

ORDER NO. O-27-2023

AN ORDER OF THE COMMISSIONERS COURT OF THE COUNTY OF ARANSAS, TEXAS, REPLACING ORDER NO. O-12-2021 ENTITLED “REGULATIONS FOR THE CUTTING OF LIVE OAK TREES IN THE UNINCORPORATED AREAS OF ARANSAS COUNTY” TO RETITLE THE ORDER “REGULATIONS FOR THE REMOVAL OR CLEAR CUTTING OF LIVE OAK TREES IN THE UNINCORPORATED AREAS OF ARANSAS COUNTY”; TO AMEND DEFINITIONS AND PROCEDURES; TO PROVIDE FOR SEVERABILITY, REPEALER, AND SAVINGS; AND TO ESTABLISH AN EFFECTIVE DATE.

WHEREAS, the Texas Local Government Code, Section 240.909, provides that certain counties may prohibit or restrict the cutting of Live Oak Trees in the unincorporated areas of the county; and,

WHEREAS, the Commissioners Court of Aransas County previously adopted Ordinance 1-2010 that was later repealed and replaced by Order No. O-14-2021 on November 8, 2021, which established regulations related to Live Oak Trees in the unincorporated areas of Aransas County; and,

WHEREAS, upon reviewing the order, the Tree Committee recommended that the Commissioners Court amend the Order for the sake of clarification and to provide additional guidance to citizens, developers, County staff, and others; and,

WHEREAS, the Commissioners Court of Aransas County desires to replace Order No. O-14-2021.

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF ARANSAS COUNTY, TEXAS:

Section 1. Replacement of Order 14-2021 .

The Commissioners Court of Aransas County adopted Order No. O-14-2021 entitled “Regulations for the Cutting of Live Oak Trees in the Unincorporated Areas of Aransas County,” on November 9, 2021. The Commissioners Court hereby repeals Order O-14-2021 and replaces it with this Order.

Section 2. Purpose and Scope.

This Order entitled “Regulation of the Removal or Clear Cutting of Live Oak Trees in the Unincorporated Areas of Aransas County,” is hereby created and establishes protections for Live Oak Trees from removal or clear-cutting, as defined herein, throughout the unincorporated areas of Aransas County Texas.

Many local Live Oak Trees have been bent by coastal winds and are often referred to as windswept Live Oak Trees. Live Oak Trees are considered a special natural resource to this area,

shaped and created by forces of nature, and are remarkable. They provide character and enhance the beauty of the County, and the special preservation of such trees benefits the County. Live Oak Trees are deserving of extra protection and that was recognized by the Texas Legislative when it established Section 240.909 of the Texas Local Government Code, in 2009.

This Order contains provisions related to criminal violations of this Order as well as administrative fees that may be assessed under this Order. The fees are not fines and not intended to be punitive in nature. Fines, however, may be assessed by a court of law for violations of this Order, Tree Plans issued pursuant to this Order, requirements in a Tree Removal Permit, or other conduct prohibited or required by this Order. The administrative provisions are separate and apart from the criminal provisions herein. For example, a person violating this Order may be assessed fees through the administrative process while simultaneously being prosecuted in a court of law for violations of this Order that could result in the imposition of fines.

Section 3. Applicability.

- (a) The terms and provisions of this Order apply to every property in the unincorporated areas of Aransas County that:
 - i. by legal description encompasses an area of One (1) acre or more; and,
 - ii. which property contains any Live Oak Trees that are at least six inches (6”) in diameter when measuring diameter at four feet and six inches (4’6”) above the ground (This measurement is often referred to as “Diameter at Breast Height” or “DBH”).
- (b) This Order shall apply to each property owner, tenant, developer, contractor, subcontractor, or any other person or party identified as a responsible party related to pre-development activity, development activity, or other actions that involve removing Live Oak Trees in a manner that does not comply with this Order.
- (c) The property owner, developer, contractor, or other person representing himself or herself as the responsible party is responsible for ensuring all parties involved are aware of, and follow, the provisions of this Order. Ignorance of the law is no excuse and all involved parties shall be held responsible for following this Order as they have a duty to identify all laws and regulations governing their activities.
- (d) This Order shall not apply to any land under the ownership or jurisdiction of State or federal agencies, or when prohibited by statute.
- (e) This Order does not apply to the facilities or operations of an electric utility as defined by Section 31.002 of the Texas Utilities Code or to a gas utility as defined by Section 101.003 of the Texas Utilities Code.

