



# Mendocino County Farm Bureau

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Affiliated with the California Farm Bureau Federation and the American Farm Bureau Federation

March 8, 2021

Mendocino County Board of Supervisors  
501 Low Gap Road, Room 1010  
Ukiah, CA 95482

Via Email: [bos@mendocinocounty.org](mailto:bos@mendocinocounty.org)

*RE: Agenda Item 5F: Discussion and Possible Action Including Direction to Staff Regarding the Oak Tree and Oak Woodland Protection Ordinance*

Dear Chair Gjerde and Board members,

The Mendocino County Farm Bureau (MCFB) is a non-governmental, non-profit, voluntary membership, advocacy group whose purpose is to protect and promote agricultural interests throughout the county and to find solutions to the problems facing agricultural businesses and the rural community. MCFB would like to submit comments on agenda item *5F: Discussion and Possible Action Including Direction to Staff Regarding the Oak Tree and Oak Woodland Protection Ordinance*

MCFB has been engaged with this issue for the past year. Our comments to the Planning Commission from November of 2020 are included as Attachment A. The Board is encouraged to review these comments as most are still relevant. In summary, MCFB's primary concerns were the lack of data supporting the overall need for a county wide oak removal ordinance, excessive mitigation ratios, lack of mitigation options and exemptions that were not true exemptions.

The current redline version of the ordinance in front of you still retains language that supports several of these concerns.

## **Need for a County Wide Ordinance**

There has not been an assessment of the overall status of the oak woodlands in Mendocino County to have a baseline for determining what species of oak are of most concern or to have a way to measure the success of an oak ordinance. In other words, what is trying to be achieved and will this proposed ordinance accomplish those goals.

The cannabis ordinance has been used as rationale for the need of this ordinance. For Phase 1, there is language in the cannabis ordinance that does not allow for any tree removal. In addition, the language below is in the State Water Resources Control Board cannabis cultivation policy, Attachment A from February 5, 2019 discusses oak tree damage and removal. Note that this mitigation ratio is 3:1. There are existing local and state policies already connected to cannabis permits for oak tree removal. If these existing policies are not followed or enforced, one more layer most likely will not lead to a different result.

	similar native species.
34.	Cannabis cultivators shall avoid damage to oak woodlands. Cannabis cultivator shall plant three oak trees for every one oak tree damaged or removed. Trees may be planted in groves in order to maximize wildlife benefits and shall be native to the local county.
35.	<p>Cannabis cultivators shall develop a revegetation plan for:</p> <ul style="list-style-type: none"> <li>• All exposed or disturbed riparian vegetation areas,</li> <li>• any oak trees that are damaged or removed, and</li> <li>• temporary work areas.</li> </ul> <p>Cannabis cultivators shall develop a monitoring plan that evaluates the revegetation plan for five years. Cannabis cultivators shall maintain annual inspections for the purpose of assessing an 85 percent survival and growth of revegetated areas within a five-year period. The presence of exposed soil shall be documented for three years following revegetation work. If the revegetation results in less than an 85 percent success rate, the unsuccessful vegetation areas shall be replanted. Cannabis cultivators shall identify the location and extent of exposed soil associated with the site; pre- and post-revegetation work photos; diagram of all areas revegetated, the planting methods, and plants used; and an assessment of the success of the revegetation program. Cannabis cultivators shall maintain a copy of the revegetation plan and monitoring results onsite and make them available, upon request, to Water Boards staff or authorized representatives. An electronic copy of monitoring results is acceptable in Portable Document Format (PDF).</p>

Enforcement is a question that also needs to be addressed. With the current scope of this ordinance, does the county have the staffing to enforce this proposal on a county wide basis? Or will this simply be another regulation for those who choose to follow the terms (most likely project application driven) or complaint driven like other existing county ordinances.

### **Mitigation Ratio's**

Oak Woodland mitigation ratio is listed as 8:1. This was reduced from 16:1. Individual oak tree removal has remained at 8:1. The rationale for the high mitigation ratios for this proposed ordinance, when compared to other county oak ordinance examples, has not been provided.

These ratios are not connected to tree diameter, species, scope of project, parcel size limitations, etc. This is a one size fits all mitigation ratio.

## **Mitigation Options**

The redlined draft has included an expanded suite of mitigation options. However, MCFB would like to point out that these mitigation options have limited applicability, especially for smaller parcels.

For example, the minimum parcel size for a Williamson Act open space contract is 40 acres. In addition, the qualifications for an open space Williamson Act contract are limited to lands used for specific purposes within scenic highway corridors, a wildlife habitat, a salt pond, a managed wetland or a submerged area.

