

## **ATTACHMENT A**

**Section 1.** Chapter 20.248 is hereby added to the Mendocino County Code to read as follows:

### **Chapter 20.248 – Oak Tree and Oak Woodland Protection Ordinance**

#### Section 20.248.005 – Title, Purpose, and Intent

It is the purpose and intent of this Chapter to protect oak woodlands and individual oak trees as sensitive and unique natural communities within the County of Mendocino. California native oak trees are a culturally integral part of the County of Mendocino and identified in the General Plan as diverse habitats for wildlife. The goal of this Chapter is to retain and manage the oak resources of the County and provide adequate regulations to ensure perpetuity of oak trees and oak woodlands within Mendocino County.

#### Section 20.248.010 – Applicability

This Chapter shall be applicable to all zoning districts in Mendocino County governed by Division I of this Title.

#### Section 20.248.015 – Definitions

The definitions in this Chapter are intended to apply solely to the regulations in this Chapter or Chapters that specifically refer to this Chapter. As used herein the following definitions shall apply:

- (A) **Arborist**: A person certified by the International Society of Arboriculture (ISA) that provides professional advice regarding trees.
- (B) **Botanist**: A professional with a BA or BS or advanced degree in botany, plant biology, or other degree specializing in the botanical sciences; professional or academic experience as a botanical field investigator, with a background in field sampling design and field methods; and/or taxonomic experience and knowledge of plant ecology with the appropriate county, state, and federal policies and protocols related to special status species and biological surveys.
- (C) **Canopy Cover**: The percentage of ground covered by the combined crowns of all oaks that form the outermost perimeter of the spread foliage.
- (D) **Capable Soils**: Any soils that are not defined as semi-capable soils.
- (E) **Crown Cover**: The area of ground covered by the crown of a single oak tree.
- (F) **Developed Parcel**: A parcel on which any permitted, conditional, or accessory use, or building or structure, as defined in Division I of Title 20 of the Mendocino County Code, has been established. Any parcel not considered as a developed parcel shall be referred to as an “undeveloped parcel” for the purposes of this Chapter.
- (G) **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.

The measurement shall be taken at the widest diameter. In the case of trees with multiple trunks, the diameter of all stems (trunks) at breast height shall be summed.

- (H) Heritage Oak Tree(s): Any live native oak tree of the genus *Quercus* (including blue oak (*Q. douglasii*), interior live oak (*Q. wislizeni*), coast live oak (*Q. agrifolia*), canyon live oak (*Q. chrysolepis*), Oregon oak (*Q. garryana*), California black oak (*Q. kelloggii*), valley oak (*Q. lobata*), Shreve oak (*Q. parvula* var. *shrevei*), or hybrids thereof) with a single main trunk measuring at or greater than the dbh established in section 20.248.025 of this Chapter. For trees with multiple trunks, the dbh shall be the summed diameter of all stems (trunks) at breast height. This definition does not include Shrub Oaks, Individual Oak Tree(s), or an Oak Woodland.
- (I) Impact: For Native Oak Trees, Individual Native Oak Trees and Heritage Oak Trees, impact 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. For Oak Woodlands, impact means tree, shrub, and land clearing associated with land development, including, but not limited to, grading, clearing, or otherwise modifying land for roads, driveways, buildings or building pads, landscaping, utility easements, and other development activities.
- (J) Individual Native Oak Tree(s): Any established live native oak tree of the genus *Quercus* (including blue oak (*Q. douglasii*), interior live oak (*Q. wislizeni*), coast live oak (*Q. agrifolia*), canyon live oak (*Q. chrysolepis*), Oregon oak (*Q. garryana*), California black oak (*Q. kelloggii*), valley oak (*Q. lobata*), Shreve oak (*Q. parvula* var. *shrevei*), or hybrids thereof) with a single main trunk measuring at or greater than the dbh established in section 20.248.025 of this Chapter. For trees with multiple trunks, the dbh shall be the summed diameter of all stems (trunks) at breast height. This definition does not include Shrub Oaks, Heritage Tree(s), or an Oak Woodland.
- (K) Native Oak Tree: Any live native oak tree of the genus *Quercus* (including blue oak (*Q. douglasii*), interior live oak (*Q. wislizeni*), coast live oak (*Q. agrifolia*), canyon live oak (*Q. chrysolepis*), Oregon oak (*Q. garryana*), California black oak (*Q. kelloggii*), valley oak (*Q. lobata*), Shreve oak (*Q. parvula* var. *shrevei*), or hybrids thereof). Shrub Oaks shall not be included in this definition.
- (L) Non-native Oak Tree(s): Any live oak tree of the genus *Quercus* that is not identified in this chapter as a Native Oak Tree or Shrub Oak. This definition shall not include any hybrid oak tree with at least one parent originating from a Native Oak Tree.
- (M) Oak Resources: Collectively, Native Oak Tree(s), Individual Native Oak Tree(s), Heritage Oak Tree(s), and/or Oak Woodland(s).
- (N) Oak Stand or Stand: A contiguous community of no less than two (2) trees sufficiently uniform in composition, structure, age, size, and spatial arrangement.
- (O) Oak Tree Removal Permit: An administrative 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 administrative 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).

