

**Key Concepts for Discussion Related to
General Plan Policies 7.4.4.4 (Option A), 7.4.4.5, 7.4.5.1, and 7.4.5.2.
Revised 9/1/06**

1) Clarify Intent/Applicability of Policy 7.4.4.4

Policy 7.4.4.4 has multiple references to “woodland” and “oak woodland” but does not clearly specify whether the retention/replacement requirements of this policy are intended to apply to both or only to oak canopy within defined oak woodland.

Issue for Discussion:

Confirm that Policy 7.4.4.4 tree retention requirements apply only to oak canopy within oak woodland.

Recommendation:

- Confirm that Policy 7.4.4.4 tree retention/replacement requirements apply only to oak canopy within oak woodlands.

2) Determine the Qualifications Needed to Prepare an Oak Woodland Inventory/Impact Assessment and Mitigation/Replacement Program

Policy 7.4.4.4 requires preparation of various studies related to Oak Woodlands. It does not clearly specify the qualifications required to perform these studies.

Issue for Discussion:

Determine that professionals suitably trained in wildlife biology, botany, arboriculture, or forestry such as qualified wildlife biologists, I.S.A. certified arborists, or Registered Professional Foresters (RPFs) can determine “habitat” value and canopy cover of oak woodlands determined from baseline aerial photography. The professional should be able to perform a species-focused site survey, use GPS to locate species and habitat on a map or aerial photograph, and should be able to address oak tree corridors (if applicable) for Policy 7.4.4.5. The qualified professional will need to prepare a Biological Resources Study and Important Habitat Mitigation Plan that satisfies County requirements.

Recommendation:

- Confirm that the use of “trained professionals” may be by direct agreement between the “trained professional” and the applicant/property owner, or by agreement between the “trained professional” and the County with the cost borne by the applicant/property owner.
- Confirm that the determination of the qualifications of “trained professionals” shall be subject to Development Services staff approval and shall take into consideration academic background and field experience. The Guidelines will note that in the event that a dispute arises involving the contents of the Biological Resources Study and/or Important Mitigation Plan the County may refer the matter to an outside qualified consultant, retained by the County and paid for by the applicant/property owner, to develop recommendations for dispute resolution.

3) Define Oak Woodlands and Related Key Terms.

Policy 7.4.4.4 makes reference to “...woodland habitats as defined in this General Plan...”; however, there is not a specific definition in the General Plan Glossary for woodland or oak woodland.

Issues for Discussion:

“Oak woodlands” means a given unit of land, with one or more stands of live trees, where a plurality of the live trees in the stands are native oaks and/or the project site contains 10 percent or more oak canopy cover for parcels less than one acre, or 1 percent or more oak canopy cover for parcels one acre or greater.

“Oak canopy cover” means the area directly under the live branches of the oak trees, often defined as a percent, of a given unit of land.

“A given unit of land” means the land contained within the project site. If the project site, prior to any proposed land division, is comprised of multiple parcels, the parcels may be treated as a single given unit of land for the purpose of calculating oak canopy cover and retention requirements.

“Stand” means the area of the project site covered by oak canopy cover.

“Diameter at Breast Height (DBH)” means the measurement of the tree in inches, specifically four (4) feet six (6) inches above natural grade on the uphill side of the tree. In the case of trees with multiple trunks, the diameter of all stems (trunks) at breast height shall be combined to calculate the diameter at breast height of the tree.

Sources: El Dorado County General Plan & EIR, and California Oak Foundation.

Recommendations:

- To address various comments suggesting clarifications to the definitions, the following revisions are suggested:

“Oak woodlands” means a given unit of land, with one or more groupings of live trees, where the dominant species (i.e. the plurality) within the groupings is native oaks (species quercus).

Oak woodlands with oak tree canopy coverage of less than 10% of the project site for parcels one acre or less in size, or oak woodlands with oak tree canopy coverage of less than 1% on parcels of land that are more than one acre in size, are **not** subject to the oak tree canopy cover retention requirements of Policy 7.4.4.4 Option A.

“Stand” means a group or groupings of trees.

- Staff recommends that the remaining definitions be accepted without revision.

4) Clarify Exceptions to Retention Requirements of Policy 7.4.4.4.

