

Clackamas County Trees Task Force

Meeting Summary

August 13, 2009

Development Services Building, Oregon City

Attendance

Task Force members: Catherine Blosser, Eileen Eakins, Bill Howe, John Landon, Bob Murch, Ernie Platt, Eric Shawn, Dick Shook, Ruth Toler, Jim Wick

Staff: Jennifer Hughes, Ellen Rogalin

Visitors: Pat Reinart

Welcome

Eileen welcomed task force members and visitors to the meeting. She reviewed the meeting agenda and the summary of the July task force meeting.

Public Comment

There was no public comment.

Tree Removal and Utilities

David Johnson from Portland General Electric talked about vegetation removal, tree-trimming and tree-cutting that PGE does in order to maintain electrical service and provide additional service.

PGE maintains the transmission system (usually 125-foot private easements) and the distribution system. The transmission system has much higher voltage. It's regulated by NERC and the local coordinating council. We have to provide clearances to make sure no trees grow into the lines. We are audited annually. The goal is to have sustainable, low vegetation. We need a 35-foot width for the lines and can have larger trees in the border zones, but might have to cut them down if they get too tall. Requiring mitigation for that can be punitive if it's not administered properly.

Distribution lines are 13,000 volts and below, and are usually on public right-of-way.

Oregon has the most stringent utility line vegetation clearance rules in the nation. PGE supports consistent pruning standards. There must be a five-foot clearance from the high voltage lines on top. We try to trim regularly and maintain the canopy. Our goals are public and employee safety, service reliability and damage prevention.

Pruning cycles are key to PGE's vegetation management program. We go through every 2-3 years. PGE foresters are responsible for the tree-cutting/pruning crews. It is a species specific program. We have certified arborists on staff.

We work with property owners when the wrong tree has been planted. We're better off having a full canopy of smaller trees than one tall tree that has to be topped. PGE is concerned about mitigation requirements when it costs more to maintain inappropriate trees than to remove a tree.

It's rare that we want to remove a tree in a private easement. We want to contribute to planting the right trees for the property. PGE contributes to the homeowner's cost. I suggest you consider a review process, like the City of Beaverton has.

We have no problem with the County requiring permits for utilities and for removing trees to put in new lines. PGE removes more trees from Clackamas County than everyone else combined. We don't top trees, but we do prune to suppress the crown of a tree without damaging the tree. We definitely don't want dead trees around power lines.

Bill -- Why are we having utilities get permits? We have state and federal regulations, we have responsible utilities, it's costing the county and utility and we're not likely to ever say no.

Jennifer -- We're not going to say no, but we may require mitigation.

Ernie -- I think we should re-vote on this.

David Johnson -- You could set up a blanket review process.

Catherine -- We want permits to keep track of tree removal. What is punitive mitigation? Is donating to a tree fund or planting a comparable tree elsewhere punitive?

David Johnson -- Yes, it is. A tree under a power line is a negative for the community and removing it is a positive. Therefore, mitigation would be punishing us for doing something positive for the community. Requiring us to replace a 32-inch tree with 64, two-inch trees is punitive; replacing it with two appropriate trees in the same area is less punitive.

Catherine -- If a private property owner puts a power line into their house, would you help them work to not have to remove trees?

David Johnson -- Yes. We also recommend the County have a recommended tree list for trees to plant in rights of way.

Eileen -- Let's take a quick vote on whether the tree ordinance should apply to utilities.

VOTE: Yes -- 5; No -- 4

Eileen -- This will apply to all utilities; we've only heard from one utility today.

Bill -- Add "regulation" to phrase "trees removed because of state or federal law or regulation".

Eric -- This relates to public education.

Bill -- I suggest adding, "but an electrical utility can remove the following trees. . ."

Jennifer -- Or we could exempt trees removed by a utility (with notification to the county) because they are interfering with overhead lines. The permitting is expensive. If it's in a utility easement or public right of way, if we received notification from the utility we could reply with information on how to mitigate.

Bob -- I think it's ok to exempt above-ground utilities. We know PGE does a good job.

Eileen -- We need to fairly apply the ordinance to all utilities. If trees need to be removed to install a sewer line, for example, that's comparable to PGE removing trees to install above-ground power lines.

VOTE

- **Exempt cutting trees to maintain existing overhead lines? Yes -- 10. No -- 0.**
- **Exempt cutting trees to maintain existing facilities for all utilities? Yes -- 6. No -- 4**
- **Exempt cutting trees to build new roads? Yes -- 0. No -- 10**
- **Exempt cutting trees to maintain current roadways? Yes -- 10. No -- 0**
- **Should there be a mitigation requirement for utilities? Yes -- 5. No -- 5. (depends on mitigation requirement)**
- **Require some kind of evidence/some level of proof even from utilities that are exempt? Yes -- 8. No -- 2.**

Tree Removal Permit Required

Jennifer -- I added language about violations after talking about it with our code enforcement staff. The County has a code enforcement system (which I'll share with task force members) and I recommend not changing that for this ordinance. There are priority levels of violations, and tree removal would probably be Level 1. The range of fines is \$500-3,500. I recommend a fine per tree. Fines are not imposed automatically -- we consider related factors. The County can also assess administrative costs, County staff can cite people and the citation can always be challenged in an administrative hearing with a hearing officer.

