

**File ZDO-219**  
**Proposed Zoning and Development Ordinance Amendment**  
**Draft Dated 2/11/10**

Proposed Section 1020 is new text in its entirety.

1020     **TREES**

[Many of us lose sight of the forest for the trees. These documents are intended to protect the "tree canopy," a vital aggregation of trees. Amend the title of this ordinance to "\*\*TREE CANOPY\*\*" and citizens throughout the County will gain a more immediate sense of its larger purpose. The education effort will begin.](#)

1020.01   PURPOSE

[The proposed ordinance lists nine statements of purpose. The Board of County Commissioners' charge to the Trees Task Force that drafted much of this ordinance was to "Develop recommendations for: Changes to the Zoning and Development Ordinance \(ZDO\) necessary to \*\*assure that the tree canopy is maintained, preserved and enhanced\*\*, by controlling predevelopment tree cutting without prohibiting development..." \(02/25/09, bold font is mine\).](#)

[This section establishes the rationale for the procedural and regulatory requirements that will follow. In general, the proposed ordinance presents a list of strategies. In our discussions, we realized that purpose should flow from the Comprehensive Plan, so we reviewed that document as well and have submitted our proposals to amend the Plan and inform the Ordinance in order to meet the Commissioners' charge.](#)

Section 1020 is adopted to:

- A. Conserve urban trees and the urban tree canopy while permitting responsible development and the reasonable removal of trees for infrastructure construction and maintenance, solar access, view easement protection, and safety;

[Bullet A attempts to make the largest statement of purpose, but the adjectives "responsible" for development and "reasonable" for removal of trees are too subjective to earn our confidence at this time.](#)

- [The action verbs "conserve," "preserve," "maintain," and "enhance" are distributed among bullets A, D, and E. We agree that these verbs express the purpose of the ordinance and propose that they be combined in a leading, over-arching statement of purpose: "\*To maintain, preserve and enhance the urban tree canopy while accommodating infrastructure and economic development, solar access, public safety and the protection of existing view easements.\*"](#)

- B. Incentivize tree preservation prior to development;

["Incentivizing" tree preservation prior to development could be a productive strategy but we did not find the concept clearly developed in the body of the ordinance. What does the County propose? We wouldn't want to see the County making direct payments to property owners to still their axes.](#)

- C. Advance the County's sustainability objectives by protecting wildlife habitat, air and water quality, and ground water recharge; controlling surface water run-off; and reducing the urban heat island effect;

[It's good to see a list of fundamental, measurable benefits. They are at the heart of the purposes behind this initiative. Consider language to summarize these benefits and "ecosystem function," as we have, in the Comprehensive Plan.](#)

- D. Preserve trees for their contribution to property values, and for their natural beauty and historical significance;

[Should be expanded to present a sense of property value and community in the aggregate as well as the individual: "...property values of homes, businesses, and neighborhoods, as well as individual trees or groves with historical significance."](#)

- E. Encourage mitigation of negative impacts of authorized tree removal to maintain and enhance the tree canopy in urban unincorporated Clackamas County;

[To "encourage mitigation" will not restore our urban tree canopy. We should be clear and direct. We'll have to mitigate a lot. Consider, "Aggressively mitigate the loss of trees that must be removed in order to maintain and enhance the tree canopy in urban unincorporated Clackamas County."](#)

- F. Contribute to County compliance with federal, state, and regional environmental regulations;

[Bullets F, H & I are indisputable.](#)

- G. Increase public awareness of the benefits of a healthy urban tree canopy;

[We don't see specific content in the body of the ordinance to increase public awareness of the value and benefits of our tree canopy and the County's commitment to preserving and enhancing it. We infer that those citizens who enter the permit process will gain some education, but we should be able to do better than that. Language in the Comprehensive Plan would be appropriate and should find its way into the Sustainability Action Plan. An Urban Forestry Commission would assume some responsibility for guiding efforts to educate citizens.](#)

- H. Allow the continued management of commercial forestlands for forest uses, including the harvesting of forest tree species;

- I. Implement the Oregon Forest Practices Act inside the Portland Metropolitan Urban Growth Boundary.

• [Additional statements of Purpose:](#)

- [Establish an Urban Forestry Commission to oversee the efficient and effective implementation of this ordinance and its modifications over time, as necessary to achieve the goals in the Comprehensive Plan. OLCC develops this initiative in its comments on Chapter 3 of the Comprehensive Plan.](#)

- [Develop and maintain an accurate database for the urban tree canopy to account for change over time and inform future policy decisions.](#)
- [Preserve and protect designated Heritage Trees](#)

## 1020.02 AREA OF APPLICATION

Section 1020 applies to all land inside the Portland Metropolitan Urban Growth Boundary, including rights-of-way and easements, except:

- A. Land specially assessed as forestland on the effective date of Section 1020; and
- B. A lot of record that is:
  - 1. Located in an R-2.5, R-5, R-7, R-8.5, R-10, R-15, R-20, R-30, VR-5/7, or VR-4/5 zoning district;
  - 2. Developed with a single-family dwelling; and
  - 3. Not divisible. A lot of record is “not divisible” if:
    - a. It is not divisible under Section 1012; or
    - b. It is not divisible because division is prohibited by a deed restriction, or by conditions, covenants, or restrictions.

