To: The Calaveras County Planning Commission

From: Muriel Zeller, 2640 Stagecoach Drive, Valley Springs, CA 95252

Regarding: The Calaveras County Draft Oak Woodlands Ordinance

Date: February 28, 2024

*Via Email*

Honorable Members of the Planning Commission:

Once again, thank you for the opportunity to comment on the Calaveras County draft Oak Woodlands Ordinance. I sent comments on January 29, but the draft ordinance has changed significantly since that date. Nevertheless, some of my previous comments remain relevant, and I have retained them. Please forgive the repetition.

As before, I will present my comments in sections with headings that are direct quotations in bold lettering from the draft ordinance. Emphasis added with the use of underlining is mine.

**Purpose 1: Mitigate any significant direct and cumulative impacts to oak woodlands in conjunction with discretionary project development**

In order to address the first purpose of the draft oak ordinance, it would be helpful to map the open space in the county and identify priority lands for conservation as required by Government Code Section 65565(a)(1)(K). As the draft ordinance proclaims in its Introduction, “the county must do its part to protect the species” for the litany of reasons outlined therein. It would only make sense then that oak woodlands would be designated as priority lands for conservation. This would also serve to help identify oak woodlands that have the potential to meet mitigation requirements with perpetual conservation easements or even mitigation banking.

The introduction eloquently states the reasons for identifying oak woodlands as priority lands, “California’s oak woodlands perform numerous important ecosystem services including scenic beauty, erosion prevention, improving water quality and infiltration, regulating water flow in watersheds, providing habitat for bird and animal species, increasing biodiversity, carbon sequestration, as well as improving soil health. Oaks are healthy for rangelands for many of these same reasons, plus they provide shade for grazing animals and increase soil water storage for a longer ‘green’ period.”

**Purpose 2: Address pre-development removal of oaks in conjunction with discretionary projects.**

**17.101.050 Nuisance declared; revocation; enforcement; abatement costs; fines. A: Removal of oak woodlands in violation of this Chapter is unlawful in all zones and constitutes a public nuisance that may be enforced and abated as described in Chapter 8.06 of the County Code.**

I am struggling to understand how the removal of oak woodlands will be abated “as described in Chapter 8.06 of the County Code” in which abatement “means any action the building official and his/her designees may take or order taken to remove or alleviate a public nuisance, including but not limited to demolition, eradication, removal, repair, cleaning, boarding up, securing, or replacement of property.” If abatement is eradicating or putting a stop to the public nuisance, in this instance the trees have already been eradicated and the perpetrator stopped cutting when he was done.

Also we have no idea how the “removal of oak woodlands” will be quantified. Will it be by counting trees, will it by the acre, by the percentage of canopy cover, or all of the above? And why doesn’t the draft oak ordinance say that the unlawful removal of oaks will “be enforced and abated as described in Chapter 8.06” instead of saying “may.”

**Draft Oak Ordinance—Nuisance Declared; Revocation; Enforcement; Abatement Costs; Fines 17.101.050. B: Permit revocation under this subsection and enforcement of violations as a nuisance are not mutually exclusive remedies, and either or both may be initiated in response to a violation.**

Does this means the county has given itself the option of abating and punishing the public nuisance by simply denying or revoking a permit? No enforcement options other than revoking the permit have been identified, and fines are only levied once an administrative citation and abatement orders are issued. What is the abatement for the removal of oaks and oak woodlands?

Fines are problematic in that Chapter 8.06 says, “If an owner or occupant fails to correct the violation(s), subsequent administrative citation and orders shall be deemed to have issued daily for the ongoing violation(s) without further notice until the violation has been fully abated and verified as such by the building official as described in Section 8.06.520.” In other words, the fines automatically accrue daily until abatement has been verified,” but no abatement for the loss of oaks has been specified, so how will fines be levied?

Replacement as abatement could mean replanting, but take blue oaks, for example, "Even if a stand that was cut today regenerated well, it could take several human generations before mature trees were reestablished (UCANR, Oaks ’n’ Folks – Volume 5, Issue 1 – June, 1990).” Do fines continue to accrue until the oaks are of the same size and maturity as those that were illegally removed? Is an oak conservation easement abatement? With this draft oak ordinance we simply don’t know. In addition, the current draft gives no idea how long an applicant would have to wait before submitting a new application after a violation.

In April 2008, Tuolumne County, for example, adopted Ordinance 2903 which added chapter 9.24 to the Tuolumne County Ordinance Code. Chapter 9.24 is intended to discourage the premature removal of oak trees by establishing procedures and penalties for such removal. They didn’t try to cram a square peg in a public nuisance hole.

