



Legislation Text

File #: 2023-1460, **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:

3:30 PM- ORD21-0001 and ORD23-0004 Modernizing Tree and Woodland Protections

Recommended Action:

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

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 on consent on January 9, 2024, to the Board 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).

Oak Woodland Protection Ordinance:

- iii. 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.
 - iv. CEQA Compliance: Find the proposed action exempt from the California Environmental Quality Act (CEQA).
- B) Moratorium Option (4/5ths vote). Consider an urgency ordinance establishing a temporary moratorium, with limited exceptions, to prohibit: (1) the removal of Protected Trees greater than six inches (6") diameter at breast height (dbh); and (2) any Type Conversion of Oak Woodland, throughout the unincorporated area of the County, excluding the Coastal Zone, for no more than 45-days and expiring January 26, 2024, unless extended to May 31, 2024 or different date by subsequent action of the Board of Supervisors, pursuant to and consistent with Government Code Sections 65858 and 25123; and find the action exempt from 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 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.

The Board held a public hearing to discuss the proposed ordinances and motioned for a continued hearing to December 12, 2023. The purpose of this continuation was to provide additional time for discussion and to allow staff to respond to several themes raised in the hearing, including:

- Clarifying the interaction between TPO and OAK
- Address hazard and nuisance tree removal and maintenance of evacuation routes
- Facilitating Home Maintenance without large homeowner expense
- Clarifying the exemptions that would apply for each ordinance

Staff was asked to address these issues through additional refinements to proposed ordinances and to prepare an optional, temporary moratorium that would limit tree removal until the effective date of the proposed ordinances. This memo serves to highlight proposed changes intended to address Board feedback, and to provide greater clarity on issues raised at the prior hearing.

Discussion:

Issue 1. Clarify Interaction/Overlap Between TPO and OAK.

The TPO addresses the removal of protected trees, while the OAK district addresses native oak trees and the permanent conversion of oak woodlands. Neither ordinance applies in the Coastal Zone, which has its own dedicated resource protections. The TPO applies to most native species (“Protected Species”) over 6” in diameter at breast height (dbh). Native oaks of all sizes within oak woodlands are addressed by the OAK District.

Most trees, even native species, can be removed with a zoning permit and simple mitigations like replanting, retaining young trees, or paying a mitigation fee. The most notable exceptions to this are oak removals with oak woodlands habitat (OAK), the removal of protected species over 36” dbh and 48” dbh for redwoods (TPO), and trees located in the Riparian Corridor Combining District (RC).

In oak woodlands, the removal of oaks (“Woodland Impact”) or any permanent conversion of oak woodland (“Type Conversion”) is subject to a use permit, unless specifically exempted or specifically allowed with a zoning permit, as discussed in a later section of this memo. A map of the proposed OAK district can be viewed at permitsonoma.org/oakwoodlandmap.

Example 1. Madrone removal in oak woodland. Within an oak woodland, species other than oaks are exempt from the oak woodland ordinance but may be subject to other ordinances. The madrone is a protected species under the Tree Protection Ordinance, and if over 6” dbh would be subject to that ordinance.

Example 2: Oak tree removal outside oak woodland. Tree removal outside of an oak woodland is exempt from the OAK District. All native oaks at least 6” dbh are considered protected species under the TPO and would be subject to that ordinance. If the removal is exempt from the ordinance, such as the removal of a tree

damaging a residential foundation, it could be removed without a permit or mitigation.

Issue 2. Hazard Mitigation, Property Maintenance, and Nuisance Trees

The Tree Protection Ordinance (TPO) is a mitigation-based ordinance that allows for the removal of trees with a zoning permit and mitigations in most circumstances. Zoning permits are approved at the staff level and do not require a public hearing. Exceptional trees above specified size thresholds would require a use permit and mitigations. Use permits are subject to public notice and a public hearing. The Oak Woodland Ordinance (OAK) requires a use permit for projects that propose to eliminate oak woodlands. Both ordinances exempt specified activities, that are beneficial from a land management or property maintenance standpoint, from permitting or mitigation requirements.

