RESOLUTION NO. **164-2020**

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO

ADOPTING A SUPPLEMENTAL CERTIFICATION OF THE FINAL ENVIRONMENTAL ~~IMPACT REPORT FOR THE~~ GENERAL PLAN BIOLOGICAL RESOURCES POLICY UPDATE AND OAK RESOURCES MANAGEMENT PLAN

WHEREAS, on October 24, 2017 the Board of Supervisors adopted Resolution 127-2017 certifying the Biological Resources Policy Update and Oak Resources Management Plan Environmental Impact Report ("EIR") for the General Plan Biological Resources Policy Update Project (Project) which included revisions to specific biological resource objectives, policies, and implementation measures in the Conservation and Open Space Element of the County's 2004 General Plan, adoption of an Oak Resources Management Plan (ORMP) including an in-lieu fee payment option for impacts to oak woodlands and individual oak trees, and adoption of the Oak Resources Conservation Ordinance (Legistar 12-1203), and

WHEREAS, on November 21, 2017, Rural Communities United, an unincorporated association, filed a Petition for Writ of Mandate challenging the EIR (*Rural Communities United v. County of El Dorado*, Case No. PC20170536) ("Litigation"), and

WHEREAS, the petition was amended to add Conserve El Dorado Oaks, an unincorporated association, Ellen Van Dyke, an individual, and Cheryl Langley, an individual, as petitioners on the writ petition, and

WHEREAS, after extensive briefing and argument, the trial court ruled in favor of the County with the exception of two narrow holdings, and issued a writ of mandate directing that the County decertify limited aspects of the EIR, and suspend the County's authority to grant certain approvals ("Writ"), and

WHEREAS, the Board of Supervisors adopted Resolution 163-2020 decertifying selected conclusions in the EIR in compliance with the Writ, and

WHEREAS, the Board of Supervisors directed staff to bring the decertified portion of the EIR into compliance with the California Environmental Quality Act (CEQA) as set forth in the Court's Tentative Ruling and Ruling Following Post-Trial Briefs in the Litigation and directed staff to augment the administrative record as authorized by CEQA, including the missing reports and studies described in the Court's rulings, and

WHEREAS, the Board considered the staff report ("Staff Report") including a memorandum by Dudek, the County's CEQA consultant ("Dudek"), along with public comments (oral and written), and the existing administrative record on file with court.

NOW, THEREFORE, BE IT RESOLVED the Board of Supervisors of the County of El Dorado has received, reviewed, and considered the entire record, both written and oral, relating to the decertified portions of the EIR (Resolution 163-2020) and adopts a supplemental certification to the EIR as follows:

A. The Board of Supervisors finds that focusing on preservation of oak woodland habitat in the Highway 50 corridor was not the best course of action. This finding is based upon the following separate considerations[1]:

1. The 2004 General Plan, as amended, includes substantial population growth and habitat conversion in the Highway 50 Corridor where oak woodlands are present. (DEIR p. 5-15, Figure 5-1). Countywide, the County anticipated 10,000 new residential units by 2025 and an additional 7,000 units by 2035. (DEIR 4-3,4). The EIR disclosed the areas of existing development within oak woodlands (DEIR Figure 5-2), and anticipated growth and oak woodland conversion anticipated under the 2004 General Plan in years 2025 and 2035 (DEIR Figure 5-1). Significant parcelization has already occurred within the Highway 50 Corridor substantially reducing if not eliminating opportunities for acquisition of large conservation blocks. (See Staff Report; Staff presentation to the Board of Supervisors 3/20/2015).

2. These urban type uses create edge conflicts with the introduction of non-native landscaping, human disturbance, and predators including cats, dogs, and bird species the latter of which more readily adapt to urban and suburban land uses to the detriment of native species through competition for food and predation. This can cause a shift away from traditional pre-development species composition. (Dudek pp.2, 3, 17-28).

