



Legislation Text

File #: 2023-1259, **Version:** 1

To: Sonoma County Board of Supervisors

Department or Agency Name(s): Permit Sonoma

Staff Name and Phone Number: Doug Bush, Planner III (707) 565-5726 & Robert Aguero, Senior Environmental Specialist (707) 565-3718

Vote Requirement: Majority

Supervisorial District(s): Countywide

Title:

2:00 P.M. - ORD21-0001 and ORD23-0004 Modernizing Tree and Woodland Protections

Recommended Action:

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

- A) Tree Protection Ordinance: 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 on consent to the Board for final adoption no less than five days from the date of introduction.
- B) Oak Woodland Ordinance: 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.
- C) CEQA Compliance: Find the proposed actions exempt from the California Environmental Quality Act (CEQA).

Executive Summary:

The present item brings forward two related but separate ordinances for consideration and adoption. The two ordinances together enhance protection for trees and woodlands. The first ordinance proposes changes to tree protections in the zoning ordinance and subdivision ordinance to enhance tree protection. The second ordinance would only amend the zoning ordinance and is focused on oak woodland protection. Separate motions are required for each action.

Trees and woodlands are essential elements of Sonoma County's rural and urban lands. They provide a range of fundamental services to the community including beauty, clean air and water, wildlife habitat, natural cooling and climate moderation, cultural and historical value.

Climate change, natural disasters and development continue to threaten the health, diversity and distribution of local trees and the benefits they provide. From 2013 to 2021 alone, almost 75,000 acres of the County's trees were lost or significantly degraded due to fire, development, drought other factors.

The County's Five-Year Strategic Plan, targets maximizing carbon sequestration and minimizing the loss of natural carbon sinks in the natural environment. The General Plan calls for the protection and enhancement of the County's natural habitats (Goal OSRC-7) and the establishment of standards and programs to protect

native trees (Objective OSRC-7.6). Despite these policies supporting tree protection, and the fact that forests and woodlands are the County's most important carbon sinks - most of these essential resources are not protected.

To address the discrepancies between policy and implementation, and help reach the County's climate goals, the Planning Commission recommends:

1) Modernizing the existing Tree Protection Ordinance and associated regulations by:

- Expanding the Tree Protection Ordinance to require mitigation for more tree removals;
- Modifying the definition of "protected species" to include more native species;
- Lowering the size threshold of "protected trees" to support forest health;
- Exempting removals for public safety, defensible space, and basic property maintenance; and
- Providing mitigation options including replanting or paying fees based on appraisal.

2) Protecting uniquely important oak woodlands by establishing an Oak Woodland Combining District and modernizing the Valley Oak Habitat Ordinance to:

- Establish a combining district with discrete regulations for oak woodlands;
- Establish ministerial and discretionary permitting processes for projects that impact oak woodlands within the combining district; and
- Modernize the Valley Oak Habitat Combining District to align with updates to the Tree Protection Ordinance.

Discussion:

A. Policy Implementation

The proposed code updates would further the following General Plan Goals, Objectives, and Policies:

Goal OSRC-7: Protect and Enhance the County's natural habitats and diverse plant and animal communities.

- **Objective OSRC-7.5:** Maintain connectivity between natural habitat areas.
- **Objective OSRC-7.6:** Establish standards and programs to protect native trees and plant communities.

Policy OSRC-7k: Require the identification, preservation and protection of native trees and woodlands in the design of discretionary projects, and, to the maximum extent practicable minimize the removal of native trees and fragmentation of woodlands, require any trees removed to be replaced, preferably on the site, and provide permanent protection of other existing woodlands where replacement planting does not provide adequate mitigation.

Goal OSRC-12: Preserve, sustain and restore forestry resources for their economic, conservation, recreation, and open space values.

B. Prior Hearings and Outreach

The proposed ordinances were developed through collaboration between the Planning and Natural Resource Divisions of Permit Sonoma with financial support from the State of California. The project is informed by data-analysis from the University of California Cooperative Extension, eight public meetings with the Board of

Supervisors and Planning Commission and extensive public outreach from 2020 to 2023 with representatives of over 30 stakeholder groups, organizations and County and State agencies. In addition, a community survey was published online and made available during May, 2023. Several dominant themes were identified through this engagement:

- 1) Current regulations are not effective because:
 - a) Most development projects are exempt from tree protection ordinances;
 - b) Even when applicable, the regulations do not prevent removal of trees;
 - c) Mitigations often allow paying fees which do not reflect actual value of the resource and make “feeing out” too easy; and
 - d) Regulations do not consider cumulative effects of removals.
- 2) Ordinances should emphasize retaining existing trees because replacement trees grow too slowly to replace old growth resources and are more susceptible to wildfire, pests and disease.
- 3) Tree preservation and wildfire hazard mitigation are compatible (e.g., removal of large trees is rarely necessary to maintain defensible space).
- 4) Ecologically-sound stewardship by private landowners should be facilitated.
- 5) Improved tree protection is necessary to meet County carbon sequestration and climate adaptation goals.
- 6) Over 500 people completed the online survey and respondents favored (average 70% in favor of) mitigation requirements for tree removal activities.

