
Chapter 130.39. – Oak Resources Conservation
–Public Review Draft

El Dorado County Code of Ordinances

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EL DORADO COUNTY

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Sec. 130.39.010 Content.

This Chapter 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 CO-P (mitigation requirements for impacts to oak resources). This Chapter shall be referred to as the Oak Resources Conservation Ordinance ("Ordinance").

Sec. 130.39.015. Conflict of Ordinances

- A. The operation of this Chapter shall in no way change or diminish the application of other ordinances in this Code dealing with like or similar matters.
- B. In any case where a provision of this, or any other, Chapter conflicts with a provision of any zoning, building, fire safety, or health ordinance or any other section of the Code, including fines, the provision which establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail.
- C. It is not intended by this Chapter to repeal, abrogate, annul, or in any way impair or interfere with existing provisions of other laws or ordinances.

Sec. 130.39.020 Applicability.

With the exception of exempt activities listed in Section 130.39.050 (Exemptions ~~and Mitigation Reductions~~) below in this Chapter, the requirements of this Ordinance shall apply to both ministerial (including streamlined) and discretionary development activities 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) in Article 1 (Zoning Ordinance Applicability) of this Title, as applicable.~~

Projects directly undertaken by the County are exempt from the permit requirements of this Chapter. However, where mitigation to oak woodlands is required, pursuant to the California Environmental Quality Act, Public Resources Code [PRC] Section 21083.4, the mitigation requirements of this Chapter may be applied.

Sec. 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. Any definition cross referenced to other provisions of the El Dorado County Code of Ordinances is repeated for convenience only and any subsequent update or amendment to those cross-referenced definitions shall apply to this Chapter:

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

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

"CAL FIRE" means the California Department of Forestry and Fire Protection.

"Commercial Firewood Cutting" means fuel wood production where a party cuts firewood for sale or profit.

"Conservation Easement" means 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. A Conservation Easement shall be established consistent with the requirements of Section 6.0 (Definitions) of the ORMP. 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 shall be required to ensure the long term maintenance and preservation of Oak Woodlands. The Conservation Easement shall provide for the preservation of

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~~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.~~

"Construction/Disturbance Area" means any area in which movement of earth, alteration in topography, soil compaction, disruption of vegetation, change in soil chemistry, and any other change in the natural character of the land occurs as a result of site preparation, grading, building construction or any other construction activity.

"Deed Restriction" means 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:" As defined in Chapter 8.09 of the El Dorado County Code of Ordinances (Hazardous Vegetation and Defensible Space, means the buffer that Responsible Person(s) is(are) required to create on their property between a "Structure" and the plants, brush, and trees or other items surrounding the "Structure" that could ignite in the event of a fire.

~~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. California Public Resources Code (PRC) Section 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" means:

- ~~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 or applicable Design Review Permits under Section 130.52.030 (Design Review Permit) 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)" means the measurement of the diameter of a tree in inches, specifically four feet six inches above natural grade on the uphill side of the tree. In the case of trees with multiple trunks, the diameter of ~~all~~ the three largest stems (trunks) at breast height shall be combined to calculate the diameter at breast height of the tree.

"Fire Hazard:" As defined in Chapter 8.09 of the El Dorado County Code of Ordinances (Hazardous Vegetation and Defensible Space), means any condition, arrangement, act, or omission which:

1. Increases, or may cause an increase of hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service regularly engaged in preventing, suppressing, or extinguishing fire; or
2. May obstruct, delay, hinder, or interfere with the operations of a fire department or the egress of occupants in the event of fire.

"Hazardous Vegetation:" As defined in Chapter 8.09 of the El Dorado County Code of Ordinances (Hazardous Vegetation and Defensible Space), means any vegetation that is combustible and endangers the public safety by creating a Fire Hazard. Hazardous Vegetation includes material that in its natural state will readily ignite, burn, and transmit fire from native or landscape plants to any Structure or other vegetation. Hazardous Vegetation includes, but is not limited to, dry grass and leaves, brush, weeds, green waste, dead or dying trees, low-hanging branches, litter, or other flammable vegetation that create a Fire Hazard. Hazardous Vegetation shall not include a commercial agricultural crop that is being actively grown and managed by a Responsible Person.

