

## EXHIBIT B



# COMMUNITY DEVELOPMENT SERVICES LONG RANGE PLANNING

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Date: July 18, 2017

To: Board of Supervisors

From: Anne Novotny, Principal Planner

**Subject: General Plan Biological Resources Policy Update, Oak Resources Management Plan and Oak Resources Conservation Ordinance – Supporting Information for Staff Report (Attachment 24A)**

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This memo provides background information and supporting documentation for the Biological Resources Policy Update, Oak Resources Management Plan and Oak Resources Conservation Ordinance (proposed Project) Staff Report (Attachment 24A) as follows:

- A. Project Background
- B. Staff's analysis of Planning Commission's (4/27/17) Recommendations
- C. Staff's analysis of Agricultural Commission's (5/10/17 and 6/14/17) Comments
- D. Summary of Public Comments Received (3/13/17 – 4/27/17)
- E. Past Performance of Oak Mitigation Efforts
- F. Discretionary Development Projects subject to General Policy 7.4.4.4 Option A and Interim Interpretive Guidelines adopted November 2006
- G. County Department of Transportation (DOT) Oak Mitigation for Road/Bridge Projects
- H. Weber Creek Canyon Important Biological Corridor (IBC)

### **A. Project Background**

For the Planning Commission hearing on April 27, 2017, Planning staff prepared a staff report (Attachment 22A) which provided the Commission with detailed information on the Project including: 1) Project Description, 2) Project Objectives, 3) Background and History, 4) Environmental Review Process, 5) Summary of Significant Impacts and Mitigation Measures, 6) Summary of Changes to the Draft Environmental Impact Report (EIR), 7) Public Involvement, and 8) Department Recommendation.

The detailed information included in the staff memo to the Planning Commission will not be reiterated in this memo to the Board. In summary, since the adoption of the 2004 General Plan, the County has engaged in ongoing efforts to implement the biological resources policies in the General Plan. A substantial amount of time and monetary resources have been expended over

the past decade, including over 9,000 hours of staff time and approximately \$1.7 million in consultant contracts, which includes over \$500,000 for the current contract with Dudek. During the 10-year period 2006-2016, over 150 public meetings were held in which items related to this Project were discussed. All individuals, groups and agencies desiring to comment on the Project and environmental review documents have been given adequate opportunity to submit written and oral comments since July 2014, when Dudek presented the Board with the first of a series of memorandums that guided the development of the Project.

A pivotal turning point was in September 2012, when the Board directed staff to prepare a Resolution of Intention (ROI) to Amend General Plan Policies 7.4.2.8, 7.4.2.9, 7.4.4.4, 7.4.4.5, 7.4.5.1 and 7.4.5.2 and their related Implementation Measures, including clarification regarding oak tree protection and habitat preservation; and to prepare a Request for Proposal for a consultant to assist the County with amending the policies and preparing the related EIR.

In March 2014, the Board approved a contract with consulting firm Dudek. In July 2014, Dudek presented to the Board a summary of the historical background and status of the County's General Plan biological policies and related Implementation Measures. Four broad policy options were also presented with an analysis of the pros and cons of each option. These options were as follows:

- Option 1: Compliance with State and Federal Regulations
- Option 2: Mitigation Approach
- Option 3: Mitigation/Conservation Approach
- Option 4: Conservation Approach

*(The Dudek Background Memo dated May 1, 2014 and Dudek Options Memo dated July 18, 2014 are attached to Legistar File 12-1203, as Attachment 5B and Attachment 5C, respectively.)*

In October 2014, the Board held a workshop to follow up on the July 28, 2014 discussion regarding the history and status of the County biological policies. The Board directed staff to move forward with Policy Option 3: Combination Mitigation/Conservation Approach, which would redefine the County's program for management of and mitigation for biological resource impacts and implementation of the OWMP, specifically related to Option B of General Plan Policy 7.4.4.4 (oak woodland in-lieu fee option) in place of establishing and implementing the Integrated Natural Resources Management Plan (INRMP). However, INRMP components (as included in current Policy 7.4.2.8) would be incorporated into the revised biological policies, which identify self-implementing mitigation and conservation requirements. (See Board Agenda for 10/07/2014, Item 22, Legistar File 12-1203, Attachment 6C).

In November 2014, staff presented the Board with three potential processing approaches to prepare an EIR to evaluate the existing OWMP. The Board selected Approach A (Mitigation/Conservation Option with limited public outreach), which anticipated that public outreach would occur within the context of presentations to and workshops with the Board.

In January 2015 through March 2015, a series of special Board workshops were held in which staff and Dudek presented the Board with 10 key decision points listed below. The referenced attachments are attached to Legistar File 12-1203.

