typha* sp., *Scirpus acutus*, *Juncus effusus*, *Eremocarpus setigerus*, and *Polygonum* sp. The open water area is less than 50% vegetated, and is seasonal in duration. The site meets the requirements for a jurisdictional wetland.

The relative percent cover of the plants classified as obligate wetland species in the seasonal and emergent marshes in Wetland 3 is 83%. Dominant vegetation in this wetland consists of *Scirupus acutus*, *Typha* sp., *Juncus effusus* and *Polygonum* sp. The open water area is less than 50% vegetated, and does draw down during the summer months. The site meets the requirements for a jurisdictional wetland.

## Oak Woodland

The monitoring results for the oak woodland monitoring are presented in Table 1.

Table 1. Oak Woodland Survival Results

| Location | Phase | Monitoring Year | # Live Trees | # Dead Trees | Total Trees Observed | Survival Rate | Area Planted | Live Trees/Acre* | Standard Met |
|---|---|---|---|---|---|---|---|---|---|
| Upper Silva Valley | V | 3 | 116 | 157 | 273 | 42% | 3.4 acres | 27 | No |
| Lower Silva Valley | V | 3 | 209 | 103 | 312 | 67% | 4.4 acres | 33 | No |
| Village D | V | 3 | 413 | 308 | 721 | 57% | 9.5 acres | 13 | No |

*This Value Derived As Follows:
(218 trees planted/acre) x (Survival Rate) / Area Planted = Estimated Number of Live Trees/Acre

**WILDLANDS, INC.**

April 12, 2007

Andrea Brown
Serrano Associates L.L.C.
4525 Serrano Parkway
El Dorado Hills, CA 95162

**Subject: Serrano El Dorado Development**
**Oak Woodland Mitigation Project**

Dear Andrea,

Please find enclosed the final 2006 monitoring report for oak woodland (Phases 1-6) and wetland (Phases 4) monitoring. This letter represents our suggestions based upon our complete survival census for oak woodland mitigation areas conducted during October 2006 and January 2007 in (Phases 1-6).

The Phase 4 wetlands are readily achieving there performance standards at this time. The survival for oak woodland mitigation areas resulted in 62 trees per/acre, just short of the Corps requirements of 70 trees per/acre.

Although oak survival is below performance standards the ecological characteristics (i.e., slope, aspect, drainage, and soils) and density of mature trees within existing natural oak woodlands onsite were qualitatively evaluated and compared to oak planting sites to assist in determining whether or not the planting sites were representative of early seral stage oak woodlands. Although some oak planting sites support a relatively low density of living oak saplings other sites are very successful. Overall, the oak planting sites possessed ecological characteristics consistent with the range of conditions observed in the natural oak woodlands onsite. Planting sites that are not supporting higher densities of saplings may simply not possess site conditions optimal for high density oak woodland, but rather would naturally be sparser oak woodland or savannah type habitat. Given that the majority of the oak planting effort was not irrigated the observed survival is not uncharacteristic of other similar natural (i.e., unirrigated) oak woodland restoration projects in the region. These observations suggest that the oak planting sites are approaching their natural capacity for oak trees and further planting may not appreciably increase the overall density of oak trees within the oak planting areas.

If you have any questions regarding the monitoring report do not hesitate to call me.

Sean Munson
Biologist
Wildlands, Inc.
916-435-3555 Office
916-302-6385 Cell

Wetland C, D and E are located at the southern end of Village E. Wetland C is estimated to be 0.35 acres and is dominated by cattail, arroyo willow and cottonwood (*Populus fremontii*). Emergent marsh vegetative cover equals about 90% with the open water equaling approximately 10%.

Wetland D is approximately 0.38 acres and is dominated by cattail, arroyo willow and bulrush (*Scirpus acutus*). Emergent marsh vegetative cover equals about 80% with the open water equaling approximately 20%.

Wetland E is roughly 1.02 acres and dominant vegetation is comprised primarily of bulrush and cattails. Emergent marsh vegetative cover equals about 50% with the open water equaling approximately 50%.

### Oak Woodlands

The created oak woodlands (Phases 1-6) were monitored in August of 2006 and January of 2007. A total of 145.81 acres of oak woodland habitat was monitored. This area contained approximately 7,752 surviving oak plantings. Based upon the Corps requirements of 125 acres oak mitigation with 70 trees per acre, the surviving 7,752 trees equates to approximately 62 trees per acre over the entire oak woodland restoration effort (Table 2).

## CONCLUSIONS

Overall, the Phase 4 wetlands are readily achieving their performance standards and no remedial actions are necessary at this time. However, the oak woodlands have failed to meet its success criteria's of 70 trees per acre within an overall 125 acres of oak woodland habitat.

## RECOMMENDATIONS

A complete census was conducted on the oak woodland habitat in 2006-2007. This monitoring effort was to establish an accurate count of overall survival and to determine what remedial actions may be needed in the near future. The overall results for all Phases showed survival was 8 trees per acre short of the 70 trees per acre require by the Corps.

The ecological characteristics (i.e., slope, aspect, drainage, and soils) and density of mature trees within existing natural oak woodlands onsite were qualitatively evaluated and compared to oak planting sites to assist in determining whether or not the planting sites were representative of early seral stage oak woodlands. Although some oak planting sites support a relatively low density of living oak saplings other sites are very successful. Overall, the oak planting sites possessed ecological characteristics consistent with the range of conditions observed in the natural oak woodlands onsite. Planting sites that are not supporting higher densities of saplings may simply not possess site conditions

optimal for high density oak woodland, but rather would naturally be sparser oak woodland or savannah type habitat. Given that the majority of the oak planting effort was not irrigated the observed survival is not uncharacteristic of other similar natural (i.e., unirrigated) oak woodland restoration projects in the region. These observations suggest that the oak planting sites are approaching their natural capacity for oak trees and further planting may not appreciably increase the overall density of oak trees within the oak planting areas.

