ORDINANCE NO. 3325

AN INTERIM ZONING/URGENCY ORDINANCE OF THE COUNTY OF SAN LUIS OBISPO PROHIBITING THE CLEAR-CUTTING OF OAK WOODLANDS AND LIMITING THE REMOVAL OF NATIVE TREES IN THE INLAND AREA (DOES NOT INCLUDE THE COASTAL ZONE) OF THE UNINCORPORATED PORTIONS OF SAN LUIS OBISPO COUNTY, EXCEPT FOR DEVELOPMENT OR LAND USE ACTIVITIES COMPLYING WITH CERTAIN AUTHORIZATION STANDARDS AND PROCEDURES.

The Board of Supervisors of the County of San Luis Obispo do ordain as follows:

Section 1. Findings and Declarations.

The Board of Supervisors makes the following findings in support of the enactment of this interim zoning/urgency ordinance in the inland area of the unincorporated county:

A. This Ordinance promotes the role of Native Trees in creating natural scenic beauty and unique community identity, sustaining ecological balance and overall environmental health, providing habitat to ensure the generation of future trees, moderating climatic extremes, reducing soil erosion and enhancing surface water quality, improving air quality, and adding value to property.

B. This Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §21000, et seq.) ("CEQA") because:

1. Per CEQA Guidelines §15061(b)(3) – The interim zoning/urgency ordinance is not subject to CEQA due to the general rule that an action is not subject to CEQA where it can be seen with certainty that there is no possibility that there will be a significant effect on the environment. The Ordinance provides for regulations to protect Native Tree species, woodlands, and critical habitats and thus, will not have a significant adverse effect on the environment.
2. Per CEQA Guidelines §15307 (Class 7) – The interim zoning/urgency ordinance consists of regulations and restrictions that prohibit the unauthorized removal of Native Tree species and promotes maintenance and restoration activities for the enhancement of these natural resources.
3. Per CEQA Guidelines §15308 (Class 8) – The interim zoning/urgency ordinance consists of regulations and restrictions on development activities to minimize damage, stress, premature death and unnecessary removal of trees; and it consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of the environment, including Native Tree species and all of the people, species, and environs that rely on that resource.

C. Native trees are an essential component to the fabric of the State of California for its people, environment, and economic well-being. Our heritage and our legacy are indivisibly linked with native trees, their majestic beauty, unique community character

and life-giving benefits. Native trees provide habitat for wildlife and other plant species, help clean the air, stabilize the soil, and add value to real property.

D. In San Luis Obispo County, oak woodlands are the quintessential landscape throughout the county and have been culturally significant for thousands of years.

E. The intentional destruction of oak woodland and irresponsible removal of native trees is an assault on our County's heritage and threatens the sustainability of our critical landscape.

F. Large amounts of oak trees and Oak Woodlands were recently Clear-cut and removed by a landowner in preparation for planting new vineyards in the inland portion of the County. Such removal denuded the hillside of hundreds of oak trees and many acres of Oak Woodland, destabilizing the ground, removing habitat, and destroying this quintessential county landscape.

G. The County currently has no ordinance or regulation in place to specifically address the Clear-cutting or removal of Native Trees or Oak Woodland in the inland area, outside of the urban or village reserve lines. Landowners in the inland area, like the one discussed above, own hundreds of acres of Oak Woodland and Native Trees that have the potential to be removed without appropriate County oversight or regulation. This likelihood increases as the demand for land suitable for irrigated vineyards increases, as was seen in the case described above. Without a specific County ordinance, Native Trees and Oak Woodlands are likely to continue to be Clear-cut or removed, depriving the County of its critical and quintessential habitat. As a result, the Board of Supervisors, as the legislative body of the County of San Luis Obispo, has determined that there is a need to consider and study potential changes in the County's General Plan and/or land use ordinances to assure appropriate oversight of Native Tree removal.

