



FINAL AGENDA

FORREST C. SOTH CITY COUNCIL CHAMBER
4755 SW GRIFFITH DRIVE
BEAVERTON, OR 97005

REGULAR MEETING
APRIL 11, 2005
6:30 P.M.

CALL TO ORDER:

ROLL CALL:

PROCLAMATIONS:

Arbor Week: April 17 - 23, 2005

PRESENTATIONS:

05068 Tree City USA Growth Award

VISITOR COMMENT PERIOD:

COUNCIL ITEMS:

STAFF ITEMS:

CONSENT AGENDA:

Minutes of the Regular Meeting of April 4, 2005

05069 Development Services Fee Schedule Increase (Resolution No. 3813)

05070 Classification Changes

05071 City Council Appointments to Boards and Commissions

Contract Review Board:

05072 Bid Award - Cedar Hills Boulevard Utility Improvements Project, Phase 3

WORK SESSION:

05073 TA 2004-0011 Tree Code Text Amendment

ORDINANCES:

First Reading:

05074 TA 2004-0011 Tree Code Text Amendment (Ordinance No. 4348)

EXECUTIVE SESSION:

In accordance with ORS 192.660 (2) (h) to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed and in accordance with ORS 192.660 (2) (e) to deliberate with persons designated by the governing body to negotiate real property transactions and in accordance with ORS 192.660 (2) (d) to conduct deliberations with the persons designated by the governing body to carry on labor negotiations. Pursuant to ORS 192.660 (3), it is Council's wish that the items discussed not be disclosed by media representatives or others.

ADJOURNMENT

This information is available in large print or audio tape upon request. In addition, assistive listening devices, sign language interpreters, or qualified bilingual interpreters will be made available at any public meeting or program with 72 hours advance notice. To request these services, please call 503-526-2222/voice TDD.

PROCLAMATION

OFFICE OF THE MAYOR CITY OF BEAVERTON



- WHEREAS,** 60 million trees are planted each year in Oregon - over 50 for each Oregonian; and
- WHEREAS,** Oregon Arbor week was established by the Oregon State Legislature to encourage tree planting and tree care, as well as to gain an appreciation of the environment; and
- WHEREAS,** the City of Beaverton recognizes that trees and parks are important to enhance the beauty of the City, and actively encourages the planting and care of trees throughout the City; and
- WHEREAS,** the City of Beaverton has planted and maintains approximately 4,840 street trees and adds new street trees each year to enhance the quality of the neighborhood environment; and
- WHEREAS,** the City of Beaverton has been recognized for eleven years as a Tree City USA by the National Arbor Day Foundation and desires to continue its tree-planting ways; and
- NOW, THEREFORE,** I, ROB DRAKE, MAYOR, of the City of Beaverton do hereby proclaim the week of April 17th – 23rd, 2005 as:

ARBOR WEEK

in the City of Beaverton, and urge all citizens to support efforts to care for our trees and woodlands.

A handwritten signature in black ink, appearing to read "Rob Drake", written over a horizontal line.

Rob Drake
Mayor



AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Tree City USA Growth Award

FOR AGENDA OF: 04-11-05 **BILL NO:** 05068

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Operations 

DATE SUBMITTED: 04-07-05

CLEARANCES: City Attorney 

PROCEEDING: PRESENTATION

EXHIBITS:

BUDGET IMPACT

EXPENDITURE REQUIRED N/A	AMOUNT BUDGETED N/A	APPROPRIATION REQUIRED N/A
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HISTORICAL PERSPECTIVE:

For the eleventh consecutive year, the City of Beaverton has been recognized as a "Tree City USA". To achieve this distinction, the City has committed through ordinances and practices to preserve, manage and enhance existing trees while also promoting the reforestation of Beaverton through the Development Tree Program, the sponsorship and support of volunteer tree planting efforts, new tree planting for land use mitigation and the care and management of the tree inventory.

INFORMATION FOR CONSIDERATION:

Numerous elements including tree planting, tree preservation, routine care including periodic watering and pest and disease management and pruning are important to the City's selection as a "Tree City USA". The expansion of the tree inventory on a continuing basis is the primary reason the City receives the "Tree City Growth Award". The staff presentation will briefly describe these various program elements and some of the issues involved in the successful management of the City's tree inventory. A representative from the Oregon Department of Forestry will be in attendance to present the award and "Tree City USA" flag.

RECOMMENDED ACTION:

Listen to the presentation and receive award.

DRAFT

BEAVERTON CITY COUNCIL
REGULAR MEETING
APRIL 4, 2005

CALL TO ORDER:

The Regular Meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Forrest C. Soth City Council Chamber, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, April 4, 2005, at 6:32 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Catherine Arnold, Betty Bode, Dennis Doyle, Fred Ruby and Cathy Stanton. Also present were City Attorney Alan Rappleyea, Chief of Staff Linda Adlard, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Operations/Maintenance Director Gary Brentano, Library Director Ed House, Human Resources Director Nancy Bates, Deputy Police Chief Chris Gibson, Traffic Engineer Randy Wooley, City Utilities Engineer David Winship and Deputy City Recorder Catherine Jansen.

PUBLIC HEARING:

05066 APP 2005-0002 Appeal of Garden Grove PUD; Conditional Use Approval (CU 2004-0021)

Mayor Drake said a public hearing was scheduled for this meeting on Agenda Bill 05066, APP 2005-0002, Appeal of the Garden Grove Planned Unit Development (PUD); Conditional Use Approval (CU 2004-0021). He said the Council was asked to continue the hearing to May 2, 2005. He asked Joe Grillo, Community Development Director to explain the reason for the continuance.

Grillo said it was discovered today that what was accepted by the City, and what the applicant had unintentionally applied for, was a Preliminary Planned Unit Development (PUD) to go along with their Land Division and Tree Planting Plan. He said upon conferring with the applicant he thought the applicant's intention was that they were applying for a Final PUD. He said since the application was processed and noticed as a Preliminary PUD for the Planning Commission hearing and for the appeal to Council, staff asked the applicant for their preference. He said the City received a request from the applicant, Ms. VanLoo, CES NW, for a continuance of the public hearing concerning the appeal to May 2, 2005. He said this would allow the City to readvertise for a Final PUD that would be heard as a full public hearing on May 2, 2005. He said the City would renotify all parties involved and the Council would hear the application in full on May 2, 2005. He said the applicant gave the City additional time through May 20, 2005 to review the findings and Council determination. He said everyone within 500 feet would be renotified, along with any parties of record and this would be brought back to Council as a full public hearing on May 2, 2005.

Mayor Drake opened the public hearing on APP 2005-0002 Appeal of Garden Grove PUD, Conditional Use Approval (CU 2004-0021), and asked the City Council for a continuance to May 2, 2005.

Coun. Bode MOVED, SECONDED by Coun. Stanton, that Council grant a continuance to the Garden Grove PUD, Conditional Use 2004-0021, to the City Council Regular Meeting of May 2, 2005, at 6:30 p.m.

Coun. Arnold asked if the City needed a time extension concerning the 120 day deadline and if that was part of the motion.

Mayor Drake replied this request was from the applicant and it allowed sufficient time for Council consideration, findings and determination, before May 20, 2005. He said it allowed 18 days after the public hearing for processing and final action. He said it protected everyone's rights.

Coun. Arnold asked if the 120-day period would end on May 20, 2005.

Mayor Drake said that by asking for the continuance, the applicant preserved their right to be heard and preserved citizens' rights to comment on the application. He said the appellant would be fully vested to come to the hearing on May 2, 2005, and present their case to the Council to grant the appeal. He said this extended the Oregon law requirement that an application be processed within 120 days. He said since the applicant voluntarily agreed to this, the City would have until May 20, 2005, to finish this application. He repeated everyone was protected by this action.

Coun. Stanton confirmed with Mayor Drake that everyone who submitted written or oral testimony at the Planning Commission hearing would be renotified of the May 2 hearing.

Question called on the motion. Couns. Arnold, Bode, Doyle, Ruby and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

PROCLAMATIONS:

Mayor Drake proclaimed April 10 - 16, 2005, as Paralyzed Veterans of America Week.

VISITOR COMMENT PERIOD:

There were none.

COUNCIL ITEMS:

Coun. Arnold said the Washington County Cooperative Library System (WCCLS) was sponsoring National Family Story Telling Festival Events at the local libraries during the month of April. She said Beaverton's Story Telling Event was scheduled for April 16, 2005, at 2:00 p.m.

Coun. Stanton said this Thursday, April 17, 2005, at the Beaverton Library, Nancy Ponzi from Ponzi Vineyards, would be speaking about the wine industry and its influence on Beaverton's history and future.

Coun. Stanton invited the Council to attend Community Action Organization's Spirit Awards Dinner at the Tiger Woods Center on the Nike Campus, on Wednesday, April 13, 2005. She said this would be an excellent presentation about Community Action's programs and services.

STAFF ITEMS:

There were none.

CONSENT AGENDA:

Mayor Drake said Agenda Bill 05063, Traffic Commission Issue TC 573, was being pulled for separate consideration at request of Coun. Stanton

Coun. Bode MOVED, SECONDED by Coun. Doyle, that the Consent Agenda be approved as follows:

Minutes of the Regular Meeting of March 28, 2005

05062 Liquor License Application: Change of Ownership - Bugatti's; New Outlet - Restaurant Max

05063 Traffic Commission Issue No. TC 573 - Pulled for separate consideration.

05064 Authorize Mayor to Sign Third Amendment to Joint Funding Agreement for IWRM Water Supply Feasibility Study (aka Tualatin Basin Water Supply Project) - Pulled for separate consideration after Work Session.

05067 A Resolution Approving Transfer of Appropriation Within the General Fund of the City During the FY 2004-05 Budget Year and Approving the Appropriations for the Fund (Resolution No. 3812)

Coun. Stanton said she had one minor correction to the minutes which she gave to the Deputy City Recorder.

Mayor Drake pulled Agenda Bill 05064, Authorize Mayor to Sign Third Amendment to Joint Funding Agreement for IWRM Water Supply Feasibility Study, for consideration after the work session.

Question called on the motion. Couns. Arnold, Bode, Doyle, Ruby and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

05063 Traffic Commission Issue No. TC 573

Coun. Stanton said this issue involved adding a center turn lane to SW Greenway between Albertson's and Downing Drive. She said the Traffic Commission approved this action and she pulled this item because she was concerned about this recommendation. She said she lived off SW Davies, that feeds onto SW Greenway, and to go to Albertson's she has to make a left turn onto Greenway. She said particularly in the morning and evening peaks it was problematic to make that turn.

Coun. Stanton said staff stated the center turn lane would provide a refuge for vehicles entering the flow of traffic from driveways and intersections. She said since the only driveways on SW Greenway were for the apartments at the north end of Greenway, why would the center turn lane run from Albertson's to SW Downing. She said her greatest concern was that the center turn lane would be used as a refuge for side-street traffic to enter onto Greenway, at the same time it is a refuge for traffic making left-hand turns. She said she was concerned about the refuges between SW Steamboat and SW Davies, and SW Davies and SW Murphy, because when trying to access SW Greenway from Davies, or trying to turn left onto Davies from SW Greenway, it could lead to a head-on collision. She said this happened to her eight years ago. She said people would use the center turn lane, especially during the evening peak, to queue for a left turn onto SW Murphy. She said the current site distance and curve of SW Greenway make it difficult to view any vehicles in the center turn lane trying to queue for a left turn onto SW Murphy. She stressed this was a highly-traveled area. She said she agreed with Commissioner Crocker that this was a band-aid solution for the heavy traffic on SW Greenway and the real solution was to finish the 125th Avenue extension.

Coun. Stanton stressed she was concerned about queuing the whole length of SW Greenway from Albertson's to Downing. She said queuing from Albertson's to Steamboat, to help the apartment residents, might be acceptable. She said she saw a substantial conflict between Steamboat and Windmill, and Steamboat and Davies. She said for these reasons, she would vote no on this issue.

Coun. Bode noted that 17,000 vehicles per day travel on SW Greenway. She said when one considers that SW Greenway was supposed to be a pathway for the neighborhoods to access Hall Boulevard or Murray Avenue, it could be reasoned that the 17,000 cars that travel on SW Greenway were not from those two neighborhoods. She said she checked the curve on SW Greenway and also did not feel the visibility was adequate because of the curve and the trees. She said she agreed this was another band-aid approach instead of moving ahead on the 125th Avenue extension.

Mayor Drake said this was driven by a citizen concern from a resident on Windmill. He said the City was proceeding on the 125th Avenue extension; Phase 1 was finished and the draft Capital Improvement Plan had funds for underground infrastructure improvement, which was Phase 2 of this project. He said this project would cost around ten million dollars, and the City did not have the funds available as yet. He agreed this project had been in the process for many years, but there was some movement being made on the project. He said no one testified at the Commission hearing, so he would recommend this be sent back to the Traffic Commission and that staff be given more direction on what the Council would like the Commission to review. He asked staff to comment on this issue.

Traffic Engineer Randy Wooley said the Commission discussed all of these issues; it was recognized by the Commission and staff that there were advantages and disadvantages to this proposal. He said it would cost approximately \$25,000 to stripe the roadway if an outside firm was used; it would cost less if the City did the work.

Coun. Doyle said the Commission spent a lot of time on this issue. He said his biggest concern was that the left turn lane would be used to pass traffic. He asked if the Council agreed with Coun. Stanton's comments, was it necessary to send this back to the Traffic Commission or could it be handled by the Council.

Coun. Stanton said she believed the Commission's deliberation was thoughtful. She said there was a difference between enthusiastically embracing an issue or acquiescing, and she wasn't sure this wasn't more of an acquiescing to a staff proposal to meet the need of one citizen off of Windmill. She said she would like to see this remanded back to the Traffic Commission with direction to restudy the length of the center turn lane.

Coun. Doyle stated this was a safety measure for many people, not just the neighborhoods on SW Greenway.

Mayor Drake agreed that as a courtesy he felt it should go back to the Traffic Commission and those who were involved in the issue should be notified.

Coun. Stanton MOVED, SECONDED by Coun. Bode, that the Council remands Traffic Commission Issue No. TC 573, Agenda Bill 05063, back to the Traffic Commission, to restudy this issue looking at center turn lane only from the Albertson's Driveway to Steamboat Drive.

Coun. Arnold asked if that meant the Commission would only look at the lane up to that point or may they consider it further than that.

Coun. Stanton said she was comfortable with a separate left turn queue at Park View Loop. She said she did not like the center turn lane going all the way down to the bridge. She said this proposal showed a long center turn lane in an area where there were no opportunities to turn either way, so she questioned why the lane was in that area. She said her greatest concern was using that queue as a through lane and the potential for collisions because of that. She said she was mostly concerned with Davies Road and Steamboat Drive; she did not want conflicts there.

