

APPENDIX D

Proposed Oak Resources Conservation Ordinance

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CHAPTER 130.39 – OAK RESOURCES CONSERVATION

130.39.010 Content

This section establishes standards for implementing the County's Oak Resources Management Plan (ORMP) in compliance with General Plan Policy 7.4.4.4 and Implementation Measure C0-P (mitigation requirements for impacts to oak resources). This Chapter shall be referred to as the Oak Resources Conservation Ordinance ("Ordinance").

130.39.020 Applicability

With the exception of exempt activities listed in Section 130.39.050 below (Exemptions and Mitigation Reductions), the requirements of this Ordinance shall apply to both ministerial and discretionary development resulting in impacts to Oak Resources as defined in this Chapter. This Chapter shall apply to all privately-owned lands within the unincorporated area of the County at or below the elevation of 4,000 feet above sea level where Oak Resources are present.

- A. Effect of Ordinance Changes on Projects or Plans in Progress.** The enactment of this Chapter or amendments hereto may have the effect of imposing different standards on development or new uses from that which previously applied. In these cases, the County shall apply the standards found in Section 130.10.040.C (Effect of Zoning Ordinance Changes on Projects in Progress), Section 130.10.040.D (Exception for Area Covered by Specific Plan) and Section 130.10.040.E (Private Agreements), as applicable.

130.39.030 Definitions

For the purposes of this Ordinance, the following terms and phrases shall have the meanings respectively ascribed to them by this Section:

Agricultural Cultivation/Operations: As defined by General Plan Policy 8.2.2.1.

Arborist: A person certified by the International Society of Arboriculture (ISA) that provides professional advice regarding trees in the County.

CAL FIRE: California Department of Forestry and Fire Protection.

Commercial Firewood Cutting: Fuel wood production where a party cuts firewood for sale or profit.

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 County Counsel and the Development Services Director 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.

Deed Restriction: Private agreements that restrict the use of the real estate and are listed in the deed. Restrictions travel with the deed, and cannot generally be removed by new owners.

Defensible Space: The area within the perimeter of a parcel, development, neighborhood or community where basic wildland fire protection practices and measures are implemented, in order to defend against encroaching wildfires or provide for people to escape structure fires.

Defensible space is required by any person who owns, leases, controls, operates or maintains a building or structure in or adjoining any mountainous area, forest-covered lands, brush-covered lands, grass-covered lands or any land that is covered with flammable material. PRC 4291 requires 100 feet of Defensible Space (or to the property line if less than 100 feet) from every building or structure that is used for support or shelter of any use or occupancy.

Developed Parcel:

1. A parcel zoned for a single-family residence and subdivided down to its ultimate size consistent with the zone, with or without on-site improvements, but with completed subdivision improvements;
2. A parcel zoned for multifamily, commercial, industrial or research and development use for which all discretionary entitlements, as well as design review approval under Chapter 130.27 (Combining Zones – Design Review), have been approved and are effective. "Developed parcel" shall not mean any parcel which otherwise meets the requirements of this paragraph, but for which another discretionary entitlement, or a modification to an existing entitlement is being requested. Such parcels shall be treated as undeveloped parcels under this chapter.

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.

Fire Safe Plan: Defined in the El Dorado County General Plan (Policy 6.2.2.2) as a plan prepared by a Registered Professional Forester (RPF) and approved by the local Fire Protection District and/or California Department of Forestry and Fire Protection. The plan is prepared to demonstrate that development can be adequately protected from wildland fire hazard in areas of high and very high wildland fire hazard or in areas identified as "urban wildland interface

communities within the vicinity of Federal lands that are a high risk for wildfire,” as listed in the Federal Register of August 17, 2001.

Heritage Trees: 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.

Impact: For Individual Native Oak Trees, the physical destruction, displacement or removal of a tree or portions of a tree caused by poisoning, cutting, burning, relocation for transplanting, bulldozing or other mechanical, chemical, or physical means. For oak woodlands, tree and land clearing associated with land development, including, but not limited to, grading, clearing, or otherwise modifying land for roads, driveways, building pads, landscaping, utility easements, fire-safe clearance and other development activities.

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.

Individual Native Oak Tree(s): 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 greater than 6 but less than 36 inches dbh, or with a multiple trunk with an aggregate trunk diameter measuring greater than 10 but less than 36 inches dbh.

Oak Resources: Collectively, Oak Woodlands, Individual Native Oak Trees, and Heritage Trees.

Oak Resources Technical Report: A stand-alone report prepared by a Qualified Professional containing information, documents and formatting as specified in Section 2.5 of the ORMP (Oak Resources Technical Reports).

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).

