

RESOLUTION NO. 127-2017

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO

**CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR GENERAL PLAN
BIOLOGICAL RESOURCES POLICY UPDATE, OAK RESOURCES MANAGEMENT PLAN,
AND OAK RESOURCES CONSERVATION ORDINANCE; MAKING ENVIRONMENTAL
FINDINGS OF FACT; ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS;
AND APPROVING THE MITIGATION MONITORING AND REPORTING PROGRAM**

Exhibit B

CEQA Statement of Overriding Considerations

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SECTION A.

GENERAL INTRODUCTION

When approving a project that is evaluated in a Final Environmental Impact Report (EIR) that would result in significant, unavoidable environmental impacts, the County must adopt a Statement of Overriding Considerations that balances the project's economic, legal, social, technological, or other benefits against its unavoidable environmental risks. (California Environmental Quality Act [CEQA] Guidelines Section 15093)

The Biological Resources Policy Update, Oak Resources Management Plan (ORMP), and the Oak Resources Conservation Ordinance (collectively referred to as the Project) amends the biological resources policies in the General Plan Conservation and Open Space Element, adopts an ORMP, and adopts an implementing ordinance. The Project proposes amendments to several General Plan objectives, policies, and implementation measures to address the County's need for a clear, defensible, feasible, and reasonable approach to managing biological resource impacts, including impacts to oak trees and oak woodland resources. The Project does not propose any site-specific development projects.

The Project is analyzed at a program level from the point of view of the future implementation of the General Plan, with the amendments embodied in the Biological Resources Policy Update and the requirements of the ORMP and Oak Resources Conservation Ordinance. The environmental impacts of the Project will occur in the context of future implementation of the General Plan based on the land use and development projections for the County.

The ORMP identifies specific requirements for evaluation and mitigation of impacts to oak woodlands, oak trees, and Heritage Trees (individual native oak trees with trunk diameters measuring 36-inches and greater). The ORMP also establishes an in-lieu fee payment option for impacts to oak woodlands and native oak trees, identifies Priority Conservation Areas where oak woodland conservation efforts may be focused, and outlines minimum standards for identification of oak woodland conservation areas outside the Priority Conservation Areas. The Oak Resources Conservation Ordinance incorporates the standards outlined in the ORMP. It includes definitions, descriptions of the types of projects that would be exempt from the mitigation requirements – consistent with the ORMP, requirements and procedures for issuance of oak tree and oak woodland removal permits, and provisions for enforcement and monitoring.

The baseline for the Project's Programmatic EIR analyses is the existing physical conditions within the unincorporated areas of the County (as described in the Project Description, Draft EIR, Chapter 2, Project Description), in accordance with CEQA Guidelines Section 15125. This section states that: "[the] environmental setting will normally constitute the baseline physical conditions by which a lead agency determines when an impact is significant." Accordingly, the Project's Programmatic EIR has examined the potential impacts of the Project in comparison to existing conditions, in particular the existing extent of natural vegetation communities within the unincorporated areas of the County.

The Board of Supervisors (Board) has considered the information contained in the Draft and Final EIR prepared for this project, and has fully reviewed and considered the public testimony and record in this proceeding. The Board has carefully balanced the benefits of adoption of the Project, inclusive of the project modifications made in response to comments on the Draft EIR to reduce potential effects, against the unavoidable adverse impacts identified in the Draft EIR. The Board has also adopted as part of the Project the mitigation measures identified in the Draft EIR. Notwithstanding the disclosure of impacts identified in the Draft EIR as significant and potentially significant, which have not been eliminated or mitigated to a less-than-significant level, the Board, acting pursuant to Section 15093 of the State CEQA Guidelines, hereby determines that the benefits of the Project outweigh the significant unmitigated adverse environmental impacts.

SIGNIFICANT AND UNAVOIDABLE IMPACTS

In light of the development expected to occur from implementation of the General Plan, as amended, the EIR identifies nine (9) significant environmental impacts that cannot be mitigated to a less-than-significant level, including instances where the Project's contribution to a cumulative impact is substantial. These impacts are listed and discussed below and briefly described by the Draft EIR chapter in which they are found and the impact number. The significant and unavoidable impacts of the Project are the result of future development under the General Plan. These impacts are essentially the same impacts identified and analyzed in the 2004 General Plan EIR, with the exception of greenhouse gas (GHG) emissions, which were not reviewed as part of the 2004 General Plan EIR. However, GHG emissions were analyzed in the 2015 Targeted General Plan Amendment-Zoning Ordinance Update (TGPA-ZOU) EIR.

The Project would not substantially alter (increase or decrease) each of these impacts.