Section 4. Definitions.

The following terms, phrases, and words contained in this Order shall, for the purposes of this Order, be defined as listed below. When not inconsistent with the context, words used in the present tense include the future, words in plural shall include the singular, works in the singular shall include the plural, words used in the masculine include the feminine, and words used in the feminine include the masculine. The word “shall” is mandatory and not merely a formality. The following definitions shall apply:

- (a) *Aransas County Tree Committee*: The primary body responsible for implementation of this Order and for serving as an advisory board to the Commissioners Court, which committee is created herein. It is sometimes referred to as the “Tree Committee.”
- (b) *Clear Cutting*: Removing or critically damaging more than fifty percent (50%) of all Live Oak Trees on a property that is subject to this Order.
- (c) *Commissioners Court of Aransas County*: In this Order, “Commissioners Court,” “Aransas County Commissioners Court,” and “Commissioners Court of Aransas County” may be used interchangeably to describe the Commissioners Court of Aransas County which is the governing body of the County of Aransas, a political subdivision of the State of Texas.
- (d) *County*: Aransas County, Texas
- (e) *Critical Damage*: Any action that could cause a tree’s death within three (3) years, which includes but is not necessarily limited to: severing the main trunk, large branches, or large roots; girdling; poisoning; carving; mutilating; touching with live wires; crushing or exposing roots; digging or drilling a hole or trench larger than three (3) cubic feet within the critical root zone; covering a substantial part of the critical root zone with an impermeable surface; or adding an excessive depth of soil in the critical root zone to constitute an impermeable surface.
- (f) *Critical Root Zone (CRZ)*: An area surrounding a tree the distance from the trunk, which is equal to one and one-half feet (1.5’) for every inch of trunk diameter measured at DBH. This is the minimum area beneath a tree that must be left undisturbed to preserve a sufficient root mass so a tree has a reasonable chance of survival. (See Figure 1 for an illustration).
- (g) *Development or Construction Activity*: Activities that may be described as land disturbing activities, which are normally undertaken for the development, construction, repair, renovation, rehabilitation, or conversion of buildings or other improvements for residential or commercial use, which activities may overlap with those defined in Pre-Development Activities below.

