



STAFF REPORT

TOWN COUNCIL MEETING OF OCTOBER 8, 2013

TO: Town Council

FROM: Town Manager and Town Attorney

SUBJECT: Proposed Revised Tree Ordinance For Town Council Review

DATE: September 26, 2013

STAFF RECOMMENDATION:

Allow staff to provide a brief report on the Revised Tree Ordinance, open the public hearing and take public comment, discuss and provide a recommendation to the Town staff to proceed with returning with the proposed ordinance for first reading at the November 12, 2013 meeting with direction on incorporating California White Oak and Oracle Oak into the proposed mitigation table.

BACKGROUND:

The Town of Loomis has had a tree protection ordinance since approximately 1989. The latest adopted version is dated 2003. Since that time, requests to remove specific trees have gone through a review and permit process under the existing ordinance, with applicants being required to mitigate for the impact of tree removal with replanting or with the payment of a fee in-lieu of replanting. While the existing ordinance can be credited to having saved hundreds of trees that might otherwise be removed, and has led to new planting of replacement trees, there were concerns that the ordinance was too onerous and that the mitigation requirements were too extensive.

A few years ago, a tree subcommittee—comprised of Planning Commissioners Janet Thew and Jean Wilson, along with Shawna Martinez, a biology and botany professor at Sierra College—was formed to review and provide suggested revisions to the tree ordinance. After regular meetings spanning the course of over a year, the tree subcommittee prepared a revised draft tree ordinance (**Attachment B**).

Town staff used a number of the suggested changes from the subcommittee draft and prepared a new ordinance for the Planning Commission's consideration. After several hearings and workshops before the Planning Commission, and, with the incorporation of public comments and many of the provisions contained in the subcommittee's draft ordinance, the Planning Commission, on September 24, 2013, on a vote of 3-2, passed the following motion:

"The Planning Commission recommends that the Town Council approve Ordinance No. ____ 'Loomis Tree Conservation Ordinance' with the additional requested changes as reflected in the record, and consider adopting a policy in the future setting objective standards under which the Town would consider accepting replacement trees to be replanted on Town property. In addition staff is to include the Planning Commission version for comparison and any minority positions which are given to staff in a timely fashion".

You will note that the motion contains a recommendation that the Town Council consider in the future adopting a policy setting objective standards under which the Town would consider accepting replacement trees to be replanted on Town property. Currently, the Town does not own sufficient property to plant the trees currently owed to the Town from previously approved project(s) which is approximately 900. At the Council's direction, staff will return at a later date with a policy for your consideration.

Attachment C is a letter received from Commissioner Wilson which gives a history and explanation of the tree ordinance and comments regarding Commissioner Wilson's position on the ordinance.

DISCUSSION:

The draft ordinance presented for recommendation to Town Council (**Attachment A**) is intended to make the tree ordinance more user-friendly and effective.

This draft incorporates the following features:

- A revised purpose and intent section;
- Designation of tree types that are categorized as "protected";
- Tree rating system to determine the overall health and condition of trees;
- Permit requirements for specific activity (i.e. construction);
- Tree plan requirement for development projects which are discretionary in nature;
- Clearer mitigation fee table which alerts applicants the number of trees which must be replanted or the in-lieu fee to be paid for each tree removal;
- Exemptions for dead or dying trees, emergency tree removal, and mitigation credits, among others;
- Violations and penalties for failure to comply with the ordinance.

This draft also revised the mitigation which is required to offset the direct impact of the tree removal. However mitigation is not required if a tree is being removed because it is dead or dying, or, if it is a hazard to the public health or safety.

A range of options are included for satisfying the mitigation requirement, including:

- Replanting of trees (on-site or off-site replacement, as long as the replanting occurs within the Town limits);
- At the discretion of the applicant, payment of a fee in-lieu of replanting; and/or
- Credit for existing smaller trees.

The Planning Commission, staff and legal counsel have spent a great deal of time crafting an ordinance which can be supported by both the Planning Commission and staff. While total consensus was not reached, of the 2 no votes, one was narrowly focused on disagreement on a portion of the Mitigation Table and the other was expressed as a “personal” reason.

The Planning Commission held 5 public meetings starting on July 23, 2013 concerning the proposed tree ordinance. Public input was taken at each of the meetings. Several members of the public stated that the mitigation table contained in the existing ordinance should be retained as the proposed ordinance mitigation table did not accomplish the goal of “detering” tree removal by developers. The Commission, however, passed the mitigation table as presented in the subcommittee’s version.

There is one unresolved issue with the mitigation table before you. During final review of the ordinance for preparation of this staff report, it was discovered that when the Planning Commission modified the definition of “Native Tree” 2 additional oak species were included (California White Oak and Oracle Oak). Unfortunately, the mitigation table was not modified to identify the mitigation requirements for these oaks. Staff believes this issue can be resolved at the Council level without returning the Ordinance to the Planning Commission.

The Town also conducted research to support the specific mitigation in the proposed Ordinance. The replanting and in-lieu fees set forth in the ordinance are roughly proportionate to the effect of the tree removal for the following reasons:

According to a study conducted by the US Army Corps of Engineers, trees planted in urban situations have a less likely chance of survival and optimal tree growth than if the tree to be removed simply remained. Consequently, a strict 1:1 ratio would not ensure that the tree(s) removed would be fully mitigated since there exists the opportunity that the replanted tree fails. The rationale behind the replacement ratio in the ordinance is that replacement trees are generally smaller than the trees planted as in-kind mitigation. Additionally, requirements for size and species differ because of the disparate success rate in species.

Another study prepared by the Clemson University explains that “Most newly planted trees are subject to stress-related problems due to tremendous root loss when dug at the nursery. This condition, commonly called transplant shock, results in increased vulnerability to drought, insects, diseases and other problems. To a greater or lesser degree, transplant shock lasts until the natural balance between the root system and the top or crown of the transplanted tree is restored. Of those newly planted trees that do not survive, most die during this root-establishment period. A tree’s chance of survival can be drastically improved through practices that favor establishment of the root system. This involves regular care during the first three years following transplanting.” This serves as another reason why a simple 1:1 replacement ratio is not adequate.

(Watson, G. 1985. Tree size affects root regeneration and top growth after transplanting. J. Arboric. 11:37-40.)

Additionally, with respect to the in-lieu fee, the International Society of Arboriculture (ISA) has established guidelines which explain that “fees charged [as in-lieu fees] should be sufficient to provide for ongoing monitoring and maintenance, including eventual replanting. If direct mitigation fees are allowed, additional mitigation fees may be necessary to provide for monitoring, maintenance, and enforcement.” In other words, the fee in-lieu of replanting consists of the actual cost of tree replacement, plus the amount reasonably calculated to provide for the monitoring and replacement of that tree.

ENVIRONMENTAL ANALYSIS:

The proposed Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15308 (Action by Regulatory Agencies for Protection of the Environment) which applies to actions taken by regulatory agencies to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. This Ordinance revises and updates the Town’s existing regulatory process to protect trees in the Town. The Ordinance does not involve or cause any direct physical change to the environment. Therefore, no circumstances exist that create a reasonable possibility that the proposed Ordinance will have a significant impact on the environment; therefore, the proposed Ordinance qualifies for this exemption.

Notwithstanding the foregoing, the Town finds that the replanting of trees and/or payment of a fee in-lieu of planting fully mitigate the potential impacts of the tree removal because the number of trees which will be required to be replanting will ensure that the tree(s) removed is replaced, and alternatively, the specific in-lieu fee amount will be used to offset the impact of the tree loss by establishing a fund which will support tree replanting, maintenance, and conservation.

FINANCIAL IMPLICATIONS:

There are no financial implications at this time.

Attachments: Proposed Ordinance (A)
Planning Commission Sub Committee Proposed Ordinance (B)
Commissioner Wilson’s Comment Letter (C)
Existing Town Tree Ordinance (D)

TOWN OF LOOMIS

ORDINANCE NO.: _____

AN ORDINANCE OF THE TOWN OF LOOMIS REPEALING AND REENACTING CHAPTER 13.54 OF THE MUNICIPAL CODE RELATING TO TREE CONSERVATION

Section 1. Chapter 13.54 of the Town of Loomis' ("the Town") Municipal Code is hereby repealed and reenacted as follows:

TREE CONSERVATION

Sections:

13.54.010	Purpose and Intent
13.54.020	Goal
13.54.030	Definitions.
13.54.040	Property Owner Responsibilities
13.54.050	Town Manager Duties
13.54.060	Exempt Activities.
13.54.070	Protected Trees, No Construction–Permit Required
13.54.080	Protected Trees, Construction–Permit Required.
13.54.090	Permit, Application, Process, Decision
13.54.100	Removal of Trees-Mitigation and Replacement.
13.54.110	In-lieu Fees.
13.54.120	Agricultural Exemptions
13.54.130	Development Projects, Tree Plan Required.
13.54.140	Mitigation of Other Trees.
13.54.150	Implementing Regulations.
13.54.160	Liability-Responsibility.
13.54.170	Emergency Response and Abatement.
13.54.180	Stop-work Order.
13.54.190	Appeals.
13.54.200	Violation-Penalty.

ATTACHMENT A

13.54.010 Purpose and Intent.

The Town of Loomis is unique in the region in preserving the rural character of its Town core and outlying areas. The tree canopy of both native and introduced species contributes significantly to this character and offers residents environmental, social, financial (property values), and aesthetic benefits. Trees are, in effect, green infrastructure. The highest priority of our tree ordinance is to maximize the preservation of existing protected trees. Public safety is a primary benefit, as healthy trees are safe trees. The goal of a tree ordinance is to promote a healthy tree canopy needed for community enjoyment and vibrant, functioning ecosystems. This Chapter covers tree management in both new development and established residential areas.

This Chapter acknowledges the delicate balance between the rights of private citizens to develop their properties, and the public interest in preserving its tree canopy. Trees are a community asset needing protection, maintenance, and continued rejuvenation. A clearly defined, fair, and effective ordinance helps provide for the long-term benefits of the citizens as well as the Town's tree canopy.

13.54.020 Goal

The Town's goal is to achieve an overall healthy tree canopy, and to the extent feasible, in accordance with the Sacramento Tree Foundation's Greenprint Program.

13.54.030 Definitions.

As used in this Chapter the following words and terms shall have the following meanings:

"Caliper" means a tree measurement for trees less than 6" DBH, by measuring the tree 6" above grade.

"Construction Activity" means the incorporation of labor and materials to build any structure requiring permanent or temporary location.

"Critical Root Zone (CRZ)" is the area to be protected around a tree where the radius of the circle around the Protected Tree is the longest horizontal branch plus one (1) foot.

"Development Project" means any construction project undertaken for the purpose of development which requires discretionary approval from the Town, including, but not limited to a conditional use permit, major use permit, or minor use permit. A project which only requires a ministerial permit, such as a building permit, is excluded from this definition.

"Diameter at Breast Height (DBH)" is the diameter of a tree trunk as measured at 54" (4'6") above the ground at the base of the tree.

"Exempt Trees" are trees not identified in this Chapter as protected or native.

"Multi-Trunk/Multi Stem:" means a same species of tree that appears to originate from one general base location. The extrapolated diameter of a multi-trunk tree shall equal the combined aggregate cross section area measurements at 54" above grade.

"Native Tree" (for the purpose of this Chapter) means a living tree, or hybrids thereof, of the interior live oak (*Quercus wislizenii*), valley oak, California white oak (*Quercus lobata*), blue oak (*Quercus douglasii*), Oracle oak (*Quercus x morehus*), and California sycamore (*Platanus racemosa*)."

"Owner" means the legal owner of real property fronting upon any street as shown on the last equalized assessment roll.

"Protected Tree" means any native oak tree with a trunk that is a minimum of 6" in diameter as measured at breast height (DBH), or, any oak tree with multiple trunks that have an aggregate DBH of at least 10". This also includes trees of any species that are 18" DBH or greater or with an aggregate DBH of 24" or greater that is rated a 3, 4, or 5 by a certified arborist, or any trees preserved or replanted pursuant to Chapter 13.54.90, except for Exempt Trees and those classified as invasive species by the California Invasive Pest Council, Cal-IPC (cal.ipc.org) and non-native trees listed as not to be planted on Town-owned property in the Master Tree List.

"T4, T6, T8 Tree Pot" means a tree container with a square top. A T4 Tree Pot is 4"x4"x14", a T6 tree pot is 6"x6"x16" and a T8 Tree Pot is 8"x8"x18".

"Town Manager" means the Town Manager or his or her designated representative.

"Tree Permit" means written authorization by the Town Manager, on an official Tree Permit application, to perform an activity on a Protected Tree.

13.54.040 Property Owner Responsibility.

A. It is the responsibility of the property owner to maintain all trees on his or her property. The property owner must ensure that the trees on his or her property do not pose a danger to his or her own property or the property of others. Property owners have the burden of demonstrating compliance with this Chapter.

B. Property owners that do not maintain trees on their property and, as a result, create an emergency, will be subject to the provisions of Section 13.54.170.

13.54.050 Town Manager Duties

The Town Manager shall perform the following duties:

A. Determine and take inventory of suitable and desirable species of specified trees and the areas in which and the conditions under which such trees shall be planted, in consultation with a certified arborist. The Town Manager shall report the findings in writing to the Town Council. When approved by the Town Council, the report shall be known as the "master tree list," and shall be placed on file with the Town Clerk and shall thereafter be the official determination of the Town Manager. Revisions or changes in the master tree list may be made from time to time by the Town Manager, in consultation with a certified arborist, with the approval of the Town Council.

B. Perform other duties as set forth in this Chapter:

13.54.060 EXEMPT ACTIVITIES:

The following activities are considered exempt from the provisions of this Chapter:

A. Parcels with a RS-10, RS-7 or RS-5 zoning designation (approximately 1/4 acre lots and smaller) that can no longer be subdivided are exempt from Tree Permit requirements.

B. Pruning. Pruning of trees covered under this Chapter is exempt provided the pruning activity does not interfere with the condition of any Protected Tree.

C. Emergency response and abatement as set forth in **13.54.170** of this Chapter.

D. Traffic Visibility Obstructions. Removal or relocation of trees necessary to maintain adequate line-of-sight distances as required or determined by the Town Manager or Town Engineer.

E. The removal of dead, dying, or hazardous trees, as determined by the Town Manager, the Town Arborist, or an arborist approved by the Town Manager (rated a 0 "dead", or 1 "dying or hazardous", or 2 "major corrective care needed") shall not require mitigation. Photographic evidence may be considered.

13.54.070 Protected Trees, No Construction, Permit Required

It shall be unlawful to perform any of the following acts with respect to a Protected Tree within the Town limits without a tree removal permit issued by the Town Manager:

A. Move, remove, cut down, poison, set fire to or permit fire to burn in proximity to, or perform or fail to perform any act which results in the unnatural death or destruction of a Protected Tree.

