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Fwd: BOS Meeting September 12, 2017--File # 12-1203; Agenda Item # 27

#27

2 messages

Cheryl <Cheryl.FMR@comcast.net>

Tue, Sep 12, 2017 at 7:56 AM

To: bosfive@edcgov.us, jim.mitrisin@edcgov.us, EDC COB <edc.cob@edcgov.us>

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Supervisor Novasel & Jim--

I'm forwarding this message because initial delivery failed...please see attached file.

Thank you--
Cheryl Langley
Shingle Springs

----- Forwarded Message -----

Subject:BOS Meeting September 12, 2017--File # 12-1203; Agenda Item # 27

Date:Tue, 12 Sep 2017 07:49:58 -0700

From:Cheryl <Cheryl.FMR@comcast.net>

To:'The BOSONE' <bosone@edcgov.us>, "bosfive@edcgov.us; edc.cob@edcgov.us; jim.mitrisin"@edcgov.us

Supervisors and Jim--

Please include the attached comments in the administrative record for file 12-1203; agenda item #27--**Biological Resources Policy Update/Oak Woodlands Management Plan**. This is for the September 12, 2017 BOS meeting.

Thank you.

Cheryl Langley
Shingle Springs



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BOS_Meeting_Sept_12_2017_FNL.pdf
921K

Jim Mitrisin - El Dorado County <jim.mitrisin@edcgov.us>

Tue, Sep 12, 2017 at 8:14 AM

To: Cheryl <Cheryl.FMR@comcast.net>

Cc: The BOSFIVE <bosfive@edcgov.us>, EDC COB <edc.cob@edcgov.us>

Thank you, your comments will be added accordingly.

Jim Mitrisin
Clerk of the Board of Supervisors
County of El Dorado
Ph. 530.621.5390 Main
Ph. 530.621.5592 Direct
Email jim.mitrisin@edcgov.us

[Quoted text hidden]

Supervisors—

I commend the Board for *not* including in the Biological Resources Policy Update/Oak Resources Management Plan (ORMP) project both the removal of live oaks from heritage tree status eligibility, and the revision of the personal use exemption—these amendments are needlessly destructive. **However, there are other project elements that require further consideration, and amendment.** These elements *include*, but are not limited to, the following.

Unilateral In-Lieu Fee Changes

The following change would allow the Planning Director to unilaterally approve reductions in-lieu fee amounts:

After the July 18, 2017 Board hearing, planning staff also determined that a more streamlined appeal process for in-lieu fees would be more effective if the Planning Commission and Board were removed from the process and the Director was designated as the final arbiter of all appeals. Staff is proposing to add Section 130.39.080 (In-Lieu Fee Reductions and Appeals) to the proposed Oak Resources Conservation Ordinance.

Excerpt Source: Legistar file # 12-1203; 25A Revised Staff Memo BOS 9-12-17; page 1 -2 of 3.

Clearly staff originally decided to make this change without Board or Planning Commission approval, and minus public input. This excerpt from the original Staff Memo for 9-12-17 states staff *already added* a new section to the proposed ordinance:

Subsequent to the Board hearing on July 18, 2017, staff has added a new section to the proposed Ordinance, Section 130.39.080 (In-Lieu Fee Reductions and Appeals). This section includes procedures for applying for in-lieu fee reductions and/or appeals. The key change is that the decision making body is the Director rather than the Planning Commission or the Board of Supervisors. These procedures are consistent with the Traffic Impact Mitigation Fee appeals process. (See Attachment 25G for the revisions made to the proposed Ordinance shown in Track Changes.)

Excerpt Source: Legistar file # 12-1203; 25A Staff Memo BOS 9-12-17; page 2 of 12.

This is an unacceptable amendment. **This change alone will require recirculation of the project EIR; it basically undermines project mitigation by making mitigation an unknown quantity for any given project.** Under this scenario, **no mitigation fee standards are actually established;** all fees can be changed for yet to be determined reasons by the Planning Director, minus input from the Board, the Planning Commission, and the public. This represents a potentially serious degradation of mitigation standards; it casts uncertainty into the process, **making mitigation standards unstable and unknowable.**

To complicate matters, this change was initiated while staff nearly simultaneously recommended rejection of the Planning Commission’s (PC) well-reasoned request to “*increase in-lieu fees for Oak Woodland based on acquisition land values in El Dorado County*” (request #4—April 27, 2017 PC meeting). These two acts—that of unilateral fee adjustments and the rejection of a reasonable request by PC members—represents not only an unwillingness to commit to reasonable mitigation standards, but a willingness to change project mitigation standards based on criteria not yet established—and likely never *established*—because *flexibility* is what is being requested here. What do proposed mitigation measures mean if they can be changed on any given day by a “jury” of one?

Adaptive Management

What makes the foregoing particularly troubling is the coupling of the unilateral in-lieu fee decision with the concept of “adaptive management” and “contingency plans.” The concept of adaptive management was raised in an appendix to an appendix in the draft EIR.

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)*, pdf page 86 of 215.

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)*, pdf page 35 of 215.

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 inadvertently or intentionally. And, importantly, **this 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. The ability of mitigation to reduce 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. It casts uncertainty into the mitigation process, and provides zero assurances that mitigation will be performed in an effective manner, or even that the ORMP will be the same project a year from now.**

The court in *Gentry v. City of Murreleta* (1995) 36 Cal.App.4th 1359 found a Negative Declaration defective because it improperly relied on deferred formulation of specific mitigation measures. There, the city required the applicant to comply with any existing ordinance and allowed the city to require a biological report and compliance with any recommendations in the report. The court found this to be insufficient because it was based on compliance with a report that had not yet been performed. **This ruling not only applies to adaptive management and contingency plan schemes, but may also apply to reports developed by “qualified professionals” for specific projects.**

To require some alternative that is not specified means the project lacks meaningful requirements; it only “requires” some alternative that is not specified. **This is not acceptable under CEQA.** That is, **the County must establish clearly defined and enforceable mitigation/performance standards.** Decisions that alter mitigation standards do not meet the criteria that **mitigation requirements must include standards that are mandatory, specific, and enforceable.** (*Coastal Hills Rural Preservation v. County of Sonoma* (2016) 2 Cal.app.5th 1234, 1258.) **This lack of definition is a violation of CEQA’s goal of full disclosure and informed decision making.**

This lack of specific, effective mitigation is emphasized in this excerpt from the Staff Memo of September 12, 2017, the meeting at which the project was *intended* to be completed and given final approval.