- (P) Oak Tree Removal Technical Report: A stand-alone report prepared by a Qualified Professional containing information, documentation, and formatting pursuant to Section 20.248.035 of this Chapter.
- (Q) Oak Woodland(s): An oak stand with a greater than ten percent (10%) canopy cover or that may have historically supported greater than ten percent (10%) canopy cover that encompasses a minimum area of one quarter (1/4<sup>th</sup>) of an acre. To achieve a 10% oak woodland canopy cover, the native vegetation stand must consist of one or more California native oak trees six (6) inches or larger dbh and spaced less than one hundred and seventy (170) feet apart. The 10% oak woodland canopy cover applies to the individual stand of vegetation and not to the project site or subject parcel; consequently, the project site or subject parcel may have one or more oak woodlands on it. Measurements shall utilize aerial imagery data and other techniques to determine current and historical coverage. This definition does not include Individual Oak Tree(s) or Heritage Oak Tree(s), but shall include Shrub Oaks.
- (R) Oak Woodland Removal Management Plan: A stand-alone report prepared by a Qualified Professional containing information, documentation, and formatting pursuant to Section 20.248.030 of this Chapter.
- (S) Oak Woodland Removal Permit: A Use Permit issued by the County allowing removal of oak woodland(s). An Oak Woodland Removal Management Plan 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).
- (T) Qualified Professional: An arborist certified by the International Society of Arboriculture (ISA), a Qualified Wildlife Biologist, a Botanist, and/or a Registered Professional Forester (RPF).
- (U) 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; and/or taxonomic experience and knowledge of plant and animal ecology with the appropriate county, state, and federal policies and protocols related to special status species and biological surveys.
- (V) Registered Professional Forester (RPF): 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.
- (W) Replacement Tree(s): An oak tree that is part of the mitigation for an Oak Tree Removal Permit or an Oak Woodland Removal Permit. Stock for replacement trees shall be sourced from Mendocino from an elevation of no greater than 500± feet deviation from

the project site. Additionally, replacement tree(s) may be established from acorns or saplings no less than two (2) feet in length from top of crown to bottommost root. Non-native oak trees shall not be used for the purpose of replacement trees and all stock shall be certified free of Sudden Oak Death.

- (X) Semi-Capable Soils: Soils found to contain, or are derived from, serpentine and ultramafic rocks according to the United State Department of Agriculture Western and Eastern Soil Studies of Mendocino County. Those soils categorized into any of the following groupings, with associated group number, shall be considered as semi-capable soils for the purposes of this Chapter: Dingman-Beaughton complex (117), Dann-Hiltabidel complex (133), Dann-Littlered-Hiltabidel complex (134), Henneke-Montara complex (136), Henneke-Montara complex (137), Maxwell clay (156), Hiltabidel-Dann complex (162), and Xerochrepts (214).
- (Y) Shrub Oak(s): Any native oak shrub of the genus *Quercus* and the species including, but not limited to, Oregon white oak (*Q. garryana* var. *breweri*), huckleberry oak (*Q. vaccinifolia*), scrub oak (*Q. berberidifolia*), and leather oak (*Q. durata*). This definition does not include Shrub Oaks, Individual Oak Tree(s), or an Oak Woodland.
- (Z) Sudden Oak Death: A tree disease caused by the fungus-like plant pathogen *Phytophthora ramorum*.

