

## **Oak Woodlands Protection Act of 2014 State CDFW Permit Program**

An act to add Chapter 6.5 (commencing with Section 1625) to Division 2 of the Fish and Game Code, to read:

*The people of the State of California do enact as follows:*

SECTION 1. Section 21083.4 of the Public Resources Code is repealed on the effective date of this statute.

SECTION 2. Chapter 6.5 (commencing with Section 1625) is hereby added to Division 2 of the Fish and Game Code, to read:

### **Chapter 6.5 Oak Woodlands Protection Act**

1625. Short Title. This chapter shall be known, and may be cited, as the Oak Woodlands Protection Act.

1626. The Legislature hereby finds and declares all of the following:

- (a) The conservation of oak woodlands enhances the natural scenic beauty for residents and visitors, increases real property values, promotes ecological balance, provides sustainable habitat for over 300 wildlife species and 2,000 plant species, reduces soil erosion, sustains healthy watersheds and water quality, moderates temperature extremes and climate change, and aids with nutrient cycling, all of which affect and improve the health, safety, and general welfare of the residents of the State of California.
- (b) Widespread changes in land use patterns across the landscape and habitat loss due to the pathogen *Phytophthora ramorum*, commonly known as Sudden Oak Death, and infestations of the Goldspotted Oak Borer parasite, are fragmenting oak woodlands' wildland character over extensive areas of the state. The combination of human impacts and other impacts will cumulatively fragment oak ecosystem continuity unless appropriate conservation steps are taken immediately.
- (c) The future viability of hundreds of California's wildlife species are dependent on the maintenance of biologically functional and contiguous oak woodland ecosystems at local and bioregional scales.
- (d) A program to encourage and make possible the long-term conservation of oak woodlands is a necessary part of the state's wildlands protection policies. It is hereby declared to be the policy of the state to conserve oak woodlands and maintain oak ecosystem health.

1627. It is the intent of the Legislature that this Act be construed in light of the following primary objectives:

- (a) To conserve oak woodland ecological attributes remaining in California and to provide habitat for wildlife species that are associated with such habitat.
- (b) To provide maximum conservation of the oak woodlands ecosystem.
- (c) To insure that land use decisions affecting oak woodlands and dependent wildlife are based

on the best available scientific information and habitat mitigation measures.

(d) To restore and perpetuate the state's most biologically diverse natural resource for future generations of Californians.

1628. For purposes of this chapter, the following terms have the following meanings:

(a) "Canopy cover" means the area, defined as a percent of total ground area, directly under the live branches of an oak tree.

(b) "Commission" means the Fish and Game Commission.

(c) "Department" means the Department of Fish and Wildlife.

(d) "Director" means the Director of Department of Fish and Wildlife.

(e) "Dying trees" means oak or riparian hardwood trees which exhibit one or more of the following: have tested positive for Sudden Oak Death; trees designated by an accredited forester, forest pathologist or arborist as necessary to remove in order to control the spread of disease or insect pests to healthy trees; trees toppled by natural events; and damaged trees representing an imminent danger to human life or property.

(f) "Oak tree" means any tree in the genus *Quercus* that is not growing on timberland, as defined in Section 4526 of the Public Resources Code.

(g) "Oak removal" means causing an oak tree to die or be removed as a result of human activity by any means including, but not limited to, cutting, dislodging, poisoning, burning, pruning, topping or damaging of roots.

(h) "Oak removal permit" means a discretionary permit approving an application for the removal of more than ten percent of the existing oak canopy cover on a parcel.

(i) "Oak removal plan" means an oak woodlands biological impacts evaluation and site-specific management plan.

(j) "Oak woodland" means a non-timberland area on a parcel of five (5) or more acres containing oak trees, or a non-timberland area on a parcel of at least one (1) or more acres containing valley oak trees, with a greater than ten (10) percent canopy cover, or that can be demonstrated to have historically supported greater than ten (10) percent oak canopy cover.

(k) "Riparian hardwood" means native broadleaved evergreen and deciduous trees that produce flowers and grow within 50 feet, measured horizontally, of any watercourse or lake.

(l) "Parcel" means a single assessor's parcel of land as shown on maps produced by the county assessor.

(m) "Timberland" means "timberland" as defined in Public Resources Code section 4526.

(n) "Watercourse" means any well-defined channel with distinguishable bed and bank showing evidence of having contained flowing water indicated by deposit of rock, sand, gravel, or soil, including but not limited to a "stream" as defined in Section 4528(f) of the Public Resources Code.

1629. (a) After January 1, 2015, no person shall remove oak trees, or any valley oak tree greater than or equal to 20" diameter at breast height, from an oak woodland unless an oak removal permit prepared by a Registered Professional Forester for such operations has been submitted to and approved by the Director. The Director may delegate this authority to the Department's regional managers.