B. Perform any activity that will interfere with the condition of any Protected Tree.

C. Perform any work or permit any work to be performed within the critical root zone (CRZ) of a Protected Tree which would endanger the tree.

D. All hired work shall conform to the most current American National Standards Institute (ANSI) Tree care standards.

13.54.080 Protected Trees, Construction, Permit Required

During construction activity on any property upon which a Protected Tree is located, it is unlawful for any person to perform any of the following acts without a Tree Permit issued by the Town Manager, which permit shall not be denied if the activities are deemed necessary for the project and proper care is taken to protect any Protected Tree:

A. All of the activities set forth in Section 13.54.070(A)-(D).

B. Change the appropriate amount of irrigation or drainage water provided to any Protected Tree.

C. Trench, grade, pave or otherwise damage or disturb any exposed roots within the critical root zone (CRZ) of a Protected Tree.

D. Park or operate any motor vehicle within the critical root zone (CRZ) of any Protected Tree.

E. Place or store any equipment or construction materials within the critical root zone (CRZ) of any Protected Tree.

F. Place, apply or attach any signs, ropes, cables or any other items to any Protected Tree.

G. Place or allow to flow any oil, fuel, concrete mix or other deleterious substance into or over within the critical root zone (CRZ) of any Protected Tree.

H. All hired work shall conform to the most current American National Standards Institute (ANSI) tree care standards.

I. The owner/developer will be required to submit a utility and/or irrigation trenching-Pathway plan on the site plan:

1. The Trenching Pathway Plan shall depict all of the following: easements, storm drains, sewers, water mains, area drains, and irrigation and underground utilities. Except in lot sale subdivisions, the Trenching Pathway Plan must show all lateral lines serving buildings. The plan must also include an accurate plotting of the critical root zone (CRZ) of each Protected Tree within 50' of the soil disturbance activity.

2. The trenching-pathway plan must be developed to avoid going into the CRZ of any Protected Tree on its path from the street to the building.

3. If the encroachment into the CRZ is unavoidable, a certified arborist must assess the

impact to determine the type of preservation device required. Boring under the root system of a Protected Tree may be required. Encroachments and mitigation measures must be addressed in a supplemental arborist report. If no preservation device is implemented, mitigation shall be required for that Protected Tree.

4. In order to minimize or avoid injury to the root system, trenching within the CRZ of a Protected Tree, when permitted, may only be conducted with hand tools, air spades, or other acceptable measures. Acceptable measures and said work shall be determined by and conducted under the supervision of a certified arborist. Boring machinery, boring pits, and spoils shall be set outside of the CRZ fencing.

5. Utility corridors shall be under or adjacent to driveways where feasible, if needed for tree protection.

13.54.090 Permit, Application, Process, Decision.

Any person seeking to perform any activity for which a tree Permit is required by this Chapter shall fill out an application containing the following information:

1. Location, size and species of the tree(s) affected;
2. The type of activity for which the permit is sought;
3. A statement of the reasons for the activity;
4. A written evaluation of the health and status of the tree(s) affected prepared by a registered forester or an International Society of Arborists (I.S.A.) certified arborist and evaluating the following:

Overall rating of tree condition, by tree number, according to the following categories:

Rating #0: This indicates a tree that has no significant sign of life.

Rating #1: The problems are extreme. This rating is assigned to a tree that has a structural and/or health problems that no amount of work or effort can change. The issues may or may not be considered a dangerous situation.

Rating #2: The tree has major problems. If the option is taken to preserve the tree, its condition could be improved with corrective work including, but not limited to: Pruning, cabling, bracing, bolting, guying, spraying, mistletoe removal, vertical mulching, fertilization, etc. If the recommended actions are completed correctly, hazard can be reduced and the rating can be elevated to a 3. If no action is taken the tree is considered a liability and should be removed.

Rating #3: The tree is in fair condition. There are some minor structural or health problems that pose no immediate danger. When the recommended actions in an Arborist report are completed correctly the defect{s} can be minimized or eliminated.

Rating #4: The tree is in good condition and there are no apparent problems that an Arborist can see from a visual ground inspection. If potential structural or health problems are tended to at this stage future hazard can be reduced and more serious health problems can be averted.

Rating #5: No problems found from a visual ground inspection. Structurally, these trees have properly spaced branches and near perfect characteristics for the species. Highly rated trees are not common in natural or developed landscapes. No tree is ever perfect, especially with the unpredictability of nature, but with this highest rating, the condition should be considered excellent.

Note: Ratings are dependent upon both the condition of the tree. There is a very important line drawn between a tree rated a 3 and a 2. A tree rated 3, 4, 5 is a tree to be preserved, and a tree rated 0, 1, or 2 is recommended for removal. Trees rated a 2 may be retained and rated a 3, but only if the recommendations are followed; otherwise the tree should be removed.

5. The certified arborist or registered forester preparing the report shall not be from the tree company retained to remove the trees;
6. For a development project, the tree plan as provided by Section 13.54.120; and
7. Such other information as the Town Manager may require to effectuate the intent of this Chapter.
8. If the site is subject to CC&R's that address tree removal and are administered by an active homeowners' association (HOA), the application shall include written approval from the association.

C. In reaching a decision to grant or deny a Tree Permit, the Town Manager shall take into account the following:

1. The condition of the tree with respect to disease, general health, damage, public nuisance, danger of falling, proximity to existing or proposed structures, and interference with utility services;
2. Protected Trees shall have a higher preservation priority than others;
3. The number of existing trees in the area and the effect of any proposed removal upon the public health and safety, or the prosperity, beauty and general welfare of the area;
4. Mitigation measures as proposed or replacement measures; and
5. Steps to avoid or minimize removal and destruction of trees.

D. The Town Manager shall render a decision granting or denying an application for a Tree Permit within (30) thirty days from the date the completed application is received. As a condition of granting a Tree Permit, the Town Manager may require that the work be performed by a person who is qualified by education or experience to perform the work and who holds a valid business license issued by the Town for such purpose.

E. Each application and each appeal shall be accompanied by fees as prescribed by a resolution of the Town Council. Such fees shall in no event exceed the actual cost to the Town to conduct the services required to satisfy the requirements of this Chapter.

F. The Town Manager shall periodically present a summation of his actions to the Town Council for its review.

G. The property owner removing a Protected Tree will make every effort to replace the tree on the property, in accordance with Section 13.54.090.

H. All hired work shall conform to the most current ANSI tree care standards.

13.54.100 Removal of Trees-Mitigation and Replacement.

When the Town Manager has granted a Tree Permit to remove a Protected Tree, said permit shall require the applicant to replace the tree with a living tree (or trees) of the same species on the property or within the Town of Loomis, in a location approved by the Town Manager. Said location will be specified in the Tree Permit. The replacement requirement shall be calculated as provided by Table 5-3. The property owner will replace the tree(s) and continue to replace the replacement tree(s) if the tree(s) die(s) any time within five (5) years of the initial planting. Annual Arborist monitoring with a written report is required to ensure survival of the trees. The removal of dead, dying, or hazardous trees, as determined by the Town Manager, the Town Arborist, or an arborist approved by the Town Manager (rated a 0 "dead", or 1 "dying or hazardous", or 2 "major corrective care needed") shall not require mitigation. Photographic evidence may be considered.

Table 5-3: Tree Removal Mitigation Table

Species of Trees to be Removed	Size of Trees DBH in inches	T4, T6 or T8 Tree Pots or #5/5 Gal.	OR	#15 (15 Gal.) Mitigation Trees to be Planted •	OR	24" Box Mitigation Trees to be Planted	OR	In-lieu Fee Amount \$ per inch
Blue Oak (<i>Q. douglasii</i>)	6-14.9	X10		x8		x6		x\$100
	15- 24.9	X16		X12		x8		x\$110
	25 -29.9	x18		X14		X10		x\$120
	30 -34.9	X20		X16		X12		x\$130
	>35	X26		X20		X14		x\$140
Valley Oak (<i>Q. Jobata</i>)	6-14.9	x8		x6		X4		X\$90
	15- 24.9	X14		X10		x6		x\$100
	25-29.9	x16		X12		x8		x\$110
	30- 34.9	x18		X14		X10		x\$120
	>35	X24		X18		X12		x\$130
Interior Live Oak (<i>Q. wislizenii</i>)	6 -14.9	x6		X4		X2		x\$80
	15- 24.9	X10		x6		X4		x\$90
	25-29.9	X12		x8		x6		x\$100
	30-34.9	X14		X10		x8		x\$110
	>35	X18		X12		X10		x\$120
All other protected species	18- 24.9	x6		X4		x2		x\$70
	25 -32.9	x8		x6		X4		x\$80
	>33	X10		x8		x6		x\$90

For each species and size class, 1 or a combination of columns may be used to determine total mitigation. Up to 50% of the required replacement trees may have T4, T6, T8 Tree Pots (oaks) or a #5/5 gallon (other species) container size, where the Town Manager determines that long-term tree health and survival will be improved by starting with a smaller container size, and that each tree with a container size less than #15 will not be in a location where it will be more subject to damage while it is becoming established than a larger tree. If the property owner is unable to replace the tree on his or her property or within an area approved by the Town Manager, the Town Manager shall require the property owner to pay an In-lieu Fee to the Town.

A. **Small Tree and Native Tree Preservation Credits (TPC).** The Town may consider the preservation of seedling and sapling native trees that are smaller than 6" DBH as a credit toward the total removed inches, in addition to Gooddings willows, red willows, fremont cottonwoods, California Sycamores, California black walnuts, foothill pines, white alders, and California buckeyes that are smaller than 18" DBH. For example, a 1" sapling (Caliper) would equal 1" of mitigation. These smaller trees are valuable because they are already established. Trees with Calipers of less than 1" shall not be eligible for credit under this provision. Retention of small blue oaks is especially encouraged. Any tree that is to be considered for preservation credit shall be evaluated, included in the arborist report, rated a 3, 4, or 5, and located in a suitable site with adequate spacing. They must be marked as protected mitigation trees (e.g. tagged or staked), and fenced during construction just as 6" or larger trees are required to be fenced. TPC shall not count if they are in a poor growing space due to position within the CRZ of another Protected Tree to be preserved, or are likely to be adversely impacted by the proposed development or they are located in a non-development zone. They shall be included as Protected Trees in all required monitoring as stated in 13.54.090 of this Chapter.

B. **Large Parcel 10% Allowance.** On residentially zoned parcels zoned larger than RS-10 and having at least ten (10) Protected Trees, ten percent (10%) of Protected Trees may be removed over a ten-(10) year period without mitigation being required. Trees within conservation easements may be counted but not removed under this provision. A dated site map, subject to staff verification, to be kept on file at Town Hall, showing size, number, and species of all Protected Trees is required to verify the ten percent (10%). The Large Parcel 10% Allowance is subject to Town approval.

C. **Woodland Enhancement.** Removal of Protected Trees to thin canopy density, improve overall health and spacing of remaining trees, improve species diversity, and improve habitat value shall not require mitigation. This requires a registered forester or certified arborist to provide a written recommendation and justification and is subject to review by the Town Arborist and subject to Town Manager approval.

13.54.110 Use of In-lieu Fees.

In-lieu Fees shall not be used for any other purposes other than for tree planting or propagation, purchasing, maintenance, preservation programs (including, but not limited to, land purchase and/or conservation easements), public education programs regarding trees which support the purposes of this Chapter (.e.g., workshops on proper pruning), and activities in support of the administration of this Chapter. Fees collected pursuant to this Chapter may be directed by the Town Council to non-profit organizations for the implementation of programs consistent with the purposes of this Chapter within the Town of Loomis.

13.54.120 Agricultural Exemptions

A Tree Permit may be granted to allow tree removal within the RA zoning district for an active agricultural use without mitigation and subject to the following conditions:

- A. The agricultural use, as proposed and ultimately established, shall be limited to crop production, horticulture, orchards or vineyards, but shall not include grazing or other animal uses;
- B. Only that area that will be utilized for active agriculture shall be exempt;
- C. The Tree Permit shall be exercised within one (1) year;
- D. Once tree removal is commenced, the proposed replacement agricultural use shall be in place within twenty-four (24) months of the removal of the first tree, or mitigation shall be required in compliance with Sections 13.54.090; An extension of 1 (one) year may be granted.

E. Once the replacement agricultural use is established, it shall be maintained for a minimum of ten (10) years. If the agricultural use is terminated before ten (10) years, and /or if a subdivision application for non-agricultural development is filed with the Town within that period, mitigation shall be required in compliance with Sections 13.54.090;

F. The approved tree removal and subsequent agricultural use shall retain existing trees:

1. Surrounding existing buildings;
2. Within 100' from a perennial stream;
3. Within 10' of any property line or neighboring dwelling; and
4. In significant groves, as determined by the Town Manager.

13.54.130 Developments, Projects, Tree Plan Required.

An application for a development project shall be accompanied by a tree plan, prepared by a certified arborist, containing the following information:

A. Contour map showing the extent of grading within any part of the CRZ, plus existing and proposed grades and the location, size, species and condition of all existing trees which are located upon the property proposed for development.

B. Identification of those trees which the applicant proposes to preserve and those Protected Trees which are proposed to be removed and the reason for such removal.

C. A description of measures to be followed to insure survival of Protected Trees during construction.

D. A program for the preservation of Protected Trees during and after completion of the project, which shall include the following:

1. Each tree or group of trees to be preserved shall be enclosed with a fence prior to any grading, movement of heavy equipment, approval of improvement plans or the issuance of any permits and such fence shall be removed following construction, but prior to installation of landscaping material;
2. Fencing shall be located at the CRZ of the tree or trees and shall be a minimum of four (4) feet in height;
3. Signs shall be posted on all sides of fences surrounding each tree stating that each tree is to be preserved;
4. Any and all exposed roots shall be covered with a protective material during construction; and

E. A program for the replacement of any trees proposed to be removed.

F. All of the tree preservation measures required by the conditions of a discretionary project approval (the arborist's report and the Tree Permit, as applicable) shall be completed and certified by staff or the developer's arborist prior to issuance of a Certificate of Occupancy.

G. The property owner will be required to submit a utility and/or irrigation trenching-pathway plan on the site plan:

1. The Trenching Pathway Plan shall depict all of the following: easements, storm drains, sewers, water mains, area drains, and irrigation and underground utilities. Except in lot sale subdivisions, the trenching-pathway plan must show all lateral lines serving buildings. The plan must also include an accurate plotting of the CRZ of each Protected Tree within 50' of the soil disturbance activity.

2. The Trenching Pathway Plan must be developed to avoid going into the CRZ of any Protected Tree on its path from the street to the building.

3. If the encroachment into the CRZ is unavoidable, a certified arborist must assess the impact to determine the type of preservation device required. Boring under the root system of a Protected Tree may be required. Encroachments and mitigation measures must be addressed in a Supplemental Arborist Report. If no preservation device is implemented, mitigation shall be required for that Protected Tree.