Oak Woodland Conservation Fund: A fund set up by the County to receive in-lieu fees (Oak Woodland In-Lieu Fee and Individual Tree In-Lieu Fee) which shall be used to fund the acquisition of land and/or Oak Woodlands Conservation Easements from willing sellers, native oak tree planting projects, and ongoing conservation area monitoring and management activities, including but not limited to fuels treatment, weed control, periodic surveys, and reporting.

Oak Woodland(s): An oak stand with a greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover (California Fish and Game Code Section 1361).

Oak Woodland Removal Permit: A permit issued by the County allowing removal of oak trees that are a component of an oak woodland. An oak resources technical report shall accompany any oak woodland removal permit application submitted to the County. Conditions of approval may be imposed on the permit. If an oak woodland removal permit application is denied, the County shall provide written notification, including the reasons for denial, to the applicant. Oak woodland 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).

Qualified Professional: An arborist certified by the International Society of Arboriculture (ISA), a qualified wildlife biologist, or a Registered Professional Forester (RPF).

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.

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 have an understanding of 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.

130.39.040 - Prohibition

With the exception of exempt activities listed in Section 130.39.050 (Exemptions and Mitigation Reductions), no person shall remove, or otherwise cause an Impact to Oak Resources located wholly or partially within the unincorporated areas of the County unless the requirements of this chapter are fully met and a permit has been obtained.

130.39.050 Exemptions and Mitigation Reductions

The provisions of this Chapter do not apply to the following activities, uses, and structures, except where provisions of a memorandum of understanding between the County and another governmental agency provide for County regulatory authority or otherwise provided by law:

- A. Existing Single-Family Parcels.** Projects or actions occurring on parcels of 1 acre or less allowing a single-family residence by right, and that cannot be further subdivided without a General Plan Amendment or Zone change are exempted from the mitigation requirements included in this Chapter.
- B. Fire Safe Activities.** Actions taken pursuant to an approved Fire Safe Plan for existing structures, or a Community Wildfire Protection Plan, or in accordance with Defensible Space maintenance requirements for existing structures as identified in California Public Resources Code (PRC) Section 4291 are exempted from the mitigation requirements included in this Chapter. Oak resources impacts for initial Defensible Space establishment for new development are not exempt from the mitigation requirements included in this Chapter.

In addition, fuel modification activities outside of Defensible Space areas that are associated with fuel breaks, corridors, or easements intended to slow or stop wildfire spread, ensure the safety of emergency fire equipment and personnel, allow evacuation of civilians, provide a point of attack or defense for firefighters during a wildland fire, and/or prevent the movement of a wildfire from a structure to the vegetated landscape, where no grading permit or building permit is applicable, are exempted from the mitigation requirements included in this Chapter.
- C. Utility Line Maintenance.** Actions taken to maintain safe operation of existing utility facilities in compliance with state regulations (PRC 4292-4293 and California Public Utilities Commission (CPUC) General Order 95) are exempted from the mitigation requirements included in this ORMP. Actions associated with development of new utility facilities, including transmission or utility lines, are not exempt.
- D. County Road Projects.** Road widening and realignment projects necessary to increase capacity, protect public health, and improve safe movement of people and goods in existing public rights-of-way (as well as acquired rights-of-way necessary to complete the project) where the new alignment is dependent on an existing alignment are exempted from the mitigation requirements included in this ORMP. New proposed roads within the County Circulation Element and internal circulation roads within new or proposed development are not exempt.
- E. Affordable Housing.** Affordable housing projects for lower income households, as defined pursuant to Section 50079.5 of the California Health and Safety Code, that are located within an urbanized area, or within a sphere of influence as defined pursuant to California Government Code §56076 are exempted from the mitigation requirements included in this Chapter.

- F. Agricultural Activities.** The following types of agricultural activities are exempted from the mitigation requirements included in this Chapter:
1. Agricultural activities conducted for the purposes of producing or processing plant and animal products or the preparation of land for this purpose;
 2. Agricultural Cultivation/Operations, whether for personal or commercial purposes (excluding commercial firewood operations);
 3. Activities occurring on lands in Williamson Act Contracts or under Farmland Security Zone Programs.
- G. Emergency Operations.** Actions taken during emergency firefighting operations or responses to natural disasters (e.g., floods, landslides, avalanches, etc.) and associated post-fire or post-disaster remediation activities are exempted from the mitigation requirements included in this Chapter.
- H. Timber Harvest Plan.** Tree removal permitted under a Timber Harvest Plan approved by CAL FIRE is exempted from the mitigation requirements included in this Chapter.
- I. Dead, Dying, or Diseased Trees.** Individual native oak tree removal is exempted from the mitigation requirements included in this Chapter when:
1. The tree is dead, dying, or diseased, as documented in writing by a Certified Arborist or Registered Professional Forester; and/or
 2. The tree exhibits high failure potential with the potential to injure persons or damage property, as documented in writing by a Certified Arborist or Registered Professional Forester.
- J. Exemption for Personal Use.** Removal of a native oak tree, other than a Heritage Tree, when it is cut down on the owner's property for the owner's personal use, is exempted from the mitigation requirements included in this Chapter.
- K. Mitigation Reductions for Affordable Housing.** Non-exempt affordable housing projects may qualify for partial oak woodland mitigation credit. Specifically, 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 woodland that is required to be mitigated, as set forth in Table 2. The reduction is to be applied to the mitigation ratio presented in Table 3 and shall only be applied to the residential portion(s) of the proposed project. This reduction for affordable housing projects applies to oak woodland and individual native oak tree impacts and but not to Heritage Tree impacts. In no case shall the mitigation requirement be less than zero.

