



# PLANNING AND BUILDING DEPARTMENT

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Date: September 13, 2021

To: Board of Supervisors [Agenda Date: October 19, 2021]

From: Bret Sampson, Planning Manager, Long Range Planning and;  
Efren Sanchez, Senior Planner, Long Range Planning

Re: **Oak Resources Management Plan (ORMP) Implementation Report**

### RECOMMENDATIONS

1. The Planning Division recommends the Board receive and file this Oak Resources Management Plan (ORMP) Implementation Report.
2. The Planning Division recommends the Board defer any potential adjustments to the in-lieu fees until the next biennial report is performed in 2022.
3. The Planning Division also recommends the Board provide direction for staff to explore alternative methodologies for determining the amount of any potential future adjustment of In-Lieu Fees.

### BACKGROUND AND PRIOR BOARD ACTION

On October 7, 2001, the Governor approved the California Oak Woodlands Conservation Act (AB 242) which requires that local governments develop an Oak Woodlands Conservation Management Plan (Plan) to qualify for funding to preserve oak woodlands through the State of California's Oak Woodlands Conservation Fund (Fund). In addition, as of January 2005, California Public Resources Code Section 21083.4 (2004 Senate Bill 1334) requires that when a county is determining the applicability of the California Environmental Quality Act (CEQA) to a project, it must determine whether that project "may result in a conversion of oak woodlands that will have a significant effect on the environment." If such effects (either individual impacts or cumulative) are identified, the law requires that they be mitigated.

On October 24, 2017, the El Dorado County Board of Supervisors adopted a General Plan Amendment that revised the biological resources policies and related objectives and implementation measures in the Conservation and Open Space Element of the General Plan.

Specifically, this amendment made changes to the County's OWMP, which subsequently was retitled the Oak Resources Management Plan (ORMP) under Resolution 129-2017 and 130-2017. By way of the Resolutions, the Board approved the Oak Resources Conservation Ordinance, 5061, which became effective on November 23, 2017 and the In-Lieu Mitigation fee which became effective on December 23, 2017.

The purpose of the ORMP is to define mitigation requirements for impacts to oak resources (oak woodlands, individual native oak trees, and Heritage Trees) and to outline the County's strategy for oak woodland conservation. The ORMP functions as the oak resources component of the County's biological resources mitigation program identified in General Plan Policy 7.4.2.8. The ORMP identifies standards for oak woodland and native oak tree impact determination, mechanisms to mitigate oak woodland and native oak tree impacts, technical report submittal requirements, minimum qualifications for technical report preparation, mitigation monitoring and reporting requirements, and projects or actions that are exempt from mitigation requirements. The ORMP also establishes an in-lieu fee payment option for impacts to oak resources, identifies Priority Conservation Areas (PCAs) where oak woodland conservation efforts may be focused, and outlines minimum standards for identification of oak woodland conservation areas outside the PCAs. Requirements for maintenance and monitoring of conserved oak woodland areas and identification of allowable uses within conserved oak woodland areas are also included in the ORMP.

## INTRODUCTION

This staff memo specifically addresses the requirement to prepare an annual monitoring report, which includes an oak tree and oak woodland removal permits summary and any enforcement action on an annual basis. The staff memo also serves as a biennial report of all in-lieu fees collected and explores the possibility of a fee adjustment as described in Appendix A of the ORMP to the Board of Supervisors. This report represents the annual monitoring report for 2018, 2019, and 2020; and it represents the first biennial reporting as well. The requirements from the Title 130 Zoning Ordinance to prepare both of these reports are outlined below:

- Annual Monitoring and Reporting (Oak Tree/Oak Woodland Removal Permits and Enforcement Actions) (Zoning Ordinance Code Section 130.39.100 A.)
- Biennial Reporting (Oak Woodland Conservation Fund Fee documentation, evaluation and recommendation regarding fee adjustment, if any) (Zoning Ordinance Code Section 130.39.100 B.)

## DEFINITIONS

**Diameter at Breast Height (dbh):** The measurement of the diameter of a tree in inches, specifically four (4) feet six (6) inches above natural grade on the uphill side of the tree. In the case of trees with multiple trunks, the diameter of all stems (trunks) at breast height shall be combined to calculate the diameter at breast height of the tree.

