

Clackamas County Trees Task Force

Meeting Summary, July 23, 2009 Development Services Building, Oregon City

DRAFT 7/30/09

Attendance

Task Force members: Catherine Blosser, Bryon Boyce, Eileen Eakins, Randy Duncan (for Bill Howe), John Landon, Bob Murch, Trish Nixon, Ernie Platt, Eric Shawn, Dick Shook, Jim Wick

Staff: Jennifer Hughes, Ellen Rogalin

Visitors: Lynn Fisher, Pat Russell

Welcome

Eileen welcomed task force members and visitors to the meeting.

Public Comment

Lynn Fisher encouraged the task force to keep working and finish the process.

Meeting Summary and Agenda Review

Eileen asked for approval of the July 9, 2009 meeting summary. Eric requested, and the group agreed, to add the word “separate” to Bill Howe’s comment on page 3: *We shouldn’t require a separate permit for activity that will be permitted.* The summary was approved.

Eileen reviewed the meeting agenda.

Exempt Trees Subsection

Jennifer –I made changes requested by the task force in this subsection – added the fire department and orchard trees; removed “commercial” from Christmas trees. I also added language modifying the reference to “dead trees” (“where death resulted from an accident or non-human cause”) and diseased or hazardous trees to paragraphs H and I. This language clarifies that the property owner can’t deliberately cause the death or damage and then remove the tree.

Related to those items, I added the following to the definitions subsection:

- Definition of Christmas trees from state land use law
- Definition of Orchard Tree

Does the group want to change either of those definitions?

Eileen – In C in the exempt trees section, change fire “district” to fire “official.”

Ernie – In the definition of Christmas tree, strike paragraph (a); otherwise it’s ok.

Bob – I’m ok with the Christmas tree definition.

Jim – Some parts of the definition, like the section about “U.S. No. 2 or better standards,” are archaic. I would strike (c), the words “stump culture” and “irrigation” from (d), and the word “Cultured” from the title of the definition.

The task force supported Jim’s suggestions, and expressed support for the definition of “orchard trees” as written.

Bryon – In terms of the definition of a tree, “any wooded plant” includes shrubs.

John – The City of Portland defines a tree as any woody plant with a least one well-defined stem of 12 inches or more.

The task force agreed to the following definition of a tree: “Any woody plant with at least one well-defined stem of at least eight inches DBH (diameter at breast height) or any tree planted as a mitigation requirement of this ordinance.”

Utility and Right-of-Way Easements

Jennifer reviewed some options and thanked Catherine for sending examples.

Bob – Utilities have easements with rights. It should also be their responsibility. I like Vancouver’s language, with mitigation. This helps us track tree removal and mitigation.
Eric – I favor requiring permits and mitigation because the task force charge is to maintain and enhance tree canopy. Pruning isn’t an issue. Removing trees under 8” DBH is no problem.
Eileen – If we require a permit, mitigation is part of that.
Jennifer – If we’re going to require a permit, then we don’t need to change current language.
Bryon – Usually utilities just prune trees; they try to avoid removing trees wherever possible.
Dick – I’m concerned about issues with new utilities, like liquid natural gas (LNG) or a wind farm, because they usually clear-cut underneath.
Ernie – We’re only dealing inside the UGB – will that kind of clear-cutting ever happen?
Bryon – It probably will, at some point.
Eileen – Should be an option of mitigation or paying into a tree fund.
Eric – The advantage of a permit is to keep the responsibility with the actor.

Jim – If I have a lot of trees and I take out two trees and the utility company comes along and takes out another tree on my property, then I’m in violation of the ordinance. I don’t like that what the utility company does causes trouble for me.

Jennifer – That could be the way it would be. If the utility company removed two trees, the property owner wouldn’t be able to remove any trees (8” DBH or more) for another two years. But this is probably very uncommon.

Bob – The legal definition of “easement” is an issue. I think of an easement as not being my property and act accordingly. It seems unfair that the property owner would be responsible for what happens on the easement.

