

**PRELIMINARY DRAFT (November 28, 2017)**

Butte County Oak Woodland Mitigation Ordinance

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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. Oak woodlands are scattered throughout the county, but are concentrated in the transition area between the lower valley and higher elevations of the county. Oak woodlands provide wildlife with nesting sites, cover and food. Oak woodlands are common locally and regionally; however, native oak trees and woodland habitats are declining statewide because of development and land management practices. Butte County's oak woodlands enhance the natural and scenic beauty of the area, provide forage and shelter for more than 300 species of wildlife, facilitate nutrient cycling, moderate temperature extremes, reduce soil erosion, sustain water quality and increase the monetary and ecological value of property. Oak woodlands and their associated forests

sequester and store atmospheric carbon in quantities that contribute to the health and well-being of the population of Butte County and the region. The California Oaks Foundation estimate that oak woodlands in Butte County account for 3,283,286 metric tons of sequestered carbon. Carbon sequestration is thought to play an important role in reducing greenhouse gasses in our atmosphere.

XX-3 Purpose. The purpose of this chapter is to provide protection for native oak woodlands and oak forests through the establishment of mitigation standards for oak canopy and oak tree removal on discretionary projects. It is the intent of this chapter to 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, significant specimen trees, tree groves and establishing an in-lieu payment for oak woodland canopy removal for discretionary projects. It is further the intent to satisfy the provisions of California Public Resources Code §21083.4 including other mitigation measures developed by the County. This chapter provides for the protection of trees on private property where discretionary applications have been filed by controlling tree removal while allowing for reasonable enjoyment of private property rights and property development for the following reasons:

- A. The county finds it necessary to preserve oak woodlands on private property in the interest of the public health, safety and welfare and to preserve scenic beauty.
- B. Oak woodlands provide soil stability, improve drainage conditions, provide habitat for wildlife and provide aesthetic beauty and screening for privacy.
- C. Oak woodlands are a vital part of a visually pleasing, healthy environment for the unincorporated area of this County.
- D. Oak woodlands are proven to sequester carbon which helps to reduce greenhouse gases and achieve local and state greenhouse gas reduction goals.
- E. Discretionary projects that are consistent with this section are considered to have less than significant impacts with respect to impacts to oak woodlands pursuant to the California Environmental Quality Act (CEQA).

XX-4 Applicability. The provisions of this ordinance shall apply to discretionary projects that include the following:

- A. Result in soil disturbance; and
- B. Result in removal of oak trees or oak woodlands.

XX-5 Definitions.

- A. 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.
- B. Dbh (Diameter at breast height). This is a measure of the diameter of a tree at 4.5 feet above grade.

- C. Project Site. A parcel or parcels of land on which a land development project is proposed.
- D. Oak canopy cover. The area directly under the live branches of the oak trees as a percent of a given unit of land.
- E. Oak stand. A group of similar trees growing in a contiguous pattern, having sufficiently diverse age-class distribution, composition and structure, and growing on a site of sufficiently uniform quality that it is distinguishable as a unit. Stands are a basic unit of vegetation in the landscape and do not have a set size.
- F. Oak tree. The native tree of the genus *Quercus*, of any age or size over 5 inches dbh.
- G. Oak woodland. Project site land where a majority of living trees are native oaks and with 10 percent or greater oak canopy cover. The 10 percent canopy cover standard applies to the individual stand of oaks and not to the entire project site; consequently, a project site may contain one or more oak woodland.

XX-6 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.
- 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.
- 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. Existing Structure Defensible Space/Fire Safe Measures – Oak tree removal in the 100-foot defensible space zone around an existing building or structure and fuel modification actions, inside of the 100-foot defensible space zone of an existing structure, unless otherwise directed by the applicable fire agency.
- G. Public Road and Public Utility Projects – Oak canopy removal necessary to complete County capital improvement 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. Lands owned by public utilities and used for administrative purposes or uses unrelated to the public service provided by the utility are not exempted under this provision. This exemption shall not apply to new roads or utility installation, or to internal circulation roads within new development.

XX-7 Approval required prior to removal. On applicable discretionary projects, unless exempted under this ordinance, no oak tree, oak woodland 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 is established and as otherwise required in the conditions of approval, and
- C. The Department of Development Services has issued a letter to proceed.

XX-8 Oak Woodland Evaluation Plan and Retention Standards.

A. In order to determine the extent of the impact on oak woodland, an Oak Woodland Evaluation Plan shall be required in conjunction with an application for the required discretionary entitlements for a development project. The Oak Woodland Evaluation Plan shall include but not limited to the identification of the location and total acreage of oak woodland on the project site, including oak canopy area, a description of representative samples of the species and sizes of all native oaks five inches or more dbh. The requirements of an Oak Woodland Evaluation Plan shall be specified in a manual prepared and maintained by the Department of Development Services.