The Board also provided the following general direction listed below*:

1. **Develop metrics to measure mitigation effectiveness;**

Excerpt Source: Legistar file # 12-1203; 25A Staff Memo BOS 9-12-17; page 3 of 12.

While I agree the **development of mitigation metrics (performance standards) is an important step**, this is a step that should have been taken well in advance of project approval. In fact, **it should have served as a basis for mitigation measure development and selection, and metrics should have been presented in the EIR.** This is a red flag that the EIR has failed in its role as a document upon which informed decision making can be accomplished, and failed as a full disclosure document. How do Board members make reasoned decisions when the information upon which decisions must be made is absent?

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.)

What *is* certain here is that there is **not** a full understanding of the environmental consequences, and the public is **not** assured the environmental consequences of the project have been taken into account because, in this instance, **mitigation metrics (performance standards) have not been established—there is no benchmark by which to measure mitigation success.** The Board is in essence *asking* for that benchmark—the target—that signals mitigation success.

In fact, the following excerpt from the final EIR reveals an unwillingness to *develop* performance standards (mitigation metrics) that actually measure mitigation efficacy. It was stated in the final EIR that defining a required amount of tree canopy over time is “*not considered a reliable metric by which mitigation success can be measured*”:

The commenter requests that the Final EIR include specific performance standards with regard to oak tree and oak woodland mitigation (e.g., amount of canopy cover expected over a period of time).

The proposed ORMP defines the number and type of trees to be planted. Because tree growth is subject to many diverse conditions, defining a required amount of tree canopy over time was not considered to be a reliable metric by which mitigation success can be measured.

Excerpt Source: Final Environmental Impact Report for the Biological Resources Policy Update and Oak Resources Management Plan, February, 2017; pdf page 425 of 582.

Actually, requiring a defined amount of tree canopy over time would be one of the *more reliable* metrics to use to determine mitigation efficacy. What has this project provided that is a more reliable benchmark? Tree survivability, when survivability may equate to a 5” high blue oak sprouted from an acorn seven years ago? Is this an adequate/acceptable replacement for removed mature trees/woodland?

This request by the Board for performance standards is particularly interesting because during the course of EIR circulation, a question was posed by the public that sought to determine if adequate analysis had been performed to ensure the development of effective mitigation measures:

- Include a discussion of mitigation efforts undertaken by the County. Discuss reason(s) for mitigation failures (such as the mitigation plantings adjacent to Serrano Village D2, and along road project sites within the County). If there have been successful mitigation efforts, describe the location of the plantings, the type of oak replanting that took place (i.e., acorns, container plants, etc.—including the size of the container plants), when they were planted, and the current status of the plantings (size, condition, mortality rate, etc.)

Excerpt Source: Final EIR, pdf page 322 of 582.

The response in the Final EIR was the following:

8-53 The commenter requests that the Final EIR include a discussion of mitigation efforts undertaken by the County, reasons for mitigation failures, and success of oak replanting.

The EIR evaluates the proposed project as described in the Project Description (Chapter 3 of the Draft EIR). Evaluating the efficacy of other mitigation efforts undertaken by the County is beyond the scope of the proposed project and is not required by CEQA. Refer to Master Response 4 in Chapter 2 (Master Responses) regarding oak mitigation monitoring.

Excerpt Source: Final EIR, pdf page 425 of 582.

This response is clearly inadequate. Evaluating the efficacy of other mitigation efforts undertaken by the County *is* relevant, and must be the basis—not an afterthought—for development of performance standards and mitigation designed to meet those standards. This request by the Board reveals **the project is being managed in a manner that exposes its propensity for failure.**

Need for an Oversight Committee

It is imperative that an oversight committee—made up of environmental experts, including experts from State agencies—be appointed and utilized for mitigation oversight and in-lieu fee use. The document *Draft Oak Resources Management Plan Background and Support Information*¹ specifies **“the major components of the administration program will include ... One or more entities approved by the Board of Supervisors to assist in the management, maintenance, monitoring or restoration of oak woodlands...”**

The appointment of an oversight committee is something that could be done in *conjunction* with project approval, and could add credibility to project implementation, provided professionals with training in biological resources are appointed.

Attachment A

I have attached comments provided to the PC on August 24, 2017 that pertain to file # 12-1203 topics currently being considered by the Board, but heard and filed under file # 17-0937.

Closing of Public Hearings

While the public repeatedly requested project hearings remain open to both oral and written public comment, County staff and the Board of Supervisors have chosen to close the hearing to oral public comment. This is inappropriate, and it is requested that this not become standard practice in the County.

In Closing

This project needs to be amended to correct defects. I ask Board members to ***not*** approve the project without amendment, and to begin incorporating amendments that preserve our oak woodlands.

Thank you for the opportunity to comment on this important project.

¹ 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](#))

Commissioners--

I have reviewed the documents provided under Agenda Item 5 (File # 17-0937; associated file 12-1203) and have the following comments regarding the Planning Commission / County staff recommendations, and other related issues.