Ernie – But, based on the legal definition, the property owner is responsible for their easement.

Jennifer – You could add language to the ordinance about the utility removing trees separate from the property owner. Property owners can landscape on easements; they just aren’t allowed to build on easements.

Jim – If a utility company takes out trees on an easement, it shouldn’t count against the property owner. The utility would have to get a permit regardless – with no two-tree minimum -- and mitigate.

Bob – I’d like a statement that utilities and comparable agencies are covered by the ordinance.

Ernie – We need language for trees removed by a utility on an easement on private property not counting against the landowner – get a permit, no minimum, mitigation.

Bryon – You need a permit for mitigation. New power lines often involve large clear-cuts, so a two-tree minimum wouldn’t make sense.

Jennifer – We’ve already said we can live with two trees every two years. The concern is to not unfairly burden property owners. To avoid that, we’ve have to require a permit from the utilities.

Ernie – You can remove two trees without a permit. If I apply to remove five trees and get approval, there’s still no problem. Utility companies should apply for a permit regardless.

Eileen – It sounds like the group is saying that we should require utility companies to get a permit for any tree removal (8” DBH and above, not diseased, etc.). The task force agreed.

Tree Removal Permits Section

Jennifer reviewed proposed definitions for “Topping” and for “Tree Removal” in the Definitions Section, and asked for task force comments.

Eric – I support the tree removal definition. I also agree with the tree-topping definition, but think it may be done occasionally by utilities.

Jennifer – We could exempt utilities that need to top trees.

Bryon – The two definitions of topping in these sections contradict one another – we need to resolve that conflict.

Catherine – I’m concerned about trees damaged during construction.

Ernie – Let’s deal with that in the preservation section.

John – I’m okay with the definitions. We should exclude utilities – they shouldn’t need a permit every time.

Jim – I agree.

Randy – I’m concerned about an expert’s definition of topping. Can an arborist reasonably let a homeowner know that they won’t be in trouble with the county for topping a tree?

John – A homeowner should get in trouble if they want to top a tree – we should prohibit topping because it harms trees. There are national guidelines for tree pruning, and they also prohibit topping.

Randy – Are the standards easy to apply?

John – Fairly easy.

Bob – Topping just applies to evergreens.

Bryon – Deciduous trees are sometimes topped, also.

John – Some people ask to have their trees topped. It opens a tree to rot and decay, promotes growth of weak branches and causes other problems.

Ernie – I’m okay with the definitions as they are.

Eric – If we have topping in the definition of “tree removal,” do we need a separate definition?

Jennifer – No, we don’t. We could include a reference to tree trimming standards, but that might place an unfair burden on homeowners.

John – I agree. It’s an industry standard that wouldn’t make a lot of sense to individual property owners.

Eileen – It sounds like the group favors eliminating the separate definition of “topping” and accepting the definition of “tree removal” as written. Task force members agreed.

Jennifer reviewed the expanded introductory language in the section on Tree Removal Permits.

She suggested replacing “development” in paragraph B with “building or grading.”

Catherine – Under 1305.02, single-family residence permits don’t come to CPOs.

Jennifer – 1305.02 means CPOs would get tree removal permit applications in the future.

Bob – I want the ordinance to be a clear, understandable document for the public. I suggest the title of this section be “Tree Removal Permits and Approval Criteria.” In paragraph A, add “Removal of trees without a permit may result in fines, mitigation or other consequences as provided in this ordinance.”

Randy – I strongly agree and this is a laudable goal – we want the average person to understand the ordinance and comply.

Eileen – Is everyone okay with the proposed title change? The task force agreed.

Jennifer – In terms of adding a phrase related to violations – we don’t usually do that in the code. If we do it in one place, it’s odd to leave it out of other places. I’ll come up with some language that says that removal of trees without a permit may result in consequences.

John – Will you review the process for how neighbors are notified about a permit application?

Jennifer – Inside the UGB, application notification goes to property owners within 300 feet (as the crow flies) of the property. There is a 15-day comment period. Then the decision is sent to the same people and there is a 12-day appeal period. There is a \$250 appeal fee, but that is refunded if the appeal is successful.