[Exception A was indisputable, but exception B generated lengthy debate. Initially, we struggled to understand the areas intended \(bullet 1 is missing “and” to connect it to bullets 2 and 3\). When we came to consensus, we asked, how much land within the urban growth boundary would this ordinance actually apply to? From a map of dividable lots in the County, we estimated that this ordinance would apply to less than 20% of the potential tree canopy. Our need to quantify tree canopy is new. Citizens have only recently begun to realize the benefits listed in the “Purpose” section of this ordinance. We understand that Clackamas County’s tree canopy measures approximately 23% and is considered substandard. Credible sources and other jurisdictions, including the City of Portland and Oregon City, propose that a healthy tree canopy, a canopy that optimizes its many benefits for its citizens, is approximately 40%.](#)

[We recognize that the initial charge to the Trees Task Force from the County Commissioners was to control the predevelopment clearing of the beneficial tree canopy. When we realized how small a percentage of land might be affected by the terms of this ordinance, and then learned how subsequent provisions reduce the effectiveness of this ordinance even further, we decided to propose to the Planning Commission that our tree canopy will regain its health and we will realize the many significant benefits of a healthy tree canopy only if this ordinance applies to the large percentage of non-dividable lots as well. Most members of our CPO are owners of non-dividable lots. We will support the County’s efforts to manage an effective tree canopy, even if necessary regulations apply to us as well.](#)

[Before your analysis progresses beyond this section of the ordinance, we urge you to accurately quantify the percentage of land within the urban growth boundary this proposed ordinance will apply to.](#)

1020.03 DEFINITIONS

Unless specifically defined in Subsection 1020.03, words or phrases used in Section 1020 shall be interpreted to give them the same meaning as they have in common usage and to give Section 1020 its most reasonable application.

- A. Caliper: A tree's diameter at six inches above grade. On multi-stem trees, the stem with the largest diameter shall be measured.
- B. Christmas Tree: A tree of a marketable species and evidencing periodic maintenance practices of shearing for Douglas 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.
- C. Critical Root Zone: The area where a tree's roots are located. This root zone is generally the area surrounding a tree trunk at a distance equal to one foot for every inch of d.b.h. This area is described as the radius of a circle around the tree.

[Critical Root Zone: Some say the common definition is the tree's drip line. Please employ the definition that effectively protects mature trees from construction equipment and activity.](#)

- D. 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.
- E. Emergency: Any manmade or natural event or circumstance causing or threatening loss of life, or injury to person or property.
- F. Forester: A Society of American Foresters Certified Forester, or a full member of The Association of Consulting Foresters of America, Inc.
- G. Hazardous Tree: A tree that, by reason of disease, infestation, age, or other condition, presents a known or immediate hazard to people or property.
- H. Nuisance Tree: Any tree of the following species: western hazelnut (*Corylus cornuta californica*), single seed hawthorn (*Crataegus monogyna*), English holly (*Ilex aquifolium*), plums (*Prunus* hybrids), sweet cherry (*Prunus avium*), English laurel (*Prunus laurocerasus*), and Portuguese laurel (*Prunus lusitanica*).

[Nuisance Tree: This is not a definition. It's a listing of invasive trees that are currently listed as most egregious. Others will be added in future. Why do we call them nuisances? Define the term in this ordinance and provide citizens with an updated list of nuisance trees \(with photos\) in the permit office. Refer to Christmas Trees for a good attempt to make a clear distinction.](#)

I. Orchard Tree: A fruit or nut tree.

[Orchard Tree: This is not a definition. Some trees that bear fruit or nuts are major canopy trees, ie Oregon White Oak, American Walnut, American Chestnut. What is it about a remnant orchard tree that is otherwise providing all the benefits that mature trees provide \(and includes food\) that makes it a nuisance? We should protect commercial orchards and discourage some trees that orchardists plant from becoming invasives in natural areas. Refer to Christmas Trees for attempt to make a clear distinction.](#)

J. Oregon Forest Practices Act: The provisions of the Oregon Forest Practices Act identified in Oregon Administrative Rules, Chapter 629, Divisions 600, 610, 615, 620, 623, 625, and 630, adopted by reference.

[Oregon Forest Practices Act \(OFPA\). Add the acronym. It will be used later.](#)

K. Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose.

[Practicable: "Available and capable of being done after taking into consideration \*monetary\* cost, existing technology and logistics \*in light of overall project purpose, probable social impact, and probable impact on ecological functions.\*"](#)

L. Solar Energy System: Any solar collector, other solar energy device, or structural design feature of a building, the primary purpose of which is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, water heating, or electricity.

M. Tree: Any woody plant with at least one well-defined stem.

N. 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 topping and severe cutting back of limbs to such a degree as to destroy or adversely affect the normal growth pattern of the tree. Tree removal does not include routine pruning or trimming.