<b>Date</b>	<b>Decision Point</b>	<b>Board Direction</b>
1/13/15	1. Whether the current in-lieu fee amount (as previously adopted in the OWMP) should be retained or re-analyzed and updated. (Attachment 9B)	Re-analyzed and updated; Board approved OWMP In-Lieu Fee Study
1/26/15	2. Which method of oak woodland measurement (woodland area or canopy cover area), would be used for impact calculations and mitigation area determination. (Attachment 10B)	Use oak woodland area as method of measurement
1/26/15	3. Whether to require undercrossings for future 4- and 6-lane roadway projects to provide for wildlife movement, and determine specific standards for undercrossings. (Attachment 10B)	Require undercrossing for future 4-, 6-, and 8-lane roadway projects
2/23/15	4. If a two-tiered oak mitigation approach where smaller projects mitigate for tree impacts and larger projects mitigate for oak canopy or woodland impacts is necessary and determine appropriate threshold. (Attachment 11B)	a) Revise the minimum parcel criteria for projects that are exempt from oak woodland mitigation; b) Update the oak woodland retention standards and mitigation ratios; and c) Clarify mitigation requirements for individual native oak trees outside of oak woodlands and for heritage trees (which the Board defined as native oak trees with individual trunk size measuring 36 inches or more in diameter at breast height).
2/23/15	5. Whether exemptions to oak woodland impact mitigation requirements included in the current OWMP and General Plan biological resource policies shall remain and/or be revised. (Attachment 11B)	a) Retain exemptions for oak woodlands consistent with the Kuehl Bill (for affordable housing, agricultural production) and exemptions in compliance with state-level fire safe (PRC 4291), utility line clearance requirements (General Order 95) or specific County policies related to oak woodland and oak tree mitigation; b) Clarify individual oak tree exemptions; and c) Examine options for exempting public schools, parks and government buildings as requested by the Board.
2/23/15	6. Whether Priority Conservation Areas (PCAs) will be updated. (Attachment 11B)	Retain PCAs shown in 2008 OWMP and establish criteria for identifying additional conservation areas.
2/23/15	7. Appropriate mitigation requirements specific to each category of special-status resources for inclusion in policies. (Attachment 11B)	Use mitigation ratios for special-status biological resources, including vegetation communities, plants and wildlife, as a component of the County's conservation strategy.

<b>Date</b>	<b>Decision Point</b>	<b>Board Direction</b>
3/30/15	8. Specific standards for the establishment of IBCs, such as minimum parcel size, contiguous areas, and minimum corridor widths. (Attachment 12B)	Revise General Plan Policy 7.4.2.9 and define IBC Overlay Standards. Potential standards include: a) Require site-specific biological resources technical report to determine presence of special-status species or habitat, and wildlife corridors, particularly for large mammals; Implement land use siting and design tools to achieve no net loss of habitat function or values for special-status species and large mammals; b) Establish IBC standards for discretionary projects, primarily focused on the north-south corridor in the Weber Creek Canyon. (Attachment 12C, page 22)
3/30/15	9. Which important ecological areas identified by the Plant and Wildlife Technical Advisory Committee (PAWTAC) to include with the PCAs and IBCs to develop a conservation strategy. (Attachment 12B)	a) Retain existing PCAs and IBCs for conservation opportunities when mitigation is required; b) Allow developers to identify conservation opportunities outside of the PCAs and IBCs, within or outside of identified important ecological areas identified by PAWTAC (e.g., aquatic environments, important habitat for migratory deer herds, Pine Hill areas, valley oak woodland, etc.); and c) Define specific criteria that must be met by these additional conservation lands, including a criterion that prioritizes the use of PCAs, IBCs and other identified important ecological areas.
3/30/15	10. Define the County's requirements for maintaining a database of willing sellers within PCAs and IBCs and/or other important biological areas. (Attachment 12B)	Incorporate requirement for establishment of database of willing sellers into General Plan policy; Database should include willing sellers within PCAs, IBCs, and other important biological areas; County should manage database as voluntary program; Landowners must opt-in by contacting the County to be included. (Attachment 12C, page 37)

On June 22, 2015, the Board adopted ROI 108-2015 to consider proposed amendments to the General Plan biological resources policies and revisions to any related implementation measures; and adopted ROI 109-2015 to consider proposed amendments to the Oak Woodland Management Plan (OWMP). On July 14, 2015, the Board adopted ROI 118-2015 (superseded ROI 108-2015) to include additional proposed revisions to General Plan objectives and policies.

## **B. Staff Analysis of Planning Commission's Recommendations, 4/27/17**

### **1. Add language to Ordinance Section 130.39.080 (Enforcement) from the Oak Resources Management Program (ORMP) Maintenance and Monitoring Program**

Staff is recommending the Board accept the Planning Commission's recommendation on this item based on the analysis below.

#### Analysis:

Based on public comment, the Planning Commission recommended adding language to Section 130.39.080 (Enforcement) of the draft Oak Resources Conservation Ordinance from the ORMP Maintenance and Monitoring Program.

Mitigation requirements are included in several sections of the Ordinance. For ministerial projects, mitigation requirements are found in Section 130.39.060.D (Mitigation – Oak Woodland Removal) and in Section 130.39.060.E (Mitigation – Individual Native Oak Tree/Heritage Tree Removal). Both sections generally require that impacts from ministerial projects be mitigated through payment of in-lieu fees. Where a project applicant requests to mitigate through replacement planting or a conservation easement, these sections stipulate that a Minor Use Permit would be required and that “Replacement planting shall be consistent with Section 2.4 (Replacement Planting Guidelines) of the ORMP.”