4. In order to minimize or avoid injury to the root system, trenching within the CRZ of a Protected Tree, when permitted, may only be conducted with hand tools, air spades, or other acceptable measures. Acceptable measures and said work shall be determined by and conducted under the supervision of a certified arborist. Boring machinery, boring pits, and spoils shall be set outside of the CRZ fencing.

5. Utility corridors shall be under or adjacent to driveways where feasible, if needed for tree protection.

H. Tree Permits for development projects will be granted for trees impacted by the construction of streets, utility installation, grading and other infrastructure improvements. A Tree Permit shall only be issued in conjunction with a grading or building permit.

13.54.140 Mitigation of Other Trees.

When mitigation is required by the California Environmental Quality Act or any other regulation for the removal of any tree, such mitigation shall be provided consistent with Chapter.

13.54.150 Implementing Regulations.

The Town Council may adopt implementing regulations to effectuate the intent of this Chapter.

13.54.160 Liability-Responsibility.

This Chapter shall not be construed to impose any liability upon the Town, its officers or employees for the performance of any act or the failure to perform any act under this Chapter, and shall not relieve the owner from the duty to keep any tree upon his or her property in such condition as to prevent it from causing damage or constituting a nuisance. By enactment of this Chapter, the Town is not assuming responsibility for the maintenance of Protected Trees, nor relieving the property owner of the duty to maintain such trees at his own expense. Furthermore, it shall be the obligation and duty of each owner to demonstrate compliance with this Chapter.

13.54.170 Emergency Response and Abatement.

A. An owner is not precluded by this Chapter from taking action, in the event of an emergency, which would otherwise violate the terms of this Chapter, if such action is necessary to minimize danger. In the event such emergency action is taken, the owner shall notify the Town Manager or his representative by the next working day. The burden is on the owner to demonstrate that any action taken complies with this Section. For purposes of this section, "emergency" means imminent threat to life or property.

B. In the event that an owner has not maintained trees for which the owner is responsible and the trees pose an imminent danger to persons and/or property, constituting an emergency, the Town Manager may commence abatement proceeding pursuant to Section 7.04.020 of the Municipal Code. At the owner's expense, the tree shall be removed or have the dangerous condition otherwise rectified.

C. In the event that an owner has not maintained trees for which the owner is responsible and the trees and the condition does not pose an imminent threat to persons and/or property, but has the potential to pose such a threat, the Town Manager shall give the owner (30) thirty days to eliminate the potentially dangerous condition. If the condition has not changed in (30) thirty days the Town Manager may commence abatement proceedings pursuant to Section 7.04.020 of the Municipal Code.

13.54.180 Stop-work Order.

Whenever the Town Manager determines that an action being taken is in conflict with this Chapter, he shall cause to be issued a Stop work Order which shall prohibit such action. Such Stop work Order shall set forth the alleged violations and may list remedies to be taken to correct the violations. The person receiving the Stop work Order shall report in writing to the Town Manager within forty-eight (48) hours regarding the steps to be taken to correct the violations or to appeal the posting of the Stop work Order. The Stop work Order shall remain in effect until a finding is made that the circumstances giving rise to its order no longer exist. Any party receiving a Stop work Order may appeal through the process outlined in Section 13.54.190.

13.54.190 Appeals.

Any person dissatisfied with the decision of the Town Manager made under this Chapter may appeal such decision to the Town Council. Such appeal shall be in writing, stating the reasons therefore, and, except as otherwise provided herein, shall be filed with the Town Clerk not later than fifteen (15) days after the date of the Town Manager's decision. All appeals shall be conducted in accordance with Chapter 13.54 of the Municipal Code. The decision of the Town Council shall be final.

13.54.200 Violation-Penalty.

In addition to compliance with the appropriate mitigation as required by this Chapter, any person, corporation or other legal entity who violates or fails to comply with any Chapter of this provision shall be subject to a fine of one hundred dollars (\$100) for the first offense, two hundred dollars (\$200) for the second offense, and five hundred dollars (\$500) for the third offense and each subsequent offense thereafter. Each person, corporation or other legal entity is guilty of a separate offense for each and every tree each and/or every day the violation exists, during any portion of which violation of this Chapter is committed, continued or permitted by any such person, corporation or legal entity, and such person, corporation or legal entity shall be punished accordingly.

In addition to the general penalty set forth above, any condition caused or permitted to exist in violation of this Chapter shall be deemed a public nuisance and may be summarily abated by the Town in accordance with Section 7.04.020, Nuisance Abatement, and other applicable provisions of law.

Section 2. Severability: If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance for any reason shall be held to be invalid or unconstitutional, the decision shall not affect the remaining portions of the Ordinance. The Council of the Town of Loomis hereby declare that they would have passed this Ordinance and each article, section, subsection, paragraph, sentence, clause or phrase which is a part thereof, irrespective of the fact that any one or more articles, sections, subsections, paragraphs, sentences, clauses or phrases are declared to be invalid or unconstitutional.

Section 3. Effective Date and Posting. This Ordinance shall take effect thirty (30) days after its adoption. The Town Clerk shall cause this Ordinance to be published in the Loomis News and to be posted at three (3) locations within fifteen (15) days after its passage; shall certify to the adoption and posting of this Ordinance; and shall cause this Ordinance and its certification to be entered in the Book of Ordinances of the Town of Loomis.

The foregoing Ordinance was introduced at a regular meeting of the Council of the Town of Loomis held on _____, 2013, and was ADOPTED AND ORDERED published and posted at a meeting of the Council held on the ____ day of _____, 2013, by the following roll call vote:

AYES: _____

NOES: _____

ABSENT: _____

By: _____
Mayor

ATTEST:

By: _____
Crickett Strock, Town Clerk

The Town of Loomis is unique in the region in preserving the rural character of its town core and outlying areas. The tree canopy of both native and introduced species contributes significantly to this character and offers residents environmental, social, financial (property values), and aesthetic benefits. Trees are, in effect, green infrastructure. Public safety is a primary benefit, as healthy trees are safe trees. The goal of a tree ordinance is to promote a healthy tree canopy needed for community enjoyment and vibrant, functioning ecosystems. This ordinance covers tree management in both new development and established residential areas. The ordinance acknowledges the delicate balance between the rights of private citizens to develop their properties, and the public interest in preserving its tree canopy. Trees are a community asset needing protection, maintenance, and continued rejuvenation. A clearly defined, fair, and effective ordinance helps provide for the long-term benefits of the citizens as well as the Town's tree canopy.

Goal

In accordance with the Sacramento Tree Foundation's Greenprint Program, the Town's goal is to achieve a 35% overall tree canopy by 2025. This will also help to meet the mandates of AB 32 (California Global Warming Solutions Act).

Purpose

- A. To implement General Plan emphasis on value of trees;
- B. To establish a tree conservation policy to preserve the environmental and public safety benefits of trees, to protect the existing tree canopy, and to retain the optimal canopy in property development or improvement;
- C. To encourage the preservation, protection, and maintenance of trees in the Town, with particular attention to protecting native trees, mixed oak woodlands, stands and groves, and species biodiversity;
- D. To provide a basis for a public education program to increase public awareness of the value and care of trees. The Town's website provides helpful information;
- E. To safeguard the public health benefits of trees in improving air and water quality, retaining topsoil, reducing wind damage, reducing heat island effect (accumulation of heat in developed areas) and providing access to nature in urban and rural neighborhoods;
- F. To protect water quality and quantity, prevent excessive runoff, and improve overall watershed health, especially along riparian corridors and wetlands. This supports compliance with the Clean Water Act, Endangered Species Act, California Environmental Quality Control Act, AB 32, and other State and Federal environmental laws.

Incentives:

Residents who apply for a required tree permit will be given an on-site consultation with an arborist hired by the Town. (30 minutes for 1-2 trees, 1 hour for 3+ trees proposed for removal) The Tree Mitigation Fund may be used for this purpose as a means of furthering community education on proper care of trees.

Penalties for not obtaining a required tree permit:

Failure to obtain a required tree permit may result in:

- A. Being charged for all costs of enforcement, including staff and Town-appointed arborist time**
- B. Having a "Stop Work" order issued until the situation is rectified**
- C. Doubling of mitigation requirements**

13.54.020 A. APPLICABILITY TO PROTECTED TREES

Because the survivability of native oaks is greater on larger lots, the provisions of this chapter shall apply to all Loomis parcels more than **12,500 square feet (approx. ¼ acre)** for the removal, relocation, or necessary protection of any protected tree.

A protected tree is any of the following:

1. A native oak tree with a diameter of 6" or more as measured at Diameter Breast Height (DBH) above the ground, or any native oak with multiple trunks that have an aggregate DBH of 10" or greater (See Fig 1).
2. The larger specimen trees of any other species over 18" DBH or a total aggregate of 24" rated a 3 "fair", 4 "good", or 5 "excellent" by an Arborist. Exception: Invasive species listed by the California Invasive Pest Council (Cal-IPC) <http://www.cal.ipc.org/>, and non-native trees listed in the "Loomis Tree List" as "not to be planted on Town Owned Property". This list is available online.
3. A tree required to be planted or preserved as a condition of approval of a tree permit or other discretionary permit, and/or as environmental mitigation for a discretionary permit.
4. Any tree within one hundred feet from the center of a perennial stream, or within fifty feet from the center of a seasonal stream, which are under Federal and State jurisdiction. (For trees in riparian and wetland areas, please refer to section Chapter 13.56 – 13.58 of the Loomis Zoning Ordinance....

B. EXCEPTIONS:

The removal of a protected tree is exempt from permit requirements under the following circumstances:

1. Residential parcels less than 12,500 square feet (approx. ¼ acre) are exempt if the parcel cannot be further subdivided. The survivability of native oaks is greater on larger parcels.
2. Emergency Situation. Cases of emergency where the Planning Director, Town Engineer, Town Arborist, a member of a law enforcement agency, or the fire department, for example, determines that a protected tree poses an imminent threat to public safety or general welfare.
3. Traffic Visibility Obstructions. Removal or relocation of trees necessary to maintain adequate line-of-sight distances as required by the Planning Director or Town Engineer.
4. Public Utility Damage. Removal of trees for the protection of existing electrical power or communication lines.
5. Nursery and Orchards. Removal of trees planted, grown, or held for sale by a nursery, tree farm, or similar commercial operation. Removal of orchards or fruit/nut trees grown, planted, or held for sale for cash crop or commercial purposes.

C. ACTIVITIES REQUIRING A MINOR TREE PERMIT AND SUBJECT TO MITIGATION.

A tree permit shall be required for a protected tree prior to the relocation, removal, cutting-down, or other act that causes the death or irreparable harm of a protected tree. A minor tree permit is sufficient for any of the following:

1. Projects under 500 square feet requiring a building permit
2. Projects not requiring discretionary approval (use permits, variance, or subdivision map)
3. Solar array installation

D. ACTIVITIES REQUIRING A MINOR TREE PERMIT BUT EXEMPT FROM MITIGATION.

1. On residential parcels larger than ¼ acre and having at least ten protected trees, ten percent of protected trees within the building envelope and driveway, and not including the trees within a conservation easement, may be removed over a ten year period. A dated site map, subject to staff verification, to be kept on file at Town Hall, showing size, number, and species of all protected trees is required to verify the ten percent.
2. Vegetation Management Plan: As recommended or required by agencies such as Cal-Fire, California Conservation Corp, Natural Resources Conservation Service, Loomis Fire Department, or other Planning Director approved environmental consultants.
3. Woodland Enhancement: thinning of trees to improve overall health and spacing of remaining trees, improve species diversity, and improve habitat value. Requires written certified Arborist recommendation and justification.

4. Removal of trees determined by the Planning Director, or the Town Arborist, to be dead, dying, or hazardous (rated a 0 "dead", or 1 "dying or hazardous"). Photographic evidence may be considered.

5. Conditions for Tree Removal to Accommodate Agriculture. A tree permit may be granted to allow tree removal within the RA zoning district to accommodate a commercial agricultural use without mitigation and subject to the following conditions:

- a. The agricultural use, as proposed and ultimately established, shall be limited to crop production, horticulture, orchards or vineyards, but shall not include grazing or other animal uses;
- b. The tree permit shall be exercised within one year;
- c. Once tree removal is commenced, the proposed replacement agricultural use shall be in place within twenty-four months of the removal of the first tree, or mitigation shall be required as in Section 13.54.060;
- d. Once the replacement agricultural use is established, it shall be maintained for a minimum of ten years. If the agricultural use is terminated before ten years, and /or if a subdivision application for non-agricultural development is filed with the town within that period, mitigation shall be required in compliance with Section 13.54.060;
- e. The approved tree removal and subsequent agricultural use shall retain existing trees:
 1. Around existing and proposed buildings;
 2. Within 100' from a perennial stream;
 3. Adjacent to parcel boundaries; and
 4. In significant groves, as determined by the review authority.

E. ACTIVITIES REQUIRING A MAJOR TREE PERMIT AND SUBJECT TO MITIGATION:

A tree permit shall be required for a protected tree prior to the relocation, removal, cutting-down, or other act that causes the death or irreparable harm of a protected tree and is necessary:

1. Prior to grading, clearing, grubbing, trenching, new or additional paved area, the import or export of soil that requires a grading permit, (50 cu yds or more or current grading standards, whichever is less), within a CRZ - Critical Root Zone (see definition) (see Section 13.54.050)
2. For the approval of a building permit over 500 square feet or discretionary projects (use permit, minor use permit, variance, or subdivision map) where protected trees are affected.
3. For the installation of a swimming pool and/or spa where any development activities are within the CRZ of ~~any protected tree on the lot to be developed~~.

Tree permits for development requiring discretionary approval will be limited to trees impacted by construction of streets, utility installation, and other initial infrastructure only. Further permits within any building lot shall only be issued in conjunction with a building permit.

13.54.030 MINOR TREE PERMIT APPLICATION REQUIREMENTS

A. Application Contents.

Each minor tree permit application shall include the following information and materials.

1. **General Content Requirements.** The application shall use the forms provided by the Town of Loomis, and shall include an Arborist's or tree care professional's report in compliance with Section 13.54.040, and shall be accompanied by an application fee if required by the Town of Loomis.

2. **Homeowner's Association Approval.** If the site is subject to conditions, covenants, and restrictions (CC&Rs) that address tree removal and are administered by an active homeowners' association, the application shall include written approval from the association.

3. **Tree Site Map.** A tree permit application shall include an accurate, to-scale simple site map with the following information.

- a. Property lines
- b. roads and driveways
- c. existing and proposed structures
- d. protected trees within 50 feet of any development activity.

The requirement for a site map may be waived by the director if the permit is only for removal of dead or hazardous trees.

13.54.040 MAJOR TREE PERMIT APPLICATION REQUIREMENTS

A. Application Filing.

An application for a tree permit involving a discretionary project shall be included as part of the application for the discretionary project. An application for a tree permit not associated with a discretionary project shall be filed with the department separately.