Issues for Discussion:

Confirm the following exceptions to the oak tree canopy retention requirements:

- a. Agricultural cultivation (per Policy 7.4.4.4);
- b. Actions pursuant to an approved Fire Safe Plan necessary to protect existing structures (per Policy 7.4.4.4);
- c. Development on parcels that are one acre or larger and have less than 1 percent total oak canopy cover (per Policy 7.4.4.4);
- d. Development on parcels that are less than one acre and have less than 10% total oak canopy cover (per Policy 7.4.4.4);
- e. Oak trees determined to be dead or diseased and dying by a certified arborist or registered forester are excluded from calculations of canopy cover and retention requirements (per proposed definition of oak woodland that requires the oak trees to be living).
- f. Individual oak trees with a trunk dbh of 5 inches or less and oak trees with multiple trunks that have a combined trunk dbh of less than 10 inches are not included in calculations of canopy cover and retention requirements

(per Policy 7.4.5.2 which exempts oak trees that are at or below these size thresholds from tree removal permit requirements).

Recommendations:

- Regarding Item “a,” staff recommends that the Commission confirm that agricultural cultivation (whether for personal or commercial purposes) must be within agricultural land use designations or agricultural zone districts to be exempt from the retention/replacement requirements of Policy 7.4.4.4. Commenters also expressed concern about potential for future conversions of agricultural lands where oak canopy has been removed under this exception. Such conversions would typically require review by the County (e.g. General Plan Amendment, Rezoning, etc. and would be subject to CEQA, therefore concerns related to prior oak canopy removal could be addressed.
- Regarding Item “b,” staff recommends that the Commission confirm that actions necessary to protect existing structures pursuant to a Fire Safe Plan approved by either the County or the local Fire District are exempt from the retention/replacement requirements of Policy 7.4.4.4.

Commenters have suggested that the scope of this exemption should be broadened to include protection of vacant land, proposed structures, road improvements, turn-arounds, setbacks or other measures required by the local Fire District as conditions of approval for a discretionary project. Since the policy is specific to “existing structures,” broadening the scope of this exemption would require an amendment to this policy.

- Regarding Item “f,” staff recommends that the Commission confirm that the oak woodland canopy retention/replacement requirements of Policy 7.4.4.4 are to include native oak trees of all sizes, and that the exemptions listed pursuant to Policy 7.4.5.2 are only applicable to individual tree removal permit processes to be established by separate ordinance. Staff will be presenting the Commission with a draft ordinance to implement 7.4.5.2 shortly, once the Oak Woodland Management Plan (OWMP) process is underway this Fall.

5) Clarify 1:1 Replacement Requirements/Options Under Option A, Policy 7.4.4.4.

The intent of the 1:1 mitigation policy is to return the oak woodland to its prior canopy coverage and return the oak woodland to a state of forest health. Policy 7.4.4.4 does not specifically define whether replacement can occur on-site or off-site and it does not address whether replacement is inch for inch, or per square foot of canopy, or by acorn.

Issue for Discussion:

Proposed replacement options to satisfy the 1:1 requirement can include the following:

- i. On-Site Replacement Tree Planting. The replacement requirement is calculated based upon an inch for an inch replacement of the removed trees, measured at DBH. The total of replacement trees should have a combined diameter of the tree(s) removed. Replacement trees are to be planted on-site to the satisfaction of the Development Services Director. The size of the designated replacement area shall equal at a minimum the total area of the oak tree canopy proposed to be removed. An agreement to the satisfaction of County Counsel and the Director shall be required to ensure the long term maintenance and preservation of any on or off-site replacement trees planted.
- ii. On-Site Planting of Acorns. Under the direction of a qualified biologist, certified arborist and/or registered professional forester, acorns may be planted at a density designed to achieve oak woodland canopy coverage which will equal the canopy coverage removed within no more than 15 years from the date of planting. Recommendations from the qualified professional shall include a minimum of: site planting design; acorn planting ratios to ensure success; acorn collection areas or nurseries; propagation measures; acorn protection techniques; maintenance, and monitoring and reporting. The size of the designated replacement area shall equal at a minimum, the total area of the oak tree canopy that is proposed to be removed. An agreement to the satisfaction of County Counsel and the Director shall be required to ensure the long term maintenance and preservation of any on or off-site replacement acorns planted.
- iii. On-Site Replacement of Canopy Area. Under the direction of a qualified biologist, certified arborist and/or registered professional forester, acorns, oak trees or a combination of both may be planted on-site at a density designed to achieve oak woodland canopy coverage which will equal the canopy coverage removed within 15 years from date of planting or sooner.