H. In response to the irresponsible and irreparable damage to Oak Woodlands and Native Trees and in response to the lack of specific regulations addressing the Clear-cutting or removal of Native Trees or Oak Woodland in the inland area, the Board of Supervisors as the legislative body of the County of San Luis Obispo, has determined that in order to protect the public health, safety, and welfare, there is an urgent need for an interim zoning/urgency ordinance prohibiting the Clear-cutting of Oak Woodlands and regulating the removal of Native Trees while the County considers and studies permanent amendments to its General Plan and/or land use ordinances.

I. This Ordinance is adopted as an urgency ordinance pursuant to the provisions of Government Code sections 25123 and 25131 and as an interim zoning ordinance pursuant to the provisions of Government Code section 65658 and shall be effective for a period of 45 days from its passage. Based on the findings set forth above in this section of the ordinance, the Board of Supervisors finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate

preservation of the public peace, health, safety, and welfare pursuant to the requirements of Government Code sections 25123, 25131, and 65858, and is necessary to preserve the status quo while comprehensive community outreach to stakeholders, and preparation of studies and reports are completed for a comprehensive Native Tree protection ordinance.

J. This interim zoning/urgency ordinance does not apply to areas within the Coastal Zone of the County.

Section 2. Definitions.

For the purposes of this Ordinance, the following terms have the definitions set forth below:

A. "Canopy" means the overhead covering of a tree or trees formed by its foliage. Canopy can consist of an individual tree or continuous woodland. For purposes of this Ordinance, measurement of Canopy (existing or removed), shall be determined with the County's aerial photography.

B. "Clear-cutting" means the removal of continuous Canopy or semi-continuous stands of trees with occasional gaps in Canopy, of Native Trees (as defined by this Ordinance) including their saplings, seedlings, and associated understory vegetation from a Site or portion of a Site.

C. "County-approved tree consultant" means an individual on a list of qualified tree experts. The list will be established and maintained by the Planning and Building Director.

D. "Diameter at Breast Height (DBH)" means the total cross-sectional diameter between the outside bark of an oak tree measured in inches at a height four-and-one-half (4-½) feet above the ground on the uphill side of the tree. In the case of trees with multiple stems (trunks), the diameter of all stems at breast height shall be combined to calculate the diameter at breast height of the tree.

E. "Director of Planning and Building" means the Director of the Department of Planning and Building of San Luis Obispo County as established by Chapter 2.22 of Title 2 of the County Code, or his or her designee.

F. "Discretionary Permit" means an entitlement that may be issued under the provisions of this Ordinance or Title 22 that requires the exercise of judgment and the resolution of factual issues to determine if the application and requested entitlement conform to the provisions of this Ordinance or Title 22. Generally, a Discretionary Permit consists of any entitlement that requires a decision to approve, approve subject to conditions or disapprove, based on the judgment of the review authority after a hearing.

G. "Immediate danger" for the purpose of Tree removal, means, an emergency situation where a tree's structural condition threatens health or property and time does not allow for consultation with the county.

H. "Native Tree" means one of the following species: Blue oak (*Quercus douglasii*), California bay laurel (*Umbellularia californica*), California sycamore (*Platanus racemosa*), Coast live oak (*Quercus agrifolia*), Interior live oak (*Quercus wislizeni*), Grey pine (*Pinus sabiniana*), Valley oak (*Quercus lobata*), Black oak (*Quercus kelloggii*), and Pacific madrone (*Arbutus menziesii*).

I. "Receiver Site" means a property eligible to receive off-site replacement trees or participate in county administered Native Tree planting projects.

J. "Sapling or seedling" means existing, young trees that are in a healthy state and are less than two inches in diameter.

K. "Site" means any lot or parcel of land or contiguous combination thereof, under the same ownership, where grading or other use or activity regulated by this Ordinance or Title 22 is performed or permitted.

L. "Tree" means a woody perennial plant, typically having a single stem or trunk of two (2) inches or more DBH growing to a considerable height and bearing lateral branches at some distance from the ground. Compare with "Sapling or Seedling".

