



RESOLUTION NO.
OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO
ADOPTING MITIGATION FEE FINDINGS FOR THE OAK WOODLAND CONSERVATION
MITIGATION FEE PROGRAM

WHEREAS, the Oak Woodland Conservation Fee has been collected since establishment in 2008 through implementing Ordinances 4771 (2008) and 5061 (2017) for the purpose of protection of oak woodlands through property acquisition and management in designated oak woodlands; and

WHEREAS, The Oak Woodland Conservation Fee is collected at the time of issuance of building or grading permits where building or grading activities will cause removal of individual native oak trees and/or native oak woodland; and

WHEREAS, California Government Code Section 66000, et seq., known as the "Mitigation Fee Act", requires local agencies that impose mitigation fees to make certain findings (California Government Code Section 66001(d)); and

WHEREAS, when such findings are required, they must be made in connection with the public information required by California Government Code 66006(b); and

WHEREAS, the public information required by the Mitigation Fee Act was reviewed by the Board of Supervisors in connection with review and consideration of the mitigation fee findings,

NOW, THEREFORE, BE IT RESOLVED

- A. The Board of Supervisors hereby makes the mitigation fee findings, as required by Government Code Section 66001, for the Oak Woodland Conservation Fee, as set forth below, which is attached hereto and incorporated herein.
- B. Collection of the Oak Woodland Conservation Fee was required as a condition of approval for development projects or actions that result in impacts to oak woodlands and/or individual native oak trees consistent with the County's General Plan (e.g. General Plan Policy 7.4.4.4, Implementation Measure CO-P).

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the ____ day of _____, 20__, by the following vote of said Board:

Attest:
Kim Dawson
Clerk of the Board of Supervisors

Ayes:
Noes:
Absent:

By: _____
Deputy Clerk

_____ Chair, Board of Supervisors

El Dorado County - Findings for Oak Woodland Conservation Fee Program (FY19 / 20) - As required by Government Code Section 66001(d)(1)

Section 66001(d)(1)(A): Identify the purpose to which the fee is to be put.

Finding for Section 66001(d)(1)(A): Oak Woodland Conservation fees have been collected since establishment in 2008 through implementing Ordinances 4771 (2008) and 5061 (2017) for the purpose of protection of oak woodlands and establishment of development project mitigation standards for oak tree removal. The fee is collected at time of issuance of building permits or grading permits and is used to acquire, monitor and maintain designated oak woodlands. The fees are only collected on permits that remove oak resources, including oak woodland and individual native oak trees, with certain exceptions in the Ordinance for: existing single-family parcels of one acre or less that cannot be further subdivided, affordable housing, defensible space, agricultural cultivation, public road and utility projects, emergency operations, CalFire-permitted timber harvest plans, dead/dying/diseased oak trees and limited removal of specified oak species for personal use.

Section 66001(d)(1)(B): Demonstrate a reasonable relationship between the fee and the purpose for which it is charged

Finding For Section 66001(d)(1)(B): The reasonable relationship for the fee was established in the Oak Resource In-lieu Fee Nexus Study, completed in 2016, by New Economics & Advisory Consulting (“Nexus Study”). The Nexus Study analyzed how the mitigation fees and assessment methodology prescribed in both the County’s Oak Resources Management Plan (ORMP) and the implementing Ordinance 5061 is consistent with the Mitigation Fee Act. The Nexus Study calculated the amount of the fee based on an estimate of land values, both easement and in fee title, acquisitions for oak woodland, long and short-term management of the acquisitions, and monitoring. Incorporating the above cost factors, the fee is currently set at 8,285 per acre as broken out below (Nexus Study Figure 4.1, page 31):

Oak Woodland Area (OWA) Cost Components:	
Acquisition	<u>\$4,400</u>
Initial M&M (Years 1-5)	<u>\$2,600</u>
Endowment (for Long Term M&M)	<u>\$890</u>
Subtotal Cost	<u>\$7,890</u>
Administration (5%)	<u>\$395</u>
Total Cost	<u>\$8,285</u>
<i>Source: New Economics & Advisory Oak Resource In-Lieu Fee Nexus Study (June 2016)</i>	

Further, according to the Nexus Study, the resulting fee would be collected based on the percent of on-site Oak Woodland Areas (OWA) impacted by new development as shown on Figure 4.2 of the Nexus Study (below). These rates are set uniformly within the ORMP boundary and are charged per OWA acre impacted. To ensure the amount of impact to OWAs is as accurate as possible, the impacted OWAs will be identified in a site-specific Oak Resources Technical Report (ORTR) prepared by a qualified professional retained by the project applicant during the development review process.

