



COMMUNITY DEVELOPMENT SERVICES

LONG RANGE PLANNING

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Date: September 12, 2017
To: Board of Supervisors
From: Anne Novotny, Principal Planner
Subject: General Plan Biological Resources Policy Update, Oak Resources Management Plan, and Oak Resources Conservation Ordinance Final Environmental Impact Report (EIR) and Project Adoption

PURPOSE

The purpose of this memorandum is to provide the Board of Supervisors (Board) with final documents and information to assist with review and certification of the Final Environmental Impact Report (FEIR) and adoption of the General Plan Biological Resources Policy Update, Oak Resources Management Plan, and Oak Resources Conservation Ordinance (the "Project"). This memo is organized as follows:

- A. Summary of Final Project Documents
- B. Board Direction to Staff on July 18, 2017
- C. Response to Comments Received During Board Hearing on the Project and FEIR, and Related Information
- D. Board Action

A. Summary of Final Project Documents

The following documents have been modified as necessary to accommodate the Board's direction on July 18, 2017 and are attached to Legistar File No. 12-1203:

1. Resolution certifying the Final Environmental Impact Report for the General Plan Biological Resources Policy Update, Oak Resources Management Plan, Oak Resources Conservation Ordinance and in-lieu mitigation fees (Resolution No. 127-2017); Making Environmental Findings of Fact (Exhibit A); Adopting a Statement of Overriding Considerations (Exhibit B); and Approving the Mitigation Monitoring and Reporting Program (Exhibit C), *see Attachment 25B for the Resolution and Attachment 22N for a link to the FEIR*;

2. Resolution adopting a General Plan Amendment to the Biological Resources Policies, Objectives and Implementation Measures in the El Dorado County General Plan (Resolution No. 128-2017), *see Attachment 25C*;
3. Resolution adopting the Oak Resources Management Plan (Resolution 129-2017), *see Attachment 25D*;
4. Resolution establishing an In-Lieu Mitigation Fee to Mitigate Impacts to Oak Woodland Areas and Individual Oak Trees (Resolution 130-2017), *see Attachment 25E*; and
5. Adoption of the Oak Resources Conservation Ordinance (No. 5061), *see Attachment 25F*.

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.)

B. Board Direction to Staff on July 18, 2017

After the close of the public hearing, the Board deliberated and approved staff's proposed changes to the draft Oak Resources Conservation Ordinance as shown in the staff report (Attachment 24A) as follows:

- 1) Incorporate proposed changes to Sections 130.39.080 and 130.39.090 as shown under Planning Commission Recommendation No. 1;
- 2) Incorporate proposed changes to Section 130.39.070 as shown under Planning Commission Recommendation No. 5;
- 3) Incorporate proposed changes to Section 130.39.060 as shown under Other Proposed Minor Changes; and
- 4) Change the word "Bi-annual" to "Biennial" in Section 130.39.090.B.

The Board also provided direction to staff to revise the Personal Use Exemption to allow removal of eight trees per parcel, or per dwelling unit per parcel. In addition, the Board approved staff's recommendation to incorporate other proposed changes as shown on Attachment 24E.

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

1. Develop metrics to measure mitigation effectiveness;
2. Return to the Board in one year after Project adoption with an assessment of the Project's implementation;
3. Also include more information about the various species of oak trees;
4. Return to the Board with a separate item regarding the Weber Creek Canyon Important Biological Corridor (IBC);
5. Provide a link to the GIS map with the complete IBC layer for the whole County that is located on the County website <http://gem.edcgov.us/ugotnet/>;
6. Return to the Board in about 90 days with a separate item that discusses tracking and reporting of existing mitigation and monitoring efforts, and how projects subject to the new oak mitigation requirements will be tracked and monitored after project adoption; and
7. To exclude Live Oaks from the definition of a Heritage Tree.