Tuolumne’s website explains, “Premature removal means:

• Removal of native oak trees resulting in a 10% or greater average decrease in native oak canopy cover within an oak woodland

• Removal of any old growth oak tree

• Removal of any valley oak tree measuring five inches or greater in diameter at breast height (DBH) from a site within the five years preceding the submission of an application for a discretionary entitlement from Tuolumne County for a land development project.

“The premature removal of native oak trees is subject to penalties, including withholding approval of an application for a discretionary entitlement on the site for a period of up to five years, and monetary penalties as high as three times the in-lieu fee established by the Board of Supervisors.”

**Purpose 4: Leave oak woodlands connected, when possible, to retain wildlife corridors and avoid habitat fragmentation**

Purpose 4 of the draft oak ordinance is laudable, but again mapping of priority lands for conservation, oak woodlands, and existing conservation easements would be very helpful in retaining wildlife corridors and avoiding habitat fragmentation. This is just one instance in which a countywide HCP/NCCP would be invaluable. (Please see comments under 17.101.030 A below.)

Purpose 4 also embodies the type of project that the Wildlife Conservation Board (WCB), which administers the Oak Woodlands Conservation Fund, would consider for a grant from one of their other programs. For example, they fund “Projects to improve open-space corridors and trail linkages” and “Projects for the acquisition, development, rehabilitation, restoration, protection, and expansion of wildlife corridors and open space to improve connectivity and reduce barriers between habitat areas (Wildlife Conservation Board General Grant Guidelines January 2023, pages 5-6).” Perhaps the county should apply for a grant to implement Purpose 4.

**Purpose 5: Protect oak woodland working landscapes that provide a variety of ecosystem goods and services**

I am in complete agreement with Purpose 5, but beyond mitigation for the conversion of oak woodlands, I don’t see anything in the draft ordinance that actually protects or improves working landscapes that are home to oak woodlands other than handing out booklets and encouraging use of the Oak Woodland Voluntary Management Guidelines.

In implementing Purpose 5, the county has the opportunity, for example, to also sequester carbon on working landscapes. According to PRC § 21083.4, the county may develop its own mitigation measures and, thereby, actually protect and improve oak woodland working landscapes by creating, for example, the *Calaveras County Oak Woodlands Conservation Fund* to which developers may donate as mitigation. (See below under 17.101.060 Oak Woodland Mitigation.)

**17.101.030 A: Exemptions from the requirements of the oak ordinance include: “Projects undertaken pursuant to an approved Natural Community Conservation Plan or approved subarea plan within an approved Natural Community Conservation Plan that includes oaks as a covered species or that conserves oak habitat through natural community conservation preserve designation and implementation and mitigation measures that are consistent with Public Resources Code § 21083.”**

It is true that a Natural Communities Conservation Plan (NCCP) would provide an exemption from the Oak Woodlands Conservation Act, but we don’t have an NCCP, and, given our past failures, this seems an unlikely exemption, but let’s be optimistic. Apply for a grant to develop an NCCP, and, voilà, no mitigation. A Natural Community Conservation Planning Local Assistance and 30x30 Grant from Fish & Wildlife would be perfect. I have previously provided information about this grant to the Planning Director. The WCB also funds projects to implement the goals and objectives of NCCPs and HCPs (Please see the California Grants Portal for additional funding opportunities.)

A federal Habitat Conservation Plan (HCP) and a state NCCP are often done in conjunction with one another. A countywide HCP/NCCP would streamline California Environmental Quality Act (CEQA) review for discretionary development projects while protecting vulnerable species habitat. It is an opportunity to benefit the economy and the natural environment of Calaveras County and has the added benefit of fulfilling another important implementation measure of the current General Plan, COS-4C: Habitat Conservation Plan for Amphibians.

Of course, COS-4C is limited in that it intends to “pursue a countywide habitat conservation plan to allow incidental take of California tiger salamander and California red-legged frog habitat.” Yet, it also says, “Consider expanding the plan to include special status species occupying similar habitats.” If the goal is to attract sustainable growth and development to Calaveras County, the Board of Supervisors should make a countywide HCP/NCCP a priority.