Since this ordinance is proposing to cover all oak removal on parcels over an acre, there needs to be consideration for workable mitigation options.

Also of concern is the connection to the approval of alternative forms of mitigation with both the County of Mendocino and the Department of Fish and Wildlife. The Department may be a consulting agency when appropriate but should not be an approving agency.

## **Exemptions**

- A. It is appreciated that A2 was stricken from the proposed draft. Additional clarification is needed on what the requirements of an oak tree removal form are, what are the associated costs, etc.

B.

1. Agricultural Zoning District: existing AG:40 parcels fall under the exemption. Does this include existing non-conforming AG parcels that are smaller than 40 acres?

Residential Zoning Districts: How many parcels in the residential zoning districts in the county are over one acre in size? The Board should be aware of this number to understand the potential number of parcels that will not qualify for this exemption.

### **8. Personal Use for Non-Commercial Firewood**

The limit of 3 individual oak trees for a combined DBH of 20 inches per parcel per year is a significant limitation on the quantity of firewood that can be produced on an annual basis depending on the number of parcels under a single ownership.

The chart below<sup>1</sup> shows an example of DBH conversion to cords of firewood. This shows that a combination of 1-3 trees with a max DBH of 20 inches adds up to less than 1 cord.

There are a significant number of residents in Mendocino County that depend on firewood for home heating purposes and these existing limitations could prevent property owners from being able to fulfill their firewood needs.

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<sup>1</sup> <https://ucanr.edu/sites/placernevadasmallfarms/files/76320.pdf>

Tree Diameter at 4 ½ feet	Number of Trees to Make a Cord	Number of Cords Per Tree
5"	50	.02
6"	20	.05
7"	12	.08
8"	8	.12
9"	6	.17
10"	5	.21
11"	4	.25
12"	3.5	.30
14"	2.5	.40
16"	2	.50
18"	1.5	.65
22"	1	1.00

Assume 4 inch top diameter

(Based on research by Gevorkiantz and Olsen 1955)

Example:

In a representative sample plot (74 foot diameter circle) you count the following.

3 trees 5" diameter (3 x .02 cords/tree) = .06 cords  
 2 trees 8" diameter (2 x .12 cords/tree) = .24 cords  
 1 tree 10" diameter (1 x .21 cords/tree) = .21 cords  
1 tree 12" diameter (1 x .30 cords/tree) = .30 cords

7 trees

TOTAL = .81 cords

MCFB encourages the Board to consider these comments and seriously discuss the need to prioritize a county wide ordinance for oak protection. What is the overall intent and measure of success for this ordinance? Does the county have the staff time and resources to implement this proposed ordinance? Will this ordinance encourage oak appreciation and preservation or drive property owners to see oaks as a liability?

These questions deserve an honest review in the conversation at the Board level and in what further direction is provided to staff.

Sincerely,



George Hollister  
President

# **Attachment A**



# *Mendocino County Farm Bureau*

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Mendocino County Department of Planning and Building Services  
860 North Bush Street  
Ukiah, CA 95482

***RE: Comments on Draft Oak Tree and Oak Woodland Protection Ordinance for November 5, 2020  
Public Workshop***

Dear Commissioners,

The Mendocino County Farm Bureau (MCFB) is a non-governmental, non-profit, voluntary membership, advocacy group whose purpose is to protect and promote agricultural interests throughout the county and to find solutions to the problems facing agricultural businesses and the rural community. MCFB would like to submit comments the draft oak tree and oak woodland protection ordinance for the November 5, 2020 public workshop.

**General Comment**

Creating an oak tree and oak woodland protection ordinance that will enact restrictions on all inland properties regardless of if there are any problems affecting oak trees or woodlands on those properties is overly restrictive. The county is considering a one size fits all regulation that assumes all property owners are negligent of oak trees and oak woodlands. There needs to be acknowledgment that many landowners do not have this problem. A less burdensome exemption process should be considered.

As proposed, this ordinance is dependent on discretionary permits. This will leave permit requirement and compliance determinations open to interpretation. Since the mitigation timelines as drafted are at a minimum of 10-20 years (with the chance to extend the mitigation timeline if findings are not met), there could be staff turnover, property ownership turnover, etc. over this period. The chances of inconsistencies between start and finish of a permit are high. There needs to be consideration of looking at a ministerial permit process and not a complete discretionary one.

