

# DEVELOPMENT SERVICES DEPARTMENT

COUNTY OF EL DORADO

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TO: Board of Supervisors

FROM: Peter N. Maurer, Principal Planner

DATE: August 6, 2009

RE: Annual Report – Oak Woodland Management Plan

## BACKGROUND:

On May 6, 2008, the Board adopted the OWMP. The implementing ordinance (Ordinance 4771, codified as County Code Chapter 17.73) came into effect on July 7, 2008. A provision in the OWMP requires an annual report to the Board of Supervisors, with the first fee adjustment study occurring at least 12 months after adoption of the OWMP, and every March thereafter. Section 17.73.090 of County Code states the following:

17.73.090 Annual Review. The Board of Supervisors shall annually review the success of the conservation fund in-lieu fee program with regard to the ability to acquire conservation easements on oak woodland habitat, the costs of management and maintenance of oak woodlands, and the amount of the fee. The Board may adjust the fee based on changing land values, acquisition costs, inflation, acreage of oak woodland preserved through conservation easements compared to oak canopy lost due to development, or other applicable factors.

Specifically, Appendix A of the OWMP (page A-33) provides that the reports should contain information concerning 1) Conservation Fund fees collected; 2) oak woodlands protected through Conservation Fund In-Lieu fee expenditures; 3) oak canopy replacement area planted as mitigation under Option A; and 4) oak canopy removed by new development.

This report also provides a discussion of management options to ensure a timely and cost-effective management of the acquisition program.

**DISCUSSION:**

**Report of Annual Data – FY2008-09**

Year	Conservation Fund	Oak Woodland Protected by Fund Expenditures	Replacement Planting Option A	Canopy Removed for New Development
FY2008-09	\$62,833	0	0	10.68

At the end of the first full year (through June 2009) the County had received a total of \$62,833 for oak canopy mitigation. This was the total from 19 building or grading permits and six discretionary projects (principally from road construction for new subdivisions or parcel maps.) The total oak canopy removed from the 25 projects was 10.68 acres.

Due to the small amount of money accumulated in the first year of operation, no land or conservation easements have been acquired utilizing the fund. Since adoption of the OWMP and the availability of Option B (In-lieu fee) no one has chosen to mitigate their impacts to oak woodland utilizing Option A, either through on-site replanting or off-site acquisition.

**Fee Adjustment**

Due to the limited amount of funds received, the lack of any acquisition activity, and the unknown costs for management, there has been no assessment of the success of the Conservation Fund or whether the fee amount needs to be adjusted. It is simply too early to know if an adjustment is needed. While land prices have dropped since the OWMP was adopted, it is unknown if that correlates to reduced costs for conservation easements. Once a management and acquisition strategy is approved and implemented, there will be more information on which to base any possible adjustment, and hopefully the land values will have stabilized so that an accurate assessment can be made. Staff recommends that any adjustment (if needed) be deferred until next year.

**Future Action**

Although building slowly due to the economy, the Conservation Fund will continue to increase. Its purpose is to be used for acquisition of conservation easements or land in fee as mitigation for the loss of oak canopy due to development. Simply collecting the money does not, in itself, mitigate for that loss. Therefore, it is important that the money be spent to accomplish its goal. The County should investigate the most effective way to use that fund. Below is a discussion of various options for management and acquisition.

**Acquisitions and Administration: Benefits and Constraints of Four Options**

**In-house staff.**

Planning Services currently has three staff allocated to work on long range planning and General Plan Implementation projects. The Board has identified 3 priority projects for these planners, completion of the zoning ordinance update, adoption of the INRMP, and resolution of the gabbro soils rare plant issue. OWMP implementation is not included in this prioritization. Staff will continue to make the annual report as required by the OWMP, and will conduct the annual fee study.

Benefits of utilizing in-house staff for acquisitions and administration include the lower cost of in-house staff; and staff's familiarity with the county, the OWMP, and the Priority Conservation Areas (PCAs). However, Planning staff does not have real estate negotiation experience – specifically in conservation easements (although possibly other County staff in other departments have real estate experience). Planning also does not have biology or forestry backgrounds. This would be a constraint in the acquisition process (to examine possible conservation easement lands; monitor lands for biological changes; make annual inspections/reports), and to analyze which acquisitions need management such as fuels treatment or removal of invasive species (although perhaps this could be contracted out to the UC Extension office or to a forester).

In addition, it must be kept in mind that if the County holds the conservation easement, there may be liability on the County for management efforts (or lack of) on the easement.

#### Consultant.

Another option is for the County to hire a consultant to administer and manage acquisitions. The benefits of utilizing a contracted consultant are that the consultant will have expertise in acquisition, management, and monitoring, or will hire sub-consultants that have the expertise. Local consultants are familiar with the county.