Coun. Doyle said bringing the center turn lane back past the south entrance of Albertson's parking lot, makes an already difficult left turn more challenging with two lanes of traffic blocking the left turn.

Coun. Arnold asked about the section by Park View Loop.

Coun. Stanton said it was fine with her if the staff and Commission also looked at a left turn queue for Park View Loop.

Mayor Drake said the motion was to remand this issue back to the Traffic Commission and ask the Commission to look at this from south of the Albertson's parking lot down to Steamboat Drive, and to review the left turn at Park View Loop.

Coun. Stanton agreed with the Mayor's restatement of the motion.

Coun. Bode said she would like to see the Commission discuss handling the 5:00 p.m. left turn from Albertson's onto Hall Boulevard, with relation to safety issues.

Coun. Ruby said he was fine with this action as long as it was understood this was being remanded for further discussion and review. He said if the Commission decided to stay with this original recommendation, he would be inclined to support it.

Question called on the motion. Couns. Arnold, Bode, Doyle, Ruby and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

RECESS:

Mayor Drake called for a brief recess at 7:09 p.m.

RECONVENE:

Mayor Drake reconvened the meeting at 7:20 p.m.

WORK SESSION:

05065 Update of Tualatin River Basin Water Supply Project

City Utilities Engineer Dave Winship presented an update on the Tualatin Basin Water Supply Project (TBWSP) to Council. He said information on this project was included in the agenda bill that would authorize the Mayor to sign the third amendment to the Joint Funding Agreement for the IWRM Water Supply Feasibility Study (Agenda Bill 05064, also being considered by Council at this meeting).

Winship said the work on the Water Supply Feasibility Study occurred from 2001-2004 and the third amendment to the Joint Funding Agreement for the IWRM Water Supply Feasibility Study, would fund the Tualatin River Basin Water Supply Project (TBWSP) for Years 2004-2006. He said the objective of the TBWSP was development of a long-term water supply to the Year 2050. He reviewed the participants in the TBWSP and the major source options for the Water Supply Feasibility Study (WSFS) (in the record).

Winship said the WSFS showed the Scoggins Dam raise was feasible in terms of wetlands, vegetation, threatened and endangered species, fish habitat, recreation, hydrology and engineering; it was studied by project consultants. He said the Bureau of Reclamation cost estimates for the raise were: \$100 million for a 20-foot raise, which provides an additional 24,300 acre feet of net usable water; and \$135 million for a 40-foot raise which provides an additional 52,600 acre feet of net usable water.

Winship reviewed the property impacts of the dam raise on the tributary areas. He said water level changes were significant with some private property impacts, though no dwellings would be inundated by a forty foot dam raise, road relocation would be significant, and recreational park facilities would need to be relocated. He reviewed figures on the yield and reliability of the expanded reservoir (in the record). He said the reliability was an issue on the 40-foot expansion. He said to increase the reliability and yield for the 40-foot expansion, a raw water pipeline would be laid from the expanded dam to the treatment plant and to the Spring Hill Pumping Plant, which is the JWC and TVID intake on the Tualatin River; using this line, during high river flow, water could be withdrawn from the Tualatin River and pumped back to fill Hagg Lake. He said this would increase reliability to 93%. He said this option was preferable to the Sain Creek

Tunnel because Sain Creek had a number of environmental challenges. He said the Sain Creek option was eliminated through a recommendation by the Water Managers Group and the Policy Steering Committee.

Coun. Stanton referred to the Sain Creek Tunnel and asked about the idea of pumping water from the Willamette River into Hagg Lake, co-mingling the water and then treating it.

Winship said the exchange would go directly into the Tualatin Valley Irrigation District's storage reservoir and (TVID) distribution system for irrigation; it would not be pumped directly in Hagg Lake.

Coun. Stanton said she was sure the TVID users had said they would not use Willamette River water on their crops.

Winship said in early discussions, the TVID exchange pipe came up as an idea and was studied. When the information on the exchange pipe was reviewed, TVID did not support the option.

Winship explained the City's Aquifer Storage and Recovery (ASR) wells would still be available for future water supplies as mentioned in the TBWSP studies as a supply alternative. He reviewed the process and timelines for the Water Supply Project Environmental Impact Statement (EIS) (in the record). He said the final EIS and Record of Decision should be available by Summer 2006. He said at that time, the partners will need to decide whether or not to move forward with construction.

Winship reviewed the cost estimates for the City's participation in the Source Water Supply Project. He said the City's share of the costs, as currently estimated, for the Tualatin Basin Water Supply Project is \$11.7 million; that included the Scoggins Dam Raise and the pumping component of the Raw Water Pipeline Pump Back from Tualatin River to Hagg Lake. He said Beaverton's cost for the Joint Water Commission's Capital Improvement Projects is \$14.1 million. He said the total potential cost of all of these projects to the City was \$25.8 million over the next ten years.

Mayor Drake said an important thing to remember was that the region has relied mainly on the water sources on Mount Hood. He said these projects help diversify the supply; if there was ever a volcanic event that disrupted the Mount Hood sources, there would be another supply source for the short term until repairs or rebuilding could be done.

Coun. Stanton said she appreciated those considerations on a regional view. She said at this meeting she was considering from a local view, the needs of the City, which did not include Bull Run water or access to it. She asked if the City ever had to tap into Bull Run water to meet its daily needs.

Winship replied that the City had to use Bull Run water in 2001 when there was only a half full reservoir in Hagg Lake; the City bought 300 million gallons from the City of Portland. He said the cost of that water was shared by the JWC partners.

Coun. Stanton asked if the City could ever lose its contract with the Bureau of Reclamation for Scroggins Reservoir and how often it was renewed.

Winship said his recollection was that the contract was renewed every 50-years. He said the contract was not in jeopardy. He said the Federal government had many contracts such as this with reservoirs throughout the country.

Coun. Stanton asked what "Portland Purchase" meant on the slide which showed the source options screened for the Water Supply Feasibility Study.

Winship replied it was an alternative that could be considered, in lieu of expanding the dam in the Tualatin Basin. He said the Tualatin Valley Water District had reduced by half its use of Bull Run Water since joining the Joint Water Commission.

There were no further questions.

05064 Authorize Mayor to Sign Third Amendment to Joint Funding Agreement for IWRM Water Supply Feasibility Study (aka Tualatin River Basin Water Supply Project)

Coun. Doyle MOVED, SECONDED by Coun. Ruby that Council approve Agenda Bill 05064, Authorize Mayor to Sign Third Amendment to Joint Funding Agreement for IWRM Water Supply Feasibility Study (aka Tualatin River Basin Water Supply Project); and direct the Finance Director to include the required Beaverton expenditure in FY 2005-06 of \$67,619 and \$155,803 in FY 2006-07 budgets to continue with the project. Couns. Arnold, Bode, Doyle, Ruby and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

ORDINANCES:

Second Reading:

City Attorney Alan Rappleyea read the following ordinances for the second time by title only:

05059 An Ordinance Relating to the Fire Code, Repealing Beaverton Code Sections 8.01.010, 8.01.033, 8.01.038, 8.01.043, and 8.01.900. (Ordinance No. 4345)

05060 An Ordinance Amending Beaverton Code Section 6.02.215 to Allow Use of Muffled Exhaust Braking on Emergency Vehicles (Ordinance No. 4346)

Coun. Doyle MOVED, SECONDED by Coun. Ruby, that the ordinances embodied in Agenda Bills 05059 and 05060, now pass. Roll call vote. Couns. Arnold, Bode, Doyle, Ruby and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

ADJOURNMENT

There being no further business to come before the Council at this time, the meeting was adjourned at 8:04 p.m.

Catherine Jansen, Deputy City Recorder

APPROVAL:

Approved this day of , 2005.

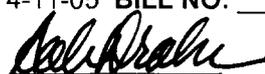
Rob Drake, Mayor

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Development Services Fee Schedule Increase

FOR AGENDA OF: 4-11-05 **BILL NO:** 05069

Mayor's Approval: 

DEPARTMENT OF ORIGIN: CDD 

DATE SUBMITTED: 2-25-05

CLEARANCES: Finance 
City Attorney 
Devel. Services 

PROCEEDING: Consent Agenda

- EXHIBITS:**
1. Staff Memorandum dated February 25, 2005
 2. Draft Resolution approving the Community Development Department's development services fee schedule
 3. Proposed Development Services Fee Schedule.
 4. Existing Development Services Fee Schedule.
 5. Fee Comparison Table
 6. Fee schedules from Washington County, City of Portland, City of Tigard, City of Gresham, City of Hillsboro.

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

Since at least June 1994, the City has annually adjusted the Community Development Department's Development Services Fee Schedule according to the United States Department of Labor Consumer Price Index "West-C". Since FY 97/98, the Development Services Division of the Community Development Department has recovered less than 30% of its annual costs. FY 99/00 witnessed a high of 28% cost recovery and FY 00/01 witnessed a low of 14.7% cost recovery. FY 03/04 had a cost recovery of 22%.

INFORMATION FOR CONSIDERATION:

Please refer to exhibit 1, staff's memorandum of February 25, 2005, detailing the proposed changes to the Community Development Department's Development Services Fee Schedule.

RECOMMENDED ACTION:

Staff recommend that the City Council approve the attached resolution adopting a new Development Services Fee Schedule.

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AGENDA BILL FOR:

DEVELOPMENT SERVICES FEE SCHEDULE INCREASE

I.	Staff Memorandum	Pages 002-006
II.	Draft Resolution	Pages 007-008
III.	Proposed Fee Schedule	Pages 009-010
IV.	Existing Fee Schedule	Pages 011 - 012
V.	Fee Comparison Table	Page 013
VI.	Fee Schedules from Washington County and Cities of Portland, Tigard, Gresham, and Hillsboro	Pages 014 - 027



MEMORANDUM

City of Beaverton

Community Development Department

"make it happen"

To: Mayor Drake and City Council
From: Steven A. Sparks, AICP, Development Services Manager 
Date: February 25, 2005
Subject: *Development Services Application Fees*

The City has not performed an in-depth review of land use and design application fees for at least the past fifteen years. During that time, however, the Development Services Fee Schedule has been adjusted by varying percentages annually. Since 1994, annual fee adjustments have been tied to the Consumer Price Index for a West Coast mid-sized city (CPI-W). For FY 2004-05, land use application fees were adjusted by an increase of 3.0 percent.

In FY 2003-04, the Development Services Division (current planning) recovered approximately 22% of the Division's expenditures for FY 2003-04. The costs of the Division included in this analysis is limited to Development Services staff, not all of whom are routinely involved in the daily processing of land use applications. The staff who are not routinely involved include the Division Manager, support staff, and one Senior Planner whose primary responsibility is Development Code writing. This cost recovery analysis does not include time and resources spent by staff in the Engineering (transportation and water) and Operations Divisions who are routinely involved with the review of land use applications.

The Division has surveyed five regional jurisdictions to find out what percent of the cost of providing staff is recovered through application fees. The following is a brief summary of the City's findings from surveying the jurisdictions:

- Washington County - Washington County is a 100% cost recovery fee program.
- City of Portland - Portland cost recovery goal is 65% of the land use review (current planning) program.
- City of Tigard - Tigard's budget expectations are to recover approximately 50% of the Current Planning Division's costs.

- City of Gresham - Gresham's budget expectations are to recover approximately 60% of the Development Planning (current planning) section's costs.
- City of Hillsboro - Hillsboro has not conducted a cost recovery analysis nor does the City have an official policy regarding how much cost recovery should take place.

The Division has undertaken an analysis to compare the specific fees charged by the five (5) above listed jurisdictions. The purpose of the fee comparison is to determine how great a difference there is between the City's fees and the surveyed jurisdictions. Each of the jurisdictions have different land use applications and sometimes different methods of calculating a fee for universally comparable land use applications. Therefore, some discretion was used in determining the appropriate fee for comparable land use applications. The fees charged by the jurisdictions are typically significantly higher than the fees charged by the City of Beaverton. The fees charged by each jurisdiction also ranged widely for some of the land use applications. To provide a more balanced approach to determine a percentage difference in fees, staff eliminated the highest and the lowest fees for each land use application and averaged the remaining fees.

Because of the differences in applicable land use applications, staff reviewed the fees charged for (9) universally comparable land use applications¹. The net result of the fee analysis is that the City's land use application fees are approximately one third of similar land use application fees in the surveyed jurisdictions. If the Division's FY 2003-04 revenues (i.e. collected land use application fees) had been increased by 100%, the Division would have recovered approximately 45% of the Division's costs in FY 2003-04.

Staff suggest that a 45% cost recovery is a modest goal to meet as compared to the surveyed jurisdictions. The City's land use application fees will continue to be, on average, lower than neighboring jurisdictions. Further, the remaining costs will be borne by the City whose citizens are also involved in the land use review process.

Staff suggest that all current fees be raised 100% except for the following applications (see Exhibits 3 and 4 of the Agenda Bill for proposed and existing fee schedules):

¹ Land use applications in comparison were: Appeal to City Council, CUP (Major), Design Review (\$250K valuation), Home Occupation, Sign, Subdivision (10 lots), Tree Removal (Major), Variance, and Quasi-Judicial Zoning Map Amendment

DMV License Review: The City's fees for new and renewed Department of Motor Vehicle (DMV) licenses are slightly lower than the average among the surveyed communities. Instead of raising the fees 100%, staff recommend minor increases by raising the renewal fee from \$34 to \$40 and the new license fee from \$84 to \$100. The \$40 and \$100 fee represent the average between the surveyed jurisdictions.

Director's Interpretation: The City's fee for Director's Interpretations appear to be comparable to the surveyed jurisdictions. Therefore, staff do not recommend any change to the current fee.

Flexible Setbacks: None of the surveyed jurisdictions have a flexible setback application. Therefore, staff do not recommend any change to the current fees.

Home Occupation One: Due to the changes in processing of this application, staff recommend that the fee be eliminated.

Land Divisions: Each of the jurisdictions surveyed typically charge a graduating fee based on the number of lots proposed in a land division. Staff suggest that the City adopt this fee format to determine the fees for Preliminary Subdivisions and Preliminary Fee-Ownership Subdivisions.

Preliminary Partition The average application fee is substantially higher than the City's existing fee. A land partition application is limited to review of no greater than three (3) lots. With the exception of the City of Gresham, each of the surveyed jurisdictions charge a flat fee, no per lot fee, for the review of Preliminary Partition plats. The average fee is \$3,494 or \$2,838 higher than the City's fee of \$656. Therefore, instead of raising the fee 100% and remaining almost \$2,200 behind the surveyed average, staff recommend raising the fee to \$3,000 to a more comparable fee but one which is still approximately \$500 below the surveyed average. Staff further recommend that no "lot based" fee be created for Preliminary Partition applications.

