

Chapter 9.24

PREMATURE REMOVAL OF NATIVE OAK TREES

Sections:

- 9.24.010 Purpose.
- 9.24.020 Definitions.
- 9.24.030 Premature removal.
- 9.24.040 Exemptions.
- 9.24.050 Mitigation required.
- 9.24.060 Financial assurance and security agreement.
- 9.24.070 Penalties.
- 9.24.080 Determination of premature removal.
- 9.24.090 Appeals.
- 9.24.100 Enforcement responsibility.

9.24.010 Purpose. The board of supervisors finds that native oak trees within Tuolumne County provide multiple benefits, including, but not limited to, wildlife habitat, scenic value, healthier air, and quality of life. The board of supervisors further finds that retention of these resources is essential to retain the beauty and character of the County and that responsible stewardship by landowners is necessary to sustain these resources. This chapter is intended to discourage the premature removal of oak resources by establishing procedures and penalties for such removal. (Ord. 2903 §1 (part), 2008)

9.24.020 Definitions. For the purpose of this chapter, the definitions listed hereunder shall be construed as specified in this section. Any word or term not interpreted or defined by this chapter shall be used within a meaning of common or standard utilization.

- A. "dbh" is the acronym for "diameter at breast height" which means the tree stem diameter as measured 4.5 feet above the average ground level.
- B. "Oak canopy cover" means the area directly under the branches of the oak trees, defined as a percent of a given unit of land. Oak trees of any size are to be counted in calculating canopy cover.
- C. "Oak woodland" is a stand of native vegetation containing predominately California native oak species where the oak woodland canopy cover is 10% or greater in accordance with the California Board of Forestry and Fire Protection's definition that encompasses a minimum area of two (2) acres. To achieve a 10% oak woodland

canopy cover, the native vegetation stand must consist of two or more California native oak trees 5" or larger dbh and spaced less than 170' apart. The 10% oak woodland canopy cover applies to the individual stand of vegetation and not to the project site; consequently, the project site may have one or more oak woodlands on it.

- D. "Old growth oak" is any native oak tree that is 24" or greater dbh.
- E. "Project site" is a parcel or parcels of land on which a land development project is proposed. (Ord. 2903 §1 (part), 2008)

9.24.030 Premature removal. The removal of native oak trees meeting one or more of the criteria listed below from a project site within the five (5) years preceding the submittal of an application for a discretionary entitlement from the County of Tuolumne for a land development project on that site is deemed premature removal of oak trees:

- A. Removal of native oak trees resulting in a 10% or more ($\geq 10\%$) average decrease in native oak canopy cover within an oak woodland;
- B. Removal of any old growth oak trees;
- C. Removal of any Valley Oak measuring 5" or greater in diameter at breast height (dbh). (Ord. 2903 §1 (part), 2008)

9.24.040 Exemptions. The following activities are exempt from the provisions of this chapter:

- A. Removal of native oak trees as part of a construction project for which a ministerial

permit, such as a building permit, or a discretionary entitlement, such as a tentative parcel map, has been issued or approved by the County of Tuolumne;

- B. Removal of native oak trees as part of a construction project for which a permit has been issued by a state agency, such as Caltrans or the Department of Fish and Game;
- C. Removal of native oak trees in conjunction with a timber harvest plan or other plan approved by the California Department of Forestry and Fire Protection;
- D. Removal of native oak trees for health and safety reasons, including, but not limited to, preventing interference with utility lines or eliminating the risk of a diseased or dying tree falling, subject to approval of the community development department;
- E. Removal of native oak trees in conjunction with a fire hazard reduction plan that has been approved by the fire prevention bureau and the community development department or that is consistent with the State of California's standards for fuel reduction around structures;
- F. Removal of native oak trees on land within an agricultural zoning district for the purpose of producing or processing plant or animal products for commercial purposes; or
- G. Silvicultural treatment to enhance the vitality of the oak woodland in accordance with a plan prepared by a qualified consultant or as otherwise approved by the California Department of Fish and Game.