"Heritage Trees" means 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 trunked tree ~~trunk~~ trunk with the aggregate diameter of the three largest trunks ~~an aggregate trunk diameter~~ measuring 36 inches dbh or greater.

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"Impact," for Individual Native Oak Trees, means 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. Impact includes regulated activities within the Tree Protection Zone. 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" means 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)" means 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 six (6) inches dbh or greater but less than 36 inches dbh, or with a multiple trunk with an aggregate trunk diameter measuring greater than ten inches dbh and is not a Heritage Tree.

"Minor Trimming" means the cutting of dead or diseased limbs or twigs, parts which may result in damage to an existing dwelling, parts which must be removed for safety or public utilities, or pruning to promote the health or growth of the tree. Safety includes, but is not limited to minor trimming to comply with defensible space requirements outlined in Chapter 8.09 of the El Dorado County Code of Ordinances. Trimming which substantially reduces the overall size, or density of the tree, or alters the natural shape of the tree is not considered minor trimming.

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

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

"Oak Tree Removal Permit" means a permit issued by the County allowing removal of individual native oak trees not located within an oak woodland or where less than two (2) acres of oak woodland will be Impacted by a project. 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" means 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)" means an oak stand with a greater than ten percent canopy cover or that may have historically supported greater than ten percent canopy cover (California Fish and Game Code Section 1361).

"Oak Woodland Removal Permit" means a permit issued by the County allowing removal of oak trees that are a component of an oak woodland. Where two (2) acres or more of oak woodlands will be Impacted, an Oak Woodland Removal Permit is required. Otherwise, an Oak Tree Removal Permit is required. 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" means an arborist certified by the International Society of Arboriculture (ISA), a qualified wildlife biologist, or a Registered Professional Forester (RPF).

"Qualified Wildlife Biologist" means 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

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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.

"Regulated Activity" is construction activity within the Tree protection Zone, including but not limited to grade changes (cut and fill), introduction of impervious services, soil compaction or chemical spillage with a high likelihood of detrimental effects to the tree.

"Registered Professional Forester (RPF)" means 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.

"Responsible Person:" As defined in Chapter 8.09 of the El Dorado County Code of Ordinances (Hazardous Vegetation and Defensible Space), means an owner, tenant, occupant, lessor, manager, licensee, political subdivision, local government agency, municipality, or other person having control over a structure or parcel of land or, to the fullest extent allowed by law, the parent or legal guardian of any person under 18 years who have done any act for which a penalty may be imposed under this Chapter, or any other person required to comply with the provisions of the Code and, any other lien holder, secured party, or other person who has properly recorded a security interest or other appropriate document evidencing an interest in the property, which has been recorded in the official records of the County.

"Structure:" As defined in Chapter 8.09 of the El Dorado County Code of Ordinances (Hazardous Vegetation and Defensible Space), includes buildings which qualify for occupancy classification and use designation per the County building code, such as residential dwellings (which includes trailers and mobile homes, whether situated in a park or installed on private property), commercial buildings, industrial buildings, agricultural buildings, barns, storage buildings, government buildings, and any accessory buildings thereto deemed appropriate for a site address by the County Surveyor.

Exception: Any freestanding outbuilding 120 square feet or less in floor area.

"Tree Protection Zone (TPZ)" means the area surrounding a tree where the majority of the tree's roots take place. The TPZ shall be the greater of the following: (1) one foot diameter for every inch of trunk diameter, or (2) the area of ground beneath the tree's canopy.

"Wildland-Urban Interface (WUI) Fire Safe Plan:" Defined in the El Dorado County General Plan (Policy 6.2.2.2) as a plan prepared by a qualified professional as approved by the El Dorado County Fire Prevention Officers Association and approved by the local Fire Protection District and/or the California Department of Forestry and Fire Protection (CAL FIRE). 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 "[WUI] communities within the vicinity of Federal lands that are a high risk for wildfire", as listed in the Federal Register Executive Order No. 13728, dated May 18, 2016.