The primary constraint of hiring a consultant is the cost; the management and monitoring fees are based on wage rates for forestry and conservation related workers; consultants generally charge approximately three times the labor rate for their profit and overhead. This would delve into the collected fees and could result in a lesser amount of land acquired, or the conservation fund could run low or out of money for management and monitoring.

Another issue would be that the County would hold the conservation easement, and there may be liability on the County for management efforts (or lack of) on the easement.

#### Non-profit land trust.

A third option is using a not-for-profit land trust. Working with a land trust would likely occur under a Memorandum of Agreement between the County and the land trust. Staff has identified many regional, state, and national land trusts that could be approached to determine their interest; however, there appear to be only two local land trusts currently operating in the County: American River Conservancy, and El Dorado Land Trust.

American River Conservancy has operated in El Dorado County since 1989. ARC's mission is to serve the community by protecting and enhancing natural habitats where biodiversity can flourish. It attempts to promote stewardship, assuring healthy ecosystems now and for future generations. The Conservancy acquires critical wildlife and plant habitat by purchasing or accepting donations of land from willing landowners. Staff has informally met with ARC and there is interest from ARC in working with the County.

The El Dorado Land Trust has been formed to conserve and protect property in El Dorado County dedicated to preserving working farms, ranches and timber operations. This is a newly formed organization and has not yet established a track record of acquisition and management successes. There is some question whether their focus on agriculture and timberland is consistent with the requirements of the OWMP.

There are benefits of working with a land trust. Land trusts have experience in negotiating conservation easements, and they are very familiar with the laws concerning such easements. Land trusts either hold the easement themselves, or turn the easement over to an agency, which would reduce the liability on the County. Land trusts have staff that are familiar with management and monitoring. Land trusts can also utilize grant funding, which, when combined with the Oak Woodland Conservation Fund fees, would enable easement purchases of larger or more contiguous areas of habitat. A local land trust is usually familiar with the county environs and has established relationships with the community. Implementation of acquisitions, management, and monitoring will be relatively simple due to the land trust's experience.

A constraint of working with an outside entity could be that less control would be exercised by the County; however, this could be rectified by contract or MOA. Funding for the trust's operations usually comes from a percentage of the sales price of the land or easement going to the organization.

#### For-profit mitigation bank.

Working with a for-profit mitigation bank is the fourth option available to the County. Staff was contacted recently and met with Wildlands, Inc., a for-profit mitigation banking company based in Rocklin. Wildlands, Inc. was established in 1991 and is a habitat development and land management company with projects throughout California and the western United States. It was the first private organization in the West to establish mitigation banks and conservation banks to protect wildlife habitat in perpetuity. Their brochure cites economic benefits including severance of liability, expedited permitting time, and economy of scale. Ecological benefits include large preserve size, mitigation before impact, habitat performance standards, and resources and expertise.

During their meeting with staff, Wildlands' representatives stressed that they are flexible and can design a program to meet the County's needs. They generally buy a large expanse of property fee title, and then sell mitigation credits for development. Doing so takes the liability off of the agency, and Wildlands then shoulders the liability. Mitigation banking negates temporal loss – the longer a habitat program is not implemented the more loss that occurs.

The benefits of working with a for-profit mitigation bank are the transfer of liability to the mitigation bank; the ease of implementation; technical expertise; monitoring; and other opportunities that they offer due to the fee title aspect. These opportunities can also include passive public recreation – regional trails, bridal paths, educational opportunities (including guided or self-guided tours), and appropriate agriculture (such as grazing).

A constraint of working with an outside entity could also be that less control would be exercised by the County; however, this could be addressed in the contract. There is usually an up-front cost to the County to set up the banking program.

#### **Conclusion**

Given the current economic constraints, development activity resulting in impacts to oak woodland has been minimal. Staff has received no inquiries regarding the acquisition of conservation easements on any property, although neither has the County actively pursued such easements. Until such time as development activity picks up, or sufficient funds have accrued in

the conservation fund, staff recommends that County staff continue to manage the program. Planning staff will continue to work with applicants to meet the mitigation requirements of their projects. This includes the options of on-site mitigation, payment of mitigation in-lieu fees, or off-site acquisition of conservation easements from private parties. The latter would be private agreements between the applicant and another party, with oversight by the County and the applicant's biological consultant, to ensure that the agreement satisfies the requirements of the OWMP. Additionally, should an opportunity arise for the County to acquire a conservation easement on land within the Priority Conservation Areas, staff in the Department of Transportation has experience with appraisals and negotiating sales prices, and has expressed an interest in assisting in the process if needed.

## **RECOMMENDATION**

Staff recommends the following:

1. Receive and file the annual report for 2008-09;
2. Retain the fee amount as presently set, with the intention to review and update the fee, if necessary, in March, 2010 as set forth in Section 3 of the OWMP;
3. Continue to utilize staff resources for management, monitoring and acquisition activities associated with the OWMP for at least the current fiscal year.