

From: Hughes, Jennifer
Sent: Tuesday, January 27, 2009 8:51 AM
To: Rogalin, Ellen
Cc: McClain, Doug
Subject: FW: Tree Ordinance
For inclusion in the next Trees Task Force packet . . .

Jennifer Hughes
Senior Planner
Clackamas County Planning Division

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From: KNOTTS Bradley A [mailto:Bradley.A.Knotts@state.or.us]
Sent: Wednesday, January 21, 2009 4:00 PM
To: Hughes, Jennifer
Cc: RIES Paul; CLINE Gregg L
Subject: RE: Tree Ordinance

Hello, Jennifer. I have embedded my answers in your original message below. I hope I got to the intent of each question. Please let me know if elaboration is needed.

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From: Hughes, Jennifer [mailto:jenniferh@co.clackamas.or.us]
Sent: Tuesday, January 20, 2009 12:14 PM
To: KNOTTS Bradley A
Subject: Tree Ordinance

Hi Brad,

I have a couple of follow-up questions regarding the County's tree ordinance efforts.

1. If I understood your presentation correctly, it is possible for the County to take over the FPA for only part of the area within the UGB. However, I'm not clear about how that distinction could be drawn. Can we choose to take it over geographically—for example, only for a particular neighborhood or only for particular areas of tree canopy? Or can we regulate properties with a particular attribute (e.g. only properties less than 5 acres, only properties not receiving forest tax deferral, only properties zoned a certain way)? My assumption here is that

the state would continue to take jurisdiction over the remaining properties.

Answer: It is possible for the County to take over forest practices jurisdiction for only a part of the area inside the UGB. The distinction needs to be drawn on some sort of geographic basis. This could be for any area the county would want to identify, based on characteristics such as proximity to identified resources (e.g., within 100 feet of streams), a designated neighborhood or tree stand, or a zoning or taxation type. ODF would continue to administer the FPA in the remaining areas. One critical point is that this can lead to some confusion over who has the authority over a particular parcel. Practically speaking, the simplest arrangement is for either the county or ODF to have the full jurisdiction inside the UGB. Having said that, ODF encourages local governments to consider adopting their own forest practice regulations, and the "regulation by area" set up described above is allowable. If things went that way, it would be important for the county to provide ODF with accurate, periodically updated maps of the areas subject to the county forest practice regulations.

2. Can we change the definition of a commercial harvest (assuming that the FPA has such a definition)?

Answer: The FPA has a definition of "operation" in OAR 629-600-0100(47), which is a restatement of ORS 527.620(12). It is helpful to also review the definition of "commercial" at OAR 629-600-0100(11). The concept of an activity being "commercial" is embedded in the "operation" definition. The county could revise these definitions for use in a county ordinance. ODF would still be obligated to use the standard FPA definitions on any area for which it retained jurisdiction.

3. Is there some general understanding/definition of what constitutes a small woodlot?

Answer: The Oregon Department of Revenue uses a forested parcel size of 2 acres as the minimum it will consider for taxation as forestland. ODF and many others consider that family forestlands, often called small woodlots or nonindustrial private forestlands, to be up to 5,000 acres as long as parcel is owned by a private party (individuals, group owners, associations, tribes, or even corporations as long as they are not traded publicly). We use those parameters to determine who is eligible for incentive programs. I'm not sure how helpful they will be for the County.

4. Can we exempt a lot zoned for a single-family dwelling and that is not capable of being divided under the current zoning from our forest practices regulations? One proposal on the table is to exempt such lots from the proposed tree cutting restrictions. My concern is that if we take over the FPA and restrict tree cutting on other properties, we're left with a gap in the regulations if someone wants to do a commercial harvest on one of the unregulated lots. I guess that gets us back to question number one—can we take over the FPA only for lots that are zoned commercial, industrial, multifamily or are single-family and capable of being divided? If the answer to that is "no," then I'm envisioning a situation where ordinance would not prohibit tree cutting on the "unregulated" lots but would need to address the criteria required to conform with the FPA.

Answer: I think the answer here goes back to my comment under item 1. One of the main intents of ORS 527.722 is that there would be some effective forest practice regulation on all

parcels where forest practices might occur. We wouldn't want to see any significant gaps, so wherever the County ordinance did not apply, the FPA probably still would. Again, while ODF encourages the County to adopt a local forest practice regulation to meet local conditions and values, we should be careful not to get too complex in designating which areas would be subject to which jurisdiction. If there is a geographically-based division, it should be one that can be clearly described and delineated for the County, ODF, landowners, operators, and the public.

Thanks for your help!

Jennifer

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