

The Board of Supervisors recognized the importance and adopted the Oak Woodland Management Plan (OWMP). The Board stated its intent to mitigate for oak trees only, not habitat, and provided maximum flexibility in mitigation.

The OWMP was challenged because the oak advocates asserted that the Board's interpretation resulted in impacts not previously addressed in the General Plan Environmental Impact Report (EIR).

The Trial Court disagreed with the oak advocates and upheld the County's OWMP. The Court of Appeals reversed that decision, showing, yet again, that the Policy was subject to various interpretations by intelligent people.

So now the County is faced with a new question: Does it try to implement the controversial and difficult Policy 7.4.4.4 or does it consider clarifications and refinement?

Staff has prepared a short "Options Analysis" to review six primary options to address the issue of implementing Policy 7.4.4.4.

Policy 7.4.4.4 Options Analysis:

The six primary options are listed below in two groups. Analysis follows in the Discussion section.

The first three options are available if there is no intent to amend any General Plan Policies:

Option 1. Do nothing and continue to apply Policy 7.4.4.4 retention indefinitely. The Option B mitigation fee would not be available.

Option 2. Prepare a new OWMP with an EIR, implementing an Option B mitigation fee.

Option 3. Continue work on the INRMP, and include the oak woodland chapter in the EIR that will ultimately be prepared for the INRMP, implementing the INRMP and the Option B mitigation fee.

The next three options presented would involve amending the General Plan oak policies:

Option 4. Adopt a resolution of intention to amend the General Plan Oak Policies 7.4.4.4 and 7.4.4.5, and analyze those amendments as part of the LUPPU and in the EIR for that process.

Option 5. Adopt a resolution of intent to amend the General Plan Oak policies 7.4.4.4 and 7.4.4.5 in a separate process with a separate EIR.

Option 6. Adopt a resolution of intent to amend the General Plan oak Policies 7.4.4.4 and 7.4.4.5, the related General Plan policies (Policies 7.4.5.1, 7.4.5.2, 7.4.2.8 and 7.4.2.9). A separate EIR would be required.

DISCUSSION

Options 1 -3: Implementing the Existing Policies

Option 1: Continue to apply the retention policies in Policy 7.4.4.4 “Option A” with no further effort to implement Option B. This option does not require any additional staff time or other County expenditures to implement. However, this option precludes many projects, particularly commercial and industrial projects, that would otherwise help the County meet other important economic and land use goals. There are significant challenges associated with this option. A great deal of staff time is consumed explaining and implementing 7.4.4.4 Option A. Without Option B mitigation fee program, Policy 7.4.4.4 is difficult to implement consistently and fairly. This option would create difficulties in the development of many land properties. This option is not the most environmentally sensitive approach in the long term, since it treats all oaks as equal, and allows additional fragmentation to occur everywhere in the County. This option is not recommended.

Option 2: Prepare an EIR and readopt the OWMP. This option may appear to be the most straightforward approach to implement the existing oak policy. It could technically satisfy the Court of Appeal’s ruling. However, any EIR that would satisfy the Court’s ruling would be partially or wholly an EIR for the Integrated Natural Resources Management Plan (INRMP). The Court of Appeals stated that a new CEQA analysis for adoption of the OWMP would need to include identification of which “oak woodlands” are “important” biologically. This leads inevitably to a discussion of which oaks are used as habitat and as wildlife corridors. To be a reasonably defensible document given the parameters set out by the court in Center for Sierra Nevada Conservancy v. County of El Dorado, an EIR for the oak chapter of the INRMP becomes virtually indistinguishable from an EIR for an entire INRMP. This option is not recommended.

Option 3: Complete an EIR and adopting an INRMP. This option is a viable option and consistent with the General Plan. It would address all of the concerns raised by the Court of Appeals. Option 3 has the same defects as Option 1 because otherwise laudable infill projects, including commercial and industrial development, could remain unbuildable until the INRMP is adopted. Option 3 will require additional time and resources than Options 1 and 2 in order to complete the INRMP process. This option is superior to Options 1 and 2, but is not recommended.