**Table 2. The Serrano Oak Monitoring for 2007 (complete census)**

| Phase | Area | Acreage | Live Trees Observed | Total Trees Observed | Total Trees Planted | Survival vs Observed | Survival vs Planted | Live Trees/ Acre |
|---|---|---|---|---|---|---|---|---|
| I | The Split Mitigation Area #1 (Non-Irrigated) | 10.20 | 532 | n/a | 2,224 | n/a | 24% | 52.16 |
| I | The Split Mitigation Area #2 (Irrigated) | 1.50 | 182 | n/a | 327 | n/a | 56% | 121.33 |
| I&II | Village B Mitigation Area | 15.20 | 995 | 3,702 | 3,314 | 27% | 30% | 65.46 |
| I | Hillside Drainage Mitigation Area | 3.20 | 99 | 423 | 698 | 23% | 14% | 30.94 |
| I | Village Green Parkway West | 4.71 | 193 | 199 | 1,027 | 97% | 19% | 40.98 |
| I | Village D Mitigation Area | 1.00 | 141 | 141 | 218 | 100% | 65% | 141.00 |
| I&V | Lower Silva Valley Mitigation Area | 8.20 | 999 | 2,421 | 1,787 | 41% | 56% | 121.83 |
| III | Village H Mitigation Area | 26.60 | 671 | 3,386 | 5,799 | 20% | 12% | 25.23 |
| IV&V | Silva Valley Road Mitigation Area | 12.30 | 427 | 1,310 | 2,681 | 33% | 16% | 34.72 |
| V | Upper Silva Valley Mitigation Area | 3.40 | 300 | 828 | 741 | 36% | 40% | 88.24 |
| V | Village D Mitigation Area | 9.50 | 418 | 1,158 | 2,071 | 36% | 20% | 44.00 |
| | **Totals** | 95.81 | 4957 | 13,568 | 20,887 | | | |

| Phase | Area | Acreage | Live Trees Observed | Total Trees Observed | Total Trees Planted | Survival vs Observed | Survival vs Planted | Live Trees/ Acre |
|---|---|---|---|---|---|---|---|---|
| n/a | A1 | 50.00 | 107 | 243 | 270 | 44% | 40% | **55.90** |
| n/a | A2 | | 71 | 243 | 229 | 29% | 31% | |
| n/a | A3 | | 19 | 98 | 99 | 19% | 19% | |
| n/a | A4 | | 14 | 83 | 101 | 17% | 14% | |
| n/a | A5, A16a, A16b | | 535 | 2,283 | 2,417 | 23% | 22% | |
| n/a | A6a, A6b | | 345 | 1295 | 1505 | 27% | 23% | |
| n/a | A7a, A7b, A7c | | 165 | 376 | 318 | 44% | 52% | |
| n/a | A8, A9, A15 | | 315 | 1,471 | 1,505 | 21% | 21% | |
| n/a | A10 | | 79 | 249 | 166 | 32% | 48% | |
| n/a | A12 | | 856 | 1,887 | 1,451 | 45% | 59% | |
| n/a | A13 | | 284 | 1,306 | 1,293 | 22% | 22% | |
| n/a | A14 | | 5 | 296 | 285 | 2% | 2% | |
| | **Totals** | 50.00 | 2795 | 9830 | 9639 | | | |

| Areas Combined | Acreage | Live Trees Observed | Live Trees/ Acre |
|---|---|---|---|
| | 145.81 | 7,752 | 53.17 |

| | |
|---|---|
| Trees Needed For 70/Acre - 125 acres | 8,750 |
| Shortfall | 998 |
| Trees Needed For 70/Acre - 145.81 acres (2) | 10,207 |
| Shortfall | 2,455 |

**NOTES:**

**(1)** Corps permit requires a total of 125 acres of oak mitigation.

**(2)** Serrano Associates has voluntarily planted an additional 20 acres, bringing the total to 145.81 acres.

RECORDING REQUESTED BY:

[redacted]

WHEN RECORDED RETURN TO:

NAME: [redacted]
MAILING ADDRESS: [redacted]
CITY, STATE, ZIP: [redacted]

(FOR USE OF RECORDER ONLY)

**NOTICE OF RESTRICTION**

**NOTICE IS HEREBY** given that development limitations and requirements are imposed on the parcel designated as [redacted] as noted in the Official Records of the County of El Dorado. This Notice of Restriction is imposed as a result of condition(s) placed on that Tentative Subdivision Map TM14-1523 for the area shown on the attached Tentative Subdivision Map and in the attached portion of the *Biological Resources Report including Special-Status Species Survey and Oak Tree Survey, Preservation and Replacement Plan for* [redacted] *Shingle Springs, El Dorado County, CA dated April, 2016 (Exhibit A).* Said development limitations are a result of the following facts:

WHEREAS, property owner is the owner of the identified real property in the County of El Dorado, hereinafter called "County," located at [redacted] Shingle Springs, CA; APN: 319-330-27;

WHEREAS, property owner desires to develop said property and in doing so will remove indigenous oak trees protected under El Dorado County General Plan Policy 7.4.4.4; and

WHEREAS, El Dorado County General Plan Policy 7.4.4.4 requires the retention and replacement of indigenous oak tree canopy. The replacement of removed oak trees are to be replaced in accordance with Policy 7.4.4.4 and as further described in the "Interim Interpretive Guidelines For El Dorado County General Plan Policy 7.4.4.4 (Option A)," adopted November 9, 2006, as amended October 12, 2007;

WHEREAS, In accordance with the Interim Interpretive Guidelines, the property owner has prepared, and the County has accepted, an Oak Canopy Analysis that identifies the oak trees to be retained and the replacement area location(s) and the number and species of oak trees to replace the oak tree canopy removed due to site development. Said plan is attached as Exhibit A, includes nine pages, and is incorporated herein.

NOW, THEREFORE, in consideration of the approval of said plan and issuance of the referenced development permits, the owner agrees to comply with the following:

1. Compliance with Approved Plan. Oak trees on the subject property shall be retained, or removed and replaced, in accordance with the approved Tree Canopy Analysis. Said Plan may be modified at any time upon agreement of the County and the owner to ensure compliance with General Plan Policy, adopted guidelines, or in compliance with any subsequent policies or guidelines, or modifications of the same.