• [Additional Definitions:](#)

- [Ecological Function: The contribution of a tree or grove to the microclimate, water storage capacity, water flow moderation, stream bank stabilization, sediment and pollution control, habitat area and connectivity, and unique habitat types.](#)
- [Heritage Tree: Any tree that has been designated as a heritage tree within the Heritage Tree Program of Clackamas County. Heritage trees are generally accepted to present exceptional size, form or horticultural value, or to have acquired historical or landmark significance.](#)
- [Tree Canopy: The area of the property that contains coverage by trees and consists of the total crown spreads or drip lines of all trees existing on site.](#)

- [Urban Forest: The sum of all woody and associated vegetation in and around dense human settlements. This woody vegetation is most often associated with the residential, street, park and urban woodlands that are remnants of the larger native ecosystems that once occupied the area.](#)

#### 1020.04 EXEMPT TREES

The following trees are exempt from the requirements of Section 1020. However, removal of the listed trees may be regulated under other provisions of this Ordinance, such as 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.

- A. Trees with a d.b.h. of less than eight inches. However, this exemption shall not apply to trees planted either to remedy a violation pursuant to Subsection 1020.13 or as part of a mitigation plan approved pursuant to Subsection 1020.10;
- B. Trees required to be removed by state or federal law or regulation, or by a fire official;
- C. Orchard trees;

[Orchard Trees: If certain fruit and nut trees should be exempt, the community will need a clear and supportable definition that distinguishes the trees that are unwanted for good reason from those that provide the multitude of benefits without compromising the integrity of commercial orchards.](#)

- D. Christmas trees;
- E. Trees planted on the site of a commercial nursery and grown for commercial purposes;
- F. Nuisance trees;

[Nuisance Trees: Because they are exempt, the community needs a clear and supportable definition.](#)

- G. Dead trees, where death resulted from an accident or non-human cause;
- H. Diseased or hazardous trees, where the condition resulted from an accident or non-human cause, if the property owner first provides a report to the County Planning Division from an International Society of Arboriculture (ISA) Certified Arborist verifying that the tree qualifies under this exemption. If a hazardous tree is removed in response to an emergency, the property owner may provide the required arborist's report, or other credible evidence that the tree was hazardous, within 30 days after the tree's removal;

- I. Trees required to be removed by the terms of a view easement established prior to the effective date of Section 1020, if the property owner provides a copy of the easement document to the County Planning Division; and
- J. Trees, the removal of which requires review of a Habitat Conservation Area Development Permit under Section 706 or a Water Quality Resource Area Development Permit under Section 709.

#### 1020.05 TREE REMOVAL PERMITS

[The ability of this ordinance to achieve its purposes, especially the Commissioners' initial charge to preserve, protect and enhance the urban tree canopy, depends on the details of the permitting process. The procedural requirements for permits, as outlined in this section, appear to be sound \(1020.05.A-D&F\). The framework of permits, the manner in which the County proposes to distinguish four types of permits \(1020.05.E\), generated a great deal of thoughtful discussion, and deserves your close consideration.](#)

[In addition, the proposed framework of permits implies a sophisticated database that will assemble a great deal of pertinent information. The database should be designed to efficiently serve the permit process. It should also be designed to develop reports that measure and trend the tree canopy over time. It should lead to data-based proposals for future modifications of the ZDO. These essential comments lead to our support for a dedicated Urban Forestry Commission.](#)

[We agreed that mitigation should be a factor each and every time a Tree Removal Permit is issued. Mitigation will always be secondary to preservation, but must be aggressively realized in order to enhance our substandard urban tree canopy.](#)

- A. No tree shall be removed without a Tree Removal Permit (TRP), unless such removal is exempt pursuant to Subsection 1020.04.
- B. No building or grading permit shall be issued prior to the approval of a TRP if the proposed development requires removal of a nonexempt tree.
- C. Tree removal also may be regulated by other provisions of this Ordinance, such as Section 1002 (Protection of Natural Features) and Section 1003 (Hazards to Safety).
- D. Section 1020 shall be applied to an application for design review, a subdivision, a partition, or a conditional use. If a TRP is approved as a result of this review, it shall be issued as part of the design review, subdivision, partition, or conditional use approval.
- E. There are four types of TRPs. Table 1 identifies these four types and provides a brief description of each. Table 1 is intended to assist with navigating Subsection 1020, but is not intended to be regulatory. For the regulatory provisions, see the applicable subsections.