John – Do we really want to put this whole process in motion for one tree?

Jennifer – We don’t have much choice. Because the approval criteria we’ve drafted are subjective, we’re required to provide notice and an opportunity to appeal.

John – Cities must have exemptions. Many send out their arborist who approves or disapproves the tree removal.

Jennifer – That’s a different situation if the city permits removal with a finding by the arborist. If the criteria are not discretionary, we could approve “over the counter.” The criteria that we’ve drafted are discretionary and require us to evaluate different location and design alternatives to save the tree.

John – That’s lots of expense for the county.

Bob – John has a good point. CPO notices should be related to development, not just removing a tree. Development to me is partitioning the property.

Jennifer – That’s covered to some degree by current regulations. The loophole is everything not under paragraph C (design review, subdivisions, partitions and conditional uses), and that’s what the task force is trying to prevent. That requires a permit process. We could just require mitigation. If we decided to do that, we’d have to backtrack quite a bit on the ordinance language we’ve already drafted. Allowing tree removal in all cases with mitigation could be administered “over the counter” and would not require the more extensive process of 1305.02.

Bob – I have suggestions for changes in the ZDO outside of this ordinance that could resolve this problem.

Eileen – That’s not something we’re dealing with at this point.

Catherine – We’re closing the loophole for a good reason – to protect the canopy.

Eileen – The group agreed to paragraphs A, B, C and D with the changes noted above.

Jennifer said she reworked paragraph E based on the discussion at the last task force meeting. She added a reference to land division. She suggested the group might want to add something about utilities in the last sentence and move “tree too close to an existing structure” to subparagraph 2. She provided the definition of “ecological functions” (used as part of the definition of “practicable”), but noted that it’s quite technical.

Eric – Can we deal with these one at a time?

Ernie – They are interrelated. This is about creating a subdivision. The spirit of this can work, but there are some unintended consequences. “Design alternative” in whose opinion? Where does this end – it’s a slippery slope. “Ecological evaluation” is totally unacceptable as part of the definition of practicable. The emphasis is on saving native trees, but what about replanting trees more appropriate or suited for the development? We need a practical mechanism in which someone can develop the property.

Bob – Ernie makes some good points. Consideration of cost is a factor. I’m concerned about subsection a about alternatives to tree removal. There is no significant environmental statement there, but ecological functions are hard to document. I like subsection a, but I also want to emphasize the importance of other ecological issues.

Ernie – I suggest adding “planting plan” to subsection a.

Jennifer – Subsection b addresses Ernie’s concern about loss of density. The definition of practicable, with ecological functions, will still apply to riparian areas. We need to focus on the upland portion of the definition. We need to be careful not to make this sound like a wildlife protection ordinance due to Goal 5 requirements that would then apply. Remember, also, that the “practicable” definition will apply to anyone applying to remove a third tree.

Catherine – Clackamas County joined with Metro in the Integrating Habitats program. There are some design precedents to save urban tree canopy. Area cities with tree regulations have not had a reduction in development permits, so it’s not fair to say that this would hurt developers. The tree ordinance raises the awareness of the need to develop in a way to protect canopy. I would keep the current definition of “practicable.” Developers want to sell lots, and if lots are more attractive, they will sell better. We still haven’t developed a body of understanding about the value of trees. It takes eight trees to compensate for the carbon dioxide put out by just one person.

Trish – In subsection a, add “appropriate to the development” to the end of the last sentence.

Eric – I voted to keep “ecological function” in the definition of practicable – isn’t it from Metro?

Jennifer – Yes, it's related to wildlife habitat.

Eric – We still need to have this ordinance go through the lens of the BCC goal on sustainability. Should this term go into the parking lot issues list for later work by another group? It might need additional technical review.

Jim – I'm concerned about "diversity of species" language. I don't think native species have a place in a subdivision because they're too big. "Diversity" is a nice word, but it will come anyway – no one plants all one tree in urban areas. Native trees are good in parks and forest areas, but not urban areas.