**Heritage Trees:** Any live native oak tree of the genus *Quercus* (including blue oak (*Quercus douglasii*), valley oak (*Quercus lobata*), California black oak (*Quercus kelloggii*), interior live oak (*Quercus wislizeni*), canyon live oak (*Quercus chrysolepis*), Oregon oak (*Quercus garryana*), oracle oak (*Quercus x morehus*), or hybrids thereof) with a single main trunk measuring 36 inches dbh or greater, or with a multiple trunk with an aggregate trunk diameter measuring 36 inches or greater.

**In-lieu Fee:** Cash payments that may be paid into the County's Oak Woodland Conservation Fund by an owner or developer as a substitute for a Deed Restriction, Conservation Easement or replacement planting. In-lieu fee amounts for Individual Native Oak Trees, Heritage Trees, and Oak Woodlands as presented in the ORMP may be adjusted by the County over time to reflect changes in land values, labor costs, and nursery stock costs.

**Individual Native Oak Tree(s):** Any live native oak tree of the genus *Quercus* (including blue oak (*Quercus douglasii*), valley oak (*Quercus lobata*), California black oak (*Quercus kelloggii*), interior live oak (*Quercus wislizeni*), canyon live oak (*Quercus chrysolepis*), Oregon oak (*Quercus garryana*), oracle oak (*Quercus x morehus*), or hybrids thereof) with a single main trunk measuring greater than 6 but less than 36 inches dbh, or with a multiple trunk with an aggregate trunk diameter measuring greater than 10 inches dbh and is not a Heritage Tree.

**Oak Resources:** Collectively, Oak Woodlands, Individual Native Oak Trees, and Heritage Trees.

**Oak Resources Technical Report:** A stand-alone report prepared by a Qualified Professional containing information, documents and formatting as specified in Section 2.5 (Oak Resources Technical Reports) of the ORMP.

**Oak Tree Removal Permit:** A permit issued by the County allowing removal of individual native oak trees not located within an oak woodland. An oak resources technical report shall accompany any tree removal permit application submitted to the County. Conditions of approval may be imposed on the permit. If a tree removal permit application is denied, the County shall provide written notification, including the reasons for denial, to the applicant. Oak tree removal permit processing and approval will be conducted concurrently with the environmental review process for discretionary projects or concurrent with other permit review and processing for ministerial projects (e.g., building permits).

**Oak Woodland Conservation Fund:** A fund set up by the County to receive in-lieu fees (Oak Woodland In-Lieu Fee and Individual Tree In-Lieu Fee) which shall be used to fund the acquisition of land and/or Oak Woodlands Conservation Easements from willing sellers, native oak tree planting projects, and ongoing conservation area monitoring and management activities, including but not limited to fuels treatment, weed control, periodic surveys, and reporting.

**Oak Woodland(s):** An oak stand with a greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover (California Fish and Game Code Section 1361).

**Oak Woodland Removal Permit:** A permit issued by the County allowing removal of oak trees that are a component of an oak woodland. An oak resources technical report shall accompany any oak woodland removal permit application submitted to the County. Conditions of approval may be imposed on the permit. If an oak woodland removal permit application is denied, the County shall provide written notification, including the reasons for denial, to the applicant. Oak woodland removal permit processing and approval will be conducted concurrently with the environmental review process for discretionary projects or concurrent with other permit review and processing for ministerial projects (e.g., building permits).

#### **ANNUAL MONITORING AND REPORTING (Zoning Ordinance Section 130.39.100 A.)**

The County shall monitor all Oak Tree and Oak Woodland Removal Permits and any enforcement actions on an annual basis. The County shall provide the results of this monitoring to the Board of Supervisors in the form of an annual report. The report shall include the quantity of permits issued and estimated inches/acres approved for removal during the reporting year. The following sections satisfy the requirement to report the number of oak tree and oak woodland removal permits as well as enforcement actions from the inception of the Oak Resources Conservation Ordinance, 5061, which became effective on November 23, 2017, up to March 15, 2021.

