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**Via Email Delivery**

Shawna L. Purvines  
El Dorado County Community Development Agency  
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**RE: Comments on Biological Resources Policy Update and Oak Resources Management Plan Draft EIR**

Dear Ms. Purvines:

I am submitting these comments on behalf of the Center for Sierra Nevada Conservation, California Native Plant Society (El Dorado Chapter) and the Maidu Group of the Sierra Club on the Biological Resources Policy Update and Oak Resources Management Plan Draft EIR .

As discussed below, we have concerns that the changes to the Biological Resources section of the existing General Plan, particularly the elimination of the requirement that the County prepare an Integrated Natural Resources Management Plan (“INRMP”), has the potential for significant environmental impacts on rare and sensitive plants and wildlife and their habitats, including oak woodlands, in El Dorado County.

The proposed General Plan changes intend to “mitigate” for losses of oak woodland and dependent wildlife by purchasing development rights on rural lands far from where the actual threats to wildlife habitat and movement will occur, along the rapidly developing areas around the Highway 50 corridor. The DEIR does not consider this impact in meaningful detail, nor does it consider an alternative that would identify Priority Conservation Areas (“PCA”) in the corridor region.

We would request that County consider and choose an alternative that follows up on the considerable analysis already completed as part of the INRMP process to identify lands for acquisition and/or conservation that will ensure adequate habitat for future wildlife refuge and movement. *See e.g.*, El Dorado County Integrated Natural Resources Management Plan - Phase I Final Wildlife Movement and Corridors Report December 7, 2010. (Attachment 1); El Dorado County Integrated Natural Resources Management Plan Phase I - Revised Draft - Overall Approach for Preparing INRMP (Phase II) February 7, 2011 (Attachment 2). In this way, the County may avoid the worst effects of habitat fragmentation, as intended by the existing General Plan. *See e.g.*, Policies 7.4.1.6, 7.4.2.8. *See also* Pub. Resources Code § 21002 (“The Legislature finds and declares

that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would *substantially lessen the significant environmental effects* of such projects....”) (emphasis added.)

Components of this Alternative would include:

- analyzing “corridors” where wildlife might cross highways if able to do so.
- providing mechanisms to raise adequate mitigation funds to preserve this type of valuable habitat.
- linking public lands to form refuges for wild animals.

Our more specific comments are discussed below.

### **1. Impacts to Important Habitat and Migratory Corridors Due to the County’s Abandonment of the INRMP.**

The 2004 General Plan requires the County to complete the INRMP in order to identify “important habitat in the County” and “establish[] a program for effective habitat preservation and management.” *See* General Plan Policy 7.4.2.8. Important habitat is to include 1) Habitats that support special status species; 2) Aquatic environments including streams, rivers, and lakes; 3) Wetland and riparian habitat; 4) Important habitat for migratory deer herds; and 5) Large expanses of native vegetation. *Id.* The County should update the important habitat inventory every three years “to identify the amount of important habitat protected, by habitat type, through County programs and the amount of important habitat removed because of new development during that period.” *Id.*

In coordination with this strategy, the 2004 General Plan relies on the protection and full mitigation of important habitat loss as a means to limit the impacts of future development:

All development projects involving discretionary review shall be designed to avoid disturbance or fragmentation of important habitats to the extent reasonably feasible. Where avoidance is not possible, the *development shall be required to fully mitigate the effects of important habitat loss and fragmentation. Mitigation shall be defined in the Integrated Natural Resources Management Plan (INRMP) (see Policy 7.4.2.8 and Implementation Measure CO-M).*

*See* General Plan Policy 7.4.1.6 (emphasis added.)

The INRMP was considered at the time of the General Plan’s enactment to be a critical element of avoiding future habitat fragmentation and worst impacts of General Plan buildout development. The INRMP approach called for the establishment of a “Habitat Protection Strategy,” described as “a strategy for protecting important habitats based on coordinated land acquisitions [] and management of acquired land” in order to “to conserve and restore contiguous blocks of important habitat to offset the effects of increased habitat loss and fragmentation elsewhere in the county.”