Table 2
Affordable Housing Mitigation Reduction

Affordable Housing Type (Household Income Level)	Percent Oak Woodland Mitigation Reduction (for portion of project that is income restricted)
Very Low	200%
Lower	100%
Moderate	50%

Example: A project proposes 25% of the units to be affordable in the Lower income category. The oak woodland mitigation ratio may be reduced by 25%. A Moderate income project that provides all units at that income level may reduce the oak woodland mitigation ratio by 50%. A project with 20% Very Low income units would receive a 40% reduction in oak woodland mitigation ratio.

130.39.060 Oak Tree and Oak Woodland Removal Permits – Ministerial Development Projects.

An Oak Tree and/or Oak Woodland Removal Permit shall be required for all non-exempt ministerial (e.g. building permit-related) development activities with Impacts to Oak Resources on a Developed Parcel as defined in this Chapter. Oak Tree and Oak Woodland Removal Permits shall contain the following minimum information as specified below:

- A. Administrative Permit.** For purposes of this Chapter, Oak T and Oak Woodland Removal Permits shall be processed as an Administrative Permit pursuant to Chapter 130.52 (Permit Requirements, Procedures, Decisions and Appeals).
- B. General Permit Requirements.** Application for an Oak Tree or Oak Woodland Removal Permit shall be made by filing a completed application form with the Director. The form shall require the following minimum information:
 1. An Oak Resources Technical Report as defined in this Chapter;
 2. Condition of the Oak Resource(s) subject to Impact;
 3. Site/Plot plan of affected parcel(s) as required by Administrative Permit requirements;
 4. Reason and objective for Impact;
 5. Any other information as determined by the Director to be necessary or convenient to evaluate the request.

C. Oak Tree and Oak Woodland Removal Permits – Permit Processing

1. The director shall issue an Oak Tree or Oak Woodland Removal Permit pursuant to Administrative Permit processing requirements.
2. The property owner shall be required to mitigate Oak Resources Impacts as shown in Section 130.39.060.D (Mitigation-Oak Woodland Removal) and/or Section 130.39.060.E (Mitigation – Individual Native Oak Tree/Heritage Tree Removal) below:

D. Mitigation – Oak Woodland Removal. If identified Oak Woodlands will be impacted as part of the permit, the applicant shall mitigate for loss of Oak Woodlands by In-lieu Fee payment to the Oak Woodland Conservation Fund. Fee payment shall be based on the percent of on-site Oak Woodlands impacted by the development as shown in Table 5 in the ORMP (Oak Woodland In-Lieu Fee).

Ministerial development projects where alternate mitigation is requested, such as replacement planting or Oak Woodlands conservation (either on-site or off-site) will require a Minor Use Permit pursuant to Section 130.52.020 (Minor Use Permits) and/or other permit(s) as required for review of the project by the County Code of Ordinances. Such requests shall be processed as a discretionary development project as specified in Section 130.39.070 (Oak Tree and Oak Woodland Removal Permits – Discretionary Development Projects). Replacement planting shall be consistent with Section 2.4 (Replacement Planting Guidelines) of the ORMP.

E. Mitigation – 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 In-lieu Fee payment to the Oak Woodland Conservation Fund. In Lieu Fee payment for individual oak tree removal shall be as shown on Table 6 (Individual Oak Tree In-Lieu Fee) of the ORMP.

Ministerial development projects where alternate mitigation is requested, such as replacement planting (either on-site or off-site), will require a Minor Use Permit pursuant to Section 130.52.020 (Minor Use Permits) and/or other permit(s) as required for review of the project by the County Code of Ordinances. Such requests shall be processed as a discretionary development project as specified in Section 130.39.070 (Oak Tree and Oak Woodland Removal Permits – Discretionary Development Projects). Replacement planting shall be consistent with Section 2.4 (Replacement Planting Guidelines) of the ORMP.