Sec. 130.39.040 Prohibition.

With the exception of exempt activities listed in Section 130.39.050 (Exemptions ~~and Mitigation Reductions~~) below in this Chapter, 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.

Sec. 130.39.050 Exemptions ~~and Mitigation Reductions~~.

Oak resources impact mitigation is required for any non-exempt action requiring discretionary development entitlements or approvals from El Dorado County, or ministerial actions requiring a building permit or grading permit issued by El Dorado County. With the exception of dead, dying, and diseased trees, ~~trees that have fallen or sustained damage due to natural disasters/incidents or trees considered "Hazardous Vegetation" pursuant to Section 8.09 of the County Ordinance Code (Hazardous Vegetation and Defensible Space), as discussed in Section 130.39.050.I (Dead, Dying, or Diseased Trees) below in this Section,~~ all impacts to Heritage Trees, individual valley oak trees, and valley oak woodlands shall be subject to the provisions and mitigation requirements contained

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in the ORMP, regardless of whether or not the action requires a development permit. With the above noted exceptions, 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, legally created prior to October 24, 2017, and that cannot be further subdivided without a General Plan Amendment or Zone change are exempted from the permit mitigation requirements included in of this Chapter.~~
- ~~B.A. B. Fire Safe Activities. Actions taken pursuant to an approved WUI Fire Safe Plan for to protect existing structures, or a Community Wildfire Protection Plan, or in accordance with maintenance of 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 or Chapter 8.09 of the El Dorado County are exempt from the permit requirements included in this Chapter.~~ Oak resources impacts for initial Defensible Space establishment for new development are not exempt from the mitigation permit requirements included in this Chapter. In addition, fuel modification activities outside of ~~defined~~ Defensible Space, ~~as defined in Section 130.39.030 (Definitions), requirements in 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 permit requirements included in this Chapter.
- ~~B. Dead, dying, or diseased trees inspected by an Investigative Official as defined in Section 8.09.030 of the County Ordinance Code (Hazardous Vegetation and Defensible Space) and documented in writing to the Planning and Building Department that said tree(s) constitute "Hazardous Vegetation" pursuant to Section 8.09 of the County Ordinance Code~~
- ~~C. Trees that have fallen or sustained damage due to thunderstorms, windstorms, floods, earthquakes, fires or other natural disasters/incidents.~~
- ~~C.D. C. Utility Line Location, Construction and Maintenance. Actions associated with location and construction of new electrical energy facilities as specified in Subsection 130.10.040.B (Exemptions from Zone Ordinance Requirements) in Article 1 (Zoning Ordinance Applicability) of this Title, or 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 permit requirements included in this Chapter.~~
- ~~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 Chapter. New proposed roads within the County's General Plan Transportation and 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.~~
- ~~D.E. F.D. Agricultural Activities. With the exception of uses/activities that require issuance of a Conditional Use Permit, and when such uses/activities are otherwise consistent with other provisions of County Code Title 130 (Zoning Ordinance), the following types of agricultural activities are exempted from the mitigation permit 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 and Ranch Marketing); and
 - 3. Activities occurring on lands in Williamson Act Contracts or under Farmland Security Zone Programs.

