

# Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613  
 For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

**SCH # 2015072031**

**Project Title:** County of El Dorado Biological Resources Policy Update, Oak Resources Management Plan, and Oak Resources Conservation Ordinance

Lead Agency: County of El Dorado Contact Person: Robert Peters  
 Mailing Address: 2850 Fairlane Court Phone: 530-621-5355  
 City: Placerville Zip: 95667 County: El Dorado

**Project Location:** County: El Dorado City/Nearest Community: County-wide

Cross Streets: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Longitude/Latitude (degrees, minutes and seconds): \_\_\_\_\_ ° \_\_\_\_\_ ' \_\_\_\_\_ " N / \_\_\_\_\_ ° \_\_\_\_\_ ' \_\_\_\_\_ " W Total Acres: \_\_\_\_\_

Assessor's Parcel No.: \_\_\_\_\_ Section: \_\_\_\_\_ Twp.: \_\_\_\_\_ Range: \_\_\_\_\_ Base: \_\_\_\_\_

Within 2 Miles: State Hwy #: \_\_\_\_\_ Waterways: \_\_\_\_\_

Airports: \_\_\_\_\_ Railways: \_\_\_\_\_ Schools: \_\_\_\_\_

**Document Type:**

- |                                      |  |                                    |  |
|--------------------------------------|--|------------------------------------|--|
| CEQA: <input type="checkbox"/> NOP   | <input type="checkbox"/> Draft EIR                 | NEPA: <input type="checkbox"/> NOI | Other: <input type="checkbox"/> Joint Document                         |
| <input type="checkbox"/> Early Cons  | <input type="checkbox"/> Supplement/Subsequent EIR | <input type="checkbox"/> EA        | <input type="checkbox"/> Final Document                                |
| <input type="checkbox"/> Neg Dec     | (Prior SCH No.) _____                              | <input type="checkbox"/> Draft EIS | <input checked="" type="checkbox"/> Other: <u>Policy Determination</u> |
| <input type="checkbox"/> Mit Neg Dec | Other: _____                                       | <input type="checkbox"/> FONSI     | Update _____   |

**Local Action Type:**

- |  |   |  |   |
|--|---|--|---|
| <input type="checkbox"/> General Plan Update               | <input type="checkbox"/> Specific Plan            | <input type="checkbox"/> Rezone                            | <input type="checkbox"/> Annexation                                   |
| <input checked="" type="checkbox"/> General Plan Amendment | <input type="checkbox"/> Master Plan              | <input type="checkbox"/> Prezone                           | <input type="checkbox"/> Redevelopment                                |
| <input type="checkbox"/> General Plan Element              | <input type="checkbox"/> Planned Unit Development | <input type="checkbox"/> Use Permit                        | <input type="checkbox"/> Coastal Permit                               |
| <input type="checkbox"/> Community Plan                    | <input type="checkbox"/> Site Plan                | <input type="checkbox"/> Land Division (Subdivision, etc.) | <input checked="" type="checkbox"/> Other: <u>Oak Management Plan</u> |

**Development Type:**

- |   |  |
|---|--|
| <input type="checkbox"/> Residential: Units _____ Acres _____                 | <input type="checkbox"/> Transportation: Type _____            |
| <input type="checkbox"/> Office: Sq.ft. _____ Acres _____ Employees _____     | <input type="checkbox"/> Mining: Mineral _____                 |
| <input type="checkbox"/> Commercial: Sq.ft. _____ Acres _____ Employees _____ | <input type="checkbox"/> Power: Type _____ MW _____            |
| <input type="checkbox"/> Industrial: Sq.ft. _____ Acres _____ Employees _____ | <input type="checkbox"/> Waste Treatment: Type _____ MGD _____ |
| <input type="checkbox"/> Educational: _____                                   | <input type="checkbox"/> Hazardous Waste: Type _____           |
| <input type="checkbox"/> Recreational: _____                                  | <input type="checkbox"/> Other: _____                          |
| <input type="checkbox"/> Water Facilities: Type _____ MGD _____               |  |

