

CHAPTER 17.101

OAK WOODLAND MITIGATION ORDINANCE

Calaveras County contains four of the state's five identified hardwood rangeland habitat types: valley oak woodlands, blue oak/foothill pine woodlands, blue oak woodlands, and montane hardwood forests. Oak woodlands play a critical role in protecting soils from erosion and land sliding, regulating water flow in watersheds, and maintaining water quality in streams and rivers. Oak woodlands also have higher levels of biodiversity than virtually any other terrestrial ecosystem in California. For those reasons, the County of Calaveras must do its part to protect the species by passing an Oak Woodlands Mitigation Ordinance.

The primary purpose of the Oak Woodlands Mitigation Ordinance is to mitigate significant direct and cumulative impacts to oak woodlands and to address pre-development removal of oaks in conjunction with discretionary projects, which are projects subject to approval by the County Planning Commission and the County Board of Supervisors and are subject to the California Environmental Quality Act.

17.101.010 General Plan Policies Regarding Oak Woodlands Mitigation

- A. Calaveras County General Plan Policy COS 3.5 encourages “preservation of oak woodlands in accordance with state law.”
- B. Calaveras County General Plan Policy COS 3.6 provides that conservation easements may be an acceptable means to protect oak woodlands from new development.
- C. Calaveras County General Plan Policy COS 3.9 seeks to (p)reserve and enhance healthy woodlands consistent with state law, reasonable development, and fire safety considerations.
- D. Calaveras County General Plan Implementation Measure COS-4D directs the Planning Department to implement Policies COS 3.5, 3.6, and 3.9 by adopting the statutory oak woodland mitigation measures described in Public Resources Code §21083.4(b)(1)-(3) as well as local mitigation measures pursuant to Public Resources Code §21083.4(b)(4).
- E. The purpose of Implementation measure COS-4D is to facilitate the environmental review process relative to mitigating significant direct and cumulative impacts to oak woodlands in conjunction with discretionary project approval and to address pre-development removal of oaks.
- F. The purpose of this Chapter is to implement General Plan Implementation Measure COS-4D by adopting herein the statutory and local oak mitigation measures that comply with Public Resources Code §21083.4(b)(1)-(4).

17.101.020 Protection of Oak Trees Before, During, and After Construction Activity

- A. No oak woodlands shall be removed by an applicant prior to an application for a discretionary permit through the County. Violation of this clause will result in assessment of

finest to the developer through the project's conditions of approval and mitigation measures, subject to the appropriate sections of this ordinance.

B. For all oak trees that will be retained within a project area, the following protective measures shall be implemented prior to, during, and after any construction activities:

1. Establish a Tree Protection Zone (TPZ). The Tree Protection Zone is defined as the surface area surrounding a tree, extending outward 1.5 times the distance between the trunk and the drip line. Alternatively, a radius of 1.5 feet per inch of trunk diameter may be used to delineate the TPZ. This can be applied to individual trees or connected oak woodlands. A smaller TPZ may be established per the discretion of the qualified professional.
2. Fence off the Tree Protection Zone. Brightly colored construction fencing shall be placed around the outermost edge of the TPZ on all sides that may be subject to construction activity. The fence shall remain in place until all construction activities are completed.
3. No construction activities shall be conducted in the TPZ, including but not limited to trenching, paving, driving, storage or parking of any equipment or vehicles, storage of construction materials, or dumping of any trash, soils, fuels, or liquids.
4. The existing grade shall be maintained around protected trees to the maximum extent possible. Retaining walls shall be utilized when necessary and no fill shall be allowed within the TPZ.
5. If any construction activity must occur within the TPZ, and the qualified professional deems it acceptable, it may be performed under their supervision. All directions provided by the qualified professional shall be implemented.
6. No plantings or irrigation shall occur within the drip line of any retained oak tree.
7. Pruning work, if required, shall be done in accordance with current ISA (International Society of Arboriculture) Best Management Practices. This also applies to root pruning.
8. Monitoring. The qualified professional shall do periodic assessments of the retained trees throughout the construction process. The frequency and duration of the monitoring, including post-construction monitoring, shall be left to the discretion of the qualified professional. The developer is responsible for associated monitoring expenses.
9. A copy of "Living Among the Oaks: A Management Guide For Woodland Owners and Managers", UCANR Publication #21538, or comparable educational brochure, shall be disbursed by the County Planning Department with all appropriate project permits.
<https://anrcatalog.ucanr.edu/pdf/21538.pdf>
10. Trees that are retained in a project and are adequately protected according to the above guidelines shall not require mitigation.

