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## Comments for Bio Resources BOS Meeting, 1/26/15; Agenda Item#2; File# 12-1203

2 messages

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**Langley, Cheryl@CDPR** <Cheryl.Langley@cdpr.ca.gov>

Fri, Jan 23, 2015 at 3:08 PM

To: "Mikulaco, Ron@El Dorado" <bosone@edcgov.us>, "Nutting, Ray@El Dorado" <bostwo@edcgov.us>, "Veerkamp, Brian@El Dorado" <bosthree@edcgov.us>, "Briggs, Ron@El Dorado" <bosfour@edcgov.us>, "Santiago, Norma@El Dorado" <bosfive@edcgov.us>

Cc: "david.defanti@edcgov.us" <david.defanti@edcgov.us>, "Shawna.purvines@edcgov.us" <Shawna.purvines@edcgov.us>, "edc.cob@edcgov.us" <edc.cob@edcgov.us>

Board Members:

Attached are my comments regarding the Biological Resources Special Meeting of the Board of Supervisors on January 26, 2015, Agenda Item 2, File # 12-1203.

Thank you for the opportunity to comment.

Cheryl Langley  
Shingle Springs Resident

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 **January 26, 2015 BOS Meeting.pdf**  
151K

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**EDC COB** <edc.cob@edcgov.us>

Fri, Jan 23, 2015 at 4:16 PM

To: "Langley, Cheryl@CDPR" <Cheryl.Langley@cdpr.ca.gov>

Thank you for your comments.

Office of the Clerk of the Board  
El Dorado County  
330 Fair Lane, Placerville, CA 95667  
530-621-5390

[Quoted text hidden]

**Cheryl Langley  
Shingle Springs Resident**

To: Board of Supervisors  
Brian Veerkamp, Chair, District 3  
Ron Mikulaco, First Vice Chair, District 1  
Shiva Frentzen, Second Vice Chair, District 2  
Michael Ranalli, District 4  
Sue Novasel, District 5

Date: January 23, 2015

**Subject: Biological Resources Workshop of January 26, 2015; File# 12-1203; Agenda Item# 2**

Board of Supervisors:

I have the following comments regarding biological resources policy update decision points 2 & 3:

**Decision Point 2: Determine which method of oak woodland measurement (woodland area or canopy cover area), would be used for impact calculations and mitigation area determination.**

The Dudek recommendation (Wells, December 31, 2014) that the Board "*Identify 'oak woodland' as the preferred method of measurement for determining oak resource impacts and quantifying mitigation requirements*" is a recommendation I support, providing "oak woodland" is defined as including other associated tree species, understory, gaps between tree canopies, etc.

**I would not support this recommendation if:** "oak woodland" is interpreted as "oak canopy," as it is in the Interim Interpretive Guidelines Measures for El Dorado County General Plan Policy 7.4.4.4 (Option A) Adopted November 9, 2007; Amended October 12, 2007 (Page 2): "*For purposes of implementing these guidelines, 'tree canopy' retention shall mean oak tree canopy retention and replacement of 'woodland habitat' shall mean replacement of oak canopy.*" This interpretation is unacceptable. It is generally understood (and accepted) that *oak canopy* represents the area of ground directly beneath the dripline of an oak tree, and that *oak woodland* includes associated species, gaps between canopies, understory, etc. (and takes into account the habitat value to wildlife).

**Decision Point 3: Determine whether to require undercrossings for future four- and six-lane roadway projects to provide for wildlife movement, and if so, determine specific standards for undercrossings (i.e., size, location).**

I agree that it is necessary to: "*Require, when necessary, undercrossings for future four (4)-, six (6)-and eight (8) lane roadway projects to provide for wildlife movement, and define specific standards for undercrossings (i.e., size, location).*"

I believe it is crucial to provide wildlife undercrossings (or overcrossings) particularly (although not exclusively) where roadways cross streams, creeks, seasonal creeks, other drainages, and riparian areas. Wildlife are most likely to frequent, and most likely to attempt roadway crossings, at these sites. Providing wildlife undercrossings/overcrossings supports both wildlife preservation and motorist safety.