Planning Commission Recommendations:

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

Heritage Oaks (Planning Commission recommendation #2)

The Board of Supervisors denied the Planning Commission recommendation to change the definition of Heritage Oak from 36" to 20" diameter at breast height (dbh). **I again request heritage tree designation be established at a size no larger than 24"**, if not for all oaks, for **blue oaks**. Numerous citations from scientific studies have been provided to the Planning Commission and the Board of Supervisors that specify blue oaks grow very slowly, and that growth may even cease after 26".¹ Thus, under the current Heritage Oak size designation of 36", many of these oaks will *never* reach heritage size, despite their extreme age. **Valley oaks** would be another worthy addition—it is an endemic *species of special concern*, and there is relatively little valley oak woodland in the County. Of the approximate 247,000 acres of oak woodland in the County, under 4,000 acres is valley oak woodland.

Also in need of revision is the exclusion of live oak under the Heritage Tree designation:

Heritage Trees: Any live native oak tree of the genus *Quercus* (including blue oak (*Quercus douglasii*), valley oak (*Quercus lobata*), California black oak (*Quercus kelloggii*), ~~interior live oak (*Quercus wislizeni*), canyon live oak (*Quercus elaeagnifolia*)~~ Oregon oak (*Quercus garryana*), oracle oak (*Quercus x morehus*), or hybrids thereof) with a single main trunk measuring 36 inches dbh or greater, or with a multiple trunk with an aggregate trunk diameter measuring 36 inches or greater.

Excerpt Source: Exhibit A—Errata Summary Table—File # 17-0937; Agenda Item 5; pdf page 14 of 29.

If omitted from Heritage Tree designation, it is likely this is the only County in the State to do so. (Also, the "multiple trunk" aggregate measurement is mostly included to accommodate this species.) Importantly, different species of oak support different wildlife species—including mammals, insects and lichen species. That is, an oak tree is not simply an oak tree—it supports a *community* that is species specific. To exclude or reduce live oak from Heritage Tree protections—and presumably from some replanting programs—is to exclude many associated species as well; it limits woodland and wildlife diversity.

¹ McDonald, 1985; in: Ritter, L.V. Undated. *Blue Oak Woodland*; page 2 of 4. Available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=67340>.

Besides—this is an odd prejudice—a prejudice based on the perception that live oak is a relatively fast growing “weedy” oak species, and therefore not in need of the same protections as other oaks. But relatively “fast” growth is an asset when it comes to woodland replacement. To demonize this attribute may result in mitigation plantings comprised largely of oaks that will take multiple decades to reach the size of those removed.

Request:

- **Establish Heritage Oak tree size as no larger than 24”**, if not for all oaks, for blue oaks and valley oaks.
- **Reinstate live oaks under the Heritage Tree definition.**

In-Lieu Fee Adjustments (*Planning Commission recommendation #4*)

I concur with the Planning Commission’s request for in-lieu fee adjustments based on El Dorado County land acquisition values.

Request:

- Repeat the request to the Board of Supervisors to implement this Planning Commission recommendation.

Enforcement of Mitigation Monitoring and Reporting (*Planning Commission recommendation #5*)

The Planning Commission requested more effective enforcement of oak mitigation efforts in light of past failures. While this recommendation seems to be supported by County staff in concept, it is not clear what mechanisms have been instituted to change the trajectory of mitigation efforts. For instance, in the past it has been suggested a PAWTAC-like committee² be used to oversee mitigation efforts and in-lieu fee use. However, as one Supervisor commented privately, because such groups are often overwhelmed by debate and conflict, such a committee is unlikely to be effective.

While this may be the case in some instances, it need not be the case in *all* instances. Perhaps the **El Dorado County Fish and Game Commission** could serve in the capacity of overseeing mitigation proposals, mitigation implementation and efficacy, and oversight of in-lieu fee use.³ This is an established commission with expertise—and with contacts within the research community; this would enable it to do an effective job. While this commission may require additional resources to take on additional tasks, the expertise necessary to accomplish the goal is present, and the benefits of mitigation oversight would be worth the cost.

Besides, the document *Draft Oak Resources Management Plan Background and Support Information*⁴ specifies **“the major components of the administration program will include ... One or more entities approved by the Board of Supervisors to assist in the management, maintenance, monitoring or restoration of oak woodlands...”**

Request:

- **Reconvene a PAWTAC-like committee, or utilize the El Dorado Fish and Game Commission;** task the commission with oversight of oak mitigation proposals, mitigation implementation and efficacy, and oversight of in-lieu fee use.

Long-Term Funding for Mitigation and Monitoring (*Planning Commission recommendation #6*)

I concur with the Planning Commission’s request for long-term funding in perpetuity.

Request:

- Repeat the request to the Board of Supervisors to implement this Planning Commission recommendation.

² PAWTAC: Plant and Wildlife Advisory Committee.

³ The current EDC Fish and Game Commission is comprised of the following individuals: Larry Nelson and Grady Garlough (at large); Dennis Byrne (District I); Mike Denega (District II); Kurt Mikkola (District III); Pat Weddle (District IV); Victor Babbitt (District V). See information on the Commission at: <https://www.edcgov.us/Government/FishGame>.

⁴ 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**)

Other Project Related Issues

Acorn Mitigation

While Dudek supports the use of acorns for mitigation plantings under specific circumstances, there is ample evidence that **acorn planting is simply not efficacious**. I have submitted numerous comments on the issue to both the Planning Commission and the Board of Supervisors based on research and observations made by multiple researchers—including the researcher Dudek cites as providing evidence acorns can work; Dudek simply ignores the caveats.

In support of acorn use, the final EIR (FEIR) described jurisdictions that allow acorn planting. But this information was not accurate:

2) The FEIR does not provide the information needed for the Board to make a fully informed decision, and in some cases intentionally misleads us. Without listing all instances, here are a few examples:

a. In answer to 'what jurisdictions allow acorn planting for mitigation?', FEIR Response 6-55 falsely claims

"Jurisdictions that allow acorn planting or have approved oak woodland mitigation plans that include acorn planting include, but are not limited to, Sacramento County (whose General Plan Conservation Element also calls for amending the Tree Preservation Ordinance to allow for acorn planting), Nevada County, Placer County, Santa Barbara County, and Sonoma County."