**Table 1: Tree Removal Permit Types**

	<b>Type A</b>	<b>Type B</b>	<b>Type C</b>	<b>Type D</b>
<b>Applies To</b>	Any lot of record, but no more than two nonexempt trees, or 10 percent of the total number of trees, whichever is less, in a two-year period	Some public agency and utility infrastructure projects	Property specially assessed as farmland; or property developed with a single-family dwelling and zoned R-2.5, R-5, R-7, R-8.5, R-10, R-15, R-20, R-30, RA-1, RA-2, RRFF-5, FF-10, FU-10, EFU, TBR, AG/F, VR-4/5, or VR-5/7	Tree removal due to construction, interference with the healthy growth of other trees, location too close to a structure, interference with utility service or drainage, conflict with corner vision or sight distance standards; or solar access
<b>Special Limitations</b>		Mitigation and tree protection required	Approval results in a five-year moratorium on most development	Mitigation and tree protection required
<b>Approval Criteria</b>	See Subsection 1020.06	See Subsection 1020.07	See Subsection 1020.08	See Subsection 1020.09
<b>Submittal Requirements</b>	See Subsection 1020.12(A)	See Subsection 1020.12(B)	See Subsection 1020.12(C)	See Subsection 1020.12(D)

1. Except as provided in Subsection 1020.05(C), Type A, B, and C TRPs shall be ministerial and are not land use decisions.
  2. Except as provided in Subsection 1020.05(C), Type D TRPs shall be subject to Planning Director Review pursuant to Subsection 1305.02.
  3. If more than one tree is proposed for removal, the applicant may consolidate the requests into one TRP application. If a consolidated request includes a tree subject to a Type D TRP, the entire application shall be subject to Planning Director Review pursuant to Subsection 1305.02.
- F. A TRP shall be valid for three years from the date of the final written decision, except that if a TRP is approved as part of a design review, subdivision, partition, or conditional use approval, it shall be valid for the

same period of time as that approval, including any time extension thereof. If the tree is not removed prior to the expiration of the TRP, removal shall require the filing of a new TRP application, unless such removal is exempt pursuant to Subsection 1020.04.

#### 1020.06 TYPE A TREE REMOVAL PERMIT APPROVAL CRITERIA

A Type A Tree Removal Permit (TRP) for a nonexempt tree shall be approved if no more than two trees on a lot of record, or 10 percent of the total number of trees on a lot of record, whichever is greater, are removed in a two-year period.

To this point, every provision has established a context for the preservation and maintenance of trees except when justifiable cause must be acknowledged. A Type A permit, as defined in this proposal, is simply a give-away, a permit to remove trees for no apparent reason at all. We could not determine benefit to citizens. We could only envision a slower pace to the removal of the urban tree canopy in many dividable lots. This permit, as defined, undermines the purposeful intent of the ordinance as a whole and we urge you to delete it. If we are to realize the many benefits of an urban tree canopy, we must preserve and enhance it with knowledge, care and deliberate action.

- A. The two-year period shall commence with the removal of the first tree.
- B. Trees removed pursuant to a Type A TRP may be in addition to exempt trees removed pursuant to Subsection 1020.04 and trees removed pursuant to a Type B, C, or D TRP.
- C. Trees in a public right-of-way, or to be removed by a public utility company in a utility easement, are not eligible for a Type A TRP.

#### 1020.07 TYPE B TREE REMOVAL PERMIT APPROVAL CRITERIA

A Type B Tree Removal Permit (TRP) for a nonexempt tree shall be approved if:

- A. The tree proposed for removal is to be removed by a public agency, and the applicant provides a written statement from the public agency that the tree must be removed in order to maintain, repair, replace, or expand an existing road, sidewalk, or pedestrian pathway located in a public right-of-way, or to construct a new road, sidewalk, or pedestrian pathway in a public right-of-way; or
- B. The tree proposed for removal is to be removed by a public utility company, and the applicant provides a written statement from the utility company that the tree must be removed in order to maintain, repair, or replace an existing utility line, or to construct a new utility line in a public right-of-way.

[We recognize that trees will have to be removed to maintain and expand public infrastructure. We are aware that some infrastructure developments, such as sidewalks and driveways, can be sited around significant trees or groves with little additional cost or functional impact. We referred back to ZDO 1002.04, the section on "Trees and Wooded Areas" within the "Protection of Natural Areas," for language to support our desire for planners and developers to negotiate site development with respect to trees. Much depends on more careful design. The County proposes to delete this section, but we found provisions worth keeping. Among them:](#)

["1002.04 - 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 whenever feasible. Site planning and design techniques which address this standard 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 in Section 1009.](#)
- [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;](#)
- [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;"](#)

#### 1020.08 TYPE C TREE REMOVAL PERMIT APPROVAL CRITERIA

- A. A Type C Tree Removal Permit (TRP) for a nonexempt tree shall be approved if the applicant provides evidence substantiating compliance with the following criteria:
  1. The subject property is located in an R-2.5, R-5, R-7, R-8.5, R-10, R-15, R-20, R-30, RA-1, RA-2, RRFF-5, FF-10, FU-10, EFU, TBR, AG/F, VR-4/5, or VR-5/7 zoning district, and is developed with a single-family dwelling; or the subject property was specially assessed as farmland on the effective date of Section 1020, and has remained specially assessed as farmland continuously since then; and
  2. If the OFPA applies, the applicant has submitted a plan, completed and signed by a forester, verifying that the tree removal as planned will comply with the OFPA.
- B. If a tree is removed pursuant to a Type C TRP, no application for design review, a partition, a subdivision, or a conditional use shall be approved on the subject property for a period of five years after the last such tree is removed. Prior to the removal of a tree pursuant to a Type C TRP, the

property owner shall record a deed restriction acknowledging these development limitations.