### ***Memorandum from Mr. Vandewater***

*The proposed project also includes a General Plan Amendment to Action Item RM-28.1 which discusses protections for oak woodlands and resources. The General Plan Amendment intends to change the replacement ratio for the oak trees, which is currently 2:1. The change would establish a range for the replacement ratio, with a minimum of 2:1 and a maximum of 16:1, thus providing the County with more flexible mitigation measures. This amendment is important because the Oak Tree and Oak Woodland Protection Ordinance is proposing a higher ratio than currently required.*

Increasing the mitigation ration from 2:1 to a maximum of 16:1 is significant. Since this ordinance is proposed to cover properties over one acre in size, there could be numerous situations where a 16:1 mitigation ratio is simply not possible for on sight mitigation options.

Within the draft document there is also no reference to a minimum of 2:1 mitigation ratio. 20.248.030 (D) states a 16:1 mitigation ratio for oak woodland. Section 20.248.035(D) states a replacement ratio of 8:1 for an individual native oak tree or heritage oak tree. From this information, it appears that the mitigation range is from 8:1 to 16:1, not 2:1-16:1 as stated in the memorandum.

### **Attachment A Draft Oak Tree and Oak Woodlands Protection Ordinance**

#### **Section 20.248.010 Definitions**

Heritage Oak Tree(s): The table presented in section 20.248.020 is described as specifying the DBH for the determination of a heritage oak tree. It is requested that the table be clarified to specify the DBH requirements to determine heritage oak status as the current presentation is not easily understood.

It is also requested that staff clarify how the measurements were determined for the DBH measurements in the table in section 20.248.020. In looking at oak tree ordinances from other counties, the heritage tree DBH measurements were larger than those presented in the draft.

Impact: the definition considers impact to be the removal of a tree or portions of a tree.

Since many oak trees, especially those located near or above structures, require pruning maintenance to avoid potential damage, this ordinance should not create additional limitations for “removing portions of an oak tree”. This may also conflict with defensible space requirements for fire prevention.

For oak woodlands, impact means tree, shrub, and land clearing associated with land development.

As an example, would fence line maintenance and the need to remove brush/shrubs to do so be considered development and therefore an impact if the fence were in an oak woodland?

Individual Native Oak Tree(s) and Native Oak Tree: Why is it necessary to have two separate definitions?

Oak Tree Removal Permit: if the administrative permit is issued by the county, why do any alternative mitigation measures have to be approved by the County of Mendocino AND the CA Department of Fish and Wildlife? The county should be the sole entity connected to permitting and related mitigation. The same comment applies to the definition of Oak Woodland Removal Permit.

Oak Woodlands: the definition includes language stating, “*an oak stand with a greater than 10% canopy cover or that may have historically supported greater than 10% canopy cover....*”

“That may have historically supported” is making several assumptions. The focus of the ordinance is on tree removal, so if trees are not currently present in a project area, then mitigation should not be required. “That may have historically supported” should be removed.

Shrub Oaks: This definition is stated to not include Shrub Oaks, Individual Oak Trees or Oak Woodland. Is this definition limited to the specific species listed and no other shrub oaks? The fact that the definition of shrub oaks does not include shrub oaks is confusing. Also, the definition of oak woodland includes shrub oaks so there is lack of consistency.

## **Section 20.248.020-Prohibition of Oak Resource Impact and Removal**

*No person or entity should remove, or otherwise impact Oak Resources located within the unincorporated inland areas of the County of Mendocino...*

As mentioned above, the definition of impact seems to include the ability to trim/prune oak trees that may impact structures, etc. Since “otherwise impact” is on the list of prohibitions, it is important to clarify that tree maintenance is not considered an impact.

*This prohibition only applies to Shrub Oak(s) when within 50 feet of a Native Oak Tree(s).*

The ability to remove shrub oaks is not prohibited unless the shrub oaks are within 50 feet of a native oak. However, the definition of impact includes shrub clearing and the definition of oak woodlands includes shrub oaks. The ability to remove shrub oaks needs to be clarified.

*No building shall occur within twenty-five (25) feet of the dripline of an oak tree.*

There is no definition of drip line. It is requested that a definition be added for clarification.

What is “building” considered to be within 25 feet of the dripline of an oak?

Will “building” limitations impact timber operations as defined in the Forest Practice Act, Public Resource Code section 4516.5(a) below? If so, there is conflict with the Forest Practice Act and the Timber Productivity Act and the county should consult with the Board of Forestry.

