

CHAPTER 17.XX OAK WOODLAND MITIGATION ORDINANCE

17.XX.010 Purpose

- 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 is 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.XX.020 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 5 inches or more in diameter at breast height.
- B. “Oak woodlands” shall have the same meaning as it does in California Fish and ~~Game-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 ~~historically~~-supported greater than 10 percent canopy cover.”
- C. Qualified Professional: An arborist certified by the International Society of Arboriculture (ISA), a qualified wildlife biologist, or a Registered Professional Forester (RPF), or other professionals licensed in the subject matter, as determined by the Director of Planning.
- D. 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.

- E. 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.
- F. Oak Tree Removal Permit: A permit issued by the County allowing removal of individual native oak trees not located within an oak woodland. An oak resources technical report shall accompany any tree removal permit application submitted to the County. Conditions of approval may be imposed on the permit. If a tree removal permit application is denied, the County shall provide written notification, including the reasons for denial, to the applicant. Oak tree removal permit processing and approval will be conducted concurrently with the environmental review process for discretionary projects or concurrent with other permit review and processing for ministerial projects (e.g., building permits).
- G. Oak Resources: Collectively, Oak Woodlands, Individual Native Oak Trees, and Heritage Trees.
- H. Oak Resources Technical Report: A stand-alone report prepared by a Qualified Professional containing information, documents, and formatting.
- I. Heritage Trees: Any live native oak tree of the genus Quercus (including blue oak (Quercus douglasii), valley oak (Quercus /obata), 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.
- 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. In the case of trees with multiple trunks, the diameter of all stems (trunks) at breast height shall be combined to calculate the diameter at breast height 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, Heritage Trees, and Oak Woodlands as presented in the ORMP may be adjusted by the County over time to reflect changes in land values, labor costs, and nursery stock costs.
- L. 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.
- E. For Conservation Easement dedication (on-site) or acquisition (off-site) as mitigation for Oak Woodlands impacts, a Conservation Easement to the satisfaction of County Counsel and 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

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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.

17.XX.030 Mitigation Options - All mitigation measures must be implemented in real time.

A. 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.

B. 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:

1. The creation of an oak woodland conservation easement as described in the Oak Woodlands Conservation Act (Article 3.4 of Chapter 4 of Division 2 of the California Fish and Game Code).
2. The planting of an appropriate number of trees, including a requirement that, for a period of at least seven (7) years (perhaps 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-half (1/2) of the mitigation requirement for the project. This mitigation measure may be used to restore former oak woodlands.
3. The contribution of funds to the Oak Woodlands Conservation Fund, as established under California Fish and ~~Game-Wildlife~~ Code § 1363(a), for the purpose of purchasing oak woodlands conservation easements as specified in Fish and ~~Game-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.

4. Alternatively, if the County will receive the money for compensation identified in Section 17.XX.030 (B) (3), rather than the WCB the county shall:

a. Collect a fee for stewardship including compliance and resource monitoring, which range from 5-10% of the total.

b. The county shall develop and continually update (every 5 years at least) a land acquisition plan that is approved by the County Board of Supervisors.

c. The county shall establish an independent spending authority to provide checks and balances to protect the public interest.

d. County legal counsel shall be responsible for ensuring that the public trust interests are protected through CEQA and for every negotiated conservation easement.

e. The county will be responsible for compliance and resource monitoring of any conservation easements that they hold.

f. The funds collected as mitigation shall not be transferred to a private company or non-profit without public oversight.

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g. The time lag between collecting the fee and purchasing land as compensation should be minimized, while still allowing for enough funds to be accumulated to implement a beneficial acquisition.

h. If funds are held for a period of time, interest would be accrued to offset expected increases in land values.

45. 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. Impact to oak resources on a ministerial project with a minimum footprint of 100,000 square feet shall be addressed at the building permit issuance stage or at the approval of the final subdivision map, if applicable.

Oak Woodlands Removal. If identified Oak Woodlands will be impacted as part of the permit identified in Section 17.xx.030(5), 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 as specified in the ORM-P:

a. In-lieu Fee payment based on the percent of on-site Oak Woodland impacted by the development as shown in Table 5 (Oak Woodland In-Lieu Fee) in the ORMP 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. Off-site Deed Restriction or Conservation Easement acquisition for purposes of off-site oak woodland conservation consistent with Chapter 4.0 (Priority Conservation Areas) of the ORMP.~~

eb. 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.

ec. 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.

ed. A combination of options a through d above.

e. If oak resources are identified for on-site retention as part of a discretionary or ministerial 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 or ministerial project, the applicant shall post a bond or other security instrument in an amount equal to the

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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 either seven years or 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.

6. 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 as specified in the ORMP:

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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 ~~as shown in Table 6 (Individual Oak Tree In Lieu Fee) in the ORMP.~~

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) in the ORMP. ~~On-site replacement planting shall be consistent with Section 2.4 (Replacement Planting Guidelines) of the ORMP.~~

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.

C. For ministerial projects that are exempt from CEQA with a building footprint of over 100,000 square feet, the Planning Department shall determine whether the proposed project may result in a conversion of oak woodlands.

D. If the Planning Department determines that a potentially significant conversion of oak woodlands may result, the Planning Department shall require, as a condition of issuance of a building permit, or final subdivision map, one or more of the following mitigation measures identified in Section 17.xx.030(B)(1-6) above, to mitigate the conversion:

Table 3 (ORMP)

Oak Woodland Mitigation Ratios

<u>Percent of Oak Woodland Impact – Canopy Cover</u>	<u>Oak Woodland Mitigation Ratio</u>
<u>0 – 5%</u>	<u>1:1</u>
<u>50.1% - 75%</u>	<u>1.5:1</u>
<u>75.1 – 100%</u>	<u>2:1</u>

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Table 3 (ORMP)
Oak Woodland Mitigation Ratios

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

Table 4 (ORMP)

Oak Tree Replacement Quantities – Replace with oaks of same species

<u>Replacement Tree Size</u>	<u>Number of Trees Required Per Inch of Trunk Diameter Removed</u>
<u>Acorn</u>	<u>3</u>
<u>1-gallon/Tree Pot 4</u>	<u>2</u>
<u>5-gallon</u>	<u>1.5</u>
<u>15-gallon</u>	<u>1</u>

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Table 4 (ORMP)
Oak Tree Replacement Quantities

Replacement Tree Size	Number of Trees Required Per Inch of Trunk Diameter Removed
Acorn	3
1-gallon/TreePot 4	2
5-gallon	1.5
15-gallon	1

17.XX.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