For discretionary projects, mitigation requirements are included in Section 130.39.070.C. Within this section, subsections 1c and 1d each state that any replacement planting conducted to mitigate impacts to oak woodland must be “consistent with Section 2.4 (Replacement Planting Guidelines) of the ORMP.” Similarly, subsections 2b and 2c state that any replacement planting conducted to mitigate impacts to individual oak trees must be “consistent with Section 2.4 (Replacement Planting Guidelines) of the ORMP.”

Section 2.4 of the ORMP requires that an oak resources replacement planting plan be “prepared for all replacement planting efforts (on- and off-site) by a Qualified Professional and may be prepared in conjunction with oak resources technical report” and lists specific required content of each replacement planting plan (as discussed further in this memo under Item 5). These requirements include documenting the suitability of the site to support the proposed replanting, demonstrating consistency with accepted native oak tree planting standards, and specific methods for monitoring and maintaining the planted trees.

### **2. Redefine Heritage Tree size to 20 inches (from 36 inches diameter at breast height [dbh]).**

Staff is not recommending the Board accept the Planning Commission's recommendation on this item based on the analysis below.

#### Analysis:

The Board considered the definition of Heritage Tree size at the February 23, 2015 meeting during the discussion on Decision Point No. 4. The following information was presented at

that meeting: “Current policy language (Policy 7.4.5.2) requires a tree removal permit for trees with a trunk diameter of at least 6 inches (or 10-inch aggregate for multi-stem trees) and provides exemptions if trees measure less than 36 inches in trunk diameter. While not specifically defined, the identified 36-inch threshold under existing policies affords greater protection to large trees. However, while General Plan Objective 7.4.5 is to “protect and maintain native trees including oaks and landmark and heritage trees,” the definitions of ‘heritage tree’ and ‘landmark tree’ in the 2004 General Plan are vague and do not provide any type of measurement criteria to easily determine a tree’s status. Based on the current policy language, heritage or landmark tree protection is difficult to evaluate.”

Following input at the February 23, 2015 meeting, the Board directed staff to define Heritage Trees as native oak trees with individual trunk diameters measuring 36 inches or more. No changes to the Heritage Tree definition were recommended by the Board following the information presented at the June 22, 2015 meeting. The 36-inch threshold for defining Heritage oak trees in the Draft ORMP was derived from existing General Plan Policy 7.4.5.2, which affords greater protection to oaks measuring 36 inches and greater. The consultant’s research of other counties found the thresholds ranged from 19 inches to 48 inches. The Planning Commission recommendation to reduce the threshold to 20 inches would increase the number of trees required to mitigate at a 3:1 ratio, potentially resulting in greater tree replanting or in-lieu fee mitigation payments.

In addition, written and verbal comments were received on the Draft Biological Resources Policies and ORMP during or following the Board hearing on May 18, 2015. In response to received comments, the following information related to heritage trees was presented to the Board at the June 22, 2015 meeting:

“A comment was received suggesting that the Heritage Tree definition be revised to include oak trees measuring 24-inches and greater and cites Placer and Tuolumne Counties as examples. The 36-inch threshold for defining heritage oak trees in the Draft ORMP was derived from General Plan Policy 7.4.5.2, which afforded greater protection to oaks measuring 36 inches and greater. Definitions of heritage trees vary by county throughout the state, for those that have provided diameter measurement threshold in their definitions. The variations in trunk diameter thresholds range from 19 inches (Sacramento County), to 24 inches (Placer and Tuolumne Counties), to 36 inches (Los Angeles County), up to 48 inches (San Mateo County). In addition, some counties provide no specific definition other than designation of specific trees by the Board of Supervisors (e.g., Nevada and Sonoma Counties) and some counties provide no definition for heritage trees (e.g., Calaveras, Amador, and Butte Counties). Lowering the 36-inch threshold for the Heritage Tree definition in El Dorado County would increase the number of trees required to mitigate at a 3:1 ratio potentially resulting in greater tree replanting or in-lieu fee mitigation payments.”

The Planning Commission recommendation to change the definition of a heritage tree size to 20 inches would mean more trees would likely meet the definition of heritage trees and would result in greater mitigation requirements.

A change in the definition of Heritage Trees would not alter the conclusions of the Draft EIR since the EIR does not include an estimated number of individual trees or heritage trees that would be lost. Rather the impact evaluation is based on potential loss of oak woodlands, including trees of all sizes. These impacts and the associated mitigation requirements would be determined for individual projects.

**3. Change “Bi-Annual Reporting” to “Annual Reporting” and include expenses and income in Ordinance Section 130.39.090.B (Bi-Annual Reporting – Oak Woodland Conservation Fund Fees).**

Staff is not recommending the Board accept the Planning Commission’s recommendation on this item based on the analysis below.

Analysis:

The Board determined that a staff report on the Oak Woodland Conservation Fund should be prepared and presented to the Board every two years. The in-lieu fee includes a five percent (5%) administration fee that would be used to fund County activities associated with implementing the ORMP and Oak Resources Conservation Ordinance, including presenting the bi-annual reports to the Board. Section 130.39.090.B of the ordinance is consistent with the requirements in Section 3.3 of the ORMP. In addition, Section 3.3 of the ORMP requires that the County adjust the in-lieu fee amount annually based on an annual inflation fee that accounts for changes in acquisition/planting and management/monitoring costs.

