

## Chapter 17.72

### Oak Woodland Conservation

*Draft 3/10/08*

#### Sections:

- 17.72.010 Purpose and Intent.
- 17.72.020 Applications.
- 17.72.030 Exemptions.
- 17.72.040 Exceptions.
- 17.72.050 Oak Woodland Conservation Fee in Lieu of Mitigation.
- 17.72.060 On-site Mitigation.
- 17.72.070 Off site Mitigation or Fee Payment in Lieu of on-site conservation and replacement of oak canopy.
- 17.72.080 Oak Woodlands Conservation Fee; Formula.
- 17.72.090 Annual Fee Review.
- 17.72.100 Time of Fee Payment.
- 17.72.110 Accounting.
- 17.72.120 Handling.
- 17.72.130 Determination of Retention of Oak Tree Corridors within an Oak Tree Stand.
- 17.72.140 Appeals.
- 17.72.150 Definitions.

#### 17.72.010 Purpose and Intent.

The purpose of this chapter is to provide protection for native oak woodlands through the establishment of development project mitigation standards for oak canopy removal. It is the intent of this chapter to implement Policy 7.4.4.4 of the General Plan by setting forth standards for oak canopy retention and establishing a mitigation in-lieu fee for oak canopy removal for development projects that will remove oak canopy. It is further the intent to satisfy the provisions of California Public Resources Code §21083.4.

#### 17.72.020 Applications.

The provisions of this ordinance shall apply to development projects that meet all of the following criteria:

- A. Result in soil disturbance; and
- B. Remove oak canopy in oak woodlands, as defined in this ordinance; and
- C. Located on parcels that meet one of the following criteria:

1. Less than or equal to one acre with at least 10% total oak woodland canopy cover; or
2. Greater than one acre with at least 1% oak woodland canopy cover.

17.72.030 Exemptions.

The following types of development are exempt from this ordinance:

- A. Agricultural Cultivation – the removal of native vegetation, including oaks, for the purposes of producing or processing plant and animal products or the preparation of land for this purpose.
- B. 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 and outside of the 100-foot defensible space zone of an existing structure.
- C. 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 Director of Transportation shall have the authority to make the determination when an existing alignment restricts alternatives that would otherwise avoid oak canopy loss.

This exemption shall not apply to new roads or utility installation, or to internal circulation roads within new development.

17.72.040 Exceptions.

Exceptions to the provisions of this chapter shall apply to the following new development projects as described below.

- A. Affordable Housing – Development projects that propose a minimum of 10 percent of the dwelling units as income restricted affordable units, as defined by California Health and Safety Code §50052.5, 50053, and 50093, shall be granted a reduction in the amount of oak canopy that is required to be protected, or the amount of conservation in-lieu fee to be paid, as set forth in Table 1, below:

**Table 1: Affordable Housing Reduction**

<b>Affordable Housing Type (Household Income Level)</b>	<b>% Reduction of Oak Canopy Mitigation for portion of project that is income restricted</b>
Very Low	200%
Lower	100%
Moderate	50%

Example: A project proposes 25% of the units to be affordable in the lower income category. The amount of on-site retention or Conservation Fund In-Lieu Fee may be reduced by 25%. A moderate income project that provides all units at that income level may reduce the retention and/or fee by 50%. A project with 20% very low income units would receive a 40% reduction.

- B. Fire defensible space area for new development projects – The 100-foot defensible space zone, and fuels modification necessary for implementation of a Fire Safe Plan, is part of the project footprint and oak canopy removed shall be counted in the project total oak canopy removal. Any oak trees that can be safely retained, even if separated from the oak woodland, will count as oak canopy retained.

Because of the ability to safely retain some of the oak canopy within the defensible space, when calculating oak tree canopy loss with new subdivisions and parcel maps, an applicant may assume 20% retention of the oak tree canopy within the defensible space area around building pads or sites.

17.72.050 Oak Woodland Conservation Fee in Lieu of Mitigation. There is hereby established an Oak Woodland Mitigation requirement for removal of oak canopy due to a development project, comprised of on-site and off-site mitigation standards and an oak woodland conservation fee in lieu of such mitigation. The amounts of the fee shall be established by resolution of the Board of Supervisors and shall be based on a formula which includes sufficient revenue to acquire conservation easements within Priority Conservation Areas, manage said lands for the purpose of conserving oak woodland habitat, and the monitoring and reporting on the success of the program.

17.72.060 On-site Mitigation. Oak canopy removed as a result of a development project shall be mitigated consistent with the canopy retention and replanting/replacement requirements, Mitigation Option A, of the Oak Woodlands Management Plan, adopted by resolution of the Board of Supervisors. The canopy retention requirements from the 2004 General Plan Policy 7.4.4.4 are provided in Table 2.

