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January 16, 2008

Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Re: Oak Woodlands Management Plan (OWMP) Status Report

Dear Board Members:

Your motion of October 30, 2007 directed that Planning Services return to the Board in January for consideration and potential action on the Oak Woodlands Management Plan, after review by the Agriculture Commission and Planning Commission. The purpose of this report is to provide a status report on the plan, and to receive further direction from the Board on unresolved policy questions applicable to the plan.

Due to the high level of interest in the draft OWMP and the controversy surrounding it, staff provided over a month for the public and agencies to review the draft document and provide comments. This was also necessary, due to the Planning Commission schedule, for the commission to have an opportunity to comment on the document. Staff received 36 comment letters, some that were quite lengthy, and we are in the process of incorporating those comments, where appropriate, into the final draft document and the CEQA analysis. While not complete as of the writing of this report, the draft CEQA document is anticipated to be out for public review in January, with a hearing likely to be scheduled before the Planning Commission in February. This will allow for the plan to come before the Board for adoption in March.

Policy Issues

There are several unresolved policy issues that are still outstanding. While staff has prepared the draft OWMP based on the best available information and our professional judgment, some modifications may occur due to further public comment or the recommendation of the Planning Commission. A brief discussion of the issues is provided below:

Amount of the Conservation Fund In-Lieu Fee – Staff continues to work with the consultant hired by the County and the County Assessor to refine the amount of the fee. Estimates from the public and consultants range from \$3,250 to \$14,000. Staff is keenly aware of the need to keep the fee at the lowest possible level, due to affordable housing and economic development concerns expressed by the public, Board and Commission members, and as articulated in General Plan policies of the Housing and Economic Development Elements. However, the fee

amount must be sufficient to support the acquisition and management efforts anticipated in the plan. A final recommendation will be provided, along with any additional background data on the calculation of the fee, with the presentation of the final draft OWMP to the Planning Commission and Board.

Optional Payment into Conservation Fund In Lieu of On-Site Replacement Under Option A – The draft OWMP presently provides for flexibility in applying Option A and B by allowing an applicant to combine the two programs if that best meets the applicant’s needs. In this way, a project may satisfy the oak mitigation requirements by meeting the retention requirements and providing the replacement with the Option B fee. Where this will most likely occur is with the 1:1 replacement requirement. In most cases, the available land where replacement could occur will be occupied by project improvements such as parking, structures, roads, etc., or the land could be unsuitable for replacement plantings. In lieu of replanting on- or off-site, an applicant may simply pay into the conservation fund.

The question is whether that should be at a 1:1 ratio or 2:1. Advocates for 1:1 indicate that this fee would be in-lieu of replanting only, the on-site retention requirements would still be met, and a lower fee amount could encourage developers to retain more oak woodland as a part of the project. On the other hand, there will still be a net loss of oak woodland, and 2:1 would provide for greater funding of off-site acquisition to offset that loss. Staff requests direction from the Board on the appropriate level of payment for this provision.

Definition of “Agricultural Cultivation” – A number of commenters, particularly from the agricultural community, have expressed concern that the proposed definition of agricultural cultivation is too limited. The term is not defined in the General Plan, therefore, staff took a definition essentially from the dictionary, as well as standard terminology used in the agriculture industry. As proposed, agricultural cultivation would apply to activities associated with the growing of crops, such as tilling the soil or preparing ground for planting of crops. This would include the area needed for turning farm equipment at the end of rows, and removal of vegetation that would compete with crops by root encroachment or shade. However, it would not apply to the construction of buildings or facilities used in agricultural production, such as packing sheds or processing buildings.

The Agricultural Commission has suggested that the term be expanded to more generally apply to agricultural production. The basis for this is that state law [PRC §21083.4(d)(3)] exempts “land that is used to produce or process plant and animal products for commercial purposes.” The County may adopt regulations that are more stringent than the state, and staff is basing its recommendation on the basic understanding of what cultivation means, as that is the term used in the General Plan. Staff requests direction from the Board with regard to this issue. Arguably, a general plan amendment could be required to modify the policy to exempt agricultural *production*, rather than *cultivation*. Or the Board may find that there is sufficient flexibility in the term cultivation to include processing facilities as well.

Measurement of Oak Woodland – One of the most challenging aspects of the policy, and of the plan itself, is how it is applied on a case-by-case basis. Specifically, the question of what is measured and included in the canopy to be protected has yet to be fully resolved. The Policy

7.4.4.4 uses several terms to identify what is intended to be protected, which has led to a great deal of confusion for staff, applicants, and the decision makers. These terms include “canopy”, “canopy cover by woodlands habitat”, “tree canopy”, and “woodland habitat”. It is clear from the General Plan EIR that the impact addressed by this mitigation measure and policy is the loss of oak woodland habitat; however, the conflicting terminology needs to be clarified. Staff has provided a series of examples of different ways of measuring the canopy, and defining what is to be measured. These show the following:

- Oak canopy – This identifies just the footprints of each individual oak tree or stand of oaks;
- Oak woodland canopy – This identifies the canopy footprint of all trees within the oak woodland, including non-oak species, along with small openings in the canopy otherwise surrounded by oak woodland;
- Oak woodland canopy, with buffer – In addition to the canopy footprint above, it includes a minimum buffer area that would incorporate open areas between individual trees and stands, which would include a portion of the entire woodland habitat;
- Oak woodland habitat – This would include all of the tree canopy, as well as other associated areas of grassland and other vegetation that would make up the entirety of the habitat, as determined by a biological analysis of the site.

