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Butte County Oak Woodland Mitigation Ordinance

Contents

- XX-1 Title
- XX-2 Findings
- XX-3 Purpose
- XX-4 Relationship to Other Laws, Regulations and Ordinances
- XX-5 Alternate Project Design and Review
- XX-6 Applicability
- XX-7 Definitions
- XX-8 Exemptions
- XX-9 Oak Woodland Evaluation Plan
- XX-10 Oak Canopy Removal
- XX-11 Oak Canopy Mitigation
- XX-12 Oak Canopy Replacement Ratio
- XX-13 Equivalent Oak Canopy Replacement Planting Standards
- XX-14 Site Preparation and Construction Impacts
- XX-15 Monitoring of Approved Projects
- XX-16 Approval Required Prior to Removal
- XX-17 Subsequent Projects
- XX-18 Premature Removal

XX-1 Title. Butte County Oak Woodland Mitigation Ordinance.

XX-2 Findings. In Butte County, oak woodland biological community types include valley oak woodland, blue oak woodland and blue oak-foothill pine which contains a variety of species. Oak Woodlands are scattered throughout the county, but are concentrated in the transition area between the lower valley and higher mountainous areas of the county, between the elevations of 200 feet and 3000 feet. Oak Woodlands support a rich wildlife community by providing food, shelter, nesting and resting areas for mammals, birds, reptiles, amphibians and insects. Oak Woodlands moderate temperature extremes, reduce soil erosion, sustain water quality and increase the ecological and monetary value of property. The California Oaks Program of the California Wildlife Foundation (formerly the California Oaks Foundation) estimated that trees of the genus Quercus, within Oak

Woodlands and oak forests in Butte County, account for approximately 6.9 million metric tons of sequestered carbon. Oak Woodlands contribute to the overall health and wellbeing of Butte County through the sequestration of atmospheric carbon. Oak Woodlands are one of the defining physical features of the Butte County area. They provide scenic beauty, shade, and recreational areas to residents and visitors. Oak Woodlands are common locally and regionally; however, native oak trees and woodland habitats are declining statewide because of development, disease, fire, and land management practices. Land use practices can result in further reduction of Oak Woodland acreage according to the Butte County Oak Woodlands Management Plan, adopted by Board of Supervisors Resolution 07-084.

- XX-3 Purpose. The purpose of this chapter includes the following:
- A. Promote avoidance of impacts to native Oak Woodlands through the establishment of a threshold of significance (CEQA Guidelines 15064.7) and mitigation standards for Oak Canopy removal on Discretionary Projects.
 - B. Implement goals, policies and actions of the Butte County General Plan Conservation and Open Space Element pertaining to Oak Woodland habitat by setting forth standards for Oak Canopy retention and establishing an in-lieu payment methodology for Oak Canopy removal for Discretionary Projects.
 - C. Address direct, indirect and cumulative impacts to Oak Woodlands.
 - D. Satisfy the provisions of California Public Resources Code Section 21083.4, including other mitigation measures developed by the County.
 - E. Protect trees on private property where discretionary applications have been filed by controlling Oak Canopy removal while allowing for reasonable enjoyment of private property rights and property development for the following reasons:
 - 1. The County finds it necessary to preserve Oak Woodlands on private property in the interest of public health, safety and welfare.
 - 2. Oak Woodlands provide habitat for over 300 vertebrate species and more than 5,000 species of insects.
 - 3. Oak Woodlands stabilize the soil, improve drainage conditions, and provide aesthetic beauty and screening for privacy.
 - 4. The County finds that this ordinance provides a clear, defensible, feasible, and reasonable approach to managing impacts to Oak Woodlands.
- XX-4 Relationship to Other Laws, Regulations and Ordinances. This ordinance only applies to the effects on oaks and Oak Woodlands. Discretionary Projects that are consistent with this ordinance are considered to have less than significant impacts with respect to impacts to Oak Woodlands pursuant to the California Environmental Quality Act (CEQA).
- XX-5 Alternate Project Design and Review. Projects that do not meet the requirements of this ordinance may propose an alternate approach to the ordinance except for Sections XX-10, Thresholds of Significance, and XX-16, Premature Removal. Any alternate project proposal shall include standard methods of evaluation, impact identification and mitigation strategies prepared by a Qualified Professional. The applicant shall provide a plan for review that proposes equivalent or better mitigation than this ordinance would otherwise provide. The Decision-Making Authority may consider the proposed alternate methods in its environmental determination and in its decision to approve, deny or modify the project.