Options 4-6: Amending the General Plan Oak Policies

Since the General Plan was adopted in 2004, the oak policies have been some of the most controversial and difficult to apply. The policies are confusing because they use “oaks”, “oak woodlands” and “oak habitat” inconsistently, and sometimes interchangeably. The policies attempt to achieve two overlapping, but distinct objectives: protecting (some) oaks because they

are big beautiful trees; and protecting groups of oaks because they are identified to provide important habitat for other plants and animals. These concepts have gotten muddled and the County is now spending a great deal of time and money attempting to implement policies that few people understand or fully support. Therefore, staff recommends that the Board not implement the existing oak policies, but instead, consider amendments to clarify and refine them. The following three options discuss various methodologies to do so.

Option 4: Amend Policies 7.4.4.4 and 7.4.4.5 through the current LUPPU process. The County is currently refining the project description and is moving forward with that project. There are some advantages to including these Policies in the process that is already underway. There would be some economies in the costs, there would be less risk of inadvertent inconsistencies between the Policies, and there would be no claim of “piecemealing” the analysis.

On the other hand, the EIR for the LUPPU is already growing in size and needs to be completed to implement many other important General Plan policies and Board direction. Adding to this analysis would potentially delay that process and make it more complex. The General Plan’s biological policies appear to be severable from the larger LUPPU process. Where the LUPPU process includes a wide variety of specific “targeted” General Plan amendments, the biological policies are all clearly related, located in the same General Plan Element, and do not directly correlate to other policies. In addition, the process for the LUPPU may take longer than amending the biological policies separately; conversely, the biological policies may end up taking a longer time, and delay the other important policies the Board is attempting to amend.

However, Option 5 and 6 are both preferable to Option 4.

Option 5: Prepare a separate Resolution of Intention to amend Policies 7.4.4.4 and Policies 7.4.4.5 and process a separate EIR. The goal would be to clarify the language in those policies, including what types of oaks are to be protected, how oaks removed are to be measured, and how replacement is to be calculated. There are many benefits to amending the policies. First, the County has tried to implement these policies and failed, in large part due to the ambiguities contained in the policies. Second, the substance of the policies may be unpopular, in large part due to the ambiguity, but also due to a perception that the policies protect oak trees to a greater extent than necessary, thereby creating a cost to El Dorado County landowners that landowners in neighboring jurisdictions do not share. Third, the oak policies do not result in the most efficient way to preserve the truly “important” groups of oaks that the residents of the County perhaps value most. The EIR for the 2004 General Plan stated that the onsite retention identified in 7.4.4.4 Option A is not the best method to protect the biological value of oaks over the long term, because it protects fragmented oaks with marginal biological value instead of accumulating funding to protect large unfragmented areas that would have a better biological value. However, Option B cannot be utilized until the Board analyses the impacts of its policy choices including the methods of impact measurement, the location of important habitats, and ratios for replacement of the trees removed. Finally, amending the oak policies would allow the County to take advantage of a change in state law that occurred after the adoption of the 2004 General Plan.

In 2004, the legislature adopted a special rule mandating the analysis of a project's impacts on oak woodlands, and establishing specific mitigation measures for such impacts. Public Resources Code Section 21083.4 (commonly referred to as "the Kuehl bill") applies only to oak woodlands, not to individual oak trees. It does not mandate that any particular threshold be used, but does require that the impacts to oak woodlands be analyzed.

"If a county determines that there may be a significant effect to oak woodlands, the county shall require one or more of the following oak woodlands mitigation alternatives to mitigate the significant effect of the conversion of oak woodlands:

1. Conserve oak woodlands, through the use of conservation easements
2. Plant an appropriate number of trees, including maintaining plantings and replacing dead or diseased trees
3. Contribute funds to the oak woodlands conservation fund
4. Other mitigation measures developed by the county"

If a county adopts one more of the specified mitigation measures for a project, it will be deemed to have satisfied the necessary CEQA analysis for oaks.

Implementation of state law does not allow the County to simply delete the oak policies and "comply with the Kuehl bill." The state law does not establish any standards for when oak woodland loss must be mitigated. Nor does the statute identify how the woodland is to be measured, establish replacement ratios, identify how to select the location of the easements, or define how you would determine the appropriate fee. Under the Kuehl bill, all of these policy choices are left to the counties to decide. The Kuehl bill simply states that counties must analyze a project's impacts on oak woodlands and sets forth three acceptable ways to mitigate for that impact.