It is noted that Section 2.4 of the ORMP requires that individual project applicants who have undertaken a replanting effort submit annual reports throughout the seven year monitoring period to document the success of their replacement planting effort. The ORMP and ordinance anticipate that these reports would be reviewed by County staff and included in the project file. Further, Section 130.39.090.A of the ordinance requires that an annual report be presented to the Board regarding all Oak Tree and Oak Woodland Removal Permits issued and any enforcement actions for those permits.

Changes to the reporting frequency for the status of the Oak Woodland Conservation Fund and the need for fee adjustments would not alter the conclusions of the Draft EIR.

If the Board decides to change the bi-annual reporting to annual, staff recommends revising Section 130.39.090.B of the draft Oak Resources Conservation Ordinance, and Section 8.2 in Appendix A of the draft ORMP as shown below:

**Draft Oak Resources Conservation Ordinance  
Section 130.39.090 Monitoring and Reporting**

- B. Bi-Annual Reporting - Oak Woodland Conservation Fund Fees.** The County shall monitor all In-lieu Fees deposited into the Oak Woodland Conservation Fund and provide annual reports documenting~~ation of fees collected, operations/maintenance expenses and income,~~ and recommend fee adjustment(s), as appropriate, to the Planning Commission and Board of Supervisors ~~every other March,~~ as specified in Appendix A of the ORMP.

**Appendix A**

**Draft Oak Resources Management Plan Background and Support Information**

**8.2 Status Reports to the Board of Supervisors**

The County shall deposit all oak woodland in-lieu fees into its Oak Woodland Conservation Fund, which shall be used to fund the acquisition of land and/or conservation easements from willing sellers. A portion of the fund shall also be used for ongoing monitoring and management activities, including but not limited to fuels treatment, weed control, periodic surveys, and reporting. Reporting shall be to the Board of Supervisors on an annual basis~~no less than every other March~~ and shall address the status of conserved oak woodlands in the County and whether adjustments to the oak resources in-lieu fee are necessary to reflect current acquisition and operating costs.

**4. Increase in-lieu fee for Oak Woodland based on acquisition land values in El Dorado County (ORMP, Section 3.0, In-Lieu Fee)**

Staff is not recommending the Board accept the Planning Commission's recommendation on this item based on the analysis below.

Analysis:

The Nexus Study accurately reflects the actual value of land that supports oak woodland habitat in El Dorado County in 2016 dollars and no revisions to the fee calculation are needed to ensure that the fee is sufficient to accomplish oak woodland conservation. The Nexus Study provides for annual inflation adjustments and bi-annual consideration of the need for further fee adjustments.

The In-Lieu Fee Nexus Study relied on a range of data points to determine land values in El Dorado County relevant to oak woodland conservation. Page 15 of the Nexus Study states "this Nexus Study considers actual recent and/or current acquisition and M&M [Management & Monitoring] costs faced by LCOs [Land Conservation Organizations] actively conserving oak woodland resources or other tree-dominated habitat."

Figure 3.5 of the Nexus Study identifies the specific data points used to calculate the in-lieu fee for oak woodland conservation. This includes one property transaction reported by the El Dorado County Assessor's office – purchase of 71 acres at a price of \$2,047 per acre –



and seven data points from LCOs, with per acre prices ranging from \$1,000 to \$12,000. Additional property transaction data from the El Dorado County Assessor's office was considered, as shown in Appendix A to the Nexus Study; however, those properties included so little oak woodland that they were considered not representative of the value of lands that would be appropriate for conservation under the ORMP. As discussed on pages 23 and 24 of the Nexus Study, the study also considered the costs for acquisition of conservation easements. These costs are lower than the costs for acquisition in fee title and are represented proportionally in the final Nexus Study land acquisition fees. In other words, the in-lieu fee for oak woodland conservation would be paid to the County by individual project applicants and then would be used by the County and/or LCOs to acquire oak woodlands for conservation. Acquisition may occur in fee title or as conservation easements. The per-acre fee amount reflects a blending of the costs likely to occur under the fee title and conservation easement acquisition scenarios, assuming that approximately 18 percent of the land acquired for mitigation of impacts to oak woodlands would be in conservation easements and the remaining 82 percent would be acquired in fee title.

The fees identified in the Nexus Study are based on 2016 dollars and would be updated to current year land values using the annual inflation adjustment process described in Section 7 of the Nexus Study.

Additionally, the current Nexus Study methodology addresses the data gaps that were present in the 2008 in-lieu mitigation fee study, noting on page 5 that the 2008 study "applied a series of cost estimate assumptions to a hypothetical 125-acre parcel to develop a per-acre fee. In contrast, this 2016 Nexus Study considers actual recent and/or current acquisition and management and monitoring costs faced by LCOs actively conserving oak woodland resources or other tree--dominated habitat." Further, on page 9, the Nexus Study notes that the approach used in this study "differs from the 2008 in-lieu fee analysis in that this 2016 Nexus Study takes into consideration costs for a variety of locations (rural and urban), terrains (canyon, valley, foothills), and sizes (small, ranch)."

##### **5. Enforcement needs to be more effectively applied, in light of past performance and (perceived) deficiencies.**

Staff is recommending the Board accept the Planning Commission's recommendation on this item based on the analysis below.

