

COUNTY OF ORANGE
PROTECTED TREE ORDINANCE

1. Scope.

This ordinance applies to all unincorporated areas of the County of Orange (“County”) including both public and private property (not applicable in the Coastal Zone or in State Parks). The ordinance pertains to tree species native to Orange County, including but not limited to those listed in Appendix 1, attached hereto, incorporated by reference, and made an integral part hereof. Qualifying tree specimens will have a single trunk measuring five (5) inches or more in diameter measured four and one-half (4½) feet above average natural grade (as so measured defined as the “diameter at breast height”; hereinafter referred to as “DBH”). Such trees are defined herein as “Protected Trees.” Trees in Appendix 1 with two (2) or more trunks are Protected Trees when the combined circumference of any two (2) trunks is at least twenty-three point six (23.6) inches measured four and one-half (4½) feet above average natural grade (seven and one-half [7½] inches DBH). An exceptional specimen tree may also be deemed a “Protected Tree” if it is determined by the County to be of unique and intrinsic value to the general public because of its size, age, historic association, location, and/or ecological value. OC Public Works shall keep a record of all specimen trees so designated and their locations, and such records shall be made available to the public.

2. Purpose.

The purpose of the ordinance is: (a) to recognize Protected Trees as significant ecological, historical, and aesthetic resources; (b) to recognize Protected Trees as providing oxygen release and carbon sequestration, which are essential to proper functioning of the ecosystem; (c) to recognize Protected Trees as a central, basic part of the ecosystem, providing crucial habitat for wildlife, including areas for nesting, foraging, and migration; (d) to recognize Protected Trees’ role in lending beauty and charm to the manmade landscape, and enhancing the value of property and the character of the communities in which they exist; and (e) to create favorable conditions for the preservation and propagation of the unique heritage provided by Protected Trees for the benefit of current and future residents of Orange County.

3. Interpretation.

For the purpose of this ordinance, certain terms and words are defined as follows: Words used in the present tense shall include the future tenses; words in the singular number shall include the plural, and words in the plural number shall include the singular except where the natural construction of the writing indicates otherwise. The word “shall” is mandatory and not discretionary and the word “may” is permissive. The word “feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, economic, social, and technological factors.

4. Conflicts with Other County Regulations.

If any provision of this ordinance conflicts with any provision of any regulation contained in any previously adopted ordinance or resolution of the County, the provisions of this ordinance shall be controlling; provided, however, where any provision in any previously adopted ordinance or resolution contains regulations that are more stringent than the regulations provided herein, such previously adopted ordinance or resolution of the County shall be controlling.

5. Damaging or Removing Protected Trees Prohibited – Permit Requirements.

- A. Except as otherwise provided in Section 6, a person shall not cut, destroy, remove, inflict damage, or encroach into a Protected Zone of any tree of genus of the Protected Trees that is (a) five (5) inches or more DBH; in the case of a Protected Tree with more than one trunk, whose combined circumference of any two trunks is at least twenty-three point six (23.6) inches as measured four and one-half (4½) feet above average natural grade (seven and one-half [7½] inches DBH), on any lot or parcel of land within the unincorporated area of Orange County, or (b) any tree that has been planted as a replacement tree, pursuant to Section 18, on any lot or parcel of land within the unincorporated area of Orange County, unless a Protected Tree Removal or Damage Permit is first obtained as provided by this Part XX.
- B. **“Damage,”** as used in this Part XX, includes any act causing or tending to cause damage, injury, or death to a Protected Tree, or causing or tending to cause a Protected Tree to be uprooted or removed from the ground by any means, including, but not limited to, cutting, grading, changing hydrology from grading, construction, and/or erosion, burning, applying toxic substances, operating equipment or machinery, livestock grazing, or by paving, changing the natural grade, trenching, or excavating within the Protected Zone of a Protected Tree. Excessive pruning, including removal of branches in excess of two (2) inches in diameter, or topping, or severing a Protected Tree’s roots enough to lead to the death of the tree, is also considered damage. Death by natural causes (e.g., gold-spotted oak borer infestation and/or Fusarium dieback caused by polyphagous shot hole borer infestation) verified by a County-certified Arborist shall not be considered damage.
- C. **“County-certified Arborist”** as used throughout this ordinance shall mean an International Society of Arboriculture (ISA)-certified arborist with an additional Tree Risk Assessment Qualification (TRAQ).
- D. **“Protected Zone,”** as used in this Part XX, shall mean that area within the dripline of a Protected Tree and extending therefrom to a point at least ten (10) feet outside the greatest extent of the dripline, or twenty (20) feet from the trunk of a tree, whichever distance is greater. The “dripline” means the area defined by the outermost circumference of a tree canopy where water drips from and onto the ground.

