

Considerations When Removing or Pruning Trees in Santa Barbara

BY SCOTT JASKE

Is it my tree? Is it my neighbor's tree? What kind of legal risks might one face for pruning, altering, or removing a tree? What about monetary penalties or criminal charges for removing a tree without the municipality's blessing (permission)? What about trees on my own property? This article will discuss considerations for Santa Barbara homeowners faced with decisions about removing trees on their own property, removing trees on a property line, and pruning limbs and roots of neighboring trees that encroach onto their property.

Determining Who Owns the Tree

The first step is to determine who owns the tree. According to Civil Code section 833, "[a] tree whose trunk stands wholly upon the land of one owner belongs exclusively to them, although the roots may grow into the land of another." Civil Code section 834 states: "trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common." These rules seem straightforward when the tree and its trunk are located entirely on one's own property. In that case, the tree belongs to that owner exclusively. However, if the tree's trunk is located on the boundary line between adjacent properties, then it belongs to *both* neighboring owners (a.k.a. "coterminous ownership"). Ideally, the individual who wishes to alter, prune, or remove a tree would know in advance precisely where the property boundary line is located. However, artificial boundary markers such as fences and privacy hedges may not be denoting the actual boundary line. If there is uncertainty as to the correct boundary line, a surveyor should be retained to determine the true boundary lines.

If a neighbor's tree branches overhang the property line, the non-owner can remove the overhanging portions, regardless of whether they cause damage. However, you cannot cut the branches back *beyond* the property line.¹ On the other hand, a tree owner can potentially be liable for damage caused in the event those branches fall. Generally,

courts have held that an owner can cut back a neighbor's encroaching tree roots to the property line (not beyond), particularly when they cause damage.

Coterminous or "boundary" trees should not be removed without mutual consent of the neighbor or a court order. Civil Code section 841, subsection (a), states that adjoining landowners shall share equally in the responsibility for maintaining the boundaries and monuments between them. This means coterminous owners will be responsible for removing leaves or branches that fall from a boundary tree from their respective yards. However, one may not remove the boundary tree itself without the other owner's consent.²

When removing branches and roots, it is wise to remember that owners have a duty to act reasonably toward adjoining landowners, and refrain from causing foreseeable injury to a neighbor's property.³ In *Booska v. Patel* (1994) 24 Cal.App.4th 1786, the court "tempered" the right to self-help by imposing a "duty to act reasonably," when removing tree limbs or roots that encroach from a neighbor's tree.⁴ The duty of reasonableness has been found to include giving a neighbor notice before trimming an overhanging tree branch or removing the neighbor's tree roots. An alternative to self-help would be to sue for damages or injunctive relief caused by the overhanging or encroaching tree roots or branches.⁵ Prior notice would hopefully be sufficient to avoid a neighbor's nuisance lawsuit.

Measure of Damages for Harm to Another's Tree

Civil Code section 3346 and Code of Civil Procedure section 733 determine the measure of damages to be three times the amount that would compensate for actual detriment. When the damage is "casual or involuntary" the actual damages may be doubled. The treble damages remedy is discretionary, but doubling the damages is generally mandatory, unless the damage resulted from, e.g., innocent reliance on an incorrect boundary line survey. Additional damages could include "the amount which will compensate for all the detriment proximately caused thereby, whether it



Scott Jaske

could have been anticipated or not.”⁶ Cases have analyzed potential damages, e.g., transportation costs for the new tree, removal of the damaged or dead tree, disposal of the damaged or dead tree, and diminution in value of the home sans the tree, all of which could be assessed against the party who wrongfully removed or damaged a tree.

Santa Barbara County Deciduous Oak Tree Act

It is also worth noting that Santa Barbara County and City have ordinances to protect certain types and species of trees. On April 15, 2003, Santa Barbara County adopted Ordinance Number 4490, also known as the “Deciduous Oak Tree Protection and Regeneration Act” (hereinafter “The Oak Trees Act”). The County Board of Supervisors found that protecting oak trees was important to the people’s well-being, and the ecological integrity of Santa Barbara County. The regulation was created to address deciduous oak tree removal in the inland rural areas of the county and requires a permit for removal of deciduous oak trees under articles II or IV of chapter 35 of the County Code, or Ordinance 661.

The Oak Trees Act defines any removal of protected deciduous oak trees to be unlawful and a public nuisance. The Oak Trees Act allows for injunctive relief, abatement, civil penalties, and remedies. For example, someone who violates The Oak Trees Act can be liable for a civil penalty not to exceed \$25,000 for each violation. There are also possible criminal penalties. The Oak Trees Act penalizes violations with infractions consisting of a fine not exceeding \$100 per protected deciduous oak tree for first violations, fines not exceeding \$200 for a second violation within one year, and a fine not exceeding \$500 for each additional violation within one year. The District Attorney may upgrade the infraction to a misdemeanor at the District Attorney’s discretion, and the punishment is to be a fine not less than \$500 nor more than \$25,000 per violation or imprisonment not to exceed six months or both.

Reportedly, The Oak Trees Act was originally enacted in response to a Santa Ynez vintner who destroyed hundreds of oak trees on his property, causing a public outcry to protect the oaks. In 2012, a Carpinteria property owner was fined almost three thousand dollars for removing an oak tree from her own property in violation of The Oak Trees Act. Why such a harsh penalty for removing oak trees from her own property? Unfortunately, the Carpinteria owner failed to secure a permit in advance for the tree removal.