*For purposes of this section, “timber operations” includes, but is not limited to, soil erosion control, protection of stream character and water quality, water distribution systems, flood control, stand density control, reforestation methods, mass soil movements, location and grade of roads and skid trails, excavation and fill requirements, slash and debris disposal, haul routes and schedules, hours and dates of logging, and performance bond or other reasonable surety*



*requirements for onsite timber operations and for protection of publicly and privately owned roads that are part of the haul route.*

## **Section 20.248.025: Oak Tree Canopy and Heritage Classifications**

*The crown cover will be used to calculate replacement trees for Oak Woodland Removal Permits.*

It is unclear in the permitting process how exactly crown cover will be used to calculate (the number??) of replacement trees. If mitigation ratios have been established for oak woodland removal and oak tree removal, it seems like the use of crown cover can require higher mitigation ratios. Is this a correct interpretation? If this is the case, then the use of crown cover for mitigation needs to have additional clarification added.

Table

See comments under the heritage oak tree definition above.

## **Section 20.248.030- Permitting Requirements for Oak Woodland Removal**

B (2): Oak Woodland Removal Management Plan

What are the estimated costs associated with the development of an oak woodland removal management plan?

(F) How is an applicant supposed to map out proposed replacement trees if the requirement for the number of replacement trees has yet to be determined? This question goes back to the use of crown cover, set mitigation rates, etc.

(G) Are the measures for reducing the spread of sudden oak death (if present) related to the trees that are proposed to be removed or will property owners have to develop a broader plan for the entire property in relation to sudden oak death?

(H) If a proposed project cannot avoid impacts to oak woodlands, will a project be able to move forward if there is not an alternative provided that avoids oak woodland impacts? Minimizing impacts may be possible, while complete avoidance may not be.

C. Limitations

A single applicant with an oak woodland on their property can remove up to 5% of the oak woodland over a ten-year period. However, if the woodland extends across multiple ownerships, then each property owner can only remove up to 1% in a ten-year period.

This seems problematic for a few reasons. If there are several property owners, there may be needs/desires to move forward with projects at different points in time. The forfeiture of the 1% may work for certain ownerships for a certain period but could become problematic especially if properties sell or are otherwise transitioned to new ownerships. If properties sell/transition within the ten-year mitigation

time frame, how will new property owners be notified of project limits? Is there a recorded restriction or notification process?

#### D. Replacement:

How was the 16:1 mitigation ratio determined? This is significantly higher than other oak removal ordinance examples.

“no less than” 16:1 is indicative that there could be mitigation ratios even higher than 16:1 which is also reinforced in (D)(1).

(2) Requiring direct mitigation of replacement trees onto lands adjacent to existing woodlands could also prove to be problematic. As stated in (4), there could be alternative mitigation measures other than the direct planting of replacement trees on the property or adjacent lands.

(3) What is there is a delay in the first rains of the season which significantly narrows the time frame for being allowed to plant replacement trees between October 1 and December 31?

(4) Given that not all projects and properties are the same, there should be a suite of mitigation options available. Offsite mitigation, mitigation banking, a conservation fund, etc. should all be acceptable forms of mitigation. Again, as mentioned earlier, the County of Mendocino grants the permits and should be the sole entity responsible for determining acceptable mitigations. The CA Department of Fish and Wildlife should not determine mitigation measures.

#### E. Findings for Approval

(4) Requiring a finding that “the value of oak habitat is not diminished” is excessively broad and open to interpretation. This should be further clarified or removed.

#### F. Monitoring

If mitigation is acquired through direct tree replacement, an applicant will be required to submit at least five monitoring reports completed by a qualified professional over a ten-year period, unless otherwise stated. After the fact permitting would be at least 10 reports over a twenty-year period.

Will the monitoring requirement be eliminated if direct tree replacement mitigation is not used? What happens if a property sells or transitions in the 10- or 20-year time frame? How will impacts to mitigation replanting be addressed in the case of a natural disaster such as a wildfire that may occur within the 10-20 year time frame?

#### G. Final Clearance

(5) there should not be an automatic requirement to extend a monitoring permit another 5 years and require another replanting to the initial mitigation determination. If replacement tree survival rate comes

in at 58% instead of 60%, then there should be flexibility to encourage the applicant to reach the accepted standard. A full second replant and permit extension should not be mandatory.

### **Section 20.248.035-Permitting Requirements for Oak Tree Removal**

Several of the general permit statements and questions expressed above under the Oak Woodland Removal permit process also apply to the oak tree removal permit.

#### **D. Replacement**

How was the 8:1 mitigation ration determined for the replacement of an individual native oak tree or a heritage oak tree?

### **Section 20.248.040-Exemptions**

A. 1: Are there any costs for submitting an oak removal exemption form?

A. 2: Even if a project is exempt, an applicant has the burden of the expense related to hiring a qualified professional to determine sudden oak death or “any other” concern with the tree removal? Every person who wants to make firewood or take down a dangerous tree now must hire a professional?