2. Maintenance of Oak Trees. The oak trees to be retained and the oak trees to be planted shall be nurtured using techniques consistent with the most current version of the University of California Cooperative Extension publication "How to Grow California Oaks."

3. Monitoring Report. The owner shall self-monitor the plantings annually and provide to the County Development Services Department a report documenting the success rate of the replacement trees. This report shall

be submitted at the conclusion of either 10 years for replacement trees, or 15 years for replacement acorns following the date of permit issuance. If the success rate is less than 90 percent, additional trees or acorns must be planted in replacement of trees that did not survive. No further monitoring shall be required. The County shall record a Release of Notice of Restriction indicating that replacement and monitoring requirements have been satisfied.

4. Remedies for Non-Compliance. Upon the failure of the owner (or agents, tenants or lessees of the owner) to maintain the oak trees in a healthy condition as determined by the Development Services Director, the County may take actions to assure adequate care. The cost of such care shall be the responsibility of the property owner. Pursuant to the requirements of Government Code 54988, the costs shall become a lien on the property, or shall be recoverable from the property owner by other legal means. If legal action by the County is necessary, the owner will pay the County's reasonable attorney's fees and Court costs, together with interest on any sums expended by the County for restoration and maintenance of oak trees from the date said sums are spent by the County.

5. Right of Entry by County. For the purpose of inspection or tree maintenance, the County may enter the property following a minimum of 15 day notice to the owner and current occupant.

Said Notice of Restriction shall be binding upon the heirs, assigns and successors in interest of the grantors, and shall remain in effect until rescinded by El Dorado County Planning Services. The purpose of the Notice of Restriction is to give constructive notice of this Development's limitations and requirements.

By: _____ Print: _____
Property Owner Property Owner

By: _____ Print: _____
Property Owner Property Owner

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy or validity of the document.

State of California
County of _____)

On _____ before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____ (Seal)

## C. Tree Preservation

### 1. General Plan Policy 7.4.4.4

**Policy 7.4.4.4 contains provisions to protect and conserve forest and woodland resources for their wildlife habitat, recreation, water production, domestic livestock grazing, production of a sustainable flow of wood products and aesthetic values. Policy 7.4.4.4, Option A, requires oak canopy to be retained within development projects, with the percentage of retention dependent upon total oak canopy cover of the project.**

The total oak canopy covers 93.98 % of the Tanis parcel, which requires 60% oak tree retention under Policy 7.4.4.4, Option A. The proposed removal for Parcel 1 is 3.0% of its total oak canopy (97% retention), and the removal for Parcel 2 is 8.5% (91.5% retention). Similarly, the total oak canopy on the Rancheria Court easement is 61.1%, which requires 70% retention. Oak canopy removal is 15.7% (84.3% retention). Clearly, Option A requirements will not be exceeded on the project site (Tables 6, 7 and 8).

### 2. General Plan Policy 7.4.4.5, Oak Tree Corridor Retention

**Policy 7.4.4.5 requires retention of a corridor of oak trees around removed trees, maintaining continuity between all portions of the stand. The retained corridor shall have a tree density equal to the density of the stand.**

An unbroken corridor of oak trees surrounds the trees to be removed, and the tree density will remain the same in the retained corridor. The project will not disrupt an oak tree corridor.

### 3. General Plan Policy 2.2.2.1

#### a. Safeguarding Trees During Construction

General Plan Policy 2.2.2.1 of the Biological Resources Study and Important Habitat Mitigation Program Guidelines, adopted November 9, 2006, has sixteen conditions for safeguarding trees during construction.

**1. All oak trees over eight inches dbh in the construction area are required to be inventoried as to size and location on the site.**

Sixty-two oaks eight inches dbh or larger were found in or near the construction zone (Figures 10 and 11). The oaks include 21 interior live oaks, 26 blue oaks, 13 black oaks and two valley oaks (Table 10).

**Table 10.** Oak trees over eight inches dbh within or near the construction zone.

| | Tree Size (dbh, inches) | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 8 | 9 | 10 | 11 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 22 | 23 | 25 | 26 | 27 | 28 | 29 |
| Live Oak | | | 3 | 2 | | 1 | 1 | | | 1 | | | 1 | | 1 | | 1 | 1 |
| Blue Oak | 1 | 3 | | 2 | 2 | 1 | 1 | 2 | 2 | 1 | 2 | 2 | 1 | 2 | | 1 | 1 | |
| Black Oak | | | | | | | | 1 | | | | 1 | | | | | | 1 |
| Valley Oak | | | | | | 1 | | | | | | | | | | | | |
| | Tree Size (dbh, inches) | | | | | | | | | | | | | | | | | |
| | 32 | 33 | 34 | 36 | 38 | 40 | 41 | 46 | 53 | 59 | 62 | 64 | 69 | 74 | 77 | 82 | Total | |
| Live oak | | 1 | 1 | | 1 | | 1 | 1 | | | 2 | | 1 | | 1 | | 21 | |
| Blue oak | 1 | | 1 | | | | | | | | | | | | | | 26 | |
| Black oak | | 1 | | 1 | | 2 | | | 1 | 1 | 1 | 1 | | 1 | | 1 | 13 | |
| Valley oak | | | | 1 | | | | | | | | | | | | | 2 | |



Exhibit A

**2 a. Grading, cutting or filling within the tree root zone or within a five foot distance of the tree root zone of an oak to be preserved shall be supervised by a Certified Arborist/qualified professional.**

Forty-eight oak trees will be retained that will have soil disturbance of no more than 25% of the tree root zone (Table 11), and eleven more are within five feet of the tree root zone (Table 12). It is recommended that the project owners monitor those trees for stress (excessive leaf fall, wilting, dieback, etc.), particularly during the dry season. If signs of stress are found, it is recommended that supplemental deep irrigation be provided once monthly during July, August and September for three years after construction. See Item 11, below, for further recommendations.