City of Santa Barbara Tree Preservation Act

The City of Santa Barbara has its own separate requirements for certain trees. In 1969, the Santa Barbara City

Council enacted the Preservation of Trees Act codified as Municipal Code Chapter 15.24. Section 15.24.020. The Trees Preservation Act states: “it is unlawful for any person to remove or significantly alter or to authorize or allow the removal or significant alteration of any of the following trees without a permit: A) a setback tree; B) a parking lot tree; C) a tree on an approved plan; or D) a tree designated as an historic or specimen tree by the City Council.”

Setback Trees. A “Setback Tree” is “located in the front setback of any lot as the term front setback is defined and specified in Title 28 of this Code, the Zoning Ordinance. A tree is a setback tree if more than 50% of the tree trunk, measured at the highest natural grade adjacent the trunk, is within the front setback.” Setback requirements can vary depending on local, county, and state requirements.

Parking Lot Trees. A “parking lot tree” is a tree situated in a planter required pursuant to Section 28.90.050 of the Santa Barbara Municipal Code. The City of Santa Barbara sought to encourage the development of more attractive parking lots in commercial, industrial, and multiple-family use areas and has designated “parking lot trees” as being protected by the Preservation of Trees Act.

Trees on an Approved Plan. A tree shown on an approved plan on record with the City of Santa Barbara for a lot developed with commercial, multiple-family residential, or industrial use, are protected by the Preservation of Trees Act. Both “Parking Lot Trees” and “Trees on an Approved Plan” require the same application and permitting process for alteration, pruning, or removal. The application shall be filed with the Community Development Department on the provided forms and the application must show the location and identify the tree or trees sought to be removed by diagram or plot plan and photograph(s), the name and address of the owner, and other such information as required by the form provided.

Designated Historic/Specimen Trees. A tree is designated as “historic” if it has been found by the Parks and Recreation Commission, the Historic Landmarks Commission, or the City Council to be a tree of notable historic interest and has been designated by resolution of the City Council as such. A “specimen tree” is a tree which has been found by the Parks and Recreation Commission to be of high value because of its type and/or age, and which has been designated by resolution of the City Council as a “specimen tree.” A good example of a “historic tree” would be Santa Barbara’s Moreton Bay Fig Tree, which is believed to be the largest *Ficus macrophylla* in the United States. A seaman visiting Santa Barbara in 1876 presented a seedling of an

Continued on page 14

Jaske, continued from page 12

Australian Moreton Bay fig tree to a local girl who planted the tree at 201 State Street. The tree was then transplanted to the corner of Montecito and Chapala streets. The tree was designated as an official historic landmark in 1970 and was deeded to the City of Santa Barbara in 1976.

Penalties for Violating the Preservation of Trees Act

On December 8, 2009, the Santa Barbara City Council adopted resolution 09-096, which established a “Fine Schedule” of administrative penalties for tree removal, excessive pruning, and landscape plan maintenance. For example, Resolution 09-096 enables the City of Santa Barbara to impose and collect civil administrative fines in conjunction with the abatement of violations. The alteration of a tree protected by the Preservation of Trees Act can result in civil fines of up to \$500 or \$1000, depending on the diameter of the tree trunk, and outright removal of a tree under the act can result in fines from \$1,000 up to \$5,000. The City of Santa Barbara may also require corrective actions such as implementation of a tree rehabilitation program, or if the tree has been removed and cannot be rehabilitated, the city may require the tree to be replaced. The cost of replacing a mature tree can reach or exceed \$15,000.

Penalties for Damaging Someone Else’s Tree

Consider the following: a Santa Barbara local cut down three (3) Eugenia trees that were located on City of Santa Barbara property in front of their home. However, the

owner did not apply for a permit and with a helping hand removed the trees. The problems for our local homeowner were stemming from his tree removal which grew into a far greater problem than he anticipated. The District Attorney announced a felony complaint was filed against the local homeowner charging them with two felony violations: conspiracy to commit vandalism in violation of Penal Code section 182(a)(1) and vandalism causing damage over \$10,000 in violation of Penal Code section 594(a)(3). Further, the District Attorney went after the homeowner with three misdemeanors in violation of Santa Barbara Municipal Code section 15.20.115 and one misdemeanor violation of Santa Barbara Municipal Code section 15.24.020. Do the misdemeanors look familiar? They should. The local homeowner is charged with violating the Tree Preservation Act.

Exceptions to the Tree Preservation Act and Obtaining Permits

There are several notable exceptions to the Tree Preservation Act, which allow removal of a tree that is dying, or that poses a potential danger to persons or property due to age, disease, storm, fire, or injury, or if the City Fire Department orders the pruning of the tree. If none of these exceptions apply, lawfully removing a tree which is subject to the Act will typically require obtaining a permit from the City of Santa Barbara. Most permit applications are filed with the Parks and Recreation Commission or the Community Development Department. Following submittal, it may take up to sixty (60) days for permit approval. If denied, the application may be appealed to the Santa Barbara City Council. ■

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ENDNOTES

1. *Bonde v. Bishop* (1952) 112 Cal.App.2d 1.
2. See *Smith-Chavez, et al.*, Cal. Civ. Prac. Real Property Litigation (2020) § 11:40; *Miller & Starr, California Real Estate* (4th ed. 2020) § 17:12; *Anderson v. Weiland* (1936) 12 Cal.App.2d 730.
3. *Grandona v. Lovdal* (1886) 70 Cal. 161, 162.
4. *Id.* at 1791.
5. *Bonde, supra*, at 6.
6. Civ. Code § 3333; *Heninger v. Dunn* (1980) 101 Cal.App.3d 858, 861.

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