As of 12/13/16 Sac County did NOT allow acorn mitigation planting. Placer county allows acorn planting for restoration, not mitigation, and as of 7/12/16 their Tree Preservation Ordinance called for 15 gal trees as replacement mitigation. Nevada County tree ordinance (section 4.3.15 Trees) calls for "equal or greater mitigation" and does not turn up anything on a search for 'acorn'. Allowing numerous acorns to replace a mature tree is not the norm in other jurisdictions as has been implied.

Excerpt Source: Ellen Van Dyke public comments to the Board; July 18, 2017; file 12-1203, page 1 of 4.

And, when asked to describe **the efficacy of any such program** in these counties, Dudek responded that they ***"...confirmed through telephone calls that the counties listed in Comment 6-55 do not maintain data regarding the success of individual oak woodland mitigation programs conducted in their jurisdictions."***⁵

When confronted with examples of El Dorado County oak mitigation sites that had relied on acorn planting and failed, staff attempted to justify oak mitigation failure via the following justification:

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.

Excerpt Source: Legistar File 12-1203, 24C; Exhibit B—Staff Memo; page 15 of 18.

But this description fails to acknowledge that the mitigation site was not maintenance/maintained, and failure ensued. It also ignores the issues that many sites were denuded of oaks for the purpose of cattle grazing long ago, and since that time poor oak regeneration has become a significant problem. That is, the same issues that plague natural regeneration impact acorn planting, yet this is not acknowledged, and mitigation proposals under this project have not been adjusted to take that condition into account.

⁵ Final EIR, Response 8-47, pdf page 422 of 582.

Also significant in terms of assessing acorn planting as a mitigation strategy are the following examples provided by staff. Staff presented what they deemed to be oak mitigation “success stories”:

- **Wilson Estates and Cameron Glen: Both projects were performed under Option A retention standards—their “success” relies on oak retention, not oak replacement.**⁶
- The Department of Transportation (DOT) **Green Valley Road Widening project was performed using 5 – 15 gallon size container plants and included “hand-watering, maintenance, monitoring, and annual reporting for almost 5 years.”**⁷ (This oak mitigation project was performed under contract with Dudek. If Dudek was certain acorns would provide a successful outcome, why plant larger stock?)
- The DOT **Weber Creek Project was performed using 1–5 gallon size saplings, “including regular watering to support healthy growth.”**⁸ Since this project was performed in March/April 2017, it is not known what the success rate of this planting site will be, but obviously acorns were not used.
- **Serrano oak mitigation:** Because there has been criticism of the oak mitigation efforts in the El Dorado Hills Specific Plan area, County staff 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.”*⁹ This—County staff contends—provides evidence that the oak 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.**¹⁰

As for other sites, *“As of June 2017, the County is not aware of any tree planting monitoring reports that have been submitted.”*¹¹ **But the County surely must be aware of mitigation that has not been implemented (enforced), and of failed oak mitigation attempts—the public is,** and those sites have been documented in comments submitted to the Planning Commission and the Board of Supervisors. But oak mitigation failure at these sites has not been acknowledged by staff. **If you cannot “see” the problem, you cannot correct it.**

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.¹²

Request:

- Eliminate acorn planting as a method for oak mitigation.

⁶ Legistar File 12-1203; 24C, Exhibit B—Staff Memo; page 16 of 18.

⁷ Legistar File 12-1203; 24C, Exhibit B—Staff Memo; page 17 of 18.

⁸ Legistar File 12-1203; 24C, Exhibit B—Staff Memo; page 17-18 of 18

⁹ County of El Dorado, 24C –Exhibit B; *E. Past Performance of Oak Mitigation Efforts*, page 15 of 18.

¹⁰ Wildlands, Inc. 2002 report: *Serrano El Dorado Development Project Wetland and Oak Woodland Mitigation 2002 Monitoring Report*, February, 2003 AND 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.

¹¹ Legistar File 12-1203; 24C, Exhibit B—Staff Memo; page 16 of 18.

¹² 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.”*

Exemption for Personal Use

The exemption for personal use is not only too “generous,” it invites abuse. For instance, there is no restriction based on parcel zoning; thus, properties including those zoned commercial, industrial and R&D could be stripped of their oak resources over time, without the need to mitigate loss.

J. **Exemption for Personal Use.** Removal of a native oak tree, other than a Heritage Tree or valley oak tree, when it is cut down on the owner’s property for the owner’s personal use, is exempted from the mitigation requirements included in this Chapter provided that no more than 8 trees are removed from a single parcel per parcel per year or 8 trees per dwelling unit per parcel per year and provided that the total diameter inches at breast height (dbh) of trees removed from a single parcel per year or per dwelling unit per year does not exceed 140 inches.

Excerpt Source: Exhibit A—Errata Summary Table—File # 17-0937; Agenda Item 5; pdf page 22 of 29.

Request:

- Restrict personal use to a more limited number of trees per parcel per year, and limit the zoning designations that allow oak removal under the personal use exemption.

Violation of Public Resources Code

The Oak Ordinance **appears to violate Public Resources Code Section 21083.4:**

SECTION 1. Section 21083.4 is added to the Public Resources Code, to read:
21083.4. (a) For purposes of this section, "oak" means a native tree species in the genus *Quercus*, not designated as Group A or Group B commercial species pursuant to regulations adopted by the State Board of Forestry and Fire Protection pursuant to Section 4526, and that is 5 inches or more in diameter at breast height.