As the ordinances were developed concurrently, the proposed ordinance exemptions have been revised and aligned for consistency and clarity between the two code sections. Since the November 28, 2023 Board of Supervisors meeting, staff has also reorganized the exemption language for clarity and internal consistency. The following section highlights specific topic areas raised in the November 28th public hearing. The following activities are exempt from both zoning and mitigation requirements unless otherwise specified:

Fire Risk Reduction.

Fire risk reduction activities exempt from zoning permit and mitigation requirements, are listed below:

- Protected tree removal that is no more than necessary to comply with fire safety laws and regulations, including tree removal required to comply with state or local defensible space requirements, including Sonoma County Code Chapter 13A. and California Public Resources Code Section
- 4291. Protected tree removal that is no more than necessary to obtain or maintain property insurance coverage, when required by an insurance company that insures an occupied dwelling or occupied structure, and when in accordance with the requirements and restrictions of state law, including Public Resources Code section 4291.
- Fire risk reduction activities that may result in protected tree removal when the activity or tree removal is documented to be directed, ordered, overseen, recommended, or approved by the County, CAL FIRE, or other public agency. 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.
- Fire risk reduction activities that may result in protected tree removal when the activity or tree removal is undertaken by the County, CAL FIRE, or other public agencies. 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.

Provisions exempting defensible space implementation reference PRC 4291, which includes provisions for adjustments to be made by State approved fire experts acting on behalf of insurance companies insuring occupied structures or dwellings. This will reduce the burden on landowners who may be required to remove protected trees above the scope of existing defensible space regulations under fluid insurance trends in

Sonoma County.

**The provision allowing for fire risk reduction activities, “directed, ordered, overseen, recommended, or approved,” the “County, CAL FIRE, or other public agencies” was added to support wildfire mitigation projects that are driven by community groups or other nongovernmental organizations that aren’t approved, overseen, or directly carried out by a public agency. The intent is to require some level of consultation to minimize loopholes for tree removal projects that are unnecessary for fire hazard mitigation. These changes are consistent and mirrored between TPO and OAK.

Emergency Operations.

Emergency operations or post-emergency activities undertaken by public agencies, such as local fire protection agencies and public infrastructure road crews are exempt from zoning permits and mitigations.

Hazard Trees

All hazard tree removals are exempt from mitigation, while some require an over-the-counter zoning permit to verify consistency with stated criteria.

- Exempt from zoning permit and mitigation:
 - Removal inside defensible space zone of structures.
 - Protected trees within striking distance of structures when there is potential health and safety hazard due to the risk of its falling and its structural instability cannot be remedied.
- Exempt from mitigation, but requires a zoning permit for verification that criteria are met:
 - Removal outside defensible space zone of structures.
 - Protected trees outside striking distance of structures. Application must demonstrate that tree removal is necessary to protect life or property from the threat of harm as determined by a certified arborist or Registered Professional Forester.
 - Removal of tree over 36” dbh shall require a certified arborist or Registered Professional Forester to make the determination that such removal is necessary.

The Board asked how these ordinances would address maintenance of evacuation routes. The proposed provision would exempt maintenance of evacuation routes from zoning permit or mitigation requirements. The previous recommendation provided accommodation for public agencies to maintain public roadways but did not fully address maintenance of private evacuation routes. The proposed language now clarifies that maintenance of defensible space is allowed. Defensible space by definition includes roadways that serve as evacuation routes.

Home Maintenance - Nuisance Trees

All nuisance tree removals are exempt from zoning permit and mitigation. These exemptions are mirrored between TPO and OAK, with minor language edits to reflect each ordinance.

- Residential maintenance activities. Protected tree removal no more than necessary for residential maintenance activities associated with a legally established residential structure or residential use,

including maintenance of residential structures, fences, residential well and septic systems, and outdoor spaces used in conjunction with a residence, such as yards, gardens, and landscaping.