###### Analysis:

Members of the public and the Planning Commission raised concerns regarding enforcement and success rates of prior tree planting projects in the County. It is important to note that the ORMP and ordinance do not solely rely on tree planting for mitigation. Rather, conservation of existing oak woodlands must make up at least 50 percent of the mitigation for any project that impacts oak woodlands, while mitigation for loss of individual trees must occur through payment into the in-lieu fee and/or replacement tree planting undertaken by the project applicant.

As noted above, all replacement tree planting must be conducted pursuant to the requirements of Section 2.4 of the ORMP. This section stipulates that a Replacement Planting Plan must be prepared by a Qualified Professional and must address:

- Consistency with accepted native oak tree planting standards;
  - Suitability of the site;
  - Density of replanting;
  - Mix of species to be planted;
  - Source of acorns or container trees for replanting;
  - Avoiding replacement planting within the 100-foot defensible space zone from existing or proposed structures;
  - Maintenance of the replacement plantings based on the site-specific conditions, which may include weed control, irrigation, tree protection, pest management, and/or fertilization;
  - Contingencies or alternatives if the success criteria are not met annually or at the end of the monitoring term along with a means to ensure compliance with the replacement planting plan;
  - Best Management Practices (BMPs) for protection of retained oaks during and after construction; and
  - Estimate of the total costs associated with implementation of the replacement plan.
- These requirements for the preparation of a Replacement Tree Plan were developed to improve the success rate of tree planting efforts. They exceed the requirements of the previous OWMP and those of the General Plan policies that require replacement tree planting.

## **6. Establish long-term funding for mitigation and monitoring in perpetuity.**

Staff is not recommending the Board accept the Planning Commission's recommendation on this item based on the analysis below.

### Analysis:

As explained on page 17 and shown in Figure 3.4 of the Nexus Study, the study considers costs for initial Management and Monitoring (M&M) efforts as well as long-term M&M efforts for oak woodlands conservation. These costs are included in the in-lieu fee, and are assumed to be included in any direct acquisition negotiations that may occur between a LCO and a private property owner. Figure 3.8 identifies the actual long-term M&M costs that LCOs have observed, while Figure 3.9 identifies anticipated costs associated with initial M&M. For oak woodland conservation, the Nexus Study also includes an endowment amount to ensure there is sufficient financial support for LCOs to conduct M&M in perpetuity, as shown in Figures 3.11 and 3.12. The total in-lieu fee amount for oak woodland conservation is shown in Figure 3.13, including acquisition, initial M&M, the endowment for long-term M&M, and costs for the County's administration of the in-lieu fee program.

Section 4 of the Nexus Study documents the findings of the Nexus Study consistent with the Mitigation Fee Act. Under Step 2: Use of the Fee, it is noted that the Oak Woodland Area (OWA) In-Lieu Fee will be used to acquire OWA through direct property acquisition or

acquisition of conservation easements; to conduct Initial M&M activities and Long-Term M&M activities designed to ensure conservation in perpetuity.

Section 5 of the Nexus Study documents the basis for the replacement tree planting in-lieu fee. Similar to the oak woodland conservation in-lieu fee, the replacement tree planting fee includes acquisition of the trees to be planted and other materials, labor for the planting, initial M&M (for seven years, consistent with state law), and the County's administration of the in-lieu fee program. As documented in Section 5, based on research conducted into LCOs in the area, the Nexus Study assumes that replacement trees will be planted on land owned and managed by the LCOs that are also overseeing oak woodland conservation. Therefore, the long-term M&M costs for replacement tree planting are expected to be nominal and will be absorbed into the LCO's overall M&M costs. Native oak trees that have passed their establishment period do not require maintenance. These oaks are native trees with deep taproots. When they are planted on a suitable site (as required under ORMP Section 2.4), it is reasonable to expect that they will continue to survive without maintenance once they have become established. The current Draft ORMP requirements include seven (7) years of M&M, to further assure oak survival. Additionally, if tree mortality occurs, the project applicant would be responsible for tree replacement and M&M for another 7-year period.

Section 7 of the Nexus Study describes the annual adjustment procedures for both the oak woodland and individual tree in-lieu fees. These procedures would account for changes in land values, labor wages, costs for annual M&M, and needed increases in the endowment portion of the fee to ensure that funding is sufficient for M&M in perpetuity. Therefore, the in-lieu fee includes a portion to fund M&M in perpetuity.

### **C. Staff Analysis of Agricultural Commission's Comments, 5/10/17 and 6/14/17**

#### **1. Heritage Oak size should not be less than 36 inches in diameter on Ag zoned lands or AL designated, but should be reduced to 20 inches in diameter on other lands.**

Staff is not recommending that the Board accept the Agricultural Commission's recommendation on this item based on the analysis below.

##### Analysis:

See Item 2 under Planning Commission Recommendations above.

#### **2. Personal Use Exemption – Eight (8) tree limit per parcel seems impractical and needs more flexibility or criteria depending on the character of the parcel (e.g., size, density, number of dwelling units, number of owners, zoning or land use designation).**

Staff is not recommending that the Board accept the Agricultural Commission's recommendation on this item based on the analysis below.