#### ***Oak Resources Code Compliance Certificates***

The process by which applicants disclose whether oak resources are impacted by their projects involves a Code Compliance Certificate. County staff has observed minor complications with the oak resources code compliance certificate and in August 2020 implemented changes to the certificate for clarity. The certificate requires the applicant to certify whether any oak resources are impacted by the proposed project and if so, the applicant certifies the relevant exemption that applies to their particular situation, if any. If oak resources are in fact impacted and no exemption applies, the applicant provides detailed oak resources information including quantity, type of species, and total trunk diameter inches (dbh) to be removed for purposes of mitigation.

#### ***Oak Tree and Oak Woodland Removal Permits***

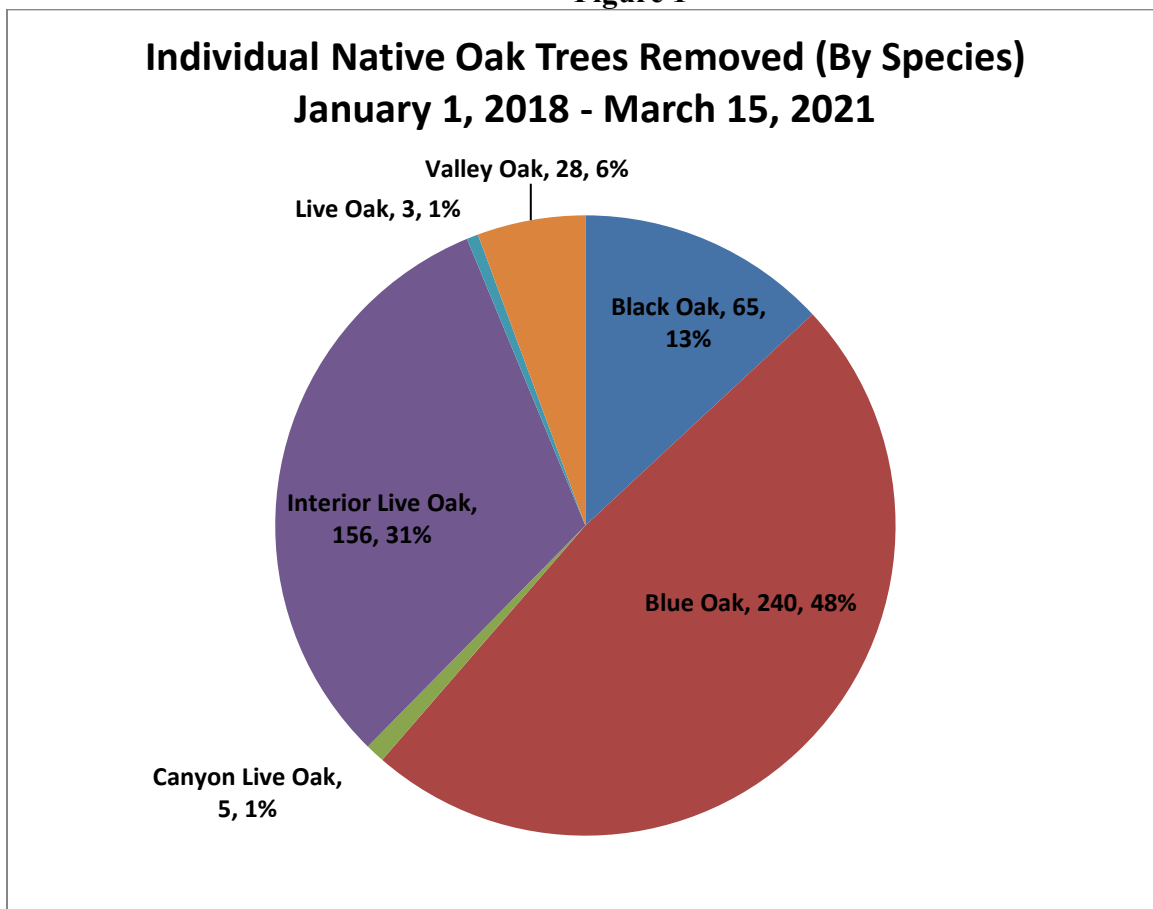
The County created and is currently maintaining a database for the separate accounting of administrative permits that impact individual oak trees and oak woodlands and the specific tree species and acreages impacted for annual review and reporting by the County. This database will be used to track the monitoring and reporting information for this and future reports to the Board. This data is extracted primarily from Oak Resources Technical Reports submitted as part of discretionary project applications.