17.101.030 Mitigation Options

1. All mitigation measures must be implemented in real time.
2. For all discretionary projects that are not exempt from the California Environmental Quality Act (CEQA), the Planning Department shall determine whether the proposed project may result in a conversion of oak woodlands that will have a significant effect on the environment.
3. If the Planning Department determines that a potentially significant conversion of oak woodlands may result, the Planning Department shall require, as a condition of project approval, one or more of the following mitigation measures to mitigate the conversion:
 - a. The creation of an oak woodland conservation easement as described in the Oak Woodlands Conservation Act (Article 3.5 of Chapter 4 of Division 2 of the California Fish and Wildlife Code).
 - b. The planting of an appropriate number of trees, including a requirement that, for a period of at least 10 years, the project applicant shall maintain the plantings and replace dead or diseased trees. This mitigation measure may not be used to fulfill more than one-fourth (1/4) of the mitigation requirement for the project. This mitigation measure may be used to restore former oak woodlands.
 - c. The contribution of funds to the Oak Woodlands Conservation Fund, as established under California Fish and Wildlife Code § 1363(a), for the purpose of purchasing oak woodlands conservation easements as specified in Fish and Wildlife Code §1363(d)(1) and the guidelines and criteria of the Wildlife Conservation Board. A project applicant that contributes funds under this paragraph shall not receive a grant from the Oak Woodlands Conservation Fund as part of the mitigation for the project.
 - d. Alternatively, if the County will receive the money for compensation identified in Section 17.101.030(3)(c), the county shall use the funds in accordance with its established Oak Woodland Fund policies and procedures.
 - e. Impacts to oak resources on a property subject to a discretionary approval shall be addressed in the discretionary application review process and shall be incorporated as conditions of project approval.

4. Oak Woodlands Removal

If identified Oak Woodlands will be impacted as part of the permit, the applicant shall mitigate for loss of oak woodlands. Mitigation shall occur at the ratio identified in Table 3 (Oak Woodland Mitigation Ratios) using one or more of the following options:

a. In-lieu Fee payment based on the percent of on-site Oak Woodland impacted by the development to be either used by the County to acquire off-site deed restrictions and/or conservation easements or to be given by the County to a land conservation organization to acquire off-site deed restrictions and/or conservation easements.

b. Replacement planting within an area on-site for up to 50 percent of the total Oak Woodland mitigation requirement. This area shall be subject to a Deed Restriction or Conservation Easement.

c. Replacement planting within an area off-site for up to 50 percent of the total Oak Woodland mitigation requirement. This area shall be subject to a Deed Restriction or Conservation Easement.

d. A combination of options a through c above.

e. If oak resources are identified for on-site retention as part of a discretionary project, a bond or other security instrument in an amount not less than ten thousand dollars (\$10,000.00) shall be required as a condition of issuance of the discretionary permit and/or authorization to protect any Individual Native Oak Trees and/or Oak Woodlands identified for preservation during the construction period. The form and amount of the security instrument shall be specified by the permit issuing body and approved by County Counsel. No grading or other on-site work shall be permitted until the security is posted.

f. If oak tree replacement planting is proposed for a discretionary project, the applicant shall post a bond or other security instrument in an amount equal to the current value of required replacement tree(s) and/or acorns, plus the cost of maintenance and monitoring, as determined by a Qualified Professional. The security instrument shall be for a term of ten years from the date of issuance of an oak tree/oak woodland removal permit, or from the date of the last replacement tree(s) planted as mitigation for the project, whichever is greater. The amount of the security instrument shall be specified by the permit issuing body and approved by County Counsel. No grading or other on-site work shall be permitted until the security is posted.

5. Individual Native Oak Tree/Heritage Tree Removal. If Individual Native Oak Trees, including Heritage Trees, will be impacted as part of the permit, the applicant shall mitigate for loss of individual tree(s) by one or more of the following options:

a. In-lieu Fee payment for individual oak tree removal to be either used by the County to plant oak trees or to be given by the County to a land conservation organization to plant oak trees.

b. Replacement planting on-site subject to a Deed Restriction or Conservation Easement and utilizing the replacement tree sizes and quantities shown in Table 4 (Oak Tree Replacement Quantities).

c. Replacement planting off-site within an area subject to a Conservation Easement or acquisition in fee title by a land conservation organization utilizing the replanting sizes and quantities specified in Table 4.

d. A combination of options a through c above.