Analysis:

Personal Use Exemptions are included in the ORMP, based on the Board's determination during their consideration of the oak mitigation exemptions during the public workshop on February 23, 2015. The Personal Use Exemption is included in current General Plan Policy 7.4.5.2 without limit on the number of oak trees affected. Several commenters on the Draft EIR requested clarification on this exemption. As explained in Master Response 6 in the Final EIR (pages 2-19 to 2-21), "to ensure that the personal use exemption is applied as narrowly as possible to meet the General Plan goals for ensuring the maximum feasible protection of oak resources as well as ensuring the reasonable use of private property, the personal use exemption in the proposed ORMP has been modified to specify that its use is limited to removal of no more than eight (8) individual trees and no more than 140 inches dbh per parcel per year." As further explained in Master Response 6, the eight (8) trees and 140 inches dbh is expected to provide approximately four (4) cords of firewood. These thresholds were selected assuming the primary use of oak trees cut for personal use in El Dorado County is firewood, given their low value as lumber. Based on research described in the Master Response 6, four (4) cords of firewood is generally sufficient to allow individual property owners to remove enough oak trees from their property each year to exceed typical needs for heating a home exclusively with woodburning.

This is a policy decision for the Board. Options could include retaining the exemption as proposed allowing removal of eight (8) trees/140 inches per dwelling unit on a given parcel, allowing higher amounts of tree removal on larger parcels, and/or modifying the text to clarify the meaning of an "owner's personal use".

Changes to the current policy language to further define the personal use exemption would not alter the conclusions of the Draft EIR. As described in Master Response 6, monitoring for compliance with this limit would be infeasible. The County lacks sufficient staff resources to monitor and inspect every parcel in the County to observe whether oak tree removal has occurred, to determine the size of each oak removed under this exemption, and to track such removals annually. However, the proposed limit and other possible clarifications to this exemption would provide a clear definition for the applicability and limitations of the personal use exemption, thereby providing a mechanism for enforcement of the ORMP penalties and fines for removing oaks without first obtaining an oak tree removal permit if the personal use exemption is relied upon impermissibly. The County would rely on complaints made by County residents to enforce these penalties for violations of the personal use exemption.

**3. Site Selection Criteria and Management & Monitoring (M&M) cost in the in-lieu fee seems inadequate.**

Staff is not recommending that the Board accept the Agricultural Commission's recommendation on this item based on the analysis below.

Analysis:

See Item 6 under Planning Commission Comments above regarding ongoing maintenance and monitoring costs. Site selection criteria will be determined by the technical expert and

included in the site specific reports prepared for individual projects by a Qualified Professional.

**4. Exclude mitigation requirements for uses/activities requiring a Conditional Use Permit (CUP) for parcels located in a General Plan Agricultural District or active Williamson Act contract.**

Staff is not recommending that the Board accept the Agricultural Commission's recommendation on this item based on the analysis below.

Analysis:

Current General Plan Policy 7.4.4.4 provides that agricultural cultivation is exempt from mitigation requirements for loss of oak trees and woodlands. The Interim Interpretive Guidelines for current Policy 7.4.4.4 further specify that the agricultural cultivation exemption applies to personal and commercial activities on lands planned or zoned for agricultural use, including those lands with rural residential designations. This exemption was also included in the 2008 OWMP. Agricultural exemptions are continued in the proposed ORMP. This is consistent with Board's determination during their consideration of the oak mitigation exemptions during the public workshop on February 23, 2015.

As detailed in Master Response 5 in the Final EIR, it should be noted that Agricultural activities are exempted from the mitigation requirements in the ORMP and implementing ordinance for three primary reasons. First, agricultural activities are exempted because requiring oak woodlands mitigation on agricultural lands would directly conflict with General Plan goals, objectives, and policies supporting long-term conservation and use of existing and potential agricultural lands and limiting the intrusion of incompatible uses into agricultural lands. Second, there is no substantial evidence in the record that current or forecasted agricultural activities will result in large-scale permanent oak woodland conversion. Third, exemptions for agricultural activities are consistent with state law (Senate Bill 1334, Kuehl).

The need for the Agricultural Activities Exemption was questioned by commenters on the Draft EIR. To ensure the agricultural exemption is applied as narrowly as possible to meet the General Plan goals for ensuring the maximum feasible protection of oak resources as well as ensuring the continued viability of the County's agricultural economy, the Agricultural Activities Exemption in the proposed ORMP has been modified to specify that it does not apply to any agricultural activities that require issuance of a Conditional Use Permit. For example, development of any of the following land uses on land zoned for agricultural use would require issuance of a Conditional Use Permit: microbrewery, bed and breakfast inn, health resort and retreat center, feed and farm supply store, and wholesale storage and distribution facility. These uses, and all others that require a Conditional Use Permit to be constructed on lands that are zoned for or allow agricultural uses, would therefore be subject to the impact analysis and mitigation requirements of the ORMP under the modified agricultural exemption.

## **5. Exemption from mitigation for Heritage Trees that are Live Oak species removed from Agricultural properties.**

Staff is not recommending that the Board accept the Agricultural Commission's recommendation on this item based on the analysis below.