Individual Native Oak Tree(s): Any live native oak tree of the genus *Quercus* (including blue oak (*Quercus douglasii*), valley oak (*Quercus lobata*), California black oak (*Quercus kelloggii*), interior live oak (*Quercus wislizeni*), canyon live oak (*Quercus chrysolepis*), Oregon oak (*Quercus garryana*), gravel oak (*Quercus x morehus*), or hybrids thereof) with a single main trunk measuring greater than 6 but less than 26 inches dbh, or with a multiple trunk with an aggregate trunk diameter measuring greater than 10 but less than 26 inches dbh, and is not a Heritage Tree.

Excerpt Source: Exhibit A—Errata Summary Table—File #17-0937; Agenda Item 5, pdf page 14 of 29.

This conflicting language likely means the removal of “oaks,” as defined under the PRC, is **not mitigated under this ORMP**. This is a violation of State law.

Request:

- **Change project language to reflect consistency with State law;** define oaks 5 inches dbh as the threshold for mitigation.

Adaptive Management and Contingency Plans

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, **this 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.**

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.

Request:

- Restrict the application of “adaptive management” and “contingency plans” to eliminate misapplication. This “flexibility” actually 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 mitigation measures are not defined.

Commissioners—please recommend the following to the Board of Supervisors:

- First and foremost, **do not forward a recommendation of approval to the Board of Supervisors** for this project without amendment.

Include in your request for amendment:

- **Reinstate Option A retention standards.**
- **Establish of Heritage Oak size as no larger than 24”**, if not for all oaks, for blue oaks and valley oaks.
- **Reinstate live oaks under the Heritage Tree definition.**
- **Require in-lieu fee adjustments** be made based on El Dorado County land acquisition values.
- **Convene an oversight committee**; task the committee with oversight of oak mitigation proposals, mitigation implementation and efficacy, and oversight of in-lieu fee use.
- **Establish long-term funding** for mitigation and monitoring in perpetuity.
- **Eliminate acorn planting as a method for oak mitigation.**
- **Restrict personal use to a more limited number of trees per parcel per year, and limit the zoning designations that allow oak removal under the personal use exemption.**
- **Change project language to reflect consistency with State law**; define oaks 5 inches dbh.
- **Restrict the application of “adaptive management” and “contingency plans”** to eliminate misapplication.
- **Revise the Greenhouse Gas analysis to comply with State policy and law.**



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DATE 9/12/17 #27

Jim Mitrisin <jim.mitrisin@edcgov.us>

Comments on Biological Resources Policy Update and Oak Resources Management Plan Final EIR

1 message

Oak Staff <oakstaff@californiaoaks.org>

Tue, Sep 12, 2017 at 8:46 AM

To: "edc.cob@edcgov.us" <edc.cob@edcgov.us>, Jim Mitrisin - El Dorado County <jim.mitrisin@edcgov.us>, "anne.novotny@edcgov.us" <anne.novotny@edcgov.us>

Cc: "Mwgraf@aol.com" <Mwgraf@aol.com>, Janet Cobb <jcobb@californiawildlifefoundation.org>

Greetings,

Please find attached a comment letter on Biological Resources Policy Update and Oak Resources Management Plan Final EIR.

Please acknowledge receipt of this email and letter and please also place us on the notice list about this matter.

Thank you so much,

Angela

Angela Moskow
California Oaks Information Network Manager
California Wildlife Foundation/California Oaks
428 13th Street, Suite 10A
Oakland, CA 94612
www.californiaoaks.org
Office: (510) 763-0282
Mobile: (510) 610-4685

 **FEIR Comment Letter.pdf**
115K

**Michael W. Graf
Law Offices**

227 Behrens St.,
El Cerrito CA 94530

Tel: 510-525-1208
email: mwgraf@aol.com

September 11, 2017

Via Email Delivery

Community Development Agency
Long Range Planning Division
2850 Fairlane Court
Placerville, CA 95667
edc.cob@edcgov.us
jim.mitrisin@edcgov.us
shawna.purvines@edcgov.us
anne.novotny@edcgov.us

RE: Comments on Biological Resources Policy Update and Oak Resources Management Plan Final EIR

Dear Ms. Purvines:

I am submitting these comments on behalf of California Oaks. California Oaks has submitted prior comments on the DEIR and FEIR.

We are concerned that the County appears poised to approve the Biological Resources Policy Update and Oak Resources Management Plan (“Project”) without having addressed several issues that we believe could cause great environmental impacts due to the County’s 1) decision to eliminate the Integrated Natural Resources Management Plan (“INRMP”) previously found to be necessary to avoid significant impacts to sensitive wildlife and their habitats; 2) adoption of a new Oak Woodland Management Plan (“OWMP”) that allows projects to clear oak woodlands in their entirety, thereby leading to heightened concerns regarding loss of connected and unfragmented habitat, particularly in the area around the Highway 50 Corridor; and 3) failure to consider the adverse environmental impacts caused by greenhouse gas emissions unleashed by this Project.

1. The Project’s Fee Program for Mitigating Impacts to Oak Woodlands Is Not Set Up to Preserve Important Oak Woodland Habitat Within the Highway 50 Corridor, Thereby Leading to Unnecessary Habitat Fragmentation.

The proposed General Plan changes intend to “mitigate” for losses of oak woodland and dependent wildlife by establishing Priority Conservation Areas (“PCA”) on rural lands far from where the threats to wildlife habitat and movement will occur, along the rapidly developing areas around the Highway 50 corridor. The County explains this as follows:

[T]he PCAs are located in areas where oak woodland habitats are present in contiguous areas that are a minimum of 500 acres. Further, as described in the Habitat Fragmentation section below, research indicates that *conserving habitat blocks where habitat fragmentation is unlikely to occur results in maximizing patch size, which in turn allows for preservation of larger populations of wildlife and flora and maximizing the protection of biodiversity*. The approach also provides for minimizing edge effects and other indirect effects on the habitat and species, thus providing greater protection to species that are sensitive to disturbances from adjacent land uses.