- Nuisance trees. Removal of a protected tree if it is or creates a nuisance. For the purpose of this exemption, nuisance means causing damage to improvements, such as but not limited to building foundations, retaining walls, roadways/driveways, patios, sidewalks and decks, pipes, utility conduits, or otherwise interfering with the operation, repair, replacement or maintenance of public or private utilities.
- Septic. Protected tree removal to allow an existing on-site sewage disposal system that poses a threat to human health or safety to be repaired or replaced, so long as no alternative option exists that would both cure the threat to human health and safety and avoid the protected tree removal.

For a complete list of exemptions, please see Section B of Attachment 2A for Tree Protection Ordinance, and Section 26-67-030 and Attachment 5A for the Oak Woodland Ordinance. Major exemption categories are summarized below in Table 1.

Table 1. Exemption Summary

E = Exempt

ZP = Zoning Permit Required

ZP* = Zoning Permit may be required in certain conditions

CUP = Conditional Use Permit Required

Activity Type	Existing TPO	Proposed TPO	Proposed OAK
Defensible Space	E	E	E
Fire Risk Reduction	E	E	E
Emergency Operations	E	E	E
Prescribed Fire	E	E	E
Hazardous, Dead, Dying Diseased Trees	E	E/ZP*	E/ZP*
Resource/Stewardship Activities	E	E	E
Forest Management, Timber Harvesting, Forestry Activities	E	E	E
New Agriculture Development	E	ZP	ZP/CUP
Agriculture Crop Maintenance	E	E	E
Clearing for Development Involving Protected Tree Removal	E/ZP	ZP	ZP/CUP
Large Individual Tree Removal (unless exempt)	E	CUP	CUP
Nuisance Tree Removal	E	E	E
Septic Exemption	E	E	E

These proposed revisions to exemptions from permit and mitigation requirements, or just mitigation requirements, as applicable, are consistent with and provide more specificity to the general scope of the Planning Commission’s consideration of provisions for hazardous tree removal to protect life or property from

the threat of harm posed by a dead, dying, diseased, or damaged tree, or a tree at risk of falling due to structural instability that cannot be remedied; and its consideration of tree removal in the context of fire fuel management, agricultural needs, infrastructure, road, and utility needs, and forest management.

Issue 3. Development in Urban Service Areas

The proposed Oak Woodland Ordinance contains a provision which would exempt by-right housing in Urban Service Areas, as recommended by the Planning Commission. The zoning code defines by-right uses as those which are permitted by base zoning and are nondiscretionary. There are 12,973 parcels, of which 937 (~7%) are in Urban Service Areas. This provision was included to support city centered growth and facilitate all forms of housing where public utilities are available or planned.

If desired, the Board may also consider accommodating other forms of by-right development in Urban Service Areas by modifying this provision to eliminate specific reference to housing, as originally considered by the Planning Commission at the public hearing on October 5, 2023. Doing so would expand the exemption beyond housing to include permitted uses including some commercial, industrial, or agricultural uses that would otherwise be permitted by-right in such areas. Exempt uses would not be subject to the Use Permit requirements in the OAK District but would be subject to the mitigation requirements of the TPO unless eligible for exemptions contained in that ordinance.

Issue 4. Location of Mitigation Plantings

At the November 28th hearing, the Board of Supervisors discussed that some benefits of trees are highly localized, including the reduction of the urban heat island effect, contribution to scenic value, and in some cases, helping to maintain wildlife corridors. Both the current TPO and the Planning Commission's recommended changes maintain this flexibility. The Planning Commission's proposed changes go a step further to prioritize on-site plantings and help maintain these localized benefits by requiring that any planned off-site planting occur only if suitable on-site locations are proven to not be available as determined by the Director. As a result, if the Director finds that on-site replanting is infeasible, such as on a small urban lot without sufficient distance between septic systems, residence and potential planting locations, the Planning Director retains the authority to allow for off-site mitigation. The revised proposed language clarifies how the exemption works procedurally and expresses policy in favor of using replanting sites that are geographically close to the site where trees are removed, but still retains flexibility in the location of such re-plantings.

Current Tree Protection Ordinance

“Replacement trees may be located on residentially zoned parcels of at least one and one-half acres and on any commercial or industrial zoned parcel, regardless of size, where feasible. Where infeasible, they may be located on public lands or maintained private open space.”