After initial workshops with the Board of Supervisors (May 18, 2021) and Planning Commission (November 4, 2021), staff presented potential approaches to updating the Tree Protection Ordinance, Riparian Corridor Combining Zone, and Timberland Conversion Ordinances on August 18, 2022, August 3, 2023 and August 31, 2023 where the Planning Commission adopted a resolution recommending approval of an ordinance updating existing tree protections. The Planning Commission held separate public hearings to consider potential approaches to oak woodland protections on September 1, 2022, September 21, 2023 and October 5, 2023 where they adopted a resolution recommending approval of an ordinance to introduce the Oak Woodland Combining District, rezone 12,968 parcels to apply District, and update the Valley Oak Habitat Combining District.

C. Tree Protection Ordinance

The Tree Protection Ordinance (County Code Section 26-88-010(m)) was adopted in 1989 by Ordinance 4014. It is based on the premise that:

- 1) Native trees are valuable to the environment and the community;
- 2) If those trees are removed there are often negative impacts or loss of ecosystem services;
- 3) Despite this, landowners should be free to remove trees in most circumstances; and
- 4) In a limited subset of those circumstances where native trees are removed, the impacts to the

environment and loss of community benefits should be addressed by replanting or paying in-lieu fees to help replace what was lost.

The ordinance functions by requiring mitigations if trees of a certain type and size are removed as part of a discretionary project (e.g., design review or use permit). In the limited circumstances when the ordinance applies, it does not prohibit removal of trees but instead requires mitigations for trees that are removed. Non-discretionary permits or other actions involving tree removal, such as most agricultural uses, are exempt from the mitigation requirements in the ordinance. When applicable the ordinance also contains separate construction standards to protect trees that are not proposed for removal.

Since its adoption in 1989, the effectiveness of the ordinance has been limited by its narrow applicability. With current declines in forest health resulting from drought, pests, disease, wildfire and human disturbance, the Planning Commission discussed the increasing importance of tree protection and the need for tree removal impacts to be appropriately mitigated. The Planning Commission recommends that the ordinance now address the removal of protected trees in most circumstances, not just when it is associated with a Use Permit or other discretionary permit. The following ordinance updates would largely maintain the tree protection ordinance as a permissive and mitigation-based ordinance but would apply to a greater variety of trees and require mitigations in more circumstances when trees are removed.

1. Expand the applicability of the ordinance to most tree removals

The current ordinance only applies to tree removals associated with discretionary permits. The proposed ordinance would apply to all tree removals unless exempt, as defined below. Tree removal would remain by-right in most circumstances. Mitigation would be required unless the removal qualifies for a specified exemption.

The proposed changes would not alter the uses otherwise allowed by underlying zoning or create a discretionary process unless already required by county code, with one exception. Removal of redwoods over 48" in diameter and other protected species over 36" in diameter would require a use permit. The ordinance would be more effective at limiting cumulative loss of tree cover countywide by requiring trees or payment to support county-led planting and maintenance of trees.

2. Exempt activities that support public health and safety.

The ordinance balances development and resource stewardship by ensuring that impacts from tree removal are properly mitigated, while minimizing restraints where tree removal is necessary or beneficial to address basic hazards (e.g., hazard trees at risk of damaging life or property) or to support conservation (e.g., selective thinning to improve forest health). Exempt activities include, but are not limited to:

- 1) Hazard Reduction (e.g., defensible space management, prescribed burns, emergency operations)
- 2) Hazardous, Dead, Dying, or Diseased Trees
- 3) Resource Management and Ecological Restoration Projects
- 4) Projects of the County (always exempt from Zoning Code)
- 5) By-right Housing in Urban Service Areas

3. Exempt Agricultural Maintenance Activities

Most county lands are in private hands (88.7% of unincorporated acres) and the majority of those lands are zoned for agricultural use (85% of unincorporated acres). As a result, the effectiveness of the ordinance largely hinges on whether the ordinance applies to agricultural zones. Agricultural operations are exempt from the existing tree protection ordinance, largely undermining its effectiveness.