6. Exemptions from Part XX Applicability.

The provisions of this Part XX shall not apply to:

- A. Any permit, variance, or tentative map for a subdivision, including a minor land division, approved by the Board of Supervisors or Planning Commission (if Planning Commission approval represents the final approval) prior to the effective date of the ordinance codified in this Part XX;
- B. Cases of emergency caused by a Protected Tree being in a hazardous or dangerous condition, or being irretrievably damaged or destroyed through flood, fire, wind, lightning, or other natural cause as determined after visual inspection by a County-certified Arborist, only to the extent compliant with any applicable specific plan;
- C. Emergency or routine maintenance by a public utility necessary to protect or maintain an electric power or communication line or other property of a public utility; provided, however, all applicable County permits are obtained by the public utility prior to such maintenance and all feasible protections are implemented to ensure the continued health of Protected Trees;
- D. Tree maintenance, limited to medium pruning of branches not to exceed two (2) inches in diameter in accordance with guidelines published by the National Arborists Association intended to ensure the continued health of a Protected Tree;
- E. Trees planted, grown and/or held for sale by a licensed nursery;
- F. Trees within existing road rights-of-way where pruning is necessary for public safety to maintain adequate line-of-sight distances and/or to keep street and sidewalk easements clear of obstructions, or to remove trees causing damage to roadway improvements or other public facilities and infrastructure within existing road rights-of-way, as required by the Director of OC Public Works. Provisions in any previously adopted ordinance or resolution governing scenic roadways shall be observed and shall govern to the extent they are more stringent in providing regulation for the protection of Protected Trees;
- G. Trees in environmentally sensitive habitat overlay areas, except to the extent this ordinance provides more stringent regulation for the protection of Protected Trees;
- H. Preemptive removal due to infestation after inspection by a County-certified Arborist; or
- I. Pruning a native tree on private property as long as the tree is not damaged under the definition in 5.B.

7. Application – Filing.

Any person desiring a Protected Tree Removal or Damage permit, as provided for in this Title XX, may file an application with the Director of OC Public Works; provided, however, except as set forth under the section below titled “Re-Application,” no application shall be filed or accepted if final action has been taken within one (1) year prior thereto by the Director of OC Public Works, Planning Commission, or the Board of Supervisors on an application requesting the same or substantially the same permit.

8. Re-Application.

No application shall be accepted nor acted upon if within the past one (1) year, the same or substantially the same application has been made and denied by the Director of OC Public Works, Planning Commission, or the Board of Supervisors, which covers substantially the same real property, unless either the Director of OC Public Works, Planning Commission, or the Board of Supervisors permits such re-application because of an express finding that one or more of the following applies:

- A. That new evidence material to a revised decision will be presented that was unavailable or unknown to the applicant at the previous hearings and that could not have been discovered in the exercise of reasonable diligence by the applicant;
- B. That there has been a substantial and permanent change of circumstances since the previous hearings that materially affects the applicant's real property; or
- C. That a mistake was made in the consideration of the previous application, which was a material factor in the denial or denials of the previous application.

9. Application – Information and Documents Required.

An application for a Protected Tree Removal or Damage Permit shall include the following information and documents:

- A. The name and address of the applicant and of all persons owning any or all of the property proposed to be affected;
- B. Evidence that the applicant:
 - 1. Is the owner of the premises involved, or
 - 2. Has written permission of the owner or owners to make such application;
- C. Location of subject property (address or vicinity and/or GPS coordinates);
- D. Legal description of the property involved;

- E. 1. A site plan drawn to a scale satisfactory to, and in the number of copies prescribed by the Director of OC Public Works, indicating the location and dimension of all of the following existing and proposed features on the subject property:
 - a. Lot lines,
 - b. Streets, highways, access, and other major public or private easements,
 - c. Buildings and/or structures, delineating roof and other projections,
 - d. Yards,
 - e. Wall and fences,
 - f. Parking and other paved areas,
 - g. Location of all trees and shrubs that qualify for Protected Tree status, and their associated Protected Zones, regardless of whether they will be affected by the proposed construction, excavation, grading, or landfill, or the proposed landscaping and irrigation (which will change the hydrology even if the soil is not otherwise disturbed),
 - h. Proposed areas to be landscaped and/or irrigated,
 - i. Proposed construction, excavation, grading and/or landfill (where a change in grade is proposed, the change in grade within the Protected Zone of each plotted Protected Tree shall be specified),
 - j. The location of all Protected Trees subject to this Part XX that are proposed to be removed, or within two hundred (200) feet of proposed construction, grading, landfill, or other activity
 - i. Each Protected Tree shall be assigned an identification number on the plan, and a corresponding permanent identifying tag shall be affixed to the north side of each tree in the manner prescribed by Section XX)
 - ii. These identifications shall be utilized in the Protected Tree report and for physical identification on the property where required
 - iii. The Protected Zone shall be shown for each plotted tree,
 - k. Location and size of all proposed trees to be planted as replacement trees,
 - l. Proposed and existing land uses,
 - m. Location of all surface drainage systems,
 - n. Other development features which the Director deems necessary to process the application, and
 - o. Any resource protection plans, regulations, or overlays applicable to Protected Trees on the site, including specific plans;
 2. Where a concurrent application for a permit, variance, zone change, tentative map for a subdivision, including a minor land division or other approval, is filed providing the information required by this subsection E, the Director of OC Public Works may waive such site plan where he/she deems it unnecessary to process the application;
- F. A Protected Tree Report, prepared by a County-certified Arborist acceptable to the Director of OC Public Works and Planning Commission, and certified to be true and correct, which is acceptable to the Director of OC Public Works and