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~~F. GEEGE. 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 permit requirements included in this Chapter.~~

~~G. Timber Harvest Plan. Tree removal permitted under a Timber Harvest Plan approved by CAL FIRE is exempted from the permit requirements included in this Chapter.~~

~~E.H. Minor Trimming, as defined within this Chapter, and conforming to the most current standards of the American National Standards Institute (ANSI).~~

~~F. HEFHE. Timber Harvest Plan. Tree removal permitted under a Timber Harvest Plan approved by CAL FIRE is exempted from the mitigation permit requirements included in this Chapter.~~

~~G. G. Minor Trimming, as defined within this chapterChapter, and conforming to the most current standards of the American National Standards Institute (ANSI).~~

~~I. Dead, Dying, or Diseased Trees. Individual native oak tree removal (including individual valley oak trees and valley oak trees within valley oak woodlands) 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 or individual valley oak trees and valley oak woodlands, 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 provided that no more than eight trees are removed from a single parcel per year and provided that the total diameter inches at breast height (dbh) of trees removed from a single parcel per year does not exceed 140 inches.~~

~~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 ten 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 (Affordable Housing Mitigation Reduction) in the ORMP. The reduction is to be applied to the mitigation ratio presented in Table 3 (Oak Woodland Mitigation Ratios) in the ORMP and shall only be applied to the residential portion(s) of the proposed project. This reduction for affordable housing projects does not apply to removal of Heritage Trees or individual valley oak trees. This reduction for affordable housing projects also does not apply to impacts to valley oak woodlands. This reduction for affordable housing projects applies to impacts to other oak woodland habitat and removal of other individual oak trees. In no case shall the mitigation requirement be less than zero.~~

~~Table 2 (ORMP).
Affordable Housing Mitigation Reduction~~

Affordable <u>Housing</u> <u>Type</u> (Household Income Level)	Percent <u>Oak Woodland Mitigation Reduction</u> (for portion of project that is income restricted).
Lower	100%
Moderate	50%

~~Source: ORMP, Section 2.1.11 (Mitigation Reductions for Affordable Housing)~~

~~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.~~

Sec. 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 confirmed -iImpacts to Oak Resources. The permit may be issued as a stand-alone permit, or in conjunction with another ministerial or discretionary permit. -on a Developed Parcel as defined in this Chapter. Oak Tree and Oak Woodland Removal.. Where two (2) acres or more of oak woodlands will be impacted, an Oak Woodland Removal Permit is required. Otherwise, an Oak Tree Removal Permit is required. Permits shall contain the following minimum information as specified below:

- A. Administrative Permit. For purposes of this Chapter, Oak Tree and Oak Woodland Removal Permits shall be processed as an Administrative Permit pursuant to Section 130.52.010 (Administrative Permit, Relief, or Waiver) in Article 5 (Planning Permit Processing) of this Title.
- 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. A Code Compliance Certificate, on a form approved by the Director, verifying that no Oak Resources have been impacted within two years prior to submittal of permit application;
 2. An Oak Resources Technical Report as defined in this Chapter;
 3. Condition of the Oak Resource(s) subject to Impact;
 4. Site/Plot plan of affected parcel(s) as required by Administrative Permit requirements;
 5. Reason and objective for Impact;
 - ~~65565. 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 in this Section.
- D. 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 Permit) in Article 5 (Planning Permit Processing) of this Title. 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. The resulting distribution and type of remaining oak resources including Individual Native Oak Trees, Oak Woodland, Heritage Trees, Valley Oak Trees and Valley Oak Woodland, as applicable.

~~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 (Oak Woodland In-Lieu Fee) in the ORMP.~~

~~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 Permit) in Article 5 (Planning Permit Processing) of this Title 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) below in this Chapter. 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, regardless of location within or outside of an oak woodland, 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 in Table 6 (Individual Oak Tree In-Lieu Fee) in 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 Permit) in Article 5 (Planning Permit Processing) of this Title 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) below in this Chapter. Replacement planting shall be consistent with Section 2.4 (Replacement Planting Guidelines) of the ORMP.~~

~~E. Denial of Oak Tree and/or Oak Woodland Removal 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 or 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)~~

Sec. 130.39.070 ~~Oak Tree and Oak Woodland Removal Permits—Discretionary Development Projects~~Mitigation.