B. Application Contents.

Each major tree permit application shall include the following information and materials.

1. **General Content Requirements.** The application shall use the forms provided by the Town of Loomis, shall include an Arborist's or tree care professional's report in compliance with Section 13.54.040, and shall be accompanied by an application fee if required by the Town of Loomis.

2. **Homeowner's Association Approval.** If the site is subject to conditions, covenants, and restrictions (CC&Rs) that address tree removal and are administered by an active homeowners' association, the application shall include written approval from the association.

3. Tree Site Map. A tree permit application shall include an accurate, to scale site map with the following information. Two maps may be required, depending on the size and scope of the project with an existing Tree Site Map and proposed Tree Site Map. The requirement for a site map may be waived by the director if the permit is only for removal of dead or hazardous trees.

a. **Physical Features of the Site.** The tree Site Map shall accurately show the location of the following existing and proposed features of the site, and structures on the site, as applicable:

i. Property lines and easements;

ii. Existing and proposed streets, access easements and/or public or private driveways and other paved areas;

iii. Existing and proposed buildings or structures;

iv. Seasonal or perennial streams;

v. All proposed development, roadways, grading, and utility and irrigation trenching;

vi. Existing and proposed grades, structures, site improvements;

vii. North arrow, and drawn to a standard scale.

b. If a grading permit is required (soil to be moved of 50 cu yds or more or current grading standards, whichever is less) the following applies:

i. A survey of the exact locations of the protected tree trunks shall be conducted by a professional engineer, a licensed land surveyor, or an Arborist. Each tree shall be numbered on both the site plan and grading plan.

ii. Soil shall not be deposited within the CRZ of any tree on the site. See grading permit application online.

c. **Fencing Plan.** Shall be on the proposed Tree Site Map detailing the location of the tree protection fencing (13.54.050) that shall be installed and maintained in original position, in proper condition until directed in writing to remove or be relocated by the Town Arborist.

C. Arborist report.

An Arborist report shall be provided that includes all protected trees on or off site, which have a CRZ that is wholly or partially located within 50' of any development activity, as well as other areas as determined by the Director or Town Arborist. The information shall be used to evaluate tree conditions, identify measures to protect trees for preservation, and to evaluate areas in which to plant replacement trees. The contents of the Arborist report (valid for 2 years) shall be detailed on a list prepared and maintained by the Director and may include, but is not limited to, the following information:

1. Minimum information. The Arborist report shall include the following minimum information:
 - a. Botanical name of trees by tree number,
 - b. Common name of trees by tree number,
 - c. Location of trees by tree number,
 - d. Diameter at fifty-four inches above ground level (DBH), by tree number.
 - e. Longest dripline radius by tree number on the report and CRZ defined on the Tree Site Map(s);
 - f. Notes on condition of tree and its environment, by tree number
 - g. Recommended actions by tree number;
 - h. Overall rating of tree condition, by tree number, according to the following categories:

Rating #0: This indicates a tree that has no significant sign of life.

Rating #1: The problems are extreme. This rating is assigned to a tree that has a structural and/or health problems that no amount of work or effort can change. The issues may or may not be considered a dangerous situation.

Rating #2: The tree has major problems. If the option is taken to preserve the tree, its condition could be improved with correct arboricultural work including, but not limited to: Pruning, cabling, bracing, bolting, guying, spraying, mistletoe removal, vertical mulching, fertilization, etc. If the recommended actions are completed correctly, hazard can be reduced and the rating can be elevated to a 3. If no action is taken the tree is considered a liability and should be removed.

Rating #3: The tree is in fair condition. There are some minor structural or health problems that pose no immediate danger. When the recommended actions in an Arborist report are completed correctly the defect(s) can be minimized or eliminated.

Rating #4: The tree is in good condition and there are no apparent problems that an Arborist can see from a visual ground inspection. If potential structural or health problems are tended to at this stage future hazard can be reduced and more serious health problems can be averted.

Rating #5: No problems found from a visual ground inspection. Structurally, these trees have properly spaced branches and near perfect characteristics for the species. Highly rated trees are not common in natural or developed landscapes. No tree is ever perfect, especially with the unpredictability of nature, but with this highest rating, the condition should be considered excellent.

Ratings are subjective and are dependent upon both the health and structure (per the ISA) of the tree. There is a very important line drawn between a tree rated a 3 and a 2. A tree rated 3, 4, 5 is a tree to be preserved, and a tree rated 0, 1, or 2 is recommended for removal. Trees

rated a 2 may be retained and rated a 3, but only if the recommendations are followed; otherwise the tree should be removed.

D. Arborist recommendations

1. Recommendations by Tree Number. Based upon the conditions and findings, recommendations should be made that logically follow the report conditions. For instance, if weak crotches are reported, cabling, bolting, or bracing could be a logical recommendation to include in the report. These recommended mitigative measures should be clearly defined and in most cases should improve the tree's condition ratings after they have been completed. The specific recommendations must consider the tree species and how it can handle the impacts from the activities proposed.
2. All protected trees within 50' of any development activity shall be physically tagged on site with rigid metal tags that are pre-stamped with numbers. The tags shall be held ¾ to 1" off of the trunk, to allow for future tree growth. The numbered trees shall conform to the Arborist report and Tree Site Map(s). Trees beyond 50' should also be protected from soil compaction by vehicles, equipment, or materials storage within their CRZ's.

13.54.050 MITIGATION

Summary of Mitigation Preferences:

1. Preserve Existing Trees via Site Modification
2. Replacement Planting
3. Habitat Enhancement
4. In-lieu Fees

Preference # 1: Preserve existing trees through site plan modification

The Town's primary preference is to preserve existing trees, particularly in healthy stands (eg: modify plans, alternative siting to preserve healthy trees, etc.). Where the review authority determines that preservation is infeasible, then mitigation may be allowed using a combination of the following, in order of preference:

Preference #2: Replacement Planting. The review authority in consultation with the town Arborist may condition any tree permit for the removal of a protected tree upon the replacement of trees in kind. The replacement requirement shall be calculated as provided by Table 5-3. The replacement trees shall be planted on-site (the town's preferred method of mitigation), except that the review authority may authorize other areas to plant within the Town. Five years of irrigation, maintenance, and Arborist monitoring with annual reporting is required to ensure survival of the trees. At the end of 5 years at least 80% of the trees must be rated a "3" or better. Replacement shall be required if the 80% is not achieved. All costs are the landowner's responsibility.

Replacement trees shall be of the same native species as the removed trees, except:

- 1) An Arborist has determined that species diversity is needed, or
- 2) An Arborist has determined that the native tree is inappropriate for the site.

The replacement tree species in the above cases will be chosen by an Arborist, using the Loomis Tree List, to maximize likelihood of long-term survival and minimize likelihood of future tree removal. All trees should meet the standards in Urban Tree Foundation's 'Guideline Specifications for Nursery Tree Quality. <http://www.urbantree.org/newspecc.asp>

Replacement trees shall not include required parking lot, landscaping, or street trees. See Section 13.34.050 Landscaping Standards for Required Street Trees.

Refundable deposit to ensure replacement tree survival will be charged at the rate of \$500 for 1-5 trees, plus \$100 for each additional tree.

Planting as mitigation will be allowed only to the extent the Town Arborist/Consultant deems it biologically optimal for any remaining trees and overall canopy health. To maximize survival, plantings should be completed in fall or winter. Trees shall be planted at finished landscape grade.

The Town Arborist may allow variation in container sizes to enhance overall canopy health. Trees should be regionally grown stock from a nursery with experience in growing native plants.

Table 5-3: Tree Removal Mitigation Table - For each species and size class, 1 or a combination of columns may be used to determine total mitigation.

Species of Trees to be Removed	Size of Trees DBH in inches	T4 or T8 Tree Tubes	OR	#15 (5 Gal.) Mitigation Trees to be Planted	OR	24" Box Mitigation Trees to be Planted	OR	In-Lieu Fee Amount \$ per inch
Blue Oak (<i>Q. douglasii</i>)	6 - 14.9	X 10		X 8		X 6		X \$100
	15 - 24.9	X 16		X 12		X 8		X \$110
	25 - 29.9	X 18		X 14		X 10		X \$120
	30 - 34.9	X 20		X 16		X 12		X \$130
	>35	X 26		X 20		X 14		X \$140
Valley Oak (<i>Q. lobata</i>)	6 - 14.9	X 8		X 6		X 4		X \$90
	15 - 24.9	X 14		X 10		X 6		X \$100
	25 - 29.9	X 16		X 12		X 8		X \$110
	30 - 34.9	X 18		X 14		X 10		X \$120
	>35	X 24		X 18		X 12		X \$130
Interior Live Oak (<i>Q. wislizenii</i>)	6 - 14.9	X 6		X 4		X 2		X \$80
	15 - 24.9	X 10		X 6		X 4		X \$90
	25 - 29.9	X 12		X 8		X 6		X \$100

	30 – 34.9	x 14	x 10	x 8	x \$110
	>35	x 18	x 12	x 10	x \$120
All other protected species	18 - 24.9	x 6	x 4	x 2	x \$70
	25 – 32.9	x 8	x 6	x 4	x \$80
	>33	x 10	x 8	x 6	x \$90

*Up to 50% of the required replacement trees may have a #5 (5 gallon) container size, where the review authority determines that long-term tree health and survival will be improved by starting with a smaller container size, and that each tree with a container size less than #15 will not be in a location where it will be more subject to damage while it is becoming established than a larger tree.

Small Tree Preservation Credits (STPC). The Town may consider the preservation of seedling and sapling native trees that are smaller than 6" DBH as a credit towards the total removed inches on an inch per inch basis. These smaller trees are valuable because they are already established. Retention of small blue oaks is especially encouraged. Any tree that is to be considered for preservation credit shall be evaluated, included in the arborist report, rated a 3, 4, or 5, and located in a suitable site with adequate Tree List spacing. They must be marked as protected mitigation trees (e.g. tagged or staked), and fenced during construction just as 6" or larger trees. STPC shall not count if they are in a poor growing space due to its position within the CRZ of another protected tree to be preserved, or are likely to be adversely impacted by the proposed development. They will be included as protected trees in all required monitoring.

Preference #3: In-lieu fees: The approving authority may determine that the remedies described above are not feasible or desirable, and may require instead, payment of a cash contribution based upon the matrix in Table 5-3. The cash contribution shall be deposited into the tree mitigation fund.

1. **Tree Mitigation Fund.** A tree mitigation fund has been established by resolution for the deposit of mitigation fees and penalty assessments. The fund may be utilized to propagate and protect trees. Uses of the fund include, but are not limited to:
 - a. tree education
 - b. retention of an Arborist hired by the Town
 - c. propagating trees from seed or container stock
 - d. maintaining existing public trees
 - e. public tree planting and re-vegetation projects for roadways, parks and trails
 - f. purchasing property or conservation easements to protect or plant native trees

This fund shall be administered by the Director, as appropriated by the Loomis Town Council.

2. Land Dedication. Mitigation for the removal of protected trees may be in the form of preserving an existing and sustainable preserve of native trees. The value of the trees to be preserved shall be determined by the approving authority. The preservation area must be either dedicated to the Town, placed in a conservation easement, or some other method accepted by the approving authority to ensure preservation of the woodland habitat.

Final Tree Audit. There shall be a tree audit prior to receiving a certificate of occupancy and final tree audit at the end of the 5-year period with an Arborist final certification letter. Additional fees and/or planting may be required, or refunds may be due depending on the tree audit results.

13.54.060 STANDARD POLICIES AND PROCEDURES FOR APPROVED WORK AROUND PROTECTED TREES

Great care must be exercised when work is conducted upon or around protected trees. The policies and procedures described in this section apply to all encroachments into the CRZ of protected trees. All tree permits shall be deemed to incorporate the provisions of this chapter except as the tree permit may otherwise specifically provide.

1. Protective Fencing and Signage

A tree protective fencing plan shall be submitted with the Proposed Tree Site Map.

- a. **Type of Fencing.** 4' high plastic mesh fence or chain link fence (or as approved by Arborist) shall be installed at the outermost edge of the CRZ of each protected tree or group of protected trees.
- b. **Fence Installation.** The fences shall be installed in accordance with the approved fencing plan with fence posts not more than 10' apart, and prior to the commencement of any grubbing, grading, trenching, excavation, or any construction activities. The Town Arborist or Staff shall complete inspection of the fencing.
- c. **Signage.** A minimum of two signs shall be installed on the fence around each individual protected tree. Signs placed on fencing around a grove of protected trees shall be placed at approximately fifty-foot (50') intervals. The size of each sign must be a minimum of 11" x 17". The signs must be made of weather resistant material, and must contain language as required by the Loomis Planning Department.
- d. **Fence and Sign Removal.** Once approval has been obtained, the fences and signs shall remain upright and in place until all construction and landscaping are completed. The fencing shall not be moved or removed without obtaining written authorization from the Loomis Planning Department or Town Arborist.

2. Grading

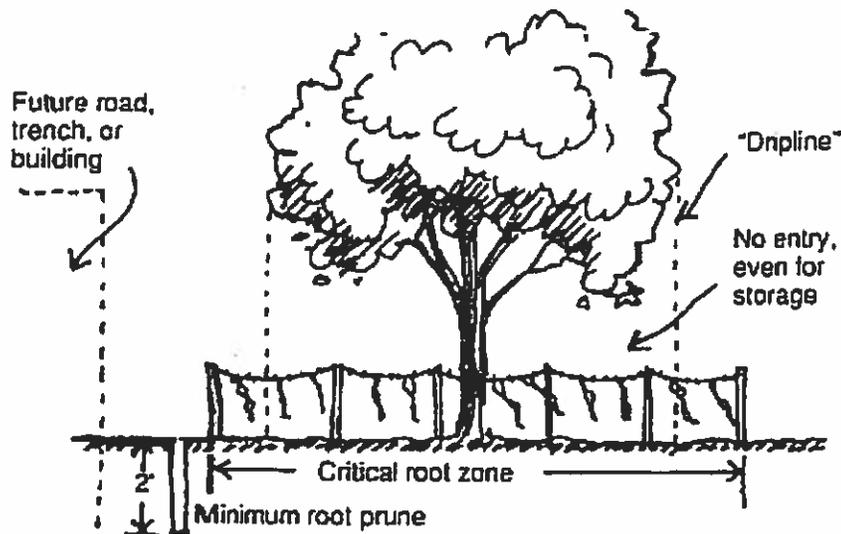
No grade changes, cut and/or fill slopes impacting the CRZ or 5 feet from the trunk (whichever is larger) are allowed without written Town Arborist approval. Also refer to the grading ordinance.