**Decision Point 1:** I also have the following comment regarding biological resources policy update Decision Point 1 which was discussed at the January 13, 2015 Board of Supervisor’s meeting:

It is not clear that Assembly Bill 1600 (Government Code sections 66000 – 66025 “the Mitigation Fee Act”) will in fact provide adequate guidance for developing impact mitigation fees for the loss of oak woodlands. AB 1600 appears to focus almost exclusively on public facilities and infrastructure, and is designed to defray the cost of *public facilities* related to a project (Gov. Code § 66001). Clearly “public facilities” most appropriately includes works of public improvement such as fire stations, libraries, sewer plants, traffic improvements and administrative buildings. Less clear are items that don’t readily constitute an “improvement,” “service,” or “amenity;” in fact, AB 1600 doesn’t apply to exactions such as school fees.

However, if AB 1600 is used as a basis for developing in-lieu fees, (I believe development interests are largely in favor of basing the in-lieu fee on AB 1600 because its intent is to limit the amount of fees a developer must pay); for instance, new development is not required to mitigate existing infrastructure deficiencies, or pay for maintenance and operation expenses, but *Shapell Industries v. Governing Board* (1991) 1 Cal.App.4th 218 determined that a fee was *not invalid* that required new development to pay for new science laboratories, libraries, gymnasiums and administrative buildings to support additional classrooms, even though these new facilities incidentally benefited existing residents who happened to live in the same school district as the new development. In other words, the exaction can be “stretched” to accommodate facilities above and beyond those required by those living in the development in question. In addition, some non-AB 1600 exactions interrelate with AB 1600 fees. For example, Quimby Fees can be collected from residential subdivisions for park or recreational purposes.

The point is, if AB 1600 is utilized, it is important to not limit the in-lieu fee evaluation to the criteria included in AB 1600, especially when those criteria may not be strictly applicable. It is vital to remember that other funding “tools” that lack the narrow findings required under AB 1600 can be enacted to acquire the necessary amount of mitigation funds: Propositions 62 and 218, for instance, can provide for a special tax (but require voter approval). And, while a fee study provides the quantified basis for the imposition of fees, **the County is free to determine that the level of service it would like to provide cannot be met simply through the imposition of the impact fee.**

After all is said and done, it is important to remember that—while some individuals have requested that the in-lieu fees be kept as low as possible—this provision is intended to provide **viable mitigation**, and as such must be adequate to mitigate loss. **Affordability is not a criterion under which the effectiveness of mitigation can legitimately be degraded.**

**Keeping the Public in the Loop**

Finally, the fee study prepared by *New Economics and Advisory* must be prepared in a manner that makes it **easily understood by the public**. The fee studies must adequately explain how calculations were derived or what assumptions were used in projecting future needs. And, while fee studies are often based on staff’s *professional judgment* or *opinion* regarding potential impact—and on a County’s growth projection—the basis for all conclusions must be supported by *substantial evidence*. Because El Dorado County’s water supply is arguably “uncertain” at this time, it will be difficult to project potential growth realistically.

**More Public Input**

Because this process has been “accelerated” to accommodate development interests (to the extent that public input has been limited; see NOTE below), I recommend that a committee be established to work with Long Range Planning staff and Dudek, and that committee members include individuals from the development community, and those with expertise in wildlife/ecology/biology/etc. I believe this is necessary, especially in light of the limited time frame for completion of this project. It is *very* difficult for the interested public to attend workshops that are closely spaced in time, and especially difficult to adequately prepare comments on the decision points in a timely manner. This is especially true because many of us (probably most) have jobs that require our attendance/attention as a first priority. (I agree with Supervisor Ranalli: time spent now to work out important issues may likely save time at the “end” of the process.)

Thank you for providing the opportunity to comment on this important topic.

Cheryl Langley

**NOTE:** *“In recognition of the Board’s desire to expedite completion of this process, this approach would potentially limit public input to focused Planning Commission and Board meetings. The TGPA/ZOU process has used this approach to receive public comment rather than the public outreach program currently identified for input on revisions to the policies.”*

**(Source:** Document 7B under *Meeting Details*, PROCESS APPROACHES FOR THE OAK WOODLAND MANAGEMENT PLAN.)

cc: David Defanti, Assistant Director, Community Development Agency, Long Range Planning  
Shawna Purvines, Principal Planner  
Jim Mitrisin, Clerk of the Board