M. "Tree removal" means to sever or displace the above-ground portion of a tree using manual, mechanical, or chemical means, which results in the death or stumping of the tree.

N. "Oak Woodland" means a plant community where the dominant trees are oaks, including species such as: Blue oak *(Quercus douglasii),* coast live oak *(Quercus agrifolia)*, interior live oak (*Quercus wislizeni*), valley oak *(Quercus lobata)*, and black oak *(Quercus kelloggi)*; interspersed with other vegetation, such as grasses, shrubs, and other tree species.

Section 3. Applicability.

This Ordinance applies to any and all properties within the unincorporated areas of San Luis Obispo County, except for the Coastal Zone.

Section 4. Prohibitions.

A. The act of Clear-cutting Oak Woodland is prohibited.

B. The removal of Native Trees (not including Saplings or Seedlings) is prohibited.

Section 5. Exemptions.

The following activities are exempt from the requirements of this Ordinance:

A. Emergency. A tree removed when determined necessary by emergency personnel actively engaged in emergency procedures.

B. Immediate danger. A tree in a hazardous condition which presents an Immediate danger to health or property where trimming alone cannot reduce the hazard.

C. Diseased. A tree or trees in a diseased or infected state as verified at a reasonable time either before or after the removal by the Director of Planning and Building, where removal of the tree will be beneficial to the plant community or will avoid developing a hazardous condition. If recommended by the County or a County-approved tree consultant, adjacent healthy trees may also be removed in order to prevent or curtail the spread of pathogens and infectious diseases, such as sudden oak death.

D. Utilities and rights-of-way. Trees which require maintenance or removal for the safe operation and maintenance of public rights-of-way, existing electrical power lines, communication lines, gas pipelines, or other property of a public agency or utility, as determined by the public agency or utility, its employees, or designee(s).

E. Trimming and pruning. Trimming and pruning of no more than 25 percent of an individual tree's canopy, provided the trimming or pruning does not result in the death of a tree.

F. Fire safety. Trees removed for compliance with fire safety laws and regulations or as part of a cooperative fire hazard abatement project if required by the fire agency having jurisdiction.

G. Agricultural operations. Trees removed for agricultural operations and land management purposes that meet all of the following requirements:

1. No more than five percent (5%) of a Site's total Native Tree Canopy will be removed.
2. An Agricultural Operations Tree Removal Form is completed and filed with the Department of Planning and Building prior to the removal of the Native Tree(s).
3. The removal of trees does not constitute Clear-cutting.

H. Previously-approved land use permit or land division. Trees authorized for removal with:

1. A land use permit approved pursuant to Title 22 of the County Code, prior to the effective date of this Ordinance
2. A land division approved pursuant to the Real Property Division Ordinance, Title 21 of the County Code, prior to the effective date of this Ordinance and pursuant to otherwise applicable vesting laws.

I. Non-native species. The removal of tree species not included in the definition of Native Trees.

J. De minimis removal.

1. Ministerial. On Sites of five (5) acres or less in size, in association with ministerial permits, up to three (3) Native Trees may be removed.
2. Existing Agricultural Operations. On Sites currently engaged in crop production or grazing, as of the effective date of this Ordinance, up to three (3) Native Trees may be removed in conjunction with and in support of existing agricultural operations.

K. Conservation Easement. Sites under conservation or open space easement that provides for the management of Native Trees or Oak Woodland pursuant to a management plan.

Section 6. Permitted removal.

Notwithstanding Section 4 above, the removal of Native Trees may be permitted as follows:

A. Permitting:

1. For projects that involve the removal of up to 10% of the total Native Tree Canopy on the Site, Minor Use Permit approval must be obtained. Minor Use Permits shall be processed according to the requirements set forth in Title 22 of the County Code.
2. For projects that involve the removal of more than 10% of the total Native Tree Canopy on the Site, Conditional Use Permit approval must be obtained. Conditional Use Permits shall be processed according to the requirements set forth in Title 22 of the County Code.