**Table 11.** Oak trees to be retained with 1% to 25% construction disturbance within the tree root zone.

| Tree No. | 34 | 35 | 36 | 37 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 48 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| % Root Zone Disturbance | 5 | 20 | 10 | 10 | 5 | 10 | 20 | 20 | 25 | 25 | 25 | 25 | 5 |
| Tree No. | 49 | 50 | 51 | 53 | 55 | 56 | 57 | 58 | 100 | 109 | 110 | 113 | 115 |
| % Root Zone Disturbance | 5 | 10 | 5 | 10 | 2 | 15 | 5 | 10 | 20 | 10 | 2 | 5 | 20 |
| Tree No. | 122 | 126 | 131 | 132 | 133 | 135 | 137 | 138 | 139 | 141 | 142 | 143 | 145 |
| % Root Zone Disturbance | 25 | 5 | 2 | 5 | 5 | 15 | 25 | 20 | 5 | 1 | 5 | 10 | 20 |
| Tree No. | 147 | 151 | 154 | 156 | 157 | 159 | 160 | 161 | 165 | Total | | | |
| % Root Zone Disturbance | 2 | 1 | 25 | 2 | 5 | 15 | 15 | 5 | 1 | 48 Trees | | | |

**Table 12.** Oak trees within five feet of the construction zone.

| Tree Number | 11 | 12 | 13 | 19 | 38 | 52 | 54 | 101 | 114 | 152 | 153 |
|---|---|---|---|---|---|---|---|---|---|---|---|

**2 b. Grading, cutting or filling beyond five feet but within twenty feet of oak trees 6-inches dbh or greater will be monitored by an independent professional.**

Five trees were found beyond five feet but within twenty feet of the construction site (Table 13). It is recommended those trees be monitored for stress, particularly during the dry season, and supplemental irrigation be provided once monthly from July through September for three years if signs of stress are found.

**Table 13.** Oak trees six to twenty feet from the construction zone.

| Tree No. | 15 | 16 | 103 | 104 | 162 |
|---|---|---|---|---|---|

**3. Damage to any protected tree during construction shall be reported to Planning Services. The property owner shall be responsible for correcting any damage to protected trees on the property in a manner specified by a Certified Arborist/qualified professional.**

**4. No oil, gasoline, chemicals or other construction materials or equipment will be stored within any oak tree root zone.**

**5. Drains shall be installed to direct water run-off away from oak tree root zones.**

**6. Wires, signs and similar items shall not be attached to protected trees.**

**7. The existing ground surface within the tree root zone of protected trees shall not be cut, filled, compacted or pared. No soil shall be stored or filled within the root zone of oaks.**

See No. 2 (above) and No. 11 (below) for Arborist's recommendations for trees to be retained that are near the construction site.

**8. No paint thinner, paint, plaster or other liquid or solid excess or waste construction material or waste water will be dumped between the tree root zone and the base of protected trees, or uphill from protected trees where such substance might reach the roots through leaching.**

**9. A minimum four-foot tall temporary orange standard tree protection fence will be installed five feet beyond the dripline of protected oaks, and shall be maintained until construction is complete.**

**10. When cuts are made near roots of protected trees, appropriate measures will be taken to prevent exposed soil from drying out.**

**11. Any cuts within root zones of retained trees will be made before grading and shall utilize methods that would make clean cuts to roots, such as vibrating knives, rock saws, narrow trenchers with sharp blades or hand tools. Root disturbances shall not be accomplished by rough grading equipment such as excavators, bulldozers, graders or backhoes. All excavation activities within the root zone of retained oaks shall be under the direction and supervision of a Certified Arborist or qualified professional.**

When oak roots are disturbed, it is recommended that any frayed ends of the exposed roots be pruned with hand equipment to the nearest healthy root junction.

**12. No building materials, vehicles or equipment shall be parked or stored within the tree root zone of any protected tree during development.**

**13. No metal stakes will be driven into tree trunks, stems or the tree root zone of protected trees for any purpose other than to support the tree.**

**14. No open flames will be allowed within fifteen feet of the foliar canopy or trunk of a protected tree.**

**15. No trenching will be allowed within the root zone of protected oaks, except as allowed in No. 11, above. If it is absolutely necessary to install underground utilities within the root zone of protected trees, the trench shall be either bored or drilled unless a Certified Arborist/qualified professional determines that the trenching will not endanger protected trees.**

**16. No paving shall be installed within the root zone of protected trees. Only porous materials shall be installed beneath protected trees.**

### b. Safeguarding Trees After Construction

It is recommended that the project owners monitor trees having construction-related root disturbances for stress (excessive leaf fall, wilting, dieback, etc.), particularly during the dry season. If signs of stress are found, it is recommended that supplemental deep irrigation be provided once monthly during July, August and September for three years after construction. Supplemental irrigation is especially important for trees having more than 25% root zone disturbances, if those trees are retained.

Landscaping beneath oak trees should be limited to drought resistant plants or mulch materials such as wood chips. All landscaping should be kept at least five feet away from the trunk of oaks.

### D. Tree Replacement Plan

#### 1. Revegetation

County standards require a 1:1 ratio between canopy removal area and mitigation area. Replacement standards require 200 trees (or 600 acorns) per acre with a survival rate of 90 percent after ten years. Mitigation calculations for trees proposed to be removed from Parcel 1 are shown in Table 14, calculations for Parcel 2 are shown in Table 15, and calculations for Rancheria Court are shown on Table 16.

Non-vegetated areas suitable for oak mitigation planting were measured on the aerial photo provided by Northern California Geomatics. The Tanis parcel has enough open space to accommodate the 0.88 acre required mitigation area, but the openings are scattered throughout both parcels [12] (Figure 13). Mitigation trees will be marked by protective tree collars and/or flagging for the duration of the mitigation period.