*See [July 18, 2017 Board Agenda Minutes](#), Item No. 44

Staff will address the Board's general direction on Items 1 through 7 above as follows:

- Items 1 and 3 will also be addressed when staff returns to the Board in one year after project adoption with the assessment of the project's implementation (Item 2).
- Item 4 will be addressed after the adoption of the General Plan Amendment to the biological resources policies as a zoning ordinance update to amend the IBC Overlay in the Weber Creek IBC to delineate the parcels located within the Weber Creek Canyon IBC. This zoning code amendment will include publicly noticed hearings with the Planning Commission and the Board of Supervisors. Notification of the public hearings will also be mailed to all the property owners of parcels located in the proposed Weber Creek Canyon IBC. (A map of the proposed Weber Creek Canyon IBC is included on Legistar File 12-1203, Attachment 24E, p. 32).
- Item 5 (the link to GIS map with the county-wide IBC layer) will be posted on the County website before the Board hearing on September 12, 2017.
- Item 6 will be brought to the Board in about 90 days after adoption of the new oak mitigation requirements.
- Item 7 has been included in the proposed Oak Resources Management Plan and Oak Resources Conservation Ordinance as a revision to the definition of Heritage Tree to exclude Live Oaks. The effect of excluding live oaks from the definition of Heritage Tree is that live oaks that meet the Heritage Tree criteria would no longer be mitigated

at a 3:1 ratio. Permits/mitigation for removal of live oaks would still be required for those meeting the Individual Oak Tree criteria. The environmental analysis in the EIR was at a programmatic level and therefore, did not address individual or Heritage Tree loss. Rather, the impact analysis was based on loss of oak woodlands using Fire Protection's Fire Research and Assessment Program (FRAP) data.

C. Response to Comments Received During Board Hearing on the Project and FEIR, and Related Information

On July 18, 2017, the Board held a public hearing and received and considered additional written and oral public comments regarding both the FEIR and Project. The Chair closed the public hearing on July 18, 2017 and continued this matter to September 12, 2017. On July 18, 2017, the Board tentatively approved various actions and directed staff to revise draft documents as necessary pursuant to this tentative action and return on September 12, 2017 for final action.

Written comments were submitted on July 17, 2017 by six people (three representing the following organizations: California Oaks, El Dorado Senior Housing LLC, and North State Building Industry). At the Board hearing on July 18, 2017, three individuals submitted written comments (two had also submitted comments on July 17, 2017), and one person also submitted comments on behalf of the Quercus Group.

Staff has received, reviewed, and considered both written and oral comments provided during the Board hearing, and found that the issues raised were previously addressed during the procedural processing of this project. However, in light of the time that has elapsed between the inception of the project and the proposed final action, it seems appropriate to include the County's previous responses to comments, where applicable, in this memo. In addition, if any further response or clarification was deemed warranted, it is also included in this memo.

1. Oak Resources Management Plan (ORMP) Mitigation and Monitoring

1-A Issue: Two commenters reasserted their previous concerns about the success of existing mitigation and monitoring efforts for oak woodlands.

Response 1-A: This topic was discussed at both the Planning Commission public hearing on April 27, 2017 and the Board of Supervisors public hearing on July 18, 2017. The Staff Memo Supporting Documentation presented to the Board on July 18, 2017 included several examples of successful oak mitigation efforts including the El Dorado Hills Specific Plan (Serrano), a couple of discretionary projects, and the County's Department of Transportation road/bridge projects. (See Legistar File 12-1203, Attachment 24C).

The County's current mitigation and monitoring under existing Policy 7.4.4.4, Option A was addressed in several sections of the Final EIR, including Chapter 2, Master Responses - Master Response No. 4 (ORMP Mitigation and Monitoring - Monitoring of the Oak Woodland In-Lieu Fee by the County) and Section 3.4 (Individuals), Response to Comment No. 12-11, p. 3- 437).

The County has received very few monitoring reports as the current year 2017 is the first year for reporting for trees planted after the Interim Guidelines for General Plan Policy 7.4.4.4 (Option A) were adopted in November 2006. The first year for reporting for acorns planted in 2007 will be 2022. The Guidelines require reporting at year ten (for tree plantings) and at year 15 for acorn plantings. Specific Plans have their own mitigation requirements and are not subject to the Interim Guidelines for Policy 7.4.4.4 (Option A).