**Project Issues Discussed in Document:**

- |  |   |  |  |
|--|---|--|--|
| <input checked="" type="checkbox"/> Aesthetic/Visual     | <input type="checkbox"/> Fiscal                             | <input type="checkbox"/> Recreation/Parks                | <input checked="" type="checkbox"/> Vegetation         |
| <input checked="" type="checkbox"/> Agricultural Land    | <input type="checkbox"/> Flood Plain/Flooding               | <input type="checkbox"/> Schools/Universities            | <input type="checkbox"/> Water Quality                 |
| <input type="checkbox"/> Air Quality                     | <input checked="" type="checkbox"/> Forest Land/Fire Hazard | <input type="checkbox"/> Septic Systems                  | <input type="checkbox"/> Water Supply/Groundwater      |
| <input type="checkbox"/> Archeological/Historical        | <input type="checkbox"/> Geologic/Seismic                   | <input type="checkbox"/> Sewer Capacity                  | <input checked="" type="checkbox"/> Wetland/Riparian   |
| <input checked="" type="checkbox"/> Biological Resources | <input type="checkbox"/> Minerals                           | <input type="checkbox"/> Soil Erosion/Compaction/Grading | <input type="checkbox"/> Growth Inducement             |
| <input type="checkbox"/> Coastal Zone                    | <input type="checkbox"/> Noise                              | <input type="checkbox"/> Solid Waste                     | <input checked="" type="checkbox"/> Land Use           |
| <input type="checkbox"/> Drainage/Absorption             | <input type="checkbox"/> Population/Housing Balance         | <input type="checkbox"/> Toxic/Hazardous                 | <input checked="" type="checkbox"/> Cumulative Effects |
| <input type="checkbox"/> Economic/Jobs                   | <input type="checkbox"/> Public Services/Facilities         | <input type="checkbox"/> Traffic/Circulation             | <input type="checkbox"/> Other: _____                  |

**Present Land Use/Zoning/General Plan Designation:**

Various - Project would update General Plan policies that apply county-wide and update the Oak Resources Management Plan and Oak Resources Conservation Ordinance that would apply to all land within the County focusing on preservation of oak woodland habitat in the Highway 50 corridor.

**Project Description:** (please use a separate page if necessary)

County of El Dorado Board of Supervisors proposes to consider: 1) the adoption of a Resolution to partially decertify the Final Environmental Impact Report (FEIR) for the General Plan Biological Resources Policy Update (Project) only as it relates to the County's determination that focusing on preservation of oak woodland habitat in the Highway 50 corridor was not the best course of action and it was not feasible to focus on preserving the oak woodlands within the Highway 50 corridor; 2) directing staff to augment the administrative record as authorized by CEQA, including the missing reports and studies, as set forth in the court's ruling in Rural Communities United v. County of El Dorado, Superior Court of the County of El Dorado, Case No. PC20170536; and 3) the adoption of a Resolution to recertify the portions of the FEIR that were decertified by the adoption of the prior resolution. The proposed action is in response to the Court's orders in the writ issued in the above noted litigation. The FEIR for the Project was certified by adoption of Resolution 127-2017 on October 24, 2017. The proposed decertification is a partial decertification; all other parts of the FEIR/EIR will remain in effect.

*Note: The State Clearinghouse will assign identification numbers for all new projects. If a SCH number already exists for a project (e.g. Notice of Preparation or previous draft document) please fill in.*

## Reviewing Agencies Checklist

Lead Agencies may recommend State Clearinghouse distribution by marking agencies below with an "X".  
If you have already sent your document to the agency please denote that with an "S".