FEIR, p. 16 (emphasis added.) The FEIR goes on to state:

The County relies on preservation in areas where habitat fragmentation is unlikely to occur. As described below, this was a criteria used to define the County's PCAs. Proposed Policy 7.4.2.8 and the proposed ORMP require that mitigation areas be prioritized by their inclusion in the PCAs and, secondarily, their inclusion in the IBCs. This ensures that the preserved areas are those that are expected to retain the greatest habitat and conservation value in the long-term. In addition to providing high habitat values, the approach and criteria used to identify the PCAs are important for ensuring the long-term feasibility of managing areas that are conserved under the proposed ORMP. For example, the routine monitoring and maintenance necessary for a single 500-acre conservation area would require substantially less time and effort than routine monitoring and maintenance of ten 50-acre parcels.

Id.

While all this may be true, however, that does not mean it will not *also be necessary* to include priority areas for conservation amidst the wide swaths of oak woodlands currently existing along the Highway 50 corridor where future habitat fragmentation is expected to be most intense. *See* DEIR, Figure 6-1. Indeed, the idea that habitat will *only* be preserved in areas where fragmentation is unlikely to occur appears completely backwards. Instead, it is where there is the potential for significant habitat fragmentation that a plan must be devised that will protect such habitat under the most development pressure.

For better or for worse, the identification and in lieu fee program designed to preserve PCAs in the County represents 'the plan' for offsetting oak woodland and wildlife habitat fragmentation. Yet this 'plan' somehow has determined there is no need to preserve critical habitats in the areas most susceptible to habitat fragmentation. The County justifies this approach by applying arbitrary limiting criteria on what can and what cannot be considered as PCAs, including excluding areas under 500 acres or which are designated as rural-residential in the General Plan or zoning code. Yet the record shows considerable oak woodland habitat, including patches of over 500 acres on lands away from community centers but within the Highway 50 corridor. *See* DEIR, Figure 6-1.

Moreover, the County's assumption in limiting PCAs to areas of 500 acres or more is literally the classic case of letting the perfect be the enemy of the good. While it is true that 500 acre contiguous blocks of habitat may indeed be the most preferable, in areas where the potential for habitat fragmentation is highest, smaller parcels may have to play an important role in avoiding or

substantially lessening development's worst impacts. See Pub. Res. Code § 21002. This is clear from the County's own recommendations that five acre parcels may constitute effective mitigation to offset development's fragmentary impacts, which occurs in the 'Proposed Changes to Policy 7.4.2.8, Section D. Habitat Protection,' stating:

Mitigation for impacts to vegetation communities defined above in Section A will occur within the County on a minimum *contiguous habitat block of 5 acres*. (emphasis added.)

New proposed Section 7.4.2.8.D includes a list of criteria to 'prioritize' possible mitigation sites, a number of which would apply to the oak woodlands habitats in the Highway 50 corridor including:

- location within other important ecological areas, as defined in the Updated INRMP Initial Inventory and Mapping (June 2010);
- woodland, forest and shrub communities with diverse age structure;
- woodland and forest communities with large trees and dense canopies;
- opportunities for active land management to be used to enhance or restore natural ecosystem processes;
- presence of or potential to support special-status species;
- connectivity with adjacent protected lands;
- parcels that achieve multiple agency and community benefits;
- parcels that are located generally to the west of the Eldorado National Forest; and
- parcels that would preserve natural wildlife movement corridors such as crossings under major roadways (e.g., U.S. Highway 50 and across canyons).

The County's own proposed changes to the General Plan clarify that parcels meeting these criteria in sizes down to five contiguous acres may constitute important habitat eligible as possible mitigation for loss of other habitat due to development.

Despite this acknowledgment, however, the County's in-lieu fee program available as an option to mitigate wholesale clearing of oak woodlands has not been set up to accommodate the acquisition of development rights on these important habitat lands occurring within the Highway 50 corridor. Thus, although the EIR and General Plan documents clarify that this habitat can function as offsetting mitigation for the loss of other similarly situated habitat, thereby alleviating the worst impacts in areas where habitat fragmentation will be the most problematic, the *fee program does not include any plan* to be able to acquire such parcels. Here, it is foreseeable that most Highway 50 corridor development proposing to clear out oak woodlands will simply pay the impact fee, based on a fee schedule that does not enable the County to purchase the most critical parcels necessary to ensure that the most significant impacts of habitat fragmentation are avoided. Instead, the FEIR states:

The in-lieu fee calculated for the ORMP was developed as a component of a Nexus Study...in order to establish the legal and policy basis for the fee.the in-lieu fee is designed to pay the full cost of the mitigation for development impacts, including acquisition, management and monitoring (initial and long term), and administration. In developing the oak woodlands in-lieu fee, the scale of cost incurred by local land conservation organizations

that actively acquire and manage conservation land was analyzed...in addition to an analysis of real estate transaction data within the County.the oak woodland in-lieu fee was based on costs identified by the American River Conservancy and Placer Land Trust, because data from these two organizations is most applicable to the oak woodland conservation program identified in the ORMP. In considering the land acquisition costs of all the studied land conservation organizations, the Nexus Study found that "Recent conservation land costs among LCOs [Land Conservation Organizations] range from \$1,000 to nearly \$17,000 per acre, but most fall within a range of \$2,800 to \$12,000 per acre"As shown in Table 3-5 of the Nexus Study, the land values that were relied on to determine the proposed in-lieu fee included one transaction within El Dorado County in which 71 acres that included some oak woodland habitat were acquired for a price of \$2,047 per acre. ...With consideration of the land acquisition costs of all the studied land conservation organizations, the Direct Acquisition Price for oak woodland conservation in El Dorado County determined in the Nexus Study was \$5,000 per acre.

See FEIR, p. 2-11-12 (Master Response 4.)