   The proportion of detection of migrant bird species is higher in undeveloped lands; and sensitive species known to avoid human interaction such as northern flicker, orange crowned warbler and Hutton's vireo (species known to occur in El Dorado County) are more abundant in undeveloped sites. (Dudek p.4). "...by preserving habitat further away from human development, the likelihood of preserving a bird community more representative of historic pre-development conditions is increased." (Dudek pp. 4, 30-38).

   In a study of Placer County woodlands, many bird species were found to be sensitive to development density and landscape conditions. (Dudek p. 5). "Lark sparrow and rufous-crowned sparrow abundances were negatively associated with development density, as was the occurrence of ash-throated flycatcher, western kingbird, tree swallow and western meadowlark. Conversely, the western scrub-jay, house finch, and other species were positively associated with development density. The species that were positively associated are either human-tolerant species or those that benefit from food subsidies of residential development." (Dudek p. 5). "Additional development and more fragmented oak woodlands shifts bird species composition away from the historic short-distance and neotropical migrant species toward greater abundance of human-tolerant winter resident species. Preservation of habitats that benefit migrant species is of greater conservation concern due to their historic habitat loss and ongoing pressures on habitat availability and quality. This category also includes many special-status species." (Dudek pp. 40-65).

3. Larger remote preserves have advantages over small preserves. The Donnelly and Marzluff 2004 study reach several important conclusions regarding preserve location. Remote preserves included greater species richness and variability. Large reserves in urban landscapes had high species richness, but the "added species" were human adapted species which colonized from urban areas. Reserves near urban areas had more exotic plant species, which correlated with the human adapted species. As preserves decreased in size, native forest species disappeared at predictable rates. (Dudek pp. 7, 78-90).

[1] Each of these considerations functions as a separate and independent basis in support of the Board of Supervisors' conclusion.

4. A Colorado study (Length 2006) compared the conservation values of clustered development (creating open space) with traditional exurban 2 to 16 hectare parcels.[2] Both types of housing development had "significantly higher densities of non-native and human-commensal species and significant lower densities of native and human-sensitive species than undeveloped areas." (Dudek p. 8). "Preserved areas that are intermixed with dispersed housing show similar patterns in species composition compared to more continuous preserve areas surrounding cluster developments." (Dudek pp. 9, 92-103). This study supports the decision to locate conservation areas away from areas of urban and urbanizing land uses, such as those occurring and planned to occur in the Highway 50 corridor.

5. Another Colorado study (Odell and Knight 2001) reached conclusions that songbirds and medium sized mammals were sensitive to urban and low density development, and that the species populations were detected more frequently in undeveloped parcels. (Dudek p. 8.) "From an ecological standpoint, it is preferable to cluster housing and leave the undeveloped areas in open space, as opposed to dispersing housing across the entire landscape." (Dudek pp. 9, 105-112). This study supports the County's strategy to locate conservation lands away areas of existing and proposed development within the Highway 50 corridor.

6. The Hansen and Rotella study (2002), dealing with bird species in and near Yellowstone park, suggests that native bird populations fared better in preserves located away from development lands, compared to preserves located near residential development. (Dudek pp. 114-124). This study supports the County's decision to locate conservation lands away from the Highway 50 corridor towards more remote lands, less disturbed by forms of human development.

7. As noted in the Maestas 2003 study, exurban development (low density residential) is associated with increased abundance of human dependent species and reduced detection of coyotes and bobcat when compared to ranching and reserves. Native plant species in preserves which allow for public recreation may be adversely impacted by the introduction of exotic plant species as a result of recreational use when compared to grazing lands. Exurban developments can support greater densities of tree nesting and human adopted bird species, likely because of the presence of non-native tree species and food subsidies. (Dudek p. 11). This study supports the conclusion that urban, urbanizing, and exurban areas such as those occurring and anticipated to occur in the Highway 50 corridor, will shift bird species away from native bird populations towards human compatible species. (Dudek pp. 126-135).

