



Legislation Text

File #: 2024-0210, **Version:** 1

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

Title:

10:00 AM - ORD21-0001 and ORD23-0004 Modernizing Tree and Woodland Protections Workshop

Recommended Action:

Hold a public workshop, review staff's feedback on stakeholder outreach and provide direction to staff on policy options.

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 considered and recommended 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:

Staff presented the proposed Tree Protection and Oak Woodland Ordinances to the Board on November 28, 2023. The Board continued that item to December 12, 2023, at which meeting it considered modifications to the ordinances and in the alternative an urgency ordinance imposing a temporary moratorium on tree removal with limited exceptions. At the December 12, 2023 meeting the Board did not take action on the proposed Tree Protection Ordinance or the proposed Oak Woodland Ordinance, and instead adopted the temporary moratorium on tree removal, 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 to be noticed for Board consideration.

On January 16, 2024, staff were invited to observe and participate in a stakeholder field trip organized by local foresters and Supervisors' Gore and Hopkins offices, touring several sites in the County to discuss forestry and forest management issues. Staff also separately conducted stakeholder interviews with CALFIRE staff, local

foresters, and other stakeholders who were not able to attend the field trip. The dominant topic areas from these stakeholder meetings are addressed in the Tree Protection Ordinance Options discussion below which relate to the proposed Tree Protection Ordinance. The Oak Woodland Ordinance was also discussed as part of this outreach, but staff did not receive any significant recommendations for that proposed ordinance.

On January 23, 2024, the Board voted to extend the moratorium of limited tree removal until May 31, 2024. As part of updates to its Items of Significant Interest Calendar, the Board set March 5, 2024 as the date at which it would hear the Tree Protection and Oak Woodland ordinances. Based on outreach, staff proposes options for changes to the Tree Protection Ordinance, but left the Oak Woodland Ordinance relatively unchanged.

Moratorium

The Board adopted an urgency ordinance on December 12, 2023 that prohibits certain tree removal, with limited exceptions, which the Board extended during their January 23, 2024 hearing, and which now expires May 31, 2024.

TREE PROTECTION ORDINANCE POLICY OPTIONS

Following stakeholder outreach with local fire, environmental and forestry professionals, staff have prepared ten (10) themes for stakeholder feedback policy options for the Tree Protection Ordinance (TPO) for the Board's consideration to clarify purpose, refine applicability of the ordinance, facilitate response to sudden oak death, and facilitate beneficial tree removal projects. These options are discussed below.

Option 1: Revised Purpose Statement

During the December 12, 2023 hearing the Board directed staff to draft a purpose statement to act as a preamble for the Tree Protection Ordinance to better articulate the intention of the ordinance based on County policies, as well as the Planning Commission's resolution recommending the ordinance.

"Approximately half of the County's land area is devoted to forest and woodlands. 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 clean air and water, wildlife habitat, natural cooling and climate moderation, cultural and historical value, aquifer recharge, timber resources, and other ecosystem and community services. It is also recognized that in some cases, the benefits of trees may be outweighed by negative impacts to infrastructure, threats to public health and safety, or may contribute to unhealthy or undesirable forest conditions.

The intent of this ordinance is to 1) support the essential community and ecosystem benefits of trees by requiring their protection during construction projects, and requiring mitigations for their removal, while 2) facilitating hazard reduction, forest health, and property maintenance by exempting qualifying activities from permits or mitigations.

Planning Commission recommendation: This text was not included in the Planning Commission Recommended

draft TPO presented to the Board on 12/12/23, however the language included in the proposed Purpose Statement summarizes generally the content of the draft ordinance as recommended by the Planning Commission and is consistent with what that body considered previously. For these reasons, incorporating this statement into the ordinance would not require returning to the Planning Commission.

Staff analysis: The inclusion of this text would establish a purpose and intent of the Tree Protection Ordinance. This would set the values and help build a framework of understanding for the staff and public about why there is an ordinance and how it works.

Option 2: Applicability of TPO

As proposed, the current draft TPO applies to all tree removal activities unless an exemption applies. Staff have developed two options, based on stakeholder feedback, that would both apply at the time development requiring a county approval is proposed including: development permits as defined by Section 26-04-020 (D.), building permits, grading and drainage permits, encroachment permits; and new vineyard and orchard development permits and agricultural grading and agricultural drainage permits issued under Chapter 36. Under these options, protected tree removal that occurs outside the footprint of a proposed development would not be subject to the provisions of the ordinance unless the trees to be removed met the size thresholds to require a Use Permit.