This resulting fee bears no relationship to the actual costs of purchasing lands in the Highway 50 Corridor. For example, a listing for 14.7 acres in the corridor area asks for \$3.5 million, about \$238,000 per acre: <https://www.redfin.com/CA/Cameron-Park/Coach-Ln-95682/home/108482895>. See also <https://www.redfin.com/CA/Cameron-Park/2526-Greenwood-Ln-95682/home/108363574> (0.5 acres for \$179,000.) In addition, the land trust estimates were based on projects with no particular constraints on the location, in which case trusts typically look for lowest cost per acre when doing "general" acquisitions. In comparison, a recent American River Conservancy project for acquisitions for rare plants in the Cameron Park area paid well over \$50,000 an acre for a parcel that was greater than 200 acres.

Here, the County's fee program lacks any analysis of 1) the actual range of costs of purchasing oak woodland habitat within the Highway 50 Corridor; 2) a methodology to ensure that an adequate amount of unfragmented land would be purchased; or 3) why it would not be feasible to set a higher per-acre fee that would function as part of a plan to ensure significant oak woodland habitat fragmentation in these areas most susceptible to development pressure would be preserved.

This same problem was identified in *Center for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156 which described the issue that had occurred in the County the last time this came up:

The County's planner noted the difference of opinion regarding the appropriate Option B fee rate: "There was disagreement on which Rural/Urban ratio to use in making the fee calculation. [¶] The consultant recommends the low level of acquisition, management, and restoration ... the 80% Rural/20% Urban Acquisition for a fee of \$14,000 per acre of required mitigation. ... [¶] At its April 26, 2007 meeting, the Planning Commission indicated that it preferred the lowest fee of ... 100% Rural Land Acquisition. [¶] Development Services staff recommends that your Board accept the Low-Cost Scenario [with a \$14,000 fee per acre] as the appropriate fee amount for the off-site mitigation under Option B." The County's planner

explained that the Option B fee amount adopted represented "a compromise between the 25% requested by some commenters and the staff-recommended 80% of fee title value." Nonetheless, the mitigation fee rate and land acquisition options were not analyzed by an EIR that considered the environmental effects of the options.

Id. at 1179. The Court went on to find that the County's rejection of its own consultant's recommendation of \$14,000 per acre as a fee that would cover acquisition, management, and restoration given a split of 80% Rural and 20% Urban lands was arbitrary and unanalyzed with respect to the actual needs of preserving lands within the Highway 50 Corridor:

The County's 2004 program EIR ...declare[d] that '[p]riority will also be given to parcels that would preserve natural wildlife movement corridors such as crossings under major roadways (e.g., US [Highway] 50 and across canyons).' Thus, the 2004 program EIR emphasized the importance of connectivity among preserved oak woodlands. In formulating the oak woodland management plan, the County's planner informed the Board that "it is necessary to recognize the concept of connectivity, in the form of corridors, to ensure that the oak woodlands that will be preserved in the future through the mitigation program will also be able to function as habitat. Therefore, oak woodland corridors have now been illustrated on the final map for your Board's consideration. ... [¶] ... Without corridors, fragmentation of habitat will result. Fragmentation results in the degradation of habitat and ecosystem values." The initial study for the oak woodland management plan acknowledges, 'In El Dorado County, Highway 50 presents a major barrier to north-south wildlife dispersal [citation]. The Oak Woodland Technical Advisory Committee that was formed in the County in 1996 'concluded that connectivity of woodlands from north to south was an important value to preserve and that it was at risk from future development.'.... By excluding the Highway 50 corridor from Option B fund mitigation goals, the County allowed for a fee rate at the lower end of the range due to the lesser cost of rural land and easement acquisition. By specifying that Option B mitigation funds would not be spent on conservation in that corridor, the oak woodland management plan differs from the 2004 program EIR's emphasis on the importance of protecting connectivity of habitat across the Highway 50 corridor.

Id. at 1180-1181. The Court added that "[t]hese decisions on the adequacy of the Option B mitigation goals and fee structuring must be made with the benefit of an EIR." *Id.* at 1181.

Here, the County is adopting a fee program that will be used to purchase acreage in PCAs that are not present in the Highway 50 Corridor area, where oak woodland habitat is most likely to become fragmented, without any EIR analysis of how this will be adequate or why a more robust approach is not feasible and significant habitat fragmentation impacts in the Highway 50 Corridor thus 'unavoidable.' *See* Pub. Res. Code § 21081.

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2. The County Has Not Replaced the INRMP with An Adequate Substitute Plan, Thereby Leading to Significant Impacts that Completion and Implementation of the INRMP Would Have Avoided.

A central shortcoming of the General Plan amendments proposed in this case are their collective failure to meet the General Plan objectives to conserve wildlife species and their associated habitats in a sustainable manner over the long term life of the General Plan. This objective was to have been accomplished by former Policy 7.4.1.6, which read:

All development projects involving discretionary review shall be designed to avoid disturbance or fragmentation of important habitats to the extent reasonably feasible. Where avoidance is not possible, the *development shall be required to fully mitigate the effects of important habitat loss and fragmentation. Mitigation shall be defined in the Integrated Natural Resources Management Plan (INRMP) (see Policy 7.4.2.8 and Implementation Measure CO-M).*

See former General Plan Policy 7.4.1.6 (emphasis added.) The INRMP was considered at the time of the General Plan's enactment to be a critical element of avoiding future habitat fragmentation and worst impacts of General Plan buildout development. The INRMP approach called for the establishment of a "Habitat Protection Strategy," described as "a strategy for protecting important habitats based on coordinated land acquisitions [] and management of acquired land" in order to "to conserve and restore contiguous blocks of important habitat to offset the effects of increased habitat loss and fragmentation elsewhere in the county."