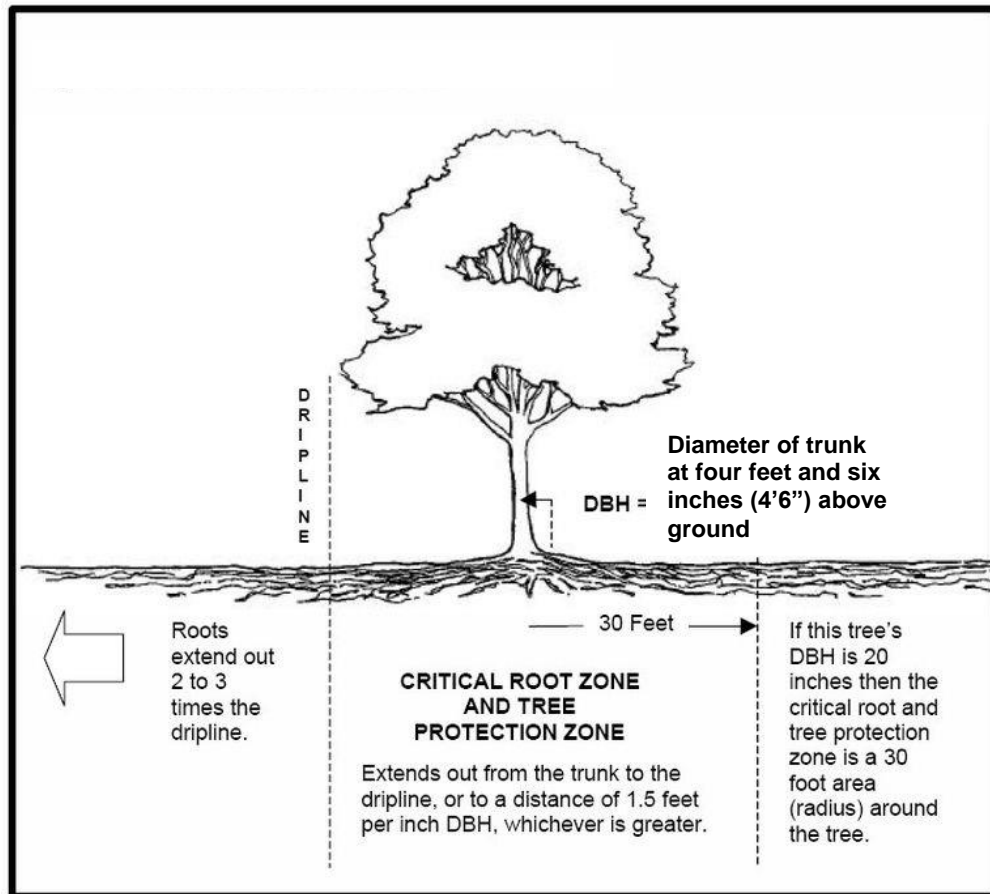
- (h) *Diameter at Breast Height (“DBH”)*: The diameter of a tree measured in inches at breast height, which is four feet and six inches (4’6”) above the ground. If a tree forks into multiple trunks below four feet and six inches (4’6”), the trunk is measured at its most narrow point before the fork. (See Figure 1 for an illustration).
- (i) *Drip Line*: An imaginary circle around a tree marking the outermost edge of the tree canopy where water drips to the ground. (See Figure 1 for an illustration).
- (j) *Environmental Health*: Aransas County’s Department of Environmental Health, often referred to as “Environmental Health,” works to protect the public through various activities, including nuisance abatement, food service inspections, regulating septic facilities, and more. This Department is also responsible for implementing this Order.
- (k) *Ex-officio Member*: The County Commissioner designated by the Commissioners Court to serve as liaison to the Aransas County Tree Committee. This person takes part in the deliberations of the Tree Committee but shall have no vote.
- (l) *Irrigation or Irrigation System*: A method for delivering water to an area where it is needed, but not normally present in necessary quantities.
- (m) *Legally Defined Property*: A property as described in the records of the County Clerk of Aransas County, Texas, or by a professional survey.
- (n) *Live Oak Tree*: This term is used interchangeably with “windswept Live Oak Trees,” “windswept oaks,” “oak trees,” and other variations herein, and is used to describe certain oak trees native to Aransas County. Live Oak Trees are sometimes called “Southern Live Oaks” or “Coast Live Oaks.” The Latin name for this tree is *Quercus virginiana*. It may be described as a large, stately tree with an extensive and widespread root system. Live Oak Trees may exceed fifty feet (50’) in height, have short and stout trunks, and are known for large twisting limbs that form a low dense crown.
- (o) *Mitigation*: An approved action to offset certain violations of this Order or as agreed upon measure taken when a variance is requested.
- (p) *Order*: The word “Order” refers to this Order of the Commissioners Court. Also see *Tree Order*, below.
- (q) *Pre-Development Activity*: Activities that may be described as land disturbing activities which include, but are not necessarily limited to, demolition, moving of buildings, site clearing (not to include those activities associated with minimal understory clearing as required for a tree survey), grubbing, grading, and any other activity which disturbs the surface of land and is actually undertaken, or customarily undertaken, as preparation for development.
- (r) *Tree Order*: This Order is sometimes referred to as the “Tree Order” as contains Aransas County’s regulations pertaining to trees in the unincorporated areas of the County.

(s) *Tree Plan*: A detailed drawing with explanation provided with a Tree Plan Application, which includes a Tree Survey along with a detailed site plan. The site plan is a depiction of the entire property and must include the proposed locations for any structures, driveways, roadways, and/or other fixtures (such as a septic tank or septic field) and the location for any such improvements already in existence. If mitigation measures are required under this Order, the Tree Plan shall also include a description of the required measures and how the requirements will be satisfied.