#### Section 20.248.020 – Prohibition of Oak Resource Impact and Removal

With the exception of the activities listed in Section 20.248.045 (Exemptions), no person or entity shall remove, or otherwise impact Oak Resources located within the unincorporated inland areas of the County of Mendocino without adhering to the requirements of this Chapter and the issuance of a permit. This prohibition only applies to Shrub Oak(s) when within 50 feet of a Native Oak Tree(s). Furthermore, no replacement trees that are part of mitigation for an Oak Tree Removal Permit or Oak Woodland Removal Permit shall be impacted until the dbh established in section 20.248.025 for Individual Native Oak Tree(s) has been reached by said trees, unless as part of the Oak Tree Removal Technical Report or Oak Woodland Removal Management Plan for the purposes of thinning replacement trees. No buildings shall occur within twenty-five (25) feet of the dripline of any oak tree.

#### Section 20.248.025 – Oak Tree Canopy and Heritage Classifications

This section provides the estimated crown cover for each of the native oak species. The crown cover will be used to calculate replacement trees for Oak Woodland Removal Permits. The table also provides the dbh for individual native oak tree and heritage oak tree statuses.

Species	Estimated Crown Cover	Capable Soil Individual Native	Semi-Capable Soil Individual Native	Capable Heritage	Semi-Capable Heritage
blue oak ( <i>Q. douglasii</i> )	700 sqft	18"	See Section 20.248.030 and 20.248.035	22"	See Section 20.248.030 and 20.248.035
interior live oak ( <i>Q. wislizeni</i> )	300 sqft	6"		12"	
coast live oak ( <i>Q. agrifolia</i> )	300 sqft	12"		24"	
canyon live oak ( <i>Q. chrysolepis</i> )	1200 sqft	10"		20"	
Oregon oak ( <i>Q. garryana</i> )	700 sqft	12"		24"	

California black oak ( <i>Q. kelloggii</i> )	800 sqft	12"		22"	
valley oak ( <i>Q. lobata</i> )	1200 sqft	9"		18"	
Shreve oak ( <i>Q. parvula</i> var. <i>shrevei</i> )	700 sqft	12"		22"	
Hybrid oak trees (genus. <i>Quercus</i> ) with at least one parent being an Individual Native Oak Tree.	700 sqft	12"		22"	
Any oak tree (genus. <i>Quercus</i> ) not identified as an Individual Native Oak Tree or hybrid oak tree (genus. <i>Quercus</i> ) with both parents being non-native oak trees.	N/A	20"		30"	

#### Section 20.248.030 – Permitting Requirements for Oak Woodland Removal

An Oak Woodland Removal Permit shall be required for all activities with impacts to Oak Woodlands except the activities exempted by Section 20.248.045.

- (A) Minor Use Permit: For the purposes of this Chapter, Oak Woodland Removal Permits shall be processed as Minor Use Permits pursuant to Chapter 20.196.
- (B) Permit Application Requirements:
  - (1) Use Permit application, including reason(s) for impact to Oak Woodland;
  - (2) Oak Woodland Removal Management Plan, as defined in this Chapter, which shall include the following:
    - (a) Site location including address and Assessor Parcel Number(s);
    - (b) Quantification of all oak woodlands on subject parcel(s) including number, species, dbh (for oak trees), canopy coverage, assessment of existing recruitment, and value of oak habitat. If Oak Woodland(s) extends beyond parcel under applicant ownership/lease, an estimated size of remaining Oak Woodland(s) shall be provided;
    - (c) Purpose for removal of oak woodland;
    - (d) Objectives of the Management Plan. Shall indicate which area will be impacted and how much will be removed (in canopy coverage and number of trees), and method of removal;
    - (e) Impacts of Removal. Shall indicate impacts to surrounding environment and habitat;
    - (f) Maps, including location of existing oak woodlands and proposed replacement trees;