3. Utility and Irrigation Trenching Plan

The developer will be required to submit a utility and/or irrigation trenching-pathway plan on the proposed site map. See Appendix B

- a. Contents. The trenching-pathway plan shall depict all of the following systems: easements, storm drains, sewers, water mains, area drains, irrigation and underground utilities. Except in lot sale subdivisions, the trenching-pathway plan must show all lateral lines serving buildings. To be completely effective, the trenching-pathway plan must include an accurate plotting of the CRZ of each protected tree within 50' of the soil disturbance activity.
- b. The trenching-pathway plan must be developed to avoid going into the CRZ of any protected tree on its path from the street to the building.
- c. If the encroachment into the CRZ is unavoidable, an Arborist must assess the impact to determine the type of preservation device required. Boring under the root system of a protected tree may be required (see Figure 4). Encroachments and mitigation measures must be addressed in a supplemental Arborist's report. If no preservation device is implemented, mitigation shall be required for that tree.
- d. Trenching and Boring Procedures. In order to minimize or avoid injury to the root system, trenching within the CRZ of a protected tree, when permitted, may only be conducted with hand tools, air spades, or other acceptable measures. Acceptable measures and said work shall be determined by and conducted under the supervision of an on-site or project Arborist. Boring machinery, boring pits, and spoils shall be set outside of the CRZ fencing and boring depths to conform with Figure 4.

Figure 4: Trenching and boring procedures



- e. Utility corridors shall be under garages where feasible, if needed for tree protection

4. Tree Planting Standards near Utilities

No tree shall be planted within:

1. 4 feet of underground lines
2. 5 feet of fire hydrants
3. 20 feet of light standards

5. Swimming Pool Installation Procedures.

Proper protective fencing procedures are required during the development of a swimming pool near the CRZ of any protected tree on the lot to be developed, or on an adjacent lot where the CRZ overhangs the envelope of the lot to be developed. No grade changes will be permitted within the CRZ of a protected tree; therefore an accepted dumpsite that is not within the CRZ of a protected tree must be approved prior to the issuance of a permit.

6. Plant and Landscape Materials Under Oaks.

Planting live material under native oak trees is generally discouraged, and it will not be permitted within six feet of the trunk of a native oak tree with a DBH of more than eighteen inches. Only drought tolerant plants will be permitted within the CRZ of native oak trees and must be reflected in any landscape plans.

7. Irrigation Systems.

An independent low-flow drip and/or micro-spray irrigation system shall be used for establishing drought-tolerant plants within the CRZ of a protected tree. Irrigation should be gradually reduced and discontinued after a two to five year period, depending on plant species. WELO (Water Efficient Landscape Ordinance) compliance is required where applicable.

8. On-site Information.

The project Arborist or developer may be required to stake, paint, or chalk the site improvements and/or the CRZ on the ground. The following information shall be on-site while any construction activity is on going for a project requiring a major tree permit.

- a. Arborist's report and all future modifications;
- b. Proposed Tree Site Map with the Tree Fencing Plan and Utility and/or Irrigation Trenching Plan;
- c. Tree permit and inspection card;
- d. Approved construction plans;
- e. Approved planting and irrigation drawings;

9. Information on Standards.

The developer shall be responsible for informing all subcontractors and individuals working around protected trees of the requirements of this section. The developer shall also be responsible for informing all subcontractors and individuals of the fines, penalties, mitigation for failure to comply, and special Conditions of Approval for the project. The general contractor or applicant shall provide this information in writing to the subcontractors and employees.

10. Responsibility.

The final responsibility for tree protection, fines, penalties, and mitigation is the property owner.

11. Flexibility.

The Town's Planning Department will allow certain amounts of flexibility if minor variations will help save protected trees or improve the overall canopy. Protection of healthy groves shall be given substantial consideration. Examples that could be subject to review by the approving authority include, but are not necessarily limited to: Separated sidewalks and gutters; meandering sidewalks, change to rear or front setback, cluster parking, pervious sidewalks, sidewalks only on one side of a street, road width and building height variations, etc.

12. Final Certification.

All of the tree preservation measures required by the conditions of the discretionary project approval, the arborist's report and the tree permit, as applicable, shall be completed and certified by staff or the developer's arborist prior to issuing an occupancy permit.

13.54.070 Tree permit approval or denial.

Each tree permit application shall be reviewed, and approved or denied in compliance with this section.

A. Required Findings for Approval. The approval of a tree permit shall require that the review authority first make all the following findings:

1. Approval of the tree permit is consistent with the provisions of this ordinance.
2. Approval of the tree permit will not be detrimental to the public health, safety or welfare.
3. Measures have been incorporated into the project or permit to mitigate impacts to remaining trees or to replace the trees removed.

B. Application Evaluation. The following general considerations shall be used to support the findings required by subsection B for the approval of a tree permit.

- a. The gross floor area of proposed buildings in relation to the "usable" size of the site and the amount of usable space on the site that does not require the removal of protected trees;
- b. Design features in comparison with other existing or approved projects in the vicinity and in the same zone that have or had protected trees on their sites; ie., cumulative impacts;
- c. Factors that are unique to the site, such as topographic constraints, lot configuration and other physical limitations;

- d. The overall health and structural condition of the potentially impacted protected trees;
 - e. The number of healthy protected trees that the site will support, with and without the proposed development;
 - f. The effect of tree removal on soil stability/erosion, particularly near watercourses or on steep slopes;
 - g. Whether there are any alternatives that would allow for the preservation of the protected tree; and
 - h. The number of existing protected trees in the area and the effect of removal upon public health, safety and the general welfare of the area
 - i. The potential for the protected tree to be a public nuisance or interfere with utility service, as well as its proximity to existing structures; and
 - j. Present and future shade potential with regard to solar heating and cooling.
 - k. Any other information the review authority finds pertinent to the decision, including any information obtained at a public hearing.
- C. **Consideration for Denial of a Tree Permit.** A tree permit shall be denied if the review authority finds that any one of the following situations exists.
- 1. Removal or damage of a healthy tree could be avoided by:
 - a. Reasonable redesign of the site plan prior to construction.
 - b. Trimming, thinning, tree surgery, or other reasonable treatment, as determined by the Town Arborist.
 - 2. Adequate provisions for drainage, erosion control, land stability, windscreen, and buffers along the road have not been made where these problems are anticipated as a result of the removal.
 - 3. The tree to be removed contains an active nest of a bird covered by the Migratory Bird Treaty Act, that has been identified through the project environmental review process or that is otherwise known to the review authority, and a qualified professional has determined that the relocation of the nest without damage to the nestlings is not possible. In this case, tree removal shall be delayed until nesting is complete.
- D. **Limitation on Approved Activities.** A tree permit shall not be issued for temporary parking, or the storage of vehicles, trailers, equipment, construction materials, or temporary structures within the protected zone of a protected tree.
- E. **Conditions of approval.** The approval of a tree permit shall include conditions of approval as necessary to ensure compliance with Section 13.52.060.

13.54.080 Post approval procedures.

The following procedures apply after the approval of a tree permit application.

- A. In order to retain canopy as long as possible, tree removal is not allowed before building permit or improvement plan issuance.
- B. **Expiration/Extension.** Except where otherwise provided by this chapter, a tree permit shall be exercised within six months from the date of approval of the building permit or

improvement plan issuance or other time limit established through a concurrent land use permit approval. Time extensions, for up to a total of two additional years, may be granted in compliance with Chapter 13.44. A tree permit not exercised within its time limits shall expire in compliance with Chapter 13.44.

- C. **Performance Guarantee.** The review authority may require that a monetary security deposit be posted and maintained where deemed necessary to ensure:
1. The preservation of protected trees during construction;
 2. The completion of required mitigation measures.
 3. In the case of tree removal within the RA zoning district to accommodate an agricultural use, the establishment of the proposed agricultural use.

The deposit shall be posted in a form approved by the town attorney prior to any grading or movement of heavy equipment onto the site or issuance of any permits. Each violation of any tree permit condition regarding tree preservation shall result in forfeiture of a portion or the entirety of the deposit, at the discretion of the review authority, provided that this determination may be appealed in compliance with Chapter 13.74.

- D. **Construction Monitoring.** Monitoring of tree protection and restoration measures shall be performed with site inspections conducted by the Director and/or Town Arborist. At a minimum, an inspection is necessary prior to receiving final certificate of occupancy.
- E. **Revocation.** A tree permit may be revoked or modified, as provided in Section 13.58.050, with any of the following findings regarding the tree removal, relocation, or protection activities:
1. Cannot support the original findings;
 2. Resulted from misrepresentation or fraud;
 3. Has not been implemented in a timely manner;
 4. Has not met, or has violated any condition of approval;
 5. It is in violation of any code, law, ordinance, or statute;
 6. Is detrimental to public health, safety, or welfare; or
 7. Constitutes a nuisance.

13.54.090 Enforcement and Penalties.

Any person who damages or removes a protected tree in violation of this chapter shall be subject to the enforcement provisions of the municipal code. Planning staff and Public Works inspectors shall monitor activities affecting trees in the course of their regular duties. Any suspected violations shall be immediately reported to the Planning Department and Town Arborist. Enforcement action shall be initiated by the Planning Department within 48 hours following any complaint.

- A. Whenever any construction or work is being performed contrary to the provisions of this chapter or applicable conditions of approval, the director may issue a written notice to the responsible party to stop work on the project on which the violation has occurred or upon which the danger exists. The notice shall state the nature of the violation and the risk to the trees. No further work

shall be allowed until the violation has been corrected, fines and/or mitigation paid, and resumption of work is approved by the department.

- B. Missing trees will automatically be rated a 5.
- C. Mitigation requirements may be doubled, at staff discretion.
- D. Restitution for all enforcement costs shall be paid by the landowner.

D. Appeals. The decision of the director shall be final unless an appeal is filed in compliance with Chapter 13.74

13.54.015 Definition of Terms

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

“American National Standards Institute (ANSI)” shall mean the most current version of A300, the industry-consensus of performance standards for the care and protection of trees as contained in the body of this ordinance.

“Approving Authority” shall mean any one of the following: Loomis Town Council, Loomis Planning Commission, Director, or other body granted authority under the Loomis Municipal Code to act on subject entitlements.

“Arborist” shall mean: (1) A person currently certified by the Western Chapter of the International Society of Arboriculture as an expert on the care of trees; (2) a consulting arborist who satisfies the requirements of the American Society of Consulting Arborists; or (3) other qualified professionals who the director determines have gained through experience the qualifications to identify, remove, or replace trees. See also “Town Arborist”.

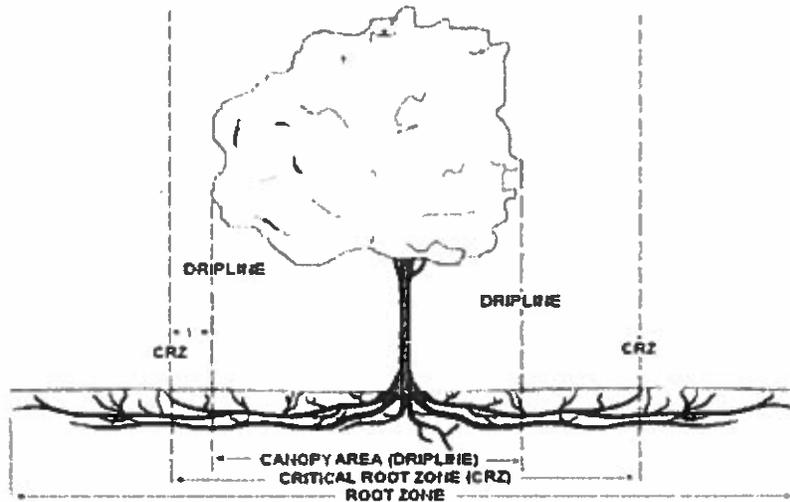
R “Arborist Report” shall mean a report prepared by an arborist containing specific information on location, condition, potential impacts of development, recommended actions and mitigation measures relating to 1 or more trees on an individual lot or project site. The report shall remain valid for 2 years.

E and Resolution under Arborists “Best Management Practices (BMPs)” shall mean the current companion publications to the ANSI A300 Standards published by the ISA for the care and protection of trees as contained in the body of this ordinance.

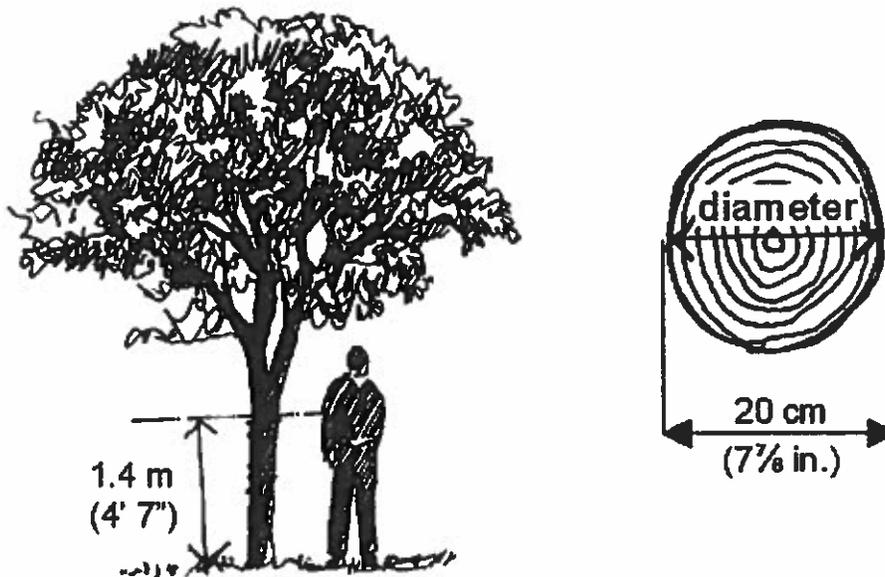
D “Boring” (as compared to utility trenching) shall mean drilling horizontally under the root system, to open an underground utility pathway, at a depth as to not cause substantial harm or disruption to the root system of a tree, see Figure 4.

D will be under Conditions “Certification Letter” shall mean a final letter written by an arborist stating that work that was performed and observed by an arborist and complies with the conditions of the discretionary project, the tree report, the tree permit, and the provisions of this ordinance, to the best of his/her knowledge.

“Critical Root Zone (CRZ) shall mean a circular area around a protected tree with a radius measured to the longest dripline radius plus 1 foot: see Figures 1, 2, and 4.