(t) *Tree Removal Permit*: A document issued by Environmental Health that must be displayed at the property, which indicates that the County has received a request for a variance to the Tree Order, that the request for variance has been presented to the Tree Committee, and it is approved.

(u) *Tree Survey*: A detailed drawing showing actual location of all existing Live Oak Trees that are at least six inches (6") DBH (and any tree that was planted as a mitigation measure under a Commissioners Court or other court order), which drawing designates the size of each tree by color as required by Environmental Health. For properties that are five (5) acres or larger, the Tree Survey must be conducted by an arborist or other licensed professional.

FIGURE 1: Critical Root Zone (CRZ), Diameter at Breast Height (DBH) and Drip Line



Section 5. The Aransas County Tree Committee.

(a) The Aransas County Tree Committee is the primary body responsible for the implementation of this Order and serves as an advisory board to the Commissioners Court.

The Tree Committee shall be composed of five (5) members:

(1) One (1) qualified voter appointed by each of the four (4) Aransas County Commissioners and the County Judge, for a total of five (5) voting members;

(2) One (1) County Commissioner shall serve as an ex-officio member of the Tree Committee.

(b) Appointed members shall serve overlapping three (3) year terms. Beginning on the effective date of this Order, two (2) members will be appointed for three (3) years, two (2) members for two (2) years, and one (1) member for one (1) year. The initial terms shall be determined by the drawing of lots. Any vacancy during the unexpired term of a member shall be filled by the Commissioners Court for the remainder of the unexpired term. The Tree Committee shall meet within thirty (30) days of the effective date of this Order and elect officers. The Tree Committee shall elect from its members a chairperson, vice-chairperson, and a secretary to serve for one (1) year beginning at that meeting. No person may serve on the Tree Committee more than two (2) consecutive terms.

(c) Meetings and duties of the Aransas County Tree Committee:

(1) The Tree Committee shall meet at least quarterly, but may need to meet more often to conduct business;

(2) The Tree Committee shall make recommendations as necessary for the removal, replacement, and protection of Live Oak Trees;

(3) The Tree Committee shall conduct its business in accordance with the Open Meetings Act and shall maintain its records in accordance with Texas law;

(4) The Tree Committee shall review this Order annually; consult with Environmental Health and other such entities having germane knowledge concerning Live Oak Trees and their peculiarities, and make recommendations for changes, if any, to the Commissioners Court;

(5) Environmental Health will provide the Tree Committee an annual report that will include the number of applications received, Tree Removal Permits issued, and violations of this Order for the previous year;

(6) The Aransas County Tree Committee shall have the responsibility to promptly meet when a variance of this Order is requested and shall have the authority to approve or deny requests for variances. All other Tree Committee

actions are advisory in nature and such recommendations shall be presented to the Commissioners Court;

(7) In order to deny a request for variance, the Tree Committee must find, by clear and convincing evidence, that the reasons for removal listed in the Request for Variance do not in fact exist and that removal is not eminently necessary to accomplish the applicant's stated reasons.

Section 6. Protection of Live Oak Trees.

Live Oak Trees located on properties that are at least one (1) acre in size, or on a property that is included on a submitted Tree Plan, are protected under this Order. If an owner desires to remove Live Oak Trees from the property, the owner shall first complete and submit an Application for Tree Order Compliance Review.

No removal or clear cutting of Live Oak Trees is allowed, unless specifically authorized by an approved Tree Plan and, if required, a Tree Removal Permit has been issued and is on display.

Any tree planted as a mitigation measure under a Commissioners Court or other court order shall be considered as a tree that is six inches (6") DBH or greater regardless of actual diameter.

Section 7. Administrative Procedures.

(a) *Application for Tree Order Compliance Review.* Before the removal of any live oak tree or the initiation of any pre-development activity, an application for Tree Order Compliance Review (the "Application") must be filed by the property owner, or an authorized designee, with Environmental Health. The Application must include a proposed Tree Plan;

(b) *Application Review.* Environmental Health is responsible for reviewing applications to ensure that proposed plans comply with the requirements in this Order. Environmental Health staff is authorized to approve such applications and associated Tree Plans as long as the documents meet the County's requirements and this Order has not been violated in any way;

(c) *Tree Plan.* An approved Tree Plan containing a Tree Survey, site plan, and any applicable mitigation measures, must be fully utilized and then completed before it expires. If a Tree Plan is not timely completed, the property owner or other responsible party must obtain approval for an extension of time or for a new Tree Plan if required by Environmental Health.