- (g) Information demonstrating how the objectives of the Plan will be executed and accomplished. This shall include timeframe of the Plan, measures taken to reduce spread of Sudden Oak Death, if present, monitoring methods of replaced oak tree(s), and success criteria;
  - (h) Environmentally sensitive alternatives to the proposed removal. The avoidance and minimization of oak woodland impacts shall be included as a preferred alternative;
  - (i) Recommendation by Qualified Professional.
- (3) Site Plan of entire subject parcel(s) with identified area of impact. A Site Plan containing only a portion of the subject parcel(s) may be submitted as supporting documentation with Site Plan of entire subject parcel(s).
- (C) Limitations: For the purposes of this Chapter, no more than 5% of the Oak Woodland shall be removed in any 10 year period. These limitations shall not to be exceeded within any ten (10) year period. If an oak woodland extends across multiple parcels each property owner may remove no more than 1% of the oak woodland within any ten (10) year period, provided, however, that an applicant may obtain permission from said property owner(s) to forfeit their 1% of oak Mwoodland impact, but shall not exceed the 5% .
- (D) Replacement: The replacement of an Oak Woodland shall be at a ratio of no less than 16:1, including Shrub Oaks, and shall meet the following requirements:
  - (1) The canopy cover of replacement trees shall not be less than the amount permitted for removal. Crown coverage of replacement trees shall be determined by Table 1 in section 20.248.025 of this Chapter, provided, however, that the number of replacement trees shall be no less than the 16:1 ratio; and
  - (2) Replacements trees shall be located on land adjacent to existing woodlands; and
  - (3) The replacement trees shall be planted between October 1 and December 31, no later than 12 months after removal. This requirement shall occur after the first rains of the season; and
  - (4) Replacement trees as a mitigation measure can be altered for other acceptable forms of mitigation, as approved by the County of Mendocino and California Department of Fish and Wildlife. Such measures include, but are not limited to, a conservation easement for the remainder of Oak Resource on a subject parcel, or the protection of saplings for a period established in an Oak Woodland Removal Management Plan.
- (E) Findings for Approval: No Oak Woodland Removal Permit shall be approved unless the following findings are made, as determined by a Qualified Professional:

- (1) There is no feasible less environmentally damaging alternative; and
  - (2) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted; and
  - (3) The resource as identified will not be significantly degraded by the proposed development; and
  - (4) The value of oak habitat is not diminished.
- (F) Monitoring: The applicant shall submit a monitoring report, completed by a Qualified Professional, to the Department of Planning and Building Services at least once every other year for a period of no less than ten (10) years from the date of the last tree replacement, unless otherwise specified in the Oak Woodland Removal Permit. The monitoring period shall be no less than twenty (20) years for ATF permits, as described in section 20.248.045(B) of this Chapter. The monitoring report shall include, at minimum, the following information:
- (1) Success rate of replacement trees; and
  - (2) Photo documentation of replacement trees; and
  - (3) If applicable, issues impacting replacement trees and method of mitigation to reduce impact(s).
- (G) Final Clearance: At the end of any monitoring period, a final inspection shall be conducted by County staff to determine completeness of an Oak Woodland Removal Permit and a final report by a Qualified Professional submitted no later than thirty (30) days before the final inspection. The criteria for final clearance shall be made using the following findings:
- (1) The survival rate of replacement trees is not less than sixty percent (60%); and
  - (2) The replacements trees have been self-sustaining for the last two (2) years and do not require human intervention for survival; and
  - (3) The final report by the Qualified Professional recommends final approval; and
  - (4) No additional unpermitted Oak Resource removals have occurred; and
  - (5) If any of these findings are not met by the end of the initial monitoring period, the monitoring period shall be extended by no less than an additional five (5) years and replacements trees shall be replanted to the initial amount established in the approved permit.

Section 20.248.035 – Permitting Requirements for Oak Tree Removal

An Oak Tree Removal Permit shall be required for all activities with impacts to Individual Native Oak Trees or Heritage Oak Trees except those exempt from activities state in Section 20.248.045. Oak Tree Removal Permits shall contain the following minimum information as specified below. Individual Native Oak Trees and Heritage Oak Trees located in semi-capable soils shall be subject to the requirements of this section regardless of dbh.

