



Legislation Details (With Text)

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Title: County Counsel recommending the Board approve and authorize the Chair to execute the Conservation Agreement between El Dorado County, American River Conservancy, a California nonprofit corporation, and Rural Communities United for the purpose of providing funding for the acquisition and long term maintenance of Oak Resources in furtherance of the County's adopted Oak Resources Management Plan which includes an in-lieu fee option as part of the settlement of two law suits (PC20170536 and PC20210189) relating to the County's adoption of its 2017 Biological Resources Policies Update.

FUNDING: Oak Resources In-Lieu Mitigation Fees.

Sponsors:

Indexes:

Code sections:

Attachments: 1. A - Blue Route, 2. B Conservation Agreement.pdf, 3. C Settlement Agreement.pdf

| Date | Ver. | Action By | Action | Result |
|------------|------|----------------------|----------|--------|
| 12/13/2022 | 1 | Board of Supervisors | Approved | Pass |

County Counsel recommending the Board approve and authorize the Chair to execute the Conservation Agreement between El Dorado County, American River Conservancy, a California nonprofit corporation, and Rural Communities United for the purpose of providing funding for the acquisition and long term maintenance of Oak Resources in furtherance of the County's adopted Oak Resources Management Plan which includes an in-lieu fee option as part of the settlement of two law suits (PC20170536 and PC20210189) relating to the County's adoption of its 2017 Biological Resources Policies Update.

FUNDING: Oak Resources In-Lieu Mitigation Fees.

DISCUSSION / BACKGROUND

The Board held a closed session on August 30, 2022, to consider a settlement agreement to settle two related cases: 1) Rural Communities United, Conserve El Dorado Oaks, Ellen Van Dyke and Cheryl Langley v. County of El Dorado (El Dorado County Superior Court Case No. PC20170536) and 2) Rural Communities United v. County of El Dorado (El Dorado County Superior Court Case No. PC20210189.) The first case involves a Petition for Writ of Mandate challenging the County's 2017 certification of the Environmental Impact Report (EIR) and approval of the General Plan Biological Resources Policy Update which included amendments to the General Plan Biological Resources policies, objectives and implementation measures, adoption of an Oak Resources Management Plan, establishment of an In-Lieu Mitigation Fee and adoption of an Oak Resources Conservation Ordinance. The second CEQA case is a Petition for Writ of Mandate challenging the County's recertification of the decertified portion of the EIR as required by the writ that issued in the first case.

By unanimous vote on August 30, 2022, the Board approved the Settlement Agreement subject to

non-substantive minor modifications and authorized the Chair to execute the Settlement Agreement. The settlement was not reported out of closed session because the agreement had not yet been signed by opposing parties. The Settlement Agreement has now been signed by the opposing parties and the County and can now be disclosed to the public.

The settlement agreement is conditioned on the County entering into an agreement with a Conservation Organization (CO) to utilize Oak Resource In-Lieu Fees that are set aside per the Settlement Agreement for oak resource mitigation in furtherance of the implementation of the Oak Resources Management Plan and Oak Resources In-Lieu Fee (Conservation Agreement or CO Agreement). The final terms and conditions of the CO Agreement are now being presented to the Board for consideration and final action.

The proposed conservation organization is American River Conservancy (ARC). ARC provided the following brief description of its qualifications:

American River Conservancy (ARC) is a nonprofit land trust based in El Dorado County, CA. Since 1989, ARC has served the community by ensuring healthy ecosystems in the Upper American River and Upper Cosumnes River watersheds through conservation, stewardship, and education. To date, ARC has protected 28,413 acres representing 87 transactions and has raised over \$88 million in conservation acquisition funding. ARC has extensive experience in developing and implementing habitat conservation strategies, working with private landowners, completing due diligence, and securing funds necessary to acquire and protect land in perpetuity through conservation easement and fee-title acquisition. ARC owns and manages approximately 13,000 acres in El Dorado County and Placer County. ARC employs professional staff to implement habitat restoration projects and steward the land effectively with the assistance of dedicated, trained volunteers.

As per the Settlement Agreement, the County agreed to set aside \$250,000 of existing Oak Resource In-Lieu Mitigation funds and to set aside, on a yearly basis, 20% of future Oak Resources In-Lieu Mitigation funds collected between July 1, 2021 until June 30, 2035 which will serve as the sole funding source for oak resource land and interests in land acquired through the CO Agreement for oak resource mitigation. The CO Agreement requires the CO to make commercially reasonable efforts to acquire land or interests in land to mitigate for the loss of oak resources in accordance with priorities related to the Highway 50 corridor and north-south connectivity; however, the parties agreed to rely upon and defer to the expertise and sole discretion of the CO as to which property interests are submitted to the County for funding. Lands designated in the County General Plan for commercial or multi-family purposes are not eligible for acquisition through the CO agreement unless such restriction is waived by the County in its sole and absolute discretion.

Once mitigation property is identified, the CO must submit an application for funding to the County. The Director of the Planning and Building Department must make a written determination as to whether or not the property interest is consistent with the Biological Resources Policy Update consisting of: (i) the Oak Resources Conservation Ordinance; (ii) the Oak Resources Management Plan; (iii) Amendments to the General Plan Biological Resources Policies, Objectives and Implementation Measures in the General Plan Conservation and Open Space Element; (iv) the In-Lieu Mitigation Fees and the Oak Resources In-Lieu Fees Nexus Study; and (v) related mitigation measures (if any). The Director will then bring a recommendation to the Board and the Board will make the final decision on the funding request. The CO will have until January 1, 2037 to submit requests for funding to the County. Effective July 1, 2037, any remaining unallocated funds shall be vested in and used by the County as authorized by law.

CEQA: The CO Agreement implements the Biological Resources Policy Update, specifically the Oak Resources Management Plan and the Oak Resources In-Lieu Fee. An EIR was prepared for the Biological Policies Update and was certified by the BOS on October 24, 2017 (Resolution 127-2017). All aspects of the Biological Resources Policy Update were analyzed in the EIR including revisions to specific biological resource objectives, policies, and implementation measures included in the Conservation and Open Space Element of the County's 2004 General Plan, adoption of an Oak Resources Management Plan (ORMP) inclusive of an in-lieu fee payment option for impacts to oak woodlands and individual oak trees, and adoption of an Oak Resources Conservation Ordinance (Ordinance). Since the CO Agreement implements the ORMP and the in-lieu fee payment option by providing funding for mitigation properties or interests in properties through funding recommendations by a qualified conservation organization no further environmental review is required. Contracting with a Conservation Organization for implementation of the ORMP is specifically contemplated in the ORMP.

ALTERNATIVES

The Board could reject the CO Agreement which would effectively nullify the previously approved Settlement Agreement.

PRIOR BOARD ACTION

08/30/2022 Closed Session, Legistar Item No. 22-1401.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

Planning and Building Department

CAO RECOMMENDATION / COMMENTS

Approve as recommended.

FINANCIAL IMPACT

No impact to the General Fund. This Agreement is entirely funded by Oak Resources In-Lieu Fees both previously collected and to be collected in the future.

CLERK OF THE BOARD FOLLOW UP ACTIONS

1. Obtain signatures on the CO Agreement,
2. Return a copy to County Counsel.

STRATEGIC PLAN COMPONENT

N/A

CONTACT

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