**Table 14.** Oak canopy replacement calculations for proposed oak removal, Parcel 1.

| | | | |
|---|---|---|---|
| 1 | Oak Canopy to be Removed | 14,344 ft$^2$<br>0.33 acres | Open area suitable for mitigation: 0.684 Acres |
| 2 | Mitigation Plants (line 1 acreage x 200 trees/acre) = # saplings; 3 x saplings = # acorns | 66 saplings OR 198 acorns | |

**Table 15.** Oak canopy replacement calculations for proposed oak removal, Parcel 2.

| | | | |
|---|---|---|---|
| 1 | Oak Canopy to be Removed | 17,383 ft$^2$<br>0.4 acres | Open area suitable for mitigation: 0.379 Acres |
| 2 | Mitigation Plants (line 1 acreage x 200 trees/acre) = # saplings; 3 x saplings = # acorns | 80 saplings OR 240 acorns | |

**Table 16.** Oak canopy replacement calculations for proposed oak removal, Rancheria Court

| | | | |
|---|---|---|---|
| 1 | Oak Canopy to be Removed | 6,428 ft$^2$<br>0.15 acres | Mitigation oaks will be placed on Parcel 1 |
| 2 | Mitigation Plants (line 1 acreage x 200 trees/acre) = # saplings; 3 x saplings = # acorns | 30 saplings OR 90 acorns | |

It is recommended that a mixture of interior live oaks, blue oaks and black oaks be planted for mitigation. If black oaks are planted, they should be placed slightly beneath or immediately north of the canopy of an existing tree, as young black oaks require shade for establishment.

Planting should follow the guidelines found in *How to Grow California Oaks*[13]. Saplings should be planted with the top of their root flare at ground level and should be protected from sun-scald and browsing animals by tree protection collars. Ground around the trees should be mulched to control weeds,

[12] Area on Parcel 1 = 0.684 acre, area on Parcel 2 = 0.379 acre; total mitigation area available = 1.063 acres.

[13] McCreary, D. 1995. *How to Grow California Oaks.* University of California Agriculture and Natural Resources Publication 21540.

and supplemental irrigation should be provided every two to four weeks during June, July, August and September (or as needed during an unusually dry winter) the first two years after planting.

Acorns should be collected from trees on or adjacent to the project site. Only acorns lacking evidence of insect infestation must be planted, ie. reject any that are very small, cracked, have insect exit holes or feel light and hollow. Acorns should be planted about one-half inch deep in soil that has been loosened to 6 inches or more depth. Acorns should be covered with 1-2 inches of natural fiber mulch (wood or bark chips, straw, etc.), and planting sites/seedlings protected with tree collars to protect them from animals. Supplemental irrigation is not needed for acorns. Further details about collection, planting and storage of acorns may be found in *How to Grow California Oaks.*

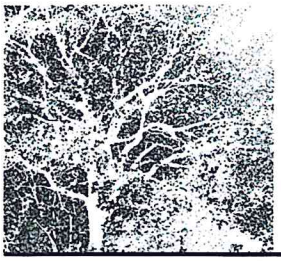
### 2. Monitoring and Reporting

Item 2.2.3.1 of the El Dorado County *Biological Resources Study and Important Habitat Mitigation Program Guidelines, Adopted November 9, 2006* outlines simplified reporting requirements for existing lots utilizing on-site replacement mitigation. The current owner intends to retain ownership of Parcel 2, and the Tanis family intends to purchase Parcel 1. It is, therefore, recommended that the simplified reporting plan be utilized for this project, as outlined below.

A. The monitoring period shall be ten years (15 years for acorns);
B. The applicants shall self-monitor their replantings annually;
C. The applicant shall report, in writing, to the County at year ten on the condition of the trees and number of failures;
D. If the failure rate of the replacement planting exceeds 10 percent of the replanted trees, then replanting of those trees that have not survived is required at the conclusion of the 10 year (or 15 year for acorns) monitoring period. Evidence of replanting shall be provided to the County. No further monitoring shall then be required.
E. The monitoring requirements shall be placed into a standard "Notice of Restriction" or similar County approved document and recorded on the title of the subject property. Once the 10 year (or 15 year) monitoring period has been successfully completed, the County shall record a release of the Notice of Restriction.

If self-monitoring is not permitted, a qualified professional would be required to monitor the mitigation trees. Item 2.2.3.2 of *Biological Resources Study and Important Habitat Mitigation Program Guidelines, Adopted November 9, 2006* outlines reporting requirements.

PUBLIC COMMENT C. LANGLEY #44 7/18/17



Quercus Group

Forest & Greenhouse Gas Consultants
a division of Horizon Forest Products
P.O. Box 5325 / Richmond, CA 94805
510/965-2274 / QuercusGrp@sbcglobal.net

July 17, 2017

Community Development Agency
Long Range Planning Division
2850 Fairlane Court
Placerville, CA 95667

Re: Biological Policy Update Project EIR

Planning Commissioners:

The Quercus Group appreciates the opportunity to submit draft Biological Policy Update Project (Update) comments. We incorporate by reference herein our remarks of March 15, 2017. Review of the responses to comments finds that the project continues to contain numerous errors of omission/commission concerning greenhouse gas (GHG) science, fact and law. Thus, the Update fails to proceed in the manner prescribed by the California Environmental Quality Act (CEQA).

**Response**: "*The EIR does not assert that projects that would convert oak woodlands to agricultural land are exempt from analysis and mitigation of GHG impacts. Rather it states that such projects would be exempt from the mitigation requirements of the proposed ORMP.*"

**Comment**: The Update can spin it any way it likes, the fact remains that agriculture has no CEQA exemption regarding forestland conversions. That includes Categorical Exemptions and ministerial processes.

**Response**: "*The EIR concludes that the ongoing implementation of the General Plan under the proposed project would result in a significant and unavoidable impact related to GHG emissions. Thus, it is not necessary to demonstrate that "the GHG mitigation proposals result in less than significant GHG emissions consistent with state 2020, 2030, and 2050 GHG reduction targets.*"

**Comment**: This response will certainly come as news to the State of California. They are apparently operating under the mistaken belief that the 2020, 2030 and 2050 GHG reduction targets are a matter of law. Nobody can accuse El Dorado County of not having a sense of humor.