[Members of the OLCC discussed this proposed permit at great length before we began to understand what it said and what it intended to say. I'm not certain we've solved it. This proposed permit seemed to address the acknowledged problem of property owners who clear dividable lots prior to submitting a development application. But it also seemed to freely grant permits to citizens who applied with no apparent purpose, similar to the proposed Type A permit. Then this provision applied a penalty to the applicant – a moratorium of five years before the County would review a development application.](#)

[We believe that our proposal to require permits for removing non-exempt trees throughout the unincorporated areas of the County within the urban growth boundary makes this permit irrelevant. In the interest of simplicity and achievability, we urge you to delete this section.](#)

[The use of a moratorium on development as a penalty for egregious violation of this ordinance is excellent and we urge you to consider moving reference to a moratorium to the appropriate section on Violations and Penalties. We also urge you to consider that a five-year time horizon is not a long time from conception to substantial completion of many land developments and may not provide the necessary deterrence. We suggest a ten-year minimum penalty for egregious violations.](#)

#### 1020.09 TYPE D TREE REMOVAL PERMIT APPROVAL CRITERIA

[Most of this section provides good content for permit approval criteria.](#)

A Type D Tree Removal Permit (TRP) for a nonexempt tree shall be approved if the applicant provides evidence substantiating compliance with at least one of the following criteria:

- A. Tree removal is necessary for the construction of a structure or other improvement, including landscaping within 50 feet of a single-family dwelling, and there is no practicable location alternative on the subject property—or, in the case of tree removal in a public right-of-way, elsewhere in the right-of-way—for the proposed structure or other improvement. In considering whether tree removal is necessary, factors that may be considered include whether the tree is located within the footprint of the proposed structure or other improvement, whether it is too close to the proposed structure or other improvement, and whether it will violate the corner vision standards of this Ordinance or obstruct required sight distance under the County Roadway Standards. If tree removal is proposed in conjunction with an application for a subdivision or partition, it also must be demonstrated that there is no practicable access, utility, or lot design alternative.
  1. In applying Subsection 1020.09(A), alternatives that also would result in tree removal shall be preferred where such alternatives would minimize the significance of the tree loss. Factors in determining relative significance include such characteristics as number of trees to be removed, tree health, tree size (i.e. height, trunk diameter, canopy

spread), historic value of the trees to be removed, erosion prevention, preservation of wildlife habitat, and maintaining a diversity of tree species with an emphasis on retaining native trees appropriate to the proposed construction.

2. Application of Subsection 1020.09(A) shall not require a reduction of the square footage of a proposed structure or a reduction in the number of lots or dwelling units that would otherwise be permitted.

["Tree removal is necessary for the construction of a structure or other improvement, including landscaping within 50 feet of a single family dwelling..." We could not imagine why such an excessive distance was suggested. We don't see it as necessary for fire safety. We don't believe professional building contractors require that much working space around the site. You should clearly understand and approve the basis for that distance.](#)

[In addition, you should quantify the percentage of land lost to the urban tree canopy by that distance. We estimate that in most zoning districts, after factoring for the typical percentage of structure \(including pavement\) on a given site and required setbacks from neighboring properties, there would be no land left for trees. Even in the larger zoning districts, the land left for trees would be a small percentage of the lot. This is another provision that undermines the admirable purposes of this ordinance and will prevent the County from preserving and enhancing the urban tree canopy.](#)

[To remedy this section, we recommend you simply delete the phrase, "including landscaping within 50 feet of a single family dwelling."](#)

[The accumulation of other qualifiers in this paragraph causes us to question whether this ordinance actually grants the easy cutting of trees. Permits seem to be granted to all for nearly any reason. Also, to preserve views and ensure corner vision standards, pruning can be a viable option. The language of this proposed ordinance and our discussion so far is to either preserve or remove. Please consider where pruning can be an agreeable and productive compromise and how it can be applied in this ordinance.](#)

- B. The tree proposed for removal interferes with the healthy growth of other trees, unless such trees are nuisance trees, and it is not practicable to preserve the tree.
- C. The tree proposed for removal is located too close to an existing structure or other improvement, and it is not practicable to preserve the tree.
- D. The tree proposed for removal interferes with existing utility service or drainage, and it is not practicable to preserve the tree.
- E. The tree proposed for removal violates the corner vision standards of this Ordinance; or obstructs required sight distance under the County Roadway Standards, and it is not practicable to preserve the tree.
- F. Tree removal is reasonably necessary to allow solar access for the efficient operation of a solar energy system. The applicant shall provide supporting documentation from a solar energy system installer, a government agency with expertise in solar energy systems, or another credible source (e.g.

Energy Trust of Oregon, an architect registered to practice architecture in the State of Oregon, an engineer registered to practice engineering in the State of Oregon).