Oak Resources Technical Reports commonly contain a description of the baseline condition of the oak woodland, including the species of oak trees present, the density of trees (number/acre), a demographic assessment of the trees (e.g. size or age range and the proportion of trees in young, mature, and declining classes), the vegetation type of the understory (e.g. scrub, grass/herb,

barren, ornamental, etc.), the presence or potential use of the site by special-status species, and the spatial relationship to other woodland stands in the vicinity (e.g., immediately adjacent and fully integrated, isolated by urban development, etc.).

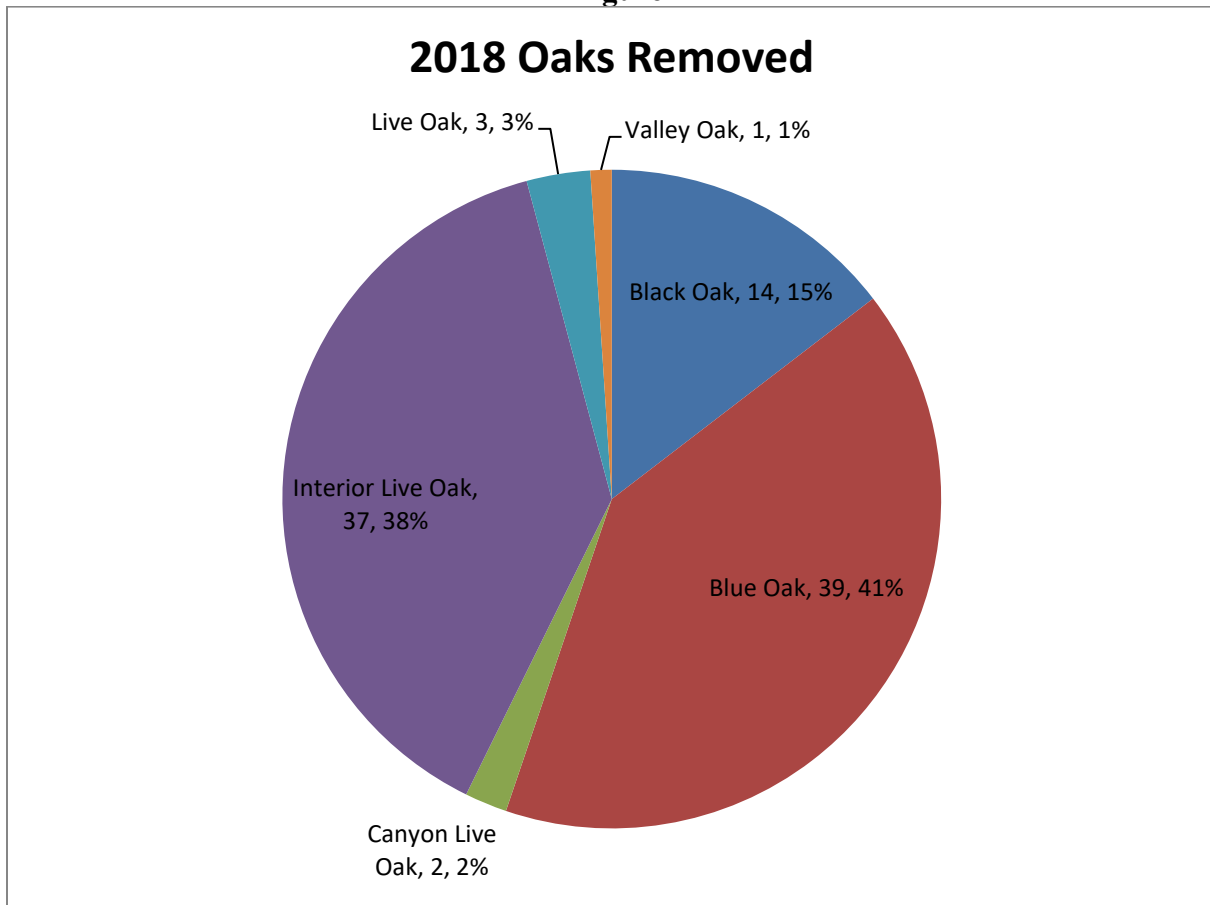
Since the adoption of the ORMP in 2017, staff has reviewed fifty-seven (57) oak technical reports that identified impacts to either individual native oak trees, oak woodlands, or both. This resulted in issuance of 57 administrative permits for removal. According to the oak resources technical reports for these particular projects, a total of 497 individual oak trees were removed with a combined removal of approximately 19.64 acres of oak woodland. *Figure 1 – Individual Native Oak Trees Removed (By Species)* illustrates the amount of oak trees removed by species from January 1, 2018 to March 15, 2021.