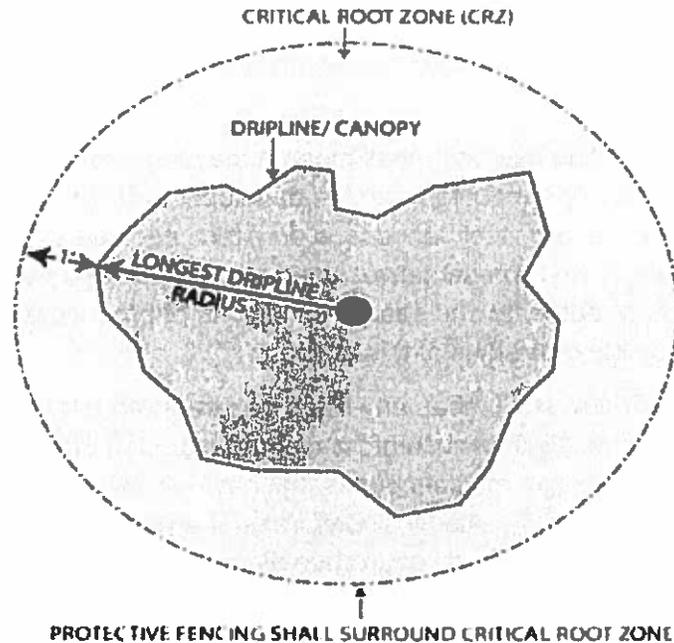


“Diameter at breast height (DBH)” shall mean the diameter of a tree trunk measured at four and one-half feet (4' 6") above ground level, or the average grade point on a hillside, along the center of the trunk axis. The diameter shall be calculated by the following formula: $DBH = \text{circumference at breast height} / 3.14$



“Dripline” shall mean the outermost edge of a tree’s canopy. When depicted on a map, the dripline will appear as an irregular-shaped circle that follows the contour of the tree’s branches as seen from overhead. Longest dripline radius shall mean

a radius equal to the distance from the trunk of the tree to the end of the longest branch and is not the same as the CRZ.



“Duff Layer” shall mean the layer of loosely compacted debris and organic matter in various stages of decomposition, underlying the litter layer on the forest floor.

“Encroachment” shall mean any regulated activity conducted within the CRZ of a protected tree.

Cross check – “Protective Fencing” “Fencing Plan” shall mean a plan that will be on the proposed Tree Site Plan to show proper tree protection fencing, outside the CRZ, and to be maintained throughout the construction phase.

“Grading” shall mean any movement, removal or deposit of soil or earth material.

“Grubbing” shall mean the physical process of removing the duff and/or upper most organic layer of soil and small underbrush, weeds, and other plants.

“Hazardous tree” shall mean a tree that has been certified by an arborist as being dead, or alive and so affected by a significant structural defect, damage, or disease, or soil that may not provide adequate support and/or that poses a threat to life or property.

“In-Lieu-Fee” shall mean payment of cash contribution based upon the cost of purchasing, planting, irrigating, and successfully establishing the required number of native trees that will be determined by this ordinance and the Town of Loomis.

“ISA” shall mean International Society of Arboriculture.

"Native oak tree" shall mean any of the following trees (or hybrids thereof): *Quercus lobata* (Valley Oak), *Quercus douglasii* (Blue Oak), *Quercus wislizenii* (Interior Live Oak), and *Quercus x morehus* (Oracle Oak).

"Native tree" shall include, but is not limited to, oaks (listed above), Goodding's willow (*Salix gooddingii.*), red willow (*Salix laevigata*), fremont cottonwood (*Populus fremontii*), California sycamore (*Platanus racemosa*), California black walnut (*Juglans hindsii*), white alder (*Alnus rhombifolia*), and California buckeye (*Aesculus californica*)

"Pre-Construction Meeting" shall mean a meeting prior to the start of construction activities, usually conducted with the developer and the developer's contractors, superintendent, architect, landscape architect, engineers, project arborist, and the appropriate Town representatives used to delineate special procedures, limits of work, lines of authority and special conditions or procedures that may not be covered by the provisions of this article.

* "Protected trees" shall mean any listed oak tree with a trunk that is a minimum of 6" in diameter (i.e. 18.8" in circumference) measured at diameter breast height (dbh), or, any oak tree with multiple trunks that have an aggregate diameter at breast height of at least 10". Also includes trees of any species 18" diameter at breast height or greater or with an aggregate diameter at breast height of 24" or more that is rated a 3, 4, or 5 by an arborist, except for exempt trees.

"Riparian" shall mean the interface between land and a river and/or stream characterized by hydrophilic (water-loving) plants such as willows, cottonwoods, blackberries.

"Town Arborist" shall mean an arborist contracted or employed by the Town as a consultant or staff, to review, evaluate, and prepare tree reports, permit requests, development plans, and to apply and enforce this tree ordinance.

"Tree" shall mean a woody perennial plant containing one or more trunks that will grow to a height of 15' or more.

"Vegetation Management Plan (VMP) shall mean a plan for the assessment, implementation, and maintenance necessary to mitigate the hazards of potential wildfire for a specific project or geographical area. A VMP is used to address specific courses of action, responsible parties, resources, and priorities. Components of a VMP may include, but are not limit to modification of fuels, removal of fuels, fire safe landscaping, defensible space, shaded fuel breaks, fire breaks, and other such means to mitigate the hazards of wildfire. Components contain specific prescriptions with the intent of reducing the wildfire hazard.

"Wetlands" shall mean those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

NOTES TO COUNCIL ON DRAFT TREE ORDINANCE

Scheduled for Town Council Review on October 8, 2013

From Planning Commissioner Jean Wilson

(To the best of my understanding)

History of the Ordinance

The first Loomis Tree Ordinance was adopted in 1989. It was revised in 2003 under the Zoning Ordinance revision that followed the General Plan update. Later, Town Arborist Ken Menzer proposed a new ordinance which was discussed and tabled. After the Council reviewed the Open Space II report it again directed the Planning Commission to revise the ordinance, incorporating elements of the Menzer report and some Open Space II recommendations. The Commission appointed a subcommittee consisting of Sierra College botany and biology professor Shawna Martinez, and Commissioners Janet Thew and Jean Wilson. The subcommittee was nearly finished (pending looking at canopy coverage mitigation) and presented a preliminary draft to the Planning Commission in December 2011 for comment and discussion. However, the ordinance was taken out of Commission hands that night by the PC attorney, for legal review. (No further opportunity for mitigation by canopy coverage was given.)

From December 2011 to July 2013 the ordinance was in the hands of the attorney. Instead of the subcommittee report, an attorney-drafted ordinance was brought to the Commission in July 2013, incorporating some elements of the subcommittee draft. Although the majority of the Commission preferred the subcommittee draft, we were instructed to use the attorney's version. However, we were able to incorporate some additional elements from the subcommittee work. The draft now under consideration is the attorney's draft with Commission alterations. However, you have also been given a copy of the subcommittee's preliminary draft for informational purposes.

DEFINITIONS

What's protected? What's not?

"Native trees" here are our four local oaks plus California Sycamore.

(Note: Other natives listed in the Small Tree Preservation Credits, 13.54.100A, are protected if they are used as credits, or in some cases if 18".)

"Protected Trees" include the four oaks at 6" DBH or a Sycamore of 18". Other trees are protected at 18" as well unless they are on the invasives list or the "Not to Be Planted on Town Property" list in the Master Tree List. (For now, see Tree Matrix on Town website for examples.) This does not mean a property owner can't plant them, only that the Town will not plant them on Town-owned property. There are of course allowances for trees that become hazardous or are in failing health.

EXPLANATORY NOTES ON SOME SECTIONS :“WHAT AND WHY?”

I thought it might be helpful to explain some of the sections and the rationale behind them.

13.54.060 EXEMPT ACTIVITIES

These are activities now totally exempt from the ordinance.

- A. **Small residential lot provision**, basically for ¼ acre or less that can't be further subdivided. The rationale is that these lots don't have a lot of space to work with and the activity level is often not conducive to long-term health of our naïve oaks (compaction, watering, etc.). In actuality there aren't a lot of oaks in these areas already. This exemption was recommended by Planning Director Kathy Kerdus, as appropriate for this size lot. It would not apply where the land has not yet been subdivided. The developer would still have to comply with the ordinance during that process. The exemption would go to the final lot homeowner.
- B. **Pruning**. Although pruning is a significant factor in tree health, there was strong public opposition when it was introduced in the Menzer proposal. Here, pruning is only an issue if it is done in a way that is harmful to the tree. The Commission hopes that some mitigation money can be devoted to education on trees, such as proper pruning, to help the public with tree care.
- C. **Emergencies** such as hazardous and falling trees, fire dept., etc. (See 13.54.170.)
- D. **Traffic Visibility** problems
- E. **Dead Trees**. A full tree permit is not required but request must still be made (brief form) to Town Manager. Photographs may be submitted. May entail a site visit from Manager and/or Town Arborist, as needed, to confirm.

F. Request: to add back provisions for Removal of Nursery and Orchard Trees as Exempt.

This was a serious concern from area nurseries and growers that any of their trees reaching 18" could not be removed without mitigation. These are part of their business operations and they should have control over them. I request that this concern be honored and the provision be put back into the ordinance. (No opportunity to discuss at PC)

13.54.070 and .080 Permit requirements when tree removal is requested when there is no construction project involved and when there is construction involved. In either case, a permit is needed for removal, and the root zones (CRZ) of remaining trees are to be protected. The requirements for construction are more extensive because of the presence of machinery, utilities,, materials, etc., that could damage the trees nearby.

13.54.090 Application Process and Decision:

The application must include an arborist report.

Please note the **new RATING SYSTEM** for evaluating the tree's condition (adopted from Menzer report). This 0 to 5 system describes each rating and is important for mitigation. Dead trees have never required mitigation. However, the change is that poorer trees will no longer require mitigation if they are removed. Currently a poor condition tree requires as much mitigation as a really healthy one. Now only trees rated fair or better will need mitigation.

13.54.100 Mitigation Table

Probably the most difficult part of a tree ordinance is deciding on what kind and how much mitigation is appropriate. This table allows for replanting trees or paying an in-lieu fee or a combination . Note that the **in lieu fee is an amount per inch of diameter**, not an amount per tree. There is some difference in species requirements because of the abundance of some species

and the relative lack of others. For instance, blue oaks have been having a difficult time regenerating and are therefore considered more valuable, so have a higher mitigation value (also the case in our current ordinance). Blues are also slower growing.

The left column is for inches of diameter of the tree removed. This is a grouped range, not replanting per inch, but essentially an average for that group. I.e. you would mitigate the same for a 6" tree as for a 12" tree (similar to current ordinance groupings). [This column should read 6-14.9, not 14-9, in case this has not yet been corrected. Would it help to have " for inches in each entry, such as 6-14.9" ?]

Note on Containers and Availability.

This table allows for small oaks to be planted for up to half of the requirement. Growers and restorationists are increasingly encouraging the planting of small oaks, only a year old or perhaps two, because of their proven survival superiority over larger oaks. In nature an oak spends its first couple of years with very little top growth and concentrates on the root system it will need to survive the summer drought. It adapts early on to its environment, compared to larger container trees. We have included not only #5 (5gal.) trees (1 or 2 years old depending on the nursery) but also tree pots, which are increasingly used in the industry. These containers encourage a long tap root such as the tree would develop in nature; acorns are typically gathered in the fall, planted in spring and trees planted out in the fall—one year. They have excellent survivability and catch up quickly with the large containerized counterparts. I am told that a tree pot or #5 tree will catch up with a #15 in about three years. (The County advisor told us for the previous ordinance that #15s should be planted in public places such as streets and parks since they are larger and have a better chance against public use, but otherwise the smaller trees are really better. 24" box is difficult to find for local oaks and is no longer recommended because it does not adapt as readily as the smaller trees. **We may need to finesse this table some as we learn more about availability and survivability.** Currently I have only found 24" box in the Livermore area, and unless it is a specimen tree for someone's year (Ken Menzer), the smaller trees are better. I am continuing to compile nursery data for the Commission in case we would want to recommend some changes later. In general, trees with local genetics are preferable because they have adapted over centuries to local growing conditions.

It is to be hoped that some local nurseries would take on propagation from acorns so that there would be a supply of local genetics for replanting as projects come in. Some will prefer to pay in-lieu fees, but where there is space, replanting will help preserve the oak heritage.

Personal Note on Mitigation Table. In general the Commission majority agreed to this table. Personally I still think it is too high in the replantings required, especially if they are required to be at 30' maturity spacing. That means even a few trees removed could result in huge amounts of one's property needed for re-planting, plus possible in-lieu fees as well. Part of the solution was suggested by Sierra biologist Shawna Martinez, who indicated that if trees are planted more densely, they could later be thinned to the best specimens for a healthy woodland. (This could be allowed under the Woodland Enhancement provision in item C at the end of this section.)

The other consideration that I do not think the table adequately addresses is the fact that trees grow, and faster than one might suppose, and therefore more trees than necessary are required to replace canopy lost. The live oaks on our property were approaching 6" at only 13 years, and

were acorn bearing in less than 20, and this with a 10 year drought. The General Plan allows 20 years for the replacement canopy to grow back (General Plan, p 113, Policies, 5) : **“When trees are removed, they shall be replaced in sufficient numbers to maintain the volume of the Town’s overall canopy over a 20 year period.”** Our replanting requirements not only take up many times the land of the tree removed, but almost certainly significantly overshoot the General Plan’s target of 20 year replacement.

Consider: We require that mitigation trees be healthy (rated 3 or better) for a 5 year monitoring period or be replaced; 80% must survive healthy at 5 years. That means that if 10 trees are required, at least 8 must be rated 3 or better at 5 years. To need so much mitigation you would have to propose that a very high percentage of these healthy 5 year trees will die after being healthy at 5 years. How many do we really need to survive to replace the canopy removed?

One solution is to consider the 20 year General Plan replacement period and measure how much canopy is being lost and then figure how many trees are needed to replace that canopy within 20 years. CRZ or longest dripline from the arborist report could be used to approximate the canopy lost, and expected canopy growth of the new trees (from studies) can be used to calculate needed replacements. This would give us a better number of how many replacement trees are needed, adding some for safety. Jurisdictions that use tree canopy coverage to calculate replacement trees generally use the estimated average size at 15 years to calculate the number of replacement trees needed (Using a 15 year size would offer us a measure of safety for achieving the 20 year goal.) Keep in mind that it calls for overall town canopy at 20 years, and the rest of the Town trees are growing and increasing canopy as well. We would also hope to be educating people to plant more trees, and select and care for them wisely, also increasing our overall canopy.

If you would like the Commission or a subcommittee to look into canopy replacement as called for in the General Plan, to see what numbers of replacement trees this method might call for, this might be something you could direct the Commission to look into and report back. I expect that the numbers might well be lower but readily calculable and supportable. A report back could also include information on spacing.

13.54.100 On page after Mitigation Table:

A. NEW! SMALL TREE AND NATIVE TREE PRESERVATION CREDITS

This section was added as a way to get developers to preserve some of the smaller oaks as well as other natives that would offer diversity. The smaller oaks have already proven their survivability, so if they are well-placed and healthy we propose giving credits for them rather than just planting replacements. After a good deal of discussion over what other natives to protect, it was decided that rather than write more rules about protecting natives, we would move them into the “credits” category, to get them to be valued. Yes, they can be cut, but if you are going to have to mitigate, consider leaving them where possible and get some mitigation credit. This will help to preserve natives where they already growing and enhance the species diversity of the woodlands. Trees used for credits are considered protected like the oaks.