**Response**: "*The EIR evaluates both anthropogenic and biogenic GHG emissions but does not evaluate these sources individually, as discussed in Responses to Comments 1-2, 1-4, and 1-5 (pp. 3-170, 3-172, 3-173) in Section 3.4 (Individuals) of the Final EIR.*"

**Comment**: The claim that all GHG biogenic emissions have been aggregated but not evaluated individually rings hollow. Lumping all GHG biogenic emissions under the $CO_2e$ rubric does not represent transparency. *Where's the beef* regarding the calculations for individual GHG biogenic emission sources? Moreover, the Update expects people to believe that it has accurately measured biogenic methane emissions across the project area but cannot do the same for biogenic soil or anthropogenic black carbon emissions? The Update also fails to explain how it complies with the SB 1383 requirement to reduce methane emissions 40 percent by 2030. The Update acts like SB 1383 does not exist. It does. Deal with it.

**Response:** *"The comment does not provide evidence to support the statement that 25 percent to 30 percent of SOC is released during earth disturbing activities; and Dudek's research on carbon releases from SOC did not find support for this statement. While it is true that some amount of SOC is released during disturbance, the actual amount varies widely based on site conditions and the specific disturbance activities."*

**Comment:** In fact the 25 percent to 30 percent SOC loss figure cited is quite conservative over a 100-year planning horizon. Based on the most relevant findings a case could be made for a SOC loss figure approaching 50 percent. See attachment A regarding ground disturbing soil carbon loss literature.

Any substantial soil disturbance results in carbon dioxide emissions. The significance of those emissions is determined by the depth of the grading, trenching, ripping, tilling, etc. To measure soil carbon stocks boring samples are taken for laboratory testing of the soil organic matter (humus) percentage. The boring samples are then used to stratify the humus and arrive at the soil carbon emissions based on the depth of soil disturbance. So estimating soil carbon dioxide emissions just requires some dirt and a lab technician.

A coarse-grain tool for measuring soil carbon stocks at the Update scale exists, the USDA 2016 Gridded Soil Survey Geographic (gSSURGO) Database. In CEQA comments prepared for California Oaks recently Quercus Group included a gSSURGO soil map for the 12,000-acre Newhall Ranch project in Los Angeles County.

**Response:** *"Further, the proposed project does not involve any specific land development projects and therefore it would not directly lead to increases in ground disturbing activities. As individual development projects are proposed within the County, the project-specific environmental review would be required to document any GHG emissions associated with ground disturbing activities and vegetation removal due to construction of the project."*

**Comment:** If land development is not the purpose of this Update why are potentially hundreds of thousands of natural land acres being impacted?[1] Does the word "foreseeable" ring a bell? Even if no land development were occurring the Update would still be required under CEQA to fully analyze and feasibly mitigate all significant GHG emissions due to natural land impacts. This is because CEQA must be interpreted to provide the fullest possible protection to the environment. Notably, GHG emissions are the only CEQA impact that has been decreed a threat to the well-being of all Californians and the state itself.

**Response:** *"This demonstrates that controlling black carbon emissions from residential woodburning is most appropriately addressed at the individual residence level, and that due to the variations in black carbon emissions based on specific conditions at the point of use, it is not feasible to estimate black carbon emissions from residential woodburning at the programmatic level of analysis for the proposed project."*

**Comment:** The assertion that it is infeasible for a programmatic level of analysis to fully analyze and feasibly mitigate black carbon emissions is specious. For example, a local Climate Action Plan is a programmatic level process. A CAP is required by CEQA § 15183.5 to account for and mitigate all significant GHG emission sources within the chosen geographical. Not only is the task feasible, it is required by law.

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[1] "When the ORMP exemptions are also considered, a total of 147,146 acres of oak woodland could be lost." Biological Resources Policy Update and Oak Resources Management Plan Draft EIR 8229 June 2016, revised February 2017 11-10.

**Response**: *"Further, as the proposed project does not involve any specific land development projects, it would not increase the amount of residential woodburning that currently occurs within the County. As individual development projects are proposed within the County, the project-specific environmental review would be required to document any GHG emissions associated with operation of that land use, including emissions from residential woodburning."*

**Comment**: The state wants El Dorado County to do its part to reduce black carbon emission 50 percent statewide by 2030. That date is 12.5 years away. Maintaining the status quo won't cut it. There is no time to dilly dally or kick the can down the road.

The EIR erroneously asserts that firewood burning "organic carbon" emissions would significantly offset concurrent black carbon emissions. This claim is factually incorrect as demonstrated by a 2013 report commissioned by the California Air Resources Board (attachment B).

Additional Update Defects

"New" Emissions - How does the cutting of "new" trees not represent new emissions? The Update counts tree methane emissions as new but asserts that the firewood black carbon emissions from the same tree are not new emissions. How does *that* work?

Update GWP Values - The Update responses are strangely quiet regarding the issue of the global warming potential (GWP) values used for the GHG emissions evaluation. This silence is understandable given the Update used outdated Intergovernmental Panel on Climate Change (IPCC) GWP values for the GHG emissions analysis. The appropriate IPCC GWP standards for CEQA review are the 2013 AR5 GWP values, not the 2007 AR4 GWP values. The Bay Area Air Quality Management District are currently using the 2013 IPCC GWP standards.

The Update issue here is not jurisdictional or approval authority but compliance with the specific language in the AB 32 global warming potential (GWP) values definition: *"based on the best available science, including from the Intergovernmental Panel on Climate Change."* Furthermore the only place in GHG statutory law that the term "based on the best available science" appears is in the key GWP definition, which is then directly linked to the IPCC GWP standards. The meaning of the AB 32 GWP definition is crystal clear and Update use of decade old IPCC GWP values does not represent the best available science. For its part CARB makes GHG policy, not GHG law. While CARB may choose whichever GWP values it wishes for policy purposes, CARB has no statutory authority to impose its GWP policy standards on CEQA reviews.