8. The Hansen study (2005) notes that there is a broad trend towards reduced biodiversity across insects, birds, lizards, and plants as one moves from wildland towards urban uses. Urbanization can lead to increased nitrogen and phosphorus levels which in turn encourages development of exotic plants at the expense of native plants. Many native plant species experience reproduction declines near homes leading to decreases in native species richness. At the same time, some exotic species, and human-adapted native species generally increase with the intensity of exurban development. (Dudek p. 12). This study supports the conclusion that conservation lands located near urban, suburban, or exurban land uses such as those occurring or anticipated to occur in the Highway 50 corridor may be compromised by development activity. Conversely, more remote conservation lands may be less at risk due to the absence or limitation on development activity. (Dudek pp. 137-149).

[2] A hectare = 2.47105 acres.

9. The Blair study (1996) notes that avian diversity can increase with development, however the increase is attributable to non-native species and synanthropic species. Native bird species abundance decreased in the study area as it shifted from preserve to business district land uses. (Dudek p. 13). "This earlier study emphasizes that total biodiversity should not be a primary metric for assessing reserve quality. Rather, native species diversity and abundance should be emphasized as these are most under threat from development pressures and are the target of habitat preservation benefits. This study also introduces the idea that preserved habitat in more urban or suburban areas, such as that provided under on-site retention, may provide a population sink for native species rather than a benefit." (Dudek p. 13). As applied to the Highway 50 corridor, the presence of urban, suburban, and exurban land uses may increase certain non-native and human compatible bird populations. Conservation of remote preserve lands would likely be more effective in protecting native bird species. (*See* also Dudek pp. 151-164).

10. The location of conservation lands away from urbanized and areas converting to urban and suburban uses is a recognized existing conservation strategy. This is illustrated by the multi-species Santa Clara Valley Habitat Conservation Plan ("SCVHCP"). (Dudek p. 467). This plan notes that only minimal land acquisition would take place within urban limit lines. (Dudek p. 467). The HCP is co-approved by the state and federal wildlife agencies. The plan seeks to avoid urban edge effects and seeks to establish large preserve blocks. (Dudek p. 14). The County's policy of establishing large conservation preserves is consistent with the federal and state approved strategy for Santa Clara Valley in that the SCVHCP recognizes the benefits of large blocks, including that "Large reserves tend to support more species for longer periods of time than small reserves. Large reserves are also generally easier to manage on a per-acre basis because, for example, a large reserve reduces conflicts that may arise when managing for covered species with very different habitat requirements." (Dudek p. 176). El Dorado County's strategy is to preserve large land blocks away from the areas of existing and planned development thus reducing the ratio of edge to protected areas. The Highway 50 Corridor includes significant parcelization. Significant, large, contiguous, undeveloped parcels serving as corridors do not exist within the Highway 50 corridor. (Staff presentation to the Board of Supervisors 3/20/2015). For the overall SCVHCP strategy, see Dudek pp. 166-471.

11. A similar strategy of conservation of lands located away from urbanizing areas was adopted as part of the East Contra Costa County Habitat Conservation Plan (Dudek p. 474), and was included as well in the then draft Butte County (Dudek p. 476), Placer County (Dudek p. 477), and South Sacramento County conservation plans (Dudek p. 478).

12. Conservation areas consisting of large land blocks can be more efficiently managed at less cost. (Dudek p. 176).

13. Conservation areas consisting of large land blocks have a lower ratio of edge to conserved lands compared to small conservation holdings. This reduces the adverse effects on species resulting from habitat impacts associated from urban and suburban development and is a recognized conservation strategy. (Dudek p. 177).

14. Highway 50 is an existing facility which impedes wildlife movement north to south. The County does not control this facility and as a result, the County cannot reasonably rely upon the future ability to construct wildlife crossings. (Staff Report; FEIR p. 2-22). Thus, there is no foreseeable reliable scenario in which the adverse effects of Highway 50 on wildlife movement will be eliminated or substantially reduced.

B. The Board of Supervisors finds that it was not feasible to focus on preserving the oak woodlands within the Highway 50 corridor. This finding is based upon the following separate considerations[3]:

1. The 2004 General Plan, as amended, plans for substantial population growth within the Highway 50 Corridor. (DEIR Figure 5-1). Setting aside substantial lands for preserves within the Highway 50 Corridor would be inconsistent with County adopted land use policies to concentrate future growth within the Highway 50 Corridor where urban services are most readily available. (Staff Report.)