XX-6 Applicability. The provisions of this ordinance shall apply to Discretionary Projects that result in the removal of Oak Canopy including disturbance to the Critical Root Zone (CRZ).

XX-7 Definitions.

- A. Critical Root Zone (CRZ). A circle on the ground around a tree that generally corresponds to the drip line of the tree.
- B. Decision-Making Authority. The public hearing authority to make a decision on a discretionary project. This includes the Zoning Administrator, Planning Commission or Board of Supervisors.
- C. Department. the Department of Development Services.
- D. Diameter at Breast Height (DBH): The diameter of the tree trunk or trunks at 4.5 feet above natural grade level.
- E. Director. Director of the Department of Development Services or designee.
- F. Discretionary Project. A project that requires the exercise of judgment or deliberation when the Decision-Making Authority approves or denies a particular activity.
- G. Hazardous Tree. A tree that possesses a structural defect which poses imminent risk if the tree or part of the tree that would fall on someone or something of value. Structural defect means any structural weakness or deformity of a tree or its parts.
- H. Letter to Proceed. A letter, email or other written documentation from the Department of Development Services stating that the applicant may proceed with the project.
- I. Oak Canopy. The surface area directly under the live branches of oak trees.
- J. Oak tree. A native tree species in the genus *Quercus*, not designated as Group A or Group B commercial species pursuant to regulations adopted by the State Board of Forestry and Fire Protection pursuant to Public Resources Code Section 4526, and that is 5 inches or more in Diameter at Breast Height.
- K. Oak Woodland. For the purposes of this ordinance, an Oak Woodland is considered to be any oak tree or group of oak trees.
- L. Oak Woodland Condition. A description of the condition of Oak Woodland prepared by a qualified professional based on a variety of factors. Methodologies to determine this include but are not limited to the University of California Oak Woodland Impact Decision Matrix. Oak Woodland Condition is further defined as follows:
 - 1. Oak Woodland Condition, Intact: In this condition roads and buildings are rare across the site. Trees, both dead and alive, dominate the landscape and the site is capable of natural regeneration of oaks and other plant species. The site allows for movement of wildlife and the existing development is localized and limited to a small number of residences with service buildings or barns. The site is relatively undisturbed and is recognized as Intact.
 - 2. Oak Woodland Condition, Moderately Degraded: The site has been changed in one or more ways that has reduced its potential for providing ecological and socially important services. For example, it may have been partially developed resulting in the net loss of trees; the canopy or understory may have been reduced or eliminated over all or part of the site; past grazing or soil disturbance may have impaired regeneration in some areas.
 - 3. Oak Woodland Condition, Severely Degraded: Site has been dramatically altered and is currently in a condition where very few oak trees remain; it is being managed in such a

way that natural regeneration is not possible or practical; the soil is compacted or contaminated; and/or the site has been used for residential, commercial or industrial purposes. Roads and stream crossings are commonplace and fencing and other obstructions limit wildlife access and movement.

M. Oak Woodland Technical Manual. The Oak Woodland Technical Manual is a companion document to the Butte County Oak Woodland Mitigation Ordinance that outlines the process of managing construction projects on Oak Woodlands in detail and implementing other portions of the Ordinance. The Oak Woodland Technical Manual is separate from the ordinance as a document prepared and maintained by the Department of Development Services.