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Air Resources Board                         | <input checked="" type="checkbox"/> Office of Historic Preservation          |
| <input type="checkbox"/> Boating & Waterways, Department of                     | <input type="checkbox"/> Office of Public School Construction                |
| <input type="checkbox"/> California Emergency Management Agency                 | <input checked="" type="checkbox"/> Parks & Recreation, Department of        |
| <input checked="" type="checkbox"/> California Highway Patrol                   | <input type="checkbox"/> Pesticide Regulation, Department of                 |
| <input checked="" type="checkbox"/> Caltrans District # <u>3</u>                | <input checked="" type="checkbox"/> Public Utilities Commission              |
| <input checked="" type="checkbox"/> Caltrans Division of Aeronautics            | <input checked="" type="checkbox"/> Regional WQCB # <u>CV &amp; LH</u>       |
| <input type="checkbox"/> Caltrans Planning                                      | <input checked="" type="checkbox"/> Resources Agency                         |
| <input type="checkbox"/> Central Valley Flood Protection Board                  | <input type="checkbox"/> Resources Recycling and Recovery, Department of     |
| <input type="checkbox"/> Coachella Valley Mtns. Conservancy                     | <input type="checkbox"/> S.F. Bay Conservation & Development Comm.           |
| <input type="checkbox"/> Coastal Commission                                     | <input type="checkbox"/> San Gabriel & Lower L.A. Rivers & Mtns. Conservancy |
| <input type="checkbox"/> Colorado River Board                                   | <input type="checkbox"/> San Joaquin River Conservancy                       |
| <input type="checkbox"/> Conservation, Department of                            | <input type="checkbox"/> Santa Monica Mtns. Conservancy                      |
| <input type="checkbox"/> Corrections, Department of                             | <input type="checkbox"/> State Lands Commission                              |
| <input type="checkbox"/> Delta Protection Commission                            | <input type="checkbox"/> SWRCB: Clean Water Grants                           |
| <input type="checkbox"/> Education, Department of                               | <input checked="" type="checkbox"/> SWRCB: Water Quality                     |
| <input type="checkbox"/> Energy Commission                                      | <input type="checkbox"/> SWRCB: Water Rights                                 |
| <input checked="" type="checkbox"/> Fish & Game Region # <u>2</u>               | <input checked="" type="checkbox"/> Tahoe Regional Planning Agency           |
| <input type="checkbox"/> Food & Agriculture, Department of                      | <input type="checkbox"/> Toxic Substances Control, Department of             |
| <input checked="" type="checkbox"/> Forestry and Fire Protection, Department of | <input checked="" type="checkbox"/> Water Resources, Department of           |
| <input type="checkbox"/> General Services, Department of                        | <input type="checkbox"/> Other: _____  |
| <input type="checkbox"/> Health Services, Department of                         | <input type="checkbox"/> Other: _____  |
| <input type="checkbox"/> Housing & Community Development                        |  |
| <input checked="" type="checkbox"/> Native American Heritage Commission         |  |

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### Local Public Review Period (to be filled in by lead agency)

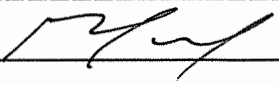
Starting Date \_\_\_\_\_ Ending Date \_\_\_\_\_

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### Lead Agency (Complete if applicable):

Consulting Firm: \_\_\_\_\_ Applicant: \_\_\_\_\_  
Address: \_\_\_\_\_ Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_  
Contact: \_\_\_\_\_ Phone: \_\_\_\_\_  
Phone: \_\_\_\_\_

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Signature of Lead Agency Representative:  \_\_\_\_\_ Date: 10-8-2020

Authority cited: Section 21083, Public Resources Code. Reference: Section 21161, Public Resources Code.