In contrast to the County's heavy reliance on the future formulation of the INRMP to identify and establish important habitat for wildlife refuge and movement, the proposed General Plan changes eliminates Policy 7.4.1.6 and substantially modifies Policy 7.4.2.8, replacing it with a series of mitigation measures that no longer requires the County to establish a coordinated strategy of protecting important habitat. Instead, the proposed changes 1) defers the assessment of mitigation measures for loss of important habitat to the project level stage; 2) limits the requirements for full mitigation to development within Important Biological Corridors; and 3) limits mitigation for loss of oak woodlands to areas identified in PCAs.

We believe there are a number of problems with this approach, which constitutes a weakening of the existing General Plan standards for protecting important habitat in the County.

First, the entire purpose of the INRMP was establish a coordinated strategy for protecting important habitat for wildlife refuge and movement. The deferral of this process to the project specific stage, as described in proposed new General Plan policy 7.4.2.8, in no way ensures that such important habitat will be protected. Instead, the project specific direction simply provides a series of criteria that will allow the elimination of habitat based on preservation of habitat elsewhere, without any coherent strategy for how such replacement habitat will be able to provide the same critical functions for wildlife refuge and movement. *See e.g., Gray v. County of Madera* (2008) 167 Cal. App. 4th 1099, 1118 ("[W]e conclude that here the County has not committed itself to a specific performance standard. Instead, the County has committed itself to a specific mitigation goal.")

Second, the County's reliance on the IBC as a substitute for important wildlife habitat is also not adequate, as the IBC has never been analyzed in any CEQA review document as a mechanism for avoiding significant impacts due to habitat fragmentation. This point can be seen from a comparison of Figure 2 in the proposed Oak Woodland Resources Plan (p. 23) to the identification in the 2010 Phase I Final Wildlife Movement and Corridors Report (Attachment 1) of important corridor areas (see Figure ES-1, p. ES-4). *See also* Discussion in Attachments 1 & 2 regarding selection of size and location of these important habitat areas. Here, the IBC overlay 1) misses several critical crossing areas, including in the 'Lower Foothills,' which were found to be important in the INRMP studies; and 2) establishes 'corridors' that are in places extremely limited in size, thereby requiring entire wildlife movement to occur in spots across a single small parcel. *See e.g., Oak Woodland Resources Plan, Figure 2* (IBC designation for area just to the east of Shingle Springs.)

Even beyond the IBC's inadequate coverage, the proposed new Policy 7.4.2.9's requirement that the developer demonstrate 'no net loss of wildlife movement function' is too vague and general to ensure any ultimate protection of important wildlife habitat for refuge and movement. The new General Plan policies do not provide criteria for how such wildlife movement function will be ensured, nor does the DEIR provide any analysis on this topic, despite the considerable information development in Phase 1 & 2 processes of the INRMP. *See Attachments 1 & 2.* The DEIR's failure both to discuss and analyze these impacts as well as identify objective criteria for mitigation violates CEQA. *See e.g., Gray v. County of Madera, supra.*

Finally, for oak woodlands, the General Plan changes propose to do away with the important habitat requirements of existing Policy 7.4.2.8, replacing them with a complete reliance on the Priority Conservation Areas, which are uniformly identified in the Oak Resources Management Plan (“ORMP”) and being located well away from the Highway 50 corridor area. *See e.g.* ORMP, Figure 2, p. 23. The County’s reliance on PCAs to protect important oak woodland habitat for wildlife refuge and movement is disingenuous, given its past previous reliance on INRMP process to identify the important habitat needed to be protected in the future:

Subsequent adoption and implementation of the INRMP, and incorporation of this plan into that document, will ensure connectivity between the PCAs. The INRMP will also address north-south connectivity across Highway 50 and the potential role of oak woodlands less than 40 acres in maintaining connectivity between larger expanses of oak woodlands.