Preliminary Subdivision Each of the surveyed jurisdictions charge a base fee and a fee calculated by the number of lots proposed for Preliminary Subdivisions. The average base fee is \$3,733 or \$1,625 higher than the City's fee of \$2,108. Further, each of the surveyed jurisdictions charge an average "lot based" fee of \$94 per lot. Therefore, staff recommend that the City raise the Preliminary Subdivision base fee from \$2,108 to \$3,730 and adopt a new fee calculation based on the number of lots created by the proposed subdivision. Staff recommend that lot based fee be established at \$95 per lot.

Under this proposal, the fee for a 10 lot subdivision would be \$3,825. (\$3,730 + \$950 (10 lots @ \$95 each)).

Fee Ownership Partition and Subdivision Staff recommend that the fees described for Preliminary Partition and Preliminary Subdivision apply to the corresponding fee ownership land divisions.

Final Partition With the exception of the City of Gresham, each of the surveyed jurisdictions charge a flat fee, no per lot fee, for the review of Final Partition plats. The City of Beaverton also charges a flat fee for this review. The City's fee for Final Partition plat review is \$607 or \$175 lower than the average fee. Therefore, staff suggest that the existing \$607 fee be raised \$175 (or 23% of existing fee) to meet the jurisdictional average of \$782.

Final Subdivision With the exception of the City of Gresham, each of the surveyed jurisdictions charge a flat fee, no per lot fee, for the review of Final Subdivision plats. The City of Beaverton also charges a flat fee for this review. The City's fee for Final Subdivision plat review is almost \$1,000 more than the average fee. Therefore, staff suggest lowering the fee from \$1,948 to \$950.

Lot Line Adjustment: The analysis shows that the City's existing fee for lot line adjustments is slightly lower than the average of the surveyed jurisdictions. Therefore, staff suggest that the lot line adjustment fee not be adjusted 100%. Instead, staff suggest the fee be adjusted to match the average by increasing the fee \$78 or 24% to a fee of \$405.

Parking Determination: None of the surveyed jurisdictions appear to have a comparable application. Therefore, staff do not recommend any change to the current fees.

Public Transportation Facility: On January 1, 2005, the City created the Public Transportation Facility application. None of the surveyed jurisdictions appear to have a comparable application. Therefore, staff do not recommend any change to the current fee.

Sign: The analysis shows that the City's existing fee matches the average of the surveyed jurisdictions. Therefore, staff suggest that the sign fee not be adjusted.

Wireless Facility: On January 1, 2005, the City created three new applications for reviewing new wireless communication facilities. None of the surveyed jurisdictions appear to have a comparable set of applications. The fees that were adopted in January 2005 were based on the Conditional Use application fees. Prior to January 2005, new wireless communication facilities were subject to both the Design Review and Conditional Use applications and fees. Staff recommend that the three (3) Wireless Facility applications continue to match the Conditional Use application fees and be raised 100%.

Approval Extension: The City of Tigard charges a lower fee to extend a prior approval. The lower fee reflects the presumed lack of complicated issues in extending a prior approval. Currently, if a project proponent wanted to extend a near expired approved application in Beaverton, the applicant would be required to pay the full application fee. Therefore, staff recommend that a new fee be established to extend previously approved applications. Staff suggest a fee of \$300 would be sufficient to cover noticing costs and 45% of staff time.

A RESOLUTION SUPERSEDING RESOLUTION NO. 3760 AND ESTABLISHING FEES FOR PLANNING PERMITS, APPEALS, AND OTHER SERVICES PURSUANT TO SECTION 10.55 OF THE BEAVERTON DEVELOPMENT CODE, ORDINANCE 2050.

WHEREAS, it is City policy to annually adjust fees for applications and appeals to reflect inflation and processing expenses; and,

WHEREAS, Section 10.55 of the Beaverton Development Code (Ordinance 2050) provides that the City may charge and collect filing and other fees as established by resolution of the Council in order to defray expenses incurred in connection with the processing of applications, preparation of reports, publications of notices, issuance of permits and other matters; and,

WHEREAS, the City Council has determined that the Development Services Division of the Community Development Department should recover approximately 45 percent of the Division's costs; and,

WHEREAS, the City has been collecting revenue from application fees which has been substantially less than 45 percent of the Division's costs since fiscal year 1997-98; and,

WHEREAS, legal public notice of the Beaverton City Council's consideration of the adjustment to the City's Development Services Fee Schedule was published in the March 17, and March 24, 2005 edition of the *Valley Times*; and,

WHEREAS, the Beaverton City Council met at a regularly scheduled meeting on April 11, 2005 to consider, on consent agenda, the adjustment to the City's Development Services Fee Schedule; now therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERTON, OREGON:

Section 1: The Council adopts the adjusted fee schedule of the Community Development Department Development Services Division actions on land development applications and processes as shown in Exhibit A to this Resolution, attached and incorporated herein by this reference. The fee schedule shall be effective for all applications received on and after July 1, 2005.

Section 2: The Council directs the Mayor annually to adjust the fee schedule adopted by this Resolution effective for land development applications received on and after July 1 of each succeeding calendar year according to the United States

Department of Labor Consumer Price Index West-C published for the interval last preceding that effective date. The Mayor shall endeavor to give 60 days public notice of the fee adjustment prior to the effective date of each adjustment, but failure to give such notice shall not invalidate the adjustment.

Section 3: This Resolution supersedes anything to the contrary in Resolution No. 3760 and in all prior resolutions setting fees for Development Services Division actions on land development approvals.

Section 4: This Resolution shall take effect July 1, 2005.

Adopted by the Council this ____ day of _____, 2005.

Approved by the Mayor this ____ day of _____, 2005.

Ayes: _____

Nays: _____

Attest:

Approved:

Sue Nelson, City Recorder

Rob Drake, Mayor

CITY OF BEAVERTON	
DEVELOPMENT SERVICES FEE SCHEDULE	
JULY 1, 2005 TO JUNE 30, 2006	
APPLICATION TYPE	Fees
ACCESSORY DWELLING UNIT	\$ 168
ADJUSTMENT	
MINOR	\$ 610
MAJOR	\$ 1,878
APPEALS	
TYPE 1 AND TYPE 2 DECISIONS*	\$ 250
TYPE 3 AND TYPE 4 DECISIONS	\$ 1,276
BALLOT MEASURE 37 CLAIM (Deposit)	\$ 1,000
COMPREHENSIVE PLAN AMENDMENT	\$ 4,650
CONDITIONAL USE	
MINOR MODIFICATION	\$ 608
MAJOR MODIFICATION	\$ 2,548
ADMINISTRATIVE	\$ 1,224
NEW CONDITIONAL USE	\$ 2,548
PRELIMINARY PLANNED UNIT DEVELOPMENT	\$ 2,548
FINAL PLANNED UNIT DEVELOPMENT	\$ 2,548
DESIGN REVIEW	
DESIGN REVIEW COMPLIANCE LETTER	\$ 100
DESIGN REVIEW TWO	\$ 1,606
DESIGN REVIEW THREE	\$ 3,532
DEVELOPMENT COMPLIANCE FEES	
DMV REVIEW (License Renewal)	\$ 40
DMV REVIEW (New Business)	\$ 100
DIRECTOR'S INTERPRETATION	\$ 640
EXTENSION OF PRIOR APPROVAL	\$ 300
FLEXIBLE & ZERO YARD SETBACKS	
INDIVIDUAL LOT (with endorsement)	\$ 100
INDIVIDUAL LOT (without endorsement)	\$ 804
PROPOSED RESIDENTIAL LAND DIVISION	\$ 804
PROPOSED ANNEXATION	\$ 804
ZERO SETBACK - PROPOSED RESIDENTIAL LAND DIVISION	\$ 804
ZERO SETBACK - PROPOSED NON-RESIDENTIAL LAND DIVISION	\$ 359
HISTORIC REVIEW	
ALTERATION	\$ 606
EMERGENCY DEMOLITION	\$ 606
DEMOLITION	\$ 606
NEW CONSTRUCTION WITHIN HISTORIC DISTRICT	\$ 606
HOME OCCUPATION	
HOME OCCUPATION ONE	N/C
HOME OCCUPATION TWO	\$ 450
LAND DIVISION	
LOT LINE ADJUSTMENT	\$ 405
PRELIMINARY PARTITION & FEE-OWNERSHIP PARTITION	\$ 3,000
PRELIMINARY SUBDIVISION & FEE-OWNERSHIP SUBDIVISION	\$3730 + \$95 / Lot
FINAL PARTITION	\$ 782
FINAL SUBDIVISION	\$ 950
EXPEDITED LAND DIVISION	\$ 5,900

EXHIBIT 3

Ex A

APPLICATION TYPE	Fees
LOADING DETERMINATION	\$ 262
PARKING DETERMINATION	
PARKING REQUIREMENT DETERMINATION	\$ 262
SHARED PARKING	\$ 262
USE OF EXCESS PARKING	\$ 131
PREAPPLICATION CONFERENCE	\$ 214
PROJECT MANAGEMENT DEPOSIT (minimum charge)	\$ 3,000
PUBLIC NOTICE (Ballot Measure 56) (deposit)	\$ 10,000
PUBLIC TRANSPORTATION FACILITY	\$ 803
RE NOTIFICATION	\$ 135
RESEARCH / PER HOUR	\$ 135
SIGN	\$ 72
SOLAR ACCESS	\$ 696
STREET NAME CHANGE	\$ 1,500
STREET VACATION	\$ 1,800
TEMPORARY USE	
MOBILE SALES	\$ 168
NON-MOBILE SALES	\$ 168
STRUCTURE	\$ 168
REAL ESTATE OFFICE	\$ 168
NON-PROFIT EVENT	\$ 168
TEXT AMENDMENT	\$ 4,230
TREE PLAN	
TREE PLAN ONE	\$ 562
TREE PLAN TWO	\$ 920
TREE PLAN THREE	\$ 1,276
TREE PLAN FOUR	\$ 1,634
VARIANCE	\$ 1,878
WIRELESS FACILITY	
WIRELESS FACILITY ONE	\$ 608
WIRELESS FACILITY TWO	\$ 1,224
WIRELESS FACILITY THREE	\$ 2,548
ZONE CHANGE	
QUASI-JUDICIAL	\$ 2,666
LEGISLATIVE	\$ 2,666
ANNEXATION RELATED - NON DISCRETIONARY	N/C
ANNEXATION RELATED - DISCRETIONARY	N/C

* Pursuant to ORS 227.175(10), if a land use decision has not previously been heard in a public hearing format, the fee for an appeal of that decision cannot be greater than \$250.00. This fee is not to be charged to any local government agencies. If the appellant prevails in this appeal, this appeal fee is to be refunded.

Adopted by Resolution No. _____

EXHIBIT 4

CITY OF BEAVERTON DEVELOPMENT SERVICES FEE SCHEDULE JANUARY 1, 2005 TO JUNE 30, 2005		Proposed Fee
APPLICATION TYPE	Fees	
ACCESSORY DWELLING UNIT	\$ 134	\$ 168
ADJUSTMENT		
MINOR	\$ 305	\$ 610
MAJOR	\$ 939	\$ 1,878
APPEALS		
TYPE 1 AND TYPE 2 DECISIONS*	\$ 250	\$ 250
TYPE 3 AND TYPE 4 DECISIONS	\$ 638	\$ 1,276
BALLOT MEASURE 37 CLAIM (Deposit)	\$ 1,000	\$ 1,000
COMPREHENSIVE PLAN AMENDMENT	\$ 2,325	\$ 4,650
CONDITIONAL USE		
MINOR MODIFICATION	\$ 304	\$ 608
MAJOR MODIFICATION	\$ 1,274	\$ 2,548
ADMINISTRATIVE	\$ 612	\$ 1,224
NEW CONDITIONAL USE	\$ 1,274	\$ 2,548
PRELIMINARY PLANNED UNIT DEVELOPMENT	\$ 1,274	\$ 2,548
FINAL PLANNED UNIT DEVELOPMENT	\$ 1,274	\$ 2,548
DESIGN REVIEW		
DESIGN REVIEW COMPLIANCE LETTER	\$ 100	\$ 100
DESIGN REVIEW TWO	\$ 803	\$ 1,606
DESIGN REVIEW THREE	\$ 1,766	\$ 3,532
DEVELOPMENT COMPLIANCE FEES		
DMV REVIEW (License Renewal)	\$ 34	\$ 40
DMV REVIEW (New Business)	\$ 84	\$ 100
DIRECTOR'S INTERPRETATION	\$ 640	\$ 640
FLEXIBLE & ZERO YARD SETBACKS		
INDIVIDUAL LOT (with endorsement)	\$ 100	\$ 100
INDIVIDUAL LOT (without endorsement)	\$ 804	\$ 804
PROPOSED RESIDENTIAL LAND DIVISION	\$ 804	\$ 804
PROPOSED ANNEXATION	\$ 804	\$ 804
ZERO SETBACK - PROPOSED RESIDENTIAL LAND DIVISION	\$ 804	\$ 804
ZERO SETBACK - PROPOSED NON-RESIDENTIAL LAND DIVISION	\$ 359	\$ 359
HISTORIC REVIEW		
ALTERATION	\$ 303	\$ 606
EMERGENCY DEMOLITION	\$ 303	\$ 606
DEMOLITION	\$ 303	\$ 606
NEW CONSTRUCTION WITHIN HISTORIC DISTRICT	\$ 303	\$ 606
HOME OCCUPATION		
HOME OCCUPATION ONE	\$ 112	N/C
HOME OCCUPATION TWO	\$ 225	\$ 450
LAND DIVISION		
LOT LINE ADJUSTMENT	\$ 327	\$ 405
PRELIMINARY PARTITION	\$ 656	\$ 3,000
PRELIMINARY SUBDIVISION	\$ 2,108	\$3730 + \$95/Lot
PRELIMINARY FEE-OWNERSHIP PARTITION	\$ 656	\$ 3,000
PRELIMINARY FEE-OWNERSHIP SUBDIVISION	\$ 2,108	\$3730 + \$95/Lot