4.2

Oak Woodland Area In-Lieu Fee Rates 2016\$

Item	Oak Woodland Areas		
	0.01 - 50.0% Impact	50.01 - 75.0% Impact	75.01 - 100.0% Impact
	per acre		
Cost Per Acre	\$8,285	\$8,285	\$8,285
Mitigation Ratio [1]	1.0 : 1	1.5 : 1	2.0 : 1
Total Fee Per Acre	\$8,285	\$12,428	\$16,570

[1] Mitigation ratios established in the ORMP (Section 2.2.2).

Prepared by New Economics & Advisory, June 2016.

Section 66001(d)(1)(C): Identify all sources and amounts of funding anticipated to complete financing incomplete improvements identified in paragraph (2) of subdivision (a) (of Section 66001).).

Finding 66001(d)(1)(C): County Oak Woodland Conservation fees have been collected on new development as directed in Ordinance 5061. There are no public improvements identified in 66001(a)(2) because this fee is collected for the purpose of acquisition of mitigation property for the protection of oak resources. This is an ongoing effort to acquire properties for the protection of oak resources. Existing funds in the County Oak Woodland Conservation fee program will either be used for replanting of individual native oak trees or oak woodland acquisition and include both initial and long-term management/monitoring and administration of replanted trees and acquired oak woodlands, as directed under Ordinance 5061.

Section 66001(d)(1)(D): Designate the approximate dates on which the funding referred to in subparagraph (C) is expected to be deposited into the appropriate account or fund.

Finding 66001(d)(1)(D): There are no public improvements identified in 66001(a)(2) because this fee is collected for the purpose of acquisition of mitigation property for the protection of oak resources. This is an ongoing effort to acquire properties for the protection of oak resources. Funds from Oak Woodlands Conservation Fees are deposited into a designated Oak Woodlands Conservation Special Revenue Fund (FAMIS 7729305/7734505 / FENIX 3770755) on an ongoing basis based on new development. As specified in Ordinance 5061, funds deposited into the above account may be used by the County to mitigate for loss of individual native oak trees by County planting of individual oak trees or funds given to a land conservation organization to plant individual oak trees in lieu of County planting. In addition, the Oak Woodlands Conservation Special Revenue Fund may also be used to mitigate for loss of oak woodlands and said funds may be used to fund the acquisition of land and/or conservation easement from willing sellers as described in detail in Section 4.0 of the ORMP (Priority Conservation Areas). This fund shall also be used for ongoing monitoring and management activities including but not limited to fuels treatment, weed control, periodic surveys and reporting.

In FY 18/19, the Board of Supervisors approved an expenditure of \$63,250 from the Oak Woodlands Conservation Fee account to help acquire 1,018 acres of land for the protection and preservation of oak

woodlands on land fronting the Cosumnes River (“El Dorado Ranch Phase 3”, County Legistar File No. 18-1197).

Additional Findings:

1. In FY 15/16, the County’s Planning and Building Department numbers changed, which resulted in the Oak Woodlands Conservation Special Revenue Fund account number to change from 7729305 to 7734505.
2. The County financial system was upgraded in January of 2018 and the FAMIS account 7734505 was closed and reopened in the new financial system FENIX as account number 3770755.
3. The Oak Woodlands Conservation Fees have been spent for the purpose for which they were collected as required by law:
 - a. Expenditures are identified in Exhibit C “Cash Statement” of the Annual Mitigation Fee Act Reports: Legistar items: 16-1222, 17-1294, 19-1553, 20-1305

General Plan Finding: The Oak Woodlands Conservation Fee program is consistent with the General Plan (e.g., Objective 7.4.4, Implementation Measure CO-P).

The County is currently in litigation (Thomas Austin and Helen Austin v. County of El Dorado, El Dorado County Superior Court Case No. PC20150633) related to the Mitigation Fee Act (MFA). The Court ruled that the ecological in-lieu fees (Ecological Preserve Fee and Oak Woodland Conservation Fee Programs) are not “development impact fees” and are not subject to the MFA. While the Superior Court has ruled that the MFA does not apply to the Ecological Preserve Fee Program or the Oak Woodland Fee Program, there is the potential for an appeal once the trial court litigation concludes. As a result, until it has been conclusively decided that the Ecological Preserve In-lieu fee and the Oak Woodland In-lieu fee are not subject to the MFA, the County is taking a conservative approach and is treating the fee in accordance with the requirements of the MFA. The Superior Court also held that taking a conservative approach and following the MFA requirements does not convert the fees into development impact fees.