



## Legislation Text

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**File #:** 2024-0263, **Version:** 1

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**To:** Sonoma County Board of Supervisors

**Department or Agency Name(s):** Permit Sonoma

**Staff Name and Phone Number:** Robert Aguero, Senior Environmental Specialist, (707) 565-3718

**Vote Requirement:** Majority

**Supervisorial District(s):** Countywide, excluding Coastal Zone

**Title:**

2:30 P.M. ORD21-0001 and ORD23-0004 Ordinances Modernizing Tree and Woodland Protections

**Recommended Action:**

Hold a public hearing and, by separate motions, take actions to:

A) Tree Protection Ordinance:

- i. Introduce and waive further reading of an Ordinance amending Chapters 25 (subdivision ordinance) and 26 (zoning ordinance) to update tree protection regulations, and direct staff to bring the ordinance back to the Board on consent on April 30, 2024, for final adoption or another date no less than five days from the date of introduction.
- ii. CEQA Compliance: Find the proposed action exempt from the California Environmental Quality Act (CEQA).

B) Oak Woodland Protection Ordinance:

- i. Adopt an Ordinance amending Chapter 26 (zoning ordinance) to add the Oak Woodland Combining District, rezone certain parcels to apply the District, and update the Valley Oak Habitat Combining District.
- ii. CEQA Compliance: Find the proposed action exempt from the California Environmental Quality Act (CEQA).

**Executive Summary:**

Trees and woodlands are essential elements of Sonoma County, that provide a range of fundamental ecosystem and community services. Climate change, natural disasters and development continue to threaten the health, diversity and distribution of local trees and the benefits they provide. The Sonoma County Planning Commission recommends that the Board of Supervisors adopt updated Tree Protection Ordinance (TPO) and Oak Woodland Ordinance (OAK) to conserve these resources and their benefits, while facilitating beneficial forestry and woodland management practices, necessary property maintenance, and other similar activities with limited potential for large-scale resource losses.

**Discussion:**

Following consideration and recommendation by the Planning Commission, staff presented proposed Tree Protection and Oak Woodland Ordinances to the Board on November 28, 2023. The Board continued that item to December 12, 2023 and considered modifications to the ordinances and an urgency ordinance imposing a temporary moratorium on tree removal with limited exceptions. The Board adopted the temporary moratorium, which it extended with modifications on January 23, 2024 to May 31, 2024, and gave direction to

staff to conduct additional outreach focused on the Tree Protection Ordinance; specifically for issues related to forest health, stewardship, impacts on small forestland owners, the protected tree species list, and the applicable diameter limit, as well as small technical revisions within the ordinance language, and to bring back a Tree Protection Ordinance and Oak Woodland Ordinance with policy options at a later date.

Staff conducted additional outreach, which included attending a field trip organized by local foresters and Supervisors Gore and Hopkins' Offices and hosted additional stakeholder meetings with technical experts and government partners. The Oak Woodland Ordinance was also discussed as part of this outreach, but staff did not receive any significant requests for changes to that proposed ordinance.

On March 5, 2024, staff presented the results of the outreach to the Board of Supervisors at a public workshop, where the Board could provide direction to staff on specific policy options to incorporate into revisions to the Planning Commission's recommendations. These options included:

1. A revised purpose statement
2. Options for the applicability of the ordinance
3. Exemptions for affordable housing to keep in compliance with state housing law
4. Exemptions for forestry activities and stewardship exemptions to reduce the burden on landowners
5. Species specific discussions for Bay trees and manzanita
6. The diameter threshold
7. Mitigation plantings
8. Mitigation fees

The Board directed staff to incorporate most of the policy options into the draft ordinances, with minor revisions to align with Planning Commission recommendations. Following this direction, the proposed Tree Protection Ordinance (Attachment 2) now includes the following updates:

### **1. Revised Purpose Statement**

The Board directed staff to incorporate a purpose statement as follows: *"The intent of this ordinance is to:*

- *Support essential community and ecosystem functions of trees by requiring their protection and requiring mitigations for their removal; and*
- *Facilitate hazard reduction, forest health, and property maintenance by exempting qualifying activities from permits or mitigations."*

### **2. Applicability of the Ordinance**

Staff presented two options which would affect the applicability of the Tree Protection Ordinance. These options would have both applied the ordinance only to tree removals associated with projects that otherwise require a County-issued permit. The Board directed staff to not include either of these options and instead follow the Planning Commission's recommendation to apply the Ordinance more broadly to any removal of protected trees.