2. At the time of EIR certification, the Board made a specific finding as to the infeasibility of land use alternatives and mitigation measures resulting in density reductions. Specifically, the Board found "Additionally, the rejected measures and alternatives would materially and adversely interfere with the County's ability to discharge its obligations under state law by potentially lowering densities, reducing housing opportunities and increasing development costs." (Legistar 12-1203 27B; p. 31-32 of 69). This finding was unchallenged in the Litigation. Displacing planned growth within the Highway 50 Corridor would have similar effects.

3. The Dudek memorandum discussed above and attached to staff report documents the benefits to native species of locating preserve lands away from urban, suburban, and exurban areas such as the Highway 50 Corridor. At the same time, the Dudek reports suggest that urban, suburban, and exurban areas such as the Highway 50 Corridor, decrease native bird populations and decrease small mammal populations. (See Findings A (2)-(10) above).

4. Reducing development potential within the Highway 50 Corridor could result in pressure to convert remote lands (Legistar 12-1203, 27B 26 of 60), introducing habitat conversion and wildlife conflicts in areas where existing wildlife populations are subject to lower disturbance by human activity. When considering an alternative requiring greater onsite oak woodland retention, the EIR concluded that "this alternative may increase development pressure in rural areas and thus lead to a greater loss of community character in those areas. Therefore, impacts to land use Alternative 2 would remain significant and unavoidable. (DEIR p. 10-21). This alternative was determined by the Board of Supervisors to be infeasible based upon conflicts with the adopted general plan. (Resolution 127-2017; CEQA findings, p. 19).

5. The existing development and planned growth within the Highway 50 Corridor will lead to substantial habitat conversion and modification. Studies cited in the Dudek memorandum support the conclusions that urban, suburban, and exurban development (such as that occurring and planned for the Highway 50 Corridor) reduces native species populations and diversity, encourages introduction of exotic plants and promotes human compatible bird species. Development activity introduces noise, predators, species competition, and noise conflicts which are adverse to native populations. Studies support the conclusion that native species are better protected when reserves are located away from urban, suburban, and exurban areas such as that planned for the Highway 50 Corridor. (See Findings A (2)-(10) above).

6. Highway 50 is an existing facility which impedes wildlife movement north to south. The County does not control this facility and there is no foreseeable reliable scenario in which the adverse

[3] Each of these considerations functions as a separate and independent basis in support of the Board of Supervisors' conclusion.

effects of Highway 50 on wildlife movement will be eliminated or substantially reduced. (Staff report; FEIR 2-23). "..the County does not have jurisdiction to require crossings on a state highway." (DEIR p.6-79).

7. At the time of the certification of the EIR, the Board of Supervisors considered an alternative based upon increased oak woodland retention. The Board of Supervisors found that this alternative would not be feasible as the habitat would not function "as a cohesive habitat block. "Increased on-site retention requirements under this alternative are assumed to lead to more dispersed and exurban development, resulting in smaller patches of retained oak woodlands and making it more difficult to maintain unfragmented habitat in the County's Rural Regions." (Resolution 127-2017; CEQA findings, p. 20).

C. The Board directs staff to supplement the administrative record in the Litigation as required by the judgment.

D. The Board further finds that the Staff Report, including the Dudek memorandum, shall be considered an Addendum. (CEQA Guidelines section 15164). Recirculation of the Staff Report/Dudek memorandum is not required as the new information simply clarifies or amplifies information previously circulated as part of the EIR and does not trigger recirculation as provided for in CEQA Guidelines section 15088.5.

E. The Board directs staff to file a return to the writ.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the 20th day of October, 2020, by the following vote of said Board:

Ayes: Hidahl, Frentzen, Veerkamp, Parlin, Novasel
Noes: None
Absent: None

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

_____
Brian K. Veerkamp
Chair, Board of Supervisors