Planning Commission, of each tree shown on the site plan required by subsection E of this section, which shall contain the following information:

1. The name, address, and telephone number during business hours of the preparer;
2. Evaluation of the physical structure of each tree as follows:
 - a. The circumference and diameter of the trunk, measured four and one-half (4½) feet above average natural grade,
 - b. The diameter of the Protected Zone at its greatest extent,
 - c. Aesthetic assessment of the tree, considering factors such as but not limited to symmetry, broken branches, unbalanced crown, excessive horizontal branching,
 - d. The presence of decaying wood and cavities, whether such cavities are naturally formed in trunks or limbs or are begun by or fully excavated by woodpeckers, and
 - e. Recommendations to remedy structural problems where required, and if it does not threaten tree health, to safely retain and manage decaying limbs four (4) inches and greater in diameter, or portions of such decaying limbs where value to wildlife is illustrated by the presence of nesting cavities, foraging by insect-eating birds, and other wildlife;
3. Photographs of the tree from two (2) angles;
4. Evaluation of the health of each tree for conditions including, but not limited to, any of the following:
 - a. Evidence of disease: slime flux, heart rot, crown rot, Armillaria root fungus, exfoliation, leaf scorch, Fusarium dieback, and exudations,
 - b. Identification of insect pests: galls, twig girdler, borers, termites, pit scale, and plant parasites,
 - c. Evaluation of vigor: new tip growth, leaf color, abnormal bark, deadwood, and thinning of crown,
 - d. Health rating based on the archetype tree of the same species, and
 - e. Recommendations to improve tree health, such as insect or disease control, pruning, and fertilization;
5. Evaluation of the applicant's proposal as it impacts each tree shown on the site plan, including suggested mitigating and/or future maintenance measures where required and the anticipated effectiveness thereof;
6. Identification of those trees shown on the site plan that may be classified as heritage trees (defined as any Protected Tree species measuring thirty-six (36) inches or more DBH); and
7. Identification of any Protected Tree officially identified by a Natural Community Conservation Plan or Habitat Conservation Plan, county resource

conservation district, park and recreation district, specific plan resource overlay, or other land-use regulation;

- G. The applicant shall provide a Protected Tree information manual prepared by and available from the County-certified Arborist to the purchasers of the property and any homeowner's association; and
- H. The applicant shall provide a Protected Tree mitigation plan for all Protected Trees proposed to be removed or damaged.

10. Application – Burden of Proof.

NOTE: For purposes of interpreting this section, it shall be specified that relocation (i.e., transplantation) produces sufficient danger to the health of a tree as to require the same findings as removal. The preponderance of scientific evidence to date demonstrates that transplanting naturally occurring trees and other plants is not a successful method of long-term conservation.¹ In particular, transplanting large trees is biologically and horticulturally unsound and does not fulfill mitigation requirements for habitat restoration. Transplanting has the same end result as removal: the death of the tree.

- A. In addition to the information required in the application by Section 9, the application shall substantiate to the satisfaction of the Director of OC Public Works the following facts:
 - 1. That the proposed damage or removal of the Protected Tree(s) will not disturb nesting birds (i.e., generally during the months of February through August) or otherwise contravene the Federal Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*, as amended);
 - 2. That the proposed construction or proposed use will be accomplished without endangering the health of the remaining trees subject to this Part XX, if any, on the subject property;
 - 3. That the proposed damage or removal of the Protected Tree(s) will not result in soil erosion through the diversion or increased flow of surface waters that cannot be satisfactorily mitigated; and
 - 4. That in addition to the above facts, at least one of the following findings apply:

¹ Bernhardt, Elizabeth A., and Tedmund J. Swiecki, 2001, Restoring Oak Woodlands in California: Theory and Practice; Phytosphere Research; phytosphere@phytosphere.com; Dagit Rosi, and A. James Downer, 1997, Status of Transplanted Coast Live Oaks (*Quercus agrifolia*) in Southern California; USDA Forest Service Gen. Tech. Rep. PSW-GTR-160. 1997; <https://www.researchgate.net/publication/237519547>, and references therein.