EXHIBIT 4

APPLICATION TYPE	Fees	
LAND DIVISION - Continued		
FINAL LAND DIVISION		
PARTITION	\$ 607	\$ 782
SUBDIVISION	\$ 1,948	\$ 950
EXPEDITED LAND DIVISION	\$ 2,950	\$ 5,900
LOADING DETERMINATION	\$ 262	\$ 262
PARKING DETERMINATION		
PARKING REQUIREMENT DETERMINATION	\$ 262	\$ 262
SHARED PARKING	\$ 262	\$ 262
USE OF EXCESS PARKING	\$ 131	\$ 131
PREAPPLICATION CONFERENCE	\$ 107	\$ 214
PROJECT MANAGEMENT DEPOSIT (minimum charge)	\$ 2,887	\$ 3,000
PUBLIC NOTICE (Ballot Measure 56) (deposit)	\$ 10,000	\$ 10,000
PUBLIC TRANSPORTATION FACILITY	\$ 803	\$ 803
RE NOTIFICATION	\$ 133	\$ 135
RESEARCH / PER HOUR	\$ 67	\$ 135
SIGN	\$ 72	\$ 72
SOLAR ACCESS	\$ 348	\$ 696
STREET NAME CHANGE	\$ 911	\$ 1,500
STREET VACATION	\$ 883	\$ 1,800
TEMPORARY USE		
MOBILE SALES	\$ 84	\$ 168
NON-MOBILE SALES	\$ 84	\$ 168
STRUCTURE	\$ 84	\$ 168
REAL ESTATE OFFICE	\$ 84	\$ 168
NON-PROFIT EVENT	\$ 84	\$ 168
TEXT AMENDMENT	\$ 2,115	\$ 4,230
TREE PLAN		
TREE PLAN ONE	\$ 281	\$ 562
TREE PLAN TWO	\$ 460	\$ 920
TREE PLAN THREE	\$ 638	\$ 1,276
TREE PLAN FOUR	\$ 817	\$ 1,634
VARIANCE	\$ 939	\$ 1,878
WIRELESS FACILITY		
WIRELESS FACILITY ONE	\$ 304	\$ 608
WIRELESS FACILITY TWO	\$ 612	\$ 1,224
WIRELESS FACILITY THREE	\$ 1,274	\$ 2,548
ZONE CHANGE		
QUASI-JUDICIAL	\$ 1,333	\$ 2,666
LEGISLATIVE	\$ 1,333	\$ 2,666
ANNEXATION RELATED - NON DISCRETIONARY	N/C	N/C
ANNEXATION RELATED - DISCRETIONARY	N/C	N/C
<p>* Pursuant to ORS 227 175(10), if a land use decision has not previously been heard in a public hearing format, the fee for an appeal of that decision cannot be greater than \$250 00. This fee is not to be charged to any local government agencies. If the appellant prevails in this appeal, this appeal fee is to be refunded.</p>		
<p>Pursuant to Resolution No. <u>3724</u>, fees have been adjusted based upon the CPI-W city size B/C for May 2003 - May 2004.</p>		

EXHIBIT 5

Application	Beaverton	Wash Co	Portland ¹	Tigard	Gresham	Hillsboro
Appeal to City Council	\$638	\$1,373	Varies ²	\$2,016	\$1,525	Varies ³
CUP (Major) ³	\$1,274	\$2,996	\$6,750	\$4,174	\$4,106	\$1,550
Design Review (\$250,000 project valuation) ^{4 & 5}	\$1,766	\$5,154	\$5,334	\$1,033	\$6,740	\$1,050
Home Occupation	\$225	\$1,244	\$1,200	\$227	\$880	\$0
Sign	\$72	\$80	\$900	\$32	\$94	\$40
Subdivision (10 lots)	\$2,108	\$6,426	\$3,900	\$4,937	\$7,042	\$1,000
Tree Removal (Major)	\$638	\$1,664	\$1,280	\$150	\$1,173	\$0
Variance (Major) ⁶	\$939	\$2,494	\$1,360	\$493	\$3,519	\$1,250
Zoning Map Amend. (Q-J) ⁷	\$1,333	\$1,664	\$3,507	\$2,570	\$7,625	\$1,500

Major = Type 3
Q-J = Quasi-Judicial

NOTES:

- [1] A portion of City of Portland fees may go to Water Bureau, Bureau of Environmental Services, Portland Department of Transportation, and the Hearings Officer. **However, the fees listed in this table reflect BDS net fee.**
- [2] Appeal fee is half of the subject application fee
- [3] Portland fee is an average Portland's fee is a minimum of \$4500 and a maximum of \$9000
- [4] Washington County does not use a Design Review process. This is a DEVELOPMENT REVIEW fee.
- [5] City of Tigard uses a "Design Evaluation Team" in certain areas of the City The fee is a deposit.
- [6] Portland uses an ADJUSTMENT application in place of the VARIANCE application
- [7] Washington County requires an initial deposit of \$1,624. Application costs typically range from \$1,500 to \$4,000.

Application	Beaverton	Wash Co ¹	Portland	Tigard	Gresham	Hillsboro
Preliminary Partition ²	\$656	\$4,554	\$3,200	\$2,727	\$4,692	\$1,050
Preliminary Subdivision ³	\$2,108	\$6,426	\$2,400	\$4,107	\$4,692	\$1,000
Final Partition	\$607	\$624	\$900	\$822	\$939	\$600
Final Subdivision	\$1,948	\$1,038	\$900	\$1,315	\$939	\$750
per lot (prelim par)	\$0	\$0	\$0	\$0	\$235	\$0
per lot (prelim sub)	\$0	\$0	\$100	\$83	\$235	\$100
per lot (final par)	\$0	\$0	\$0	\$0	\$0	\$0
per lot (final sub) ⁴	\$0	\$0	\$0	\$0	\$59	\$0

NOTES:

- [1] Washington County fees increase as the size of the land division increases, however, the fees are not by lot but increase by range of lots. Therefore, the fee assumed was for a 2-3 lot partition and a 4-10 lot subdivision.
- [2] City of Tigard charges 2 different fees This fee is an average of the 2 fees.
- [3] City of Hillsboro fee is a minimum. Maximum fee is \$2500. Fees are based on number of lots.
- [4] City of Hillsboro fee is based on 3/4ths of the original fee of the preliminary subdivision

Application	Existing Beaverton Fee	Average Jurisdiction Fee ¹	Proposed Beaverton Fee
Appeal to City Council	\$638	\$1,638	\$1,276
CUP (Major)	\$1,274	\$3,759	\$2,548
Design Review (\$250,000 project valuation)	\$1,766	\$3,846	\$3,532
Home Occupation	\$225	\$769	\$450
Sign	\$72	\$71	\$72
Subdivision (10 lots)	\$2,108	\$5,088	\$4,680
Tree Removal (Major)	\$638	\$868	\$1,276
Variance (Major)	\$939	\$1,701	\$1,878
Zoning Map Amend. (Q-J) ⁷	\$1,333	\$2,580	\$2,666

[1] This column reflects the average fee charged by the surveyed jurisdictions after removing the highest and lowest fee.



FEE SCHEDULE FOR FY 2004-2005 FOR DEVELOPMENT SERVICES SECTION

(For all applications submitted on or after July 1, 2004)

POLICIES RELATING TO FEES:

1. **Determining the Correct Fee.** The appropriate fees for Type I, II or III requests for the rural area are listed on pages two and three and for the urban area on pages four and five under the heading, "Application Fee". For Category A, B and C applications, refer to the Type I, II and III columns, respectively. The Final Approval fee, if required, is also listed. The Final Approval fee for phased projects is based on number of lots/units per each phase. For a Type II to Type I (After Master Plan Approval) use the Development review fee for a Type II. In most instances there is only one fee. Some requests however require surcharges, which are listed on page six. Engineering deposits, when required, are separate charges. The Special Use fee generally applies only to Type III requests.
2. **Consolidated Applications.** When more than one type of development request is made in conjunction with a single development action, the fee shall be the highest of the various land use actions plus one-half of the review fee for all of the subsequent requests. Application surcharges are added after the initial fee(s) is (are) determined.
3. **Development Review Valuations.** Development Review fees are based on the total cost of all on-site improvements. This includes such things as buildings, landscaping (including irrigation), paving (includes hard surfaced storm drainage and private streets), and required open space. This does not include such things as land costs, administrative and professional fees and other governmental fees. The Development review fee applies to commercial, industrial, institutional, and capital improvement projects (which may include a deposit for Traffic/Noise Analysis). All residential project fees are found in the land division, multi-family and manufactured home category.
4. **Fees Due.** Unless otherwise specified by the Code, all fees are due at the time of application or appeal of a land use decision. Failure to submit the required fee with an application, reconsideration or notice of appeal, including return of checks unpaid or other failure of consideration, may be a jurisdictional defect. All fees shall be rounded off to the nearest whole number.
5. **Fee Waivers.** Any individual who believes he cannot pay the fees required by the Washington County Community Development Code may make application for a waiver. An applicant and owner for a fee waiver must be an individual, non-corporate entity. An applicant and owner for a fee waiver shall be required to certify annual income and family size to the Director. The fee will only be waived if the family income is at or below the low income figure adjusted for household size used by this office which is obtained from the U.S. Department of Housing and Urban Development.
6. **Fee Refunds.** In cases of withdrawal of an application, refunds of fees may be made, less the costs incurred by the County, as determined by the Director. If a subsequent appeal is filed, a new fee is required. If an applicant withdraws an application after an appeal of the decision is filed and the appeal fee is refunded to the appellant, then the original applicant is responsible for reimbursing the County for costs incurred in processing the appeal.
7. **Fee Changes.** To the extent the fees are not a legislative matter under the County Charter, the fees may be amended by Resolution and Order of the Board of County commissioners.

EXHIBIT

6

URBAN

URBAN APPLICATIONS	TYPE I		TYPE II		TYPE III	
	APPLICATION FEE	FINAL APPROVAL	APPLICATION FEE	FINAL APPROVAL	APPLICATION FEE	FINAL APPROVAL
Access Management Plan	-	-	2494	-	-	-
Commencement of Development	500	-	1498	-	-	-
Deferral of Public Facilities	-	-	1664	-	-	-
Development Review (Single Family Dwelling)	500	-	1664	332	-	-
Development Review (\$0 -50,000)	664	86	2828	500	-	-
Development Review (\$50,001 - 200,000)	830	106	3660	578	-	-
Development Review (\$200,001 - 500,000)	1164	128	4490	664	-	-
Development Review (\$500,001 - 1,000,000)	1498	166	5824	830	-	-
Development Review (\$1,000,001 - 2,500,000)	1996	208	7156	996	-	-
Development Review (\$2,500,001 - 5,000,000)	2494	254	9152	1084	-	-
Development Review (\$5,000,001 - 10,000,000)	3160	332	11,650	1164	-	-
Development Review (\$10,000,001 - 25,000,000)	3826	418	14,144	1408	-	-
Development Review (\$25,000,001 - 50,000,000)	-	-	18,306	1830	-	-
Development Review (\$50,000,001 - 100,000,000)	-	-	24,962	2494	-	-
Development Review (\$100,000,000 +)	-	-	33,280	3328	-	-
Dwelling in District "B"	-	-	1498	-	-	-
Extension	-	-	1498	-	-	-
Flood Plain/Drainage Hazard Alteration	664	-	2162	-	2996	-
Hardship Relief	-	-	1498	-	-	-
Historic/Cultural Resource	-	-	1498	-	2494	-
Home Occupation	248	-	1244	-	-	-
Home Occupation Renewal	114	-	360	-	-	-
Land Div., Multi -Fam., Manuf. Dwellings (2-3)	-	-	4554	624	-	-
Land Div., Multi -Fam., Manuf. Dwellings (4-10)	-	-	6426	1038	-	-
Land Div., Multi -Fam., Manuf. Dwellings (11-25)	-	-	7280	1246	-	-
Land Div., Multi -Fam., Manuf. Dwellings (26-50)	-	-	9362	1454	-	-
Land Div., Multi -Fam., Manuf. Dwellings (51-75)	-	-	12,480	1666	-	-
Land Div., Multi -Fam., Manuf. Dwellings (76-100)	-	-	15,600	2078	-	-

APPLICATION SURCHARGES		
Expedited Review - Land Divisions		1832
Groundwater Study (rural only)		60
Planned Development /Transit Oriented District (TOD)		Type II – 3839, Type III – 6094
Planned Development /TOD (10 units or less, \$200,000 or less)		Type II – 1920, Type III – 6094
Transportation Report (>=500 A.D.T.) and Type I Development		297
Type II to Type III		1373
DEVELOPMENT COMPLIANCE FEES		
Building Permit Review Fee:	(<\$75,000 value)	50
	(\$75,000 - 250,000)	362
	(>\$250,000)	511
DMV Review (License Renewal)		43
DMV Review (New Business)		102
Flood Plain Elevation		25
Flood Plain Determination (Site Inspection)		85
OLCC Review (License Renewal)		9
OLCC Review (New Business)		74
Change in ownership, location or privilege		34
Sign Permits (all)		80
MISCELLANEOUS FEES		
Access Permit		633 (250 Deposit, 303 Operations/Insp., 80 Land Dev.)
Deferral/Continuation of Hearing		297 (Notice >21 days in advance) 744 (If w/in 21 days of H.O.)
Engineering Development Application Fee (NOTE: An application that is both a partition or subdivision and development review will only be charged the highest fee: i.e., \$175)		51 (Urban Partitions & Type II Minor Revisions) 118 (Subdivisions) 179 (Development Review, Type II & III)
Reconsideration of Type I Decision		166
Remand From LUBA		1372
Traffic Impact Statement		180
APPEAL FEES		
Appeals to Board of County Commissioners - All Urban		1373
Appeals to Hearings Officer	All Type I	880
	Type II Rural	1373
	Type II Urban	1373
Traffic Impact Fee		1259