Staff held multiple meetings with agricultural stakeholders including the Sonoma County Farm Bureau and Community Alliance with Family Farmers (CAFF). These meetings included a town hall meeting with members of the Farm Bureau, and smaller scale meetings with board members of the Farm Bureau and CAFF. Through these discussions, staff found consensus that:

- large-scale tree removal is not a common component of most farming operations;
- trees often provide localized benefits, such as shade for cattle and wind breaks;
- many farmers and ranchers have been stewards for multiple generations and trees are an integral part of the landscape and their identities; and
- where tree removal is proposed, it is often minimal but costly, and done only to address individual problem trees, particularly those that pose a risk to staff or infrastructure.

As a result of this feedback and Planning Commission discussion, the agricultural exemption was refined to apply only to the maintenance of existing crop cultivation areas and maintenance of existing infrastructure. New crop cultivation areas, the expansion of existing crop cultivation areas, or other agricultural activities not considered maintenance of existing agricultural crop cultivation would be subject to the provisions of the proposed ordinance. The Planning Commission finds that this approach strikes a balance between continued facilitation of agricultural uses while ensuring mitigations are required for tree removals that exceed the scope of basic property maintenance.

4. Replace Outdated Fees with Appraisal Option

Existing fees were adopted into code in 1989 and do not reflect the value of trees, or the current costs of raw materials and the labor required for replanting and maintaining newly planted trees. Current fees range from around \$200 for trees 9-15" to \$1,000 for trees over 33".

The Planning Commission directed staff to find an alternative to these fees, because they do not reflect the value of the resource and make it too easy to pay fees instead of plant replacement trees. The updated ordinance replaces these fees with an option to pay based on the actual, appraised cost of removed trees. The value would be determined by a qualified professional using standardized appraisal methods published by the Council of Tree and Landscape Appraisers in the Guide for Plant Appraisal. The values generated from these appraisals would better reflect the actual value of trees removed and would be paid to the County for planting and subsequent maintenance of native tree species. Fees may be used to acquire and protect stands of native trees in preserves or place trees on public lands. Fees are currently paid to the Regional Parks Department for their use in planting projects.

D. Oak Woodland Ordinance:

Valley Oak Habitat Combining District

The Sonoma County General Plan identifies valley oaks as a sensitive and valued natural resource. Valley oak (*Quercus lobata*) habitat has been reduced statewide by approximately 90% since the early 1800's, due in large part to urban development. While estimates are lacking for Sonoma County, in Napa Valley a historical ecology study estimated that the number of valley oaks declined from 45,000 in the early 1800's to less than 1,000 today (Napa Valley Historical Ecology Atlas, SFEI). It is for this reason, along with their aesthetic and habitat values, that the County has historically treated them with deference through the Valley Oak Habitat Combining District (VOH District) and requiring higher mitigation ratios than other trees.

Based on Planning Commission direction and consistent with existing General Plan policy (OSRC-7m), the VOH District would be refined to maintain elevated protections for valley oaks while ensuring consistency with other updated tree protection provisions. Changes include:

- 1) Striking the mitigation option of retaining existing trees since doing so does not address canopy loss and leads to cumulative loss of the resource.
- 2) Striking the in-lieu fee option and replacing it with the option to use professional appraisal methods as proposed in the Tree Protection Ordinance. The current fees range from \$50 for cumulative diameter removal of 60-80 inches DBH to \$150 for cumulative diameter removal greater than 140 inches, with an additional \$25 for each 20 inches of cumulative diameter removed over 140 inches.
- 3) Updating the mitigation ratios to be 1.5 times the mitigation ratios required by the Tree Protection Ordinance to ensure valley oaks continued to be replaced at higher ratios than other protected species, consistent with longstanding deference to valley oaks.

Oak Woodland Combining District

Woodland Impacts

Since the Tree Protection Ordinance (1989) and the General Plan (2008) were adopted, forest and woodland resources and their community benefits have been degraded by a variety of factors including: urban and rural development, agricultural conversion, forestry practices, historical fire suppression, and climate related phenomena including drought, fire and pests. In Sonoma County from 2017 through 2020, around 233,000 acres, or almost $\frac{1}{4}$ of the county's land area has been affected by fire. While fire can have ecological benefits, especially for fire adapted species, the intensity of recent wildfires has resulted in the deaths of thousands of mature trees.