- a. That the damage or removal of the Protected Tree(s) proposed is necessary, as its continued existence at its present location(s) frustrates the proposed use of the subject property to such an extent that any feasible development of the site is precluded, even if such development without such proposed damage or removal is more costly or less profitable to the applicant,
 - b. That the Protected Tree(s) proposed for damage or removal unreasonably interferes with utility services or streets and highways, either within or outside of the subject property, and no reasonable alternative to such interference exists other than damage or removal of the tree(s),
 - c. That the condition of the Protected Tree(s) proposed for removal or damage with reference to seriously debilitating disease or danger of falling is such that it cannot be remedied through reasonable preservation procedures and practices, or
 - d. That the removal or damage of the Protected Tree(s) proposed will not be contrary to or be in substantial conflict with the intent and purpose of the Protected Tree Removal or Damage Permit procedure;
- B. The standard of review for findings required by Section 10.A shall be the independent judgment test.

11. Application – Filing Fee.

When an application for a Protected Tree Removal or Damage Permit is filed, it shall be accompanied by the filing fee as required in Section XX.

12. Application – Denial for lack of information.

The Director of OC Public Works may deny without further action an application requesting a Protected Tree Removal or Damage Permit if such application does not contain the information required by this Part XX. The Director may permit the applicant to amend the application.

13. Application – Notice Requirements.

Notification pertaining to an application for a Protected Tree Removal or Damage Permit shall be provided as follows:

- A. Where an application for a permit, variance, zone change, or tentative map for a subdivision, including a minor land division, is concurrently filed, notice that a Protected Tree Removal or Damage Permit will also be considered shall be included in required legal notices for such permit, variance, zone change, or tentative subdivision map;

- B. 1. Where no concurrent application is filed as provided in subsection A of this section and except as otherwise expressly provided in subsection C, the Director of OC Public Works not less than twenty (20) days before the date of public hearing shall cause notice of such filing to be (i) provided to any applicable specific plan review board, residential or community organization, homeowners' association, or other organization upon such organization's written request, (ii) provided to neighboring residents within three hundred (300) feet in the community in which such Protected Tree Removal or Damage Permit is proposed, (iii) provided to any individual upon such individual's request, and (iv) published at least once in a newspaper of general circulation in the County of Orange available in the community in which such Protected Tree Removal or Damage Permit is proposed.
2. Such notices shall include the statement: "Notice of Protected Tree Removal or Damage Permit Filing." Also included shall be information indicating the location of the subject property (address or vicinity), legal description of the property involved, the applicant's request, and the time and place of the proposed public hearing. The notice shall also provide the address, email address, and telephone number of the department of regional planning, and state that the department may be contacted for further information.

14. Review of Protected Tree Report by Director of OC Public Works and County-Certified Arborist.

- A. On receipt of an application for a Protected Tree Removal or Damage Permit, the Director of OC Public Works shall refer a copy of the applicant's Protected Tree report as required by subsection F of Section 9 to the County-certified Arborist [and Sustainability Coordinator/Agricultural Commissioner]. The County-certified Arborist shall review said report for the accuracy of statements contained therein, and shall make inspections on the project site. Such inspections shall determine the health of all such trees on the project site and such other factors as may be necessary and proper to complete the review, a copy of which shall be submitted in writing to the Director of OC Public Works and/or Planning Commission within fifteen (15) days after receipt from the Director.
- B. The County-certified Arborist may at his/her option also suggest conditions for use by the Director of OC Public Works and/or Planning Commission pursuant to Section 18.
- C. When the County-certified Arborist determines that replacement on the project site of Protected Trees proposed for damage or removal is inappropriate, the County-certified Arborist may recommend that the applicant pay into the Protected Tree special fund the amount equivalent to the Protected Tree resource value of the trees described in the Protected Tree report. The Protected Tree resource value shall be calculated by the applicant and approved by the County-certified Arborist according to the most current edition of the International Society of Arboriculture's "Guide to Establishing Values for Trees and Shrubs."

D. Funds collected shall be used for any or all of the following purposes:

1. Establishing and planting new trees of Protected Tree species on protected public lands;
2. Maintaining existing Protected Trees on public lands;
3. Purchasing prime Protected Tree woodlands; or
4. Purchasing the land on which sensitive Protected Trees of ecological, cultural, or historic significance are growing.

E. Not more than seven percent (7%) of the funds collected may be used to study and identify appropriate programs for accomplishing the preceding four (4) purposes. The remaining ninety-three percent (93%) of the funds collected must be used for the purposes set forth in subsection D.

15. Application – Commission Consideration When Concurrently Filed.

When an application for a permit, variance, zone change, or tentative map for a subdivision, including a minor land division, is concurrently filed with an application for a Protected Tree Removal or Damage Permit as provided this Title XX, the Director of OC Public Works or the Planning Commission shall consider and approve such application for a Protected Tree Removal or Damage Permit concurrently with such other approvals. The Director of OC Public Works or the Planning Commission, in making their findings, shall consider each case individually as if separately filed.