- (A) Administrative Permit: For the purposes of this Chapter, Oak Tree Removal Permits shall be processed as an Administrative Permits pursuant to Chapter 20.192. Oak Tree Removal Permits shall apply to activities that impact Individual Native Oak Tree(s) and Heritage Oak Tree(s), but shall not apply to activities that impact Oak Woodland(s).
- (B) Permit Application Requirements:
  - (1) Administrative Permit application;
  - (2) Oak Tree Removal Technical Report, as defined in this Chapter; which shall include the following:
    - (a) Site location including address and Assessor Parcel Number(s);
    - (b) Objectives of the oak tree removal. Shall indicate which tree(s) shall be impacted (including species, dbh, and understory features), verification that the impacts are not to a woodland, and the reason for removal;
    - (c) Impacts of Removal. Shall indicate impacts to surrounding environment and habitat;
    - (d) Maps, including location of existing and replacement tree(s);
    - (e) Information demonstrating methods of how the removal(s) will be executed and accomplished. This shall include timeframe of the removal(s), measures taken to reduce spread of Sudden Oak Death, if present, monitoring methods of replaced oak tree(s), and success criteria;
    - (f) Environmentally sensitive alternatives to the proposed removal. The avoidance and minimization of individual native oak or heritage oak tree(s) shall be included as an alternative;
    - (g) Recommendation by Qualified Professional.
  - (3) Site Plan of entire subject parcel(s) with identified area of impact. A Site Plan containing only a portion of the subject parcel(s) may be submitted as supporting documentation with Site Plan of entire subject parcel(s).
- (C) Limitations: For the purposes of this Chapter, no more than five (5) Individual Native Oak Trees and/or no more than one (1) Heritage Oak Tree shall be permitted per permit. Multiple permits may be obtained, provided, however, that these limitations are not to be exceeded within any three (3) year period.



- (D) Replacement: The replacement of an Individual Native Oak Tree or Heritage Oak Tree shall be at a ratio of at least 8:1. The replacement trees shall be planted between October 1 and December 31, no later than 12 months after removal. This requirement shall occur after the first rains of the season.

Replacement trees as a mitigation measure can be altered for other acceptable forms of mitigation, as approved by the County of Mendocino and California Department of Fish and Wildlife. Such measures include, but are not limited to, a conservation easement for the remainder of Oak Resource on a subject parcel, or the protection of saplings for a period established in an Oak Tree Removal Technical Report.

- (E) Findings for Approval: No Oak Tree Removal Permit shall be approved unless the following findings are made:

- (1) There is no feasible less environmentally damaging alternative; and
- (2) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted; and
- (3) The resource as identified will not be significantly degraded by the proposed development.

- (F) Monitoring: The applicant shall submit a monitoring report, completed by a Qualified Professional, to the Department of Planning and Building Services at least every other year for a period of no less than ten (10) years from the date of the last tree replacement, unless otherwise specified in the Oak Tree Removal Permit. The monitoring period shall be no less than twenty (20) years for ATF permits, as described in section 20.248.045(B) of this Chapter. The monitoring report shall include, at minimum, the following information:

- (1) Success rate of replacement trees; and
- (2) Photo documentation of replacement trees; and
- (3) If applicable, issues impacting replacement trees and method of corrective actions to reduce impact(s).

- (G) Final Clearance: A final inspection shall be conducted by County staff to determine completeness of an Oak Tree Removal Permit and a final report by a Qualified Professional submitted no later than thirty (30) days before the final inspection. The criteria for final clearance shall be made using the following findings:

- (1) The survival rate of replacement trees is not less than sixty percent (60%); and
- (2) The replacements trees have been self-sustaining for the last two (2) years and do not require human intervention for survival; and

- (3) The final report by the Qualified Professional recommends final approval; and
- (4) No additional unpermitted Oak Resource removals have occurred; and
- (5) If any of these findings are not met by the end of the initial monitoring period, the monitoring period shall be extended by no less than an additional five (5) years and replacements trees shall be replanted to the initial amount established in the approved permit.

#### Section 20.248.040 – Exemptions

Exemptions from the provisions of this Chapter are provided for certain activities, uses, and zoning districts. No oak tree that is or was a replacement tree as part of an Oak Tree or Oak Woodland Removal Permit shall be exempt until said tree has reached a dbh of 6 inches or greater.

