
Land Use Hearing Item

Staff Report to the Board of County Commissioners

File Number: ZDO-219

Board of County Commissioners Hearing Date: September 8, 2010, *for deliberation and decision only*

PROPOSAL

The proposal is a legislative text amendment to the Comprehensive Plan (Plan) and the Zoning and Development Ordinance (ZDO) to implement new tree removal regulations for urban, unincorporated Clackamas County. The draft amendments are a revision of those reviewed by the Board during public hearings held on June 8 and June 28, 2010. At the conclusion of public testimony on June 28, the Board directed staff to return with a narrowly-drawn and very specific ordinance that included the following components:

1. Clearly applies only to urban, unincorporated areas, (not cities and not rural), in Clackamas County—only those areas that are in the Portland Metropolitan urban growth boundary (UGB), but not within any city limits;
2. Limits excessive tree removal in anticipation of development and includes a five-year development moratorium;
3. Makes it clear that development will not be denied because there are trees; and that recognizes that some or all of the trees may ultimately be removed, but only after approval of the development application.

The current proposal includes these elements as revisions to ZDO Section 1002 (*Protection of Natural Features*), conforming amendments to ZDO Sections 301, 307, 308, 309, 310, 314, 401, 406, 407 and 1603, and revisions to Chapter 3 of the Plan.

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.

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.

Specifically, the draft ordinance would:

1. Apply to all land inside the UGB, except land specially assessed as forestland on the effective date of the amendment. This would allow most commercial foresters inside the UGB to continue to manage their land for timber production without imposition of the development moratorium.
2. Impose a five-year development restriction as a penalty for excessive tree removal, to act as a deterrent to clear-cutting in anticipation of development.

3. Define excessive tree removal as more than three non-exempt trees in a calendar year. 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.
4. Apply the five-year development restriction by prohibiting approval of an application for a land division, conditional use permit or design review. These application types would encompass commercial, industrial or multifamily development; many institutional uses (such as churches and schools); and the creation of any new building lot. However, minor modifications of existing approved developments would continue to be permissible, allowing up to a 25 percent increase in square footage, but no new building lots.
5. Exempt 11 types of trees from the definition of excessive tree removal, regardless of the number of such trees removed:
 - Trees with a diameter at breast height (d.b.h.) of less than six inches
 - Trees required to be removed by local, state or federal law or regulation, or by a fire official
 - Trees removed or required to be removed by a public utility in order to maintain, repair or replace an existing utility line
 - Trees removed or required to be 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
 - Orchard trees
 - Christmas trees
 - Commercial nursery trees
 - Nuisance trees
 - Dead trees
 - Diseased or hazardous trees
 - Trees authorized for removal by County approval of a land use application for a specific development plan
6. Clarify existing provisions for *Trees and Wooded Areas*—already applied during review of land division, conditional use and design review applications—that development will not be denied, or density reduced, due to the presence of trees.

PLANNING COMMISSION ACTION

The Planning Commission, after extensive discussion, voted 6 to 1 to recommend to the Board that the **previous** draft ordinance not be adopted. The Planning Commission has not reviewed the most recent revised draft.

CPO, HAMLET AND VILLAGE RECOMMENDATIONS

The **North Clackamas Citizens Association**, the **Oak Lodge Community Council**, the **Jennings Lodge CPO** and the **Rosewood CPO** provided testimony in opposition to the **previous** draft ordinance. As of the writing of this staff report, no CPO, Hamlet or Village responses have been received on the revised draft. However, the comment period remains open until 9 a.m., September 8.

SIGNIFICANT ISSUES

Lack of Consensus: Testimony during the Planning Commission and Board of County Commissioners public hearings on ZDO-219 was uniformly in opposition to the previous draft of the proposed ordinance, with some calling for no tree ordinance and others calling for a more restrictive or otherwise revised tree ordinance.

Balance between Complexity and Results: Common concerns expressed by public testimony and Planning Commission discussion were the complexity of the previous draft ordinance and the belief that it would create bureaucracy with little benefit for the urban tree canopy.

Need to Enhance Clackamas County's Urban Tree Canopy: Public testimony and Board discussion highlighted concerns about reduced tree canopy in the County's urban areas, particularly as a result of development. In addition to enacting new tree removal regulations, a need was identified for both regulatory and non-regulatory approaches to increased tree planting.

The revised draft amendments address the first two issues by:

- Narrowly focusing pre-development tree removal regulations on a disincentive to clear-cut in anticipation of development; and
- Administering the new regulations through existing processes (i.e. applications for land divisions, conditional use permits and design review), rather than new administrative mechanisms (i.e. tree removal permits).

The third issue was addressed by the Board during the June 28 public hearing, with direction to staff to pursue the following additional elements of an urban tree canopy program:

- Pool County resources in parks, roads and Water Environment Services to provide for tree planting with existing funds, as well as grant money. Consider establishing a goal of planting a specific number of trees.
- Increase education and outreach on tree preservation and planting, perhaps through partnerships with community organizations.
- Establish a small, technical advisory committee with expertise in development practices, landscaping and tree care to review our existing development code and suggest possible improvements (e.g. tree well size, tree protection during construction).

Department of Transportation and Development staff has begun conversations with Water Environment Services, County Parks, and North Clackamas Parks and Recreation District regarding tree-planting efforts. Planning is underway for outreach to watershed councils, river basin councils and community groups such as Friends of Trees and Urban Green to help identify tree planting targets, opportunities and resources.

In addition, evaluation of the development code by a technical advisory committee has been included in the work program for Phase II of the Sustainability amendments to the ZDO. This work is scheduled to begin in January 2011, following completion of the Phase I amendments, which are scheduled for a Board hearing later this year.

Staff proposes to provide an update to the Board on progress toward implementation of additional urban tree canopy efforts in December 2010.

STAFF RECOMMENDATIONS

Staff recommends adoption of the revised draft ordinance and continued work on programs to increase tree planting in urban Clackamas County.