



RESOLUTION NO. 130-2017

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO

ESTABLISHING AN IN-LIEU MITIGATION FEE TO MITIGATE IMPACTS TO OAK WOODLAND AREAS AND INDIVIDUAL OAK TREES

WHEREAS, pursuant to Government Code Section 54985, Section 66016, and County Code Section 1.04.260, the Board of Supervisors of El Dorado County (Board) has established rates, charges and fees for certain activities; and

WHEREAS, establishment of an in-lieu fee provides an additional mitigation alternative for impacts to Oak Woodland Areas (OWAs) and Individual Oak Trees (IOTs); and

WHEREAS, on February 18, 2015, the Board executed the First Amendment to the Agreement for Services #425-S1411 with Dudek that included a scope of work for preparation of the El Dorado County Oak Resources In-Lieu Fees Nexus Study (Nexus Study) as Exhibit A-1; and

WHEREAS, on June 22, 2015, the Board held a special meeting to review and provide feedback on draft proposed General Plan amendments, draft Oak Resources Management Plan (ORMP), and draft Oak Resources In-Lieu Fee Program and Nexus Study, a component of the County's oak woodland mitigation program outlined in the ORMP; and

WHEREAS, on June 22, 2015, the Board adopted Resolution of Intention 108-2015 and 109-2015 and directed staff to consider project alternatives as part of the environmental review process including but not limited to options for Individual Oak Tree (IOT) replacement mitigation (e.g. acorn to 15 gallon potted tree) and associated analysis of the implications for the In-lieu Fee Nexus Study based on these options; and

WHEREAS, on June 30, 2016, the County released a Notice of Availability of a Draft Environmental Impact Report (EIR) for the General Plan Biological Resources Policy Update, Oak Resources Management Plan, and Oak Resources Conservation Ordinance which includes the Oak Resources In-Lieu Fees (Project); and

WHEREAS, the Draft EIR for the Project included Appendix B – El Dorado County Oak Resources In-Lieu Fees Nexus Study, Public Review Draft, Prepared by New Economics & Advisory, Updated June 21, 2016; and

WHEREAS, the purpose of the Nexus Study was to determine in-lieu fee rates for mitigating impacts to eligible Oak Resources, including OWAs and IOTs identified in the in-lieu fee mitigation component of the Oak Resources Management Plan, Section 3.0 (In-Lieu Fee); and

WHEREAS, the Nexus Study proposed a fee designed to pay the full cost of the mitigation for development impacts, including Acquisition, Initial Management and Monitoring (Initial M&M), Long-Term Management and Monitoring (Long-Term M&M), and associated Administrative Functions; and

WHEREAS, the Nexus Study set forth in-lieu fee rates for OWAs (Figure 4.2); and for IOTs (Figure 6.2), collectively referred to as Oak Resources In-Lieu Fees; and

WHEREAS, the in-lieu fee rates are included in the Oak Resources Management Plan Section 3.0 (In-Lieu Fee), Table 5 (Oak Woodland In-Lieu Fee) and Table 6 (Individual Oak Tree In-Lieu Fee), and attached hereto as Exhibit A (Oak Woodland In-Lieu Fee) and Exhibit B (Individual Oak Tree In-Lieu Fee) and incorporated herein; and

WHEREAS, the Oak Resources In-Lieu Fees support implementation of the General Plan's objectives and policies for the protection and conservation of oak resources; and

WHEREAS, two court opinions have recently come down regarding inclusionary housing ordinances (affordable housing) that may call into question whether or not the Mitigation Fee Act (Government Code 66000 et seq.) applies to the oak resources in-lieu fee payment option that is being established as part of the ORMP. While a similar argument could be made with regard to the oak resources in-lieu fee, there are factual differences; therefore, until a court finds that an in-lieu fee for preservation/mitigation of biological resources is not subject to the requirements of the Mitigation Fee Act, the County is taking a conservative approach and following the requirements of the Mitigation Fee Act in establishing an in-lieu fee for mitigation of impacts to oak woodland areas and individual oak trees; and

WHEREAS, on August 11, 2016, the Planning Commission held a public hearing to receive comments on the Draft EIR; and

WHEREAS, on March 8, 2017, the Final EIR for the Project was filed with the State Clearinghouse and released for public review; and

WHEREAS, on April 27, 2017, the Planning Commission held a duly noticed public hearing, pursuant to CA Government Code Sections 65090-65096 as applicable, to review and consider and receive testimony on the Final EIR and the Project and to prepare a recommendation to forward to the Board of Supervisors for consideration; and

WHEREAS, on April 27, 2017, the public hearing held by the Planning Commission on the Final EIR and the Project was closed; and