- (A) Any activity, use, or zoning district exempt from the provisions of this Chapter shall submit the following before impacting Oak Resources:
  - (1) An Oak Tree Removal Exemption Form; and
  - (2) A statement from a Qualified Professional regarding the presence of Sudden Oak Death symptoms, or any other concern for removal. If Sudden Oak Death symptoms are present, the applicant shall adhere to the permitting processes pursuant to Sections 20.248.030 and/or 20.248.035 of this Chapter.
- (B) The following activities, uses, and zoning districts shall be exempt from the provisions of this Chapter when in accordance with Section 20.248.040(A) of this Chapter or unless otherwise specified:
  - (1) Zoning Districts: The following zoning districts are exempt:
    - (a) Agricultural Zoning District: Any parcel designated as an Agricultural zoning district (AG:40) is exempt from the provisions of this Chapter. This exemption shall apply to those existing parcels that were located in the Agricultural zoning district (AG:40) prior to the adoption of this Chapter. Any parcels subsequently rezoned into the Agricultural zoning district shall not be included. This exemption shall not apply to Heritage Oak Trees.
    - (b) Residential Zoning Districts: Any parcel located within the Single-Family Residential (R1), Two-Family Residential (R2), Multiple-Family Residential (R3), or Suburban Residential (SR) zoning district is exempt from the provision of this chapter if the following are true.
      - (i) The action(s) is occurring on a parcel of 1 acre or less.

- (ii) The subject parcel cannot be further subdivided without a General Plan Amendment and/or Rezone.
- (c) **Commercial Zoning Districts:** Any developed parcel designated within the Limited Commercial zoning district (C1) or General Commercial zoning district (C2) is exempt from the provision of this chapter. Neither the removal of Heritage Oak Trees, nor any undeveloped parcel(s) created from a subdivision are included in this exemption.
- (d) **Industrial Zoning Districts:** Any developed parcel designated within the Limited Industrial zoning district (I1), General Industrial zoning district (I2), or Pinoleville Industrial zoning district (PI) is exempt from the provisions of this chapter. Neither the removal of Heritage Oak Trees, nor any undeveloped parcel(s) created from a subdivision are included in this exemption.
- (2) **Establishment of Residential Use:** The establishment of the first dwelling, and associated utilities (water well and septic), on an undeveloped parcel in any zoning district in which a single-family residence is a permitted use type is not subject to the provisions of this Chapter. This exemption shall only apply to the footprint of the single-family residence and utilities. This exemption shall not include detached bedrooms, guest cottages, accessory dwelling units, or any other accessory structure, or access to the single-family residence.
- (3) **Fire Safe Activities:** Actions taken pursuant to an approved Fire Safe Plan for existing structures 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. Impacts to initial Defensible Space establishment for new development or uses are not exempt from the mitigation requirements included in this Chapter, unless for the first dwelling pursuant to Section 20.248.040(B)(2).
- (4) **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. Actions associated with development of new utility facilities, including transmission or utility lines, are not exempt.
- (5) **County Road Projects:** Projects including protection to public health and improving safe movement of people and goods in existing public rights-of-way (as well as acquired rights-of-way necessary to complete the project) are exempted from the provisions of this Chapter. New proposed roads, including those within new or proposed development(s), road widening, and road realignment are not exempt.
- (6) **Emergency Operations:** Actions taken during emergency firefighting operations or responses to natural disasters (e.g., floods, landslides,

avalanches, storm events, etc.) and associated post-disaster remediation activities are exempted from the mitigation requirements included in this Chapter. This exemption shall only apply to public governmental and semi-governmental agencies. This exemption includes the provisions of Section 20.248.040(A).

- (7) Timber Harvest Plan: Tree removal under a Timber Harvesting Plan or other harvest document contained within the Z'Berg-Negedly Forest Practice Act (Public Resources Code, Division 4, Chapter 8, Sections 4511, et seq.) or Forest Practice Rules (Title 14 California Code of Regulations, Subchapter 7, Articles 2 and 7) approved by the California Department of Forestry and Fire Protection is exempted from the provisions included in this Chapter including Section 20.248.040(A).
- (8) Dead, Dying, or Diseased Trees: Individual native oak tree removal (including Heritage Oak Trees and those within Oak Woodlands) is exempted from the provisions included in this Chapter when:
  - (i) The tree is dead, dying, or diseased, as documented in writing by a Qualified Professional; and
  - (ii) The tree exhibits high failure potential with the potential to injure persons or damage structural property, as documented in writing by a Qualified Professional.

Documentation of the dead, dying, or diseased status of the tree shall be submitted with the exemption form.