EXHIBIT

6



Land Use Services Fee Schedule **EXHIBIT 6**
Effective September 3, 2004

Land Use Review	Proc Type	BDS Land Use Review Fee (\$) ¹	*Water Fee (\$) ¹	*BES Fee (\$) ¹	*PDOT Fee (\$) ¹	Hearings Officer Fee (\$)	Total
Adjustment Review							
Residential Use (only)							
Lots with existing single-dwelling units in a single-dwelling zone	II	897	N/A	N/A	95	N/A	992
All other residential adjustments	II	943	N/A	N/A	95	N/A	1,038
Non-residential or mixed use	II	1,360	N/A	N/A	95	N/A	1,455
Central City Parking Review	III	5,334	N/A	N/A	837	1,182	7,353
Comprehensive Plan Map Amendment	III	16,078	N/A	123	2,591	1,182	19,974
Conditional Use							
Type I	I	2,038	N/A	N/A	N/A	N/A	2,038
Minor	II	2,500	55	123	356	129	3,163
Major	III	.0043 of valuation minimum \$4,500 maximum \$9,000	55	123	1,360	1,182	minimum 7,220 maximum 11,720
Demolition/Demolition Delay Extension Review	III	3,093	N/A	N/A	39	N/A	3,132
Design Review							
Major	III	0.0043 of valuation as follows: minimum 5,334 maximum 18,331	N/A	N/A	294	N/A	minimum 5,628 maximum 18,625
Minor A (except as identified in B) (includes residential projects over 4 units)	(A) I & II	minimum 2,691 maximum 5,334	N/A	N/A	(A) 72	N/A	minimum 2,763 maximum 5,406
Minor B --Includes residential projects 4 units or fewer --Improvements under \$5,000 --Fences, freestanding & retaining walls, gates --Parking areas 10,000 sq. ft. or less --Awnings, signs, rooftop equipment --Colors in historic districts --Lighting projects --Remodels affecting less than 25 ft. of frontage	(B) I & II	minimum 534 maximum 2,691	N/A	N/A	(B) 45	N/A	minimum 579 maximum 2,736
Modifications through Design Review		100	N/A	N/A	N/A	N/A	100
Environmental Review Conservation Zone							
Residential use (only)	II	2,560	N/A	184	23	129	2,896
Non-residential or mixed use	II	5,334	N/A	184	23	129	5,670
Environmental Enhancement	I	534	N/A	N/A	N/A	N/A	534
Environmental Review Protection Zone							
	II	2,968	N/A	184	23	129	3,304
	III	3,773	N/A	184	23	1,182	5,162
Environmental Violation							
Undividable lot with existing single dwelling unit in a single dwelling zone	III	6,943	N/A	184	23	1,182	8,332
Columbia South Shore	II	3,786	N/A	184	23	1,182	5,175
	II	6,409	N/A	184	23	129	6,745
Final Plat Review⁵/ Final Dev. Plan Review⁵							
-If prelim was Type I (no new street)	I	600	N/A	N/A	632 (151) ⁶	N/A	1,232 (677) ⁶
-If prelim was Type I (new street)	I	900	N/A	N/A	632	N/A	1,532
-If prelim was Type II / IIx	I	900	N/A	N/A	632 (151) ⁶	N/A	1,532 (782) ⁶
-If prelim was Type III	I	1,300	N/A	N/A	1,059 (301) ⁶	N/A	2,359 (1,352) ⁶
Greenway							
Residential use (only)	II	1,000	N/A	184	29	129	1,342
Non-residential or mixed use	II	3,035	N/A	184	46	129	3,394
Historic Landmark Designation							
Individual properties	III	2,574	N/A	N/A	29	N/A	2,603
Multiple properties or districts	III	3,093	N/A	N/A	129	N/A	3,222
Rocky Butte Historic Features	III	1,374	N/A	N/A	129	N/A	1,503

Land Use Review	Proc Type	BDS Land Use Review Fee (\$) ¹	*Water Fee (\$) ¹	*BES Fee (\$) ¹	*PDOT Fee (\$) ¹	Hearings Officer Fee (\$)	Total
Impact Mitigation Plan							
Amendment (Minor)	II	2,847	55	123	1,132	129	4,286
Implementation	II	2,847	55	123	353	129	3,507
New/Amendment (Major)	III	14,402	55	123	4,207	1,182	19,969
Amendment (Use)	III	3,734	55	123	1,132	1,182	6,226
Land Division Review							
	I	1,700 + 100 per lot plus 500 if new street	55	123	403	N/A	2,281 + 100 per lot plus 500 if new street
	IIx	2,400 + 100 per lot plus 500 if new street	55	123	403	129	3,110 + 100 per lot plus 500 if new street
	III	4,400 + 100 per lot plus 500 if new street	55	123	833	1,182	6,593 + 100 per lot plus 500 if new street
--3 lots or less and no street	III	3,200	55	123	403	1,182	4,963
Land Division Amendment Review							
	I	1,067	N/A	123	179	N/A	1,369
	IIx	1,280	N/A	123	179	129	1,711
	III	3,200	N/A	123	179	1,182	4,684
Master Plan							
Minor Amendments	II	3,472	55	123	2,285	129	6,064
New/Major Amendments	III	7,000	55	123	5,826	1,182	14,186
Non-conforming Status Review	II	1,360	N/A	N/A	38	129	1,527
Non-conforming Situation Review	II	3,600	N/A	121	664	129	4,514
Parking Review – Marquam Hill							
	I	900	N/A	N/A	75	N/A	975
	III	3,786	N/A	N/A	837	1,182	5,805
Planned Development Review							
	IIx	2,134	55	123	291	129	2,732
	III	4,267	55	123	291	1,182	5,918
Planned Development Amendment/ Planned Unit Development Amendment							
	IIx	1,601	N/A	N/A	123	129	1,853
	III	4,267	N/A	N/A	123	1,182	5,572
Pre-Application Conference							
Major (Comprehensive Plan Map Amendment, Zone Change, Design Review, Subdivision, Master Plan, and Impact Mitigation)	N/A	1,500	73	123	366	N/A	2,062
Minor	N/A	964	73	123	366	N/A	1,526
PUD/PD Final Development Plan	N/A	305	N/A	N/A	N/A	N/A	305
Statewide Planning Goal	III	6,875	N/A	N/A	820	1,182	8,877
Tree Preservation Violation Review	III	3,000	N/A	N/A	N/A	1,182	4,182
Tree Review	II	1,280	N/A	N/A	N/A	129	1,409
Zoning Map Amendment	III	3,507	55	123	592	1,182	5,459
Other Unassigned Reviews							
	I	900	N/A	N/A	75	N/A	975
	II / IIx	1,200	55	123	78	129	1,585
	III	3,786	55	123	375	1,182	5,521

Other Planning Services		BDS Fee (\$)
Annual Subscription to Historic Demolition Notification		84
Appeals ³	Type II/IIx	250
	Type III	½ of application fee
Demolition Delay Posting		140
Design Advice Request		1,391
Early Plan Review		500
Early Land Use Review Assistance		500
Expert Consultation (above base fee) ²		80 per hour
Hourly Rate for Land Use Services		90
Limited Consultation/ Land Division Appointment ⁴		150 per hour
Plan Check	Commercial and Residential	1.34/\$1,000 valuation/45 minimum
	Community Design Standards Plan Check	.003 of valuation
	Environmental Plan Check	375
Pre-Development Conference		964
Property Line Adjustment		500
Property Tax Exemption		2,749
Renotification Fee		320
Transcripts		Actual cost
Zoning Confirmation		
Tier A (Bank Letter, New DMV)		175
Tier B (Zoning/Development Analysis, Non-conforming Standard Evidence, Notice of Use Determination)		575
Lot Segregation		400
Lot Segregation with Property Line Adjustment		700
DMV Renewal		43

*Water: Water Bureau
 *BES: Bureau of Environmental Services.
 *PDOT: Portland Department of Transportation

¹ Concurrent Reviews: When more than one land use review is requested, the full fee for the most expensive review is charged plus one-half the fee for each additional review. Water Bureau, and BES do not require additional fees for concurrent reviews. Concurrent fees do not apply to Environmental review for separate development sites. Adjustments, requested after Preliminary Land Division approval of a site, that affect multiple lots will be full price for the first lot and half price for all remaining lots

² Expert consultation fee applies to plan checks for cultural resources in the Columbia South Shore and Environmental Reviews.

³ Appeal fees will be refunded if the appellant prevails, for Type II / IIx Appeals only.

⁴ Development consultation meetings with staff prior to Land Use Review application.

⁵ If you are having a final plat concurrent with a final development plan the fee is full for one of those, and half for the other

⁶ PDOT fees and totals shown in parenthesis apply to final plats for land divisions reviewed under Title 34.

One check may be written for BDS, BES, PDOT, Water, and Hearings Officer combined fees.
Please make check payable to: City of Portland, VISA accepted.

Land Use Applications Fee Schedule

Procedure	Fee
ACCESSORY RESIDENTIAL UNITS	\$106
ANNEXATION	\$2,006
APPEAL	
DIRECTOR'S DECISION (TYPE II) TO HEARINGS OFFICER	\$250
EXPEDITED REVIEW (DEPOSIT) ★	\$300
HEARINGS REFEREE	\$500
PLANNING COMMISSION/HEARINGS OFFICER TO CITY COUNCIL	\$2,016
APPROVAL EXTENSION	\$212
BLASTING PERMIT	\$247
CONDITIONAL USE PERMIT	
INITIAL	\$4,174
MAJOR MODIFICATION	\$4,174
MINOR MODIFICATION	\$461
DESIGN EVALUATION TEAM (DET) RECOMMENDATION (DEPOSIT)	\$1,033
DEVELOPMENT CODE PROVISION REVIEW	
SINGLE-FAMILY BUILDING PLAN	\$42
COMMERCIAL/INDUSTRIAL/INSTITUTION	\$264
EXPEDITED REVIEW	
LAND PARTITION	\$3,107
SUBDIVISION	\$3,907 + 83/Lot
SUBDIVISION WITH PLANNED DEVELOPMENT	Add \$5,722
HEARING POSTPONEMENT	\$239
HISTORIC OVERLAY/REVIEW DISTRICT	
HISTORIC OVERLAY DESIGNATION	\$3,224
REMOVAL OF HISTORIC OVERLAY DESIGNATION	\$3,224
EXTERIOR ALTERATION IN HISTORIC OVERLAY DISTRICT	\$493
NEW CONSTRUCTION IN HISTORIC OVERLAY DISTRICT	\$493
DEMOLITION IN HISTORIC OVERLAY DISTRICT	\$493
HOME OCCUPATION PERMIT (ORIGINAL PERMIT)	
TYPE I HOME OCCUPATION PERMIT	\$32
TYPE II HOME OCCUPATION PERMIT	\$227
INTERPRETATION OF THE COMMUNITY DEVELOPMENT CODE	\$488
LAND PARTITION	
RESIDENTIAL AND NON-RESIDENTIAL (3 LOTS)	\$2,992
RESIDENTIAL AND NON-RESIDENTIAL (2 LOTS)	\$2,462
EXPEDITED	\$3,520
FINAL PLAT	\$822
LOT LINE ADJUSTMENT	\$383
MINOR MODIFICATION TO AN APPROVED PLAN	\$461
NON-CONFORMING USE CONFIRMATION	\$217
PLANNED DEVELOPMENT	
CONCEPTUAL PLAN REVIEW	\$5,722
DETAILED PLAN REVIEW	Applicable SDR Fee
PRE-APPLICATION CONFERENCE	\$296
SENSITIVE LANDS REVIEW	
WITH EXCESSIVE SLOPES/WITHIN DRAINAGE WAYS/WITHIN WETLANDS (TYPE II)	\$1,932
WITH EXCESSIVE SLOPES/WITHIN DRAINAGE WAYS/WITHIN WETLANDS (TYPE III)	\$2,080
WITHIN THE 100-YEAR FLOODPLAIN (TYPE III)	\$2,080
SIGN PERMIT	
EXISTING AND MODIFICATION TO AN EXISTING SIGN (NO SIZE DIFFERENTIAL)	\$32
TEMPORARY SIGN (PER SIGN)	\$15

SITE DEVELOPMENT REVIEW AND MAJOR MODIFICATION	
UNDER \$1,000,000	\$3,536
\$1 MILLION/OVER	\$4,642 + \$5/Each \$10,000 Over \$1 Million
MINOR MODIFICATION	\$461
SUBDIVISION	
PRELIMINARY PLAT WITHOUT PLANNED DEVELOPMENT	\$4,107 + 83/Lot
PRELIMINARY PLAT WITH PLANNED DEVELOPMENT	Add \$5,722
FINAL PLAT	\$1,315
PLAT NAME CHANGE	\$250
TEMPORARY USE PERMIT	
DIRECTOR'S DECISION	\$241
SPECIAL EXEMPTION/NON-PROFIT ORGANIZATION	-0-
TREE REMOVAL	\$150
VACATION (STREETS AND PUBLIC ACCESS)	\$1,765 Deposit + Actual Costs
VARIANCE/ADJUSTMENT	
ADMINISTRATIVE VARIANCE	\$493
DEVELOPMENT ADJUSTMENT	\$217
SPECIAL ADJUSTMENTS	
- ADJUSTMENT TO A SUBDIVISION	\$217
- REDUCTION OF MINIMUM RESIDENTIAL DENSITY	\$217
- ACCESS/EGRESS STANDARDS ADJUSTMENT	\$493
- LANDSCAPING ADJUSTMENT (EXISTING/NEW STREET TREES)	\$248
PARKING ADJUSTMENTS	
- REDUCTION IN MINIMUM OR INCREASE IN MAXIMUM PARKING RATIO	\$493
- REDUCTION IN NEW OR EXISTING DEVELOPMENT/TRANSIT IMPROVEMENT	\$493
- REDUCTION IN BICYCLE PARKING	\$493
- ALTERNATIVE PARKING GARAGE LAYOUT	\$217
- REDUCTION IN STACKING LANE LENGTH	\$493
SIGN CODE ADJUSTMENT	\$493
STREET IMPROVEMENT ADJUSTMENT	\$493
TREE REMOVAL ADJUSTMENT	\$217
WIRELESS COMMUNICATION FACILITY ADJUSTMENTS	
- SETBACK FROM NEARBY RESIDENCE	\$493
- DISTANCE FROM ANOTHER TOWER	\$217
ZONING MAP/TEXT AMENDMENT	
LEGISLATIVE — COMPREHENSIVE PLAN	\$7,134
LEGISLATIVE — COMMUNITY DEVELOPMENT CODE	\$2,804
QUASI-JUDICIAL	\$2,570
ZONING ANALYSIS (DETAILED)	\$461
ZONING INQUIRY LETTER (SIMPLE)	\$53
JOINT APPLICATION PLANNING FEE	100% of Highest Planning Fee + 50% of All Additional Fees Related to the Proposal

EFFECTIVE DATE: OCTOBER 29, 2003 (Updated according to Resolution No. 03-59) (Resolution No. 03-59, Repealing Resolution No. 02-38, Repealing Resolution No. 98-58, Repealing Resolution No. 96-30, Repealing Resolution No. 91-01)

★ - Established by state statute

NOTE 1: **WITHDRAWN APPLICATIONS:** In cases of withdraw of an application; refund of fees may be applicable, less costs incurred, as determined by the Director. Generally, refunds of 80 percent will be made for applications received and withdrawn prior to sending out request for comments to agencies and notice of public hearing being sent. Fifty-percent refunds will be made where notice of public hearing has been sent but no staff report has begun. NO REFUNDS WILL BE PROVIDED FOR APPLICATIONS FOR WHICH A STAFF REPORT HAS BEGUN.

NOTE 2: **PROPERTY OWNER NOTICE REQUIREMENTS:** For all Type II, III and IV applications, applicants must submit two (2) sets of pre-stamped, pre-addressed envelopes for all property owners of record within 500 feet of the subject properties. The very most current records of the Washington County Department of Assessment and Taxation shall be the official records for determining ownership. Contact the City of Tigard to request 500-foot property owner mailing labels.

