



August 19, 2010

Public invited to comment on revised draft tree ordinance for urban, unincorporated Clackamas County; County Commission set to deliberate and decide September 8

Background Information: In response to direction from the Clackamas County Board of Commissioners, County staff has produced a revised, shorter, more focused draft tree ordinance. The public is invited to submit written comments on the draft language until September 8, when the Commissioners are scheduled to meet to discuss and take action on the proposed ordinance. There are also proposed amendments to the County's Comprehensive Plan to support the regulations.

Clackamas County has been considering options for a tree ordinance for nearly two years. The review included the work of a citizen task force, and public hearings before the Planning Commission and the Board of Commissioners.

The proposed ordinance and Comprehensive Plan changes are available on the County website at <http://www.clackamas.us/transportation/planning/zdoproposed.jsp>, in the Land Use and Zoning Office on the second floor of the Development Services Building, 150 Beaver Creek Road, Oregon City, or by calling 503-742.4500.

To Submit Comments: Comments should be submitted *no later than 9 a.m., Wednesday, September 8*. They may be sent by email to zoninginfo@co.clackamas.or.us or by mail to *Land Use and Zoning, Development Services Building, 150 Beaver Creek Rd., Oregon City, OR 97045*. All input received by this time will be shared with the Board of County Commissioners.

The Board of Commissioners is scheduled to meet at 10 a.m., Wednesday, September 8, in the Clackamas County Public Services Building, 2051 Kaen Rd., Oregon City, for deliberation and decision only on the proposed ordinance. The September 8 meeting is a continuation of a public hearing that began June 8 and was continued to June 28. Public comments were taken on June 8 and 28. No public comments will be accepted at the September 8 meeting.

Overview of Proposed Draft Ordinance: The proposed new ordinance is drafted into existing Section 1002, *Protection of Natural Features*, in new Subsection 1002.04 and revisions to Subsection 1002.05. The development moratorium described below was part of earlier versions of the draft ordinance; other provisions that were in earlier versions are not included in this draft.

Proposed New Subsection 1002.04 -- *Development Restriction following Excessive Tree Removal* -- establishes a five-year development moratorium if excessive tree removal has occurred to act as a deterrent to clear-cutting in anticipation of development. Outside of wetland and riparian areas, this section would include the only regulations

applicable to pre-development tree cutting or to tree cutting associated with small-scale developments, such as a single-family home.

The proposed development restriction applies only inside the Portland Metropolitan Urban Growth Boundary (UGB) and exempts forest-deferred properties. This would allow most commercial foresters inside the UGB to continue to manage their land for timber production without imposition of the development moratorium.

With the proposed new language, for the five years prior to filing a development application, 15 non-exempt trees could be removed at the rate of a maximum of three per year, along with an unlimited number of exempt trees (listed in 1002.04(E)).

The application types (design review, a subdivision, a partition or a conditional use) included in the moratorium would encompass commercial, industrial or multifamily development; many institutional uses (such as churches and schools) and the creation of any new building lot.

There would be an exception to the moratorium for modifications to previously approved developments, including an increase of 25% in building floor area. However, the exception would not allow additional residential building lots.

Proposed Revisions to Section 1002.05 -- Most of Section 1002.05 – *Trees and Wooded Areas* -- is current code language that is already applied during review of land division and design review applications. The proposed new language clarifies that development will not be denied, or density reduced, due to the presence of trees.

Text from Proposed Draft Tree Ordinance

NOTE: All of Subsection 1002.04 is proposed new language. In Subsection 1002.05, only the underlined text is new. Only the portions of subsection 1002.05 with proposed new language are shown below. The entire text is available at <http://www.clackamas.us/transportation/planning/zdo.jsp>.

SUBSECTION 1002.04: DEVELOPMENT RESTRICTION FOLLOWING EXCESSIVE TREE REMOVAL *(entire subsection is proposed new text)*

Subsection 1002.04 applies to unincorporated land inside the Portland Metropolitan Urban Growth Boundary, except land specially assessed as forestland on *(effective date of ZDO-219)*.

- A. Definitions. Unless specifically defined in Subsection 1002.04(A), words or phrases used in Subsection 1002.04 shall be interpreted to have the same meaning as they have in common usage and to give Subsection 1002.04 its most reasonable application.
 1. Christmas Tree: A tree of a marketable species and evidencing periodic maintenance practices of shearing for Douglas fir, fir, and pine species, weed and brush control,

and one or more of the following practices: basal pruning, fertilizing, insect and disease control, and soil cultivation.