The provision that establishes the applicability of the ordinance would read as, *"Permit requirement. Unless otherwise provided by subsection B of section 26-88-080(M), a permit is required for protected tree removal, as follows: a. Except as provided by subdivision 2.b, below, a ministerial zoning permit is*

*required for removal of protected trees. b. A use permit is required for the removal of redwoods with single stem d.b.h. exceeding 48" or oaks and other hardwoods with single stem d.b.h. exceeding 36".*"

### **3. Exemptions for Affordable Housing**

In alignment with state housing and zoning law, the Board considered an option to exempt certain affordable housing from the requirements of the Tree Protection Ordinance and the Oak Woodland Ordinance. The exemption for by-right housing in Urban Service Areas in the Oak Woodland Ordinance would be retained as well. The Board directed staff to include this provision in the ordinances.

This provision would read, *"Projects that are considered a "housing development project" for very low, low-, or moderate-income households, as defined in Government Code Section 65589.5 and all by-right housing projects located within an urban service area are not subject to this ordinance."*

### **4. Exemptions for Forestry Activities**

In alignment with state law and to reduce potential landowner burden and regulatory hurdles, staff presented an option to expand the proposed forestry activities exemption to include the provision of state law that allows landowners to conduct their own forestry activities on their own land. These activities, whether conducted by the landowner or a Registered Professional Forester would be exempt from the Tree Protection Ordinance and Oak Woodland Ordinance, provided the activity does not result in the type conversion of oak woodland. This would ensure that landowners can continue to conduct their own forestry activities on their own land without County permits. The Board directed staff to include this exemption in the ordinances.

The new exemption would read as, *"The tree removal occurs as part of activities defined in California Public Resources Code Sections 750 through 781 as forestry conducted on forested landscapes overseen by a Registered Professional Forester or when performed by a landowner, who is a natural person, on lands owned by them."*

### **5. Exemptions for Stewardship Activities**

The Planning Commission recommended an exemption for protected tree removal when it occurs under a stewardship plan. The recommended language is as follows,

*"Stewardship and Resource Management Exemption. Removal of protected trees that are consistent with a County approved Oak Woodland Management Plan, or Forest Management Plan, Natural Communities Conservation Plan, Habitat Conservation Plan, Streamside Conservation Plan or similar conservation management plan as determined by the Director."*

Members of the Board directed staff to consider developing a complementary exemption for stewardship activities overseen by qualified governmental, non-profit or non-governmental organizations (NGO), but which might not be associated with an adopted stewardship plan as referenced in the above exemption. This discussion included a recommendation that the Department establish qualifying criteria and a list of qualified organizations that could be provided to the public. Staff heard similar feedback from some public stakeholders that there should be an exemption for restoration projects.

Staff developed the following language in response to this discussion.

Stewardship and Resource Conservation undertaken by a Public Agency.

This language would exempt projects where agencies like the local Resource Conservation Districts, National Resource Conservation Service, or UC Cooperative Extension provide technical service and oversight. This option would also retain the ability of other government partners, like the Department of Fish and Wildlife or the Water Resources Control Board to fund projects on privately owned land under their restoration grant programs and not be impacted by regulatory hurdles. Exempting beneficial tree removal activities approved by government agencies was broadly discussed at the Planning Commission.

There is already precedent in Chapter 11 of the County Code (Construction Grading and Drainage) for exempting from permitting requirements work that is undertaken for resource conservation, restoration or enhancement projects where a public agency takes full responsibility for the work. An option to streamline restoration and stewardship activities that involve protected tree removal could adopt similar language.

