

# DEVELOPMENT SERVICES DEPARTMENT

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TO: Board of Supervisors

FROM: Peter N. Maurer, Principal Planner

DATE: October 22, 2010

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. This is the second such report.

Section 17.73.090 of County Code states that the annual report address the following:

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.

## **DISCUSSION:**

### **Report of Annual Data**

Year	Conservation Fund	Oak Woodland Protected by Fund Expenditures	Replacement Planting Option A (acres)	Canopy Removed for New Development (acres)
FY2008-09	\$62,833	0	0	10.68
FY2009-10	19,219	0	11.5	15.33
Totals	82,052	0	0	25.59

At the end of the second full year (through June 2010), the County has received a total of \$77,864 for oak canopy mitigation. The mitigation fund currently stands at \$82,457 which includes interest generated by the account. Due to the significant reduction in construction activity, the amount of fees collected were less than one quarter of that collected in FY 2008-09.

The total canopy removed during this time frame was 15.33 acres, but that includes 11.5 acres from two capital improvement projects, the Missouri Flat interchange and the Green Valley Road Tennessee Creek Bridge replacement projects. In the case of Missouri Flat, the lost trees will be replaced at a 1:1 ratio upon completion of the project. Tennessee Creek was exempt under the ordinance and OWMP because it is a safety improvement, although a small number of trees (20 total) are required to be replaced within the wetland area. The amount of tree loss due to development was 3.83 acres.

As was the case last year, due to the small amount of money accumulated so far, 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 still too early to know if an adjustment is needed. While land prices continue to drop 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.

### **Future Action**

Although building slowed 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, by itself, mitigate for that loss. Therefore, it is important that the money be spent to accomplish its goal. However, the OWMP is presently still being litigated, with an appeal filed with the courts that has yet to be heard. Until a final decision has been rendered in the case, it would be premature to make any modifications. If an opportunity arises for purchase of land or a conservation easement within the identified Priority Conservation Areas, the County should consider using the revenue in the Fund to make the acquisition, after review and a determination that the land is suitable for mitigation purposes. But unless such an opportunity occurs, it would be prudent to simply continue to build the fund so that it can be used in the future.

### **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. Last year's report included a discussion of different options for on-going management of the program. While those options are still on the table, there does not appear to be any reason to change at this time. 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 2009-10;
2. Retain the fee amount as presently set, with the intention to review and update the fee, if necessary, after the conclusion of the currently pending litigation;
3. Continue to utilize staff resources for management, monitoring and acquisition activities associated with the OWMP for at least the current fiscal year.