**HEARING** - Planning and Building Department and County Counsel recommends:

- 1) The Board adopt Resolution **XXX**-2020 which partially decertifies the Final Environmental Impact Report for the General Plan Biological Resources Policy Update only as it relates to the County's determination that focusing on preservation of oak woodland habitat in the Highway 50 corridor was not the best course of action and it was not feasible to focus on preserving the oak woodlands within the Highway 50 corridor; and
- 2) The Board direct staff to bring the decertified portion of the FEIR into compliance with the requirements of the California Environmental Quality Act as set forth in the Court's Tentative Ruling and Ruling Following Post-Trial Briefs in *Rural Communities United v. County of El Dorado*, Superior Court of the County of El Dorado, Case No. PC20170536 and direct staff to augment the administrative record as authorized by CEQA, including the missing reports and studies described in the Court's rulings; and
- 3) The Board adopt Resolution **XXX**-2020 which recertifies the portions of the FEIR that were decertified by the Board's adoption of Resolution **XXX**-2020 pursuant to recommendation 1, above.

**FUNDING:** N/A

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#### **DEPARTMENT RECOMMENDATION**

Planning and Building Department and County Counsel recommend that the Board take the actions recommended above in order to comply with the Writ of Mandate issued by the El Dorado County Superior Court in *Rural Communities United v. County of El Dorado*, Case No. PC20170536.

#### **DISCUSSION / BACKGROUND**

On October 24, 2017, the Board of Supervisors adopted Resolution 127-2017, thereby certifying the Final Environmental Impact Report (FEIR) for the General Plan Biological Resources Policy Update Project (Project). The Project included revisions to specific biological resource objectives, policies and implementation measures in the Conservation and Open Space Element of the County's 2004 General Plan, adoption of an Oak Resources Management Plan (ORMP) which included an in-lieu fee payment option for impacts to oak woodlands and individual oak trees, and adoption of the Oak Resources Conservation Ordinance.

#### **THE LITIGATION**

On November 21, 2017, Rural Communities United, an unincorporated association, filed a Petition for Writ of Mandate alleging that the County did not comply with the California Environmental Quality Act (CEQA). The petition was amended to add Conserve El Dorado Oaks, an unincorporated association, Ellen Van Dyke, an individual, and Cheryl Langley, an individual, as petitioners on the writ petition. (*Rural Communities United v. County of El Dorado*, Case No. PC20170536)

Prior to the hearing on the merits, the court issued a 137 page tentative ruling that granted the petition in part and denied the petition in part. The Court ruled in the

County's favor on all substantive issues except as to the portion of the FEIR/EIR related to the determination of where to focus mitigation for loss of oak woodlands, in the Highway 50 corridor versus Priority Conservation Areas (PCAs) which are not adjacent to Highway 50. The Court found that biological expert reports, memos or studies referenced in the EIR to support the County's decision to focus mitigation in the PCAs were not included in the administrative record; therefore, partial decertification of the EIR was appropriate with a writ of mandate directing the County to augment the record with the reports and studies.

The hearing on the merits was held on January 31, 2020. At the conclusion of the hearing the court requested further briefing on two issues: 1) the trial court's discretion to issue a writ of mandate that addresses a specific administrative record issue and a targeted decertification of the EIR and 2) the definition of the Highway 50 corridor. The hearing on the post-trial briefing was held on February 24, 2020.

On April 27, 2020, the Court issued a Ruling Following Post-Trial Briefs that left the tentative ruling unchanged and focused on the post-trial issues noted above. The Court found that 1) it is statutorily authorized to partially decertify the EIR in a targeted manner; 2) the issue of where to focus mitigation (within the Hwy 50 corridor or in the PCAs outside the Hwy 50 corridor) was severable from the rest of the EIR and the Project; and, 3) for purposes of the litigation the Hwy 50 corridor consists of the two previously mapped Important Biological Corridors (IBCs) that are adjacent to Hwy 50 because these IBCs address RCU's north/south connectivity issue.

### **THE TRIAL COURT RULING, JUDGMENT AND WRIT**

The Court ruled that the appropriate remedy is to partially decertify the EIR only as it relates to the County's determination that focusing on preservation of oak woodlands habitat in the Highway 50 Corridor was not the best course of action and it was not feasible to focus on preserving the oak woodlands within the Highway 50 corridor; issue a writ of mandate directing the County to comply with CEQA by augmenting the administrative record with the reports and studies that were referred to and relied upon; and, suspend approval of "construction and Oak Woodland removal permits in the Highway 50 corridor defined as the mapped IBCs running north to south of Highway 50" pending final action on a return to the writ.