2. Minimum Oak Retention Standards

2-A Issue: Two commenters reasserted their previous statements that the oak retention standards of existing Policy 7.4.4.4 Option A (or similar retention requirement) be retained as part of the Project.

Response 2-A: The comment that oak retention standards of existing Policy 7.4.4.4 Option A should be retained as part of the Project was addressed in the summary of public comments received (March 13 – April 27, 2017) presented to the Board on July 18, 2017. (See Legistar File 12-1203, Attachment 24D, Response to Comment 10 – Incorporate Policy 7.4.4.4 Option A - Oak Retention Standards into ORMP).

The Option A retention standards were not incorporated into the proposed ORMP because the Board determined, in Decision Point 4, that an incentive-based approach to oak woodland conservation would better meet the County's overall General Plan and land use goals and objectives and the objectives of the Biological Resources Policy Update and ORMP project, as discussed in Response to Comment 6-23 in Section 3.4 of the Final EIR. (See Legistar File 12-1203, Attachment 11B, Decision Points 4 - 7).

As discussed in Responses to Comments 6-5 and 8-2 in Section 3.4 (Individuals) of the Final EIR, the EIR considers a reasonable range of project alternatives, as required by CEQA. The suggested alternative of adding the Option A retention standards to the proposed ORMP was not considered because it would not meet the project objectives and would not avoid any of the significant impacts of the proposed Project, as discussed in Response to Comment 6-23 in Section 3.4 (Individuals) of the Final EIR.

The Staff Report presented to the Planning Commission on April 27, 2017 explained in great detail the struggles the County experienced with efforts to implement the biological resources policies in the 2004 General Plan. In 2006, significant staff resources were

allocated to implementing General Plan Policies 7.4.4.4 (Option A), 7.4.4.5, 7.4.5.1, and 7.4.5.2. However, implementation was stymied, due to lack of clarity about how impacts and mitigation are measured. Additionally, various ambiguities and internal inconsistencies within the policies became evident during this process. To address these issues, Interim Interpretive Guidelines for Policy 7.4.4.4 (Option A) were adopted in November 2006. The County then spent the next six years trying to implement the biological resources policies without success, which brought staff to the realization that another approach was necessary to move forward. In September 2012, staff presented the Board with several options and the Board directed staff to proceed with one of the options to undertake a comprehensive analysis and update of all the General Plan biological resources policies and related implementation measures and to hire a consultant to assist the County with this effort and to prepare the related EIR. This is the Project that is being presented to the Board for adoption at this time. (See Legistar File 12-1203, Attachment 22A, Background and History section).

3. Greenhouse Gas Emissions

3-A Issue: A commenter questioned the adequacy of the EIR analysis and findings regarding greenhouse gas (GHG) emissions.

Response 3-A: The commenter's statements were previously addressed in the Final EIR, Chapter 3 – Comments and Responses, Section 3.3 (Organizations)

Issues Raised

Agricultural Exemption: The Board has made a policy decision that certain agricultural activities are exempt from the County's requirements for oak resource mitigation. This is a determination that is within the Board's purview when establishing policies for the County. Although the agricultural exemption could be applied to as much as 138,000 acres of land containing oak woodland, it is not expected that this exemption would result in conversion of 138,000 acres of oak woodland. It would require speculation to estimate the specific extent of oak woodland conversion that could occur under this exemption. The EIR contains analysis demonstrating that the agricultural exemption is not expected to result in substantial amounts of oak woodland conversion, based on historical data regarding agricultural activities in the County (from the annual crop reports) and the extent of oak woodland in the County (from California Department of Forestry and Fire Protection's Fire Research and Assessment Program (FRAP) data). Thus, it is not expected that the agricultural exemption would contribute substantially to the loss of oak resources in the County or to the loss of GHG sequestration afforded by such resources.

The comment incorrectly asserts that projects requiring ministerial approvals are subject to CEQA. CEQA only applies to discretionary actions taken by a public agency.