*See Oak Woodland Management Plan, April 2008. See also id.* (“Oak woodland habitat connectivity will be evaluated with other Policy 7.4.2.8 considerations to identify a final set of corridors that best meet all objectives.”)

The intent of the existing General Plan polices was to ensure that important oak woodland habitat would be identified and preserved, through a coordinated regulatory structure that ensured that the elimination of oak woodlands on parcels would require the preservation of “existing woodlands of equal or greater biological value as those lost.” As discussed below, the new polices do not ensure this result.

## **2. Impacts to Oak Woodland Habitat**

We are concerned that the proposed General Plan changes allow for new impacts to oak woodlands that have not been analyzed in the DEIR.

First, as was true of the prior Oak Woodland Management Plan (“OWMP”), the Oak Resources Management Plan (“ORMP”) relies on the establishment of PCAs far away from the Highway 50 corridor as the basis for offsite mitigation. However, in contrast to the ORMP, the OWMP relied heavily on the INRMP to provide protection for important oak woodland habitat in the County that was not necessarily part of the PCAs. *See* OWMP (“Subsequent adoption and implementation of the INRMP, and incorporation of this plan into that document, will ensure connectivity between the PCAs.”)

Here, as discussed above, the proposed General Plan changes eliminate the INRMP requirement to identify and preserve important habitat in the County. Instead, the proposed General Plan policies rely on vague requirements of ‘no net loss’ of wildlife ‘movement,’ which only is triggered when development occurs in IBCs, a limited subset of potentially important migratory and refuge habitat in the County that has never undergone CEQA analysis.

In the OWMP, the County asserted that parcels under 500 acres would have limited value for habitat preservation and thus PCAs would be required to be located in distant rural areas. However the DEIR here acknowledges that in cases of protecting important refuge and corridor habitat, parcels as small as five acres indeed can have value. *See* DEIR, p. 6-82 (“Policy requirements would ensure that preserved lands would be on a minimum contiguous block of 5 acres.”) Thus, there is no basis for limiting PCAs for offsite mitigation to areas far from the Highway 50 corridor.

The ORMP’s reliance on PCAs as off-site habitat mitigation also leads to the same problem the County encountered with respect to its OWMP, which is that the fee mitigation program established by the OWMP (Table 5, p. 19), will not be adequate to provide for full mitigation of oak woodland habitat of equal biological value. Instead, the DEIR should assess a mechanism whereby an In-Lieu fee program will be adequate to preserve important oak woodland habitat in areas of potential development, not just habitat in faraway rural areas that will likely never be developed in the foreseeable future. As discussed in *Center for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156, 1180-1181:

In formulating the oak woodland management plan, the County's planner informed the Board that "it is necessary to recognize the concept of connectivity, in the form of corridors, to ensure that the oak woodlands that will be preserved in the future through the mitigation program will also be able to function as habitat. Therefore, oak woodland corridors have now been illustrated on the final map for your Board's consideration. ... [¶] ... Without corridors, fragmentation of habitat will result. Fragmentation results in the degradation of habitat and ecosystem values." The initial study for the oak woodland management plan acknowledges, 'In El Dorado County, Highway 50 presents a major barrier to north-south wildlife dispersal [citation]. The Oak Woodland Technical Advisory Committee that was formed in the County in 1996 'concluded that connectivity of woodlands from north to south was an important value to preserve and that it was at risk from future development.'

In adopting the oak woodland management plan, the Board deferred the issue of '[c]onnectivity between the various habitat types, including oak woodlands' until 'other components of the [integrated plan] are developed, which will look at the whole ecosystem.' By excluding the Highway 50 corridor from Option B fund mitigation goals, the County allowed for a fee rate at the lower end of the range due to the lesser cost of rural land and easement acquisition. By specifying that Option B mitigation funds would not be spent on conservation in that corridor, the oak woodland management plan differs from the 2004 program EIR's emphasis on the importance of protecting connectivity of habitat across the Highway 50 corridor. These decisions on the adequacy of the Option B mitigation goals and fee structuring must be made with the benefit of an EIR.