(d) *Application in Conflict with this Order.* If the Application describes actions that are in conflict with this Order or if the Order has been violated prior to the submittal of the Application, Environmental Health will not make any decision on the Application. Instead, the Application will be forwarded to the Tree Committee for review and consideration.

(e) *Request for a Variance.* If Environmental Health determines that the contents of an Application indicate that an applicant is planning actions, or omissions, that do not comply with this Order, the applicant will be required to submit a Request for Variance. Next, the Application and Request for Variance shall be considered by the Tree Committee. Before the Tree Committee makes any decision, the applicant will be provided notice of a meeting where he or she shall have an opportunity to be heard. Requests for Variance may be submitted for the following reasons:

(1) Some or all of the Live Oak Trees in the Application and proposed Tree Plan are hazardous, unhealthy, or in decline, which determination has been made by Environmental Health or a professional arborist;

(2) Some or all of the Live Oak Trees in the Application and proposed Tree Plan, or their root systems, are causing visible damage to property or improvements, or are likely to cause damage in the foreseeable future, to structures, utilities, or areas used for pedestrian or vehicular traffic;

(3) Some or all of the Live Oak Trees in the Application and proposed Tree Plan are located within power line easements and the trees cannot be properly pruned;

(4) Some or all of the Live Oak Trees in the Application and proposed Tree Plan are, even after proper pruning, causing safety-related problems or concerns;

(5) Some or all of the Live Oak Trees in the Application and proposed Tree Plan need to be removed in order to relocate a structure or improvement from or onto a property. Live Oak Trees removed under this subsection must be replaced according to the mitigation requirements provided herein;

(6) In addition to the above listed criteria, the Tree Committee shall determine which other Live Oak Trees may be removed in order to develop property in a reasonable and prudent manner in accordance with this Order.

(f) *Tree Removal Permit.* With an approved Variance, Environmental Health will issue a Tree Removal Permit, which shall be displayed at the property at all times during development and not obscured from view. The Tree Removal Permit shall remain on display until Environmental Health confirms that the work is complete. However, if Environmental Health has reason to believe that an approved Tree Plan is not being followed or this Order is otherwise violated, staff may rescind the Tree Removal Permit and remove it from the property. If this occurs, Environmental Health will notify the applicant that the Tree Removal Permit has been rescinded and provide notice of a meeting to be held within Ten (10) days where the applicant shall have an opportunity to be heard.

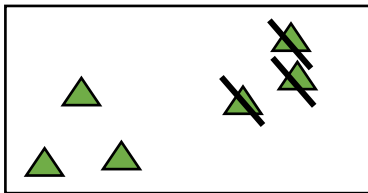
(g) *Termination of Tree Plan or Completion of Tree Plan Activities.* Any approved Tree Plan shall contain a definite date of expiration not to exceed One Hundred Eighty

(180) days from approval. If the proposed activities are not taken during that time, the Tree Plan shall expire. The property owner or other responsible party may request an extension of time by submitting a written request to the Director of Environmental Health or submit a new application with the appropriate fees. Any Tree Plan approval shall be void and of no legal effect if its terms are violated. Within five (5) days after tree removal has concluded but before debris is removed from the site, the responsible party shall submit a written notice of completion to Environmental Health and County staff will confirm actions taken were in compliance with an approved Tree Plan and Tree Removal Permit.

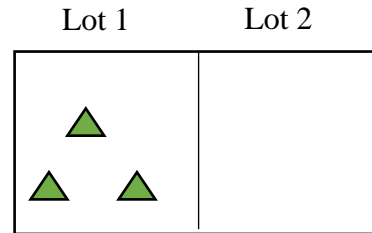
(h) *Cumulative Calculations for Removal.* Any percentage of tree removal allowed is cumulative for the entire property. If an area is developed in phases or development is otherwise separated in time, the previous percentage of removal shall be considered when determining the percentage allowed in future development.