Table 3
Oak Woodland Mitigation Ratios

Percent of Oak Woodland Impact – Canopy Cover	Oak Woodland Mitigation Ratio
0 – 50%	1:1
50.1% - 75%	1.5:1
75.1 – 100%	2:1

Table 4
Oak Tree Replacement Quantities

Replacement Tree Size	Number of Trees Required Per Inch of Trunk Diameter Removed
Acorn	3
1-gallon/Tree Pot	2
5-gallon	1.5
15-gallon	1

17.101.040 Exemptions

The following are exempt from the requirements of this Chapter:

- 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 this section.
- B. Affordable housing projects for lower income households, as defined pursuant to California Health and Safety Code §50079.5, that are located within an urbanized area, or within a sphere of influence as defined pursuant to Government Code § 56076.
- C. Conversion of oak woodlands on agricultural land that includes land that is used to produce or process plant and animal products for commercial purposes.
- D. Projects undertaken pursuant to Public Resources Code § 21080.5

17.101.050 Definitions

For the purposes of this Chapter, the following terms are defined as follows:

- A. **"Oak"** shall have the same meaning as it does in Public Resources Code §21083.4(a), which, as this statute is currently drafted, 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 Public Resources Code § 4526, and that is five (5) inches or more in diameter at breast height.
- B. "Heritage Trees" shall refer to any live native oak tree of the genus Quercus (including blue oak (Quercus douglasii), valley oak (Quercus lobata), California black oak (Quercus kelloggii), interior live oak (Quercus wislizeni), canyon live oak (Quercus chrysolepis), Oregon oak (Quercus garryana), oracle oak (Quercus x morehus), or hybrids thereof) with a single main trunk measuring 36 inches dbh or greater, or with a multiple trunk with an aggregate trunk diameter measuring 36 inches or greater.
- C. **"Oak woodlands"** shall have the same meaning as it does in California Fish and Wildlife Code §1361(h), which, as this statute is currently drafted, means "an oak stand with a greater than 10 percent canopy cover or that may have supported greater than 10 percent canopy cover."
- D. **"Drip Line" shall mean** the area directly located under the outer circumference of the tree branches.
- E. **Qualified Professional**: An arborist certified by the International Society of Arboriculture (ISA), a qualified wildlife biologist, or a Registered Professional Forester (RPF), or other qualified professionals in the subject matter, as determined by the Director of Planning.
- F. **Qualified Wildlife Biologist**: 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.
- G. **Registered Professional Forester (RPF)**: A 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 understand forest growth, development, and regeneration; soils, geology, and hydrology; wildlife and fisheries biology, and other forest resources. RPFs are also trained in fire management and, if involved in timber harvesting operations, have expertise in both forest road design and application of the various methods used to harvest.
- H. **Oak Resources**: Collectively, Oak Woodlands, Individual Native Oak Trees, and Heritage Trees.
- I. **Oak Resources Technical Report**: A stand-alone report prepared by a Qualified Professional containing information, documents, and formatting.

- J. **Diameter at Breast Height (dbh):** The measurement of the diameter of a tree in inches, specifically four (4) feet six (6) inches above natural grade on the uphill side of the tree.
- K. **In-lieu Fee:** Cash payments that may be paid into the County's Oak Woodland Conservation Fund by an owner or developer as a substitute for a Deed Restriction, Conservation Easement, or replacement planting. In-lieu fee amounts for Individual Native Oak Trees and Oak Woodlands may be adjusted by the County over time to reflect changes in land values, labor costs, and nursery stock costs.
- L. **Tree Protection Zone (TPZ):** The Tree Protection Zone is the surface area surrounding a tree, extending outward 1.5 times the distance between the trunk and the drip line. Alternatively, a radius of 1.5 feet per inch of trunk diameter may be used to delineate the TPZ.
- M. **Conservation Easement:** An easement granting a right or interest in real property that is appropriate to retaining land or water areas predominately in their natural, scenic, open, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; or maintaining existing land uses.

For Conservation Easement dedication (on-site) or acquisition (off-site) as mitigation for Oak Woodlands impacts, a Conservation Easement to the satisfaction of the Director of Planning shall be required to ensure the long-term maintenance and preservation of Oak Woodlands. The Conservation Easement shall provide for the preservation of the designated area in perpetuity and shall include such terms, conditions, and financial endowments for monitoring and management deemed necessary by the County to ensure the long-term preservation of the Oak Woodlands within the easement area. The Conservation Easement shall be in favor of the County or a County-approved conservation organization.