DEVELOPMENT PLANNING FEES

<u>APPLICATION TYPE</u>	<u>FEE</u>
Accessory Dwellings	\$704
Amateur Radio and Citizen Band Antenna	
Type I	\$59
Type II	\$587
Annexation	\$9,970
Appeals	
Appeal to Hearings Officer or Planning Commission	\$250
Appeal to City Council	\$1,525
Note: An appeal fee may be waived for a neighborhood association recognized under GRC Article 2.60, if all of the following are met:	
1. The recognized neighborhood association has standing to appeal;	
2. The appeal is not being made on behalf of an individual;	
3. The decision to appeal was made by a vote of the general membership, of the governing board, or of a land use sub-committee of the neighborhood association in an open meeting as authorized in the associations by-laws; and	
4. The appeal contains the signature of the chairperson or the contact person of the recognized neighborhood association confirming the vote to appeal as required in paragraph 3 above.	
Building Moving	\$587
Building Permits (planning review of building permits)	
Non-subdivision Single Family	\$118
Multi-Family	\$235
Commercial	\$235
Other	\$235
Grading	\$235
Occupancy - Final	\$176
Community Service	
Type I	\$587
Type II	\$1,877
Type III	\$4,106
Condominium Conversion	
Preliminary	\$1,173
Plat	\$587
Development in Conformance with Previous Approval	
Check for compliance with Conditions of Approval	\$1,173
Resubmittal Fee (after first response)	\$235
Site inspection to determine conformance with conditions	\$176 (per visit)
DMV/FEMA/LUCS/Business License Review	\$59
Future Street Plan	\$1,760
Historic Landmarks	
Historic landmark alteration (Type III)	\$2,346
Historic landmark demolition (Type III)	\$2,346
Request for designation/status change	\$2,581
Removal from list (Type II)	\$1,173
Home Occupations	
New Application (Type II)	\$880
Renewal (Type I)	\$118
Renewal (Type II)	\$1,115

Note: See Section 10.0507 to determine home occupation renewal type

Interim Office Use	\$939
Land Divisions	
Partitions and Subdivisions - tentative plan	\$4,692 + \$235/lot
Partitions and Subdivisions - final plat	\$939 + \$59/lot over 3
Planned Unit Development	\$7,038 + land division fee
Extension of preliminary plan approval	\$411
Inactive status request	\$352
Reinstatement request	\$352
Phased Subdivision	\$587
Addressing Fees	\$52 + \$5/lot
Lot Line Adjustments/Consolidations	
Preliminary plan	\$962
Final map	\$235
Nonconforming Uses/Developments	
Type I Expansion of a nonconforming use - SFR	\$118
Type II Expansion of a nonconforming use	\$880
Establish a nonconforming use	\$587
Open Space Dedication	\$294
Phasing/Staging Request (Other)	\$587
Plan Map Amendment	\$7,625
Pre-Application Conference	
Minor	\$352
Major	\$997
Follow-up for same site, same applicant	1/2 original fee
Project Management Fee	\$5,865 + negotiated hourly rt
Research Records	
Administrative or Clerical Staff	\$47/per hour
Professional Staff	\$118/hour
Note: an estimated deposit will be required prior to commencing research	
Resource Utilization Permit	\$2,346
Resubmittal Fees	
of an incomplete application (after 1st determination)	\$352
of an incomplete application (after 2nd determination)	\$704
Other	\$235
Modification of proposal	\$939
Renotification fee	\$587
Reschedule Public Hearing	\$1,173
Satellite Antennae	
Permit	\$59
Yard/Height Exception	\$587
Signs	
Permit per elevation	\$94
Change to Non-Conforming Exceptional Sign	\$2,346
Site Design Review	
	\$5,865 + \$ 0035 of project value to \$5,000,000 + \$ 0007 of project value over \$5,000,000
Extension of approval	\$411
Assignment of Addresses	See Permit Technician

Solar Access

Permit	\$1,173
Extension of approval	\$176

Special Purpose Districts (overlays)

Review of Special Purpose District Reports base fee	\$1,173
Deposit for consultant review of reports-based on actual cost	\$3,519
Adjustment to HPC/FP (Type I)	\$587
Adjustment to NR/OS (Type II)	\$939
Special purpose district boundary revision (Type III)	\$2,933

Temporary Health Hardship Dwelling

Initial Permit	\$528
Renewal	\$176
Guarantee of removal (refundable deposit or bond)	\$2,076

Temporary Use Permits

Type I	\$470
Type II	\$939

Trees

Removal	\$1,173
Deposit for consultant	\$2,346
Significant Tree - Appeal of designation (Type IV)	No fee
Significant Tree - Major pruning (Type II)	No fee
Significant Tree - Removal (Type III)	No fee
Adjustments to save trees	No fee

Traffic Report Submittal

Base fee	\$1,332
Deposit for consultant (if applicable)	\$2,346

Vacation (street, plat, other)

\$2,346

Variance

Minor (Type II)	\$728
Major (Type III)	\$3,519
Yard Setback	\$470
Private Street in Condominium	\$1,056
Modification of Regulations	\$939
Solar Yard Setback Exception	\$470

Written Interpretation (land use district or other)

\$176

Unlisted Development Permits (not specifically listed above)

Type I	\$657
Type II	\$1,173
Type III	\$3,519

PUBLIC FACILITY FEES

Plan Review and Inspection (based on valuation below)	
\$0 - \$25,000	
Plan Check Fee (Deposit)	\$2,018
Admin/Inspection Deposit	\$3,000
\$25,001 - \$100,000	
Plan Check Fee (Deposit)	\$2,925
Admin/Inspection Deposit	\$4,540
\$100,001 - \$250,000	
Plan Check Fee (Deposit)	\$3,657
Admin/Inspection Deposit	\$6,000
\$250,001 - \$500,000	
Plan Check Fee (Deposit)	\$4,388
Admin/Inspection Deposit	\$7,540
\$500,001 - \$750,000	
Plan Check Fee (Deposit)	\$4,800
Admin/Inspection Deposit	\$9,000
\$750,001 - \$1,000,000	
Plan Check Fee (Deposit)	\$5,300
Admin/Inspection Deposit	\$10,000
\$1,000,000 +	
Plan Check Fee (Deposit)	\$5,800
Admin/Inspection Deposit	\$12,000

Construction/Connection Permits

Approach (Driveway in Public Right-of-Way)	\$99
Encroachment	\$104
Sidewalk	\$99
Storm	\$42
Street Opening	\$260, plus actual cost of admin, plan review and inspection if actual costs exceed \$150
Wastewater	\$68 plus Wastewater Division Connection Permit Fee and inspection charges.
Water	\$104 plus Water Division Connection Permit Fee and installation charges. Additional deposit required for estimated installation charges.

Erosion Control - Plan Review and Compliance Inspection

Single Family/Duplex	\$177
All Others - one acre or less	\$468
Each additional acre or portion thereof above 1 acre	\$84
Extra inspections (if required due to non-compliance with erosion ctrl plan)	at cost

Pre-Design Conference (Public Facilities)	\$250
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Review of Reports and Preparation of Documents (Easements, vacates, rights-of-way, agreements, etc)

Billed at actual Cost with \$104 minimum fee; \$519 deposit required

Recording & coordination of fees for legal documents+Recording costs	\$42
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Street Lights

Billed at actual cost, deposit of estimated costs required prior to final plat approval

Development Fees and Charges (Effective May 1, 2004)

EXHIBIT 6

Street Signs

See DE or Techs for \$\$\$

Per street sign face	\$0
Per stop sign	\$0
Other signage per sign	\$0

www.ci.hillsboro.or.us/Planning_Department/LandUseApplicationFee/Default.aspx



Planning

EXHIBIT 6

Land Use Application Fee Schedule & Application Forms

Application Forms: Click on the application below to open a PDF version of the application. If no link is available, contact the Planning Department for a copy.

Comprehensive Plan

Application Type	Fee
Minor Comprehensive Plan Amendment	\$1,850
Appeal	Half original application fee

Zoning Ordinance

Zone Change	\$1,500
Conditional Use	\$1,550
Variance (project value < \$10,000)	\$500
Variance (project value > \$10,000)	\$1,250
Expansion of Non-Conforming Use	\$1,250
Planned Unit Development:	
Preliminary Development Plan	\$2,100
Final Development Plan	\$950
Administrative Modification	\$700
Planning Commission Modification	\$950
Special Use in the Floodplain/Alteration	\$1,100
Significant Natural Resources Permits:	
SNR Permit Type 1a	\$100
SNR Permit Type 1b	\$500
SNR Permit Type 2	\$1,100
Development Review by Value:	
\$0 to \$4,999	\$300
\$5,000 to \$24,999	\$550
\$25,000 to \$99,999	\$800
\$100,000 to \$499,999	\$1,050
\$500,000 to \$999,999	\$1,400
\$1,000,000 to \$4,999,999	\$1,750
\$5,000,000+	\$3,000

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EXHIBIT 6

Concept Development Plan	\$750
Detailed Development Plan by Value	Same as Development Review
Fence Permit	\$30
Home Occupation Permit	\$0
Appeal	Half original application fee

Subdivision Ordinance

Major Land Partition (tentative)	\$1,050
Major Land Partition (final)	\$600
Minor Land Partition (tentative)	\$625
Minor Land Partition (final)	\$500
Subdivisions (tentative)	\$100/lot; \$1,000 min; \$2,500 max
Final Plat	3/4 original application fee
Tentative Plat Modification	\$900
Appeal	Half original application fee

Other

Property Line Adjustment	\$0
Sign Permit	\$20 per face
Temporary Use Permit	
Up to 90 days	\$15
More than 90 days	\$100
Annexation (City of Hillsboro and Metro Fees)	
City of Hillsboro Fee	
under .33 acres:	\$300
.33 acres plus:	\$600
Metro Fee	
less than 1 acre:	\$150
1 to 5 acres:	\$250
5 to 40 acres:	\$300
more than 40 acres:	\$400

For additional information call (503) 681-6153.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Classification Changes

FOR AGENDA OF: 4-11-05 **BILL NO:** 05070

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: HR *[Signature]*

DATE SUBMITTED: 4-1-05

CLEARANCES: Finance
Planning
Library *[Signatures]*

PROCEEDING: CONSENT AGENDA

EXHIBITS: None

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED: \$23,700	BUDGETED \$39,480	REQUIRED \$0

HISTORICAL PERSPECTIVE:

Community Development Department

The creation of the Senior Engineer classification (Site Development Services Manager position) in 2003 was in response to operational audit recommendations proposed by an external consultant and internal organizational development work. The Senior Engineer classification was created by combining all the engineering construction inspection responsibilities of a position being vacated by the retirement of the Senior Field Inspector-Engineering and the responsibilities for managing the newly-formed Site Development Services Division. In addition to the engineering construction inspection section, this division encompasses the site development review section. Staff has had the opportunity to assess division processes and its staffing/organization structure since October 2003 and has concluded modifications are necessary to enable the division to progress in areas such as customer service, external client relationships, inter-departmental collaboration, consistency and quality control of construction projects.

Library

The Library on Wheels (LOW) Program was established in 1996 to provide day care children with library books and exposure to children's reading programs. At its inception, the program was developed and managed by a Division Librarian. Three employees in the Library Aide 2 classification were assigned to the program. Their responsibilities included making visits to day care centers. At the day care, they read a book from a sub-collection that was pre-selected by a Librarian and led a finger play and song. They also left a bag of books (also from the pre-selected group) at the day care centers until the next visit. The Library Aide 2 employees had restricted discretion in book selection and minimal program administration responsibilities.

Human Resources

For the past several years, the Administrative Assistant position in the Human Resources Department has provided analytical and technical support to various Human Resources functions including database development and maintenance, the creation of statistical reports, administrative support to

the Human Resources Director, assistance with compensation and labor relations survey work and daily administration of the CORE program.

INFORMATION FOR CONSIDERATION:

Community Development Department

The Senior Engineer has a staff of 12 spanning two technical sections including the first line supervision of the seven employees on the engineering construction inspection staff. This position also has oversight of over 40 construction projects at any given time. At least 95 percent of the Senior Engineer's time is spent supervising, responding to phone calls, visiting project sites, and processing close out paperwork for the construction phase of projects. Minimal time remains to work on division management responsibilities including process improvement work, proactive resolution to construction issues or collaborative relationship building between divisions, departments and developers. The Community Development Director proposes a new classification titled Engineering Construction Inspection Supervisor. This position will handle daily supervision of the inspection staff, resolution of construction issues and project close outs. The creation of this new classification will provide the necessary time for the Senior Engineer to perform the division management functions listed above.

The Human Resources staff conducted a market study on this position but did not find comparable matches. The results of the internal point factor evaluation place the new classification in salary level 13 (\$4,418 -- \$5,921). The proposed Engineering Construction Inspection Supervisor requires a Professional Engineer (PE) license. The existing Project Engineer classification also requires a PE and is in salary level 13.

Two new FTE were allocated for the Site Development Division in fiscal year 04/05. The first position was not filled until October 2004. The second position has not been filled. As a result, there is approximately \$35,380 in wages and benefits that remains in the budget for this fiscal year. These unused funds will be used to pay for the position for the remainder of fiscal year 04/05. It will cost approximately \$19,100 in wages and benefits to fund this new position for the remainder of the fiscal year.

Library

Over the past three years, the LOW program structure has changed. There is only one Library Aide 2 assigned to the program. This employee has been with the program since its inception. Because of his increased knowledge of the overall Children's book collection gained over the past years, the employee can select books from the Children's collection at large. Additionally, because of his experience with the program's administration, he manages most issues that arise regarding the program. The employee's ability to manage the day to day activities associated with the program has relieved the Division Librarian of the tasks of program administration. Because the Library Director intends to continue with the current assignment of duties to this position, he is proposing the creation of a Library Program Assistant classification. Approximately 50% of the current incumbent's time will be allocated to this new position at this time.

The Human Resources staff conducted a market study on this position and found no matches. The results of the internal point factor evaluation place the new classification in salary level 5 (\$14.34 -- \$19.22). It will cost approximately \$600 in wages and benefits to fund this new position for the remainder of the fiscal year.

Human Resources

The Human Resources and Finance Departments are in the process of implementing an automated integrated Human Resources/Payroll system (HRIS). The Human Resources Department assigned the Administrative Assistant position to be the implementation project manager from Human Resources. Once this system is implemented, this position will serve as the Human Resources Department HRIS Administrator. As such the duties will include the liaison function with Information Systems and Payroll. This position will take the lead role in the Human Resources Department for system modifications or

conversions and the development of automated processes and reporting tools. In addition to the HRIS duties, the position will continue to perform its Human Resources analytical and technical duties including that related to compensation and labor relations. The Human Resources Director proposes the creation of a Human Resources Analyst classification to perform these duties.