We're concerned about the remedy. There are two situations:

1. Tree was removed before the person applied for a permit but the removal qualifies for a permit and
2. Tree was removed without a permit in a case where a permit would not have been approved.

What should the penalty be? A punitive response would be a requirement for a greater than one-to-one tree replacement or DBH replacement or paying into a tree fund, or we could just impose fines. If we just require normal mitigation, there is no incentive to get a permit. People need to feel that there should be a permit and there is a cost to not getting the permit. At some point people have to correct the violation. Do we want to require a higher level of planting for folks who don't play by the rules?

Bob – Mitigation should be punitive and should be more than one to one replacement. Fines need to be big enough to be a deterrent. In some ordinances, fines are based on the value of the tree that is cut down, e.g., cut down a \$10,000 tree – pay a \$10,000 fine. Tree-cutting fines should be separate from other code violations. The tree ordinance should be self-sufficient with no need to refer to other parts of the code. Look at the Portland ordinance, with a simple statement that you must comply or you will be fined.

Eileen – What magnitude of penalty do we want to set?

Bob – Value of tree or fine

Eric – I support having a way to penalize people as a deterrent, but how do we determine a penalty large enough to be more than the cost of doing business? Some commissioners will raise this point. This may require some focused review and attention to assess the data.

Bill – We should distinguish between intentional violation and all others. Eric makes a good point – what would prevent people from clear-cutting?

Eileen – We would have to prove intent, and that can be difficult.

Bob – I start from the premise that most people will try to do the right thing. We should focus more on incentives and education than punishment.

Eileen – The degree of violation makes a difference – that's easier to determine than intent.

John – We need a different mitigation schedule for violators, such as double the DBH lost.

Dick – If a violator is forced to plant more trees, will they maintain the trees? I prefer a fine.

Catherine – Ignorance of the law is no excuse. We need to fine violators based on DBH.

Ruth – It sounds like we're developing a new layer of government at taxpayers' expense. I'm here representing private property rights and I object to most of this.

Eileen – Our objective is to maintain the tree canopy, so that means replacement of cut trees is important. There seems to be general agreement among task force members that there should be fines and mitigation. The monetary penalty would be a maximum of \$3,500 per tree (as in the current code) plus administrative costs plus a \$500 citation and mitigation costs.

Jennifer – It wouldn't be practical for us to put fines in the ordinance. It takes a six-month process to amend a land use ordinance and we don't want to have to go through that every time we change fines. The violation section in our code is 8-10 pages long and it doesn't make sense to add that to every section of the code. Our code enforcement process is very flexible. We don't always take things to hearing – in fact, we prefer not to because it is more expensive and time-consuming for the county. There are more than 600 open cases right now. We need to keep fines in the current format, but the task force could recommend that the maximum fine be applied.

Eric – The current maximum fines may be less than the cost of doing business for some people. We need to evaluate that.

Jennifer – Consider the impact on the developer contrasted with the impact on an individual. The same cost applies to both.
Eileen – We’re not going to be able to raise fines so high that we prevent cutting, but we can require mitigation, which meets our goal of preserving the canopy.
Bob – The moratorium factor is a huge disincentive for someone who wants to develop the property.

Eileen – So do we agree that there should be a monetary penalty and we should use the existing county penalty structure? (All – yes.) Do we recommend tree-cutting be a Level 1 violation? Yes – 6; no – 4.

Dick – I figure that, based on a value of \$200/board foot, that a 40-inch DBH tree that is 30 feet high would be worth about \$6,800.
Ernie – The labor costs more.
Jim – The value of a tree isn’t the same as the value of finished lumber. The net value to the landowner today is about \$200 for a 1,000-board-foot tree.
Catherine – Portland also considers loss to water quality and CO₂ in the atmosphere.

Bill – I propose giving the hearings officer discretion to increase mitigation up to double. We need to give the trained staff some discretion.
Catherine – Most successful ordinances have the option of donating to a tree fund.
Bill – I agree. There should a higher obligation for a deliberate violator. It could be, for example, 1.5 or 2 times the normal requirement.
Jennifer – It’s hard for the staff to exercise discretion in this case. We would prefer issues not go to a hearings officer. We need to be specific. What does twice as much mean?

Ernie – Strictly going by DBH leads to unintended consequences. Someone may not have the space to plant enough replacement trees. Not every tree with the same DBH provides the same amount of canopy. I prefer a tree by tree replacement or within a certain range.
John – I favor up to two times the mitigation schedule.
Jennifer – It should be double, not “up to.” If there is no room to plant more trees, then they can pay into a fund.

VOTE
Violator pays a fine and double the mitigation requirement? Yes – 7, no – 3.

