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## Tree rules OK in zone outside city limits

By [John Tedesco](#) - Express-News

For years, developers have tried to ignore San Antonio's tree preservation ordinance on the city's outskirts.

And for just as long, City Attorney Michael Bernard and other officials have insisted San Antonio has a right to protect trees in a 5-mile buffer zone outside city limits known as the extraterritorial jurisdiction, or ETJ.

On Wednesday, the 4th Court of Appeals weighed in on the debate and sided with the city. In [a legal opinion signed by Justice Sandee Bryan Marion](#), the court knocked down every argument raised by a developer, and stated San Antonio is entitled to enforce the tree rules in the ETJ.

“We believe the tree ordinance is more than simply an aesthetic regulation,” the opinion states. “Instead, the tree ordinance was intended to, and does, regulate tree preservation to promote the health of the municipality.”

Much was at stake in the debate. Some of the fastest-growing areas of San Antonio have been in the ETJ, where the city can enforce some, but not all, of its ordinances. The city's tree rules mandate that developers preserve some trees and pay mitigation costs for trees they bulldoze.

The city hasn't been able to stop all tree-clearing outside city limits. Some developers have sidestepped the tree ordinance by claiming their plans existed before the ordinance was adopted in 2003.

Thousands of trees also have been lost on huge tracts of land covered by agricultural exemptions.

Bernard called Wednesday's ruling an “extremely important” legal opinion that settles, for now, the question of how much control a city can wield over private landowners developing their property in a city's ETJ, but who don't want to pay mitigation costs when they bulldoze trees.

“It is what we've been waiting for,” Bernard said.

The opinion pertains to a lawsuit against the city filed by Milestone Potranco Development, Ltd. After-hours calls to a listed number for the limited partnership and a number for its lawyer, John McClish, weren't returned Wednesday.

Norm Dugas, a developer who isn't tied to the lawsuit, said Wednesday that the tree ordinance is expensive for developers, and they'll simply transfer the increased costs to homebuyers.

“It appears that homebuyers will continue to pay the cost of the city's tree preservation ordinance,” Dugas said. “That's who pays it, you know?”

Milestone sought to develop land off Potranco Road outside Loop 1604, Deputy City Attorney Norbert Hart said.

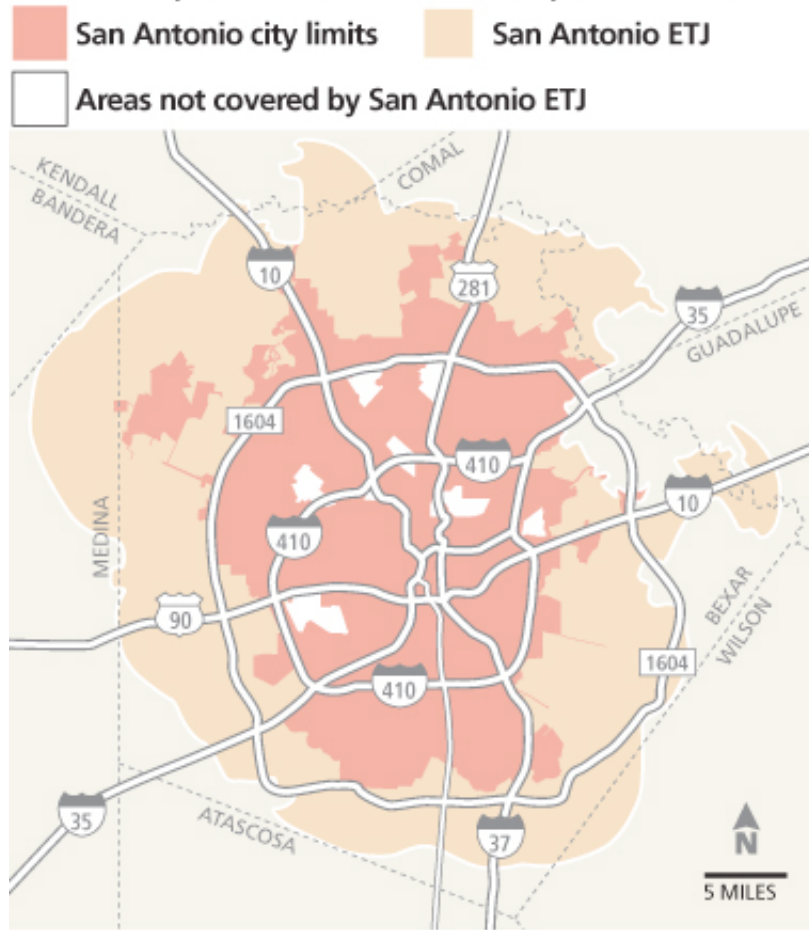
Milestone had argued in court that San Antonio's limited authority in the ETJ meant it couldn't enforce the tree ordinance.

The 4th Court of Appeals sided with the city and affirmed a ruling by the trial court judge, Janet Littlejohn.

Bernard said other trial court judges had sided with the city in the past, but this was the first appellate court case that grappled with the issue.

## Ordinance upheld

An appeals court Wednesday affirmed San Antonio's right to enforce its tree-preservation law to the extra-territorial jurisdiction beyond city limits. The jurisdiction covers most of Bexar County, and in some areas, into adjacent counties.



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