~~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 Permit) in Article 5 (Planning Permit Processing) of this Title. 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. CA _____ Mitigation Requirement. Impacts to oak resources on a property subject to a discretionary approval addressed in the discretionary application review process and shall be incorporated as conditions of project approval shall be mitigated as follows:~~

~~A. 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 3 (Oak Woodland~~

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Mitigation Ratios). Multifamily and mixed-use housing projects that qualify for streamlined ministerial processing under state law shall mitigate for impacts via an in-lieu fee payment as outlined in Subsection 130.39.070(1) below. For all other development projects, impacts shall be mitigated using through the applicant's selection of one (1) or more of the following options as specified in the ORMP:

1. ~~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 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 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;~~
 2. ~~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;~~
 3. ~~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;~~
 4. ~~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; or~~
 5. ~~e. A combination of options a.1 through d.4 above.~~
- B. ~~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). Multifamily and mixed-use housing projects that qualify for streamlined ministerial processing under state law shall mitigate for loss of individual tree(s) via in-lieu fee payment as outlined in Subsection 130.39.070(2)(a) below. For all other development projects, impacts shall be mitigated by the applicant's selection of one (1) or more of the following options as specified in the ORMP:~~
1. ~~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;~~
 2. ~~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 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;~~
 3. ~~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 (Oak Tree Replacement Quantities) in the ORMP. Off-site replacement planting shall be consistent with Section 2.4 (Replacement Planting Guidelines) of the ORMP; or~~
 4. ~~d. A combination of options a.1 through c.3 above.~~

Table 3 (ORMP)
Oak Woodland Mitigation Ratios

Percent of Oak Woodland Impact	Oak Woodland Mitigation Ratio
0-50%	1:1

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50.1–75%	1.5:1
75.1–100%	2:1

Source: ORMP, Section 2.2.2 (Oak Woodland Mitigation)

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

Source: ORMP, Section 2.3.2 (Oak Tree Mitigation)

~~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.~~

~~E. Code Compliance Certificate. A Code Compliance Certificate, on a form approved by the Director, shall be submitted verifying that no Oak Resources have been impacted within two years prior to application submittal.~~

~~FB. Security Deposit~~BC. Security Deposits for Oak Tree / Oak Woodland RetentionPreservation and Replacement Planting. The Director shall create departmental procedures to implement the following sections.

1. Security Deposit for On-Site Oak Tree/Oak Woodland Preservation. If security is required for Oak Resources identified for on-site preservation as part of a discretionary project, ten thousand dollars or 100% of estimated in-lieu mitigation fees, whichever is greater, shall be required as a condition of issuance of the discretionary permit and/or authorization during the construction and/or grading period. Prior to the issuance of any grading or building permit, the owner or developer shall deposit the cash or other acceptable security. The county shall hold the deposit to guarantee the health of the trees for a five-year period after completion of activity in the construction/disturbance areas.

1. 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, cash deposit, or other security instrument in an amount not less than ten thousand dollars or 100% of estimated cost of mitigation in-lieu fees, whichever is moreshall 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, and term 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.

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2. ~~CG~~ Security Deposit for On-Site Oak Tree/Oak Woodland Replacement Planting. If oak tree replacement planting is proposed for a ~~discretionary~~ project, the applicant shall post a bond, cash deposit, or other security instrument in an amount equal to 100% of the current value of required replacement tree(s) and/or acorns, plus the cost of maintenance

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and monitoring, as determined by a Qualified Professional. The security instrument shall be for a term of either seven (7) 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 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.

DDCHH. Mitigation Exemptions and Reductions. The following projects require issuance of a permit, per Section 130.39.060. Mitigation may be reduced or exempted as follows: 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 Section 56076 are exempted from the mitigation requirements included in this Chapter.

2. Dead, Dying, or Diseased Trees. Individual native oak tree removal (including individual valley oak trees and valley oak trees within valley oak woodlands) is exempted from the mitigation requirements included in this Chapter when:

a. The tree is dead, dying, or diseased, as documented in writing by a Certified Arborist or Registered Professional Forester; and/or

b. 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.

c. If the documentation for Section 2(a) investigating trees affected by the proposed permit concludes a single tree (if all proposed) or more than fifty (50) percent of the trees (if multiple removals are proposed) affected by the proposed permit are dead, dying, or diseased; a second documented writing by an independent Certified Arborist or Registered Professional Forester shall be required from the applicant. If the two documented writings disagree, the report most protective of Oak Resources shall apply.

