

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: November 24, 2009 Time: 10 a.m. Length: 1 hour

Presentation Title: Draft Trees Ordinance and Related Tree Programs

Department: Transportation and Development

Presenter: Jennifer Hughes, Senior Planner

POLICY QUESTION

How does the Board of County Commissioners want the Planning Division to proceed with implementing provisions to protect the County's urban tree canopy?

ISSUE & BACKGROUND

The Board of County Commissioners held a study session September 22, 2009, to discuss a draft tree ordinance and a parking lot list (attached) of tree-related issues produced by the Board-appointed Trees Task Force. During that session, the Board expressed support for initiating an amendment to the Zoning and Development Ordinance (ZDO) to adopt tree removal regulations, but also requested more information on policy questions and costs before forwarding the ordinance to the Planning Commission.

Initiating the amendment will begin the formal land use regulation adoption process, which typically includes notice, community outreach, work sessions and public hearings. Costs include staff time to process the amendment and legally-required notification to property owners (estimated at \$7,500). Once an amendment is adopted, implementation costs include staff time to process any resulting Measure 49 claims, and to administer and process tree removal permits. Some of this cost would be defrayed by permit fees.

QUESTIONS PRESENTED FOR CONSIDERATION

1. Should changes be made to the Trees Task Force draft ordinance prior to Planning Commission consideration?
2. What if any topics on the *Parking Lot Issues* list are a higher priority than others?

OPTIONS AVAILABLE

Question 1 – Changes to the Draft Ordinance: Several points raised at the last study session can be addressed by amending the draft ordinance.

- Commissioner Lehan questioned the **two-trees-per-two-years exemption** and suggested we might instead require an over-the-counter permit and mitigation for the two trees.

- Commissioner Bernard asked that the ordinance apply to **private individuals removing trees in the public right-of-way**. Currently the ordinance would apply to rights-of-way, with exemptions (e.g. trees that pose a threat to public safety, trees that must be removed to permit road maintenance).
 - In most cases, land underlying the road belongs to the abutting property owners and the County has not historically restricted tree removal in these areas.
 - The County's Engineering Division staff is concerned about the public safety implications of trees near roadways.
 - If public road construction projects are not exempt from the requirement to obtain tree removal permits, this represents an additional project cost and a timing issue. (For example, once the location of a new road has been identified, how reasonable would it be for the Planning Division to deny a tree removal permit?)
- Chair Peterson asked that **significant trees** be defined by more than the diameter of the trunk. The draft ordinance exempts from regulation trees with a diameter at breast height below eight inches, a short list of "nuisance" trees, dead trees, diseased trees, hazardous trees, orchard trees, Christmas trees and commercial nursery trees.
- The Oregon Department of Forestry (ODF) objects to the **moratorium option** in its current form, arguing that the law requires that either the County or ODF must have exclusive jurisdiction to implement the Forest Practices Act (FPA) on a piece of property. As written, the ordinance would allow some property owners to choose between harvesting trees under an ODF permit and applying for a County tree removal permit. In addition, ODF staff advises that the ordinance must include explicit provisions to apply the FPA (e.g. erosion control, treatment of slash, prescribed burning). The County has a number of alternatives to consider.
 - Eliminate the moratorium option, accept jurisdiction for those lands and make them subject to all of the proposed restrictions on tree cutting.
 - Exempt the lands proposed to be subject to the moratorium option from the tree ordinance, thereby leaving them under the state's jurisdiction with no change to the current regulatory framework.
 - Accept jurisdiction and modify the moratorium provision by providing for a harvest permit with implementation of the FPA by the County and a subsequent development moratorium.
 - Exempt these lands, offering no option to receive a tree removal permit outside the development review process (e.g. a subdivision proposal) and apply the moratorium if harvest under a state permit exceeds a certain level.

Question 2 – Parking Lot Issues List: The Board may direct staff to prepare a work program for any or all of the items on the Parking Lot Issues list (attached), or may opt not to proceed with additional consideration of those items at this time. Preparing work programs has limited budgetary implications, but proceeding with items on the list would have cost implications in terms of implementation and ongoing maintenance. At the last study session, Commissioner Austin asked that the items on the list be prioritized. The following brief discussion may assist with this.