Planning Commission Recommendation

“Where mitigation plantings are utilized, on-site planting shall be prioritized. Off-site mitigation shall be allowed if the applicant submits evidence acceptable to the Director that onsite mitigation is not available, and a suitable offsite location is available.”

Revised language for Board consideration:

“An applicant utilizing mitigation plantings shall (1) submit a plan that identifies the location of mitigation plantings on-site, off-site, or on a combination of on- and off-site locations; (2) submit a plan for any required monitoring of replacement plantings; and (3) where off-site mitigation plantings are planned, in whole or part, submit evidence acceptable to the Director that suitable on-site locations are not available. Where mitigation plantings are utilized, and off-site planting is permitted, off-site locations that are geographically close to the on-site location of tree removal are encouraged.”

This revision is within the scope of the Planning Commission’s consideration of the issue of mitigation replanting generally.

Issue 5. Urgency Ordinance.

An optional Urgency Ordinance was drafted at Board direction, to provide an option to prohibit certain tree removals, with limited exceptions, and prohibit issuance of vineyard erosion and sediment control ordinance (VESCO) permits that involve the Removal of certain trees or would cause type conversion of oak woodland, until 45 days from adoption, which would be January 26, 2024, if adopted on December 12th. The Board could later act to terminate the moratorium prior to that date, or could extend it beyond the 45 days, such as to May 31, 2024, or another date consistent with state law, which would be necessary if the Board decides to send either ordinance back to the Planning Commission for further consideration, and findings can be made to support the urgency ordinance. If adopted, the urgency ordinance would prohibit: 1) Any Removal of a Protected Tree greater than or equal to six inches (6”) in diameter at breast height (dbh); and 2) Any Type Conversion of Oak Woodland, while also providing for limited exemptions from the moratorium.

The urgency ordinance’s exceptions pertain to:

- Evacuation Routes and Emergency Activities.
- Immediate Danger.
- Diseased Trees.
- Utilities and Rights-of-Way.
- Trimming and Pruning.
- Fire Safety.
- Existing or Previously Approved Development Permits or Land Use Entitlements.
- Housing development in Urban Service Areas.
- Timber Harvest.
- Residential Maintenance.

Options

Recommendation:

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Oak Woodland Protection Ordinance:

- C) 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.
- D) CEQA Compliance: Find the proposed action exempt from the California Environmental Quality Act (CEQA).

Option:

2. Moratorium Option (4/5ths vote). Consider an urgency ordinance establishing a temporary moratorium, with limited exceptions, to prohibit: (1) the removal of Protected Trees greater than six inches (6") diameter at breast height (dbh); and (2) any Type Conversion of Oak Woodland, throughout the unincorporated area of the County, excluding the Coastal Zone, for no more than 45-days and expiring January 26, 2024, unless extended to May 31, 2024 or different date by subsequent action of the Board of Supervisors, pursuant to and consistent with Government Code Sections 65858 and 25123; and find the action exempt from exempt from the California Environmental Quality Act (CEQA).

The Board may also direct staff to make specific changes to one or more of the proposed ordinances and return to the Board of Supervisors for a future public hearing. Note that any proposed changes outside the scope of that considered by the Planning Commission in prior public hearings would need to be first considered at a public hearing before the Planning Commission.

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 Ordinance
- 1A. TPO Exhibit A
- 1B. TPO Exhibit B
2. TPO Ordinance Tracked Changes
- 2A. TPO Ordinance Exhibit A Tracked Changes
3. OAK Oak Woodland Ordinance
- 3A. OAK Oak Woodland Ordinance Exhibit A
- 3B. OAK Woodland Ordinance Exhibit B.
- 4A. OAK Ordinance. Tracked Changes
- 4B. OAK Ordinance Exhibit A. Tracked Changes
5. OAK Ordinance Exhibit A
6. TPO PC Resolution
7. TPO OAK Resolution
8. Staff Powerpoint 12/12/2023

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

N/A