It is estimated that from 2011 to 2019, drought alone killed an estimated 150 million trees throughout the State of California. In Sonoma County, UC Cooperative Extension estimates that over 5,600 acres of forest outside of wildfire perimeters, and 69,000 acres of forest within wildfire perimeters have been significantly disturbed since 2013. Almost 27,000 acres of oaks (15% of county's oaks) were killed or are in significant decline from wildfire, development, and conversion of woodland to agricultural uses. These losses result in reduced carbon sequestration and clean air generation and are felt through many localized impacts such as the loss of soil stability, loss of climate moderating canopy, habitat, and groundwater recharge, and loss of a valuable cultural and aesthetic resources.

Lack of Protections

Except for the Riparian Corridor Combining District, none of the existing county tree protection provisions prohibit oak tree removal, consider the resulting ecosystem impacts, or establish methods to track cumulative removal or habitat conversion over time. In the limited cases where tree removal is addressed, they rely on mitigation, such as paying a fee (e.g. \$200-1000), or replanting on-site by the applicant. The long-standing reliance on replanting is imperfect and often problematic. Sapling survivability varies based on factors such as fire. Fire can kill young trees but may spare the more resilient and fire adapted, mature trees that they are intended to replace. Saplings that do survive often take decades to replace the habitat value and other benefits lost due to the removal of mature trees that came before them. Historically these same replanting strategies were relied upon by many jurisdictions but today,

“...most ecologists now recognize that replacing a century-old tree with 1,3, or 10 one-year-old seedlings does not adequately replace the lost habitat value of large trees. It has become evident that simply focusing on mitigation plantings based on a tree to seedling ratio is not a sufficient strategy to ensure the viability of oak woodlands. Although recruitment of young cohorts is still an important consideration, there is broad recognition that it is critical to conserve the inherent values that exist in mature oak forests wherever possible...[.]” (A Planner’s Guide, 2005)

Woodland Value

Forests and woodlands make up almost half of the land area of Sonoma County. These areas provide habitat for most wildlife species including critical habitat for threatened and endangered species like northern spotted-owl, steelhead, coho and Chinook salmon. They also provide significant community benefits: carbon sequestration, air purification, flood protection, noise reduction, spiritual and cultural value, tourism and recreation, and sense of place. A 2016 ecosystem services study for Sonoma County estimated that trees and other natural resources in Sonoma County provide between \$2.2 and \$6.8 billion in ecosystem services each year, which represents the total annual economic contribution of ecosystem services to the local economy.

Oak woodlands are uniquely important because they support the greatest biodiversity of any local ecosystem. Oaks are “keystone species” because they are the essential backbone of local woodland ecosystems. More than 300 birds, mammals and other vertebrate animals, 2,000 plant species, and 4,000 insect species inhabit oak woodlands during all or part of their lives. Because they are keystone species, the future of local plants and animals depends on how oak woodlands are managed in the face of increasing pressure from climate, development and other factors.

Proposed Oak Woodland Combining District

After three years of extensive public outreach and ordinance development, the Planning Commission recommends adoption of an Oak Woodland Combining District. The District would:

- Apply to parcels containing oak woodlands as identified in the 2013 Sonoma County VEGMAP;
- Apply protections to woodlands while exempting areas outside of woodlands;
- Exempt defensible space management, conservation-based restoration, and maintenance of existing agricultural operations;
- Allow one-time conversion of up to 0.5 acre for undeveloped parcels to balance development and

resource conservation; and

- Require a use permit for large scale conversion projects to prioritize impact avoidance, allow for environmental review, support public transparency, and reserve county discretion on private projects of public consequence.

Several components of the proposed Oak Protection Ordinance are described in greater detail below and are also described in the attached Planning Commission staff reports.

1. Implementing protections through Combining District

A combining district is a special zoning tool that is used to apply unique regulatory standards to specific parcels, based on the presence of unique conditions (e.g. presence of oak woodlands). The County has 18 combining districts (aka zones) that are used to apply resource protections (e.g. Riparian Corridor Combining Zone), design standards (e.g. Scenic Resources Combining District), and other location-based standards that supplement the underlying zoning of a parcel. Staff recommends that oak woodland protections be implemented through a combining district to ensure regulations are applied only where they are needed - on parcels containing oak woodlands.