### Analysis:

It is unlikely that live oak trees will meet Heritage Tree size requirements. As discussed above, current draft ORMP language proposes establishing trees 36 inches dbh or greater as Heritage Trees. The draft ORMP does not distinguish between oak species with the exception of valley oaks which are identified as a sensitive habitat in the 2004 County General Plan EIR, and proposes excluding valley oaks from ORMP exemptions. Subsequent discussion between staff and the Agricultural Commissioner further clarified Commission comments. Livestock owners and other agriculturalists expressed concerns about how they work to manage the live oaks since they come back from the roots like weeds and become extremely brushy. These concerns on re-sprouts and shrubby growth are unlikely to conflict with the provisions of the ORMP. Many live oak re-sprouts and shrubby growth would not meet the minimum size criteria for individual native oak trees (or Heritage trees) as defined in the ORMP. Further control of these small live oaks would be exempted from ORMP provisions per the exemption for Agricultural Activities.

## **D. Summary of Public Comments Received 3/13/17 – 4/27/17**

During the Planning Commission hearing on April 27, 2017, the Planning Commission received and considered written and oral public comments regarding both the Project and Final EIR. Staff has received, reviewed, and considered both written and oral comments received during the Planning Commission hearing on April 27, 2017 and the Agricultural Commission meeting on May 10, 2017 and thereafter related to the Project.

For the Planning Commission hearing on April 27, 2017, 14 written letters/emails with comments were submitted by seven individuals (three represented organizations). Three of the individuals submitted requests for the Planning Commission to reschedule the hearing that was originally on the March 23, 2017 agenda to a date in April. Another individual, who also supported the Project, expressed concern about the numerous delays to implement the Project (which includes the in-lieu fee option). One commenter, who represented the North State Building Industry Association, expressed support of the Project as currently proposed. Other written comments submitted were related to the following subjects: EIR analysis/methodology regarding Greenhouse Gas Emissions (GHG); soil organic carbon emissions, black carbon emissions, and forest land conversion emissions; GHG biogenic emissions analysis/disclosure; definition of Heritage Tree size; mitigation performance standards to add to ORMP; ORMP 7-year monitoring period – retain current 10 years (for oaks) and 15 years (for acorns). These comments and responses to these comments are summarized in Exhibit C (Attachment 24D).

At the Planning Commission hearing on April 27, 2017, eight people provided oral comments to the Commission. Three of the eight commenters were representatives for the Farm Bureau, El Dorado Hills APAC, and North State Business Industry Association. Four commenters represented current development projects that supported the Project and were waiting for the in-lieu fee option to advance their projects. The oral comments received at the Planning Commission hearing are also summarized in Exhibit C (Attachment 24D).

## **E. Past Performance of Oak Mitigation Efforts**

During the Planning Commission hearing on April 27, 2017, some comments were made regarding past oak mitigation efforts that were perceived as not successful. One such project mentioned was an oak mitigation site in El Dorado Hills. While the specific project was not mentioned by name, the referred site is believed to be part of the El Dorado Hills Specific Plan (EDHSP) which was adopted in 1988, and was therefore not subject to the Interim Guidelines for General Plan Policy 7.4.4.4 (Option A) adopted on November 9, 2006.

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.

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.

In addition to the planting efforts accomplished in the open space areas, the design guidelines of the Serrano Homeowners Association (HOA) set forth specific formulas for planting oak trees in front yards of production and custom homes. Based on the formula and the number of existing homes, the developer estimates that another 3,900 oaks have been planted by homeowners in their yards (anticipated build out will be about 4,700 homes).

## **F. Discretionary Development Projects subject to General Policy 7.4.4.4 Option A and Interim Interpretive Guidelines adopted November 2006**

Staff has reviewed the Discretionary Planning Applications over the past 10 years and found that only a few projects were approved that included on-site mitigation pursuant to Option A.

Many projects are not required to follow the General Plan Policy 7.4.4.4 Option A and Interim Interpretive Guidelines because they are within Specific Plans that are vested in previous General Plans through their Development Agreements. The Specific Plans have their own unique mitigation plans that may be similar to Policy 7.4.4.4 requirements. The mitigation plans also include Oak Mitigation Monitoring reports routinely submitted to the County.

A number of projects have been approved with the Option A mitigation requirement. However, most of these projects have not started construction and therefore have not started to implement oak mitigation measures.

Two projects that are moving forward that comply with Option A is the Wilson Estates project (currently using a marketing name “The Overlook”) in El Dorado Hills and Cameron Glen Phase 5 in Cameron Park. Both of these projects are in early stages of construction. Both projects have preserved large oak trees on-site and will conduct on-site mitigation planting as part of the final map process. No mitigation monitoring reports have been submitted yet because they are still under construction. (The Wilson Estates Tree Preservation Plan is described below).

Finally, a number of building permits were required to mitigate for oak tree impacts by on-site planting. Some of these mitigation plans were addressed through a recorded oak tree mitigation agreement. This was a standardized form that was developed in 2006 and has been used since that time. These agreements required a monitoring report to be submitted to the County after 10 years for tree plantings (15 years for acorns). At this point, which is less than 11 years after the adoption of the Interim Guidelines, only monitoring reports for oak mitigation of tree plantings that were planted between November 2006 and June 2017 are required to be submitted. As of June 2017, the County is not aware of any tree planting monitoring reports that have been submitted.