Other than the reports and studies that the Court ruled were missing from the record, the Court noted "the court stated in detail in the 137 page tentative ruling how the petitioners remaining contentions that the County violated CEQA in various other ways lacked merit and found that the remainder of the project complied with the CEQA requirements. In other words, the court finds that the remainder of the project complies with CEQA requirements."

On July 27, 2020, the Court entered a judgment and order that stated in pertinent part: "The Petition for Writ of Mandate is granted in part and denied in part, for the reasons and to the extent described in the Tentative Ruling announced by the Court on November 22, 2019...and the Ruling Following Post-Trial Briefs entered by the Court on April 27, 2020..." The clerk of the court was directed to issue a writ of mandate. The

writ directs the County to do three things: 1) partially decertify the EIR only as it relates to the County's determination that focusing on preservation of oak woodlands in the Highway 50 corridor was not the best course of action and that it was not feasible to focus preservation in the Hwy 50 corridor; 2) augment the administrative record with the reports and opinions omitted from the administrative record; and, 3) suspend approvals of construction and Oak Woodland removal permits in two identified Important Biological Corridors (IBCs) pending the court's final action on the return on the writ.

On August 14, 2020, the County was served with a copy of the Writ which triggered the suspension of approval of construction and Oak Woodland removal permits in the identified IBCs. This suspension of approval of permits will remain in place until the Court discharges the writ. Three building permits were erroneously issued after service of the writ on the County; however, those permits were suspended and will remain suspended until the writ is discharged.

### **THE COUNTY'S RESPONSE**

The proposed action today is in response to the Court's orders in the writ. Accordingly, staff recommends that the Board adopt Resolution **XXX-2020** to decertify the specified portions of the FEIR noted in the writ. All other parts of the EIR will remain certified. The Court's ruling does not impact the Biological Policies Project approvals. All other actions the Board took on October 24, 2017 with regard to the Project will remain in effect.

The County has identified the various reports and studies that the Court has ordered augmented into the administrative record. Dudek, the County's CEQA consultant, has prepared a memo that puts the reports and studies into context and explains the relationship between the studies and reports and the County's decision to focus mitigation in the PCAs rather than in the Highway 50 corridor. The Dudek memorandum is attached to this Legistar item.

Resolution **XXX-2020** addresses the following two determinations: 1) the County's determination that focusing on preservation of oak woodlands in the Highway 50 corridor was not the best course of action and 2) that it was not feasible to focus preservation in the Hwy 50 corridor. By way of background information, the EIR was the result of the careful consideration of a number of different policy and regulatory approaches and considerations, supported by County staff and its independent consultant, Dudek. The policy changes and EIR was a result of a multi-year undertaking.

### **BACKGROUND INFORMATION AND PRIOR DETERMINATIONS**

The determinations directed to be set aside by the court involve fundamental and core policy considerations of where growth should occur. The 2004 General Plan, as a balance of multiple competing considerations, included a conscious policy of concentrating future growth within the Highway 50 Corridor. This strategy acknowledged that substantial new growth would occur, and the County adopted policies and implementation actions which direct that growth to the Highway 50 Corridor

where infrastructure capacity is best designed to accommodate new growth. To illustrate, Countywide, the County anticipated 10,000 new residential units by 2025 and additional 7,000 units by 2035. (DEIR 4-4) This growth is anticipated to occur within the Corridor resulting in significant conversion of oak woodlands. (DEIR p. 5-15). The EIR disclosed the areas of existing development within oak woodlands (DEIR Figure 5-2), along with the location of anticipated growth and oak woodland conversion anticipated under the 2004 General Plan in years 2025 and 2035 (DEIR Figure 5-1). Setting aside large blocks of land for habitat purposes would be inconsistent with the land use and growth decisions for the Highway 50 Corridor as embodied by the 2004 General Plan. Reducing growth within the Highway 50 Corridor could put pressure on more remote land to develop with urban uses impacting areas providing existing undisturbed habitat. (Legistar 12-1203, 27B 26 of 60) .