The General Plan revisions in this case simply delete this text of Policy 7.4.1.6, replacing it with unclear revisions to Policies 7.4.2.8 and 7.4.2.9 which do not compensate for the need to have a plan which identifies and preserves the necessary habitat to ensure long term sustainability. Thus, new Section 7.4.2.8(A), Habitat Protection Strategy, does nothing more than provide habitat replacement ratios, without any consideration of where or what quality habitat replacement will be. Similarly, Section 7.4.2.8(D) lists 'criteria' for habitat offsets, but there is no clear requirement nor discussion of how or where such habitat will be preserved. As discussed, given the County's assurances that the best use of habitat offsets are rural parcels far away from areas subject to development pressures – *i.e.*, areas where *habitat fragmentation is least likely* – nothing in these sections would ensure that important habitat within the Highway 50 corridor will be preserved.

In comparison, it is worth noting that in the County's last round with the OWMP a legitimate effort was made to identify important habitat areas around which a habitat preservation strategy could be formulated, starting with the need to establish "Oak woodland corridors" that "would be critical for maintaining the values and viability of Priority Conservation Areas:"

The criteria used in selecting oak woodland corridors were (1) for each priority conservation area, there had to be at least two ways for wildlife to move in or out; (2) large expanses of oak woodland were selected that did not meet the priority conservation area criteria, typically because they were under 500 acres in size; and (3) integrated plan criteria, such as year-round water, wetlands, and riparian habitat. They concluded that perennial stream zones would be

appropriate areas for focusing on connectivity. Two particular corridors for north-south connectivity were identified: Weber Creek and "a second area along Slate Creek in the vicinity of the Greenstone undercrossing" which represented "the highest value second corridor that would link the [priority conservation areas] in the north with the [priority conservation areas] in the south." All together there are 19 corridors, all of which are along existing streams. Public lands were specifically targeted, where feasible, as pathways between priority conservation areas.

Center for Sierra Nevada Conservation, supra, 202 Cal.App.4th at 1167-1168.

The new General Plan revisions simply jettison this entire approach, replacing it with a total reliance on Important Biological Corridors. As has been preciously noted, however, the IBC program is not designed as habitat preservation, but rather as simply design measures on existing parcels that might retain narrow movement corridors for certain large mammals. The IBC has never been analyzed in any CEQA review document, nor is there any discussion of what the term 'no net loss of wildlife movement function' is supposed to mean or how little habitat would be required to meet this standard.

In the absence of some preserved habitat in the Highway 50 Corridor, habitat fragmentation will occur yet the County is now proposing to allow for wholesale clearing of oak woodlands without any plan for how to avoid significant impacts due to the new approach.

3. The Changes to the Prior General Plan Policies Protecting Oaks Will Lead to Significant Impacts to Oak Woodland Habitat.

The General Plan proposes basically eliminating prior Policy 7.4.4.4, replacing it with a simple reference to the new Oak Woodland Management Plan ("OWMP"):

For all new development projects that result in impacts to oak woodlands and native oak trees, including Heritage Trees, the County shall require one mitigation as outlined in the County's Oak Resources Management Plan (ORMP). The ORMP functions as the oak resources component of the County's biological resources mitigation program, identified in Policy 7.4.2.8.

For oak woodlands, the OWMP simply provides a series of mitigation ratios which allow for oaks to be completely eliminated from a parcel, in exchange for either on or offsite oak replanting and/or payment of the in-lieu fee amount discussed above. Thus, the new revisions eliminate the requirement that the mitigation be devised in a manner consistent with a Biological Resources Study and Important Habitat Mitigation Plan established as part of the INRMP, which would have ensured that the loss of important oak woodland habitats were offset by habitat of 'equal biological value.'

Here, there is no requirement that important oak woodland habitat in the Highway 50 corridor area be 1) identified; or 2) be replaced by habitat that offers a similar ecological community (i.e., losses of blue oak woodland habitat having particular wildlife associations could be replaced by live oak habitat, with completely different associations) or occurs in a similar locality so as to avoid local

habitat fragmentation . As discussed, this is a potentially significant impact that is *not* unavoidable, yet will occur under the proposed revisions. Moreover, it is not clear how on-site planting would be measured in terms of replacing oak woodland habitat lost, *i.e.*, how ‘habitat’ replacement would be achieved by replanting oaks that might take decades to re-achieve an oak woodland canopy and productive habitat.

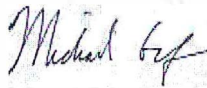
Another concern is the Agricultural Exemption for loss of oak woodlands, which potentially could cover tens of thousands of acres in the County. The County’s response on this issue is that this has not been an problem in the past, citing to only been a .8% reduction in oak woodland coverage in the ORMP study area since 2002. However, the assumption that this same low rate will continue does not account for the significant change occurring in this Project, in which wholesale clearing of oaks will be allowed for the first time in decades thereby leading to all types of development pressures on agricultural lands, including the development of vineyards.

4. Greenhouse Gas Emissions

As stated in our prior letters as well as those submitted by the Quercus Group, the EIR done for the Project does not assess the environmental impacts from cumulative greenhouse gas emissions that will be foreseeably released due to the Project’s new permission to eliminate oak woodlands completely from development parcels. This increase results from 1) the loss of live oak woodlands that take in CO₂; 2) the diffusion of further carbon from dead trees; and 3) the disruption of soil leading to substantial further releases of carbon. *See e.g.*, Letter from Ron Cowan, Quercus Group, dated March 15, 2017; Letter from Ron Cowan, Quercus Group, dated August 30, 2017.

The response to comments on this issue does not address the substantial change that is being approved in this case, essentially allowing what had been previously characterized as Option B – the wholesale clearing of oaks – for the first time in the County’s history since the adoption of the General Plan in 2004. This clearing will release greenhouse emissions that have not been avoided or mitigated by the Project, nor analyzed sufficiently in the EIR.

Very truly yours,



Michael W. Graf