Option 2a would apply to tree removal that is proposed as part of development requiring a permit. Option 2b would do the same, but also evaluate tree removal occurring in the development footprint in the last 5 years. These options were developed from stakeholder feedback that focused on concerns the ordinance is unclear in its approach and that the County should be focusing efforts on projects that permanently remove trees or result in type conversion of existing forested landscapes.

Option 2a:

The ordinance would apply to protected tree removal that occurs with permits issued by the County including: development permits as defined by Section 26-04-020 (D.), building permits, grading and drainage permits, encroachment permits; and, new vineyard and orchard development permits and agricultural grading and agricultural drainage permits issued under Chapter 36. Protected tree removal that is associated with one of these permits would require a ministerial zoning permit and mitigation requirements.

Option 2b:

Another option proposed by stakeholders would be for protected tree removal within the project area that occurred within the last 5 years would be evaluated under ordinance, unless subject to one of the exemptions. Five years was selected as a reasonable planning window for development projects that could involve tree removal. This would require verification by staff to see if any pre permit application removal has occurred, and documentation by the applicant verifying the tree removal fits into one of the exemptions. This would typically be done using satellite imagery and remote sensing data.

Additional supporting language reflecting how this policy option would interact with the rest of the ordinance,

as well as an enforcement clause would then be added throughout the code to reflect the proposed applicability of this provision. The exemptions section would then be utilized to inform the users of the ordinance what types of protected tree removal, within project footprints, would be exempt from the permit and mitigation requirements of the Tree Protection Ordinance. Additional supporting language would be written into the ordinance to support enforcement and clarify when exemptions would apply.

Planning Commission Recommendation: The ordinance as proposed by the Planning Commission, and considered at the December 12, 2023 Board hearing would apply to (aka require a ministerial zoning permit and mitigations for) the removal of protected species over 6" d.b.h. Some stakeholders have asked the County to consider narrowing the applicability of the ordinance only to projects otherwise subject to County development permits. The Planning Commission recommended that all protected tree removal be subject to the Tree Protection Ordinance. However, the Planning Commission did not consider a five-year window of tree removal leading to development. For these reasons, Option 2a falls within the larger scope of what the Planning Commission previously considered; but Option 2b does not and would need to return to the Planning Commission for consideration and recommendation.

Staff Analysis: Option 2a would establish predictability for staff and applicants. It would be clear when tree removal is regulated by the County and when it is not. It would also result in limiting the exemptions that have been previously drafted as part of the Planning Commission's recommendations and subsequent versions brought to the Board for consideration. Large tree removal would still require a Use Permit. The ordinance would only apply to permits issued by the County under this option. This option would allow for beneficial tree removal, forest health, and general property maintenance activities to continue uninhibited by the Tree Protection Ordinance, as these activities typically do not require County issued permits. This option would not have a way to enforce tree removal that occurs within project footprints outside of the permit application, meaning that pre-permit application tree removal would not be subject to the provisions of the ordinance. The only enforceable provisions of the ordinance would be the mitigation planting requirements, which establish criteria for survivability.

Option 2b would allow for beneficial tree removal, forest health, and general property maintenance activities to continue uninhibited by the Tree Protection Ordinance, as defined in the exemptions, and if it occurred within a proposed permit footprint, would require documentation that it was conducted under an exempt activity. This option would require more time from staff spent on permit applications. It would require each permit application for a project that could remove trees be analyzed to see if tree removal occurred within 5 years prior to permit application. This could take a minimal amount of time, approximately half an hour for a single project, but would be a significant effort across the applicable permit types that Permit Sonoma and Agriculture Department staff review in any given year. It would also take extra coordination between staff and applicants to determine if tree removal occurred under an exempt activity.

The Board can also direct staff to evaluate a subset of permits to apply to either of these options.

The Use Permit requirement for large tree removal is retained in both options, regardless of if the removal occurs with a permit or not, unless otherwise exempted by the ordinance.