Human Resources conducted a market study on this position and did not find comparable matches. The results of the internal point factor evaluation place the new classification in salary level 9 (\$19.00 -- \$25.46). It will cost approximately \$4,000 in wages and benefits to fund this new position for the remainder of the fiscal year. Savings from other funds in the Human Resources budget will be used to pay for this position.

RECOMMENDED ACTION:

Council approve the creation of the following:

- An exempt, management classification titled Engineering Construction Inspection Supervisor in salary level 13 effective April 11, 2005;
- A non - exempt, represented classification titled Library Program Assistant in salary level 5 effective April 11, 2005;
- A non - exempt management classification titled Human Resources Analyst in salary level 9 effective January 1, 2005.

Council authorize Human Resources to negotiate the salary for the Library Program Assistant with the Union and Council authorize the Finance Director to transfer the necessary appropriations to fund the new classifications in the next supplemental budget and in the proposed fiscal year 05-06 budget.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: City Council Appointments to Boards and Commissions **FOR AGENDA OF:** 4/11/05 **BILL NO:** 05071

Mayor's Approval: *L. DeBevoise*
Mayor Pro Tem
DEPARTMENT OF ORIGIN: Mayors Office

DATE SUBMITTED: 4/6/05

CLEARANCES: Mayor's Office *La*

PROCEEDING: Consent

EXHIBITS: List of Appointments

BUDGET IMPACT

EXPENDITURE REQUIRED\$000	AMOUNT BUDGETED\$000	APPROPRIATION REQUIRED \$000
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HISTORICAL PERSPECTIVE:

The Beaverton City Council held a City Council Retreat on January 29, 2005; one of the agenda items was the appointment of City Councilor's to City Boards, Committees and Commissions.

INFORMATION FOR CONSIDERATION:

Exhibit 1 List of Appointments

RECOMMENDED ACTION:

Approve City Council Appointments

City Council Appointments

January 29, 2005

Councilor Fred Ruby	Human Rights Commission
Councilor Dennis Doyle	Beaverton Arts Commission Mayor's Youth Advisory Board Citizen's for Community Involvement
Councilor Catherine Arnold	Citizens for Disabilities Senior Advisory Board
Councilor Betty Bode	Social Services Funding Committee Liaison to Mayor's Office
Councilor Cathy Stanton	Beaverton Library Board Metropolitan Area Communications Commission

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Bid Award – Cedar Hills Boulevard
Utility Improvements Project, Phase 3

FOR AGENDA OF: 04-11-05 **BILL NO:** 05072

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: Engineering *[Signature]*

DATE SUBMITTED: 04-06-05

CLEARANCES: Purchasing *[Signature]*
Finance *[Signature]*
City Attorney *[Signature]*
Capital Proj *[Signature]*
Water *[Signature]*

PROCEEDING: Consent Agenda
(Contract Review Board)

- EXHIBITS:**
1. CIP Project Data Sheet/Map
 2. Bid Summary
 3. Funding Plan

BUDGET IMPACT

EXPENDITURE REQUIRED *	AMOUNT BUDGETED *	APPROPRIATION REQUIRED *
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* See attached Funding Plan (Exhibit 3). As shown in the Exhibit, an appropriation of \$17,820 is needed in Program 3950 (Storm Maintenance and Replacement). The funding is available from the Storm fund's contingency account.

HISTORICAL PERSPECTIVE:

The Cedar Hills Boulevard Utility Improvements Project, Phase 3 is included in the FY 2004/05 Capital Improvements Plan (CIP) under CIP Project Number 8006C (Exhibit 1).

The Cedar Hills Boulevard Utility Improvements Project, Phase 3 extends from Beaverton Creek to Canyon Road. The purpose of the utility improvement project is to complete water, storm, and sanitary improvements prior to an asphalt overlay of Cedar Hills Boulevard from Beaverton Creek to Farmington Road scheduled for August 2005. The project scope of work for Phase 3 utility improvements consists of 1) replacing and upsizing the sanitary pipe between Millikan Way and Canyon Road as specified in the 2004 Sanitary Sewer Master Plan, 2) replacing an old 6-inch cast iron water pipe with a 12-inch pipe between Beaverton Creek and Canyon Road as specified in the Water Master Plan, 3) improving water quality in Beaverton Creek, and 4) repairing old and damaged storm pipes. Specific work items include directional drilling 264 feet of 14" water line under Beaverton Creek and the installation of 1,600 feet of 12" water line and associated fittings, 500 feet of 8" sanitary sewer pipe and nine (9) laterals, 600 feet of 12" storm pipe and 300 feet of 18" storm pipe, and a 8'x16' water quality vault and three associated manholes.

Phase 1 (Huntington Avenue to Jenkins Road) utility improvements and overlay were completed in FY 2002-03 and Phase 2 (Jenkins Road to Beaverton Creek) utility and overlay improvements were completed in FY 2003-04.

INFORMATION FOR CONSIDERATION:

The invitation for bid was advertised in the *Daily Journal of Commerce* on March 14, 2005. A mandatory pre-bid meeting was held on March 22, 2005. Five contractors attended the pre-bid meeting. Three (3) bids were received and opened on April 5, 2005 at 2:00 p.m. in the Finance Department conference room (Exhibit 2). CivilWorks NW of Portland, Oregon, submitted the lowest responsive bid in the amount of \$913,314. The overall bid amount is \$53,775 or 6.3% higher than the Engineer's Estimate (Exhibit 3). The primary reasons that the Engineer's Estimate was lower than the low bid were ductile iron pipe and fitting prices have more than doubled on a unit price basis from 2004, and the storm water quality underground vault was 50% higher than the Engineer's Estimate (\$45,000 versus \$30,000). The storm water quality underground vault is the 8-foot wide by 16-foot long by 5-foot deep structure that holds the twenty six (26) storm water filters.

Staff reviewed the qualifications of CivilWorks NW and investigated their performance with three previous customers. They received positive recommendations from all customers. In addition, CivilWorks NW completed the Murray Boulevard at Safeway Improvement Project (CIP Project 5012) in September 2003 in a very satisfactory manner. Staff finds CivilWorks NW has satisfied the bid requirements to construct utility improvements in a built-up, urban environment.

With City Council approval of the bid award, a Notice to Proceed (NTP) would be issued to the Contractor on or about April 29, 2005. The project contract requires substantial completion, which includes all work other than punch-list corrections and final cleanup, within 90 days of the NTP. This means the project's estimated substantial completion date is July 29, 2005.

RECOMMENDED ACTION:

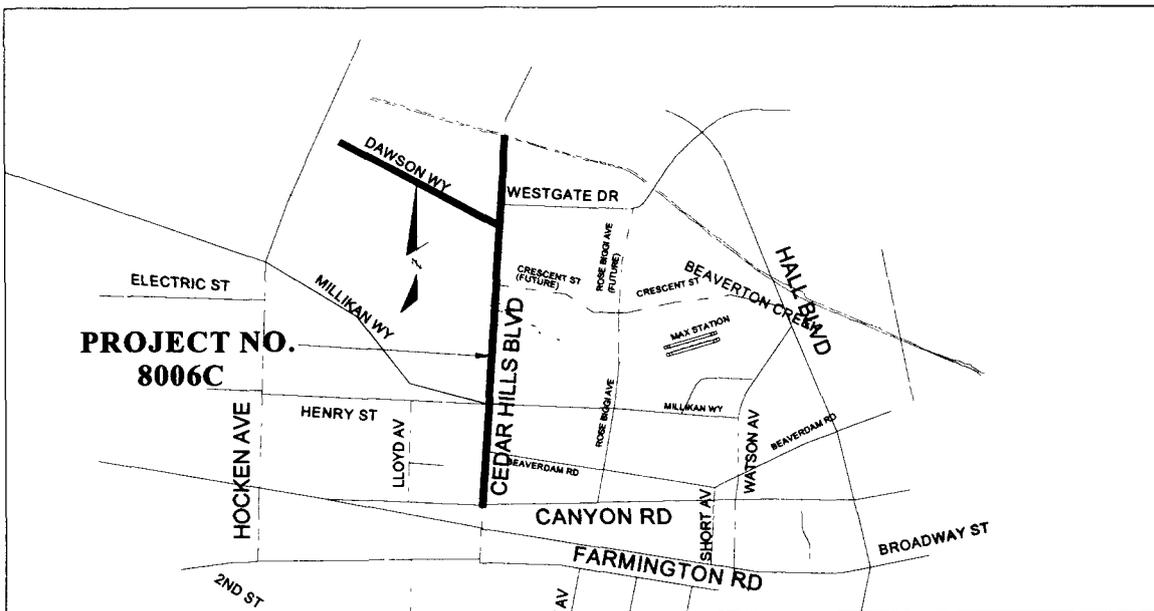
Council, acting as Contract Review Board, award the bid to CivilWorks NW in the amount of \$913,314, in a form approved by the City Attorney, as the lowest responsive bid received for the Cedar Hills Boulevard Utility Improvements Project, Phase 3 and direct the Finance Director to include an additional appropriation of \$17,820 in the next supplemental budget.

City of Beaverton
2004-2005 CIP

Project Data

Project Number: 8006C
Project Name: Cedar Hills Blvd Utility Improvements, Phase 3
Project Description: Upgrade public utilities on Cedar Hills Blvd from Beaverton Creek to Canyon Rd and on Dawson Wy from Cedar Hills Blvd to the west end. Utility improvements include water, storm drainage and sanitary sewer. This project is also coordinated with the FY2005/06 overlay program.

Map:



Project Justification: Public utilities need to be upgraded or repaired prior to a pavement overlay scheduled for the summer of 2005.

Project Status: The project was advertised on 3-14-05, held a prebid meeting on 3-22-05, and opened bids on 4-5-05. Contract award is scheduled for 4-11-05. Work is scheduled to begin on 4-25-05, be substantially complete by 7-29-05, and closed out by 8-31-05.

Estimated Date of Completion: 08/31/2005

Estimated Project Cost: \$900,000

First Year Budgeted: FY03/04

Funding Data:

<u>Project No.</u>	<u>Fund No.</u>	<u>Fund Name</u>	<u>Amount</u>	<u>FY</u>
8006C	3620	Water Extra Capacity Supply	\$165,000	FY2004/05
	3701	Water Improvements	\$165,000	FY2004/05
	3850	Sewer Maint/Replacement	\$135,000	FY2004/05
	3917	Storm SDC Water Quality	\$45,000	FY2004/05
	3950	Storm Maint/Replacement	\$157,556	FY2004/05
	3620	Water Extra Capacity Supply	\$125,000	FY2005/06
	3701	Water Improvements	\$75,000	FY2005/06
	3850	Sewer Maint/Replacement	\$50,000	FY2005/06
	3950	Storm Maint/Replacement	\$59,000	FY2005/06
<u>Total for FY:</u>			\$976,556	

BID SUMMARY

CITY OF BEAVERTON

TO: Mayor & City Council

FROM: Purchasing Division

SUBJECT: Bid Opening

Bids were opened on APRIL 5, 2005 at 2:00PM in the FINANCE CONFERENCE ROOM

For: CEDAR HILLS BLVD UTILITY IMPROVEMENT, PHASE 3 PROJECT – FY 04-05

Witnessed by: JIM BRINK

VENDOR NAME AND CITY, STATE	BID AMOUNT
EMERY & SONS, INC. STAYTON, OR	\$ 977,211.00
CIVILWORKS NW, INC. VANCOUVER, WA	\$ 913,314.00
LANDIS & LANDIS CONSTRUCTION PORTLAND, OR	\$ 1,026,099.00

The Purchasing process has been confirmed.

Signed: *Larry L. Muralt*
Purchasing Division-Finance Dept.

The above amounts have been checked: YES NO

Date: 4-5-05

Funding Plan - Cedar Hills Blvd Utility Improvements Phase 3

Project No. 8006C

Fund Number	FY2004-05 Fund Budget	FY2004-05 Project Budget	FY2005-06 Project Budget	Total Project Budget	Engineer's Estimate*	Project Cost As Bid*	Additional Appropriation Required
501-75-3701-682 Water System Improvements	\$547,000	\$155,000	\$65,000	\$220,000	\$201,157	\$208,967	NA
505-75-3620-682 Water Extra Capacity Improvements	\$701,000	\$155,000	\$115,000	\$270,000	\$245,859	\$255,404	NA
513-75-3915-682 Storm Water Conveyance Improvements	\$365,000	\$0	\$0	\$0	\$24,900	\$22,080	NA
513-75-3917-682 Storm Water Quality Improvements	\$90,000	\$45,000	\$0	\$45,000	\$30,000	\$45,000	NA
513-75-3950-682 Storm Maintenance & Replacement	\$1,010,000	\$146,000	\$49,000	\$195,000	\$194,096	\$212,820	\$17,820
502-75-3850-682 Sanitary Maintenance & Replacement	\$1,821,915	\$125,000	\$40,000	\$170,000	\$163,554	\$169,070	NA
Totals		\$626,000	\$269,000	\$900,000	\$859,566	\$913,341	\$17,820
* Includes Extra Work As Authorized							

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: TA 2004-0011 Tree Code Text
Amendment

FOR AGENDA OF: 04/11/05 **BILL NO:** 05073

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: CDD *[Signature]*

DATE SUBMITTED: 03/29/05

CLEARANCES: Planning Services *HB*

PROCEEDING: Work Session

EXHIBITS: Staff Report and Relevant Material
Attached to Ordinance to Approve
Text Amendment, Scheduled for First

BUDGET IMPACT Reading at this Meeting.

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

On February 2, 2005, February 23, 2005, March 16, 2005, and March 30, 2005, the Planning Commission held a public hearing to consider TA 2004-0011 (Tree Code Text Amendment) that proposes to amend Sections 40.60 and 60.60 and Chapter 90 to modify and clarify regulations related to removal and mitigation thereof of trees and vegetation, and related definitions found in the Beaverton Development Code.

INFORMATION FOR CONSIDERATION:

Staff will have handouts of the PowerPoint presentation available to the City Council at the meeting.

RECOMMENDED ACTION:

Conduct a Council work session.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: TA 2004-0011 Tree Code Text
Amendment

FOR AGENDA OF: 04/11/05 **BILL NO:** 05074

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: CDD *[Signature]*

DATE SUBMITTED: 03/29/05

CLEARANCES: City Attorney *[Signature]*
Planning Services *[Signature]*

PROCEEDING: First Reading

- EXHIBITS:**
1. Ordinance
 2. Planning Commission Order No. 1790
 3. Planning Commission Minutes
(01/19/05, 02/02/05, 02/23/05,
03/16/05, draft 03/30/05)
 4. Staff Reports (dated 01/14/05, 01/26/05,
02/02/05, 02/16/05, 03/02/05,
03/23/05, and memorandum dated
03/25/05)
 5. Written Testimony

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

On February 2, 2005, February 23, 2005, March 16, 2005, and March 30, 2005, the Planning Commission held a public hearing to consider TA 2004-0011 (Tree Code Text Amendment) that proposes to amend Sections 40.90 and 60.60 and Chapter 90 to modify and clarify regulations related to removal and mitigation thereof of trees and vegetation, and related definitions, found in the Beaverton Development Code. Following the close of the public hearing on March 30, 2005, the Planning Commission voted to recommend approval of the proposed Tree Code Text Amendment, as memorialized in Planning Commission Order No. 1790.