**17.101.050 B: The Oak Woodlands Evaluation Plan shall be prepared by a qualified professional. Exceptions to this may be considered by the Planning Director based on limited scale of the project or other factors.**

In the General Plan, under COS-4D Oak Woodlands, it says, “In the interim, require development that is subject to a discretionary entitlement and subject to CEQA review to enlist the services of a qualified professional (meaning a qualified biologist, botanist, arborist, or Registered Professional Forester) to survey the property in question for oak woodlands and to recommend options for avoidance and/or mitigation consistent with the provisions of RPC 21083.4 if potentially significant impacts to oak woodlands are identified.” The “interim” in this case would be the time between when the General Plan was adopted in November 2019 and such time in the future as an oak ordinance may be adopted.

It seems odd that the General Plan would not allow the Planning Director the discretion to dispense with the services of a qualified professional for the purpose of creating an Oak Woodlands Evaluation Plan, but the proposed draft oak ordinance would allow it based upon the unspecified “scale of the project” or other undefined “factors.” The General Plan does not currently allow the Planning Director to make such a decision and certainly not based on such vague criteria. Why would the oak ordinance do so? If exceptions were to be considered, why isn’t the Hardwood Advisory Committee tasked with making a recommendation at least. They drafted the ordinance and, presumably, have the knowledge and experience required for such a determination.

**17.101.060 Oak Woodland Mitigation A: 2. The mitigation of oak woodlands shall, to the extent possible, take place within**

**Calaveras County.**

There is absolutely no reason to include the qualifier, “to the extent possible.” It is absolutely possible for the mitigation of oak woodlands to take place within Calaveras County.

**17.101.060 Oak Woodland Mitigation B: 3. In-lieu fee payment to the Oak Woodlands Conservation Fund, as established under Fish**

**and Game Code §1363 et. seq. for the purpose of purchasing oak woodlands conservation easements as described by Public Resources Code §21083.4. (An applicant that chooses this option may not receive a grant from the Oak Woodlands Conservation Fund as part of project mitigation.)**

Since I wrote my January 29 comments, I have received additional information and clarification from the Wildlife Conservation Board (WCB). According to an email from a representative of the WCB, “Sending this fee to the WCB satisfies the CEQA mitigation requirement detailed in California Public Resources Code 21083.4. The County must have an approved Oak Woodland Management Plan/Ordinance for the funds to be spent in that county. My understanding is that the amount collected is used for future projects within that county.” The county or the permitting agency determines the amount of the in-lieu fee payment to be donated to the WCB.

A project will have to be developed and an application for funding submitted if the money is to be returned to Calaveras County. According to their website, “when evaluating projects, WCB often prefers projects that are ready for implementation with all or most of the planning, design, permitting, or other pre-implementation costs completed.” Getting any money returned to Calaveras will certainly be a challenge. Nevertheless, conditions may be imposed on mitigation funds donated to the WCB.

Butte County, for example, proposed this mitigation: A payment may be made to the State Oak Woodlands Conservation Fund in‐lieu of replacement through one or a combination of the following subsections. Funds from this program are to be spent on oak woodland conservation within Butte County. The calculation of the fee is subject to review and acceptance by the Department of Development Services. Proof of payment shall be provided within six months of the Department acceptance of the payment amount calculation.

1. For the removal of up to 100 trees. The calculation of the payment shall be submitted to the Department of Development Services by an International Society of Arboriculture (ISA) certified Arborist with experience in valuing oak trees. Valuation shall be consistent with the ISA standards for valuing trees of different sizes.

2. Calculate the value of the land of the area where the trees are proposed for removal. Use a qualified property appraiser who has met the educational requirements for General Certification pursuant to the Appraisal Qualifications Board of the Appraisal Foundation and who holds a designation from a recognized professional appraisal organization. The appraiser should be familiar with oak woodland land valuation and should follow best practice guidelines.

Another option to keep funds in the county is mitigation banking, but it isn’t even mentioned in the draft ordinance. Why? As the California Council of Land Trusts explains, “Mitigation banks are simply formed through the acquisition and protection of land by purchasing land or a conservation easement in excess of what is currently required by any specific development project. The excess land or conservation easement that is available for use to mitigate for other projects is the ‘mitigation bank.’” (Additional mitigation option information is attached.)

At the January 22 Local Agency Formation Commission meeting, The Municipal Service Review (MSR) and Sphere of Influence (SOI) for the Calaveras Resource Conservation District (RCD) was adopted to include my comments (attached), and a finding regarding coordination with local agencies was added. A partnership, for example, among the Agriculture Commissioner, the RCD, the Mother Lode Land Trust, and the Cattleman’s Association could make a great beginning for the *Calaveras County Oak Woodlands Conservation Fund.* Think of the possibilities when public, private, quasi-private, and non-profit entities work together for the benefit of Calaveras County. There is no reason we can’t create our own mitigation fund.