FIGURE 2: Example of Cumulative Calculations for Removal

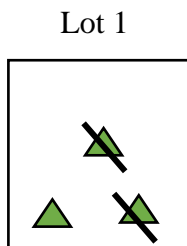
Owner submits a Two Acre Lot Tree Plan in which they propose the removal of 50% of Live Oak Trees



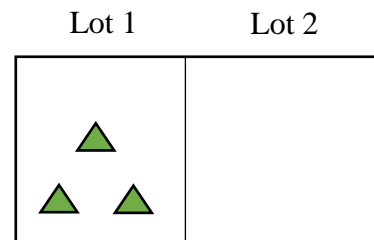
After the Tree Plan is approved and removal is complete, the owner subdivides the property into 2 lots.



Sometime later, the Owner of Lot 1 submits an Application and Tree Plan in which they propose removal of 66% of Live Oak Trees on Lot 1.



Because Lot 1 was included in a previous Tree Plan, it is still considered under that Plan (cumulative removal and 50% of the Live Oak Trees on the original property were already removed). Therefore, no Live Oak Trees may be removed without an approved variance.



Section 8. Appeals.

Should the Aransas County Tree Committee deny a request for a variance, the applicant may appeal the Tree Committee's decision to the Commissioners Court. Such appeal must be in writing and shall be delivered to the County Judge's office within ten (10) calendar days of the action of the Tree Committee. The Commissioners Court shall have the discretionary authority, on a case by case basis, to determine whether or not just cause exists to overrule the decision of the Tree Committee. The Commissioners Court shall consider the documents filed, the purpose of this Order, the unique features of the land in question, and the proposed use of the land. Any appeal shall be considered at the first regularly scheduled Commissioners Court meeting subsequent to an appeal being filed, for which an Open Meetings Act notice requirement can be met. The decision of the Commissioners Court shall be final.

Section 9. Unlawful Actions/Violations.

- (a) Any conduct, including actions or omissions, taken contrary to this Order shall be an offense and shall constitute a Class C Misdemeanor¹ punishable by fine not to exceed Five Hundred Dollars (\$500.00) plus court costs and fees.
- (b) Violations of this Order include, but are not limited to, the removal or critical damage to a live oak tree when it occurs: without an approved Tree Plan; without an authorized Tree Removal Permit; due to actions or omissions that are contrary to an approved Tree Plan; or failing to meet the mitigation requirements for replacing Live Oak Trees.
- (c) Each act or omission in violation of this Order shall be a separate offense. For example, for each live oak tree that is removed in violation of this Order, a separate offense will have occurred and the responsible party may be charged with multiple Class C Misdemeanors and be responsible for fines, court costs, and other fees for each offense.
- (d) The defendant, who is the responsible party charged with violating this Order, may be the property owner, tenant, developer, contractor, subcontractor, or any other person or party identified as a party responsible for the violation.

Section 10. Enforcement of Order and Legal Action.

- (a) The Commissioners Court will decline to approve any plat, re-plat, subdivision or re-subdivision of a property subject to this Order unless such request is accompanied by an approved Tree Plan.
- (b) Environmental Health shall enforce the provisions of this Order. If any person proceeds to remove or damage Live Oak Trees in violation of this Order, or an approved Tree Plan, or fails to meet the mitigation requirements for replacing Live Oak Trees, the

¹ Tex. Loc. Gov't Code §240.909

following actions may be taken by Environmental Health in addition to the issuance of citation(s) for Class C misdemeanors:

- (1) Refusal to issue septic system permits until a Tree Plan is made to conform with County requirements; or
- (2) Issuance of a stop work order; or
- (3) Any other actions that are available under the law, which may include the filing of a case seeking an injunction against the responsible party that will prohibit actions or omissions that would violate this Order.

Section 11. Mitigation and Replacement Tree Criteria.