Option 3: Affordable Housing Project Exemption

Based on staff analysis of the ordinances' interaction with housing law, and in order to comply with state law, a policy option can be developed that a provision be added to the Tree Protection Ordinance and Oak Woodland Ordinance that would reduce barriers to certain housing projects.

This provision would replace the provision for by-right housing in Urban Service Areas in the Oak Woodland Ordinance.

This option could reduce costs for tree removal planning under the proposed ordinance for affordable housing projects and ensure that the ordinances are not in violation of state housing law. This option could result in unmitigated tree removal where affordable housing projects are proposed, where urban forests comprise a larger part of the green space available to residents in those areas than in less dense, more rural areas.

Planning Commission Recommendation: Housing was discussed during the Planning Commission hearings, originally as a staff recommendation for both the Tree Protection Ordinance and Oak Woodland Ordinance. The Planning Commission discussed their concerns with exempting all tree removal and oak woodland conversion for affordable housing projects. The Planning Commission asked staff to develop options for both ordinances and bring back analysis on how much tree removal could occur in areas where affordable housing was likely to occur, focusing on Urban Service Areas and parcels zoned for multi-family housing. This option is within the scope of the Planning Commission discussion and would not require going back to the Planning Commission for their recommendation.

Staff analysis: Affordable housing was a significant discussion topic for the Planning Commission hearings. The language proposed to address affordable housing concerns in the Oak Woodland Ordinance was developed quickly during the Planning Commission's deliberations. At the same time, several new housing laws were moving through the legislature. Staff has since analyzed that language in light of the complex amended state housing laws and made recommended adjustments. As a result, this policy option ensures that the proposed ordinances would be compliant with housing laws and the County's goals for affordable housing.

Option 4: Forestry Activities

The Professional Forester's Law exempts landowners who conduct forestry activities on their own land from needing the oversight of a registered professional forester (RPF). Staff recommends including a similar provision into the proposed updates to TPO to allow for landowners to conduct forestry activities without requiring a tree removal permit under the TPO. Forestry activities would include the treatment of forest cover for fuels management and forest protection that could involve the removal protected trees.

Staff have heard feedback from Supervisors that guidance and best management practices (BMPs) should be developed for landowners to help steward their forestland. These BMPs could be developed and provided as part of the implementation of these ordinances and made available on the department's website.

Planning Commission Recommendation: The Planning Commission recommendation included forestry activities conducted as defined under the Professional Forester’s Law as an exemption to the Tree Protection Ordinance. This option would expand the exemption to include additional provisions already allowed under the Professional Forester’s Law.

Staff analysis: Public Resources Code 750-781 is the Professional Forester’s Law, which requires that forestry activities on forested landscapes in California require the oversight of an RPF. The Professional Forester’s Law establishes definitions for “forestry” which, when overseen by an RPF would be exempt from the proposed updates to the Tree Protection Ordinance. This definition of forestry includes, “*treatment of the forest cover in general, and includes, among other things, the application of scientific knowledge and forestry principles in the fields of fuels management and forest protection...*”

Option 5: Stewardship Exemption

Staff have heard feedback that the proposed ordinances do not address enough stewardship or restoration projects, that could entail protected tree removal, but ultimately result in net benefits for the environment. Staff propose an additional exemption in the Stewardship and Resource Management category, which would address restoration projects that are undertaken for environmental benefit. Existing definitions of ecological restoration can be used from County Code.

Planning Commission Recommendation: Protected tree removal that is conducted under a stewardship-oriented plan was included as an exemption under the Planning Commission’s recommendations. The degree of this proposed policy option was not considered by the Planning Commission and would need to go back for consideration and recommendation.

Staff analysis: This exemption would exempt protected tree removal conducted for stewardship purposes. These projects are often conducted by nonprofit groups or governmental/quasi governmental technical service providers, some of whom offer technical assistance or consultation to landowners at low or no cost.

Option 6: Bay Trees

Staff has heard concerns that the inclusion of bay on the protected species list could unintentionally limit progress in slowing the spread of sudden oak death. California Bay Laurel (*Umbellularia californica*) is a primary vector for sudden oak death (*Phytophthora ramorum*).