Compliance with the 2020, 2030 and 2050 GHG reduction targets: The comment asserted that the EIR must demonstrate that the project includes mitigation that will be effective at achieving the states GHG reduction targets. However, the EIR concludes that the impact would be significant and unavoidable. The EIR evaluated whether there are any feasible mitigation measures that would substantially reduce the impact, and found none. However, the EIR concludes that the impact would be significant and unavoidable. The EIR evaluated whether there are any feasible mitigation measures that would substantially reduce the impact, and found none (see Chapter 8, Greenhouse Gases, page 8-21 in the Draft EIR). The EIR demonstrates that there are no feasible mitigation measures to reduce the GHG emissions sufficient to achieve these targets and thus concludes that the impact would be significant and unavoidable.

The determination that there are no feasible mitigation measures under the proposed Project to avoid this impact reflects that the proposed Project would not directly result in any GHG emissions or loss of GHG sequestration. Rather, GHG emissions would be a result of development projects pursued as part of implementation of the General Plan. The EIR relies on growth projections for the County, which reflect the amount of development anticipated in the County through 2025 and 2035. Given the assumed amount of land development necessary to achieve those growth projections and the County's overall goals and objectives related to land use planning and the location of future development, it is not possible to avoid or substantially reduce the amount of natural land that would be converted to developed sites as part of ongoing implementation of the County's General Plan (see Chapter 8, Greenhouse Gases, page 8-21 in the Draft EIR).

Further, the EIR does not assert that the County does not need to work towards achievement of the state's GHG reduction targets. However, it is beyond the scope of the Project to define mitigation measures that would regulate GHG emissions from land development projects. Typically, such mitigation would entail mechanisms to reduce vehicle miles traveled (VMT) and improve the energy-efficiency of the built environment. The update project proposes to modify only the biological resources portions of the General Plan Conservation and Open Space Element and to adopt the proposed Oak Resources Management Plan. The proposed Project would support the County's defined objectives of focusing development in the Community Regions. As shown in the Alternatives analysis in the EIR, other Project alternatives would increase development pressures in the County's rural areas, which would contribute to increase VMT.

Biogenic Emissions: The EIR quantifies the GHG emissions that would result from combustion and decomposition of the vegetative materials removed from oak woodlands as a result of land development projects in the County, based on the growth projections relied upon in the EIR. Thus, the EIR has quantified the biogenic GHG emissions that would indirectly result from the project. As stated in the FEIR, the U.S. Environmental Protection Agency (EPA) defines biogenic emissions as "those that result from the

combustion, harvest, digestion, fermentation, decomposition, or processing of biologically based materials, and those that occur as part of the natural carbon cycle” (EPA 2016a). These are precisely the GHG emissions disclosed in the EIR analysis. Table 3-5 in the FEIR separately quantifies the amount of GHG emissions associated with decomposition and the amount of GHG emissions associated with combustion. Thus the biogenic emissions are not aggregated.

With respect to methane emissions from decomposition of vegetative material, the FEIR explains that high rates of methane emissions result when decomposition occurs in an anaerobic condition and that such conditions are seen in large biomass to energy facilities but are not typical in residential landscaping applications. The EIR assumes that vegetative material removed from oak woodlands in El Dorado County would be used as mulch for existing and future land uses within the county, thus the GHG emissions would more typical of those associated with residential landscaping rather than large biomass to energy facilities. The EIR includes estimates of the amount of methane that would be emitted from decomposition of vegetative materials under typical residential landscaping applications.

Senate Bill 1383 and methane emissions: SB 1383 addresses the following sources of methane emissions: livestock manure management operations and dairy manure management operations; sustainable production and use of renewable gas; citywide and countywide integrated waste management plans; reducing organic waste in landfills. There is nothing in SB 1383 that addresses conversion of oak woodlands; residential, commercial, and industrial land development projects; or residential wood-burning. There is nothing in the proposed project that relates to the types of methane sources regulated under SB 1383. There is no correlation between SB 1383 and the proposed project.

Soil Organic Carbon: The research listed in Attachment A to the comment letter focuses on the effects of agricultural activities and natural lands management on the release of soil organic compound. The reference that includes the estimate that 30% of soil organic carbon may be released specifically addresses the effects of “30-50 years of tillage.” These references do not demonstrate that 25 to 30% of soil organic carbon would be released during earth disturbing activities associated with typical land development projects. Attachment A demonstrates that the research on releases of soil organic carbon focuses on agricultural activities and management of natural lands rather than on the effects of land development projects.