#### 1020.10 MITIGATION FOR REMOVED TREES

[This section of the proposed ordinance describes mitigation for Type B and D Tree Removal Permits. In section 1020.05, we noted our belief that mitigation should be a feature of every permit. Among the purposes of this ordinance are the restoration and enhancement of the tree canopy. Mitigation should be defined in a way that can be supported by citizens, advances our purposes and meets our goals.](#)

If a Type B or D Tree Removal Permit is approved, compliance with the following mitigation standards shall be required.

- A. Except as provided in Subsection 1020.10(C)(2), each tree approved for removal shall be replaced as follows:
  1. If the tree to be removed has a d.b.h. of less than 16 inches, one replacement tree shall be planted.
  2. If the tree to be removed has a d.b.h. of at least 16 inches but less than 24 inches, two replacement trees shall be planted.
  3. If the tree to be removed has a d.b.h. of 24 inches or greater, three replacement trees shall be planted.

[The ratios for mitigation should be informed by accurate measurement of the urban tree canopy. These are among the many reasons why we believe an Urban Forestry Commission is so vital to the success of this initiative. If our tree canopy is substandard at this time, mitigation should be aggressive. Mitigation should be responsive to the time and need. It's a dynamic tool. In fact, the permit process and the costs of mitigation can be considered a "system development charge" as we learn to recognize the urban tree canopy as an organic system that we are responsible for.](#)

[We are aware that the ratios for mitigation proposed by the County in this section are comparatively low. Oregon City and the City of Portland have approved replacement ratios greater than those represented by the County in this section.](#)

- B. For a Type D TRP, to the extent practicable, the replacement tree shall be planted on the subject property and within the same general area as the removed tree. In determining whether such planting is practicable, consideration shall be given to such factors as terrain, difficulty of replacement, and impact on adjacent property.

**[1020.10.B&C](#)** [We agree with provisions for replanting on subject property when possible, approved secondary locations, and a County Tree Fund. An Urban Forestry Commission could promulgate a Forest Management Plan that would locate and prioritize optimal spaces to receive new trees by species. Such a plan could resemble the Essential Pedestrian Network in scope.](#)

- C. For a Type D TRP, when it is not practicable to relocate or replace the tree on the subject property, the applicant shall:
  - 1. Relocate or replace the tree at another location approved by the Planning Director. The alternate location shall be within the portion of the County that is inside the Portland Metropolitan Urban Growth Boundary; or
  - 2. Pay into the County Tree Fund, which fund is hereby created, an amount of money established by separate order of the Board of County Commissioners.
    - a. The County shall use the County Tree Fund within the portion of the County that is inside the Portland Metropolitan Urban Growth Boundary for planting trees and for producing, maintaining, and preserving wooded areas and heritage trees.
    - b. In addition, and as funds allow, the County Tree Fund shall provide educational materials to assist with tree planting, mitigation, and relocation.
- D. For a Type B TRP, the applicant shall comply with Subsection 1020.10(A), 1020.10(C)(1) or 1020.10(C)(2), and the choice shall be at the applicant's discretion.
- E. A replacement tree shall be appropriately chosen for the site from an approved tree species list supplied by the County. For a Type D TRP, diversity of tree species shall be maintained where essential to preserving a wooded area or other habitat.

[We believe the list of replacement trees should be biased toward native species appropriate to given terrain. Because they have evolved for so long in local conditions, they require little direct attention or maintenance. They also serve constantly to define our community character and enhance our sense of place.](#)

- F. A replacement tree shall have a minimum caliper of two inches or a minimum height of eight feet by nursery industry standards.
- G. A replacement tree shall be staked, fertilized, and mulched.
- H. Planting of required replacement tree(s) shall occur within one year of tree removal.
- I. If, within two years after the planting date, a replacement tree dies, or acquires a disease that necessitates removal, the tree shall be replaced, and the replacement tree shall in turn be subject to the same two-year standard.

[The percentage of trees that are planted but do not thrive is high. That is one of the reasons for a high replacement ratio for mitigation. Another reason is to regain the lost benefits of a tree's removal as quickly as reasonable. This provision implies that the property owner reports back to the County when his or her mitigation planting is complete - data for the database and to close the loop. Failure to complete required mitigation should be considered violation of this ordinance. We believe these facts should be clearly stated in the ordinance.](#)

## 1020.11 TREE PROTECTION DURING CONSTRUCTION

[We appreciate the thought given to protection of trees during construction.](#)

If a Type B or D Tree Removal Permit (TRP) is approved, or if construction is authorized on the subject property pursuant to the approval of an application for design review, a subdivision, a partition, or a conditional use, compliance with the following tree protection standards shall be required.

- A. Unless a tree is exempt pursuant to Subsection 1020.04 or has been authorized for removal by a TRP, it shall be protected. If no trees that require protection pursuant to this provision exist on the subject property, the provisions of Subsection 1020.11 are not applicable.
- B. Trees that require protection shall be clearly labeled as such for the duration of construction activity.
- C. Construction activity likely to be injurious to a tree designated to remain, including, but not limited to, placing solvents, building material, construction equipment, or depositing soil, or placing irrigated landscaping, within the drip line, shall be prohibited, unless a plan for such construction activity has been approved by the Planning Director based upon the recommendations of an arborist.