Tree Preservation Incentives: Reduction of application fees or relaxation of development standards are incentive options. Considerations:

- Reducing fees has the corollary effect of increasing the general fund cost to administer the land use review process.
- Relaxation of other development standards (e.g. increased density, reduced setbacks) can engender neighborhood opposition.
- Staff understands that Water Environment Services is considering, as part of rewriting surface water management regulations, a tree preservation incentive.

Tree Canopy Management Plan: Implementing the other parking lot list suggestions would help achieve this goal. There likely are other elements that could also be included.

Enforcement of Ordinance/Penalties for Ordinance Violations: Enforcement concerns were expressed at the last study session and by Task Force members. Considerations:

- The ZDO does not address code enforcement in detail. A separate chapter of the County Code establishes the enforcement process.
- In an effort to direct limited resources to the most urgent issues, the County uses a priority system for enforcement of code violations and focuses on encouraging compliance rather than punishment. Tree removal violations could be designated as a Priority 1 violation, which carries a maximum civil penalty of \$3,500 per violation. Code enforcement staff also has the authority to issue a citation of as much as \$500 per day for each day a violation continues.
- The draft ordinance would require that a tree-cutting violation be remedied by twice the amount of mitigation planting or tree fund payment as would be required if the tree had been removed with a permit.

Performance Objectives and Monitoring: Metro has a program that includes periodic analysis of tree canopy. It may be redundant to implement a separate County program.

Heritage Trees: It was suggested that the current voluntary program be made regulatory. Applying regulations (beyond the scope of the draft ordinance) to existing Heritage Trees may cause concern because the tree owners assumed it was a voluntary program.

Landscaping Standards and Street Trees: An evaluation of these issues is underway as part of the ZDO sustainability project and will come before the Board at a later date.

Community Education and Outreach: Website design and Community Planning Organization (CPO) outreach can be accomplished with current staffing.

Possible Role for CPOs with Applications Related to Trees: In keeping with current practice with land use decisions, the applicable CPO, Hamlet or Village would routinely receive notice of application for tree removal permits that were land use decisions. CPOs, Hamlets and Villages may comment on such applications and have a right to appeal a staff decision to the Land Use Hearings Officer without cost. The Planning Division does not have the option of delegating its decision-making authority to others.

Establishment of an Urban Forestry Commission: The Planning Division has experience staffing volunteer bodies such as this, but it would result in additional costs. Staff would be concerned if this body is proposed to act as a land use decision-maker, rather than an advisory committee, due to legal requirements that control such decision-making.

Establishment of Tree Fund: The establishment of a tree fund is in the current draft ordinance. An applicant for a tree removal permit would have the option in some cases of paying into this fund in lieu of planting replacement trees. This fund would need to be administered in terms of which activities are funded and how these activities are conducted. Partnering with the North Clackamas Parks District or Water Environment Services to identify suitable sites for tree planting may be an option.

RECOMMENDATIONS

Question 1 – Changes in the Draft Ordinance:

Staff recommends the draft ordinance be amended to address ODF concerns as follows:

- Adopt the FPA by reference;
- Require applicants proposing a harvest regulated by the FPA to submit a report from a professional forester verifying that the proposal is compliant with the FPA;
- Regulate divisible single-family-zoned lands and future-urban-zoned lands under the full scope of the ordinance, except as noted in the next bullet point.
- Either exempt from the ordinance lands zoned rural and natural resource, as well as other lands with a farm- or forest-land assessment status, or apply a development moratorium if harvest exceeds a certain level while clarifying that obtaining a County tree removal permit is not possible outside of the development review process.

Question 2 – Parking Lot Issues List:

Staff recommends that two items on the Parking Lot Issues List be considered in conjunction with the draft ordinance -- establishment of a tree fund and changing the Heritage Tree program from voluntary to regulatory.

- The draft ordinance already includes establishment of a tree fund, so no further action is needed on that at this time.
- The Heritage Tree program is not addressed in the current draft ordinance and staff recommends that if the Board wants the program to become regulatory, we should address it as part of this proposed new ordinance.

Staff also recommends that further consideration of other items on the Parking Lot Issues List be put on hold until after the new ordinance is adopted and implemented, and the County has a chance to assess its effectiveness.

SCHEDULE FOR STUDY SESSION

Division Director/Head Approval _____
Department Director/Head Approval _____
County Administrator Approval _____

For information on this issue or copies of attachments, please contact Jennifer Hughes @ 503-742-4518