16. Application – Public Hearing Required When.

Where no concurrent consideration is conducted by the Director of OC Public Works or the Planning Commission pursuant to Section 15, a public hearing shall be held pursuant to the procedure provided in Part XX of Chapter XX subject to the notice requirement of subsection B of Section 13 (above).

17. Application – Grant or Denial Conditions.

The Director of OC Public Works or the Planning Commission shall approve an application for a Protected Tree Removal or Damage Permit where the information submitted by the applicant and/or brought to their attention during public hearing, including the report of the County-certified Arborist, substantiates that the burden of proof set forth in Section 10 has been met. The Director of OC Public Works or the Planning Commission shall deny such application where the information submitted fails to substantiate such findings. The decision of the hearing officer or the director or the commission shall be supported by substantial evidence in the record.

18. Additional Conditions Imposed When.

The Director of OC Public Works or the Planning Commission, in approving an application for a Protected Tree Removal or Damage Permit, shall impose such conditions as are deemed necessary to ensure that the permit will be in accordance with the findings required by Section 10. These conditions may include, but are not limited to, the following:

- A. The proposed damage or removal of the Protected Tree(s) will not disturb nesting birds (i.e., such activities shall not occur during the months of February through August) or otherwise contravene the Federal Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*, as amended);

- B. The replacement of Protected Trees proposed for damage or removal with trees of a suitable type, size, number, location, and date of planting. In determining whether replacement should be required, the Director of OC Public Works or the Planning Commission shall consider but is not limited to the following factors:
 - 1. The vegetative character of the surrounding area;
 - 2. The number of Protected Trees subject to this Part XX that are proposed to be removed in relation to the number of such trees currently existing on the subject property;
 - 3. The anticipated effectiveness of the replacement of Protected Trees, as determined by the Protected Tree report submitted by the applicant and evaluated by the County-certified Arborist;
 - 4. The development plans submitted by the applicant for the proposed construction or the proposed use of the subject property; and
 - 5. The relocation of trees approved for removal shall not be deemed a mitigating factor in determining the need for replacement trees;

- C. Requirements for replacement trees shall include, but are not limited to, all of the following:

NOTE: For the purposes of this ordinance, all replacement trees are considered Protected Trees regardless of size.

- 1. Replacement trees shall consist exclusively of indigenous Protected Trees of the same species and shall be in the ratio of at least five to one (5:1);
- 2. Replacement trees shall be selected to ensure genetic diversity;
- 3. Each replacement tree shall be a one (1)-gallon or tree-tube plant; provided, however, that where “instant landscape” is required or desired, fifteen (15)-gallon size specimens measuring at least one (1) inch in diameter one (1) foot

above the base may be used. The Director of OC Public Works or the Planning Commission may, in lieu of this requirement, require the substitution of one (1) larger container specimen for each Protected Tree to be replaced, where, in its opinion, the substitution is feasible and conditions warrant such greater substitution;

4. Replacement trees shall be nurtured for a minimum of ten (10) years, the last two (2) years without supplemental watering, for oak trees, using techniques consistent with the most current version of the University of California publication "How to Grow California Oaks" and for other Protected Tree species, using best management practices (BMPs) consistent with proper maintenance of native trees. At the end of the ten (10) years, five (5) trees for every Protected Tree removed must be alive, in good health as determined by a person who, in the opinion of the County-certified Arborist, has expertise in the planting, care, and maintenance of Protected Trees, and such trees must be capable of surviving without nurturing and protection;
5. The applicant or permittee shall establish to the satisfaction of the Director of OC Public Works that it has sufficient funds to nurture replacement trees as set forth in this ordinance;
6. Replacement trees must be replaced by the applicant or permittee if mortality occurs within the ten (10)-year period;
7. Replacement trees should consist exclusively of indigenous Protected Tree species that are certified as being grown from seed collected in Orange County, unless such seed is unavailable and, as determined by the County-certified Arborist, another local (Southern California) seed source will fulfill the requirement;
8. Replacement trees should be visually inspected for canker or other pests/pathogens before planting;
9. Replacement oak trees that are planted must come from nursery stock grown from locally-sourced acorns, or acorns gathered locally, preferably from the same watershed in which they are planted;
10. If planting is done using acorns, the ratio of acorns to protected oak trees removed shall be a minimum of forty-five (45) acorns for every protected oak tree removed; and
11. Replacement trees shall be planted and maintained on the subject property and, if feasible, in the same general area where the Protected Trees were damaged or removed. The process of replacement of Protected Trees shall be supervised in the field by a person who, in the opinion of the County-certified Arborist, has expertise in the planting, care, and maintenance of Protected Trees;