At the time of EIR certification, the Board made a specific finding as to the infeasibility of land use alternatives and mitigation measures resulting in reductions in land use densities provided for in the existing General Plan. Specifically, the Board found “Additionally, the rejected measures and alternatives would materially and adversely interfere with the County’s ability to discharge its obligations under state law by potentially lowering densities, reducing housing opportunities and increasing development costs.” (Legistar 12-1203 27B; p. 31-32 of 69) This finding was unchallenged in the Litigation.

Existing development has already resulted in extensive parcelization of the Highway 50 Corridor. This was documented in the EIR. The Highway 50 Corridor does not contain large contiguous blocks of undisturbed land connecting conservation areas and providing habitat connectivity. (Staff presentation to the Board of Supervisors 3/20/2015)

The EIR acknowledged the adverse edge effects on wildlife resulting from urban and suburban development, the type of development anticipated to occur within the Highway 50 Corridor. These adverse effects include displacement, loss of natural landscape, noise and introduction of exotic plant species.(FEIR 2-9) Additionally, the impacts of habitat fragmentation were considered to be significant and unmitigated impacts at the time the 2004 General Plan was adopted (DEIR p. 6-46) and again at the time of the adoption of the TGPA-ZOU (DEIR p. 6-48) The Dudek memorandum provides supplemental documentation recognizing the adverse effects of development on wildlife, and the advantages to location of conservation lands in more remote locations (such as was adopted by the Board of Supervisors.)

Further complicating conservation efforts is the fact that the County is bisected by a state controlled highway facility, a recognized impediment to terrestrial animal movement. The County lacks jurisdiction over the State facility, however, the EIR recognized that Weber Creek provided opportunities for wildlife movement as the State facility was substantially elevated above Weber Creek. (FEIR p. 2-23) Accordingly the EIR concluded that Weber Creek was the most feasible crossing point. (DEIR 6-79)

The County’s adopted conservation strategy emphasizes acquisition and protection of lands in remote areas where urban triggered disturbances can be minimized. The

remote lands approach has the added benefit that protected lands will be contiguous or located near large tracts of federal lands or other resource lands restricted to low intensity uses. This further supports the long term benefits to species, an option not available for lands located within the Highway 50 Corridor due to lack of significant federal land ownership.

### **STAFF'S RECOMMENDATION**

Staff believes that the original decision to locate conservation lands away from the Highway 50 Corridor remains today as the best course of action. As set forth in the attached findings, staff does not believe that focusing conservation efforts within the Highway 50 Corridor is feasible.

Decertifying the specified portions of the FEIR and augmenting the administrative record with the reports and studies identified in the Dudek memorandum will comply with the order in the writ; therefore, staff recommends that the Board adopt Resolution **XXX-2020** to recertify the portions of the FEIR that were decertified by Resolution **XXX-2020**.

If the Board takes the recommended actions to comply with the writ, County Counsel and outside counsel will make a return on the writ to seek discharge of the writ by the Court.

### **ALTERNATIVES**

N/A

### **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

N/A

### **CAO RECOMMENDATION**

### **FINANCIAL IMPACT**

There is no financial impact associated with this agenda item.

### **CLERK OF THE BOARD FOLLOW UP ACTIONS**

Provide fully executed copies of Resolution **XXX-2020** and Resolution **XXX-2020** to the Planning and Building Department and County Counsel.

### **STRATEGIC PLAN COMPONENT**

Good Governance

### **CONTACT**

Tiffany Schmid, Director  
Planning and Building Department

Kathleen A. Markham, Sr. Deputy County Counsel