Land Use and Planning (Section 5.3)

LU-2: Substantially alter or degrade the existing land use character of the County.

Biological Resources (Section 6.3)

BIO-1: Result in the loss and fragmentation of wildlife habitat

BIO-2: Have a substantial adverse effect on special-status species

BIO-3: Have a substantial adverse effect on wildlife movement

BIO-4: Result in the removal, degradation, and fragmentation of sensitive habitats

Forestry Resources (Section 7.3)

FOR-1: Result in the loss of forest land or conversion of forest land to non-forest use.

FOR-2: Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use.

Greenhouse Gases (Section 8.3)

GHG-1: Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.

Visual Resources (Section 9.3)

VIS-2: Substantially degrade the existing visual character or quality of the area or region

Cumulative Impacts (Section 11.6)

The Project would make a substantial contribution to significant and unavoidable cumulative impacts related to Land Use, Biological Resources, Forestry Resources, GHG, and Visual Resources. In addition, it is expected that there will be a significant and unavoidable cumulative loss of oak woodlands statewide and particularly within the Sacramento Region.

Mitigation Measures

The EIR identifies two mitigation measures that direct revisions to General Plan policies, the ORMP and the Oak Resources Conservation Ordinance, as provided by CEQA Guidelines Section 15126.4. By making these specified revisions to reduce or avoid the impacts of future development the County is enlarging the programmatic environmental protections established under its General Plan.

No additional feasible mitigation measures have been determined to be available for these significant and unavoidable impacts. The Board finds that, in light of the mitigation measures adopted in conjunction with adoption of the General Plan in 2004 and TGPA-ZOU in 2015, along with the two mitigation measures adopted with the Project, there are no other available feasible mitigation measures or alternatives that the Board could adopt at this time which would reduce these impacts to a less-than-significant level. To the extent that these adverse impacts will not be eliminated or lessened to a less-than significant level, the Board finds that specific legal, social and economic considerations identified herein support approval of the Project despite these unavoidable impacts.

During the analysis of the potential impacts of the Biological Resources Policy Update Project, the EIR preparers considered the extent to which existing federal, state, and local regulations pertinent to the resource being reviewed would reduce the Project’s impact. The regulations are listed in the “regulatory setting” discussions within the EIR’s environmental analysis chapters (Chapters 5-9).

SECTION B.

SPECIFIC FINDINGS

Project Benefits Outweigh Unavoidable Impacts

The unavoidable and irreversible impacts of the Project are acceptable in light of the legal, social and economic considerations set forth herein because the benefits of the Project, as described in Section C (Overriding Considerations) below, outweigh the significant and unavoidable or irreversible adverse environmental impacts of the Project.

Balancing Competing Goals

In its role as the County's legislative body, the Board finds that it is imperative to balance competing goals in approving the Biological Resources Policy Update project. The Project balances policies regarding population growth, continued viability of the agricultural industry, economic development and environmental protection, while remaining consistent with the portions of the existing General Plan that are not affected by the Project.

SECTION C.

OVERRIDING CONSIDERATIONS

The Board has made a number of specific determinations regarding the remaining significant and unavoidable impacts that are relevant to the decision to approve the Project:

Legal, Social, and Economic Considerations.

Substantial evidence in the record demonstrates various legal, social, and economic benefits that the County will derive from the implementation of the Biological Resources Policy Update Project. These benefits are described below (in no particular order). Each overriding consideration by itself constitutes a separate, independent, and severable overriding consideration warranting approval of the Project notwithstanding the significant unmitigated impacts.

Legal Considerations – *Housing Element Consistency*

El Dorado County adopted the 2013-2021 General Plan Housing Element Update on October 29, 2013. Pursuant to Government Code Section 65302, the County must adopt a Housing Element as one component of its General Plan. Government Code Section 65583 requires that the Housing Element include a schedule of actions to provide opportunities for housing sufficient to meet the county's anticipated demand.

The Project will advance the Housing Element by supporting two separate policies and one key implementation measure regarding affordable housing.