Planning Commission Recommendation: The Planning Commission recommendation retained bay trees from the 1989 protected species list. The inclusion or exclusion of certain species was discussed in detail at several Planning Commission hearings, particularly as it relates to species more prone to fire or diseases, including Douglas-fir (*Pseudotsuga menziesii*) and tanoak (*Notholithocarpus densiflorus*), which are not included on the protected species list. For these reasons, incorporating this policy option into the ordinance would not require returning to the Planning Commission.

Staff analysis: Bay trees are typically a prolific sprouter if they are cut. If bay trees are removed from the protected species list, there would still be ample regeneration without mitigation plantings if bays trees are

cut down outside of development projects. When located in riparian areas, the proposed removal of bay would continue to be subject to the Riparian Corridor Ordinance.

Option 7: Manzanita

Staff received feedback from the Board and stakeholders to consider including manzanita (*Arctostaphylos spp.*) as a protected tree species. A “tree” is defined in County Code as, “A healthy living large woody plant which ordinarily has a central trunk and at maturity exceeds a height of fourteen feet (14’).” Under this definition, manzanita species would typically not qualify as a tree because manzanita species do not ordinarily exhibit a central trunk.

Planning Commission recommendation: To redefine the term “Tree” to encompass more plant species, this issue would need to return to the Planning Commission, as this definition was not discussed in detail in their prior hearings.

Staff analysis: Manzanita is a highly endemic species, with many subspecies being listed in either the California Endangered Species Act or on the California Native Plant Society’s Rare Plant ranking system. These special status species are typically provided regulatory protection through other mechanisms as well as evaluated under the California Environmental Quality Act.

Option 8: Diameter Threshold

The existing Tree Protection Ordinance specifies a diameter at breast height (dbh) minimum threshold of nine inches (9”). The proposed ordinances reduce that threshold to six inches (6”) dbh. This proposal was brought to the Planning Commission to line up with policies in the adopted 2023 Local Coastal Plan Update, where Policy C-OSRC-1g states that new subdivisions within Scenic Landscape Units, other Major Views, and views from Vista Points shall adhere to certain standards including, “...building sites and roads are to be constructed to preserve tree stands with average dbh of 6” or greater.”

Planning Commission Recommendation: The Planning Commission originally discussed reducing the diameter threshold further to 5” dbh but brought it to 6” dbh at staff’s recommendation for consistency between Coastal Zone and inland County. The Planning Commission’s recommendation of 6” dbh is intended to expand current protections by applying the ordinance to smaller trees than the current 9” threshold would address. Any recommendation to modify the recommended 6” threshold to relax protections would require going back to the Planning Commission for further discussion and analysis.

Staff analysis: Six inches is an approachable and simple diameter for most landowners to understand without having to hire a professional. It could be burdensome for landowners to try to estimate another metric for tree removal, such as canopy coverage, without the use of spatial tools.

Option 9: Mitigation Plantings

Staff received feedback from forestry stakeholders related to the irrigation requirement for mitigation plantings, based on concerns that onsite irrigation could cause more problems and costs for landowners. This

is based on forestry practice of planting seedlings where they would naturally be adapted to the climatic conditions. This often means that seedlings planted following timber harvesting are often not irrigated or watered outside of rainfall. A policy option could be to remove the irrigation requirement, when not associated with new development and evidence is provided that irrigation would not be required, as determined by a qualified professional. When applicable, irrigation would still be required under the County’s Water Efficient Landscaping Ordinance (WELO) for new development. Guidance will be provided by Permit Sonoma to assist landowners in developing mitigation plans.

Planning Commission Recommendation: The Planning Commission recommendation included that irrigation be used for all mitigation plantings, while the current Tree Protection Ordinance only required irrigation for large replacement trees (15-gallon sized plantings and 24” box sized plantings).

Staff analysis: Not requiring irrigation would likely not result in issues with tree mortality in mitigation plantings in the context of natural forested settings. The intent of this policy option is to allow applicants flexibility to make the determination if mitigation plantings need irrigation or not. Site and tree interaction may be such that irrigation could do more harm than good in establishing a healthy replacement planting.

