

**DRAFT (July 2018)**

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 Applicability
- XX-6 Definitions
- XX-7 Exemptions
- XX-8 Approval Required Prior to Removal
- XX-9 Oak Woodland Evaluation Plan
- XX-10 Impacts
- XX-11 Oak Woodland Replacement
- XX-12 Replacement Ratio
- XX-13 Equivalent Canopy Area Replacement Standards
- XX-14 Temporary Impacts
- XX-15 Monitoring of Approved Projects
- XX-16 Premature Removal
- XX-17 Alternate Project Design and Review
  
- 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 facilitate nutrient cycling, moderate temperature extremes, reduce soil erosion, sustain water quality and increase the ecological and monetary value of property. The California Oaks Foundation estimate 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 parkland visitors. Oak woodlands are common locally and regionally; however, native oak trees and woodland habitats are declining statewide because of development and land management practices.

XX-3 Purpose. The purpose of this chapter is to provide protection for native oak woodlands through the establishment of a threshold of significance and 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 and establishing an in-lieu payment methodology 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 public health, safety and welfare.
- B. Oak woodlands provide habitat for over 300 vertebrate species and more than 5,000 species of insects.
- C. Oak woodlands stabilize the soil, improve drainage conditions, provide aesthetic beauty and screening for privacy.
- D. Provides a clear, defensible, feasible, and reasonable approach to managing impacts to oak trees and 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 oaks and oak woodlands pursuant to the California Environmental Quality Act (CEQA).

XX-5 Applicability. The provisions of this ordinance shall apply to discretionary projects that result in the removal of oak trees or oak woodlands including disturbance to the Critical Root Zone (CRZ). The provisions of this ordinance shall not apply to ministerial actions including but not limited to the following:

- A. Hazardous Tree Removal – The removal of trees with structural defects that indicate pending failure as determined by a qualified professional.
- B. 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.
- C. Vegetation removal required to comply with defensible space requirements set forth in Public Resources Code Section 4290 (Fire Safety Regulations).
- D. 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 ;
- E. Requirements under Butte County Code Chapter 38A (Fire Prevention and Protection).
- F. 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. 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 are not exempted under this provision.
2. This exemption shall not apply to new roads or utility installation, or to internal circulation roads within new development.

XX-6 Definitions.

- A. Canopy Cover: The area directly under the live branches of oak trees.
- B. Critical Root Zone (CRZ): A circle on the ground around a tree that generally corresponds to the drip line of the tree. An equation is used to determine the CRZ of a tree. The CRZ is especially sensitive to construction impacts such as compaction. Disturbance within the CRZ has potential to severely damage or kill oak trees and woodlands.
- C. 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
- D. Diameter at Breast Height (DBH): The diameter of the perimeter tree trunk at 54 inches (4.5 feet) above natural grade level.
- E. Discretionary Project: A project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity.
- F. 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.
- G. Oak tree: means 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 Section 4526, and that is 5 inches or more in diameter at breast height.
- H. Oak Woodland: For the purposes of this ordinance, an oak woodland is considered to be any group of trees that contain any oak tree or trees.
- I. Oak Woodland Corridors: Strips of habitat that connect large patches of oak woodland and have a high ecological value. For the purposes of this ordinance, the term "connections" is used interchangeably with "corridors".
- J. Oak Woodland Condition. A description of the condition of oak woodland prepared by a qualified professional based on a variety of factors. Methodology to determine this includes but is 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. Examples of an Intact woodland may include large to moderately (even relatively small parcels may qualify) sized private ranches; expansive oak woodlands zoned for agriculture, open space, scenic corridors, etc.

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 that has no trees or very few 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 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.

K. Oak Woodland Technical Manual: The Oak Woodland Technical Manual is a companion document to the Butte County Oak Woodland Ordinance that outlines the process of managing construction projects on oak woodlands in detail and implementing other portions of the Ordinance.

L. Project Site: A parcel or parcels of land on which a land development project is proposed.

M. Qualified Professional: A qualified professional is either:

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.
2. 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-7 Exemptions. The following types of actions, when they include a discretionary action, 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.

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

XX-8 Approval Required Prior to Removal. On applicable discretionary projects, unless exempted or

not applicable 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-9 Oak Woodland Evaluation Plan.

A. An Oak Woodlands Evaluation Plan shall be required in conjunction with an application for the required discretionary entitlements for a development project to document the proposed extent of impact. The Oak Woodlands 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 overall condition including intact, moderately degraded and severely degraded
- 3. Measurement of total oak canopy area; location and area of proposed oak canopy removal and calculation of percentage removal.
- 4. Oak woodlands to remain. The project shall be designed such that the oak woodlands that are to remain are of intact condition; along waterways and/or wildlife corridors including deer migration corridors; are connected with oak woodlands on adjacent lands including public lands; and, other factors determined by the Department of Development Services.
- 5. The location of required tree protection fencing and signage
- 6. Proposed replacement consistent with the requirements of this ordinance.

