



RESOLUTION NO. 129-2017

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO

ADOPTING AN OAK RESOURCES MANAGEMENT PLAN

WHEREAS, the County of El Dorado is mandated by the State of California to maintain an adequate and proper General Plan; and

WHEREAS, because of that mandate, El Dorado County's General Plan and the various elements thereof must be periodically updated with current data, recommendations, and policies; and

WHEREAS, on July 19, 2004, the Board of Supervisors (Board) adopted a General Plan, which identifies planned land uses and infrastructure for physical development in the unincorporated areas of the County of El Dorado; and

WHEREAS, on May 6, 2008, the Board adopted the Oak Woodland Management Plan (OWMP) and its implementing ordinance, to be codified as Chapter 17.73 of the County Code (Ord. 4771. May 6, 2008); and

WHEREAS, on June 6, 2008, a lawsuit was filed in El Dorado Superior Court against the OWMP; and

WHEREAS, on February 2, 2010, the Court ruled to uphold the Board action to adopt the OWMP. However, on appeal, the Appellate Court over-ruled that decision, remanding the case back to Superior Court, with the direction to require the County to prepare an Environmental Impact Report (EIR) for the OWMP; and

WHEREAS, the Court decision overturning the OWMP prompted the County to address, at a minimum, the implementation of certain oak tree policies in the General Plan; and

WHEREAS, on September 4, 2012, the OWMP was rescinded (Resolution No. 123-2012) and its implementing ordinance was rescinded on September 11, 2012 (Ordinance No. 4892); and

WHEREAS, on September 24, 2012, the Board determined that all the related biological resources policies, objectives, and implementation measures in the General Plan should be reviewed and considered for revisions to ensure that the goals and objectives of the General Plan can be achieved; and

WHEREAS, the purpose of the General Plan Biological Resources Policy Update (Project) is to revise specific biological resource objectives, policies, and implementation measures included in the Conservation and Open Space Element of the County's 2004 General Plan and to adopt an Oak Resources Management Plan (ORMP) inclusive of an in-lieu fee payment option for impacts to oak woodland areas and individual oak trees, and implementing Oak Resources Conservation Ordinance (Ordinance) that replace the 2008 Oak Woodlands Management Plan (OWMP); and

WHEREAS, on October 7, 2014, the Board determined that a combination mitigation/conservation approach to redefine the County's program for management of and mitigation for biological resource impacts and implementation of the OWMP, specifically related to Option B of General Plan Policy 7.4.4.4 (oak woodland

in-lieu fee option) in place of implementation of the Integrated Natural Resources Management Plan (INRMP), shall be considered; and

WHEREAS, in 2015, the Board held five (5) workshops (January 26, February 23, March 30, May 18 and June 22) to discuss ten key project decision points that have informed the preparation of draft policy amendments, revisions to the OWMP and related General Plan Implementation Measures; and

WHEREAS, on June 22, 2015, the Board adopted Resolution of Intention (ROI) No. 108-2015, to set a public hearing to consider proposed amendments to the General Plan and revisions to any related General Plan Implementation Measures as summarized in Table “Summary of Revisions to General Plan Objectives, Policies, and Implementation Measures” and authorizing staff to prepare all necessary documentation and environmental review requirements pursuant to the requirements of the California Environmental Quality Act (CEQA); and

WHEREAS, on June 22, 2015, the Board adopted ROI No. 109-2015, to set a public hearing to consider proposed amendments to the OWMP including re-titling to the Oak Resources Management Plan (ORMP), consistent with General Plan Implementation Measure CO-P; inclusion of in-lieu fee payment option for impacts to oak woodland areas and individual oak trees; and authorizing staff to prepare all necessary documentation and environmental review requirements pursuant to CEQA requirements; and

WHEREAS, on July 14, 2015, the Board adopted ROI No. 118-2015 (superseding ROI No. 108-2015), which was revised to more accurately reflect the proposed amendments to General Plan Chapter 7 – Conservation and Open Space Element (as discussed on June 22, 2015); and

WHEREAS, on July 17, 2015, the County commenced the environmental review process with issuance of a CEQA Notice of Preparation (NOP) of a Draft EIR for a 30-day public review period ending on August 17, 2015 soliciting written comments regarding the scope and content of the EIR for the Project; and