Option 10: Mitigation Fees

The Planning Commission recommendation replaces the existing in-lieu fee payment structure and proposes using an appraisal methodology to estimate tree replacement costs. This option was developed by staff after the Planning Commission directed staff to come up with a new option to create fees that would dissuade tree removal and effectively value the intrinsic values trees provide. Staff developed this option quickly between Planning Commission hearings, and were unable to fully analyze its intersection with other planning law and policy implications. Staff have determined that using an appraisal methodology to establish mitigation fees as proposed at a minimum would require a discretionary decision on a case by case basis when determining the fees for a given property. This approach may make it difficult for landowners to estimate the cost of potential mitigation, and be procedurally complex and time consuming, as well as a potential legal conflict. The appraisal methodology could still be retained for large tree removal subject to discretionary permits. Staff could be directed to retain the existing fees, or directed to conduct a fee study and bring that back for consideration after the proposed updates are adopted. Looking at an inflation adjustment, as a potential baseline, calculated from Consumer Price Index values for December 2023, the fees per arboreal value point would then be based on the below fees:

Tree Protection Ordinance	Current Fee (1989)	Fee adjusted for CPI December 2023	Percent Increase
1 Point AV	\$200.00	\$486.51	143%
2 Point AV	\$400.00	\$973.02	143%

The below matrix shows a comparison of the example mitigation amounts:

Method	Cost - 28” Live Oak	Cost 6” Live Oak
<u>Existing Ordinance Fees</u>	<u>\$800</u>	<u>\$200</u>

CPI Adjusted Existing Fee	\$1,946.04	\$486.51
Appraisal Methodology	\$22,463	\$916

Planning Commission Recommendation: The Planning Commission recommendation is to remove the exiting in-lieu fees and replace it with the replacement cost using the appraised value of the tree. The Planning Commission discussed the fees and how best to address new fees or new ways of valuating tree loss.

Staff analysis: This new policy option would establish an objective fee for protected tree removal. The expansion of the protected species list and the reduction of the minimum diameter from 9” dbh to 6” dbh could serve to create a more effective fee structure that could dissuade tree removal.

Technical Revisions

The following technical revisions are proposed by staff:

Fire Risk Reduction Exemptions

In consultation with fire professionals, the fire risk reduction exemptions will be updated to match language found in CEQA Guidelines for defensible space. This language would qualify tree removal outside of the defensible space exempt provided a fire official with fire protection jurisdiction recommended the removal.

An additional exemption for governmental projects involving tree removal that are not directly undertaken by the governmental agency would be added, which would read as, *“Protected tree removal associated with a plan, program, project, entitlement, or other activity subject to oversight by a governmental agency.”* This would ensure that projects involving tree removal that could be part of a public plan, community wildfire protection plan cost-share program, grant program, or other agency permit, would continue to be exempt from the Tree Protection Ordinance.

Language Clean-Up

1. The language introducing the list of protected tree species was clarified to state that only the following species are considered protected tree species.
2. Language was added in the mitigation section allowing either the Director of the Permit and Resource Management Department and the Agricultural Commissioner to allow deviations to in-kind replacements, which keeps the ordinance in-line with allowing either department to enforce the provisions of this ordinance.

Post Adoption Implementation

Staff have developed and continue to develop implementation and guidance material to assist landowners. This includes education material related to tree species identification, forest stewardship practices, qualified professionals, management plan resources and other material.

Additional material and processes are being developed or have been developed that will ensure the permit application process incorporates the updates from the proposed ordinances to capture tree removal and oak woodland conversions.

In line with Planning Commission recommendations, staff would be prepared to bring back a report on the utilization of the ordinances five years after adoption to discuss efficacy and potential setbacks. This would allow an adaptive management framework to be built into the implementation process that would ensure the ordinances are working to serve the current and future needs of the County.

Oak Woodland Ordinance

If any of the proposed exemptions for affordable housing, fire risk reduction, forestry activities, or stewardship activities are directed by the Board for staff to develop for the Tree Protection Ordinance, staff would also develop similar language options into the proposed Oak Woodland Ordinance for the Board's consideration.

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)

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

FISCAL SUMMARY

Narrative Explanation of Fiscal Impacts:

NA

Narrative Explanation of Staffing Impacts (If Required):

NA

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. BOS Staff Report November 28, 2023
10. BOS Staff Report December 12, 2023
11. BOS Staff Report January 23, 2024
12. Staff PowerPoint

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

NA