B. The Oak Woodlands Evaluation Plan shall be prepared by a qualified professional. Exceptions to this 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 include the Oak Woodland Evaluation Plan in its action on the project.

XX-10 Impacts. Based up on the information in the Oak Woodland Evaluation Plan, the following thresholds are applicable.

A. Less than Significant impact, no replacement required. Replacement of oak woodlands shall not be required for projects that meet the following standards provided that no oak trees that are 24 inches or greater in DBH are removed:

1. Ten percent or less of the oak woodland canopy as identified in the Oak Woodland Evaluation Plan is removed.

a. If the Evaluation Plan demonstrates that the oak woodland is of a degraded condition, then up to an additional 10 oak trees may be removed (above 10%) without a replacement requirement. A qualified professional is to determine whether a woodland is degraded.

1-2.

2.3. Impacts greater than ten percent. If the Evaluation Plan demonstrates that the oak woodland is of a degraded condition, then up to 10 oak trees may be removed without a replacement requirement. A qualified professional is to determine whether a woodland is degraded.

**Commented [KS1]:** This portion of the Less Than Significant impact category seems to allow for impacts over 10% while still being LTS. Consider revising with the suggestion above.

B. Less than significant impact, replacement required. Replacement of Oak Woodlands shall be required for removal of over ten percent and up to 70 percent total oak canopy cover, excepting as provided in XX-10(A)(2.1a).

C. Significant impact, additional analysis required. The total removal of oak canopy shall not exceed 70 percent of the oak canopy on the project site excepting as provided in Section XX-10(A)(2). (See section XX-17 Alternative Project and Design).

XX-11 Oak Woodland Replacement. The replacement of oak woodlands shall take place within Butte County. Replacement trees shall be of a similar species mix, density, and viability as would be found in a naturally occurring and healthy oak woodland. Priority replacement shall be of the type found on the project site. The project shall include one or a combination of the following measures for the equivalent oak canopy area removed at the replacement ratio specified in XX-12 to the satisfaction of the Zoning Administrator:

**Commented [KS2]:** The issue of mitigating for canopy area units vs land conservation units should be resolved throughout.

A. Conservation Easement: Proof of executing a conservation easement for the equivalent canopy area removed.

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. A payment may be made to the State Oak Woodlands Conservation Fund in-lieu of replacement 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 Department of Development Services. Proof of payment shall be provided within six months of the Department acceptance of the payment amount calculation.

1. For the removal of up to 100 trees. The calculation of the payment shall be submitted to the Department of Development Services by an International Society of Arboriculture (ISA) certified Arborist with experience in valuing oak trees. Valuation shall be consistent with the ISA standards for valuing trees of different sizes.

2. Calculate the value of the land of the area where the trees are 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.

E. Replanting and Replacement. On-site replanting does not count toward replacement. Replanting within a conservation easement, mitigation bank or land trust does qualify for replacement.

**Commented [KS3]:** Just a recommendation on a title for this item and allowing the rules for the category to follow.

XX-12 Replacement Ratio

A. A 1:1 replacement ratio shall apply to the removal of more than 10% and up to 50% of the total oak canopy.

B. A 2:1 replacement ratio shall apply to removal that exceeds 50% and up to 70% of the total oak canopy. The 2:1 replacement ratio shall only apply to the portion of the removal that exceeds 50%.

C. Under XX-10(C), removal of greater than 70% of oak canopy is required to be addressed under XX-17 Alternative Project and Design.

*(Concept for graphic showing the percentage of removal and triggers in ordinance)*

	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%
Replacement	None	1:1 Replacement Ratio			2:1 Replacement Ratio		See Section XX-17			
Percent Range	0-10%	10.1% to 50%			50.1% to 70%		70.1% to 100%			

XX-13 Equivalent Canopy Area Replacement Standards. Canopy replacement refers to planting activities as part of mitigations for project impacts on oak woodlands. For replacement planting offsite, the calculation of replacement area for oak woodlands canopy removed is one or a combination of the following:

A. Replacement Trees. 200 trees (saplings one-gallon or greater) per acre of woodland canopy removed.

B. Replacement Acorns. 600 acorns per acre of oak woodland canopy removed.

XX-14 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, referred to as the "Oak Woodlands Technical Manual", which shall contain the standard practices for temporary impacts on oak woodlands.

XX-15 Monitoring of Approved Projects. Staff time for monitoring of the compliance with this ordinance shall be the hourly rate under the Board of Supervisors adopted fee schedule for the Planning Division.

XX-16 Premature Removal: 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-12. 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.

XX-17 Alternate Project Design and Review. Projects that do not meet the requirements of this ordinance, except Section XX-16 Premature Removal, may seek propose an alternate approach. Any alternate project proposal shall include standard methods of evaluation, impact identification and mitigation strategies. 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.