B. Fees. Fees for Discretionary Permits to allow Tree removal pursuant to this section shall be the same as set forth in the adopted County Fee Schedule for Minor Use Permits or Conditional Use Permits.

C. Environmental Review. In no case shall more than 25% of a Site's total Native Tree Canopy be approved for removal without the preparation of an Environmental Impact Report.

D. Mitigation and Monitoring. Projects requiring a Discretionary Permit pursuant to this section or Title 22 that involves the removal of Native Trees or the Clear-cutting of Oak Woodland shall be subject to mitigation and monitoring as determined necessary under each permit. At a minimum, the following mitigation and monitoring requirements apply for all permits:

1. When avoidance of Tree removal cannot be achieved and trees are impacted or removed, on-site replacement of trees is next best alternative. Off-site planting of replacement trees will only be considered after all feasible on-site planting alternatives have been evaluated by County staff.
2. Where on-site replacement would be detrimental to the health of the replacement tree or otherwise be infeasible, replacement trees may be planted at a Receiver Site to be approved by the Director of Planning and Building.
3. After replacement trees have been planted, the Department of Planning and Building or a County-approved botanist or tree consultant will verify in writing the replacement trees were of the correct species, planted using standard planting procedures and that appropriate protection measures have been completed.
4. Monitoring will only be conducted by County staff or a county-approved monitor. Monitoring shall be required until the newly planted trees have been successfully established. Monitoring reports shall be prepared by County staff or a county-approved monitor and reports shall be submitted annually for a minimum of seven years after the replacement trees have been planted.

Section 7. Enforcement.

A violation of this Ordinance is deemed to be a violation of Title 22. In the event of a violation of this Ordinance or any requirement imposed pursuant to this Ordinance, the County may, in its discretion and in addition to all other remedies, take such enforcement action as is authorized under Title 22 and Title 1 of the County Code and any other action authorized by law, including without limitation enforcement through a civil injunction or the imposition of penalties up to $25,000 per violation. No development, planting, or cultivation of the Site will be allowed for a period of not less than seven years after the violation, except as authorized by an approved Discretionary Permit.

Section 8. Severability.

If any section, subsection, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or

more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 9. Effective Date.

In light of the findings recited in Section 1 of this Ordinance, the Board of Supervisors declares that this Ordinance is necessary as an urgency measure for preserving the public health, safety and welfare. This Ordinance shall take effect immediately upon its passage and shall expire 45 days thereafter unless extended pursuant to law.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the fifteenth day of July 2016, by the following roll call vote, to wit:

AYES: Supervisors Bruce S. Gibson, Adam Hill, Frank R. Mecham, and Chairperson Lynn Compton

NOES: Supervisor Debbie Arnold

ABSENT: None

ABSTAINING: None

Lynn Compton
Chairman of the Board of Supervisors,
County of San Luis Obispo,
State of California

ATTEST:

TOMMY GONG
County Clerk and Ex-Officio Clerk
of the Board of Supervisors
County of San Luis Obispo, State of California

By: Annette Ramirez
Deputy Clerk

[SEAL]

ORDINANCE CODE PROVISIONS APPROVED
AS TO FORM:

RITA L. NEAL
County Counsel

By: /s/ Whitney McDOnald
Deputy County Counsel

Dated: July 15, 2016

STATE OF CALIFORNIA) ss.
COUNTY OF SAN LUIS OBISPO)

I, **TOMMY GONG**, County Clerk of the above entitled County, and Ex-Officio Clerk of the Board of Supervisors thereof, do hereby certify the foregoing to be a full, true and correct copy of an order entered in the minutes of said Board of Supervisors, and now remaining of record in my office.

Witness, my hand and seal of said Board of Supervisors on July 18, 2016.

TOMMY GONG,
County Clerk and Ex-Officio Clerk of the Board of Supervisors

By: Annette Ramirez
Deputy Clerk