- D. A plan for protecting Protected Trees on the subject property during and after development, such as, but not limited to, the following requirements:
1. The installation of fencing not less than four feet in height around the Protected Zone of Protected Trees shown on the site plan. Said fencing shall be in place and inspected by the County-certified Arborist prior to commencement of any activity on the subject property. Said fencing shall remain in place throughout the entire period of development and shall not be removed without written authorization from the Director of OC Public Works or the County-certified Arborist. Said fencing shall comply with requirements of applicable specific plans or homeowner's association rules;
 2. Where grading or any other similar activity is specifically approved within the protected zone, the applicant shall provide an individual with special expertise acceptable to the Director to supervise all excavation or grading proposed within the Protect Zones and to further supervise, monitor, and certify to the County-certified Arborist the implementation of all conditions imposed in connection with the applicant's Protected Tree Removal or Damage Permit;
 3. That any excavation or grading allowed within the Protected Zone of a Protected Tree be limited to hand tools or small hand-power equipment;
 4. That trees on other portions of the subject property not included within the site plan also be protected with fencing (compliant with requirements of applicable specific plans or homeowner's association rules) thus restricting storage, machinery storage, or access during construction;
 5. That the trees on the site plan be physically identified by number on a tag affixed to the north side of the tree in a manner preserving the health and viability of the tree. The tag shall be composed of a noncorrosive all-weather material and shall be permanently affixed to the tree. The tree shall be similarly designated on the site plan in a manner acceptable to the Director of OC Public Works;
 6. That corrective measures for Protected Trees noted on the Protected Tree report as requiring remedial action be taken, including pest control, pruning, fertilizing, and similar actions;
 7. That, to the extent feasible as determined by the Director of OC Public Works, utility trenching shall avoid encroaching into the Protected Zone on its path to and from any structure;
 8. At the start of grading operations and throughout the entire period, no person shall perform any work for which a Protect Tree permit is required unless a copy of the Protected Tree report, location map, fencing plans, and approved Protected Tree Removal or Damage Permit and conditions are in the possession of a responsible person and also available at the site; and

9. Upon completion of the project and throughout the ten (10)-year establishment period, all replacement trees and/or acorns shall be protected from herbivory with approved cages or shelters that are adjusted as necessary to allow growth of the trees.

19. Notice of Action – Method of Service.

- A. The Director shall serve notice of action upon:
 1. The applicant, as required by law for the service of summons or by registered or certified mail, postage prepaid, return receipt requested; and
 2. All protestants testifying at the public hearing who have provided a mailing address, by first class mail, postage prepaid.
- B. Where the Director of OC Public Works and/or Planning Commission has concurrently considered a permit, variance, zone change, or tentative map for a subdivision, including a minor land division, notice shall be included in the notice of action required for such concurrent actions.

20. Appeal – from Director’s Decision – Procedures.

Any person dissatisfied with the action of the Director of OC Public Works or Planning Commission may file an appeal of such action with the secretary of the Planning Commission within the time period set forth in, and subject to all of the other provisions of, Part XX of Chapter XX.

21. Appeal – Hearing Procedures.

In all cases where the commission sets the matter for public hearing, it shall be held pursuant to the procedure provided for public hearings in Part XX of Chapter XX.

22. Effective Dates of Decisions.

The decision of:

- A. The Director of OC Public Works shall become final and effective as forth in Part XX of Chapter XX unless an appeal is timely filed pursuant to the provisions of said Part XX of Chapter XX;
- B. The Planning Commission shall be final and effective on the date of decision. Appeal of a Protected Tree Removal or Damage Permit to the Board of Supervisors is only allowed where a Protected Tree Removal or Damage Permit is concurrently considered with a permit, variance, zone change, or tentative map

for a subdivision, including a minor land division, and such Protected Tree Removal or Damage Permit shall be appealable only as a part of an appeal on the concurrent entitlement. Said appeal must be made within the applicable time period and shall be subject to the applicable procedures established for appealing the concurrent entitlement.

23. Expiration Date for Unused Permits.

An approved Protected Tree Removal or Damage Permit that is not used within the time specified in the approval or, if no time is specified, within one (1) year after the granting of such approval, become null and void and of no effect; except that, where an application for Protected Tree Removal or Damage Permit requesting an extension is filed prior to such expiration date, the Director of OC Public Works may extend such time for a single extension period of not to exceed one (1) year.

24. Enforcement, Legal Proceedings, and Penalties.

In interpreting the provisions of Section XX as they apply to this Part XX, each individual tree cut, destroyed, removed, or damaged in violation of these provisions shall be deemed a separate offense. The remedies or penalties provided by this ordinance are cumulative to each other and to the remedies or penalties available under all other laws of this State.

A. Investigation.

The Director of OC Public Works or designees shall investigate all reported or apparent violations of any of the provisions of this ordinance. If a violation is determined to exist, the Director of OC Public Works or designee shall take such measures as he/she deems necessary or expedient to enforce and secure compliance with the provisions of this ordinance.