Sudden oak death is present in Mendocino County and is most likely more prolific that is currently realized on private, state and federal properties. Requiring that a tree that is positive for sudden oak death, and being considered for removal under an exempt activity, use or zoning, to go through the full permit process is not justified. In fact, if there are dead, dying or diseased trees, the mandate to go through the full permit process will deter property owners from properly managing those trees.

Including these mandates in A.2. does not truly allow for any consideration of exemptions.

#### **B.1. Zoning Districts**

Agricultural Zoning District: existing AG:40 parcels fall under the exemption. Does this include non-conforming AG parcels that are smaller than 40 acres?

Residential Zoning Districts: How many parcels in the residential zoning districts in the county are over one acre in size? The Commission should be aware of this number to understand the potential number of parcels that will not qualify for this exemption.

#### **3. Fire Safe Activities**

With the continued mega fires in California, the existing requirements for defensible space and property management will continue to evolve. The ability to remove oak trees to meet the standards for fire safety standards for existing structures or new development should not be impeded by this ordinance.

#### **4. Utility Line Maintenance and 5. County Road Projects**

How will mitigation options evolve for public and governmental agencies? Replanting trees along a utility corridor or roadway is not feasible? Therefore, off-site mitigation and mitigation banking should be included as options for all proposed projects.

## 6. Emergency Operations

During emergencies, especially wildfire, private property owners: 1) take proactive action to protect their properties and/or 2) are subject to actions taken by other agencies. The fact that the exemption for emergency operations only applies to public governmental and semi-governmental agencies is short sided. If a private property is impacted by a legitimate emergency and oak trees are removed, then the property owner should not be forced to mitigate for those losses under this regulation.

## 7. Timber Harvest Plan

Timber management and related harvest plans account for the management of both commercial and non-commercial species. If a timber harvest plan is within a sudden oak death quarantined county, there are already sudden oak death management requirements within the harvest plan administered by the CA Department of Forestry. The comments under A.2. related to sudden oak death notifications and the requirement to apply for a full permit is not a true exemption for timber management and harvest. The county ordinance should not conflict with the Forest Practice Act or the Timber Productivity Act by curtailing the ability to manage timberland on any zoning designations that allow for timber production such as FL or TPZ.

It was not apparent that the county consulted with the CA Department of Forestry/CAL FIRE during the development of this draft ordinance. This consultation is warranted to clarify the jurisdictional limits that the county has with regulating timber operations.

## 8. Dead, Dying or Diseased Trees

There needs to be exemption language added for the ability to perform proper maintenance of oak trees for fire prevention, potential impacts to structures, safety concerns or post natural event (tree loses branches/cracks in half) without requiring an exemption form or a consult with a qualified professional. These actions may not be related to dead, dying or diseased trees, so a separate section for tree maintenance should be added.

## 9. Personal Use for Non-Commercial Firewood

The limit of 3 individual oak trees for a combined DBH of 15 inches per parcel per year is a significant limitation on the quantity of firewood that can be produced on an annual basis depending on the number of parcels under a single ownership. There are a significant number of residents in Mendocino County that utilize firewood for home heating purposes and these existing limitations could prevent property owners from being able to fulfill their firewood needs.

## **Section 20.248.045- Penalties and Procedures for Violations**

B. The definition of impact needs to be addressed. Removing portions of an oak tree for maintenance or defensible space purposes should not trigger an after the fact oak removal permit.

How will property sales/transfers be contended with over a 20-year permit term? Is there a recorded restriction on the property or a notification process from the county to the new owner?

C. The definition of impact needs to be addressed. Removing portions of an oak tree for maintenance or defensible space purposes should not trigger penalties and permit requirements.

What is the anticipated cost of an oak tree removal permit? Sections of the penalty structure are based around multiplying the permit costs. It would be beneficial to know the monetary range for proposed penalties.

C.1. and C.2. What is the difference in native oak tree(s) and an individual native oak tree(s)? These two definitions are duplicative and need to be amended.

MCFB engaged in this issue earlier this year and appreciates the opportunity to submit additional comments on the draft oak tree and oak woodlands protection ordinance. We will continue to participate in this process as it moves forward. If there are any questions on any of the above points, please do not hesitate to contact the MCFB office.

Sincerely,

A handwritten signature in cursive script that reads "George Hollister".

George Hollister  
President

CC: Michael Jones, UCCE Forestry Advisor, Mendocino County  
Jim Donnelly, Mendocino County Agricultural Commissioner