N. Project Site. A parcel or parcels of land on which a Discretionary Project is proposed.

O. Qualified Professional. A professional having experience in California Oak Woodlands and including the following:

1. Certified Arborist is a person certified by the International Society of Arboriculture (ISA), American Society of Consulting Arborists (ASCA), or other recognized professional organization of arborists that provides professional advice and licenses professionals to do physical work on trees; or
2. Qualified Wildlife Biologist is a professional with a BA or BS or advanced degree in biological sciences or other degree specializing in the natural sciences; professional or academic experience as a biological field investigator, with a background in field sampling design and field methods; taxonomic experience and knowledge of plant and animal ecology; familiarity with plants and animals of the area, including the species of concern; and familiarity with the appropriate county, state, and federal policies and protocols related to special status species and biological surveys; or
3. Registered Professional Forester (RPF) is a person licensed by the State of California to perform professional services that require the application of forestry principles and techniques to the management of forested landscapes. RPFs have an understanding of forest growth, development, and regeneration; forest health; wildfire; soils, geology, and hydrology; wildlife and fisheries biology; and other forest resources.

XX-8 Exemptions. The following types of actions are exempt from this ordinance:

A. Projects undertaken pursuant to an approved Natural Community Conservation Plan or approved subarea plan within an approved Natural Community Conservation Plan that includes oaks as a covered species or that conserves oak habitat through natural community conservation preserve designation and implementation and mitigation measures that are consistent with Public Resource Code Section 21083.4.

B. Affordable housing projects for lower income households, as defined pursuant to Section 50079.5 of the Health and Safety Code, that are located within an urbanized area, or within a sphere of influence as defined pursuant to Section 56076 of the Government Code.

C. Conversion of Oak Woodlands on agricultural land, with a zoning designation of Agriculture (AG) or Agriculture Services (AS) that includes land that is used to produce or process plant and animal products for commercial purposes unless a discretionary action is required under Section 13-14(c) of Butte County Code Chapter 13, Grading, to be heard by the planning commission.

D. Projects undertaken pursuant to Section 21080.5 of the Public Resources Code as a State Secretary of Resources Agency certified regulatory program.

- E. Hazardous Tree Removal – The removal of trees with structural defects that indicate pending failure as determined by a Qualified Professional.
- F. Operations subject to the State Forest Practice Act or State Forest Practice Rules including tree removal resulting from a Timber Harvest Plan or Timber Harvest Plan Exemption approved by CAL FIRE.
- G. Vegetation removal required to comply with defensible space requirements set forth in Public Resources Code Section 4290 (Fire Safety Regulations).
- H. Removal of Oak Canopy through the utilization of State and local fuel reduction programs such as those managed by local Fire Safe Councils and similar organizations.
- I. Requirements under Butte County Code Chapter 38A (Fire Prevention and Protection).
- J. Public Road and Public Utility Projects – Oak Canopy removal necessary to complete County road projects when the new alignment is dependent on the existing alignment. This exemption applies to road widening and realignments which are necessary to increase capacity, to protect the public’s health, and to improve the safe movement of people and goods in existing public road rights-of-way, as well as acquired rights-of-way necessary to complete the project. This exemption shall also apply to removal of Oak Canopy necessary to comply with the safety regulations of the Public Utilities Commission and necessary to maintain a safe operation of utility facilities. The following are excluded from this exemption:
 - 1. Lands owned by public utilities and used for administrative purposes or uses unrelated to the public service provided by the utility.
 - 2. New roads or utility installation that serve the discretionary project, or to internal circulation roads within the discretionary project.
- K. Permitted uses, administrative permitted uses under Butte County Code Chapter 24, Zoning, and including the issuance of building permits for those uses.

XX-9 Oak Woodland Evaluation Plan. An Oak Woodland Evaluation Plan shall be required for applicable Discretionary Projects that result in the removal of Oak Canopy including disturbance to the CRZ consistent with the following requirements.

- A. An Oak Woodland Evaluation Plan shall be required in conjunction with an application for the required Discretionary Projects to document the Oak Woodland and proposed extent of impact. The Oak Woodland Evaluation Plan shall include but not be limited to the following:
 - 1. Site location and site plan.
 - 2. Description of Oak Woodland including an evaluation of its Oak Woodland Condition including whether it qualifies as intact, moderately degraded or severely degraded.
 - 3. Measurement of total Oak Canopy area; location and area of proposed Oak Canopy removal and calculation of percentage removal.
 - 4. Oak Woodland to remain. The project shall be designed such that the oak woodland that is to remain will be of intact condition including: when located along waterways and/or wildlife corridors including deer migration corridors; when connected with Oak Woodland on adjacent lands including public lands; and, when there are other factors determined by the Department of Development Services.
 - 5. The location of required tree protection fencing and signage.
 - 6. Proposed mitigation consistent with the requirements in sections XX-10 through XX-13.