WHEREAS, on July 18, 2017, the Board of Supervisors held a duly noticed public hearing, pursuant to CA Government Code Sections 65090-65096 as applicable, to review and consider and receive testimony on the Final EIR and the Project and to consider the Planning Commission's recommendation; and

WHEREAS, on July 18, 2017, the public hearing held by the Board on the Final EIR and the Project was closed; and

WHEREAS, on September 28, 2017, the Planning Commission recommended approval to the Board of staff's proposed modification to General Plan Measure CO-K and modifications to the proposed Ordinance, with additional modifications (underlined) to Section 130.39.050(J), Exemption for Personal Use, as follows: "Removal of a native oak tree, other than a Heritage Tree or individual valley oak trees and valley oak woodlands..."; and

WHEREAS, on October 24, 2017, the Board held a duly noticed public hearing, pursuant to CA Government Code Sections 65090-65096 as applicable, limited to receive public comment only on the proposed modifications to the proposed General Plan Amendment and Ordinance that were considered and recommended by the Planning Commission on September 28, 2017; and

WHEREAS, on October 24, 2017, the limited public hearing was closed and the Board began deliberations; and

WHEREAS, on October 24, 2017, the Board's deliberations were conducted as part of a public meeting held in accordance with CEQA and the Ralph M. Brown Act; and

WHEREAS, on October 24, 2017, the Board completed its deliberations, and accepted the Planning Commission's recommendation on the proposed modifications to the General Plan Amendment and proposed Ordinance, and adopted Resolution No. 127-2017 Certifying the Final EIR for the Project (which includes the Oak Resources In-Lieu Fees and Oak Resources Conservation Ordinance); and

WHEREAS, on October 24, 2017, the Board adopted Resolution No. 128-2017 Adopting an Amendment to the Biological Resources Policies, Objectives, and Implementation Measures in the El Dorado County General Plan; and

WHEREAS, on October 24, 2017, the Board adopted Resolution No. 129-2017 Adopting an Oak Resources Management Plan and adopted Ordinance No. 5061 Adopting an Oak Resources Conservation Ordinance to implement the Oak Resources Management Plan.

NOW, THEREFORE, BE IT RESOLVED, pursuant to Government Code Section 66001, the Board has reviewed the proposed Oak Resources In-Lieu Fees structure and makes the following findings:

Government Section 66001(a)(1): Identify the purpose of the fee.

Finding for Government Code Section 66001(a)(1): The Oak Resources In-Lieu Fees are designed to fund mitigation of impacts to OWAs and IOTs within the ORMP boundaries through acquisition and conservation of similar types of OWAs elsewhere in the County and through replacement planting of IOTs. The Oak Resources In-Lieu Fees are intended to pay the full cost of acquiring, managing, and monitoring OWAs and to pay the full cost of IOT acquisition, planting, and maintenance for a 7-year period. (Oak Resources In-Lieu Fees Nexus Study, Section 4 (*Nexus, Fee Calculation, & Fee Act Findings – OWA In-Lieu Fee*), p. 33; and Section 6 (*Nexus, Fee Calculation, and Fee Act Findings – In-Lieu Individual Oak Tree Fee*), p. 42.

Government Code Section 66001(a)(2): Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified.

Finding for Government Code Section 66001(a)(2): The Oak Resources In-Lieu Fees will be used to acquire OWA through direct property acquisition or acquisition of conservation easements; to conduct Initial M&M activities and Long-Term M&M activities designed to ensure conservation in perpetuity. The Oak Resources In-Lieu Fees will also be used to acquire and plant individual replacement oak trees and perform M&M activities for IOTs for a period of 7 years. (Oak Resources In-Lieu Fees Nexus Study, Section 4 (*Nexus, Fee Calculation, & Fee Act Findings – OWA In-Lieu Fee*), p. 33; and Section 6 (*Nexus, Fee Calculation, and Fee Act Findings – In-Lieu Individual Oak Tree Fee*), p. 42.

Government Code Section 66001(a)(3): Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

Finding for Government Code Section 66001(a)(3): The use of the Oak Resources In-Lieu Fees for the conservation of OWAs and replacement of IOTs promotes the health, safety, and general welfare of El Dorado County by protecting significant historical heritage values, enhancing the County's natural scenic beauty and complementing and strengthening zoning, subdivision and land use standards and regulations, while at the same time recognizing individual rights to develop private property. The Oak Resources In-Lieu Fees are imposed on new residential and non-residential development that impact OWAs and IOTs.