Tree Removal Permit Approval Criteria

Jennifer noted there are several issues related to this topic. First, why use both “reasonable” and “practicable?”
Eric – “Feasible and reasonable” is simpler language than “practicable.”
Eileen – I like “practicable.”
Bill – We left reasonable in. “Practicable” and “reasonable” have legal standards.
Ernie – I agree with Eric, but we did go into some effort to create a definition of practicable. I’d leave it in.

VOTE: Agree with leaving “practicable” in the ordinance and deleting “reasonable”? **Yes – 9; Abstain – 1.**

Jennifer – The next topic is landscaping. Should there be a limit on tree removal for landscaping? Is everyone ok that we’re not limiting that? Of course, mitigation would still be required.
Bob – It’s too broad. Landscaping should be excluded; driveways, etc. are ok.
Jennifer – There could be a compromise, e.g., landscaping within 20 feet of the house.

Ernie – Keep in mind where this matters – people can already take down two trees every two years.

Bob – Landscaping should take into account current vegetation.

John – It could be a problem. The owner of a two-acre property could clear-cut and call it landscaping. It also doesn't seem right that people couldn't get a permit for landscaping.

Bill – I support landscaping within a certain distance of the house. Improvements should not include adding a driveway, a deck, etc. Limit improvements to just landscaping within a certain number of feet of the house, unless there are extraordinary circumstances.

Jennifer – Compromise is good. We do want people to be able to get a permit for structures and other improvements.

Eileen – Everyone agrees there should be some exemption for landscaping.

John – Within 50 feet of a structure.

Catherine – We need to define “other improvement” – driveway, utility, etc.

Jennifer – I'll look at that.

Bill – I don't think we need to define improvement. There's a danger of leaving out something.

Jennifer – The word “structure” is extremely broad. I suggest leaving “improvement” and narrow landscaping.

Bob – Including landscaping with X number of feet.

Eileen – 50 feet? Yes – 9.

Jennifer – Section A is building something. Section B is interfering with something that's already there. In B, we'll change “feasible” to “practicable.”

Catherine – What does “too close to” mean?

Jennifer – Do we need some discretion?

Catherine – We could put 15 feet as a minimum distance to qualify.

Jennifer – Some utility language will change because of the discussion earlier today.

General agreement – do not put in a specific number.

Jennifer – Do we need to define “other trees” when we talk about being able to cut trees that are interfering with the healthy growth of other trees? (This came from Wilsonville's ordinance.)

Eric – What if the other tree is an invasive tree?

Catherine – Could we require an arborist's report?

Bill – We're not saying that we'll approve a permit in all cases.

Eileen – I think we are leaving it up to the homeowner to choose the tree they prefer.

Bill – Don't need to get a permit to save a nuisance tree, but must be evidence (though not necessarily an arborist's report). General agreement.

Catherine – Add “except in the case of a flexible lot variance” to the end of A2.

Jennifer – There are flexible lot size developments, but that doesn't change the density. We also have the ability to do lot size variances, but must have 90% of what is needed already. This can increase density. We could write something about lot size variance.

Bill – This will come up extremely rarely; perhaps we need draft language.

Jennifer – I'll work on language related to lot size variance and an explanation of what it means.

Jennifer – I don't know enough to draft technical language related to solar issues. The main question is level of proof. The burden of proof should be on the applicant with some evidence requirement.

Bill – I've installed two solar systems. For any system other than passive solar, the installer will have documentation.

Eileen – At our last meeting, the group was comfortable with allowing people to remove trees to maintain a view but not to create a view. Do we need evidence of impact on the property value? What about private view easements?

Jennifer – We don't want to trump pre-existing easements. We just need proof and mitigation. Do we want to define "view?" What proof is needed?

John – Maintaining an existing view usually only requires removing trees under 8 inches DBH or pruning. You wouldn't usually have to remove larger trees.

Bill – It will only come up rarely, but it's important in my neighborhood. It's easy to get past the two-tree allowance with solar, view, septic, etc. Wrecking the canopy to maintain a view has not been an issue. Need to be careful about requiring mitigation on cutting trees for view easements. It's a miniscule subset, but I would exempt those property owners from mitigation. Usually the person who has to cut the tree doesn't want to and wouldn't have any place to plant new trees anyway.

Catherine – I have concerns about property that's worth more with more of a view. We need to have slope and soil checks to make sure no damage is done, but could allow the trees to be removed.

Jennifer – We have code that deals with soils and slopes. Do we want to allow someone to create a view on a lot that's not yet developed, or create a view from an existing dwelling or submit house plans?

Ernie – As long as building the house is allowable, that would be ok. Otherwise, tree-cutting would be part of the partition application.

Eileen – So the land must be part of a development or building permit?

Jennifer – Are we now saying that we will allow cutting to create a view? If so, there are questions to answer: a view of what? From where?

Next Steps

The next (and probably last) meeting of the task force will be held from 8 a.m. – noon, Thursday, August 27.

The meeting was adjourned at 11:10 a.m.