Jennifer – On a practical level, how will Planning staff determine if the "ecological functions" criteria are met? What would an applicant have to show the county to make their case? Often the developer is an individual homeowner.

Eileen – Could we make this a more quantifiable standard, e.g., number of trees to be removed, number of trees replanted for mitigation, etc.?

Jennifer – This is a philosophical decision. Is the ordinance primarily designed to protect current trees or to ensure mitigation? With mitigation, we don't need a notification process – but that's very different than where we've been going. Right now we are favoring the preservation of existing trees.

Bob – Wilsonville gets around that by describing the type of property involved, discriminating between single-family residential and commercial.

Ernie – Jennifer's made some excellent points. I'm not suggesting we change course, but we should focus more on enhancing the canopy by planting trees than on saving existing trees. I would remove "ecological function" from the definition of practicable, keep what we have in subsection a. Jim makes a good point about native trees. The issue is not profit for the developer, it's the property owner's right to do what he wants on his own property and maintain the value of the property. If less can be done with the property, then the property loses value and that's a loss to the property owner.

Eileen – Require maintaining existing trees or over-compensate through mitigation.

Ernie – Have a mitigation requirement and the landowner can choose between saving trees or planting new ones. I would have a tree-planting requirement for all developers that can be reduced by maintaining current trees.

Jennifer – Wilsonville has four types of permits. The easiest level is up to three trees per year. We've already exempted most single-family property owners, which Wilsonville didn't do. We also talked about exempting every lot with a house and decided not to include divisible lots in that exemption. The outcry the County receives is when stands of old trees have been removed in anticipation of development. Is mitigation (adding landscaping) good enough? That's typically what happens now when a subdivision is developed and trees are planted on the individual lots as landscaping.

Catherine – When we met with the Board, they made it clear we're to preserve, enhance and maintain the tree canopy; not just prevent clear-cutting. The movement across the country is to preserve what's left of native forests.

Eric – I support Catherine's comments. We need to focus on satisfying the board's charge to preserve, maintain and enhance tree canopy while allowing development to occur.

Bob – Wilsonville doesn't have anything like an ecological functions definition. Commercial permits require more, but there are no further requirements related to ecological function. If we want to mimic Wilsonville's ordinance, we need to just take out the "ecological function" language. If you preserve trees correctly, you will preserve ecological functions without having to lay out the specifics.

Eileen – Is everyone agreed that we should move "a tree located too close to existing or proposed buildings or structures" from E.1. to E.2? The group agreed.

Eileen – Based on the discussion, we will remove the reference to "ecological functions" from the definition of "practicable" and add "appropriate to the development" at the end of E.1.a.

Ernie – I suggest striking the word “native” and including consideration of tree to be planted.
Bob – Everywhere people emphasize “native” trees – we’re bucking the trend.
Catherine – I talked with an arborist involved with tree ordinances in some area cities and he said they don’t have problems with native trees because arborists evaluate the appropriateness of the plantings. We need more information on whether all conifers present a danger. I would keep “native.”
Eric – I also think we should keep “native.” We want to encourage the planting of native trees, but we’re not preventing planting other kinds of trees.
Jim – I object to emphasizing native trees. Native trees from our area are huge, and when they come down they are dangerous. If we emphasize maintaining native trees, that makes things worse because the big trees are dangerous. I’m not saying people shouldn’t plant native trees, but I don’t think we should emphasize the planting of native trees.
John – I would keep “native” trees. A lot of the existing canopy is made up of native trees. A large white oak is worth far more than a bunch of 2-inch trees.
Bryon – Big firs have fallen, but some developments can also keep smaller, younger firs. You need expert opinions on a case-by-case basis.
Eileen – Should we remove the word “native”? Yes – 2; No – 9. Eileen – “native” will remain in the ordinance.

