

Tree Protection Ordinances – Can They Work?**By Kay J. Greeley, PE, ASLA, ISA**

The following is a presentation that was given at the recent California Urban Forest Council Conference in San Rafael: Threats to the Urban Forest.

Today I hope to provide you with some insight into tree protection ordinances and their resulting effectiveness. I regularly consult to three small cities where I provide project review and mitigation monitoring services with respect to tree preservation. I also consult to many private clients throughout Los Angeles and Ventura Counties, preparing tree reports and providing monitoring services on a wide variety of development projects. The scope of these projects can involve anything from a large mass-graded tract down to a small room addition at an existing single-family residence. In almost every case, some form of a tree protection ordinance drives these activities.

To cover this topic, I plan to discuss the following key points:

- The intent of tree protection ordinances
- The more common scopes and applicability of such ordinances
- Permitting requirements that may arise from such ordinances
- Mitigation measures that may be imposed as a result of such ordinances, and finally
- My thoughts on how these key points impact the overall effectiveness of tree protection ordinances

The introductory section of every tree protection ordinance contains a written description of the intent, or purpose, of the ordinance. The introduction often ends with some version of the following caveat: “The spirit and intent of this section are meant to have an equal parity to its articulated contents.” What this legal mouthful means is that even though the text of the ordinance might infer one thing to you, the City Council or other approval body might have meant something quite different when the ordinance was enacted. One

unfortunate fact of life is that this “official” meaning may shift about over time as politics and associated personal interests waver.

As you might surmise, when evaluating or utilizing such an ordinance, it is imperative that you understand not only the written words, but also the underlying history of the stated intent. I often refer to this as understanding the “culture” of the individual agency that you are working with, in other words, understanding what is really important to that agency and the community that is served by that body. The local agency planning staff should be consulted early during the design phase of the project to insure that the culture of that agency is clearly understood and properly addressed.

Tree protection ordinances contain a list of findings, or conclusions that must be supported in order to obtain a permit. A proposed tree preservation program will need to demonstrate strict compliance with these required findings in order to be approved and to be effective in terms of serving the intent of the ordinance.

As an individual, you may or may not agree with the intent of the ordinance and the politics of the particular agency you are dealing with. This is all the reason more that you need to understand the culture of that agency.

To evaluate the effectiveness of a tree protection ordinance, it is helpful to explore what the scope of such an ordinance might encompass. In the next three slides, I will discuss

- The types or kinds of trees that are typically protected
- The various geographical locations or situations where trees might be protected, and
- The duration, or timeline that might be covered by such an ordinance.

One of the key elements of a tree protection ordinance after its stated purpose is a definition or spelling out of exactly which trees are protected under that ordinance. I will describe some examples.

- Due in no small part to the Tree City USA program, many agencies now have an ordinance that protects any trees in the public right-of-way, commonly referred to as street trees. Such ordinances may require a permit to remove, prune or even plant street trees. In general, a street tree ordinance recognizes the overall community value of trees located in the public right-of-ways. It is important to note that in order to be successful, a street tree ordinance should be just one component of an overall Forestry Master Plan for that agency. Too often, an agency will pass a law, such as a tree protection ordinance, and not create the infrastructure and related programs to support that ordinance. The effectiveness of the tree protection ordinance in such cases can be quite limited.
- Many jurisdictions protect individual specimen trees once they reach a certain size, usually expressed in terms of a minimum trunk diameter. Such trees may be referred to as “mature”, “landmark”, “Heritage” or even “historic” trees, again depending upon the intent of the particular ordinance. Cities with a long or colorful history often enact such ordinances to preserve older, significant specimens that may hold emotional or sentimental value for the community. What the ordinance may not require is a management plan for these mature trees. The relative public safety of these often over-mature trees must be a constant consideration with respect to their preservation. All of us in this business know that very old trees can pose extreme dangers or be in declining health. Recommending the removal of such a treasure can be career suicide. Reforestation is an often-neglected component of the comprehensive management plan for mature trees, but must be considered in any realistic management plan.
- A very commonly encountered tree protection ordinance in Ventura and Los Angeles Counties is a native tree protection ordinance. Though most of the ordinances focus on the preservation of native oak trees, there is now a move to

expand these ordinances to include other native trees such as sycamores and black walnuts. Such ordinances usually state that native trees represent the inherent beauty and nature of the land and must therefore be preserved for the good of the community. I have attended many an emotionally charged hearing where the public lines up to demand that a developer preserve the oak trees on a site. From the political standpoint, such ordinances are often used as a tactic to limit development. Many are the times that I have heard someone mutter “I would never buy a property with an oak tree on it.” One can only wonder how effective an oak tree protection ordinance can be when it creates such attitudes.

- Speaking of changing views, I now see a move towards the creation or modification of tree ordinances designed to protect various types of native habitat, such as oak woodland, coastal sage scrub or riparian areas. The development of such ordinances is proving to be a complex task, as the nature of these habitats is quite complex. Some of you may be aware that such revisions to the Los Angeles County Oak Tree Ordinance were tabled last year. Habitat values are generally related to several qualities, including the quantity or size of an area, the geometrical shape of that area, the amount of native plant coverage contained within that area, and how well a specific parcel of habitat is connected is to other habitat areas. We may all know a riparian habitat when we see one, but quantifying the characteristics of such a habitat in legal terms is proving to be rather difficult.