The commenter is correct that the gridded soil survey database includes soil organic carbon data. As the comment notes, the amount of soil organic carbon released as a result of soil disturbance depends on “the depth of the grading, trenching, ripping, tilling, etc.” This information can vary widely depending on the specific existing conditions and proposed development for a given project site. The EIR relies on the County’s growth

projections to estimate the locations and extent of future development, but estimating the amount and extent of grading would require a high degree of speculation on the design of future projects as well as knowledge or speculation as to the project-specific soil conditions and topography. It is beyond the scope of the proposed project and the associated programmatic environmental analysis to determine the extent of grading and other earth disturbance that would be needed for individual future development projects. This type of analysis would occur at the individual project level.

The comment is correct that it is foreseeable that land disturbance would be an integral part of future land development under the County's General Plan, and that the locations of future development are included in the future growth projections for the County. However, as discussed above, it would require speculation to estimate the type and extent of grading and other earth disturbance necessary for future projects. Thus, it is not feasible to estimate the amount of soil organic carbon releases associated with future land development projects.

Black Carbon Emissions: The Final EIR demonstrates that these emissions come largely from wildfires and both on-road and off-road vehicles. The source of black carbon emissions most closely associated with the project is from residential wood-burning, which accounts for 9% of statewide black carbon emission. The EPA's particulate matter regulations for wood-burning devices address all types of particulate matter, including black carbon. The Project would not directly lead to any increases in residential woodburning in the County and thus it is beyond the scope of this Project to further regulate particulate emissions from residential woodburning. While it is proper and necessary for the County to identify ways to reduce all GHG emissions, including those from residential woodburning, it is beyond the scope of the Project because the Project addresses the County's regulations related to evaluation and mitigation of impacts to biological resources. It does not address the County's regulations specific to other components of future land development within the County, such as VMT and energy consumption.

The comment is correct that if the County undertakes preparation of a Climate Action Plan, it would be appropriate to include analysis of and mitigation for black carbon emissions associated with residential woodburning. Preparation of a Climate Action Plan is beyond the scope of the current Project.

Although the EIR states that emissions of organic carbon during woodburning could offset emissions of black carbon, the impact analysis and conclusions regarding level of significance do not rely on this offset.

Additional Update Defects: Cutting down a tree does not generate GHG emissions, other than emissions from the combustion of fossil fuels to operate equipment used in tree cutting. Rather, the EIR makes the point that to the extent that vegetative material

is used by existing County residents, whether for landscaping applications or for firewood, these emissions would not be new because existing County residents are already using vegetative material in these ways. The EIR applies this statement equally to all types of GHG emissions that may be associated with the Project, not just to black carbon emissions as suggested by the commenter.

The Final EIR states that the changes in global warming potential do not affect the impact analysis because the analysis is presented in terms of carbon dioxide equivalents, and the primary GHG evaluated is carbon dioxide (which would be emitted during combustion of vegetative materials removed from oak woodlands). Thus the increased global warming potential of other greenhouse gases does not affect the impact analysis.

4. General Plan Important Biological Corridor (IBC) Overlays

4-A Issue: A commenter asserts the Project will remove protections for lands designated in the General Plan as IBC's.

Response 4-A: This is incorrect; lands previously mapped with the IBC Overlay will not change and will continue to receive biological resources protections. Not only is the Project not proposing to remove or diminish the IBC Overlay, the criteria for the IBC Overlay has been clarified to include a “no net loss” performance standard, as described in proposed Policy 7.4.2.9:

“Properties within the –IBC overlay that are found to support wildlife movement shall provide mitigation to ensure there is no net loss of wildlife movement function and value for special-status species, as well as large mammals...”

The Final EIR further notes that proposed Policy 7.4.2.8 establishes criteria to prioritize preservation in IBCs and Priority Conservation Areas (PCAs). (See Final EIR Chapter 3 – Comments and Responses, Response to Comment No. 4-6, pp. 3-140 and 3-141).