(Ord. 2903 §1 (part), 2008)

9.24.050 Mitigation required. The loss of native oak trees or oak canopy due to premature removal shall be mitigated. The community development department may require an inventory of prematurely removed stems or canopy cover to determine the extent of the loss. The inventory shall be prepared by a resource professional with expertise in oak woodlands ecology who is on the list of qualified consultants maintained by the community development department. Resource professionals may include botanists, ecologists, wildlife biologists and foresters. The mitigation shall be in accordance with the measures provided in the Tuolumne County Biological Resources

Conservation Handbook. The property owner shall be responsible for any maintenance, monitoring, or reporting related to the required mitigation. The property owner shall be prohibited from obtaining any permit or entitlement under any provision of this code for the project site until the required mitigation for the premature removal of native oak trees has been implemented or a security agreement has been executed and a financial assurance submitted in accordance with Section 9.24.060 to guarantee the mitigation will be implemented. (Ord. 2903 §1 (part), 2008)

9.24.060 Financial assurance and security agreement.

Where the mitigation required pursuant to Section 9.24.050 has not been implemented, prior to issuance of any permit or approval of any entitlement on the project site, a security agreement shall be signed by the owner of the project site to guarantee implementation, maintenance, monitoring or reporting of the mitigation measures for the premature removal of the oak trees required in accordance with Section 9.24.050 and a financial assurance shall be provided to the community development department to establish a source of funds for the county to abate any breach of the agreement by the property owner. The financial assurance shall be in an amount sufficient to cover the county's cost to fully implement, maintain, monitor and report on the mitigation for the premature removal of the oak trees as determined by the community development director and the financial assurance may be in the form of a letter of credit, certificate of deposit, or other security as approved by the community development director. The community development director shall be authorized to execute the security agreement on behalf of the county. At the end of any required maintenance or monitoring period, any funds remaining in the financial assurance shall be released to the property owner or his/her successors-in-interest as defined in the security agreement. (Ord. 2903 §1 (part), 2008)

9.24.070 Penalties. The premature removal of native oak trees or oak canopy shall be subject to the following penalties:

- A. The approval for an application for any discretionary entitlement on the project site may be withheld and deferred for a period of up to five (5) years; and
- B. Monetary fines may be imposed as high as three times any in-lieu fee established by the board of supervisors to mitigate impacts to native oaks or oak woodlands in accordance

with the mitigation program established in the Biological Resources Conservation Handbook. Any monetary fines collected shall be deposited in the Tuolumne County Oak Woodland Conservation Fund. The monetary fines shall be paid within sixty days of a determination that premature removal of oak trees has occurred on a project site. Whenever a monetary fine is not paid as required, a lien shall be created against the parcels that comprise the project site and processing of the application for the discretionary entitlement that was the basis for the determination that premature removal of oak trees has occurred on a project site shall be suspended until the fine has been paid in full. The property owner shall be prohibited from obtaining any permit or entitlement under any provision of this code for the project site until the applicable monetary penalty has been paid.

In determining the amount of the penalty, the community development director shall consider the following factors: (1) the seriousness and scope of the premature removal of oak trees; (2) the impact of the premature removal of oak trees on the community; (3) whether the property owner or applicant has previously been found responsible for premature removal of oak trees; and (4) any other factors that justice may require. (Ord. 2903 §1 (part), 2008)

9.24.080 Determination of premature removal.

Within sixty days of receipt of an application for a discretionary entitlement, the community development director shall determine if premature removal of oak trees has occurred on a project site for which an application for a discretionary entitlement for a land development project has been submitted. The determination shall be set forth in writing and shall specify the reasons for the determination, the mitigation measures to be required, and the penalties to be imposed. The written determination that premature removal of oak trees has occurred on a project site shall be served on the property owner either in person or by registered mail. (Ord. 2903 §1 (part), 2008)

9.24.090 Appeals. If the applicant or property owner is dissatisfied with the determination of the community development director, he/she may, within fifteen (15) calendar days of the date of the determination, appeal to the board of supervisors. The appeal shall set forth in writing the reasons for the appeal and shall be submitted to the clerk of the board of supervisors. A copy of the appeal shall be

submitted to the community development department by the appellant. No fee shall be charged for such an appeal to the board of supervisors. Appeals not submitted in a timely manner will not be considered and will be returned. An appeal on any aspect of the determination of the community development director submits the entire determination to comprehensive (de novo) review by the board of supervisors. The clerk of the board shall schedule the matter for consideration by the board of supervisors within forty-five days of receipt of the appeal and shall mail or deliver notice to the owner of the project site or the owner's duly authorized agent and the applicant at least ten (10) days prior to the board of supervisors meeting at which the appeal will be considered. Within ninety days of receipt of the appeal, the board of supervisors shall determine if premature removal of oak trees has occurred on the site, what mitigation measures will be required and what penalties will be imposed. (Ord. 2903 §1 (part), 2008)

9.24.100 Enforcement responsibility. It shall be the duty of the community development director to enforce the provisions of this chapter. He/she may delegate part or all of such responsibility. (Ord. 2903 §1 (part), 2008)