1. The Zoning Administrator shall determine that the Oak Woodland Evaluation Plan is complete and distribute with the project environmental document.
2. The Decision-Making Authority shall include the Oak Woodland Evaluation Plan in its action on the project.

B. Retention Standards. After completion of the Oak Woodland Evaluation Plan. Replacement of oak woodlands shall not be required for projects that meet the following standards provided that no oak trees that is 24 inches or greater in dbh are removed:

1. Where the Oak Woodland Evaluation Plan as required in XX-8A shows that there are oak woodlands on the property that are less than 10 percent oak canopy cover.
2. For oak woodlands that have 10 percent or more of oak canopy cover:
  - a. Ten percent or less of the oak woodland canopy as identified in the Oak Woodland Evaluation Plan is removed (example: oak canopy cover is 50 percent, this may be reduced to 45 percent). In no circumstance can the canopy cover drop below 10 percent excepting as provided in the following subsection; or
  - b. Where the Oak Woodland Evaluation Plan demonstrates that the oak woodland contains limited and/or isolated trees and the oak woodland is of a degraded

condition, then up to 10 oak trees may be removed without a replacement requirement. Note that trees of 24 inches or greater dbh do not qualify for removal.

3. Oak Woodlands to remain on the property. The project shall be designed such that the oak woodlands that are to remain are of intact quality, along waterways and/or wildlife corridors including deer migration corridors, are connected with oak woodlands on adjacent lands including public lands or other factors determined by the Department of Development Services.

XX-9 Oak Woodland Replacement. For projects not meeting the retention standards in Section XX-8B, the project shall include one or a combination of the following at the Replacement Ratio specified in XX-10:

- A. Conservation Easement. Proof of executing a conservation easement subject to County approval/acceptance for the equivalent canopy area removed.
- B. Payment to mitigation bank. Proof of payment of equivalent canopy area within a County accepted mitigation bank.
- C. Payment to Land Trust. Proof of payment to an accredited land trust for equivalent canopy area removed.
- D. Payment to the State Oak Woodlands Conservation Fund. For up to 100 trees, a payment may be made to the State Oak Woodlands Conservation Fund. The calculation of the payment shall be submitted by a certified arborist or consult the International Society of Arboriculture standards for valuing trees of different sizes to the Department of Development Services for acceptance. Proof of payment shall be provided within six months of the Department acceptance of the payment amount calculation.
- E. On-site replanting does not count toward replacement. On-site replanting (within the project site) for Oak Woodland Replacement is not allowed except as follows:
  1. Exception. Projects processed under a specific plan, planned unit development or similar large-scale development may have opportunity for permanent dedicated open space, maintenance programs and funding mechanisms integrated into the project description where the County may consider alternative replacement programs wholly on-site, off-site or a combination.

XX-10 Replacement Ratio

- A. 1:1. For canopy removal of up to 50 percent removal of oak canopy area, the replacement ratio of canopy area shall be 1:1 replacement area to removal area.
- B. 2:1. For canopy removal exceeding 50 percent of the oak canopy area, the replacement ratio of canopy area shall be 2:1 replacement area to removal area exceeding 50 percent.

XX-11 Equivalent Canopy Area Replacement standards. The calculation of replacement area for oak woodlands canopy removed is one or a combination of the following:

- A. Replacement Trees. 200 trees (saplings or one-gallon) per acre of woodland removed
- B. Replacement Acorns. 600 acorns per acre of oak woodland canopy removed.

XX-12 Temporary Impacts. Construction or similar temporary activities can result in temporary impacts to oak woodlands. The Department of Development services shall prepare and maintain a manual containing the standard practices for temporary impacts on oak woodlands.

XX-13 Monitoring of Approved Projects. Staff time for monitoring of the compliance with this ordinance shall at the hourly rate under the Board of Supervisors adopted fee schedule for the Planning Division.

XX-14 Premature Removal of Oak Trees Prior to Development Approval. If the decision making authority has evidence and concludes that trees were removed prior to development application approvals, then the requirements of this ordinance shall be applied for those trees that were removed prior to approval of the development application. The decision-making authority may also require a penalty of replacement trees of up to 10 to 1 in addition to the ratios outlined in section XX-10. The removal of oak trees up to five years prior to filing the development application is considered premature. In determining the amount of the penalty, the decision-making authority shall consider the following factors:

- A. The seriousness and scope of the premature removal of oak trees;
- B. The relationship to project site design;
- C. The impact of the premature removal of oak trees on the community;
- D. Whether the property owner or applicant has previously been found responsible for premature removal of oak trees; and
- E. Any other factors.