[Language implies that a construction plan that identifies anticipated equipment, materials, and storage areas be identified. Such a plan, if required, should also identify protected trees and the diameter of protection around them. We urge you to require submittal of a construction plan.](#)

- [Additional provision: We believe it is reasonable and productive to include in this section the statement that collateral damage to the tree canopy is a violation of this Ordinance.](#)
- D. Notwithstanding the requirement of Subsection 1020.11(B), no device or wire shall be attached to any protected tree unless needed for tree protection.
  - E. Prior to the commencement of construction activity, the applicant shall erect and maintain readily visible protective tree fencing along the outer edge and completely surrounding the critical root zones of all protected trees or groups of trees. Orange construction fencing (i.e. safety fencing, snow fencing, or a comparable product) shall be required. The protective fencing shall remain in place until the County authorizes its removal or

issues a final certificate of occupancy, whichever occurs first. Protective fencing is required for all protected trees, except in the following cases:

1. Rights-of-Way and Easements. Street rights-of-way and utility easements may be cordoned by placing stakes a minimum of 50 feet apart and tying ribbon, plastic tape, rope, or similar material from stake to stake along the outside perimeters of areas to be cleared.
2. Any property area separate from the construction or land clearing area and onto which no equipment will venture may also be cordoned off as described in Subsection 1020.11(E)(1), or by other reasonable means.

#### 1020.12 TREE REMOVAL PERMIT APPLICATION SUBMITTAL REQUIREMENTS

[We agree with a clear statement of application submittal requirements, but the proposed structure and content of this section is guided by the proposed distinctions in tree removal permits as described in sections 1020.05 – 1012.09. Again, we believe that an Urban Forestry Commission is required to oversee this complex process and modify it, as necessary, over time.](#)

[The starting position remains to effectively preserve and enhance the urban tree canopy over time. We believe the County should require citizens to apply for a permit to cut every non-exempt tree with a diameter breast height greater than four inches. That measurement identifies a significant tree and citizens do not decide to remove a significant tree without purpose. This is yet another technical issue – growth rates of trees featured in mitigation factored with the time frame to restore adequate tree canopy - that an Urban Forestry Commission would identify with responsible data.](#)

- A. An application for a Type A Tree Removal Permit (TRP) shall include:
  1. A completed application on a form provided by the County Planning Division;
  2. A site plan of the subject property, drawn approximately to scale and identifying the following:
    - a. Location and type of existing development, including structure footprints, roads, driveways and parking areas;
    - b. The location of the tree proposed for removal and a brief description of the tree, including common name if known, approximate height, d.b.h., and apparent health; and
    - c. The location of all other trees on the subject property;
  3. A statement indicating whether any other trees were removed from the subject property in the two years immediately preceding submittal of the TRP application, and if so, a statement indicating the basis upon which the trees qualified for removal under this Ordinance; and

4. A statement identifying the reason for the proposed tree removal and whether the removed tree will be replaced.
- B. An application for a Type B TRP shall include:
1. A completed application on a form provided by the County Planning Division;
  2. A site plan of the subject property, drawn approximately to scale and identifying the following:
    - a. The location of the tree proposed for removal and a brief description of the tree, including common name if known, approximate height, d.b.h., and apparent health;
    - b. For a TRP requested on the basis of Subsection 1020.07(A), the name and width of the road right-of-way, and the existing and proposed improvements within the right-of-way; and
    - c. For a TRP requested on the basis of Subsection 1020.07(B), the location of the utility easement and the utility line where the work is proposed;
  3. A statement explaining why tree removal is proposed and addressing one or more of the approval criteria identified in Subsection 1020.07;
  4. A mitigation plan that addresses the requirements of Subsection 1020.10 to the extent applicable; and
  5. A tree protection and maintenance plan that addresses the requirements of Subsection 1020.11 to the extent applicable.
- C. An application for a Type C TRP shall include:
1. A completed application on a form provided by the County Planning Division; and
  2. Sufficient information to demonstrate whether the proposed tree removal is subject to the Oregon Forest Practices Act (OFPA). If the OFPA applies, the applicant shall submit a plan, completed and signed by a forester, verifying that the tree removal as planned will comply with the OFPA.
- D. An application for a Type D TRP shall include:
1. A completed land use application on a form provided by the County Planning Division;
  2. A site plan of the subject property, drawn approximately to scale and identifying the following as relevant:

- a. Location and type of existing and proposed development, including but not limited to, building footprints, roads, driveways, parking areas, utilities, onsite sewage disposal systems, wells, landscaping, and filling or grading. Label each element as existing or proposed;
  - b. Location and width of existing adjacent roads and road rights-of-way;
  - c. Location and purpose of existing or proposed easements;
  - d. Location of any rivers, streams, wetlands, or areas of special flood hazard;
  - e. The site ingress and egress proposed to be used by construction vehicles; and
  - f. Proposed equipment and material staging and stockpile areas;
3. A statement explaining why tree removal is necessary and addressing one or more of the approval criteria identified in Subsection 1020.09;
  4. A mitigation plan that addresses the requirements of Subsection 1020.10 to the extent applicable;
  5. A tree protection and maintenance plan that addresses the requirements of Subsection 1020.11; and
  6. A tree survey:
    - a. Where three or fewer trees are proposed for removal, the tree survey shall include, as part of the required site plan, the location of the trees proposed for removal and a brief description of those trees, including common name, approximate height, d.b.h., and apparent health.
    - b. Where more than three trees are proposed for removal, the tree survey shall be prepared by an International Society of Arboriculture (ISA) Certified Arborist. The tree survey shall include an accurate map of the subject property that locates all trees and identifies their common name, botanical name, approximate height, approximate canopy spread, d.b.h., health, and condition. It also shall identify the tree(s) proposed for removal. The tree survey shall include an accurate topographic survey stamped by a surveyor or engineer registered in the State of Oregon. Where a stand of five or more contiguous trees exists on the subject property and the applicant proposes neither removal of any of those trees nor construction in proximity to those trees, the

tree survey may be simplified to accurately show only the perimeter area of that stand of trees, including its drip line.

[For your consideration, one member of OLCC proposed a simpler way to differentiate permits while recognizing distinctions the proposed amendment appears to make:](#)

1. [The owner of an undividable property who is maintaining a small lot with limited resources and has determined reason to remove a non-exempt tree or a small number of non-exempt trees. The submittal requirements listed in Section 1020.12.A appear to be sufficient for this population. We anticipate few applications from this population. Most applications and permits for undividable properties will be provided by internet. The County's database should easily distinguish between dividable and undividable properties. This process will be simple and timely, as property owners would expect. It will connect individual property owners to the commonwealth and enable the County to accurately quantify the urban tree canopy through time.](#)
2. [The owner or applicant of a dividable property who has the potential to partition or subdivide for development that could have a significant impact on the property's tree canopy. Uncontrolled pre-application tree removal on these lots prompted the Bureau of County Commissioners to establish the Trees Task Force to draft a tree canopy protection ordinance.](#)
3. [Public agencies and commercial developers with large lots and the resources and experience to provide detailed site plans. In effect, any development that undergoes the County's design review.](#)

[The complexity of a tree removal permit application could be tailored to the applicable population, their ability to provide information and their potential impact on the tree canopy.](#)

## 1020.13 VIOLATIONS

[The language in this section needs to be precise and sufficient to serve as effective deterrent. Minimize costs to administer this ordinance by clearly defining violations and their consequences in the form of remedies, fines and penalties.](#)

[In addition, we believe it appropriate to title this section "Violations and Corrective Actions." Corrective actions would include remedies \(mitigation, fee to tree fund, etc\), and penalties & fines \(such as moratorium on development, and fines administered by Compliance Officer for civil infraction \(1020.13.C below\). Intent of remedy is to take action to the tree canopy whole. Intent of harsher penalty is to change behavior of assailant.](#)

- A. Removal of a non-exempt tree without first obtaining a Tree Removal Permit (TRP) is a violation of this Ordinance. If more than one non-exempt tree is removed without a TRP, each removed tree shall constitute a separate violation.

[We agree that each removal of a non-exempt tree without a tree removal permit shall be considered a separate violation. Damage to a non-exempt, non-permitted tree would apply.](#)

- B. A violation resulting from the removal of a non-exempt tree without first obtaining a TRP shall be remedied by:

1. Obtaining a TRP, in which case the TRP approval criteria will be applied as though the removed tree were still in place; or
2. Replacing the removed tree, subject to the following criteria:
  - a. Twice as many trees shall be planted as would ordinarily be required by Subsection 1020.10.
  - b. The County may use any reasonable means to estimate the number of trees removed, if destruction of the illegally removed trees prevents an exact count.
  - c. Except as modified by Subsection 1020.13(B)(2)(a), compliance with Subsections 1020.10 and 1020.11 shall be required.

[This section describes a "remedy" for violation, but not a fine or penalty, which still need more specific development.](#)

[A moratorium on development, as discussed in section 1020.08, would be penalty, not a remedy.](#)

- C. Subsection 1020.13 applies in addition to any enforcement action the County may take pursuant to Subsection 102.03 of this Ordinance and Chapter 2.07 of the County Code.

[To refer to another section of the ZDO and the County Code and send the reader searching for information is not sufficient for citizens and will not provide the desired deterrent. We urge that language from other sources be referred to in this section with some detail:](#)

1. [Per ZDO 102.03, violation of any provision of this Ordinance is subject to imposition of a civil penalty as established by resolution of the Board of County Commissioners. \(6/26/03\)](#)
2. [Per Chapter 2.07 of the County Code, the Compliance Hearings Officer may impose a penalty up to \\$3500 for violation of this ordinance.](#)