B. The Oak Woodland Evaluation Plan shall be prepared by a Qualified Professional. Exceptions to the requirement for a Qualified Professional may be considered by the Director based on limited scale of the project or other factors.

C. The Zoning Administrator shall review the Oak Woodland Evaluation Plan in order to determine its completeness and distribute it together with the project environmental document.

D. The Decision-Making Authority shall review the Oak Woodland Evaluation Plan in its action on the project. When deciding to approve the project, the Decision-Making Authority shall make findings that the project is consistent with the requirements of this ordinance and shall apply any required conditions of approval. Projects processed under Section XX-5 Alternate Project Design and Review shall conduct independent environmental review, determine whether there are significant impacts, and adopt mitigation measures if those projects are approved.

XX-10 Oak Canopy Removal. Discretionary Projects are subject to the following standards regarding removal of Oak Canopy:

A. Thresholds of Significance. The following thresholds of significance are applicable.

1. Less than significant impact, no mitigation required. Oak Canopy mitigation shall not be required for projects that meet the following standards:

a. Ten percent or less of the Oak Canopy is removed;

b. Where the Oak Woodland is of a severely degraded condition, then up to 10 oak trees, regardless of whether the number exceeds the ten percent in Section XX-10(A)(1)(a), may be removed without a replacement requirement. A Qualified Professional is to determine whether an Oak Woodland is severely degraded.

2. Less than significant impact with mitigation required. Removal of an Oak Canopy exceeding the thresholds in Section XX-10(A)(1) is reduced to a level of less than significant through Oak Canopy Mitigation under Section XX-11. Mitigation shall be required for removal of over ten percent and up to 70 percent total Oak Canopy cover.

3. Independent Evaluation Required. If the total removal of Oak Canopy exceeds 70 percent, except as provided in Section XX-10(A)(1)(b), additional analysis under Section XX-5 Alternative Project and Design is required to determine if the impact can be reduced to a level of less than significant.

B. Additional requirement. Notwithstanding Section XX-10(A)(1), the removal of any oak tree within the less than significant canopy removal threshold that is 24 inches DBH or greater shall be replaced at a ratio of 2:1 for the oak canopy removed.

XX-11 Oak Canopy Mitigation. The mitigation of Oak Canopy impacts shall take place within Butte County. Mitigation shall be of a similar species mix, density of Oak Canopy, and viability as would be found in a naturally occurring and healthy Oak Woodland. Mitigation shall be of the type of Oak Woodland found on the Project Site. The project shall include one or a combination of the following measures as mitigation for the Oak Canopy area removed at the replacement ratio specified in Section XX-12 to the satisfaction of the County:

A. Conservation easement: Proof of the creation of a conservation easement recognized by a State resource agency or trustee agency as suitable for Oak Woodland that accommodates the replacement of equivalent canopy area.

B. Payment to mitigation bank: Proof of payment for replacement of equivalent canopy area within a mitigation bank.

C. Payment to accredited land trust: Proof of payment for replacement of equivalent canopy area to an accredited land trust.

D. Payment to the State Oak Woodlands Conservation Fund. An in-lieu payment may be made to the State Oak Woodlands Conservation Fund calculated through one or a combination of the following subsections. Funds from this program are to be spent on Oak Woodland conservation within Butte County. The calculation of the fee is subject to review and acceptance by the Director. Proof of payment shall be provided to the Director within six months of the Director’s acceptance of the payment amount calculation.