**Figure 1**



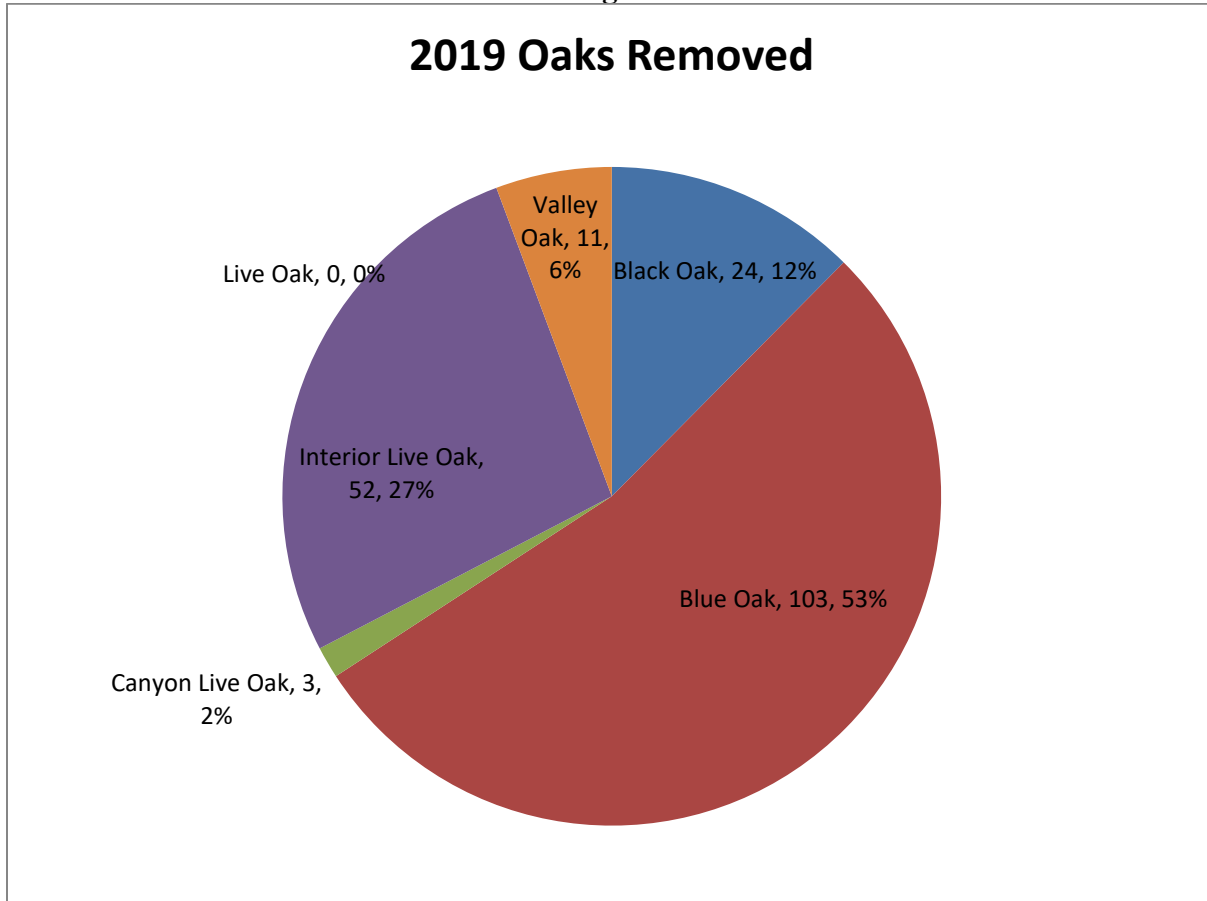
In 2018, staff reviewed eleven (11) submitted oak technical reports that identified impacts as illustrated in *Figure 2 – 2018 Oaks Removed*. According to the oak resources technical reports for these particular projects, a total of ninety-six (96) individual oak trees were removed with a combined removal of approximately 5.19 acres of oak woodland.