B. LARGE PARCEL 10% ALLOWANCE –a Revision of current ordinance

The current ordinance also has a large parcel 10% allowance but because of a paragraphing error that slipped in before the printed draft, it does not appear as was intended. This restores the intention. Why give this allowance?

1. **For some parity with the smaller properties exemption.** Allows the homeowner to remove 10% of trees within a 10 year period without mitigation, for whatever purpose (garden, pool, deck, solar, landscape trees, home orchard, etc.). Some properties have few trees so would not be allowed to remove many. Some are heavily treed and to create any sunny area or area for other use could be prohibitively expensive. Since trees grow, the property might well not have been so shady when purchased. The allowance gives more freedom on property use.
2. **Remaining trees mitigate the canopy loss.** The remaining 90% continue to grow and can make up for the loss of the 10% over the 10 year period. Each remaining tree need only grow 1% per year to replace the canopy that was lost. (I.e. for each 100 leaves, a remaining tree needs to add one leaf the first year, for 101, another the second year for 102 etc. over the ten year period—a very conservative growth rate. So the 90% left would, over the ten years, readily replace the canopy loss of the 10%.)
The 10% could be cut in one year or spaced out over the ten years.

C. Woodland Enhancement. This is meant to allow for thinning of crowded stands so that the remaining trees can have better spacing; also can provide more species diversity and habitat value. Must have an approved plan.

13.54.110. Use of In-lieu Fees –How the Tree Fund may be used

Includes planting, propagation, land purchase or conservation easements. Public education programs relating to trees in Loomis. Community or non-profit groups could implement various tree programs within the Town.

13.4.120 Agricultural Exemption

This provision has been in the ordinance since the first one in 1989, with little change.

Changes:

1. One change here is to require a **10-year requirement for the ag use, rather than 5**. This was the Open Space recommendation. It was felt that this would better protect against someone establishing an ag use for 5 years in order to save tree fees, with an intent to subdivide in 5 years. (Personally, with the cost of establishing an ag operation—clearing, prepping, irrigation, planting, maintenance, harvesting, etc.-- I doubt it would be worth it just to save the tree fee in five years, but I don't seriously object to the 10 year requirement.)
2. **One year extension may be requested**, as with other permits (such as building permits)
3. **Retained trees at property line defined as within 10'**. No distance was given in the previous ordinance, which we felt could be problematic. One consideration for the limitation is that a larger allowance could easily use up a lot of agricultural land. Even 10 feet over a 900 foot distance uses up almost a quarter acre of potentially plantable land. 25 feet would use up over a half acre. The intent was simply to leave some trees along the property lines as a visual buffer in case there are near neighbors. (Commission discussed Roger Smith's proposal to make it a 25' distance but the majority felt this could take away too much plantable space. Also did not adopt his proposal that ag be required to go around trees within the field)

4. **We did not define distance from surrounding buildings.** Council may wish to do so or leave it as a discretionary matter according to the situation. In either case the intent was simply to leave some trees, not to significantly encroach into the ag operation.
5. **Deleted “commercial” agriculture as a requirement, at lawyer’s instruction.** We were told we cannot discriminate between commercial and non-commercial ag, though the original intent of this exemption was to promote commercial agriculture.

Why promote agriculture?

This has been a part of the ordinance from the first one, in order to promote agriculture in Loomis and honor our agricultural heritage. The land is zoned for agriculture. At the time of the first ordinance, there was not even the Farmers Market/Farm to Fork emphasis we are seeing today, where small local farmers help provide us with locally grown food. If someone had to pay today’s heavy tree fees to be able to go into ag, it would be a serious detriment. Many of the lands here are former orchard lands, and the trees on them relatively recent in origin, not “old growth.”

Those doing small local ag also tend to care about their land and take care of it, considering themselves stewards of the land, and would rather farm a crop than use up their land on some of the uses we often see with the very large houses on our larger lots.

If it seems unusual to exempt ag in this way, keep in mind that the State also provides a property tax reduction for larger operations, through the Williamson Act, as a way to keep and promote agriculture. This ag exemption is a way for Loomis to honor and promote small ag in the community. We honor our ag heritage in Loomis with the Fruit Sheds and our downtown park name. This provision helps continue that tradition. (By the way, Montserrat did not request or get an agricultural exemption.)

Thank you for your time and effort on this important ordinance.
Jean Wilson

CHAPTER 13.54 - TREE PRESERVATION AND PROTECTION

Sections:

- 13.54.010 - Purpose
- 13.54.020 - Applicability
- 13.54.030 - Tree Permit Application Requirements
- 13.54.040 - Arborist's Report
- 13.54.050 - Standard Policies and Procedures for Approved Work
- 13.54.060 - Tree Planting and Replacement
- 13.54.070 - Tree Permit Approval or Denial
- 13.54.080 - Post Approval Procedures

13.54.010 - Purpose

This Chapter provides regulations for the protection, preservation, and maintenance of:

- A. Native oak trees;
- B. The habitat values of oak woodlands;
- C. Trees of historic or cultural significance;
- D. Groves and stands of mature trees; and
- E. Mature trees in general that are associated with proposals for development.

It is also the intent of this Chapter to perpetuate these trees through the replacement of those removed through development.

13.54.020 - Applicability

- A. **Applicability to protected trees.** The provisions of this Chapter shall apply in all zoning districts to the removal or relocation of any protected tree. A protected tree is any of the following:
 1. A native oak tree with a diameter of six or more inches as measured 54 inches above the ground;
 2. A heritage, or landmark tree or grove identified by Council resolution;
 3. Significant groves or stands of trees identified by Council resolution;
 4. A mature tree other than those listed in Subsections A.1 through A.3, that is 19 inches or more in diameter as measured at 54 inches above the ground, and located on a commercial parcel, or on a residential parcel that can be further subdivided, or on a parcel in the RA, RE, or RR zones, provided that the tree is not a willow, fruit tree, eucalyptus, alder, cottonwood, or pine;

5. A tree required to be planted, relocated, or preserved as a condition of approval of a Tree Permit or other discretionary permit, and/or as environmental mitigation for a discretionary permit; and
6. A tree within 100 feet of a perennial stream, or within 50 feet of a seasonal stream.

B. Tree Permit required.

1. **Activities requiring a permit.** A Tree Permit shall be required prior to:
 - a. The relocation, removal, cutting-down, or other act that causes the destruction of a protected tree;
 - b. Prior to any grading, paving, or other ground-disturbing activity within the protected zone of a protected tree where the encroachment exceeds 20 percent of the protected zone; and
 - c. The approval of a Use Permit, Minor Use Permit, Variance, or subdivision map, hereafter referred to as "discretionary projects."
2. **Permit issuance.** A Tree Permit shall not be issued except in conjunction with:
 - a. The approval of a discretionary project for the same site;
 - b. The approval of a Building Permit for the same site; or
 - c. The approval of improvement plans for a subdivision of the same property.

C. Exceptions. The removal or relocation of a protected tree is exempt from the provisions of this Chapter under the following circumstances.

1. **Existing trees on residential property.** Removal of an existing tree of the type described in Subsection A.4.
 - a. Trees within the RS, RM, or RH zoning districts, on a parcel that cannot be further subdivided based on the minimum lot area requirements of the applicable zoning district.
 - b. Trees on a parcel within the RA, RE, or RR zoning districts, where the total number of trees proposed for removal within any 10-year period comprise 10 percent or fewer of the total number of protected trees on the parcel.
2. **Emergency situation.** Cases of emergency where the Director, Town Engineer, a member of a law enforcement agency, or the Fire Department determines that a protected tree poses an imminent threat to the public safety, or general welfare.
3. **Traffic visibility obstructions.** Removal or relocation of trees necessary to maintain adequate line-of-sight distances as required by the Director, or Town Engineer.
4. **Public utility damage.** Removal of trees for the protection of existing electrical power or communication lines.

5. **Nursery.** Removal of trees planted, grown, or held for sale by a nursery, tree farm, or similar commercial operation.
6. **Orchards.** Removal of orchards or fruit trees grown, planted, or held for sale for cash crop or commercial purposes.
7. **Dead or dying trees.** Removal of trees determined by the Director, or an arborist approved by the Director, to be dead or dying, have become hazardous or unsightly as a result, and provide limited habitat value.

13.54.030 - Tree Permit Application Requirements

- A. **Application contents.** Each Tree Permit application shall include the following information and materials.
 1. **General content requirements.** The application shall use the forms provided by the Department, shall include an Arborist's report in compliance with Section 13.54.040, and shall be accompanied by the application fee required by the Town fee schedule.
 2. **Homeowner's Association approval.** If the site is subject to Conditions, Covenants, and Restrictions (CC&Rs) that address tree removal and are administered by an active homeowners' association, the application shall include a letter from the homeowners' association authorizing the tree removal.
 3. **Site plan.** A Tree Permit application shall include a site plan with the following information, provided that the requirement for a site plan may be waived by the Director if the permit is for removal of dead trees or hazardous trees.
 - a. **Physical features of the site.** The site plan shall accurately show the location of the following existing and proposed features of the site, and structures on the site:
 - (1) Property lines;
 - (2) Streets, access easements and/or public or private driveways and other paved areas;
 - (3) Existing and proposed buildings or structures, including eaves and other architectural features, and the dimensions of the setbacks of all buildings and structures from property lines;
 - (4) Parking and other paved areas;
 - (5) Land uses on the site (existing and proposed as applicable);
 - (6) Proposed grading and construction - including utilities, if available;
 - (7) Existing and proposed grades; and
 - (8) Chimneys.
 - b. **Tree locations and protected zones.** The site plan shall show each protected tree on the site, together with the exact location of the base and dripline for each

protected tree within areas of the site subject to grading, other construction or alteration of the ground surface.

- (1) A survey of the exact horizontal and vertical locations of the protected trees trunks shall be conducted by a professional engineer or a licensed land surveyor. Each tree shall be numbered on both the site plan and grading plan. The base elevation of each protected tree shall be shown on the grading plan.
- (2) The exact location of the protected zone of a protected tree is crucial to evaluate impacts from construction; consequently, rough approximations will not be acceptable.
 - (a) The radius of the protected zone is a circle equal to the trunk diameter in inches converted to feet. (For example, the radius of the protected zone of a tree with a trunk diameter of six inches is six feet.) Trunk diameter is measured at 54 inches above the ground
 - (b) In the case of a trunk that is divided into limbs at a point below 54 inches, the trunk diameter shall be measured at the narrowest diameter of the trunk between the base of the tree and 54 inches above the ground.

In certain cases, it may be possible to physically stake the surveyed corner of a buildings or related improvements in the field in order to assess the potential impacts upon the trees.

- B. Application filing.** An application for a Tree Permit involving a discretionary project shall be included as part of the application for the discretionary project. An application for a Tree permit not associated with a discretionary project shall be filed with the Department separately.

13.54.040 - Arborist's Report

A Tree Permit application shall include an Arborist's report, in compliance with the following requirements, where determined by the Director to be necessary based on the number, type, and locations of trees on the site.

A. Minimum information. The Arborist's report shall include the following information:

1. Botanical name of trees by tree number;
2. Common name of trees by tree number;
3. Location of trees by tree number;
4. Diameter at 54 inches above the ground, by tree number;
5. Height by tree number (optional);
6. Dripline radius by tree number (measure longest radius);
7. Condition by tree number; and
8. Recommendations.

B. Determination of tree condition. The information on tree condition in the report shall be developed as follows:

1. **Rating system.** The condition of each tree is to be considered when determining a tree's rating according to the following categories: excellent (it is rare that a tree qualifies in this category); good; fair to good; fair; fair to poor; or poor.
2. **Factors to be considered.** At least the following factors shall be considered in light of the trees life expectancy under existing and planned conditions when determining a tree's rating:
 - a. The condition and environment of the tree's root crown (also roots, if applicable);
 - b. The condition of the trunk, including decay, injury callusing or presence of fungus sporophores;
 - c. The condition of the limbs, including strength of crotches, amount of deadwood, hollow areas, and whether there is excessive weight borne by them;
 - d. The condition and growth rate history of the twigs, including pest damage and diseases;
 - e. Leaf appearance, including abnormal size and density as well as pest and disease damage; and
 - f. The dripline environment, including evidence of grade changes and presence of water courses or ponding.

3. **Formulation of tree condition.** Using an averaging of the above factors together with the Arborist's best judgment, the tree shall be described using the above rating categories. It is important to rate structural condition separately from the tree's vigor condition if they are different. Root crown, trunk and limb ratings relate most to structure, while twigs and foliage, including growth rate, relate most to vigor. The structure of the root crown-trunk area is of primary importance and takes precedence over any other factor. This information should not be considered to be a formula but simply a guideline to help describe a tree's condition.
- C. **Arborist's recommendations.** The Arborist's recommendations shall be developed in compliance with the following:
1. **Recommendations by tree number.** Based upon the conditions and findings, recommendations should be made that logically follow the report conditions. For instance, if weak crotches are reported, cabling would be a logical recommendation to include in the report. These recommended mitigative measures should be spelled out and in some cases may even improve the tree's condition ratings.
 2. **Preservation measures for each tree not being removed.** The specific recommendations must consider the impacts from the activities proposed.

13.54.050 - Standard Policies and Procedures for Approved Work

Great care must be exercised when work is conducted upon or around protected trees. The purpose of this Section is to define procedures necessary to protect the health of affected protected trees. The policies and procedures described in this Section apply to all encroachments into the protected zone of protected trees. All Tree Permits shall be deemed to incorporate the provisions of this chapter except as the Tree Permit may otherwise specifically provide.

- A. **Trenching procedure.** Trenching within the protected zone of a protected tree, when permitted, may only be conducted with hand tools or as otherwise directed by an arborist, in order to avoid root injury.
- B. **Cutting roots.**
1. Minor roots less than one inch in diameter may be cut, but damaged roots shall be traced back and cleanly cut behind any split, cracked or damaged area.
 2. Major roots over one inch in diameter may not be cut without approval of an Arborist. Depending upon the type of improvement being proposed, bridging techniques or a new site design may need to be employed to protect the root and the tree.
- C. **Ground surface fabric.** If any native ground surface fabric within the protected zone must be removed for any reason, it shall be replaced within 48 hours.
- D. **Irrigation systems.** An independent low-flow drip irrigation system may be used for establishing drought-tolerant plants within the protected zone of a protected tree. Irrigation shall be gradually reduced and discontinued after a two-year period.
- E. **Plant materials under oaks.** Planting live material under native oak trees is generally discouraged, and it will not be permitted within six feet of the trunk of a native oak tree with a diameter at breast height (DBH) of 18 inches or less, or within 10 feet of the trunk of a

native oak tree with a DBH of more than 18 inches. Only drought tolerant plants will be permitted within the protected zone of native oak trees.