As discussed at length in the 2004 General Plan CEQA Findings of Fact, and incorporated by reference herein, “numerous studies have shown that governmental constraints on the availability of land are a major factor contributing to the cost of housing.” (2004 General Plan CEQA Findings of Fact, p. 22) As described on pages 6-56 and 6-57 of the Draft EIR, the Affordable Housing Exemption would exempt affordable housing projects that are located in an urbanized area or sphere of influence from mitigation for oak woodland losses, and would reduce the mitigation requirements for affordable housing projects not located in these areas. The GIS analysis completed for the Draft EIR identified a total of 196 acres of oak woodlands occurring on currently undeveloped lands that are designated for multi-family development, and the County’s Housing Element identifies a need for development of 3,948 units of affordable housing within the County’s west slope area (west of the Tahoe Basin). Additionally, the County’s Housing Element includes Implementation Measure HO-2013-7, in support of Policies HO-1.3 and HO-1.18, which states that the County will “develop and adopt an incentive-based Oak Woodland Management policy, consistent with the Conservation and Open Space Element of the General Plan, to include mitigation fee waivers for in-fill developments providing dwelling units affordable to very low- to moderate-income households.” Thus, inclusion of the Affordable Housing Exemption is necessary to ensure consistency with the General Plan and assist the County in meeting its responsibilities under State Housing Law (Government Code 65580 et seq.), as well as statutes focused on increasing affordable housing (Government Code Sections 65008, 65302.8, 65852.3 - 65852.5, 65589.4, 65863, 65913, 65913.1, 65913.2, 65915 - 65918, 66412.3).

Legal Considerations – *Implementation of the General Plan*

The General Plan includes specific Implementation Measures that the County will adopt to carry out the goals and policies enumerated in the Plan. The Biological Resources Policy Update Project, including the ORMP and Oak Resources Conservation Ordinance, will complete Implementation Measure CO-P, which requires development and adoption of an ORMP:

Measure CO-P: Develop and adopt an Oak Resources Management Plan. The plan shall address the following

- Mitigation standards outlined in Policy 7.4.4.4;
- Thresholds of significance for the loss of oak woodlands;
- Requirements for tree surveys and mitigation plans for discretionary projects;
- Replanting and replacement standards;
- Heritage/landmark tree protection standards; and
- An Oak Tree Preservation Ordinance as outlined in Policy 7.4.5.1.

The Project would benefit the County by reducing the obligations, costs, and liabilities that the County would incur in implementing the Integrated Natural Resources Management Plan (INRMP). Revised

Policy 7.4.2.8 clearly sets forth the requirements for assessing existing biological resource conditions, evaluating potential impacts to existing resources, and minimum standards for mitigating such impacts. It will accomplish the County's defined objectives and goals with respect to biological resource management and conservation. In contrast, and as set forth in the Planning Commission staff memo dated April 27, 2017 (Legistar File 12-1203, Attachment 22A), current Policy 7.4.2.8 that requires development of the INRMP is not self-implementing and does not provide a clear definition of what resources are covered and what development activities would be subject to the INRMP.

Social Considerations – *Regulatory Consistency*

The General Plan contains many policies to protect biological resources, including oak woodlands, sensitive habitats, and wildlife. However, due to lack of clarity, implementation of these policies has been subject to varying interpretations, making it difficult to consistently apply the policies to development projects. Because the Project clarifies and refines the intent and scope of the General Plan biological resources policies, ensures internal consistency between these policies and within the General Plan as a whole, and considers recent state law regarding biological resources, the outcome is a clear and consistent approach to regulating biological resources, including oak woodlands, throughout the County. As a result, the Project will have the social benefit of a consistent regulatory environment, creating a sense of certainty for landowners and land purchasers who want to know what biological resources regulations will apply to their lands, applicants for development projects who depend on consistent procedures and standards by which they need to abide, and decision makers who need to be uniform in applying General Plan policy, including associated codes and standards.

Economic Considerations – *Agricultural Benefits*

The Project protects the economic viability of agricultural land uses by incorporating exemptions for agricultural uses into the ORMP. As presented in the ORMP, certain agricultural activities (excluding commercial firewood operations) would be exempt from oak woodlands mitigation requirements. Included in this exemption are activities conducted for the purposes of producing or processing plant and animal products, consistent with California Public Resources Code Section 21083.4. In addition, the preparation of land for this purpose, agricultural cultivation/operations, or activities occurring on lands in Williamson Act Contracts or under Farmland Security Zone Programs is also exempt from oak woodlands mitigation requirements. As part of the Final EIR, this exemption was modified to exclude any activity on agricultural lands that requires the issuance of a Conditional Use Permit. This modification ensures that the Agricultural Exemption is applied as narrowly as possible while still meeting the General Plan goals related to protection of the County's agricultural economy.

As also noted in the CEQA Findings of Fact for the 2004 General Plan and 2015 TGPA-ZOU Project (both posted on the County website at links below), agricultural operations bring substantial benefits to the local economy in El Dorado County and are important to the county's economic health.