**17.101.060 Oak Woodland Mitigation: B. 2: In-lieu fee payment made to an accredited land trust or qualified land conservation organization.**

**17.101.090 Definitions: H. In-lieu Fee: Cash payments made as a result of a land appraisal to an accredited land trust or other qualified land conservation organization for mitigation for oak woodland loss.**

Again, according to the California Council of Land Trusts, “Local governments are strongly encouraged to adopt any in-lieu fee by resolution rather than establishing the fee on an ad-hoc basis. Generally applicable fees provide greater certainty to all parties and are likely to receive more deferential judicial scrutiny in the event of a legal challenge.” Here is a link to their booklet on a model mitigation ordinance for farmland, which discusses in-lieufees:https://farmlandinfo.org/wpcontent/uploads/sites/2/2019/09/conserving-californias-harvest-web-version-6.26.14.pdf.

One way to address an in-lieu fee resolution is to complete a simple nexus study based upon a survey of prices for oak woodlands in Calaveras County as compared to oak mitigation fees elsewhere in California. If the Calaveras fee ends up being well within the statewide distribution of fees, it is unlikely to be successfully challenged in court. To conform to California’s Mitigation Fee Act (CA Gov. Code 66000 et seq), the nexus study must be reviewed at least every five years.

Please remember that although a land trust may hold and administer the conservation easement purchased with in-lieu fees, it is the county who determines the amount of the in-lieu fee. Responsible land trusts will not accept in-lieu fees based on a land appraisal that is not defensible. There will need to be provisions in the in-lieu agreement so that it keeps up with changes in the real estate market. As the California Council of Land Trusts points out, in addition to paying for the development rights, the land trust will need funds for all the other costs including:

* Identifying and negotiating for the mitigation land or easement ( the county has not mapped oak woodlands or identified priority lands for conservation)
* Surveys, appraisals, title research
* Legal review
* Preparation of transaction documents
* Other due diligence including environmental site assessment and mineral remoteness evaluation
* Preparation of baseline condition reports for the mitigation site
* Escrow costs and title insurance
* Staff time
* Funding for long term stewardship and monitoring of the mitigation site.

All of this information should be spelled out in the oak ordinance.

**Section 3 Findings in Support of Ordinance (2): The Board of Supervisors finds that mitigating negative impacts to oak woodlands and heritage oaks resulting from new or intensified development is necessary to for (sic) the health, safety, and welfare of its citizens for the following reasons:**

**a. Oak woodlands operate as a carbon sink, and their preservation and growth in the County helps reduce the County’s greenhouse gas emissions.**

**b. Oak woodlands are a unique ecosystem that is necessary to the survival of a wide range of native animal and plant species.**

**c. Oak woodlands exist in many of the areas of the County that are most likely to experience population growth and commercial development.**

**d. Oak woodlands are symbolic of the western Sierra foothills and its history and are aesthetically prized by both County residents and visitors, and they are identified as a scenic resource in the Conservation and Open Space element of the County’s General Plan.**

**e. The destruction and loss of oak woodlands makes it easier for invasive animal and plant species to thrive.**

**f. Existing oak woodlands are increasingly stressed by periods of drought, disease, and flooding.**

Thank you, Board of Supervisors, for the above findings. I am particularly gratified that you have recognized the loss of ecosystem services such as carbon sequestration, plant and animal habitat, and viewsheds as threats to the “health, safety, and welfare” of Calaveras citizens. Yet, with that recognition, the draft oak ordinance has been edited to allow mitigation for the loss oak woodland ecosystem services to potentially occur outside Calaveras County. It is my hope, commissioners, that you will reconsider this change in the draft ordinance that you send on to the Board of Supervisors, and keep mitigation for the loss of Calaveras oaks in Calaveras County.

Thank you for your time and consideration. I appreciate your hard work.

Muriel Zeller

Attachments:

Tuolumne County Premature Removal of Native Oaks

El Dorado County In-Lieu Fee Ordinance

California Council of Land Trusts Mitigation Information

Comments to LAFCO on The Municipal Service Review (MSR) and Sphere of Influence (SOI) for the Calaveras Resource Conservation District (RCD)

CC:

Tom Infusino, Calaveras Planning Coalition Facilitator

Megan Fiske, CAP/CPC Outreach Coordinator

Colleen Platt and Joyce Techel, MyValleySprings.com

Gabriel Elliott, Calaveras County Planning Director

Calaveras County Board of Supervisors

Calaveras County Resource Conservation District

Julie Moss-Lewis, Calaveras County Deputy County Counsel

Jesse Fowler, Agriculture Commissioner