F. Protective fencing.

1. **Type of fencing.** A minimum five-foot high chain link or substitute fence approved by the Director shall be installed at the outermost edge of the protected zone of each protected tree or groups of protected trees. Exceptions to this policy may occur in cases where protected trees are located on slopes that will not be graded. However, approval must be obtained from the Department to omit fences in any area of the project.
2. **Fence installation.** The fences shall be installed in accordance with the approved fencing plan prior to the commencement of any grading operations or such other time as determined by the review body. The developer shall call the Public Works Director for an inspection of the fencing prior to grading operations.
3. **Signing.** Signs shall be installed on the fence in four equidistant locations around each individual protected tree. The size of each sign must be a minimum of two feet by two feet and must contain the following language:

"WARNING, THIS FENCE SHALL NOT BE REMOVED OR RELOCATED WITHOUT WRITTEN AUTHORIZATION FROM THE LOOMIS PLANNING AND BUILDING DEPARTMENT."

Signs placed on fencing around a grove of protected trees, shall be placed at approximately 50-foot intervals.

4. **Fence removal.** Once approval has been obtained, the fences shall remain in place throughout the entire construction period and shall not be removed without obtaining written authorization from the Department.
- G. Retaining walls and root protection.** Where a Tree Permit has been approved for construction of a retaining wall within the protected zone of a protected tree, the developer shall provide for the immediate protection of exposed roots from moisture loss during the time prior to completion of the wall. The retaining wall shall be constructed within 72 hours after completion of grading.
- H. Preservation devices.** If required, preservation devices such as aeration systems, oak tree wells, drains, special foundation systems, special paving and cabling systems must be installed per approved plans and certified by the Arborist.

I. Grading.

1. Every effort should be made to avoid cut and/or fill slopes within or in the vicinity of the protected zone of any protected tree.
2. No grade changes are permitted which cause water to drain to within twice the longest radius of the protected zone of any protected tree.
3. No grade changes are permitted that will lower the ground on all sides of the tree.

J. Chimney locations. A chimney for a wood-burning fireplace or stove shall not be located within the canopy of the tree or in a location that sparks emitted from the chimney may damage a tree.

K. Certification letters. Certification letters are required for all regulated activities within the protected zone of protected trees. The developer's Arborist will be required to submit a certification letter to the Department within five working days of completing any regulated activity, attesting that all work was conducted in accordance with the appropriate permits and the requirements of this Chapter.

L. On-site information. The following information shall be on-site while any construction activity is on going for a project requiring a Tree Permit:

1. Arborist=s Report and all future modifications;
2. Tree location map with a copy of the tree fencing plan;
3. Tree Permit and inspection card;
4. Approved construction plans;
5. Tree Preservation Guidelines; and
6. Approved planting and irrigation drawings.

M. Information on standards. The developer shall be responsible for informing all subcontractors and individuals who will be performing work around protected trees of the requirements of this Section for working around trees and conditions of approval for the project. This information shall be provided in writing to the subcontractors and employees by the general contractor or applicant.

N. Utility trenching pathway plan. As a condition of the Tree Permit, the developer will be required to submit a utility trenching-pathway plan for approval following approval of the project improvement or civil plans.

1. **Contents.** The trenching-pathway plan shall depict all of the following systems: storm drains, sewers, easements, water mains, area drains, and underground utilities. Except in lot sale subdivisions, the trenching-pathway plan must show all lateral lines serving buildings. To be completely effective, the trenching-pathway plan must include the surveyed locations of all protected trees on the project as well as an accurate plotting of the protected zone of each protected tree.

2. **Standards for plan.** The trenching-pathway plan should be developed considering the following general guidelines:
 - a. The trenching-pathway plan must be developed to avoid going into the protected zone of any protected tree on its path from the street to the building.
 - b. Where it is impossible to avoid encroachment, the design must minimize the extent of such encroachment. Encroachments and mitigation measures must be addressed in a supplemental Arborist=s Report.
- O. **Final certification of tree work.** All of the tree preservation measures required by the conditions of the discretionary project approval, the Arborist's report and the Tree Permit, as applicable, shall be completed and certified by the developer's Arborist prior to issuing an occupancy permit.

13.54.060 - Tree Planting and Replacement

The Town's principal objective for the Tree Permit process is the preservation of protected trees, particularly in groves, and for proposed subdivisions and other projects requiring discretionary approval. Where the review authority determines that preservation is infeasible, replacement plantings may be allowed in compliance with this Section.

- A. **Extent of replacement required.** The review authority may condition any Tree Permit for the removal of a protected tree upon the replacement of trees in kind. The replacement requirement shall be calculated as provided by Table 5-3. The review authority may approve a replacement program using one of the methods identified in Subsections B. through E., or any combination of the methods.

TABLE 5-3 - REQUIRED REPLACEMENT TREES

Species of Tree to be Removed	Diameter of Tree to be Removed (1)	Mitigation Value (required number of replacement trees)	Required Size and Species of Replacement Trees for Mitigation Value
Blue oak	6 to 9 inches	8	15-gallon blue oaks
	10 to 15 inches	12	
	16 to 25 inches	20	
	26 or more inches	26	
Valley oak	6 to 9 inches	6	15-gallon valley oaks
	10 to 15 inches	9	
	16 to 25 inches	15	
	26 or more inches	19	
Live oak	6 to 9 inches	4	15-gallon oaks
	10 to 15 inches	6	
	16 to 25 inches	10	
	26 or more inches	13	
Other protected tree	19 to 25 inches	12	15-gallon trees
	26 or more inches	15	

Notes:

- (1) Diameter shall be measured at a point 4.5 feet above the ground at the base of the tree.

- B. **Location and specifications for replacement trees.** The replacement trees required by Table 5-3 shall be planted on-site (the Town's preferred method of mitigation), except that the review authority may authorize other areas within the Town where maintenance to ensure survival of the trees will be guaranteed.
- All replacement trees shall be of the same native species as the trees being replaced, except in the case where a replacement tree is approved in a location characterized by non-native species (for example, within a narrow roadway median where existing trees are ornamental non-natives, or as part of residential lot landscaping).
 - Up to 50 percent of the required replacement trees may have a 5-gallon container size, where the review authority determines that long-term tree health and survival will be improved by starting with a smaller container size, and that each tree with a container

size less than 15 gallons will not be in a location where it will be more subject to damage while it is becoming established than a larger tree.

3. Replacement trees shall be in addition to any trees required by provisions of this Zoning Ordinance other than this Chapter (e.g., required parking lot landscaping or street trees).

C. Revegetation. The review authority may, instead of requiring replacement trees, require implementation of a revegetation plan.

1. The Developer shall enter into a written agreement with the Town obligating the developer to comply with the requirements of the revegetation program.
2. A performance security or bond for 150 percent of the cost of the revegetation plan shall be required to insure that the agreement is fulfilled. The Director shall approve the bid for the proposed work.
3. The revegetation program shall propagate native oak trees from seed using currently accepted methods, and shall identify the seed source of the trees to be propagated, the location of the plots, and the methods to be used to ensure success of the revegetation program.
4. A revegetation program shall not be considered complete until the trees to be propagated have survived in a healthy state for a minimum of 10 years, or the Commission has approved a revegetation program which demonstrates the need for alternative success criteria and achieves mitigation on an inch-for-inch basis.

D. In-lieu mitigation fee. The review authority may determine that the remedies described above are not feasible or desirable and may instead require the payment of an in-lieu fee for the cost of purchasing, planting and irrigating the number of 15-gallon trees required by Table 5-3. The in-lieu fee shall be calculated by multiplying the total mitigation value required by Table 5-3 for all trees to be removed, by \$100 for the removal of one to four protected trees; \$300 for the removal of five to nine protected trees; and \$500 for the removal of 10 or more protected trees. The in-lieu fee shall be deposited into one of the following funds, as determined by the Director:

1. **Oak Tree Propagation Fund.** This fund shall be used to propagate and protect native oak trees. Uses of the fund include, but are not limited to, purchasing property to plant or protect native oak trees, propagating native oak trees from seed or container stock and maintaining existing native oak trees.
2. **Non-Native Tree Fund.** This fund shall be used to purchase and plant non-native trees within Loomis. Uses of the fund include, but are not limited to, purchasing and propagating non-native trees from seed or container stock and maintaining existing non-native trees.

- E. Conditions for tree removal to accommodate agriculture.** A Tree Permit may be granted to allow tree removal within the RA zoning district to accommodate a commercial agricultural use, without mitigation in compliance with Subsections A. through E., subject to the following conditions:
1. The agricultural use, as proposed and ultimately established, shall be limited to crop production, horticulture, orchards or vineyards, but shall not include grazing or other animal uses;
 2. The Tree Permit shall be exercised within one year;
 3. Once tree removal is commenced, the proposed replacement agricultural use shall be in place within 24 months of the removal of the first tree, or mitigation shall be required in compliance with Subsections A. through E.;
 4. Once the replacement agricultural use is established, it shall be maintained for a minimum of five years. If the agricultural use is terminated before five years, and/or if a subdivision application for non-agricultural development is filed with the Town within that period, or mitigation shall be required in compliance with Subsections A. through E.; and
 5. The approved tree removal and subsequent agricultural use shall retain existing trees:
 - a. Around existing and proposed buildings;
 - b. Adjacent to parcel boundaries; and
 - c. In significant groves, as determined by the review authority.

13.54.070 - Tree Permit Approval or Denial

Each Tree Permit application shall be reviewed, and approved or denied in compliance with this Section.

- A. Application evaluation criteria.** The following criteria shall be used to support the findings required by Subsection B. for the approval of a Tree Permit.
1. **General criteria.**
 - a. The gross floor area of proposed buildings in relation to the "usable" size of the site and the amount of usable space on the site that does not require the removal of protected trees;
 - b. Design features in comparison with other existing or approved projects in the vicinity and in the same zone that have or had protected trees on their sites;
 - c. Factors that are unique to the site, such as topographic constraints, lot configuration and other physical limitations;
 - d. The overall health and structural condition of the potentially impacted protected trees;

- e. The approximate age of the each protected tree compared with the average life span for each species;
 - f. The number of healthy protected trees that the site will support, with and without the proposed development;
 - g. The effect of tree removal on soil stability/erosion, particularly near watercourses or on steep slopes;
 - h. Whether there are any alternatives that would allow for the preservation of the protected tree; and
 - i. Any other information the review authority finds pertinent to the decision, including any information obtained at a public hearing.
- 2. Criteria for removal.**
- a. The age of the protected tree with regard to whether its removal would encourage healthier, more vigorous growth of younger similar trees in the area;
 - b. The number of existing protected trees in the area and the effect of removal upon public health, safety and the general welfare of the area;
 - c. The potential for the protected tree to be a public nuisance or interfere with utility service, as well as its proximity to existing structures; and
 - d. Present and future shade potential with regard to solar heating and cooling.
- 3. Criteria for encroachment.** Whether the degree of encroachment is likely to result in the subsequent decline of the affected protected tree or create a future risk to public safety or pose a hazard to adjacent structures.
- B. Required findings for approval.** The approval of a Tree Permit shall require that the review authority first make all the following findings:
1. The approval of the Tree Permit will not be detrimental to the public health, safety or welfare, and approval of the Tree Permit is consistent with the provisions of this Chapter; and
 2. Measures have been incorporated into the project or permit to mitigate impacts to remaining trees or to replace the trees removed.
- C. Considerations for denial of a Tree Permit.** A Tree Permit shall be denied if the review authority finds that any one of the following situations exists.
1. Removal or damage of a healthy tree could be avoided by:
 - a. Reasonable redesign of the site plan prior to construction;
 - b. Trimming, thinning, tree surgery, or other reasonable treatment, as determined by the Director.

2. Adequate provisions for drainage, erosion control, land stability, windscreen, buffers along the road and between neighbors have not been made where these problems are anticipated as a result of the removal.
 3. The tree to be removed contains an active nest of a bird covered by the Migratory Bird Treaty Act, that has been identified through the project environmental review process or that is otherwise known to the review authority, and a qualified professional has determined that the relocation of the nest without damage to the nestlings is not possible. In this case, tree removal shall be delayed until nesting is complete.
- D. Limitation on approved activities.** A Tree Permit shall not be issued for temporary parking, or the storage of vehicles, trailers, equipment, construction materials, or temporary structures within the protected zone of a protected tree.
- E. Conditions of approval.** The approval of a Tree Permit shall include conditions of approval as necessary to ensure compliance with Section 13.54.060 (Tree Planting and Replacement).

13.54.080 - Post Approval Procedures

The following procedures apply after the approval of a Tree Permit application.

- A. Appeals.** The decision of the Director shall be final unless an appeal is filed in compliance with Chapter 13.74 (Appeals).
- B. Expiration/extension.** Except where otherwise provided by this Chapter, a Tree Permit shall be exercised within six months from the date of approval or other time limit established through a concurrent land use permit approval. Time extensions, for up to a total of two additional years, may be granted in compliance with Chapter 13.44 (Permit Implementation, Time Limits, and Extensions). A Tree Permit not exercised within its time limits shall expire in compliance with Chapter 13.44.
- C. Performance guarantee.** The review authority may require that a monetary security deposit be posted and maintained where deemed necessary to ensure:
1. The preservation of protected trees during construction;
 2. The completion of required mitigation measures; and

3. In the case of tree removal within the RA zoning district to accommodate an agricultural use, the establishment of the proposed agricultural use.

The deposit shall be posted in a form approved by the Town Attorney prior to any grading or movement of heavy equipment onto the site or issuance of any permits. Each violation of any Tree Permit condition regarding tree preservation shall result in forfeiture of a portion or the entirety of the deposit, at the discretion of the review authority, provided that this determination may be appealed in compliance with Chapter 13.74.

- D. **Construction monitoring.** Monitoring of tree protection and restoration measure specified as conditions of approval shall be performed by site inspection conducted by the Director.
- E. **Revocation.** A Tree Permit may be revoked or modified, as provided in Section 13.58.050 (Permit Revocation and Modification), with any of the following findings that the tree removal, relocation, or protection activities:
 1. Cannot support the original findings;
 2. Resulted from misrepresentation or fraud;
 3. Has not been implemented in a timely manner;
 4. Has not met, or has violated any condition of approval;
 5. It is in violation of any code, law, ordinance, or statute;
 6. Is detrimental to public health, safety, or welfare; or
 7. Constitutes a nuisance.
- F. **Stop work orders.** Whenever any construction or work is being performed contrary to the provisions of this Chapter or applicable conditions of approval, the Director may issue a written notice to the responsible party to stop work on the project on which the violation has occurred or upon which the danger exists. The notice shall state the nature of the violation and the risk to the trees. No further work shall be allowed until the violation has been corrected and approved by the Department.
- G. **Enforcement.** Any person who cuts, damages, or moves a protected tree in violation of this Chapter shall be subject to the enforcement provisions of the Municipal Code.