All Live Oak Trees removed in violation of this Order, or removed in accordance with a variance granted by the Tree Committee and/or Commissioners Court will be replaced, wood-for-wood. The total sum of inches of diameter of a tree to be removed shall be replaced by the same sum of inches by planting trees that are at least Four Inches (4") DBH. For example, a tree that is Twelve Inches (12") DBH may be replaced by planting Three (3) trees that are at least Four Inches (4") DBH.

Failure to comply with this section of the Order will result in the issuance of a citation for each tree removed. All removed tree(s) shall be mitigated by the following method(s):

- (a) Replacement trees must be planted in the same location or as near as possible to the removed trees (unless imposing an unreasonable burden or hazard) and shall be maintained in good health. Mitigation measures may include a requirement for an irrigation system.
- (b) Replacement trees shall be healthy Live Oak Trees of the same species as the removed tree(s).
- (c) When it is found impractical by the Tree Committee to relocate or replace trees on the same property, the Tree Committee may recommend that the Commissioners Court approve replacement being made upon public property, parks, and within rights-of-way under the authority of the County.
- (d) Replaced Live Oak Trees must survive for three (3) years or the requirements for mitigation are reinstated and additional mitigation may be required. Owners should evaluate whether survival necessitates the installation and maintenance of an irrigation system.
- (e) Any tree planted as a mitigation measure shall be treated the same as a tree that is at least Six Inches (6") DBH for all purposes under this Order, shall be included on all Tree Surveys, and may not be removed without an approved Tree Plan and Tree Removal Permit.

Section 12. Fee Schedule.

Environmental Health shall collect fees associated with this Order. The Commissioners Court has established the following fee schedule:

Fee Description	Fee
Pre-inspection for Tree Plan	\$50.00
Compliance Inspection	\$50.00
Reinspection	\$75.00
Tree Removal Permit	\$55.00 and \$35.00/acre
Fee for Tree Removal Permit issued after any tree(s) have been removed in violation of this Order	\$500.00 and \$35.00/acre

Section 13. Severability Clause.

If any article, section, paragraph, subdivision, clause, phrase, or provision of this Order shall be declared invalid or found to be unconstitutional by a court of competent jurisdiction, it is expressly the same shall not affect the validity of the remainder of this Order as a whole, or any part of provisions thereof, other than the part so declared to be invalid or unconstitutional.

Section 14. Repealer and Savings Clause for Conflicting Ordinances, Regulations, or Orders.

All provisions of any County ordinance, order, or other regulation, in conflict with this Order are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the appealed ordinance, order, or regulation, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance, order, or regulation. Any remaining portions of said ordinances, orders, or other regulations shall remain in full force and effect.

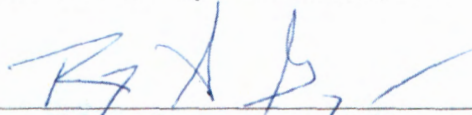
Section 15: Effective Date.

This Order shall become effective from and after its date of approval as required by law.

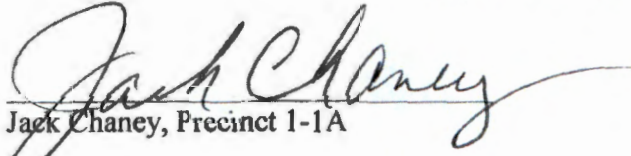
AND IT IS SO ORDERED.

Signature Page Follows

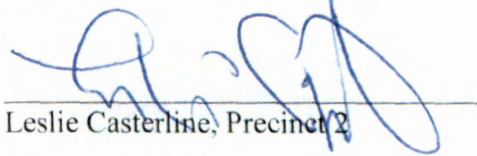
PASSED AND APPROVED on this 27th day of November, 2023.



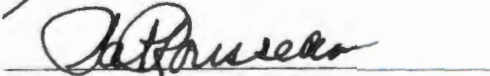
Ray A. Garza, County Judge



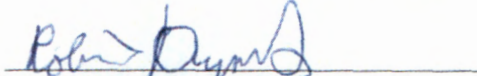
Jack Chaney, Precinct 1-1A



Leslie Casterline, Precinct 2



Pat Rousseau, Precinct 3



Robert Dupnik, Precinct 4

(SEAL)

ATTEST:

Misty R. F. Kimbrough, County Clerk