130.39.070 Oak Tree and Oak Woodland Removal Permits – Discretionary Development Projects.

- A. Oak Tree and Oak Woodland Removal Permits.** An Oak Tree and/or Oak Woodland Removal Permit shall be a component of all discretionary projects with Impacts to Oak Resources as defined in this Chapter.
- B. Commercial Firewood.** For purposes of this Section, Commercial Firewood Cutting operations shall be considered discretionary and subject to a Minor Use Permit pursuant to Section 130.52.020 (Minor Use Permits). In addition to the specific

findings required for Minor Use Permits, a Minor Use Permit for Commercial Firewood Cutting operations shall also consider the following:

1. Whether the removal of the tree(s) would have a significant negative environmental impact;
2. Whether the proposed removal would not result in clear-cutting, but would result in thinning or stand improvement;
3. Whether replanting would be necessary to ensure adequate regeneration;
4. Whether the removal would create the potential for soil erosion;
5. Whether any other limitations or conditions should be imposed in accordance with sound tree management practices; and
6. What the extent of the resulting oak woodland coverage would be.

C. Mitigation Requirement. 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.

1. **Mitigation – 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 1 (Oak Woodland Mitigation Ratios) using one or more of the following options as specified in the ORMP:
 - 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;
 - 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;
 - c. Replacement planting within an area on-site for up to 50 percent of the total Oak Woodland mitigation requirement consistent with Section 2.4 (Replacement Planting Guidelines) of the ORMP. This area shall be subject to a Deed Restriction or Conservation Easement;
 - d. Replacement planting within an area off-site for up to 50 percent of the total Oak Woodland mitigation requirement. Off-site replacement planting areas shall be consistent with Section 2.4 (Replacement Planting Guidelines) and Chapter 4.0 (Priority Conservation Areas) of the ORMP. This area shall be subject to a Deed Restriction or Conservation Easement;
 - e. A combination of options a through d above.

2. **Mitigation – 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:
- a. In-lieu Fee payment for individual oak tree removal as shown in Table 6 (Individual Oak Tree In-Lieu Fee) of the ORMP;
 - b. Replacement planting on-site consistent with Section 2.4 (Replacement Planting Guidelines) of the ORMP within an area subject to a Deed Restriction or Conservation Easement and utilizing the replacement tree sizes and quantities shown in Table 2. 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 2. Off-site replacement planting shall be consistent with Section 2.4 (Replacement Planting Guidelines) of the ORMP; or
 - d. A combination of options a through c above.

**Table 1
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 2
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

- D. Oak Resources Technical Report.** An Oak Resources Technical Report shall accompany any discretionary development project and include all pertinent information, documents and recommended mitigation as specified in the ORMP. Oak Resources shall not be removed from such property until the discretionary review process is completed and a permit has been issued.
- F. Security Deposit for On-Site Oak Tree/Oak Woodland Retention.** 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 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.

130.39.080 Enforcement

Fines, as established in the ORMP, shall be issued to any property owner that is not exempt from the standards included in the ORMP who Impacts an Oak Resource without first obtaining an Oak Tree and/or Oak Woodland Removal Permit. If an oak woodland is impacted without an Oak Woodland Removal Permit, in addition to issuing fines and penalties, any and all applications for development of that property shall be deemed incomplete unless and until the property owner enters into a settlement agreement with the County or all code enforcement and/or criminal proceedings are complete and all penalties, fines and sentences are paid or fulfilled.

If individual native oak trees or Heritage Trees are impacted without an Oak Tree Removal Permit, in addition to issuing fines and penalties, any and all applications for development of that property shall be deemed incomplete unless and until the property owner enters into a settlement agreement with the County or all code enforcement and/or criminal proceedings are complete and all penalties, fines and sentences are paid or fulfilled.

130.39.090 Monitoring and Reporting

- A. Annual Monitoring and Reporting – Oak Tree/Oak Woodland Removal Permits and Enforcement Actions.** The County shall monitor all Oak Tree and Oak Woodland Removal Permits and any enforcement actions on an annual basis. The County shall provide the results of this monitoring to the Board of Supervisors in the form of an annual report. The report shall include the quantity of permits issued and estimated inches/acres approved for removal during the reporting year.
- B. Bi-Annual Reporting - Oak Woodland Conservation Fund Fees.** The County shall monitor all In-lieu Fees deposited into the Oak Woodland Conservation Fund and provide documentation of fees collected and recommend fee adjustment(s), as appropriate, to the Planning Commission and Board of Supervisors every other March, as specified in Appendix A of the ORMP. In addition to the monitoring and reporting requirements specified in the ORMP, fee reports shall provide information consistent with Government Code Section 66001.