Finally, we have concerns about the mitigation options allowed for eliminating oak woodlands, particularly the provision that allows for up to 50% of the mitigation requirement to be accomplished through onsite planting. *See* ORMP, p. 10. The ORMP and EIR should clarify how on-site planting would be measured in terms of replacing oak woodland habitat lost, *i.e.*, how it would be accomplished in a manner consistent with the ORMP’s recognition that mitigation for lost

oak woodland habitat must be measured in terms of replacement habitat acreage and not simply in numbers or volume of trees.

### 3. Issues Related to Pine Hill Plants

We are concerned about two changes made to Policy 7.4.1.1.

First, there is a change in the code number for the county code related to the ecological preserves, *i.e.*, a change from 17.71 to 130.71. However, the actual county code 130.71 states that the purpose of the fee program is "The purpose of this Chapter is to implement the Pine Hill Endemics rare plant fee payment in lieu of mitigation for Mitigation Areas 1 and 2." *See* County Code § 130.71.010, Further, the county code also states:

130.71.050 Off-site Mitigation or Fee Payment in Lieu of Ecological Preserve Mitigation in Mitigation Areas 1 and 2:

Payment of a fee in lieu of Ecological Preserve Mitigation is encouraged in Mitigation Areas 1 and 2. Developments in Mitigation Areas 1 and 2 shall mitigate impacts by exercising one of the following two options:

- A. Pay the appropriate fee in lieu of Ecological Preserve Mitigation for the direct or indirect impacts caused by development on rare plants and rare plant habitat; or
- B. Participate in a Rare Plant Off-Site Mitigation Program, upon adoption of such program by the Board.

This fee program was found not to be a valid fee program and was set aside by the 3<sup>rd</sup> District Court of Appeal in *California Native Plant Society v. County of El Dorado* (2009) 170 Cal.App.4th 1026, 1030, due to a lack of adequate CEQA review. Here, the DEIR contains no analysis of the adequacy of the current fee program.

We ask that the county code be revised to reflect that the options above are not available and that projects must individually evaluate and mitigate impacts to these rare plants.

Second, the policy is changed by adding the words "where feasible" in reference to consistency with the Recovery Plan. The DEIR indicates that there is an underlying expectation that such consistency is bound by feasibility and that adding this phrase is not a substantive change. If that is the case, we would argue that there is no need to make such a change and making such a change is intended to diminish the need to be consistent with the recovery plan. Consistency with the recovery plan is at issue generally because it is a document created by the US Fish and Wildlife Service to guide the recovery of the federally listed species. Contained in the document are actions that the experts in this agency determined were Priority 1 actions that "must be taken to prevent extinction or to prevent a species from declining irreversibly in the foreseeable future." (Recovery Plan, p. II-37). The acquisition of specific properties was identified in the recovery plan as Priority 1 actions. More specifically, we are aware of the County's interest in developing a road across a

property in the ecological preserve and that was recommended in the recovery plan as Priority 1 action. Development of this property for a road would not be consistent with the recovery plan. The County also owns a 20-acre property that has not been designated by the County as an ecological preserve, but the acquisition of this property has been identified in the Recovery Plan as a Priority 1 action. In the near future, the County may propose to use the 20-acre property as mitigation for the proposal to construct through the ecological preserve. This would be a net loss of habitat determined by the Recovery Plan to be necessary to "prevent the extinction" of the Pine Hill plants. Actions that the County contemplates today are likely to undermine the Recovery Plan and the ability to prevent extinction or irreversible decline for the Pine Hill plants. The insertion of "where feasible" only serves to highlight an intention to avoid consistency with the Recovery Plan.

Very truly yours,

A handwritten signature in blue ink that reads "Michael Graf". The signature is written in a cursive style and is placed on a light-colored rectangular background.

Michael W. Graf