1. Appraised Value of Land. Calculate the value of the land of the area where the Oak Canopy is proposed for removal. Use a qualified property appraiser who has met the educational requirements for General Certification pursuant to the Appraisal Qualifications Board of the Appraisal Foundation and who holds a designation from a recognized professional appraisal organization. The appraiser should be familiar with Oak Woodland land valuation and should follow best practice guidelines. The Director may consider alternate methods for valuing the land for limited scale projects.
2. Value of Trees. The International Society of Arboriculture (ISA) method for valuing trees may be used as an alternative to the method above (XX-11(D)(1)). Oak trees may be counted within the Oak Canopy proposed for removal and the amount calculated consistent with the ISA standards for valuing trees of different sizes.

XX-12 Oak Canopy Replacement Ratio

- A. A 2:1 replacement ratio shall apply to the removal of more than 10% and up to 50% of the total Oak Canopy. Also see Section XX-10(B).
- B. A 3:1 replacement ratio shall apply to removal that exceeds 50% and up to 70% of the total Oak Canopy. The 3:1 replacement ratio shall only apply to the portion of the removal that exceeds 50%.
- C. Replacement ratios for Oak Canopy removal exceeding 70%. Under Section XX-10(A)(3), removal of greater than 70% of Oak Canopy is required to be addressed under Section XX-5 Alternative Project and Design.
- D. Replanting within the project site does not count toward the replacement ratio requirements. Replanting outside of the project site and within a County approved conservation easement, mitigation bank or accredited land trust as specified in XX-11(A) through (C) qualifies for up to the total replacement.

Table XX-12-1 Oak Canopy Replacement Ratios by Percent Removal

	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%
Replacement	None	2:1 Replacement Ratio				3:1 Replacement Ratio		See Section XX-5 additional analysis		
Percent Range	0-10%	10.1% to 50%				50.1% to 70%		70.1% to 100%		

Note: the replacement ratios apply to the percentage removal of Oak Canopy within the range. As an example, at 28% canopy removal, the mitigation requirement is for the 18% that exceeds the 10% less-than-significant portion of the canopy removal.

XX-13 Equivalent Oak Canopy Replacement Offsite Planting Standards. Where a County approved conservation easement, mitigation bank or accredited land trust carries out the mitigation through replanting, the replanting shall be similar to the Oak Canopy removed or the following minimum

replacement planting standard whichever is greater. The minimum replacement standard shown below is applicable to the canopy replacement required in Section XX-12 and XX10(B). The minimum replacement planting standard is one or a combination of the following:

- A. Replacement Trees. 200 trees (saplings one-gallon or greater) per acre of replacement Oak Canopy.
- B. Replacement Acorns. 600 acorns per acre of replacement Oak Canopy.

XX-14 Site Preparation and Construction Impacts. Construction activities can result in temporary impacts to remaining Oak Woodland. The Department of Development Services shall prepare and maintain a manual, referred to as the "Oak Woodland Technical Manual", which shall contain the standard practices for temporary impacts on Oak Woodland including compaction, irrigation, dust control, pruning, fencing and avoidance of tree damage.

XX-15 Monitoring of Approved Projects. Compensation for staff time for monitoring of the compliance with this ordinance shall be at the hourly rate shown in the Board of Supervisors adopted Master Fee Schedule for the Planning Division.

XX-16 Approval Required Prior to Removal. Unless exempted or not applicable under this ordinance, no Oak Canopy or portion thereof shall be removed until all of the following has occurred:

- A. The project is approved by the Decision-Making Authority;
- B. Compliance with the applicable requirements of this chapter and as otherwise required in the conditions of approval is confirmed by the Department of Development Services; and
- C. The Department of Development Services has issued a Letter to Proceed.

XX-17 Subsequent Projects. Subsequent discretionary projects applied for on a Project Site that was previously approved under this ordinance are independently subject to the thresholds in this ordinance and the prior approval shall not be used as a means to cumulatively exceed the thresholds.

XX-18 Premature Removal. If the Decision-Making Authority has evidence and concludes that Oak Canopy was removed prior to development application approvals, then the requirements of this ordinance shall be applied for the Oak Canopy that was removed prior to approval of the development application. The removal of Oak Canopy up to five years prior to filing the development application is considered premature.