The Update use of the 2007 IPCC GWP values in lieu of the 2013 AR5 values results in major GHG emission calculation errors. For example, the 2007 AR4 methane 100-year GWP value is 25; the 2013 AR5 methane 100-year GWP value is 34. That difference results in a 28 percent increase when calculating 2017 methane emissions.

Rather than using the standard 100-year planning horizon GWP values, CARB's "SLCP strategy uses a 20-year GWP"[2] planning horizon for black carbon, which coincides with the Update timeline. The seminal black carbon study, Bond 2013, has established a black carbon 20-year GWP value of 3,200 and a 100-year GWP of 900.[3] The state takes black carbon very seriously. So should El Dorado County.

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[2] 2016 Edition California GHG Emission Inventory, p. 2. California Air Resources Board.

[3] Bond et al. 2013. *Bounding the role of black carbon in the climate system: A scientific assessment.* California Black Carbon Control, February 2013. California Air Resources Board.

Summary
The Update EIR continues to be an exercise in GHG emissions analysis deflection and dissembling. Apparently along with deciding which GHG emissions to account for, El Dorado County has assumed the authority to decide which state GHG laws to obey. This Update appears designed to obfuscate and minimize project GHG emissions, rather than a bona fide attempt to comply with CEQA's focus of ascertaining "the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions."

Sincerely,

Ron Cowan

Ron Cowan, Principal

attachments (2)

The author of these comments has over 45 years of training and experience in all aspects of California forestry and 10 years of GHG emissions analysis experience. He also wrote a significant portion of the Oak Woodland Conservation Act (2001) and the first draft of legislation chaptered as Public Resources Code § 21083.4, county oak woodland mitigation (2005).

**Attachment A**

Soil Organic Carbon Citations

Conant, R. T., M. Easter, K. Paustian, A. Swan, and S. Williams. 2007. Impacts of periodic tillage on soil C stocks: A synthesis. Soil & Tillage Research, Vol. 95, pp. 1-10.

Food and Agriculture Organization of the United Nations (UN-FAO). 2001. Soil Carbon Sequestration For Improved Land Management. World Soil Resources Report No. 96. Report prepared by M. Robert, J. Benites, J. Pretty, R. Lal, A. Young, N. Batjes, M. Swift, and E. Prior. 62 pages. **Note:** PAGES 12-13, 21: 55% NET loss in SOC in top 20cm over 20 years due to grassland-to-cropland conversion; 10-30% NET loss in SOC due to ploughing; See FIGS 6 and 7.

Gibson, T. S., K. Y. Chan, G. Sharma, and R. Shearman. 2002. Soil Carbon Sequestration Utilizing Recycled Organics: A review of the scientific literature. Report prepared for Resource NSW (New South Wales, Australia) by Organic Waste Recycling Unit, New South Wales Department of Primary Industries, Agriculture. 95 pages. **Note**: PAGE 33: 20-50% NET loss in SOC in top 20cm after 40-50 years due to ag conversion.

Houghton, R., and J. Hackler. 2000. Changes in terrestrial carbon storage in the United States. 1: The roles of agriculture and forestry. Global Ecology and Biogeography: Vol. 9, pp. 125-144. **Note**: PAGE 132: 25% NET loss in SOC in top 100cm in 15 years due to `cultivation'; See TABLE 2 on page 130.

Kroodsma, D. A., and C. B. Field. 2006. Carbon Sequestration in California Agriculture, 1980-2000. Ecological Applications: Vol. 16, No. 5, pp. 1975-1985. **Note**: PAGE 1975: 20-40% NET loss in SOC over few decades.

Post, W. M., and K. C. Kwon. 2000. Soil carbon sequestration and land-use change: processes and potential. Global Change Biology: Vol. 6, pp. 317-328. **Note**: PAGE 3: 30% NET loss in SOC in top 100cm (50% in top 20cm) over 30-50 years due to tillage effects.

Reicosky, D. C., and D. W. Archer. 2007. Moldboard plow tillage depth and short-term carbon dioxide release. Soil & Tillage research, Vol. 94, pp. 109-121.

Silva-Olaya, A. M., C. E. P. Cerri, N. La Scala, C. T. Dias, and C. C. Cerri. 2013. Carbon dioxide emissions under different soil tillage systems in mechanically harvested sugarcane. Environmental Research Letters, Vol. 8, pp. 1-9.

Soderstrom, B., K. Hedlund, L. E. Jackson, T. Katterer, E. Lugato, I. K. Thomsen, and H.B. Jorgensen. 2014. What are the effects of agricultural management on soil organic carbon (SOC) stocks? Environmental Evidence, Vol. 3, No. 2, pp. 1-8.

**Attachment B**

Black Carbon and the Regional Climate of California

"The study also found that brown carbon—a type of organic carbon that is typically ignored in climate models—is also a potent warming agent, offsetting up to 60 to 90% of the cooling caused by other lighter organic carbons. Brown carbon is emitted primarily from sources such as forest fires and residential wood burning, which previous studies believed to have negligible climate effect, or even a cooling effect .... The report, however, is the first to confirm, based on both observations and computer modeling, that the warming effect of black carbon dominates, overwhelming any cooling effect of other pollutants."

Authors

Bahadur, R., Feng, Y., Russel, L. M., Ramanathan, V. "Impact of California's air pollution laws on black carbon and their implications for direct radiative forcing." Atmospheric Environment 45.5 (2011): 1162-1167.

Bahadur, R., L. M. Russell, M. Z. Jacobson, K. Prather, A. Nenes, P. Adams, and J. H. Seinfeld. "Importance of composition and hygroscopicity of BC particles to the effect of BC mitigation on cloud properties: Application to California conditions." Journal of Geophysical Research - Atmospheres 117.D9 (2012).

Bahadur, R., Praveen, P. S., Xu, Y., Ramanathan, V. "Solar absorption by elemental and brown carbon determined from spectral observations." Proceedings of the National Academy of Sciences 109.43 (2012): 17366-17371.

Kirchstetter, T. W. and T. L. Thatcher. "Contribution of organic carbon to wood smoke particulate matter absorption of solar radiation." Atmospheric Chemistry and Physics 12.14 (2012): 6067-6072.