WHEREAS, on August 13, 2015, a public scoping meeting was held during the Planning Commission's regular meeting to receive comments on the scope and content of the Draft EIR; and

WHEREAS, on August 17, 2015, the deadline to submit comments on the NOP released on July 17, 2015 closed at 5:00 p.m.; and

WHEREAS, on September 29, 2015, following consideration of comments on the original NOP and Project, the Board approved several revisions to the draft ORMP and directed staff to release a revised NOP, along with the revised draft ORMP; and

WHEREAS, on November 23, 2015, the County released a revised NOP of a Draft EIR and revised draft ORMP for a 30-day public review period ending on December 23, 2015 soliciting written comments regarding the scope and content of the EIR (documents revised based on Board direction and comments received during the initial NOP review period) for the Project; and

WHEREAS, on December 23, 2015, the deadline to submit comments on the revised NOP released on November 23, 2015 closed at 5:00 p.m.; and

WHEREAS, a Program EIR has been prepared pursuant to CEQA to analyze the potential environmental impacts of the Project; and

WHEREAS, on June 30, 2016, the County issued a Notice of Availability (NOA) of a draft program EIR (SCH# 20151072031) for the Project for a 45-day public review period ending on August 15, 2016; and

WHEREAS, said NOA contained substantially all of the information required by Public Resources Code Section 21092 and CEQA Guidelines Section 15087 and was published in a manner required by law, and was consequently made in full accordance with CEQA, notwithstanding any minor errors, which were not prejudicial; and

WHEREAS, on August 15, 2016, the deadline to submit comments on the Draft EIR closed at 5:00 p.m.; and

WHEREAS, the County received public and agency written and oral comments on the draft environmental documents including the NOP, revised NOP, and Draft EIR during the public comment periods; including over 500 written comments submitted by 17 agencies/organizations, and 115 individuals; and

WHEREAS, in accordance with CEQA, all comments received on the Draft Program EIR during the public comment periods were responded to and included in the Final EIR; and

WHEREAS, on March 8, 2017, the Final EIR was filed with the State Clearinghouse and released for public review; and

WHEREAS, on April 27, 2017, the Planning Commission held a duly noticed public hearing, pursuant to CA Government Code Sections 65090-65096 as applicable, to review and consider and receive testimony on the Final EIR and the Project; and

WHEREAS, on April 27, 2017, the public hearing held by the Planning Commission on the Final EIR and the Project was closed; and

WHEREAS, on April 27, 2017, the Planning Commission carefully reviewed and considered the proposed amendments to the biological resources policies in the General Plan, the ORMP and implementing Ordinance, Final EIR, all public comments on the Final EIR and the Project; and

WHEREAS, on April 27, 2017, the Planning Commission voted to recommend approval to the Board of staff's recommended actions that the Board certify the Final EIR; adopt an amendment to the biological resources policies, objectives and implementation measures in the General Plan; adopt the ORMP; and adopt the implementing Ordinance, including six additional recommendations identified by the Planning Commission during the hearing; and

WHEREAS, on July 18, 2017, the Board held a duly noticed public hearing, pursuant to CA Government Code Sections 65090-65096 as applicable, to review and consider and receive testimony on the Final EIR and the Project; and

WHEREAS, on July 18, 2017, the public hearing held by the Board on the Final EIR and the Project was closed; and

WHEREAS, on July 18, 2017, the Board began its deliberations and independently reviewed the Project documents, including but not limited to, the Final EIR, staff report, written public comments, Planning Commission's recommendations, draft CEQA Findings of Fact, draft CEQA Statement of Overriding Considerations, and draft Mitigation Monitoring and Reporting Program; and

WHEREAS, on July 18, 2017, the Board's deliberations were conducted as part of a public meeting held in accordance with CEQA and the Ralph M. Brown Act; and

WHEREAS, on July 18, 2017, the Board directed staff to incorporate changes as directed on this date and return to the Board on September 12, 2017 for certification of the Final EIR and consideration of adoption of the proposed Project; and