3. Exemption for Personal Use. Removal of a native oak tree, other than a Heritage Tree or individual valley oak trees and valley oak woodlands, 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 provided that no more than eight (8) trees are removed from a single parcel per year and provided that the total diameter inches at breast height (dbh) of trees removed from a single parcel per year does not exceed 140 inches. Personal use shall include only trees removed for firewood, woodworking, or fabrication of oak wood products (sale or barter of oak wood products may be subject to other State regulatory approvals). The act of preparing land for subsequent development constitutes an impact that is not covered under this exemption.

41. Mitigation Reductions for Affordable Housing. Development projects that propose a minimum of ten percent of the dwelling units as deed restricted affordable units, as defined by California Health and Safety Code Sections 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 (Affordable Housing Mitigation Reduction) in the ORMP. The reduction is to be applied to the mitigation ratio presented in Table 3 (Oak Woodland Mitigation Ratios) in the ORMP and shall only be applied to the residential portion(s) of the proposed project. This reduction for affordable housing projects does not apply to removal of Heritage Trees or individual valley oak trees. This reduction for affordable housing projects also does not apply to impacts to valley oak woodlands. In no case shall the mitigation requirement be less than zero.

Table 2 (ORMP)
Affordable Housing Mitigation Reduction

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

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Source: ORMP, Section 2.1.11 (Mitigation Reductions for Affordable Housing)

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.

5. Insurance-required Oak Removal: To qualify for an exemption for tThe removal of healthy oak trees for the purpose of complying with insurance company criterion may be reduced or exempted from mitigation requirements. To qualify for an exemption, a parcel-specific assessment from one of the following contractors must be submitted to the El Dorado County Planning and Building Department:

1. Aqualified professional as approved by the El Dorado 23. Dead, Dying, or Diseased Trees. Individual native oak tree removal (including individual valley oak trees and valley oak trees within valley oak woodlands) is exempted from the mitigation requirements included in this Chapter when:

- a. Affected tree(s) are dead, dying, or diseased, as certified in writing by a Certified Arborist or Registered Professional Forester; and/or
- b. Affected tree(s) exhibit high failure potential with the potential to injure persons or damage property, as certified in writing by a Certified Arborist or Registered Professional Forester.
- c. If multiple trees are proposed for removal as part of a proposed project and fifty (50%) or more of the trees are deemed dead, dying, diseased or as having a high failure potential, a second certification from another Certified Arborist or Registered Professional Forester on the status of the health of the trees will also be required from applicant. If the two certifications disagree, the report most protective of Oak Resources shall apply.

34. Exemption from mitigation for Personal Use. Removal of a native oak tree, other than a Heritage Tree or individual valley oak trees and valley oak woodlands, 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 provided that no more than eight (8) trees are removed from a single parcel per year and provided that the total diameter inches at breast height (dbh) of trees removed from a single parcel per year does not exceed 140 inches. Personal use shall include only trees removed for firewood, woodworking, or fabrication of oak wood products (sale or barter of oak wood products may be subject to other State regulatory approvals). The act of preparing land for subsequent development constitutes an impact that is not covered under this exemption.

5. Insurance-required Oak Removal: To qualify for an exemption from mitigation for the removal of healthy oak trees for the purpose of complying with insurance company criterion to protect persons, structures or property, a parcel-specific assessment of tree(s) required to be removed must be submitted to the El Dorado County Planning and Building Department from one of the following -officials:

1. A qualified professional as defined in Section 130.39.030 (Definitions) above in this section; or-
2. Written documentation from the property owner's insurance company identifying specific healthy oak tree(s) required to be removed to protect life or property in the event of a wildfire.

The assessment under either scenario shall highlight specific healthy trees required to be removed.