Ernie – I suggest we add “and trees proposed to be planted as part of the development.”
Jennifer – Everyone will have to mitigate. The question is whether we want to allow an owner to choose an alternative that protects fewer existing trees and plant more new trees instead?
Eric – We should deal with this in the mitigation section.
Trish – I agree.
Eileen – We’ll bring this up again in the mitigation section.

Summary of actions regarding this section:

- Move “ecological function” to parking lot issues list
- End the definition of “practicable” with the word “purpose.”
- Add “appropriate to the proposed construction” to the end of 1.a.

Eileen – Do we want to leave in language that protects solar access? The group said yes.

Jennifer reviewed #3 on solar access, as submitted by Bill Howe.

Eric – I agree solar access needs to be in the ordinance, but this is an area beyond our technical expertise to craft. It involves the angle of the sun at different times of the year, etc. Very specific site assessment information is needed – shadow casting, impact on neighbors, etc. It must be clearly described so it doesn’t become a loophole.

Eileen – Should we put the burden on the applicant to bring information from a solar expert?

Eric – I don’t know.

Trish – Yes, that’s a good idea.

Eileen – If there are people qualified to make that call, we should let them make it.

Trish – I agree – we need to make sure the opinion is from a solar expert. There’s already something in the ZDO that refers to solar.

Jennifer – The current language is vague and complicated.

Ernie – What is reasonably necessary?

Trish – There are solar consultants.

Jennifer – You could specify licensed architects, engineers and other qualified experts.

Eric – Look at the solar code for Claremont, California – it refers to possible legal restrictions on neighbors when a solar installation goes in. It shows the factors that can be involved.

Catherine – You might also want to contact John Kaufman with the Oregon Department of Energy – he may have draft language.

Jennifer – I’ll investigate and bring draft language to the next meeting.

Randy – It’s better to be inclusive – it should be a solar installation for any purpose.

Eileen – Does the group agree? Yes.

Eileen reviewed proposed subsection E.4. on view protection.

Eric – Are we talking about an existing view or creating a new view? I favor requiring mitigation for creation of a new view. We already allow pruning and removal of two trees every two years – that will be enough in many cases. Whose view are we talking about? What if someone wants their neighbor's trees to come down to protect their own view?

Jennifer – There are view easements in some cases.

Randy – This is a big issue in Skylands. I agree with the need to address existing or new view.

Jennifer – We also need to address the phrase “is not limited to.”

Bob – It's pretty subjective. Trees add value to property, but removal for a view can also add value to the property or to a neighbor's property.

Eileen – How many people favor leaving in an exemption for view? 3

How many people favor excluding an exemption for view? 7

Section E.4. is deleted.

Jennifer – The county ordinance would probably trump any private view easement agreements. We could craft language to protect those.

Trish – People can cut trees when they're small and they can trim trees.

Randy – We need an exemption for lawful private contractual agreements for view easements.

Jennifer – I'll draft language that protects existing view easements.

Eric – Should we also require mitigation?

Jennifer – Then we need language about protecting views.

Randy – New easement for view should be allowed with mitigation.

Jennifer – Do you want people to be able to remove trees to maintain or create a view?

Eric – Preservation and creation are two different items.

Jennifer – View easements do exist, but not very many.

Vote

Exempt tree-cutting to create a new view? Yes – 2; No – 8

Exempt tree-cutting to preserve an existing view? Yes – 7

Jennifer – Need to consider what the view is – from what and of what? What is a view? Eileen – We'll take up this discussion at the next meeting.

Public Comment

Pat Russell – Most of our CPO is R-10 properties, low-density properties. There are lots of mature Douglas firs in the area. The whole area is in the Kellogg-Mt. Scott watershed, which the county is supposed to restore for salmon recovery.

Next Steps

Jennifer – At the next meeting we will finish today's agenda. At the last meeting, on August 27, we need to stay away from word-smithing and focus on major issues and the parking lot issues list.

Next Meeting

Next meeting: 8-11 a.m., Thursday, August 13.

The group also agreed to add a meeting: 8-11 a.m., Thursday, August 27.

The meeting was adjourned at 11 a.m.