Based on the intent of the policy and the ability to most easily apply a standard to development projects, staff recommends that the second means of measurement, using “oak woodland canopy,” be the basis of measurement for the OWMP. This term has been used consistently throughout the draft plan. Using oak woodland canopy measurement will also allow applicants and staff to utilize aerial photography to calculate the extent of oak woodland canopy that will be affected by a project. Utilizing aerial photography could save an applicant both time and money, estimated at between \$1500 and \$15,000 depending on parcel size.

Application of the OWMP to Defensible Space Requirements for New Construction – Calfire has expressed a concern that application of the OWMP will create a conflict with the defensible space requirements of PRC §4291. Particularly, the 1:1 replacement requirements of Option A cannot be met on smaller parcels (an acre or less) because of the fuel reduction requirements between 30 and 100 feet from the structure leave very little space on a parcel for replanting. Additionally, the fee payment will discourage new homebuilders from complying with the statute.

Policy 7.4.4.4 clearly identifies that the exemption for fire safety applies to existing structures. Staff recognizes the concerns expressed by Calfire and others in this regard and has tried to incorporate some level of flexibility. With new subdivisions and parcel maps, staff is proposing to add language that recognizes that not all vegetation is removed with the defensible space requirements, and that typically about 20% of the tree canopy is retained in the 30’ to 100’ zone around structures. This will assist applicants and their agents in designing projects and minimizing oak woodland loss, and reducing the need for specific calculations for each lot at the tentative map stage.

Additionally, staff is working on a parallel general plan amendment to Policy 2.2.5.20, which would exempt all but the very largest of single family residential homes from the General Plan consistency review requirement for existing lots. While the CEQA analysis has not yet been completed or hearings held on the proposed amendment, the Board direction was quite clear that relief from this requirement for individual home builders on existing single family lots was desired. This would result in relief from the OWMP requirements for most single family homes on existing lots, thereby addressing Calfire's concerns.

Establishing a Threshold for Road Projects – The Department of Transportation has struggled with meeting the canopy retention and replacement requirements of Option A due to the lineal nature of road projects. Typically, the right-of-way acquired to straighten a dangerous curve or improve an intersection is the minimum necessary to complete the improvements, and no area is available for replacement planting. The TIM program includes, as a part of the fee structure, funding for mitigation, and Option B will provide for sufficient mitigation for the larger projects. DOT attempts, in the design of these projects to minimize environmental impacts consistent with the primary function of providing safe and efficient circulation. Transportation staff has proposed that a one-acre threshold be established for smaller road improvement projects, i.e., road projects would be exempt if they impact less than an acre of oak woodland canopy. Since the policy does not specifically exempt such projects or establish a threshold, there is concern about consistency with the policy. Development Services staff suggests that a half-acre threshold would be consistent with the proposed 20,000 square foot limit being considered for Policy 2.2.5.20.

Interim Application of Option B to Current Planning Projects

Staff has received several requests to begin applying the Oak Woodlands Conservation Fee (Option B) to projects that are presently in process or scheduled for hearing. This is based on the understanding that the Board will adopt the fee program soon, and then the fee option will be available to applicants. By the time most projects go from tentative approval to construction (for example tentative map to final, or use permit or planned development to building permit) the fee will be in place and those applicants wanting to take advantage of the fee alternative could do so.

Staff agrees that with the timing of adoption approaching, we could begin providing a choice of conditioning projects with the fee or applying the retention and replacement requirements of Option A. This would have to be with the clear understanding that should the fee not be adopted, then a project may need to be revised to comply with the Policy 7.4.4.4 mitigation in place at the time an applicant wished to move forward with the project.

Summary and Recommendation

Direction from the Board at this time on any or all of these five topics will assist staff in preparing the plan and may reduce changes later in the process. In that way any necessary changes can be incorporated into the final draft to be presented to the Planning Commission and in the CEQA document. Additional minor changes for clarification are also being made, and the final draft will be released concurrently with the draft negative declaration that is being prepared.

In addition, staff recommends that the Board authorize staff to provide a choice of conditioning applicable projects with the Option B fee in lieu of on-site retention and replacement as required under Option A.

Sincerely,

Lawrence W. Appel
Acting Director, Development Services Department