It has been recognized for some time now that preservation of individual trees within a natural setting does not preserve the nature of the site. In other words, without the native under story that grows along with the native trees, the ecology of the site is completely changed unless that native under story is preserved as well. Going back to the earlier topic of intent, you can see that it becomes extremely important to clearly understand just what is to be preserved.

Tree protection ordinances vary widely in terms of the areas in which trees may be protected. For example:

- Some ordinances only apply to land that has never been developed. In reality, this can be a confusing designation if it is not clearly defined. Oftentimes, an industrial park may be mass graded and the road infrastructure installed. Planting may then be performed and maintained within the right-of-way areas or within required landscape easements. A specific tenant may not purchase or build out the site until some years later, after the new landscape begins to mature. Some will argue that such land is undeveloped and the newly mature trees should therefore be protected. Others may argue that the property was previously developed when the pad and infrastructure were created and the newly mature trees were merely planted in the wrong place and should therefore be allowed to be removed. Many a developer has been required to acquire a tree removal permit in such cases. In other cases, the now valuable trees are lost to development.
- Some ordinances are more comprehensive, and apply to all parcels within a jurisdiction, whether developed or not. Oak tree ordinances typically fall within this category. Some cities control pruning of trees in commercial developments in this manner. A condition may be placed on the development requiring that trees be pruned properly, in accordance with an acceptable standard. If Saw-By-Night Tree Service comes in and tops the trees for half the going pruning rate, the city can then cite the owner with a violation of the development permit. Corrective pruning may be required, as well as replacement of severely damaged trees and monitoring by a qualified consulting arborist. Though the property owner hopefully only makes this mistake once, the fact of the matter is that the valuable trees were damaged. An education program needs to be in place to encourage owners to follow proper tree management practices from the moment the trees are planted. Again, such an education program would be part of the overall Forestry Management Plan for that community.
- Some ordinances differentiate between residential and non-residential properties. There are probably many reasons for this differentiation. In general, I would say that such ordinances provide for the right of the individual to treat his or her

property as desired over the rights of the community as a whole when it comes to the contribution of trees. I will note again, however, that most oak tree preservation ordinances do apply to both residential and non-residential sites. Aside from oak trees, I find it interesting that the majority of people do not know one tree species from another. In my mind, that means that the educational message with respect to at least oak trees has had some effect. Though it's an incorrect statement, I hear many people say, "You can't touch an oak tree." I always remind folks that the statement should be "You can't touch an oak tree without a permit." I guess exaggeration is better than ignorance when it comes to oak tree preservation. I do have concerns, however, with the somewhat negative attitudes that can develop, as I mentioned earlier.

Tree protection ordinances generally provide for the creation of some degree of a Tree Preservation Plan. I will go into the details of typical Tree Preservation Plans following our morning break. For now, let me note that tree protection ordinances may or may not provide for a combination of pre-construction planning, onsite monitoring and construction measures during construction, and post-construction monitoring and maintenance. The more of these components that are included, the more effective the ordinance can be.

For a simple example, let's talk about a typical preservation method, namely protective fencing that is placed around trees during construction. If pre-planning is not performed to establish the type of fencing to be used and where it must be placed, you can end up with yellow caution tape on survey stakes down near the street or within a foot of the trunk, instead of a chain link barrier surrounding the root protection zone of the trees to be preserved.

If onsite monitoring is not required, that fencing most certainly will be moved, be knocked down or even removed during the construction project. That certainly limits its overall effectiveness.

Though not always a tree health issue, if fencing is not removed following a project, it becomes a contributor to urban blight as it begins to eventually fall down or become

vandalized. It may even encourage dumping on sites that have not been fully developed. Either way, the natural beauty of the trees on the site is diminished.

Inherent in tree preservation ordinances is a fact of life: the requirement for permits. Since most ordinances focus on the preservation of healthy trees, permits are usually required if a development project will directly impact an otherwise healthy tree in some way.

Most tree preservation ordinances define a “root protection zone” around a tree. Development impacts occurring in these root protection zones may be divided into two categories. Encroachments include impacts to the root protection zone that can be performed without significant long-term adverse impacts to the tree. Removals include impacts to the root protection zone that will cause significant long-term impacts to the tree, thereby affecting its removal.

Note that I just said that most tree preservation ordinances define a “root protection zone”. Those that do not consider encroachments generally only address mitigation when a tree is removed. The effectiveness of such ordinances is limited, just as their scope is limited.

Permitting costs can be a limit to the effectiveness of tree protection ordinances as well. In the City of Calabasas, the walking-in-the-door fee for an Oak Tree Permit starts at \$700. High fees such as this do not encourage compliance. On the other hand, such fees can encourage the more honest citizen to create project designs that do not impact oak trees, thus increasing the bottom-line effectiveness of the ordinance.