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.



Since September 2012, when the Board rescinded the OWMP, discretionary development projects have been required to comply with Policy 7.4.4.4 Option A (oak canopy retention/replacement). As a recent example in the El Dorado Hills area, the Wilson Estates subdivision map (Application No. TM14-1515) was recorded in 2016 for 28 single-family residential lots. According to the Preliminary Grading, Drainage, and Tree Preservation Plan map dated July 2014, the project had 2.9 acres, out of a total of 28.2 acres, covered in oak canopy (10 percent of the project area). Based on 10 percent existing canopy cover, the project was therefore required under Option A to retain 90 percent of the existing oak canopy. Also under Option A, a re-planting plan was approved to mitigate for the portion of the existing canopy allowed to be removed (in this case, 10 percent of existing canopy, up to 0.29 acres) that must be mitigated at a 1 to 1 replacement ratio. To comply with Policy 7.4.4.4, Option A, this project utilized permanent open space lots and custom lot envelopes (non-building areas on each lot) in order to meet oak canopy retention requirements. In addition, the project utilized one of the open space lots (“Lot B”) to comply with the oak replacement requirements. To date, this subdivision map has fully complied with all requirements of Policy 7.4.4.4 (Option A).

## **G. County DOT Oak Mitigation for Road/Bridge Projects**

The County DOT has completed many road projects that included oak mitigation and monitoring for compliance with the California Environmental Quality Act (CEQA). These projects were exempt from the oak canopy retention and replacement standards of General Plan Policy 7.4.4.4 under the OWMP adopted in 2008. The OWMP provided specific exemptions for public road projects when a new road alignment is dependent on the existing alignment, and also road widening/realignments along existing roads, which were deemed necessary to protect public health and to improve the safe movement of people and goods in existing public road rights-of-way, as well as acquired rights-of-way necessary to complete such projects. In 2012, the County Superior Court invalidated the OWMP, but the Court authorized similar public safety exemptions to Policy 7.4.4.4 for public road projects (Peremptory Writ of Mandate, July 2012).

An example of a DOT road project that included a successful mitigation planting program is the Green Valley Road Widening (Francisco Drive to Amy Lane) Project. In 2007, a total of 337 trees and shrubs were planted which included 305 oak tree plantings from seedlings/saplings in 5 gallon to 15 gallon size containers. In July 2008, the County initiated a tree establishment program under a contract with Dudek and Habitat Restoration Sciences, Inc. (HRS). The program included irrigation and hand-watering, maintenance, monitoring, and annual reporting for almost five years. In February 2012, a final walk-through of the mitigation area conducted by Dudek inventoried a total of 258 surviving trees/shrubs (76 percent survival rate), of which 239 were oak trees. (Final Green Valley Road Widening Tree Establishment Tracking Report, Dudek, February 21, 2012)

Another example of a DOT project with oak tree mitigation is the Weber Creek Bridge Replacement at Green Valley Road. The design of this project avoided oak woodland impacts to the best extent feasible. However, some oak woodland and riparian (streamside) oak trees were removed to accommodate the project. Even though oak woodland mitigation was not required, the project mitigated for oaks and other trees removed from the riparian areas along Weber Creek by planting over 80 native oak replacement trees in March/April 2017. The plantings were

saplings (in 1 gallon and 15 gallon size containers) and will be monitored and maintained for a five-year period, including regular watering as necessary for healthy growth.

## **H. Weber Creek Canyon Important Biological Corridor (IBC)**

On June 14, 2017, staff received a call from former Planning Commissioner Rich Stewart, inquiring where he could find the definition of the Weber Creek Canyon IBC.

The Biological Resources Policy Update/ORMP Draft EIR notes that "the County has identified a potential wildlife crossing with the Weber Creek IBC which appears to be the most feasible based on existing topographical constraints and development patterns." (Draft EIR, Chapter 6, Biological Resources, p. 6-79)

The Draft EIR also notes that proposed General Plan Policy 7.4.2.9 "would require that discretionary and ministerial projects within the Weber Creek IBC also achieve the "no net loss" standard for wildlife movement function and values for the creek, providing a north-south wildlife movement corridor connecting large habitat blocks north and south of U.S. Highway 50." (Draft EIR, Chapter 6, Biological Resources, p. 6-79)

Proposed Policy 7.4.2.9 also states that "...applicants for discretionary projects (and applicants for ministerial projects within the Weber Creek Canyon IBC) shall be required to provide to the County a biological resources technical report..." (Attachment 22G, p. 17 of 31)

On March 30, 2015, the Board held a special workshop on the Biological Resources Policy Update to provide staff direction on Decision Points 8 - 10. Decision Point 8 pertained to determining whether to incorporate specific standards for project review in the IBC overlay (as described in Policy 7.4.2.9). The Board accepted staff's recommendation on Decision Point 8 to establish IBC standards for discretionary projects, primarily focused on the north-south corridor in the Weber Creek Canyon. (Attachment 12B, pp. 2, 7, 8 and Attachment 12C, pp. 9, 22, 38)

For clarification, Dudek prepared a map which delineates the parcels contained within the Weber Creek Canyon IBC. The map is included with Exhibit D (Attachment 24E).