**Figure 2**



In 2019, staff reviewed twenty-five (25) submitted oak technical reports that identified impacts as illustrated in *Figure 3 – 2019 Oaks Removed*. According to the oak resources technical reports for these particular projects, a total of 193 individual oak trees were removed with a combined removal of approximately 8.24 acres of oak woodland.

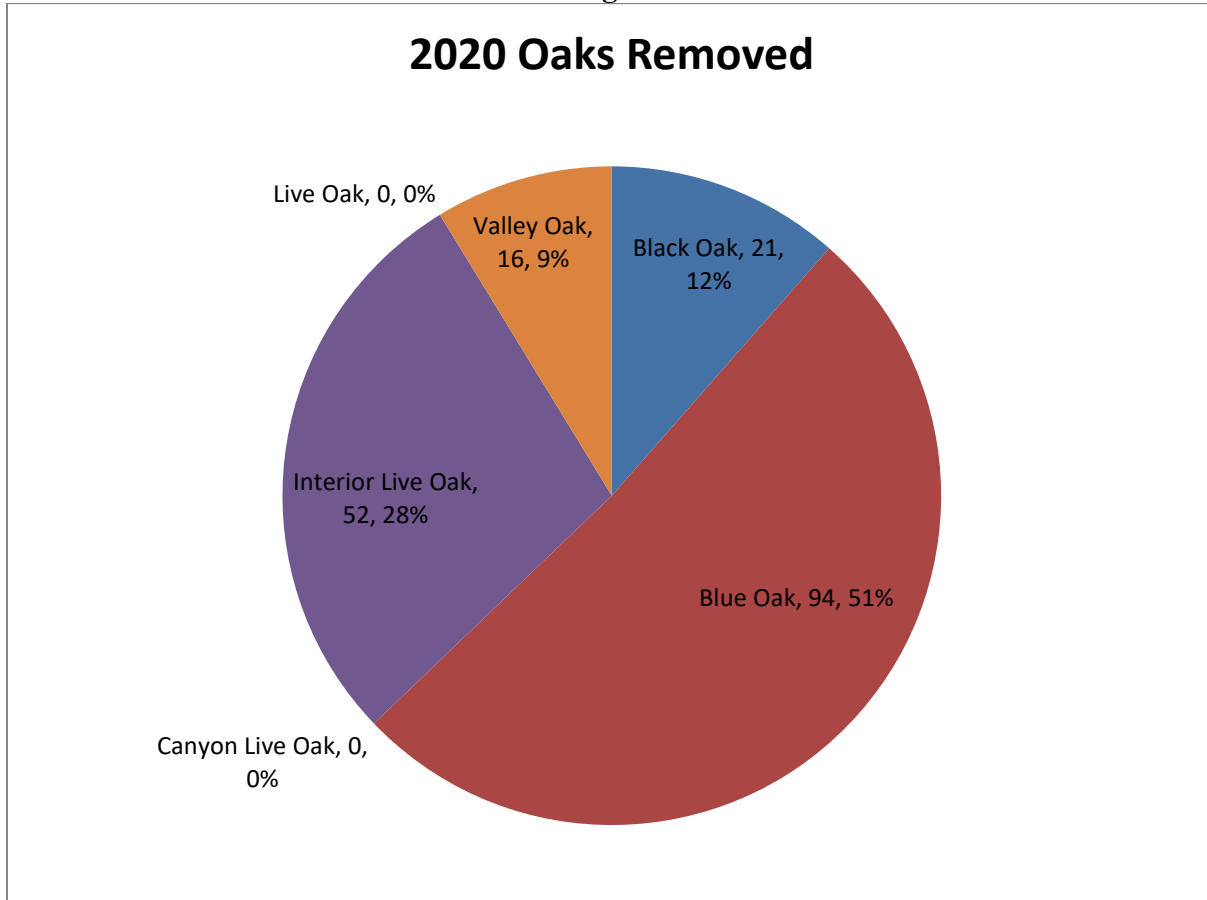
**Figure 3**



In 2020, staff reviewed seventeen (17) submitted oak technical reports that identified impacts as illustrated in *Figure 4 – 2020 Oaks Removed*. According to the oak resources technical reports

for these particular projects, a total of 183 individual oak trees were removed with a combined removal of approximately 6.55 acres of oak woodland.

