

October 2008

## California Oak Report

MND: Full Mitigation Price for Every Stump

The California Environmental Quality Act (CEQA) oak woodland mitigation standards apply equally to mitigated negative declarations (MND) and environmental impacts reports (EIR). However, MNDs must meet a much more stringent legal standard for the reduction of oak woodland impacts than an EIR.

For an EIR, oak woodland impacts must be reduced to the extent feasible within the law, with the local Board of Supervisors or City Council ultimately deciding project oak mitigation sufficiency. Local officials prerogative lies in their EIR discretionary power to invoke an "overriding consideration" in the interest of the public good. Unless it can be proven in court that local officials failed to proceed as required by law, their project decision is final.

For a MND, mitigation measures must reduce all substantial oak woodland impacts to a less than significant level. Local officials have no mitigation discretion to exercise in a MND; the MND is required to scientifically and factually demonstrate that every potential oak woodlands impact has been reduced to less than significant. Significant oak woodland effects are the sum of wildlife habitat impacts and carbon dioxide emission impacts due to woodland conversion to a non-forest use.

Developers prefer MNDs to EIRs because of the cost savings. Therefore, it is important to be vigilant in assuring the project complies fully with CEQA oak woodlands mitigation law. The fact is that the cost of mitigating oak impacts in a MND are proportionally much greater than for an EIR. Less room to spread the development cost often leads to MNDs cutting oak mitigation corners. Lawsuits filed against inadequate oak woodland MNDs are very effective because they defeat the pecuniary motives of the developer and are easily proved in court.