- (b) Applications for oak removal permits shall be on a form prescribed by the Director.
- (c) By June 30, 2015, the Commission shall adopt regulations to implement this chapter, including regulations establishing an application fee for the cost of processing an application for an oak removal permit. The fee charged is to be established in an amount necessary to pay the total costs incurred by the department in administering and enforcing this chapter. The regulations shall ensure that the vegetation cover and mapping information contained in all oak removal plans submitted as part of an oak removal permit application is incorporated into a vegetation classification and mapping program maintained by the Department.

1630. (a) An oak removal plan, in a form prescribed by the Commission, shall become part of the application for an oak removal permit. The oak removal plan shall be prepared by a Registered Professional Forester and will set forth, but not be limited to, the following information:

- (1) Present and future parcel use.
- (2) Existing and proposed parcel canopy cover percentages.
- (3) Parcel map indicating the location of all proposed oak removal.
- (4) Number, diameter at breast height and type of oak species to be removed.
- (5) Number of acres on which oak removal will occur.
- (6) Habitat mitigation measures.
- (7) Information required pursuant to Public Resources Code section 21160.

1631. (a) Oak removal operations for which an oak removal permit is required pursuant to this chapter are "discretionary projects" subject to the California Environmental Quality Act, at Public Resources Code, Division 13, commencing with Public Resources Code section 21000, and the Director shall review, and decide whether to approve, oak removal permits pursuant to this chapter and the California Environmental Quality Act.

(b) The Director or Commission may apply to the Secretary of the Resources Agency to certify this program pursuant to Public Resources Code section 21080.5.

1632. The Director shall not approve an oak removal permit where:

- (a) The application and oak removal plan do not comply with this chapter or the regulations adopted by the Commission to implement this chapter,
- (b) The Director cannot make the findings specified in Public Resources Code section 21081.
- (c) Oak tree removal operations would remove more than 10 percent of the oak canopy cover that existed on January 1, 2015;
- (d) Oak or riparian hardwood trees would be removed within 50 feet of any watercourse, lake, or reservoir.
- (e) There is evidence that the information contained in the application or oak removal plan is incorrect, incomplete or misleading in a material way, or is insufficient to evaluate the plan's environmental effects.
- (f) The applicant does not have a legal or equitable interest in the property subject to the application.

(g) Implementation of the oak removal plan as proposed would cause a violation of any applicable law.

(h) Subdivisions (c) and (d) of this section 1632 shall not apply to the removal of dead trees or the removal of oak trees to create legally required fire breaks, fuel breaks and rights-of-way.

1633. (a) The applicant may appeal the Director's denial of an oak removal permit to the Commission by filing a notice of appeal with the Department within 15 days after notice of the denial. The Commission shall hear the appeal within sixty (60) days after the appeal is filed unless a later hearing date is mutually agreed upon by the applicant and the Commission.

(b) Any applicant whose application for an oak removal permit has been denied is entitled to a hearing before the Commission pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The Commission shall hear and decide appeals de novo.

1634. Any person may maintain an action for declaratory and equitable relief to restrain any violation of this division. On a prima facie showing of a violation of this division, preliminary equitable relief shall be issued to restrain any further violation of this division. Oak removal permits approved pursuant to this chapter are "construction projects" as that term is used in Code of Civil Procedure Section 529.1. In any civil action brought pursuant to this chapter in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it is not necessary to allege or prove at any stage of the proceeding any of the following: (1) that irreparable damage will occur if the temporary restraining order, preliminary injunction, or permanent injunction is not issued. (2) the remedy at law is inadequate.

1635. The permittee shall cause an approved oak removal permit to be recorded in each county in which the property is located before beginning any operations contemplated under said permit.

1636. (a) Any public or private landowner who violates this chapter is subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation.

(b) The civil penalty imposed for each separate violation pursuant to this section is separate, and in addition to, any other civil penalty imposed for a separate violation pursuant to this section or any other provision of law.

(c) In determining the amount of any civil penalty imposed pursuant to this section, the court shall take into consideration the nature, circumstance, extent, and gravity of the violation. In making this determination, the court may consider whether the effects of the violation may be reversed or mitigated, and with respect to the defendant, the ability to pay, any voluntary mitigation efforts undertaken, any prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and any other matters the court determines justice may require.

(d) Every civil action brought under this section shall be brought by the Attorney General upon complaint by the Department, or by the district attorney or city attorney in the name of the people of the State of California and any actions relating to the same violation may be joined or consolidated.



(e) All civil penalties collected pursuant to this section shall not be considered fines or forfeitures as defined in Section 13003 and shall be apportioned in the following manner:

(1) Fifty percent shall be distributed to the county treasurer of the county in which the action is prosecuted. Amounts paid to the county treasurer shall be deposited in the county fish and wildlife propagation fund established pursuant to Section 13100.

(2) Fifty percent shall be distributed to the Wildlife Conservation Board for deposit in the Oak Woodlands Conservation Fund. These funds may be expended to cover the costs of any legal actions or for any other law enforcement purpose consistent with Section 9 of Article XVI of the California Constitution.