2. Diameter Breast Height (d.b.h.): A tree's diameter measured by diameter tape at four and one-half feet above grade on the uphill side. On multi-stem trees, the stem with the largest diameter shall be measured.
 3. Emergency: Any manmade or natural event or circumstance causing or threatening loss of life, or injury to person or property.
 4. Hazardous Tree: A tree that, by reason of disease, infestation, age, or other condition, presents a known or immediate hazard to people or property.
 5. Nuisance Tree: Any tree of the following species: tree of heaven (*Alnus altissima*), single seed hawthorn (*Crataegus monogyna*), English holly (*Ilex aquifolium*), plums (*Prunus* hybrids, which are not commercial nursery species), sweet cherry (*Prunus avium*), English laurel (*Prunus laurocerasus*), Portuguese laurel (*Prunus lusitanica*), black locust (*Robinia pseudoacacia*), and European mountain ash (*Sorbus aucuparia*).
 6. Orchard Tree: A tree maintained for the production of fruit or nuts for human consumption.
 7. Tree: Any woody plant with at least one well-defined stem.
 8. Tree Removal: The act of removing a tree by digging up or cutting down, or the effective removal through damage to a tree or its root system. Effective removal shall include any procedure the natural result of which is to cause the death or substantial destruction of a tree, including, but not limited to: topping and severe cutting back of limbs to such a degree as to destroy or adversely affect the normal growth pattern of the tree, girdling, and placing fill in excess of six inches deep over the root zone. . Tree removal does not include routine pruning or trimming.
- B. Excessive Tree Removal. Excessive tree removal is the removal of more than three trees—excluding those identified as exempt in Subsection 1002.04(E)—on a lot of record in a calendar year.
- C. Development Restriction. If excessive tree removal occurred in the five years immediately preceding the date that a complete application is filed for design review, a subdivision, a partition, or a conditional use, the application will be denied.
- D. Exception to Development Restriction. Notwithstanding Subsection 1002.04(C), a minor modification of a previous design review, subdivision, partition, or conditional use approval may be approved pursuant to Subsection 1305.01(L).
- E. Exempt Trees. Removal of the following exempt trees is not excessive tree removal, regardless of the number of such trees removed. However, removal of the listed trees may be regulated under other provisions of this Ordinance, such as Section 705 (Willamette River Greenway), Section 706 (Habitat Conservation Area District), and Section 709 (Water Quality Resource Area District), or by conditions of approval on a previous land use decision.
1. Trees with a d.b.h. of less than six inches;

2. Trees required to be removed by local, state or federal law or regulation, or by a fire official;
3. Trees removed by a public utility company in order to maintain, repair or replace an existing utility line;
4. Trees removed by a public utility in order to construct a new utility line, unless the purpose of the new line is to serve future development of the subject property;
5. Orchard trees;
6. Christmas trees;
7. Trees planted on the site of a commercial nursery and grown for commercial purposes;
8. Nuisance trees;
9. Dead trees, where death resulted from an accident or non-human cause;
10. Diseased or hazardous trees, where the condition resulted from an accident or non-human cause; and
11. Trees, the removal of which is authorized by approval of an administrative action under this Ordinance.

SUBSECTION 1002.05: TREES AND WOODED AREAS (*new proposed text is underlined; all other is in existing code*)

- A. Existing wooded areas, significant clumps or groves of trees and vegetation, consisting of conifers, oaks and large deciduous trees, shall be incorporated in the development plan wherever feasible. The preservation of these natural features shall be balanced with the needs of the development, but shall not preclude development of the subject property, or require a reduction in the number of lots or dwelling units that would otherwise be permitted. Site planning and design techniques which address incorporation of trees and wooded areas in the development plan include, but are not limited to, the following:
 1. Siting of roadways and utility easements to avoid substantial disturbance of significant clumps or groves of trees;
 2. Preservation of existing trees within rights-of-way and easements when such trees are suitably located, healthy, and when approved grading allows;
 3. Use of flexible road standards as provided in Subsection 1007.03(A), including one-way roads or split-level roads, to preserve significant trees and avoid unnecessary disturbance of terrain;
 4. Retention of specimen trees or clumps of trees in parking area islands or future landscape areas of the site as provided for in Section 1009.
 5. Use of wooded areas of the site for recreation, or other low-intensity uses, or structures, not requiring extensive clearing of large trees, grading, or filling activity which substantially alters the stability or character of the wooded area;
 6. Retention of trees which are necessary to ensure the stability of clumps or groves of trees considering the type of trees, soil and terrain conditions, exposure to prevailing winds, and other site-specific considerations;
 7. Use of trees and wooded areas to buffer, screen, or provide transitions between different or conflicting uses on and off the site;
 8. Use of flexible-lot-size and planned unit development designs to minimize disturbance of wooded areas;

9. Siting of uses and structures to utilize the natural microclimates created by wooded areas and trees to reduce extremes in temperature, provide wind protection, filter pollutants, and replenish oxygen and moisture to the air; and
 10. Use of other development techniques described in Subsection 1011.03(C).
- B. Trees and wooded areas to be retained shall be protected during site preparation and construction according to County design and specifications by:
1. Avoiding disturbance of the roots by grading and filling activity;
 2. Providing for water and air filtration to the roots of trees which will be covered with impermeable surfaces;
 3. Pruning or topping of trees which will be in parking areas or near buildings, as necessary, to maintain proper balance between top growth and roots, reduce windfall potential, and provide adequate vision clearances for safe vehicular circulation; and
 4. Requiring, if necessary, the advisory expertise of a qualified consulting arborist or horticulturist both during and after site preparation, and a special maintenance/management program to provide protection of specified wooded areas or specimen trees, as recommended by the arborist or horticulturist.
-