B. Right of Entry and Inspection.

The Director of OC Public Works or designee may enter any property in the County of Orange for the purpose of carrying out any act necessary to perform any duty imposed by this ordinance. Upon request, the Director of OC Public Works or designee shall provide adequate identification. Except under exigent circumstances, an inspection warrant shall be obtained if entry is refused.

C. Work Stoppage.

Whenever, in the judgment of any agency of the County of Orange, any person, firm, or corporation is engaged in or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of this ordinance, the Director of OC Public Works or designee shall order the work stopped by posting notice in writing at the site and serving such notice and order on any persons

engaged in doing or causing such work to be done. Any such persons, their corporation, employees, or servants, shall forthwith stop such work until such time as re-commencement is authorized by OC Public Works.

D. Referral for Legal Action.

If unable to otherwise enforce the terms of this ordinance, OC Public Works shall refer the matter to the District Attorney and/or County Counsel of the County of Orange for appropriate legal action.

E. Legal Actions.

1. Civil Actions

a. Public Nuisance

Any removal of Protected Trees contrary to the provisions of this ordinance shall be and the same is hereby declared to be unlawful and a public nuisance.

b. Injunctive Relief

Whenever, in the judgment of any agency of the County of Orange, any person, firm, or corporation is engaged in or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of this ordinance or any rule, regulation, order, or permit issued thereunder, and at the request of OC Public Works, the District Attorney or County Counsel of the County may make application to the Superior Court for an order enjoining such act or practice, or for an order directing compliance, and upon a showing by OC Public Works that such person, firm, or corporation has engaged in or is about to engage in any such act or practice, a temporary, preliminary, or permanent injunction, restraining order, or other order may be granted.

c. Abatement

In the event that any person, firm, or corporation shall fail to abate a violation hereunder after notice of same and opportunity to correct or end the violation consistent with subsection C of Section 24, OC Public Works may request the County Counsel or District Attorney to apply to the Superior Court of this County for an order authorizing OC Public Works to undertake those actions necessary to abate the violation and requiring the violator to pay for the costs of such undertaking.

2. Civil Remedies and Penalties

a. Civil Penalties

Any person, whether acting as principal, agent, employee, or otherwise, violating the provisions of this ordinance or any rule, regulation, order, or permit issued thereunder, shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000.00) for each violation of any provision of this ordinance or any rule, regulation, order, or permit issued hereunder.

b. Costs and Damages

Any person, whether as principal, agent, employee, or otherwise, violating any provisions of this ordinance or the rules, regulations, orders, or permits issued thereunder, shall be liable to the County of Orange for the costs incurred, including litigation support, and the damages suffered by the County, its agents, and agencies as a direct and proximate result of such violations.

c. Procedure

In determining the amount of the civil penalty to impose, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the violator, whether corporate or individual, and any corrective action taken by defendant.

3. Criminal Actions and Penalties

a. Infractions.

Any person, firm, or corporation, whether as a principal, agent, employee, or otherwise, who shall remove Protected Trees contrary to the provisions of this ordinance, or the rules, regulations, orders, or permits issued thereunder, is guilty of an infraction and upon conviction thereof, the crime shall be punishable by (1) a fine not exceeding one thousand dollars (\$1,000.00) per Protected Tree for a first violation; (2) a fine not exceeding two thousand dollars (\$2,000.00) per Protected Tree for a second violation of this ordinance within one year; and (3) a fine not exceeding five thousand dollars (\$5,000.00) per Protected Tree for each additional violation of this ordinance within one year.

b. Misdemeanors.

Any infraction which would otherwise be an infraction may, at the discretion of the District Attorney, be filed as a misdemeanor, and upon conviction thereof, the punishment shall be a fine of not less than one thousand dollars (\$1,000.00) nor more than twenty-five thousand dollars (\$25,000.00) per violation of any of the provisions of this ordinance, or imprisonment in the county jail for a period not exceeding six (6) months, or by both such fine and imprisonment.

c. Violations.

Each and every day during any portion of which any violation of this ordinance or the rules, regulations, orders, or permits issued hereunder, is committed or permitted, or permitted to exist without remedy, by such person, firm, or corporation shall be deemed a separate and distinct offense.

4. Private Right of Action.

Any resident or property owner within the County of Orange may bring an action or proceeding in Superior Court to enforce compliance with this ordinance. Any such action or proceeding shall be governed by Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure. The successful litigant may recover his or her attorney fees subject to the provisions of CCP 1021.5.

25. Recovery of Costs.

A. Purpose and Intent.

This section establishes procedures for the recovery of administrative costs, including staff time expended on the enforcement of the provisions of this ordinance. The intent of this section is to recoup administrative costs reasonably related to enforcement.

B. Definitions.

For the purpose of this section, the following words and phrases shall have the meanings respectively ascribed to them herein.