Kirchstetter, T.W., C.V. Preble, O.L. Hadley, T.C. Bond, J.S. Apte. "Large reductions in urban black carbon concentrations in the United States between 1965 and 2000." Atmospheric Environment 151 (2017): 17-23.

Zhao, C., L. R. Leung, R. Easter, J. Hand, and J. Avise. "Characterization of speciated aerosol forcing over California." Journal of Geophysical Research - Atmospheres 118.5 (2012): 2372-2388.

PUBLIC COMMENT E. VAN DYKE 7/18/17
ITEM 44

**E. Van Dyke - statement at the podium 7/18/17 BOS hearing, file 12-1203**

The removal of oak retention standards under Option A is a key part of this project, and I have always felt they were being unfairly eliminated. So I went back to remind myself 'why' they were removed.

In the DEIR project description I found that they were being removed because the revised mitigations somehow made retention unnecessary (pg 3-6). I would disagree with that claim, and in fact evidence actually supports avoidance as the best mitigation.

Then in the FEIR this was reiterated, along with adding that retention requirements would redirect development into more rural areas (Response 6-3). This is not substantiated, and in fact, the Board has discretionary control over any development increases in those areas.

So why remove Option A give away your discretionary power on this? With no retention standards, it's out of your hands to say 'NO' when a project comes forward that clearly could be accomplished with less impact.

I don't want to hear anyone saying "*we've already decided to omit retention requirements...*" because an EIR is intended to evaluate the impacts - this is when the discussion BEGINS. The EIR is not intended to rationalize policies that have already been decided upon - it is to INFORM us so that you (..and the public..) can make a good decision.

Please give us the opportunity to discuss this particular part of the project specifically, and how it relates to the 'No Project Alternative'.

Thank you.

Ellen Van Dyke, Placerville

# Table 3-1
## Proposed General Plan Revisions

| General Plan Objective/Policy/ Implementation Measure | Changes Made |
|---|---|
| Policy 7.4.1.4 | Replace "Proposed rare, threatened, or endangered species preserves" with "The Pine Hill Preserves" to clarify which preserves are addressed by this policy |
| Policy 7.4.1.5 | Delete text |
| Policy 7.4.1.6 | Delete text |
| Policy 7.4.1.7 | Moved to Policy 7.4.2.2 |
| Policy 7.4.2.1 | Revise language to address coordinating wildlife and vegetation protection programs with appropriate federal and state agencies |
| Policy 7.4.2.2 | Delete policy; replace with prior Policy 7.4.1.7 regarding noxious weeds |
| Policy 7.4.2.4 | Revise text to clarify that active management is not required |
| Policy 7.4.2.6 | Delete policy |
| Policy 7.4.2.7 | Delete policy to remove requirement to maintain the Plant and Wildlife Technical Advisory Committee (PAWTAC), but does not preclude the County from re-convening the PAWTAC when necessary. |
| Policy 7.4.2.8 | Revise to delete the Integrated Natural Resources Management Plan (INRMP) and to include:<br>• Requirement for wildlife movement studies for 4-, 6- and 8-lane roadway projects<br>• Requirement for a biological resources technical report and establishment of mitigation ratios for special-status biological resources<br>• Identification of criteria for conservation lands<br>• Establish a voluntary database of willing sellers<br>• Biological resources mitigation program<br>• Habitat protection strategy |
| Policy 7.4.2.9 | Revise provisions for lands within the Important Biological Corridor (IBC) overlay to reflect new site-specific requirements |
| Objective 7.4.3 | Incorporate objective into Policy 7.4.2.1 |
| Objective 7.4.4 | Consolidate Objective 7.4.4 and 7.4.5 to address oak woodlands and trees together |
| Policy 7.4.4.2 | Revise to reflect the conservation portion of the mitigation/conservation approach |
| Policy 7.4.4.3 | Revise to to encourage retention of contiguous area of forests and oak woodlands |
| Policy 7.4.4.4 | Revise to refer to oak woodland and oak tree mitigation requirements in the Oak Resources Management Plan (ORMP). The Draft ORMP reflects the following revisions to the requirements previously contained in Policy 7.4.4.4:<br>• Use of "oak woodland" as a measurement<br>• Development of a 2-tiered mitigation approach that incorporates oak woodland mitigation (Policies 7.4.4.4) and oak tree mitigation (including heritage trees (Policy 7.4.5.2). Framework removes necessity for two oak woodland mitigation options (Option A and B) and removes retention standards by incorporating an incentive-based approach for oak woodland impact avoidance.<br>• Replace two oak woodland mitigation options (Option A and B) and retention standards with an incentive-based approach for oak woodland impact avoidance<br>• Identify projects or actions exempt from oak woodland and oak tree mitigation requirements<br>• Add criteria for identifying conservation lands outside of Priority Conservation Areas (PCA) |

PUBLIC COMMENT 7/18/17 #44
ROGER. LEWIS

# ESTIMATED GROWTH OF HERITAGE TREES IN EL DORADO CO.

The presumption is that creating restrictions on the removal of trees > 19" diameter will protect these trees. Not the case. Check with Calif. Oak Foundation

| | | | | |
|---|---|---|---|---|
| Trees at El Dorado Sr. Housing Project | 387 | = | 48.4 | per ac |
| Trees, > 19" Dia on project site | 19 | = | 2.4 | per ac |
| Trees, 19" Dia, on project site | 4 | = | 0.5 | per ac |

**Extrapolating**

| | | | | |
|---|---|---|---|---|
| Acres of trees in El Dorado Co. | 250,000 | | | |
| Trees, 19" Dia, in El Dorado Co. | 125,000 | | | |

**Assume trees grow 0.1" per year = 1" in 10 years**

| | | | | |
|---|---|---|---|---|
| New heritage trees each year | 12,500 | | | |
| Acres of trees removed each year in Co. | 100 | ac | | |
| Trees > 19" removed each year, assuming all are removed | 100 | x 2.4 = | 240 | |