Table 2 (ORMP)
Affordable Housing Mitigation Reduction

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

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~~Source: ORMP, Section 2.1.11 (Mitigation Reductions for Affordable Housing)~~

~~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.~~

Sec. 130.39.080 In-Lieu Fee Appeals.

- A. In-Lieu Fee Appeals. Appeals of In-Lieu Fees may be granted by the Director under any one (1) of the following scenarios:
1. The requirements of this ~~chapter~~Chapter have been incorrectly applied; and/or
 2. That application of the requirements of this ~~chapter~~Chapter is unlawful under and/or conflict with federal, state, or local law and/or regulation including constituting an unlawful taking of property without just compensation.
- B. Application for Appeals of In-Lieu Fees. Application must be made no later than the date of application for building, grading and/or other ministerial development permit(s) with Impacts to Oak Resources. Application shall be on a form provided by the County, and shall include payment of fees as established in the ORMP. The burden of establishing by satisfactory factual proof the applicability and elements of this Section shall be on the Applicant. The Applicant must submit full information in support of their submittal as requested by the Director. Failure to raise each and every issue that is contested in the application and provide appropriate support evidence will be grounds to deny the application and will also preclude the Applicant from raising such issues in court. Failure to timely submit such an application shall constitute a failure to exhaust administrative remedies that shall preclude such person from challenging In-Lieu Fees in court. The Director may require at the expense of the applicant, review of the submitted materials by a third party.
- C. Written Determination. The County shall mail the applicant a final, written determination on the application for a reduction and/or appeal. The applicant may appeal the Department's decision to the Director. The Director's decision shall be final and not administratively appealable.

Sec. 130.39.090 Enforcement.

- A. Fines. As established in ORMP Sections 2.2.1 (Oak Woodland Removal Permits) and 2.3.1 (Oak Tree Removal Permits), fines shall be issued to any person, entity, firm, or corporation 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.
1. Unpermitted Removal of Oak Woodland. For unpermitted removal of oak woodland, fines ~~may~~shall be issued in an amount up to three (3) times the current oak woodland in-lieu fee amount, based on the area of oak woodland removed.
 2. Unpermitted Removal of Individual Native Oak Trees. For unpermitted removal of individual native oak trees, fines ~~may~~shall be issued in an amount up to three (3) times the current market value of replacement trees, including the estimated cost of replacement, and/or the cost of replacement of up to three (3) times the number of required replacement trees.
 3. Unpermitted Heritage Tree Removal. For unpermitted removal of any Heritage Tree, fines ~~may~~shall be issued in an amount up to nine (9) times the current market value of replacement trees, including the estimated cost of replacement, and/or the cost of replacement of up to nine (9) times the number of required replacement trees.
- B. Other Penalties. In addition to fines, if an Oak Resource is impacted without an Oak Woodland and/or Oak Tree Removal Permit, 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.

Sec. 130.39.100 Mitigation Maintenance, Monitoring and Reporting.

Required care, inspection and documentation of replacement oak trees, including acorns, when planted as mitigation for loss of oak woodlands, loss of individual native oak tree(s) or Heritage Tree(s) shall be consistent with all applicable provisions of the ORMP Section 6.0 (Definitions—Mitigation Maintenance, Monitoring and Reporting), including annual monitoring and replacement of any dead trees for a period of seven (7) years from the date of planting.

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- 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 and~~ provide the results of this monitoring in a report to the Board of Supervisors ~~in the form of an annual report every five years~~. The report shall include the quantity of permits issued and estimated inches/acres approved for removal during the reporting ~~year period~~.
- B. ~~Biennial-Five-Year~~ Reporting—Oak Woodland Conservation Fund Fees. The County shall monitor all In-lieu Fees deposited into the Oak Woodland Conservation Fund and provide a report documenting fees collected and recommend fee adjustment(s), as appropriate, to the ~~Planning Commission and~~ Board of Supervisors every ~~other March five years~~, as specified in Appendix A of the ORMP.