Owner: The owner of record or any person having possession and control of the subject property.

Costs: Administrative costs, including staff time expended and reasonably related to enforcement for items including litigation support, site inspections, summaries, reports, telephone contacts, correspondence with the owner and any concerned citizens or officials, and related travel time.

C. Records.

OC Public Works shall maintain records of all administrative costs, incurred by responsible County departments, associated with the processing of violations and enforcement of this ordinance and shall recover such costs from the property owner as provided herein. Staff time shall be calculated at an hourly rate as established and revised from time to time by the Board of Supervisors.

D. Notice of Violation.

Upon investigation and a determination that a violation of any of the provisions of this ordinance is found to exist, OC Public Works, or any person authorized by OC Public Works, shall notify the record owner or any person having possession or control of the subject property by mail of the existence of the violation, OC Public Works' intent to charge the property owner for all administrative costs associated with enforcement, and of the owner's right to a hearing on objections thereto. The notice shall be in substantially the following form:

<p>NOTICE</p> <p>OC Public Works has determined that conditions exist at the property at _____ which violate Section of the County Code, to wit:</p> <p>(description of violation)</p> <p>Notice is hereby given that at the conclusion of this case you will receive a summary of administrative costs associated with the processing of this violation, at the hourly rate(s) as established and adjusted from time to time by the Board of Supervisors. The hourly rate(s) presently in effect per hour of staff time are attached.</p> <p>You will have the right to object to these charges by filing a Request for Hearing with OC Public Works within ten (10) days of service of the summary of charges.</p>
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E. Summary of Costs.

At the conclusion of the case, OC Public Works shall send a summary of costs associated with enforcement to the owner and/or person having possession or control of the subject property by certified mail. Said summary shall include a notice in substantially the following form:

NOTICE

If you object to these charges you must file a Request for Hearing on the enclosed form within ten (10) days of the date of this notice.

IF YOU FAIL TO TIMELY REQUEST A HEARING, YOUR RIGHT TO OBJECT WILL BE WAIVED AND YOU WILL BE LIABLE TO THE COUNTY FOR THESE CHARGES, TO BE RECOVERED IN A CIVIL ACTION IN THE NAME OF THE COUNTY, IN ANY COURT OF COMPETENT JURISDICTION WITHIN THE COUNTY.

Dated:
OC Public Works

In the event that (a) no Request for Hearing is filed in time or, (b) after a hearing OC Public Works affirms the validity of the costs, the property owner or person in control and possession shall be liable to the County in the amount stated in the summary or any lesser amount as determined by OC Public Works. These costs shall be recoverable in a civil action in the name of the County, in any court of competent jurisdiction within the County.

F. Right to Hearing.

1. Any property owner, or other person having possession and control thereof, who receives a summary of costs under this section shall have the right to a hearing before the Director of OC Public Works on his/her objections to the proposed costs in accordance with the procedures set forth herein.
2. A request for hearing shall be filed with the Director of OC Public Works' office within ten (10) days of the service by mail of the office's summary of costs, on a form provided by OC Public Works.
3. Within thirty (30) days of the filing of the request, and on ten (10) days written notice to the owner, the Director of OC Public Works shall hold a hearing on the owner's objections, and determine the validity thereof.
4. In determining the validity of the costs, the Director of OC Public Works shall consider whether total costs are reasonable in the circumstances of the case. Factors to be considered include, but are not limited to, the following: Whether the present owner created the violation; whether there is a present ability to correct the violation; whether the owner moved promptly to correct the violation; the degree of cooperation provided by the owner.

5. The Director of OC Public Works' decision shall be appealable to the Board of Supervisors pursuant to Section 20 of this ordinance.

G. Processing Fee Assessment.

Any person who removes any Protected Tree for which a permit is required by this ordinance without first having obtained a permit, shall, if subsequently granted a permit for that action or activity on the property, also pay such additional permit processing fees as established from time to time by the Board of Supervisors.

26. Violations of Conditions – Penalty.

If any portion of a privilege authorized by a Protected Tree Removal or Damage Permit approved under this ordinance is utilized, the conditions of the Protected Tree Removal or Damage Permit approved under this ordinance immediately become effective and must be strictly complied with. The failure to comply with any valid condition imposed by the Planning Commission or Board of Supervisors, in connection with the granting of any Protected Tree Removal or Damage Permit or other permit taken pursuant to the authority of this ordinance, shall constitute a violation and shall be subject to the same penalties as defined in subsection E of Section 24.

27. Validity.

If any division, section, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

28. Periodic Review.

This ordinance shall be jointly reviewed every three (3) years by OC Public Works, the County-certified Arborist, and a conservation-community stakeholder group comprising, at a minimum, members of the California Native Plant Society – OC Chapter, Sea & Sage Audubon Society, Cavity Conservation Initiative, and Friends of Harbors, Beaches and Parks.