In a similar fashion, the timeline required to obtain a permit can either increase or decrease the effectiveness of a tree protection ordinance. For example, ease of permitting encourages folks to come in for a permit. On the other hand, cumbersome procedures such as noticed public hearings could once again discourage compliance. Careful thought must be given to approval levels. Again referring to the City of Calabasas, every permit must have at least a Planning Commission hearing. These hearings are held twice per month and a ten days notice must be published and posted. When the only Planning

Commission issue on a project is an Oak Tree Permit, the applicant often expresses frustration. This is clearly understandable. That ordinance is currently under revision and will soon allow for staff-level approvals, thus increasing the effectiveness of the ordinance.

Mitigation measures applied to tree preservation permits are one of the most effective tools with respect to the effectiveness of tree preservation ordinances. The most meaningful tool of all is a means of prohibiting impacts of any kind to trees that are to be preserved in a development project. In practical terms, this usually means fencing off the trees to be saved and then insuring that the fences stay put for the duration of the construction.

Trees that are to be impacted by encroachment require the use of specialized procedures during design and construction. Creative construction techniques, the use of smaller construction equipment and onsite monitoring during construction can all increase the success of long-term preservation. I will give you more specific details with regard to these preservation measures following this morning's break. For now, it is important to note that these measures often add expense and time to a project.

One of the greatest contributions of tree preservation ordinances is when they require the planting of replacement trees for those removed during the development of a project. Obviously there are shorter-term impacts in that the new trees are generally small nursery specimens. In the long run, such specimens adapt quickly to a site and will outgrow larger specimen trees planted for instant gratification.

One of the biggest barriers to the effectiveness of mitigation is the increased cost associated with them. Therefore, when managing such a program, one is wise to remember the old adage "Time Is Money."

Another aspect of time is the duration of mitigation. If replacement trees are planted and approved, but there is no follow-up action, there are likely to be a large number of failures.

Tree protection ordinances: can they work? The answer appears to be either yes or no, and at best, maybe. Let's go back to the four points that I brought up earlier: intent, scope, permitting, and mitigation. I will now try to sum up what needs to be addressed with respect to each of these aspects in order for a tree protection ordinance to work.

Starting back with intent: I cannot stress the importance of determining what the goals of a tree preservation ordinance should be. I have been working with my Tree Board in the City of Calabasas to revise their oak tree ordinance. We have been at that task for over a year, even though we are not changing the basic intent. There has been a lot of conflict during the meetings. Once I was able to target in on the reality that each member of that board had different goals, including some that were purely self-serving, I was able to better focus the efforts of the group. It is extremely important to tie a tree preservation ordinance to as many of the General Plan elements of the agency. That will reduce any potential conflicts with other departmental goals and will reinforce the validity of the ordinance.

One way to insure that the policies created by the ordinance can be flexible to a variety of situations is by keeping them somewhat lofty. For example, a main policy could be "Preserve all healthy oak trees throughout the City." It is clear that such a general policy could leave a lot of room for interpretation. The ordinance could be supplemented with a set of guidelines that spells out the specifics of the policy. Guidelines are much easier to change. They don't have the same requirements for public hearings. A simple vote of the agency's approving body can institute any needed changes and the development code remains intact.

Next, thinking about the scope of a tree protection ordinance. Based upon the intent that we just described, the scope must clearly define what species, sizes and locations of trees are to be covered by the ordinance. Do not be hesitant to make this scope rather large. Remember: a tree preservation ordinance does not have to unfairly limit development activity. It merely provides a means to insure that tree resources are considered as the important assets they are. Also remember that the scope should encompass the entire timeline of events, from design to construction to follow-up monitoring.

The third point discussed was permitting. There is some division of thought on this. Some people feel that if it is very difficult, costly and time-consuming to get a tree permit, that will encourage more preservation of trees. Though I do see this result in some cases, I generally do not agree with this line of thought. I find that a more cumbersome process mainly serves to discourage compliance. I urge everyone to consider a more fair process. The ability to restrict impacts to trees can be better served by carefully thought-out findings. Remember, findings are the facts that must be established in order to grant a tree removal or encroachment permit.

The last point was mitigation. Here again, some people feel that if mitigation for the removal of trees is very costly, that will also encourage greater preservation of trees. Again, though I do see this result in some cases, I generally do not agree with this line of thought. If a mitigation requirement was ever to be challenged legally, I believe that nexus, or fairness, would be a major issue. Make your mitigation requirements strong and comprehensive, but also make sure they are fair.

In closing, I would like to emphasize two final thoughts. First, in order for a tree preservation ordinance to be effective, it must be a component in a greater forestry management plan. In other words, it must serve to implement at least some of the overall goals of the agency. Creation of a mission statement and strategic plan for forestry management should occur before you even attempt to write a new tree ordinance or to revise an existing one.

Second and perhaps key is the need for public education. If the ordinance sits on the shelf collecting dust and someone's first knowledge of it is when the code enforcement officer shows up, the program cannot be deemed successful.

In conclusion, I believe with careful thought, implementation and public education, tree preservation ordinances can work!