Recommendations from the qualified professional shall include a minimum of: Site planting design; planting ratios to ensure success; any required acorn collection areas or nurseries; propagation measures; acorn and tree protection techniques; maintenance, monitoring and reporting requirements. The size of the designated replacement area shall equal at a minimum, the total area of the oak tree canopy that is proposed to be removed. An agreement to the satisfaction of County Counsel and the Director shall be required to ensure the long term maintenance and preservation of any replacement trees and/or acorns planted.

Recommendations:

- Confirm the above proposals for replacement options. Provide direction regarding the length of time that maintenance and monitoring will be required to ensure the success of the replacement trees. Seven years was suggested by commenters as a reasonable timeframe for maintenance/monitoring of replacement plantings consistent with State requirements.

6) Establish a Process to Consider Minor Modifications to Retention/Replacement Requirements if Determined Necessary to Ensure Reasonable Use of Property

The General Plan includes a broad policy that states the County's intent to administer the Plan in a manner that would not result in the taking of property without just compensation (Policy 2.9.1.6). The General Plan also states in various locations throughout the document that key policies pertaining to development are to be implemented in a manner that ensures reasonable use of property will be allowed. Policy 7.4.4.4 does not explicitly identify or define a process for ensuring reasonable use of property in the implementation of this policy.

Issues for Discussion:

Establish a "reasonable use" process related to both replacement and retention requirements.

A. Reasonable Use Options Related to Replacement:

Where existing canopy coverage on the site is 80 to 100 percent prior to development, the Director or Planning Commission may allow either of the following options to satisfy the 1:1 on-site oak tree replacement requirement if necessary to ensure that development on the property consistent with what is typical and prevalent for the general area can occur (e.g. "reasonable use"):

- i) Off-Site Replacement. The applicant may be permitted to procure an off-site planting area for the replacement trees and/or planting of acorns, preferably in close proximity and/or in connection with any oak woodland contiguous to the project site, to implement the replacement planting (reference Policy 7.4.5.2. A.). The size of the off-site replacement planting area shall equal at a minimum the total area of oak tree canopy proposed to be removed. An agreement to the satisfaction of County Counsel and the Director shall be required to ensure the long term maintenance and

preservation of any on or off-site replacement trees and/or acorns planted; or

- ii) Off-Site Conservation Easement to Protect Existing Oak Woodland in Lieu of Replacement. The applicant may obtain a Conservation Easement on property off-site with healthy oak woodland canopy area equivalent to 200% of the oak canopy area proposed to be removed. The conservation easement site should either be in close proximity and/or in connection with any oak woodland contiguous to the project site or within or adjacent to an Important Biological Corridor as designated in the General Plan. The Conservation Easement shall provide for the preservation of the designated area in perpetuity and shall include such terms, conditions and financial endowments for monitoring and management deemed necessary by the County to ensure the long term preservation of the oak woodland within the easement area. The Conservation Easement shall be in favor of the County or a County approved conservation organization.

B. Reasonable Use Related to Retention:

Where factors which are unique to the proposed property such as topographic constraints, configuration of the remaining area useable for development, access requirements, and/or other physical or environmental limitations would preclude reasonable use of the parcel, or cause inconsistencies with other General Plan policies protective of the environment, if strict compliance with the retention requirements of Policy 7.4.4.4 is required, the Planning Commission may hold a public hearing and grant relief to the retention requirements of Policy 7.4.4.4 for the project if the following findings are made:

- i. The applicant demonstrates that the development plan is designed to maximize use of parcel area unconstrained by oak trees, unless precluded by other significant constraints such as steep slopes, streams, creeks, wetlands, or other sensitive environmental resources.
- ii. The proposed project is limited to development and site disturbance that is typical and prevalent for the general area surrounding the project site.
- iii. Soil disturbance and tree removal is minimized through the incorporation of some or all of the following measures into the project design:

- a. Stepped foundations are used on sloping areas rather than graded pads.
 - b. Depth of excavation and/or fill outside of the building footprint is limited to no more than five feet measured vertically from the natural ground surface, except for grading necessary to install retaining walls designed to reduce the total area of tree canopy that will be removed and/or damaged.
 - c. Structures and the configuration of the area of disturbance are designed to parallel the natural topographic contours to the greatest extent feasible.
 - d. Patio decks are included in the design of dwellings to minimize the need for graded yard areas.
 - e. Design techniques such as clustering of buildings are proposed to take advantage of the portions of the property which are least constrained by oaks.
 - f. The project is designed to maximize consistency with all applicable policies of the El Dorado County General Plan. *It is recognized that more than one policy may have to be considered in the determination of reasonable use of a particular parcel.*
- iv. If the project site is within or adjacent to an Important Biological Corridor Overlay, a Biological Resources Study and Important Habitat Mitigation Program have been prepared by a qualified professional and approved by the County and will be fully implemented by the applicant.

Replacement of any oak tree canopy allowed to be removed by the Planning Commission in excess of the retention standards in the General Plan shall be required at a minimum 2:1 ratio pursuant to the options and methods specified in these Guidelines. Further, for discretionary projects, any effects on biological resources will be analyzed in the environmental document and appropriate additional mitigation proposed.

Recommendations:

- Confirm that “reasonable use” determinations apply only to existing legal parcels undergoing either discretionary or ministerial review.
- Determine that conservation easements protecting the resource in perpetuity are required for any off-site oak canopy replacement areas or any off-site oak canopy preservation areas as suggested by certain commenters.

- Determine that off-site oak canopy replacement approved under “reasonable use” (Item A. i above) may occur in the same locations as proposed for Item A. ii. as suggested by certain commenters.
- Various commenters have suggested that the proposed limit on off-site replacement options (items A. i. and A. ii. above) to lots with 80 to 100% oak canopy coverage should be broadened. This limit was proposed by staff because on-site replacement tends to be difficult when most of a site has existing oak canopy coverage. However, sometimes other constraints can limit areas suitable for on-site replacement. Staff requests the Commission to provide direction as to whether any limits should apply to the proposed off-site replacement option under reasonable use for “replacement” (Item A. i. above).
- Some commenters have suggested that there should be a limit on how much off-site replacement should be allowed to occur per project. Policy 7.4.4.4 does not include any guidance or limits with respect to off-site replacement. Staff requests the Commission to provide direction as to whether any limits should be placed on off-site replacement under these interim guidelines (e.g. not more than x percent of off-site replacement or preservation area may be considered per project).

7) Clarify the Application of Policy 7.4.4.5 (Corridor Retention)

Policy 7.4.4.5 addresses oak tree corridor continuity. Preserving oak tree corridors at equal densities to the oak stand protects habitat and the normal life cycle of species. Many wildlife species move between locations for breeding habitat, cover, and foraging. Movement allows wildlife species the opportunity for survival, for reproductive success, and genetic intermixing. According to this policy, if a project proposes to impact oak trees within a stand, a corridor of oak trees must be retained to maintain continuity between all portions of the stand. Per this policy, the retained corridor must have a tree density that is equal to the density of the stand.

Issue for Discussion:

In order to ensure that reasonable use of the property is provided, an applicant may request the Planning Commission to provide relief from the strict application of this corridor retention requirement in the same manner as described above. In addition, for discretionary projects, any effects on biological resources will be analyzed in the environmental document and appropriate mitigation proposed.

Note: For discretionary projects subject to CEQA, SB 1334 Kuehl (PRC section 21083.4), the California Oak Woodlands Conservation Law, no more than 50 percent of the required mitigation for impacts on oak woodlands can be fulfilled by the planting of oaks (SB 1334 Kuehl). Other options under CEQA include

conservation easements, contribution of funds to the State Oak Woodlands Conservation Fund, or other mitigation measures developed by the County (which could include Option B of 7.4.4.4 in the future). SB 1334 Kuehl exempts projects within an NCCP (which the INRMP, when completed, may include), affordable housing projects, and agricultural land conversion.

Recommendation:

No Recommendations in response to comments.