If the County replaces Policy 7.4.4.4 and Policy 7.4.4.5 with the Kuehl bill, it will still need to prepare an implementation plan before individual projects could comply with the new policy.

Although amending the oak policies in the General Plan would enable the County to implement the Kuehl bill, it would not protect oaks that are not covered under state law unless the Board chooses to do so. The Kuehl bill requires counties to analyze impacts to oak woodlands but not individual oaks or small clusters of trees. If the County were to amend Policies 7.4.4.4 and 7.4.4.5, the County could establish its own thresholds of significance and determine which mitigation measures would be appropriate for various types of projects, depending on their location, land use, and the amount and type of oak woodland impacted. By amending the policies, the County could also clarify how road and utility projects should mitigate for oak loss. An environmental analysis would be needed to amend these Policies and that analysis would probably need to be an EIR.

These benefits are why staff considers Options 5 and 6 to be better than any of the preceding options. However, amending the oak policies 7.4.4.4 and 7.4.4.5 without considering the INRMP Policies would have some of the same hazards as trying to amend the OWMP without

completing the INRMP. Policy 7.4.4.4 references Policy 7.4.2.8 and states that the County will not implement offsite protection of oaks until the oak portion of the INRMP is completed. If Policy 7.4.4.4 is amended, it is almost certain that oak advocates would argue that the amendment worsens the environmental effects identified in the 2004 General Plan. If an EIR is prepared for the amendments to Policy 7.4.4.4 and 7.4.4.5 but does not amend Policies 7.4.2.8 and 7.4.2.9, the County will still need to complete the work on the INRMP in a separate EIR. These efforts may result in more duplication rather than building upon one another. There will be increased potential for inconsistency.

There is existing confusion about the overlap between Policies 7.4.4.4 and 7.4.4.5 which protect oak trees and Policies 7.4.5.1 and 7.4.5.2 which apply to large landmark trees, including oaks. Having similar policies which apply to oak trees for different purposes creates difficulty in successful implementation. Therefore, staff believes that the Board should consider **Option 6**.

Option 6: Prepare a separate Resolution of Intention to amend Policies 7.4.4.4 and 7.4.4.5, and include possible amendments to Policies 7.4.5.1 and 7.4.5.2 (the two policies that address individual trees) and Policies 7.4.2.8 (the INRMP policy) and 7.4.2.9 (the Important Biological Corridor policy). An EIR would likely be required. Other Policies and Implementation Measures may be included.

This would enable the Board to clarify and refine the intent and scope of all of those policies, ensure the consistency of all the related biological policies, consider changes in state law, and finally harmonize the General Plan Policies.

The EIR prepared for these amendments to the Policies could provide the analysis necessary to implement the Policies, so that no additional implementation process is necessary. At the conclusion of this EIR's analysis, the mapping of the County's important resources would be completed, and the Board could determine what conservation measures are necessary and feasible, and how the conservation should be funded.

This approach would take longer than Option 5, but would ultimately save both time and money, since with Option 5 the INRMP would still need to be implemented. Over the past eight years, the County has engaged in lengthy, informative discussions about various aspects of biological protection, and has learned that the 2004 General Plan EIR's biological chapter was too broad, vague, and imprecise to serve as a workable analysis for implementing a resource protection strategy.

By focusing on only the biological policies and taking other policies and existing land use designations as a given, the Board can decide what resources are important, which important resources are at risk (as opposed to resources that already have protection as federal lands or through some other means), which important resources may be lost due to the land use designations, how to mitigate for those losses, and how to pay for that in a feasible way that does not conflict with other important goals and objectives of the 2004 General Plan

By taking a comprehensive review of the biological policies the Board can consider all of the issues that have arisen during the OWMP and INRMP processes, including analyzing the need for, and extent of, corridors and connectivity. **Option 6** would give the Board the greatest policy flexibility to reconsider the biological policies with the new information we have gathered since 2004, including our increased awareness of the concerns of various constituent groups. **Option 6** is the preferred option because 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 CO-A, CO-M, CO-N, CO-P, and CO-U are all related to tree protection. Attempting to amend one, two, or a few Policies without considering them all is problematic and not recommended. **Option 6** is recommended because it comprehensively addresses difficult policy choices.