This language would not relieve these organizations of other permitting requirements otherwise required by County Code, such as the Riparian Corridor Ordinance, Roiling Permit requirements or other zoning requirements. Tree removal impacts would still be evaluated under the required CEQA review (or NEPA review for federal agencies) of these government agencies but would not be subject to the permitting and mitigation requirements of the Tree Protection Ordinance. This option mimics the exemption for government involved tree removal for fire risk reduction activities.

6. This language would read, "*Resource conservation, restoration, or enhancement projects. Protected tree removal for soil, water, wildlife, or other resource conservation, restoration, or enhancement projects where a public agency performs, approves, or funds the work in whole. Nothing in this section is intended to modify the applicability of Section 26-02-070 of Chapter 26, related to applicability of Chapter 26 to governmental units.*"

**7. Bay Trees and Manzanita**

Staff presented analysis on the removal of Bay trees (*Umbellularia californica*) and the possible inclusion of manzanita (*Arctostaphylos* spp.) in the protected species list. The Board directed staff to remove bay trees from the protected species list in the Tree Protection Ordinance and ultimately decided to not include manzanita. The Planning Commission previously considered the exclusion of bay trees.

**8. Mitigation Planting Requirements**

The Planning Commission considered survival of mitigation plantings and recommended including irrigation requirements for all mitigation plantings. Staff presented stakeholder feedback that requiring irrigation could negatively impact mitigation plantings where plantings may be adapted to natural water conditions, such as in forested settings. The Board directed staff to remove this requirement, while retaining the general requirement in the Tree Protection Ordinance that mitigation plantings survive, and that the owner provide annual monitoring and reporting for seven years towards that end. Mitigation plantings that are part of new development subject to the Water Efficient Landscaping

Ordinance or WELO, would still be required to irrigate.

## 9. Mitigation Fees

The Planning Commission recommendation includes the option for in-lieu payments to be valued using an appraisal methodology for tree replacement. Staff have heard stakeholder feedback that this methodology could be too burdensome and high for individual tree removal that most landowners would expect to need permits for. There is also concern that this method introduces discretion into an otherwise ministerial process. Based on this feedback and discussions at the March 5 workshop, staff have retained the existing fees for in-lieu mitigation payments as a placeholder until fees can be studied and updated, if directed by the Board. Staff have retained the ability to use the appraisal methodology as a valuation method when a Use Permit is required for the removal of hardwood trees over 36" DBH or redwood trees over 48" DBH.

The Oak Woodland Ordinance establishes a discretionary permitting process allowing the County to utilize an appraisal-based methodology for in-lieu payments, as part of conditions of approval on discretionary permits.

Future changes to the existing and unchanged fees would require a fee study. Staff will pursue a fee study if directed by the Board.

The following exemption was also discussed at the March 5 workshop.

### Agriculture Exemption

The Planning Commission recommendation included an agricultural exemption for the maintenance of crop cultivation areas. At the March 5 Board workshop, the Board directed staff to include language that would make this inclusive of all agricultural maintenance activities, including for livestock and other non-crop cultivation agriculture. The agriculture exemption was discussed at multiple Planning Commission hearings.

The revised exemption, which is included in the attached proposed Tree Protection Ordinance and Oak Woodland Ordinance, would read as,

*"Maintenance of Existing Agricultural ~~Crop Cultivation~~ Activities Exemption.*

*Unless otherwise specified, the following are exempt from Chapter 26-88-080(M):*