2004 General Plan CEQA Findings of Fact

https://www.edcgov.us/government/planning/staffreport7-2004/documents/Att1_ExB_Findings.pdf

TGPA-ZOU Final EIR CEQA Findings of Fact, Resolution No. 195-2015 adopted December 15, 2015, Exhibit A (Legistar File 11-0356, Executed Resolution 195-2015 (12-15-15)

<https://eldorado.legistar.com/View.ashx?M=F&ID=4190367&GUID=9F49390D-7E50-4EAB-97FF-2BB2E1604D61>

The *2013 Agricultural Crop and Livestock Report* of the El Dorado County Department of Agriculture Weights and Measures estimates that agriculture contributed \$441 million to the county economy in 2013. This included \$222 million from ranch marketing and value-added products (El Dorado County 2014). In addition, agricultural production supports agri-tourism, and contributes sales tax, income tax, property tax, and in the case of tourism, transient occupancy tax to the county. Agri-tourism activities in the county include wine tasting and purchases, local breweries, apple harvesting as well as harvesting of many other crops such as berries, peaches, and plums, olive oil tasting and farm tours, farmer’s markets, and choose-and-cut Christmas trees. As noted in the General Plan, the viability of agriculture and timber industries is “critical to the maintenance of the County’s customs, culture, and economic stability” (2004 General Plan Introduction, p. 4) Therefore, due to the economic importance of the County’s agricultural industry, the ORMP exemptions for agricultural activities are deemed necessary for the continued viability of County agriculture.

Economic Considerations – *Land Uses*

The Project balances the protection of property rights and the need for economic development with strong commitments to environmental protection. By establishing a biological resources mitigation and conservation approach that sets clear performance standards for the evaluation and mitigation of impacts to the County’s biological resources, including the in-lieu fee payment option, allows for future development to better achieve the goals and objectives of the General Plan.

The Project supports the local economy by establishing a program, under proposed Policy 7.4.2.8, that responds to the needs of small landowners, business owners, and agriculturalists by recognizing their reliance on prior policies and planning efforts in making decisions regarding their use and acquisition of property in the County. The Project acknowledges landowner expectations arising from historic County land use planning.

Economic Considerations – *Housing Cost in Community Regions*

Housing development has been shown to be a central component in a strong local economy (Robert Fountain, Building Industry Association of Superior, California, *The Economic Impact of New Housing Construction in the Sacramento Region* [June 24, 2004]). Under the 2004 General Plan, approximately 17,500 new dwelling units remain to be built. On April 8, 2014, the Board of Supervisors approved a growth forecast that distributes 75 percent [of these units] in Community Regions, and 25 percent in the Rural Area (General Plan 2011-2015 Five Year Review, October, 2016, p. 36). The General Plan establishes Community Regions as “those areas which are appropriate for the highest intensity of self-sustaining compact urban-type development or suburban type development within the County based on

the municipal spheres of influence, availability of infrastructure, public services, major transportation corridors and travel patterns. . ." (Policy 2.1.1.2, General Plan Land Use Element, p. 12).

By concentrating land use development in the community regions, the General Plan limits the need for expansion of infrastructure, which helps reduce land development costs. However, most of the County's Community Regions also contain areas of oak woodlands. In order to best provide for Countywide oak woodland protections while also accommodating planned growth in Community Regions, the Project provides for an in-lieu mitigation fee payment option as an alternative to on-site retention/restoration of oak woodlands. In-Lieu mitigation fees collected would provide for permanent protection of large blocks of off-site oak woodlands outside Community Region boundaries in areas most suitable for long-term protection. By providing this mitigation flexibility, both developers and landowners can maximize the amount of land available for development in Community Regions.

As discussed at length in the 2004 General Plan Findings of Fact, and hereby incorporated by reference herein, "limiting the amount of development permitted in Community Regions. . .will lead residents to seek lower land prices in outlying areas" and ". . .significantly limit land availability for more intensive residential development, which could have an adverse effect on housing affordability." (2004 General Plan CEQA Findings of Fact, p. 22)

SECTION D.

CONCLUSION

The EIR for the County of El Dorado Biological Resources Policy Update Project was prepared pursuant to CEQA and the CEQA Guidelines. The Board has independently determined that the EIR fully and adequately addresses the impacts and mitigations of the Project.

The Board has balanced these project benefits and considerations against the unavoidable and irreversible environmental risks identified in the EIR, and has concluded that those impacts are outweighed by the project benefits. In conclusion, the Board finds that any remaining (residual) effects on the environment attributable to the Project, which are found to be unavoidable in the CEQA Findings of Fact (Exhibit A-1), are acceptable due to the overriding concerns set forth in Sections B (Specific Findings) and C (Overriding Considerations) of this Statement of Overriding Considerations. Each finding and overriding consideration by itself constitutes a separate, independent, and severable overriding consideration warranting approval of the Project.

The Board concludes that the Biological Resources Policy Update Project should be adopted.