- (9) Personal Use for Non-Commercial Firewood: Removal of an Individual Native Oak Tree, other than a Heritage Oak Tree(s), when it is cut down on the owner's property for the owner's personal use for non-commercial firewood, is exempted from the permitting requirements included in this Chapter provided that no more than three (3) trees are removed from a single parcel per year and provided that the total combined diameter inches at breast height (dbh) of trees removed from a single parcel per year does not exceed fifteen (15) inches.

#### Section 20.248.045 – Penalties and Procedures for Violations

This section provides for penalties and procedures that are supplemental to any and all other penalties and procedures provided elsewhere in the Mendocino County Code, or by state or federal law, whether administrative, civil, or criminal in nature. As such, the provisions of this section may be utilized alone or in conjunction with other provisions.

- (A) The permits required by this Chapter are in addition to any other permit that might be required to develop the land or otherwise engage in activities on the land. All applicable permits including the permits required by this Chapter must be obtained prior to impacting an Oak Resource. If a person obtains a permit, other than a permit required by this Chapter, to engage in an activity that results in an impact to an Oak Resource, until the permit of permits required by this Chapter are also obtained.

- (B) If a permit is required by this Chapter to impact an Oak Resource, and such Oak Resource is impacted before the required permit is obtained, the property owner from which the Oak Resource was impacted shall obtain an After-The-Fact (ATF) Oak Resource Removal Permit
- (1) An ATF Oak Resource Removal Permit shall include all the requirements of either an Oak Tree Removal Permit or an Oak Woodland Removal Permit, as applicable. Additionally the monitoring required for an ATF Oak Resource Removal Permit shall be no less than twenty (20) years.
  - (2) To the extent that an Oak Tree Removal Permit or an Oak Woodland Removal Permit would not have been granted based on the limitations for such permit, an ATF Oak Resource Removal Permit will be granted, but shall include any additional remediation measures deemed appropriate by the Director of Planning and Building Services to offset the impact to any Oak Resource beyond the limitations specified, which may include, but not limited to, denial of any proposed development or an order to demolish any development in the area of where the Oak Resource was impacted.
  - (3) The Board of Supervisors may impose an investigatory fee, which they may establish by resolution, for any ATF Oak Resource Removal Permit. Such fee is intended to account for the additional time and resources required to process and monitor an ATF Oak Resources Removal Permit, and shall be in addition to the base fee for the Oak Tree Removal Permit or Oak Woodland Removal Permit, whichever is applicable. Such investigatory fee also shall be in addition to any penalty imposed as provided in this section.
- (C) If a permit is required by this Chapter to impact an Oak Resource, and such Oak Resource is impacted before the required permit is obtained, the property owner from which the Oak Resource was impacted and anyone responsible for the impact to the Oak Resource shall pay the penalty, for which they are jointly and severally responsible, as specified in this section. The penalties shall be in addition to any required permit fee and in addition to any investigatory fee imposed. The penalties for impacting Oak Resources without an appropriate permit are as follows:
- (1) Native Oak Tree(s): The penalty for impacts to a Native Oak Tree shall be the cost of an Oak Tree Removal Permit. If two (2) or more Native Oak Trees are impacted, an additional penalty of \$500.00 per tree shall apply for every tree removed except the first.
  - (2) Individual Native Oak Tree(s): The penalty for impacts to an Individual Native Oak Tree shall be two (2) times the cost of an Oak Tree Removal Permit. If two (2) or more Individual Native Oak Trees are impacted, an additional penalty of \$1,000.00 per tree shall apply for every tree removed except the first.
  - (3) Heritage Oak Tree(s): The penalty for impacts to a Heritage Oak Tree shall be two (2) times the cost of an Oak Tree Removal Permit for each Heritage Oak Tree impacted without the appropriate permit.

- (4) Oak Woodland(s): The penalty for removal of a portion of Oak Woodland shall be two (2) times the cost of an Oak Woodland Removal Permit per 500 square feet of impacted oak woodland.
- (5) Oak Resources: In addition to any combination of the above penalties, the penalty for removal of any oak resource shall include a fine equal to the value of the removed oak resources in terms of species, location, age, and condition, as determined by an arborist.

**Section 2. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The Board of Supervisors of the County of Mendocino hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof independently, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**Section 3. CEQA.** This ordinance is categorically exempt from the California Environmental Quality Act under the Class 7 and Class 8 Categorical Exemptions pursuant to California Code of Regulations Sections 15307 and 15308.