- i. Removal of protected trees no more than necessary to maintain existing grazing, livestock management, or similar agricultural production, not involving cultivation or structures, means: (1) maintenance of existing access roads; (2) maintenance of associated infrastructure; (3) activities necessary to maintain commercial agricultural use of the existing agricultural operation. The intentional clearing of protected trees for the purposes of establishing new grazing or livestock areas is not exempt.*
- ii. Removal of protected trees no more than necessary to maintain an existing cultivated agricultural crop area, means: (1) maintenance of existing access roads; (2) maintenance of drainage or drainage infrastructure; (3) maintenance of irrigation or irrigation infrastructure; (4) activities necessary to maintain commercial agricultural use of the existing agricultural crop cultivation area, including planting, seeding, fertilizing, weeding, tree trimming, and harvesting.*
- iii. Protected tree removal is not exempt from section 26-88-080(M) if it is for the expansion of*

*existing cultivation areas or the establishment of new cultivation areas into land not used for commercial agricultural crop cultivation at the time this provision became effective, and no other exemption applies.”*

**Enforcement**

The ordinances would be enforced under the standard procedures for enforcement of the zoning code. Any potential violations would be reported to Permit Sonoma’s Code Enforcement Division. Code Enforcement staff would coordinate with Planning and Natural Resources staff to determine if a violation has occurred. Penalties would be assessed under the administrative procedure for enforcement provisions in Chapter 1 of the County Code (General Provisions).

**Post-Adoption Implementation**

Staff will develop implementation guidance that will provide information, resources, and guidance to assist County residents with complying with the Tree Protection Ordinance and Oak Woodland Ordinance and support tree and forest health. Staff will work with local technical experts and stakeholder to develop this material.

**Strategic Plan:**

Updating tree protection regulations will increase climate resiliency by preserving the County’s tree and forest resources, which act as the County’s most important carbon sinks. The proposed land use policies provide flexibility and adaptability to reflect the diversity of ecosystems across the County. These policies will help achieve the objective of maximizing carbon sequestration and minimizing the loss of the County’s forest carbon sinks.

This item directly supports the County’s Five-year Strategic Plan and is aligned with the following pillar, goal, and objective.

**Pillar:** Climate Action and Resiliency

**Goal:** Goal 5: Maximize opportunities for mitigation of climate change and adaptation through land conservation work and land use policies

**Objective:** Objective 2: Develop policies to maximize carbon sequestration and minimize loss of natural carbon sinks including old growth forests, the Laguna de Santa Rosa, and rangelands. Encourage agricultural and open space land management to maximize sequestration

**Racial Equity:**

**Was this item identified as an opportunity to apply the Racial Equity Toolkit?**

No

**Prior Board Actions:**

5/18/2021 - Board Workshop (informational item only, no action taken)

11/28/2023 - Board holds public hearing

12/12/2023 - Board adopts Ordinance 6460, establishing temporary moratorium on limited tree removal and oak woodland conversion until January 26, 2024

1/23/2024 - Board adopts Ordinance 6462, extending the temporary moratorium on limited tree removal and oak woodland conversion until May 31, 2024

3/5/2024 - Board Workshop (direction given, no action taken)

## FISCAL SUMMARY

### Narrative Explanation of Fiscal Impacts:

N/A

### Narrative Explanation of Staffing Impacts (If Required):

N/A

### Attachments:

Att 1 TPO PC Resolution  
Att 2 TPO Ordinance  
Att 2A TPO Ordinance Exhibit A  
Att 2B TPO Ordinance Exhibit B  
Att 3 OAK PC Resolution  
Att 4 OAK Ordinance  
Att 4A OAK Ordinance Exhibit A  
Att 4B OAK Ordinance Exhibit B  
Att 5 TPO PC Staff Report 08032023  
Att 6 TPO PC Staff Report 08312023  
Att 7 OAK PC Staff Report 09212023  
Att 8 OAK PC Staff Report 10052023  
Att 9 BOS Summary Report 11282023  
Att 10 BOS Summary Report 12122023  
Att 11 BOS Summary Report 01232024  
Att 12 BOS Summary Report 03052024  
Att 13 ORD23-0001 TPO Ordinance CEQA Notice of Exemption  
Att 14 ORD23-0004 OAK Ordinance CEQA Notice of Exemption  
Att 15 Staff Powerpoint

### Related Items "On File" with the Clerk of the Board:

None.