Public Resources Code 21083.4 requires a county to determine whether a project within its jurisdiction may result in a conversion of oak woodlands that will have a significant effect on the environment. If a county determines that there may be a significant effect to oak woodlands, the county must require one or more oak woodland mitigation alternatives. Public Resources Code 21083.4 identifies four mitigation alternatives, three

specifically (conservation through the use of conservation easements, replacement planting and/or contributions to the state Oak Woodland Conservation Fund established under the Fish and Game Code), while the fourth alternative is left to the discretion of the county (“other mitigation measures developed by the county”). The establishment of the county Oak Resources In-Lieu Fees provides an additional mitigation alternative for impacts to OWAs and IOTs.

The General Plan identifies the following overarching objectives that highlight the relationship between the use of the proposed fee and the new development on which the fee is imposed: 1) To foster a rural quality of life; 2) To sustain a quality environment; 3) To conserve, protect, and manage the County’s abundant natural resources for economic benefits now and for the future; and 4) To accomplish the retention of permanent open space/natural areas on a project-by-project basis through clustering.

The Conservation and Open Space Element further identifies the following Goal for biological resources, Goal 7.4: Identify, conserve, and manage wildlife, wildlife habitat, fisheries, and vegetation resources of significant biological, ecological, and recreational value. The conservation of OWAs and replacement of IOTs enhances the County’s natural scenic beauty, sustains the long-term potential increase in property values which encourages quality development, maintains the area’s original ecology, retains the original tempering effect of extreme temperatures, increases the attractiveness of the County to visitors, helps reduce soil erosion, and increases the oxygen output of the area which is needed to combat air pollution.

The development of new residential and non-residential land uses in the County may impact OWAs and result in a loss of existing IOTs. The proposed Oak Resources In-Lieu Fees are calculated according to the impact of the development on OWAs and IOTs and provides a means for development to occur while also achieving the environmental goals and objectives stated in the County General Plan. The proposed fees will be used to acquire and conserve other OWAs in perpetuity, and to acquire and plant individual replacement oak trees and maintain them for a period of 7 years, thereby furthering the County’s overarching objectives and biological resources goals stated above. Therefore, a reasonable relationship exists between the use of the Oak Resources In-Lieu Fees and new development that would pay the fees. (Oak Resources In-Lieu Fees Nexus Study, Section 4 (*Nexus, Fee Calculation, & Fee Act Findings – OWA In-Lieu Fee*), pp. 33-34; and Section 6 (*Nexus, Fee Calculation, and Fee Act Findings – In-Lieu Individual Oak Tree Fee*), pp. 42-43.

Government Code Section 66001(a)(4): Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

Finding for Government Code Section 66001(a)(4): Each new development project, both residential and non-residential, that impacts OWAs and IOTs triggers a need for conservation measures in order to implement the overarching objectives and biological goals of the County General Plan and to meet the requirements of Public Resources Code 21083.4. Mitigation of impacts to OWAs and IOTs can occur through replacement tree planting on- or off-site, offsite conservation, and/or payment of Oak Resources In-Lieu Fees. The Oak Resources In-Lieu Fees are design to mitigate the impacts of removing OWAs and IOTs. The costs associated with the Acquisition, Initial M&M, and Long-Term M&M of OWAs, and the costs associated with the acquisition, planting, and maintenance of IOTs for a period of 7 years, are accounted for in the Oak Resources In-Lieu Fees. (Oak Resources In-Lieu Fees Nexus Study, Section 4 (*Nexus, Fee Calculation, & Fee Act Findings – OWA In-Lieu Fee*), p. 34; and Section 6 (*Nexus, Fee Calculation, and Fee Act Findings – In-Lieu Individual Oak Tree Fee*), p. 42; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, pursuant to applicable provisions of state law, the Oak Woodland Area In-lieu Fee Rates set forth in Exhibit A, and the Individual Oak Tree In-Lieu Fee Rates set forth in Exhibit B, attached hereto and incorporated herein are hereby adopted and shall take effect sixty (60) days from execution of the Resolution.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the 24th day of October 2017, by the following vote of said Board:

Ayes:

Attest:
James S. Mitrisin
Clerk of the Board of Supervisors

Noes:
Absent:

By: _____
Deputy Clerk

Chair, Board of Supervisors

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Exhibit A

Oak Woodland Area In-lieu Fee Rates

**Oak Resources Management Plan
Table 5
Oak Woodland In-Lieu Fee**

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

Source: New Economics & Advisory Oak Resource In-Lieu Fee Nexus Study (June 2016)

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Exhibit B

Individual Oak Tree In-Lieu Fee Rates

**Oak Resources Management Plan
Table 6
Individual Oak Tree In-Lieu Fee**

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

Source: New Economics & Advisory Oak Resource In-Lieu Fee Nexus Study (June 2016)