WHEREAS, on July 18, 2017, the Board further directed staff to exclude Live Oaks from the definition of a Heritage Tree, and to revise the Personal Use Exemption to allow removal of 8 trees per dwelling unit per parcel; and to include these revisions in the final ORMP and implementing Ordinance for adoption; and to return to the Board on September 12, 2017 incorporating changes as directed on this date, for certification of the EIR and consideration of adoption of the Project; and

WHEREAS, on September 12, 2017, the Board redirected staff to remove the exclusion of Live Oaks from the definition of Heritage Tree and modification of the Personal Use Exemption; and directed staff to return to the Planning Commission on September 28, 2017 with additional modifications to the proposed Ordinance that were not considered by the Planning Commission on April 27, 2017, pursuant to CA Government Code Section 65857; and

WHEREAS, on September 28, 2017, the Planning Commission recommended approval to the Board of staff's proposed modification to General Plan Measure CO-K and modifications to the proposed Ordinance, with additional modifications (underlined) to Section 130.39.050(J), Exemption for Personal Use, as follows: "Removal of a native oak tree, other than a Heritage Tree or individual valley oak trees and valley oak woodlands..."

WHEREAS, on October 24, 2017, the Board held a limited public hearing to receive public comment only on the proposed modifications to the proposed General Plan Amendment and Ordinance that were considered by the Planning Commission on September 28, 2017; and

WHEREAS, on October 24, 2017, the limited public hearing was closed and the Board began deliberations; and

WHEREAS, on October 24, 2017, the Board's deliberations were conducted as part of a public meeting held in accordance with CEQA and the Ralph M. Brown Act; and

WHEREAS, on October 24, 2017, the Board completed its deliberations, and accepted the Planning Commission's recommendation on the proposed modifications to the General Plan Amendment and proposed Ordinance, and adopted Resolution No. 127-2017, Certifying the Final EIR for the Project; Making Environmental Findings of Fact; Adopting a Statement of Overriding Considerations; and Approving the Mitigation Monitoring and Reporting Program; and

WHEREAS, on October 24, 2017, the Board adopted Resolution No. 128-2017 Adopting an Amendment to the Biological Resources Policies, Objectives, and Implementation Measures in the El Dorado County General Plan; and

WHEREAS, on October 24, 2017, the Board adopted Resolution No. 130-2017 Establishing an In-Lieu Fee to Mitigation Impacts to Oak Woodland Areas and Individual Oak Trees; and

WHEREAS, two court opinions have recently come down regarding inclusionary housing ordinances (affordable housing) that may call into question whether or not the Mitigation Fee Act (Government Code 66000 et seq.) applies to the oak resources in-lieu fee payment option that is being established as part of the ORMP. While a similar argument could be made with regard to the oak resources in-lieu fee, there are factual differences; therefore, until a court finds that an in-lieu fee for preservation/mitigation of biological resources is not subject to the requirements of the Mitigation Fee Act, the County is taking a conservative approach and

following the requirements of the Mitigation Fee Act in establishing an in-lieu fee for mitigation of impacts to oak woodland areas and individual oak trees; and

WHEREAS, the County has proceeded in accordance with Government Code Section 66001(a) of the Mitigation Fee Act regarding establishment of a new in-lieu fee payment option for mitigation of impacts to oak woodland areas and individual oak trees.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the County of El Dorado have received, reviewed, and considered the entire record, both written and oral, relating to the General Plan Biological Resources Policy Update, Oak Resources Management Plan, and Oak Resources Conservation Ordinance and the associated Draft and Final EIRs and hereby adopts the Oak Resources Management Plan, attached hereto as Exhibit A and incorporated herein by reference.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the 24th day of October 2017, by the following vote of said Board:

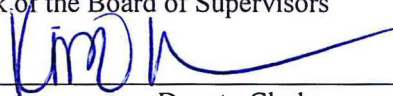
Ayes: Veerkamp,Ranalli,Hidahl,Frentzen,Novasel

Attest:

James S. Mitrising

Clerk of the Board of Supervisors

By:



Deputy Clerk

Noes: None

Absent: None



Vice Chair, Board of Supervisors
Michael Ranalli