2. Permitted Uses and Ministerial Permits

Permit Sonoma is responsible for providing a process that balances orderly development with resource stewardship, and developing standards that protect the health and safety of the public. This ordinance balances development and resource stewardship by ensuring that impacts from tree removal are properly mitigated, while minimizing restraints where tree removal is necessary or beneficial to address basic hazards (e.g., hazard trees at risk of damaging life or property) or to support conservation (e.g., selective thinning to improve forest health). The draft ordinance exempts certain activities in line with the proposed updates to the Tree Protection Ordinance.

3. Discretionary Permitting Process

Oak woodland conversion is subject to a use permit if proposed activities will impact oak woodlands and do not fall within one of the allowed or exempt uses described above. The use permit would be subject unique findings and alternatives analysis to prioritize impact avoidance whenever feasible.

4. Oak Woodland Classifications

When oak woodland removal is subject to a use permit, applicants must classify the Oak Woodland into an ecological category, representing the “quality” of the impacted woodland. Class I woodlands would be considered the highest quality, while Class III woodlands would be the lowest quality, or more highly impacted. These classifications differentiate between moderate and high-quality resources to help establish proportionality between protections, mitigations, and resource quality.

E. Procedure for Adoption of Ordinances

Tree Protection Ordinance. The Tree Protection Ordinance as proposed would be effectuated through changes to the zoning ordinance (Chapter 26 of the County Code) and changes to the County’s subdivision

ordinance (Chapter 25 of the County Code). Chapter 26 would house the tree protection requirements, and Chapter 25's definitions and procedures would be amended to align with and cross reference Chapter 26's tree protection requirements. Because the ordinance amends both a zoning ordinance and a non-zoning ordinance, it requires a two-step process for adoption: first, the ordinance is introduced and further reading waived and a public hearing held; and second, the ordinance is heard a second time at a subsequent meeting of the Board for adoption, which may be on the consent calendar, but must be scheduled at least five days from the time the ordinance is introduced. The ordinance would be effective 30 days after the subsequent meeting if it is adopted at that meeting.

Oak Woodland Ordinance. The Oak Woodland Ordinance would be effectuated only through changes to the zoning ordinance, Chapter 26. Because it is purely a zoning ordinance, it does not require a two-step process. It would not come back on consent or a 'second read' and instead could be adopted on the same day it is introduced and after a public hearing is held. It will be effective 30 days from adoption.

F. Planning Commission Recommendation

The Planning Commission adopted separate resolutions recommending the Board of Supervisors adopt the proposed ordinances and find the proposed actions exempt from the California Environmental Quality Act (CEQA).

After additional consultation with implementing staff and subject matter experts, staff recommends the following updates to the ordinances recommended by the Planning Commission:

1) Modify the proposed residential maintenance exemption in the Oak Woodland Combining District (Section 26-67-040(3), to accommodate the repair of failing septic systems when such repairs involve unavoidable encroachment into oak woodland:

Residential Maintenance. Fencing and maintenance of residential structures, residential well and septic systems, as well as existing outdoor activity areas, such as yards, gardens, and landscaping, associated with a legally established structure or use and not involving encroachment into existing Oak Woodland, except that an existing on-site sewage disposal system that poses a threat to human health or safety may be repaired or replaced even if such action would create a Type Conversion of an Oak Woodland, so long as no alternative option exists that would both cure the threat to human health and safety and avoid the Type Conversion.

2) Replace proposed hazard reduction exemptions in both ordinances (26-67-040(1)(a) and (26-88-080(M)(B) (1) to create consistency. Hazard reduction exemptions in the Tree Protection Ordinance and Oak Woodland Combining District would include:

Hazard Reduction Activities. These activities include: 1) Activities necessary to comply with local or state defensible space requirements, as defined in chapter 13A of County Code or PRC 4291; and 2) Fire risk reduction activities overseen, approved, or undertaken by the County, CAL FIRE or other public agency having fire protection responsibility for the area. This includes prescribed or cultural burning projects. 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.

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:

Public Workshop on May 18, 2021, to discuss current tree protections

FISCAL SUMMARY

Narrative Explanation of Fiscal Impacts:

N/A

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

1. TPO PC Resolution
2. TPO Ordinance
- 2A. TPO Exhibit A
- 2B. TPO Exhibit B
3. OAK PC Resolution
4. OAK Ordinance
- 4A. OAK Exhibit A
- 4B. OAK Exhibit B
5. TPO PC Staff Report August 3, 2023
6. TPO PC Staff Report August 31, 2023
7. OAK PC Staff Report September 21, 2023
8. OAK PC Staff Report October 5, 2023
9. Staff PowerPoint

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

N/A