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Re: Mandatory Duty to Enforce Lower Redway Q-Zone Ordinance (Ordinance No. 2112) Prior to Issuance of Encroachment Permit for Redwood Tree Removal – Applicant Robert Scarlett

Dear Directors Ford and Mattson:

I have been engaged by a group of Lower Redway residents and write regarding the County's apparent intention to authorize the felling of the last remaining old-growth redwood tree on the subject property through issuance of an encroachment permit. As you are aware, the property is subject to the Lower Redway Qualified Combining Zone established by Ordinance No. 2112, which imposes binding zoning restrictions on the removal of redwood trees. The County not only has jurisdiction to enforce this ordinance, but a clear and mandatory duty to do so prior to authorizing any activity that would result in tree removal.

Ordinance No. 2112 unambiguously provides that a Special Permit shall be required for the removal of any redwood greater than twelve inches in diameter at breast height. This language is mandatory, not discretionary. The ordinance further establishes a comprehensive permitting scheme, including notice to surrounding property owners, consultation with qualified professionals, and the issuance and posting of a Record of Action prior to commencement of any cutting activities. The ordinance also limits removal to specific circumstances, including situations where no feasible alternative exists or where a tree poses an imminent hazard, and requires demonstration of those conditions through the permitting process. Removal of such trees without first obtaining the required Special Permit is expressly prohibited, deemed a threat to public health, safety, and welfare, and declared a public nuisance subject to injunctive abatement.

Under California law, these provisions impose a ministerial duty on the County to require and process a Special Permit application before allowing removal of a regulated tree. See California Code of Civil Procedure section 1085 (authorizing writ relief to compel performance of mandatory duties), and Government Code section 815.6 (liability for failure to discharge a mandatory duty imposed by enactment). The County cannot lawfully authorize conduct through a separate permitting mechanism,

such as a Public Works encroachment permit, that would directly violate these zoning restrictions. Doing so would constitute an ultra vires act and a failure to perform a mandatory duty.

The County's jurisdiction in this matter is further confirmed by the State's own regulatory framework. The CAL FIRE exemption application form utilized for non-industrial timber operations expressly requires applicants to identify and comply with applicable local ordinances and regulations, including zoning restrictions. The existence of a state-level exemption pathway does not preempt or displace local land use controls such as the Lower Redway Q-Zone. To the contrary, it reinforces the County's independent obligation to ensure compliance with its own ordinances before any tree removal occurs.

Importantly, there remains a clear and viable opportunity for the County to comply with its legal obligations. The record indicates that at least one old-growth redwood tree remains standing. The County can and should require submission of a Special Permit application under Ordinance No. 2112, conduct the required review, provide notice to affected property owners, and evaluate whether removal satisfies the ordinance's substantive criteria, including whether feasible alternatives to removal exist. The ordinance plainly contemplates such an alternatives analysis, as removal is limited to situations where no other feasible option would allow the tree to remain without interfering with permitted development or where a demonstrable imminent hazard exists. There is no indication that such an analysis has been conducted here.

Equally concerning, nothing in the administrative record, including the property owner's own submissions, establishes that the remaining tree poses an imminent threat to persons or property. The ordinance provides a narrow emergency pathway, but it requires specific findings by the Planning Director, verification of the emergency, and public notice, and even then mandates subsequent compliance with the Special Permit process. The County's apparent decision to proceed on an emergency basis without satisfying these requirements is inconsistent with the ordinance and further underscores the lack of a factual basis for invoking emergency procedures.

The County's contemplated issuance of an encroachment permit under these circumstances is not a neutral or ministerial act. Rather, it is an affirmative authorization of conduct that the County's own ordinance declares unlawful in the absence of a Special Permit. By facilitating the removal of the remaining old-growth redwood without compliance with Ordinance No. 2112, the County materially increases its exposure to liability. The removal of a mature redwood in a Q-Zone setting presents well-documented risks, including root system disruption affecting adjacent trees, increased susceptibility to windthrow due to edge effects, and consequent damage to neighboring properties. These impacts may also result in measurable decreases in property values and adverse effects on local environmental character and tourism-dependent economic activity. Where such harms are foreseeable and the County has failed to enforce a mandatory regulatory scheme designed specifically to prevent them, liability under Government Code section 815.6 and related doctrines becomes a substantial risk.

In light of the foregoing, my clients respectfully urge the County to refrain from issuing any encroachment permit authorizing further tree removal unless and until full compliance with Ordinance No. 2112 has been achieved. This includes, at a minimum, requiring a Special Permit application, conducting the required environmental and feasibility review, providing notice to affected property owners, and making the findings required by the ordinance. Taking these steps will not only ensure compliance with the County's legal obligations but will also mitigate the risk of significant and avoidable harm to surrounding properties and the public.

J. Ford
May 4, 2026

Please consider this letter a formal request that the County immediately halt any further authorization of tree removal activities, including the impending encroachment permit, for the subject property pending full compliance with the Lower Redway Q-Zone ordinance. To avoid costly and unnecessary litigation, I would welcome the opportunity to discuss this matter further and to provide any additional information that may assist the County in ensuring that its actions are consistent with applicable law.

Sincerely,

Fredric Evenson

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