**Figure 4**



***Enforcement Actions***

Since inception of the ORMP, the County has received 24 code violation complaints regarding oak trees or oak woodland removal without a permit. Twenty (20) cases have been closed with four (4) remaining open as of the date of this report. Code enforcement defines a closed case as either the issue was resolved or a complaint has been deemed inaccurate.

**BIENNIAL REPORTING (Zoning Ordinance Section 130.39.100 B.)**

The County shall monitor all In-lieu Fees deposited into the Oak Woodland Conservation Fund and provide a report documenting fees collected and recommend fee adjustment(s), as appropriate, to the Board of Supervisors every other March, as specified in Appendix A of the ORMP. The following section satisfies the requirement to evaluate and recommend fee adjustments as appropriate, prescribed in Ordinance Code Section 130.39.100 B.



### ***In-lieu Fees Collected***

The in-lieu fees collected in 2018, 2019, and 2020 equate to \$414,360.38 or approximately \$138,000/year for the removal of oak trees and oak woodlands impacted by private development projects. The majority of the in-lieu fees collected were related to the removal of oak woodlands as opposed to individual oak trees.

### ***Oak Woodland Conservation Fund Disbursements***

On September 11, 2018, the Board approved the Oak Woodland Conservation Land Acquisition – Allocation of Funds which authorized the use of \$63,250 of Oak Woodland Conservation Funds to help acquire 1,018 acres of land. The 1,018 acres is for the protection and preservation of riparian and woodland habitat that includes native fisheries and oak woodlands, and to provide for the potential future wildlife oriented public use opportunities on land fronting the Consumnes River, to be owned and managed in the future by the California Department of Fish and Wildlife. This action is consistent with the requirements of the ORMP and supports the Conservation and Open Space Element of the General Plan.

### ***Fee Adjustment***

The Oak Resources Management Plan (ORMP) and Chapter 130.39–Oak Resources Conservation of the Title 130 Zoning Ordinance both recognize that a periodic fee adjustment will be necessary as costs change over time. Planning Division staff is tasked with evaluating the need for a potential fee adjustment. As costs change over time, there will be a need to review and adjust the in-lieu fees to closely match future cost increases or decreases. Staff is prepared to make a recommendation to the Board of Supervisors on the preferred alternative approach for adjusting the in-lieu fee. This recommendation is outlined in the Staff Recommendation section of this report, and differs to what is recommended by Appendix B of the ORMP. Appendix B of the ORMP details an annual inflation fee adjustment approach based on the original nexus study prepared for the current in-lieu fees.

The nexus study approach described in Appendix B of the ORMP is complex, difficult, and very costly to implement the adjustment; therefore, staff recommends an alternative approach for when the in-lieu fee is adjusted. According to Appendix B of the ORMP, an annual adjustment for cost escalations influenced by changes in land values affecting acquisition, conservation easement values, as well as property tax obligations and organizational overhead costs (e.g. rent, wages, benefits, equipment, etc.) may be applied to the Oak Woodland In-Lieu Fees. The Individual Oak Tree In-Lieu Fees may be subject to an annual inflation that accounts for changes in acquisition/planting and management/monitoring (M&M) costs. As provided in Appendix B of the ORMP the process to adjust the in-lieu fees proceed according to the following annual adjustment for cost escalations:

The Oak Woodland In-Lieu Fee shall be adjusted according to the following steps:

1. Adjust Acquisition Cost Component
2. Adjust Initial M&M Cost Component
3. Adjust Long-Term M&M Cost Component
4. Recalculate Total Cost per Acre {including 5% Administrative Fee component}
5. Recalculate Fees based on Mitigation Ratios

The current Oak Woodland In-Lieu Fee is predicated on the following cost assumptions as provided in Table 5 of the ORMP:

<b>Activity</b>	<b>Cost per Acre</b>
Acquisition	\$4,400
Initial Management and Monitoring	\$2,600
Long-Term Management and Monitoring	\$890
Administration	\$395
<b>Total Cost per Acre</b>	<b>\$8,285</b>

The Individual Oak Tree In-Lieu Fee shall be adjusted according to the following steps:

1. Adjust Acquisition/Planting Cost Component based on changes in the cost for one 1-gallon oak tree at local nurseries.
2. Adjust Initial M&M Cost Component based on changes in labor wages.
3. Recalculate Total Cost per Acre {including 5% Administrative Fee component}
4. Recalculate Fees based on Mitigation Ratios

The current Individual Oak Tree In-Lieu Fee is predicated on the following cost assumptions as provided in Table 6 of the ORMP:

<b>Activity</b>	<b>Cost per Acre</b>
Acquisition and Planting	\$31.90
Initial Management and Monitoring (Years 1-7)	\$113.40
Administration (5%)	\$7.27
<b>Total Cost per Inch (non-Heritage Trees)</b>	<b>\$153</b>
<b>(rounded to nearest whole dollar)</b>	
<b>Total Cost per Inch (Heritage Trees - 3:1 Ratio)</b>	<b>\$459</b>

Staff conservatively estimates that the effort to collect the necessary data listed above, analyze, and adjust the fees by a qualified consultant on an annual basis would exceed \$25,000. The 5% administration fee component tied to the oak tree in-lieu fee mitigation is not enough to cover the estimated cost of \$25,000. Therefore, in-lieu fees would need to increase by 18%

(\$25,000/\$138,000) to simply cover the cost of collecting and maintaining a database of costs to adjust the in-lieu fees annually, which does not achieve the desired result of increasing fees to account for increased costs related to the actual acquisition, planting, management, and monitoring costs of the County's acquisitions for oak woodland PCAs.

Additional research by a qualified consultant is needed to determine an annual inflation adjustment based on the methodology prescribed in Appendix B of the ORMP; however, the cost for this research exceeds the allocated 5% administrative fee. Appendix B of the ORMP describes how the in-lieu fee mitigation was created with all of its complexities, yet it does not include additional methods for scaling the fee on an annual basis. Ultimately, because of the heavy data collecting and data analysis required for making an annual inflation adjustment of the in-lieu fees, in accordance with Appendix B, staff is not prepared to make such recommendation as part of this report.

## **STAFF RECOMMENDATION**

Staff recommends the Board receive and file this Oak Resource Management Plan (ORMP) Implementation Report. Staff recommends that the Board defer consideration of any potential adjustment to the in-lieu fees due to a general lack of data and staff limitations in collecting the data. Staff analysis of the fee adjustment approach described in Appendix B is not cost effective and is overly complicated. Furthermore, the County does not actively maintain a database or accounting analysis necessary for recommending an annual inflation adjustment for in-lieu fees as suggested by Appendix B of the ORMP. The necessary information needed to perform the annual inflation adjustment would require data on acquisition costs, conservation easement acquisition, planting costs, management and monitoring costs, and changes in labor wages. Therefore, the effort required to adjust the fees on an annual or biennial basis may exceed the cost-benefit analysis of doing so due to the historical and future in-lieu fee collection expectations. Staff is seeking direction from the Board to explore alternative methodologies for determining the amount of any potential future adjustment. As an example, adjusting the in-lieu fee could include a simplified annual adjustment based on the analysis of Consumer Price Index (CPI) versus what is suggested in Appendix B of the ORMP. Once an alternative methodology is identified, staff will bring back to the Board for recommendation. Staff can move forward with conducting the analysis that will be performed during the next biennial reporting scheduled for 2022. The next biennial reporting will be a separate item from the 5-year findings item, required by the Mitigation Fee Act (Government Code Section 66001).

## **ALTERNATIVES**

The Board could decide to direct staff to explore alternative options for an annual inflation adjustment not yet considered by staff. Eliminate the need to obtain and monitor the aforementioned costs on an annual basis. Require an update to the ORMP to specify that annual adjustments will follow an alternative approach as opposed to the method currently specified in Appendix B of the ORMP and summarized in the Fee Adjustment section in this report.

The Board could disregard staff's recommendations and decide to direct staff to perform the annual inflation adjustment as specified in Appendix B of the ORMP; however, concerns with funding and costs associated with performing an annual inflation adjustment should be factored into the Board's decision.

The Board could also decide to direct staff to initiate a biennial inflation adjustment to assess the fee according to new information and data associated with current land acquisition, maintenance, and monitoring costs.