D. Board Action

The Board is responsible for certifying the FEIR, making CEQA Environmental Findings of Fact, adopting the CEQA Statement of Overriding Considerations, and approving the Mitigation Monitoring and Reporting Program. The action of certifying the EIR does not approve or deny the Project; it finds that the EIR adequately analyzed the Project as described in the Project Description. The CEQA document must be certified before the Project is approved.

As the County's legislative body, the Board is responsible for project adoption and may consider a range of action(s) on the Project including, but not limited to: 1) approval of the Project as scoped, 2) approval of the Project with the revisions recommended by the Planning Commission and/or as deemed necessary by the Board, 3) selective approval of specific Project

components, 4) revisions to the Project outside of the scope of the FEIR, or 5) denial of the Project.

On July 18, 2017, the Board tentatively approved various actions and directed staff to revise draft documents as presented to the Planning Commission on April 27, 2017 and return on September 12, 2017 for final action.

Pursuant to the Board's direction on July 18, 2017, staff recommends that the Board take the following final actions:

1. Adopt and authorize the Chair to sign Resolution 127-2017 certifying the Final Environmental Impact Report for the General Plan Biological Resources Policy Update, Oak Resources Management Plan, Oak Resources Conservation Ordinance and in-lieu mitigation fees; Making Environmental Findings of Fact (Exhibit A); Adopting a Statement of Overriding Considerations (Exhibit B); and Approving the Mitigation Monitoring and Reporting Program (Exhibit C), (*see Attachment 25B for the Resolution and Attachment 22N for link to the Final Environmental Impact Report*);
2. Adopt and authorize the Chair to sign Resolution 128-2017 adopting a General Plan Amendment to the Biological Resources Policies, Objectives and Implementation Measures in the El Dorado County General Plan, (*Attachment 25C*);
3. Adopt and authorize the Chair to sign Resolution 129-2017 adopting an Oak Resources Management Plan, (*Attachment 25D*);
4. Adopt and authorize the Chair to sign Resolution 130-2017 establishing an In-Lieu Mitigation Fee to Mitigate Impacts to Oak Woodland Areas and Individual Oak Trees, (*Attachment 25E*);
5. Adopt an Oak Resources Conservation Ordinance No. 5061, (*Attachment 25F*); and
6. Direct staff to return to the Planning Commission and Board within 12-18 months after adoption, or earlier if necessary, to review implementation of the Project.

ATTACHMENTS/EXHIBITS TO STAFF REPORT

Legistar File 12-1203 Attachment No.	Document
25B	Resolution 127-2017 Certifying the Final EIR; Making Environmental Findings of Fact; Adopting a Statement of Overriding Considerations; and Approving the Mitigation Monitoring and Reporting Program
25B	Resolution 127-2017 Exhibit A – CEQA Findings of Fact
25B	Resolution 127-2017 Exhibit B – CEQA Statement of Overriding Considerations
25B	Resolution 127-2017 Exhibit C – Mitigation Monitoring and Reporting Program
25C	Resolution 128-2017 Amending the Biological Resources Policies, Objectives, and Implementation Measures in the General Plan
25C	Resolution 128-2017 Exhibit A – Conservation and Open Space Element
25D	Resolution 129-2017 Adopting Oak Resources Management Plan
25D	Resolution 129-2017 Exhibit A – Oak Resources Management Plan, September 2017
25E	Resolution 130-2017 Establishing an In-Lieu Mitigation Fee to Mitigate Impacts to Oak Woodland Areas and Individual Oak Trees
25E	Resolution 130-2017 Exhibit A – Oak Woodland Area In-lieu Fee Rates
25E	Resolution 130-2017 Exhibit A – Individual Oak Tree In-Lieu Fee Rates
25F	Oak Resources Conservation Ordinance No. 5061
25G	Errata Table with Track Change Pages
25H	Blue Routing Sheets

The Draft and Final EIRs for the Project are posted on the County website at:
<https://www.edcgov.us/Government/longrangeplanning/environmental/pages/biopolicyupdate/drafteir.aspx>