**Table 2: Canopy Retention Requirements from Policy 7.4.4.4**

<b>Percent Existing Canopy Cover</b>	<b>Canopy Cover to be Retained</b>
80 – 100	60% of existing canopy cover
60 – 79	70% of existing canopy cover
40 – 69	80% of existing canopy cover
20 – 39	85% of existing canopy cover
10 – 19	90% of existing canopy cover
1 – 9 for parcels > 1 acre	90% of existing canopy cover

17.72.070 Off-site Mitigation or Fee Payment in Lieu of on-site conservation and replacement of oak canopy. In lieu of on-site conservation and replacement of oak canopy as set forth in §17.72.060, an applicant for a development project shall mitigate impacts by exercising one of the following two options:

- A. Pay the appropriate oak woodland conservation fee; or
- B. Acquire and offer to dedicate to the County a conservation easement for off-site oak woodland at a 2:1 ratio of conservation easement area for oak tree canopy area removed in excess of that required to be retained as set forth in §17.72.060.

17.72.080 Oak Woodlands Conservation Fee; Formula. The amount of the fee is based on the following formula: For each acre, or fraction thereof, of oak canopy removed as a result of a development project, in excess of the canopy retention requirements set forth in §17.72.060, the applicant shall pay into the Oak Woodlands Conservation Fund an amount two times the per acre fee, as set forth by resolution of the Board of Supervisors establishing the actual fee amount. When an applicant retains the required amount of oak canopy as set forth in §17.72.060, and elects to pay the fee in lieu of replanting oak trees on-site, the amount for the replacement in-lieu fee shall be equal to the fee amount per acre.

17.72.090 Annual Fee Review. The fee amounts shall be reviewed on an annual basis by March 31 of each year and adjusted as necessary to insure that the anticipated fees are no more and no less than required for the purpose for which they are collected. The first fee adjustment study shall occur at least 12 months after adoption of this ordinance, thence every March 31 thereafter.

The acquisition portion of the fee shall be adjusted annually by the ten year average change in assessed valuation of County land as recorded by the County Assessor using the Property System Use Codes. Land uses excluded from the Oak Woodland Management Plan shall not be included in the assessed valuation determination.

The management and monitoring portions of the fee shall be adjusted annually by the ten year average change in the mean wage rate for forestry and conservation related

employment for the state of California as reported by the Federal Bureau of Labor Statistics.

17.72.100 Time of Fee Payment. The fee is due at the time of issuance of first permit.

17.72.110 Accounting. The County shall maintain a separate oak woodland conservation fund account for fees collected, and provide an accounting by March 31 of each year. Any person may request an audit of the fund. In addition, the County shall make findings each fifth year following the first deposit into the fund with respect to unexpended portions of the fund, in which the County identifies the purpose to which the fee is to put and demonstrates a reasonable relationship between the fee and the purpose for which it is charged.

17.72.120 Handling. The fee shall be collected by the County Development Services Department. The County Treasurer shall maintain the account. The County Development Services Department shall make recommendations to the Board of Supervisors regarding the expenditures of funds from the account to acquire, monitor, and maintain designated oak woodland conservation land.

17.72.130 Appeals. An appeal from a decision made pursuant to this Ordinance shall be in accordance with the appeals procedures set forth in Chapter 17.08 of the County ordinance code.

17.72.140 Definitions. Whenever the following words are used in this chapter, they shall have the meaning herein ascribed to them.

- A. "California Environmental Quality Act" or "CEQA" means those statutes set forth at California Public Resources Code section 21000 et seq. The "CEQA Guidelines" are set forth at the California Code of Regulations, Title 14, Section 15000 et seq.
- B. "Conservation easement" means a legal agreement a property owner makes to restrict the type and amount of development that may take place on his or her property.
- C. "Defensible space" means the 100-foot area around an existing structure, or to the property line, whichever is closer.
- C. "Development Project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of any discretionary or ministerial permit.
- D. "Oak Canopy" means the foliar cover of an oak tree or trees to the drip line (including twigs, branches, and leaves). Where more than one oak tree's branches touch or overlap, they form one continuous cover or oak canopy.

- E. "Oak Tree" means a native tree of the genus *Quercus*, of any size or age.
- F. "Oak Woodland" is defined in the Oak Woodland Conservation Act (Fish and Game Code §1361) as an oak stand with greater than ten percent canopy cover or that may have historically supported greater than ten percent canopy cover. For the purposes of this ordinance, the conservation focus is on existing oak woodlands. This definition includes all sizes and ages of the genus *Quercus*.
- G. "Priority Conservation Area" means those areas identified in the Oak Woodland Management Plan identifying oak woodland habitat where willing landowners could be approached to negotiate oak woodland mitigation and acquisition of conservation easements.
- H. "Qualified Professional" means one of 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.
  2. Certified Rangeland Manager is a person licensed by the State of California through the California State Board of Forestry. Certified Rangeland Managers apply scientific principles to the art and science of managing rangelands and are recognized by the California Section, Society for Range Management as meeting the education, experience, and ethical standards for professional rangeland managers.
  3. Qualified Biologist is a person who meets qualifications as determined by the Director of Development Services. A qualified biologist has a BA/BS or advanced degree in biological sciences or other degree specializing in the natural sciences, professional or academic experience as a biological field investigator, taxonomic experience and knowledge of plant and animal ecology, familiarity with plants and animals of the area including species of concern, and familiarity with the appropriate County, State, and Federal policies and protocols related to special-status species and biological surveys.
  4. 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.