INFORMATION FOR CONSIDERATION:

Attached to this Agenda Bill is an Ordinance including the proposed text, Planning Commission Order No. 1790, the Planning Commission meeting minutes, staff reports, and written testimony comprising the record for this proposal.

RECOMMENDED ACTION:

Staff recommend the City Council approve the recommendation of the Planning Commission for TA 2004-0011 (Tree Code Text Amendment) as set forth in Planning Commission Order No. 1790. Staff further recommend the Council conduct a First Reading of the attached ordinance.

Text Amendment No. TA 2004-0011

Planning Commission Recommendation to Approve Tree Code Text Amendment, TA2004-0011

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Exhibit 1 Ordinance	1-26
Exhibit A Development Code Section 40.90	
Exhibit B Development Code Section 60.60	
Exhibit C Development Code Section 90	
<i>Exhibits A, B and C are provided as clean copy, without mark-up. The mark-up versions can be found in Exhibit 4.</i>	
Exhibit 2 Planning Commission Order No. 1790	27-33
Exhibit 3 Planning Commission Minutes	34-78
Exhibit 4 Staff Reports and Memoranda	79-386
Exhibit 5 Written Testimony	387-412

ORDINANCE NO. 4348

AN ORDINANCE AMENDING ORDINANCE NO. 2050, THE DEVELOPMENT CODE, SECTIONS 40.90 AND 60.60 AND CHAPTER 90; TA 2004-0011 (TREE CODE TEXT AMENDMENT)

- WHEREAS,** the purpose of the Tree Code Text Amendment is to amend three sections of the Beaverton Development Code currently effective through Ordinance 4332 to modify and clarify regulations related to removal and mitigation thereof of trees and vegetation, and related definitions; and
- WHEREAS,** pursuant to 50.50.1 of the Development Code, the Beaverton Planning Services Division on January 26, 2005, published a written staff report and recommendation a minimum of seven (7) calendar days in advance of the scheduled public hearing before the Planning Commission on February 2, 2005; and
- WHEREAS,** on February 2, 2005, February 23, 2005, March 16, 2005, and March 30, 2005, the Planning Commission conducted a public hearing for TA 2004-0011 (Tree Code Text Amendment); and
- WHEREAS,** at the conclusion of the March 30, 2005 hearing, the Planning Commission voted to recommend to the Beaverton City Council to adopt the proposed amendment to the Development Code as summarized in Planning Commission Order No. 1790; and
- WHEREAS,** no written appeal pursuant to Section 50.75 of the Development Code was filed by persons of record for TA 2004-0011 (Tree Code Text Amendment) following the issuance of Planning Commission Order No. 1790; and
- WHEREAS,** the City Council adopts as to criteria, facts, and findings, described in Planning Commission Order No. 1790 dated April 1, 2005, the Planning Commission record, and the Council's Agenda Bill dated March 29, 2005, all of which the Council incorporates by this reference and finds to constitute an adequate factual basis for this ordinance; and now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

- Section 1.** Ordinance No. 2050, effective through Ordinance No. 4332, the Development Code, is amended to read as set out in Exhibit "A", Exhibit "B" and Exhibit "C" of this Ordinance attached hereto and incorporated herein by this reference.
- Section 2.** All Development Code provisions adopted prior to this Ordinance which are not expressly amended or replaced herein shall remain in full force and effect.
- Section 3.** Severance Clause. The invalidity or lack of enforceability of any terms or provisions of this Ordinance or any appendix or part thereof shall not impair or otherwise affect in any manner the validity, enforceability or effect of the

remaining terms of this Ordinance and appendices and said remaining terms and provisions shall be construed and enforced in such a manner as to affect the evident intent and purposes taken as a whole insofar as reasonably possible under all of the relevant circumstances and facts.

First reading this _____ day of _____, 2005.
Passed by the Council this _____ day of _____, 2005.
Approved by the Mayor this _____ day of _____, 2005.

ATTEST:

APPROVED:

SUE NELSON, City Recorder

ROB DRAKE, Mayor

40.90. TREE PLAN

40.90.05. Purpose

Healthy trees and urban forests provide a variety of natural resource and community benefits for the City of Beaverton. Primary among those benefits is the aesthetic contribution to the increasingly urban landscape. Tree resource protection focuses on the aesthetic benefits of the resource. The purpose of a Tree Plan application is to provide a mechanism to regulate pruning, removal, replacement, and mitigation for removal of Protected Trees (Significant Individual Trees, Historic Trees, trees within Significant Groves and Significant Natural Resource Areas (SNRAs)), and Community Trees thus helping to preserve and enhance the sustainability of the City's urban forest. This Section is carried out by the approval criteria listed herein and implements the SNRA, Significant Grove, Significant Individual Tree, and Historic Tree designations as noted or mapped in Comprehensive Plan Volume III.

40.90.10. Applicability.

Different types of resources require different levels of protection. No Tree Plan is required for the following actions:

1. Removal of up to four (4) Community Trees, or up to 10% of the number of Community Trees on the site, whichever is greater, within a one (1) calendar year period. Properties one-half acre or less in size developed with a detached dwelling may remove any number of Community Trees.
2. Removal and pruning of any hazardous, dead, or diseased tree when the tree is identified as such by a certified arborist or by the City Arborist and the removal is required by the City.
3. In the event of an emergency requiring tree removal or pruning prior to the City Arborist's determination, if evidence justifies the emergency removal after the fact, then no tree plan is required for removal.
4. Minor pruning, as defined in Chapter 90.
5. Pruning of trees consistent with the Vision Clearance requirements of Section 60.55.50.
6. Pruning of trees by the utility provider for above ground utility power lines following acceptable arboricultural standards and practices.

7. Pruning of trees to maintain the minimum 8 foot clearance above a sidewalk.
8. Removal or pruning of the following nuisance tree species anywhere in the city: Lombardy Poplar (*Populus nigra*), and birch (*Betula* sp.).
9. Removal and pruning of the following nuisance tree species in Significant Groves and SNRAs: Norway maple (*Acer platanoides*), Tree-of-Heaven (*Ailanthus altissima*), Golden Chain Tree (*Laburnum watereri*), and English or Common Hawthorne (*Crataegus monogyna*).
10. Removal of a tree or nonnative vegetation listed as a Nuisance or Prohibited Plant on Metro's Native Plant List or in Clean Water Services' Design and Construction Standards.
11. Within SNRAs and Significant Groves, planting of native vegetation listed on the Metro's Native Plant List or in Clean Water Services' Design and Construction Standards when planted with non-mechanized hand held equipment.
12. Public street and sidewalk improvements within SNRAs or Significant Groves that meet i. or ii. and iii.:
 - i. Improvements within an existing public vehicular right-of-way; or
 - ii. Improvements to a public vehicular right-of-way in order to meet functional classification standards, such as widening or half-street improvements; and
 - iii. The proposed improvements do not exceed the minimum width standards of the Engineering Design Manual.
13. Trails within SNRAs and Significant Groves meeting all of the following:
 - i. Construction must take place between May 1 and October 30 with hand held equipment;
 - ii. Trail widths must not exceed 30 inches and trail grade must not exceed 20 percent;
 - iii. Trail construction must leave no scars greater than three inches in diameter on live parts of native plants; and
 - iv. Trails must be placed outside the top of bank of any stream, river, or pond, and
 - v. Trails must be 100% pervious.
14. Street Trees are covered by the Beaverton Municipal Code and Section 60.15.15.3.G.

15. Landscape Trees are covered by Section 40.20 Design Review and Section 60.60 Trees and Vegetation.
16. Enhancement activities conducted by a public agency for the sole purpose of improving the ecological health of forest and water resources.

40.90.15. Application.

There are four (4) Tree Plan applications which are as follows: Tree Plan One, Tree Plan Two, Tree Plan Three, and Commercial Timber Harvest.

1. Tree Plan One.

- A. Threshold. An application for Tree Plan One shall be required when none of the actions listed in Section 40.90.10 apply and one or more of the following thresholds apply:
 1. Major pruning of Protected Trees once within a one year period.
 2. Mechanized removal of non-native or invasive vegetation and clearing and grubbing of vegetation within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services.
 3. Mechanized re-planting of trees and shrubs, or both, or restoration planting within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services.
 4. Trails greater than 30 inches in width, or trail grade exceeding 20 percent, trail surfaces less than 100% pervious surface, or any combination thereof within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services that do not result in tree removal.
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35 of this Code, shall apply to an application for Tree Plan One. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Tree Plan One application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Tree Plan One application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]
 4. If applicable, pruning is necessary to improve tree health or to eliminate conflicts with vehicles or structures which includes, but is not limited to, underground utilities and street improvements.
 5. If applicable, the removal of vegetation or clearing and grubbing is necessary to accommodate physical development in the area in which the removal is proposed.
 6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Tree Plan One shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan One application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan One application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.

- H. Extension of a Decision. Previous approval of Tree Plan One proposal shall not be extended.

2. Tree Plan Two

- A. Threshold. An application for Tree Plan Two shall be required when none of the actions listed in Section 40.90.10 apply, none of the thresholds listed in Section 40.90.15.1 apply, and one or more of the following thresholds apply:
1. Removal of five (5) or more Community Trees, or more than 10% of the number of Community Trees on the site, whichever is greater, within a one (1) calendar year period, except as allowed in 40.90.10.1.
 2. Multiple Use Zoning District: Removal of up to and including 85% of the total DBH of non-exempt surveyed tree(s) within a SNRA or Significant Grove area that is found on the project site.
 3. Commercial, Residential, or Industrial Zoning District: Removal of up to and including 75% of the total DBH of non-exempt surveyed tree(s) within a SNRA or Significant Grove area that is found on the project site.
 4. Removal of a Significant Individual Tree(s).
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40 of this Code, shall apply to an application for Tree Plan Two. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Tree Plan Two application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Tree Plan Two application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.

3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]
4. If applicable, removal of a Community Tree(s) is necessary to enhance the health of the tree, grove, group of trees, or an adjacent tree or to eliminate conflicts with structures or vehicles.
 5. If applicable, removal of any tree is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995 standards and International Society of Arborists (ISA) standards on the subject.
6. If applicable, removal of any tree is necessary to accommodate physical development where no reasonable alternative exists.
7. If applicable, removal of any tree is necessary because it has become a nuisance by virtue of damage to property or improvements, either public or private, on the subject site or adjacent sites.
8. If applicable, removal is necessary to accomplish public purposes, such as installation of public utilities, street widening, and similar needs, where no reasonable alternative exists without significantly increasing public costs or reducing safety.
9. If applicable, removal of any tree is necessary to enhance the health of the tree, grove, SNRA, or adjacent trees to eliminate conflicts with structures or vehicles.
10. If applicable, removal of a tree(s) within a SNRA or Significant Grove will not result in a reversal of the original determination that the SNRA or Significant Grove is significant based on criteria used in making the original significance determination.
11. If applicable, removal of a tree(s) within a SNRA or Significant Grove will not result in the remaining trees posing a safety hazard due to the effects of windthrow.

12. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Tree Plan Two shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan Two application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.
 - E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan Two application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).
 - F. Appeal of a Decision. Refer to Section 50.65.
 - G. Expiration of a Decision. Refer to Section 50.90.
 - H. Extension of a Decision. Previous approval of Tree Plan Two proposal shall not be extended.
3. **Tree Plan Three**
- A. Threshold. An application for Tree Plan Three shall be required when none of the actions listed in Section 40.90.10 or none of the thresholds listed in Section 40.90.15.1 or Section 40.90.15.2 apply and one or more of the following thresholds apply:
 1. . Multiple Use Zoning Districts: Removal of greater than 85% of the total DBH of non-exempt surveyed trees within a SNRA or Significant Grove area that is found on the project site.
 2. Residential, Commercial, and Industrial Zoning Districts: Removal of greater than 75% of the total DBH of non-exempt surveyed trees within a SNRA or Significant Grove area that is found on the project site.

3. Removal of individual Historic Trees.
 4. Commercial timber harvest of trees which fail to meet the approval criterion specified in Section 40.90.15.4.C.4.
- B. Procedure Type. The Type 3 procedure, as described in Section 50.45 of this Code, shall apply to an application for Tree Plan Three. Upon determination by the Director, the decision making authority shall be either the Planning Commission or the Board of Design Review. The determination will be based upon the proposal.
- C. Approval Criteria. In order to approve a Tree Plan Three application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Tree Plan Three application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]
 4. If applicable, removal of a diseased tree or a tree is necessary because the tree has been weakened by age, storm, fire, or other condition.
 5. If applicable, removal is necessary to enhance the health of the grove or adjacent tree(s) to reduce maintenance, or to eliminate conflicts with structures or vehicles.
 6. If applicable, removal is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995 standards and International Society of Arborists (ISA) standards on the subject.

7. If applicable, removal is the minimum necessary to accommodate physical development because no reasonable alternative exists for the development at another location on the site and variances to setback provisions of the Development Code will not allow the tree(s) to be saved or will cause other undesirable circumstances on the site or adjacent properties.
 8. If applicable, removal is necessary because a tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or on an adjacent site..
 9. If applicable, removal is necessary to accomplish a public purpose, such as installation of public utilities, street widening, and similar needs where no reasonable alternative exists without significantly increasing public costs or reducing safety.
 10. If applicable, removal of a tree(s) within a SNRA or Significant Grove will not result in the remaining trees posing a safety hazard due to the effects of windthrow.
 11. If applicable, removal of tree or trees within a Significant Grove will not reduce the size of the grove to a point where the remaining trees may pose a safety hazard due to the effects of windthrow.
 12. If applicable, removal of a tree within a Historic Grove will not substantially reduce the significance of the grove in terms of its original designation on the list of Historic Groves.
 13. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Tree Plan Three shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan Three application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), any other information identified through a Pre-

Application Conference, and by a report from a qualified professional.

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan Three application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).
- F. Compliance with Approval. All conditions imposed on an approved Tree Plan Three shall be implemented prior to the removal, pruning, or planting of tree unless otherwise noted in the approval. Compliance with the conditions of approval shall be met as long as the tree exist unless otherwise specified or until modified through a City approval process.
- G. Appeal of a Decision. Refer to Section 50.70.
- H. Expiration of a Decision. Refer to Section 50.90.
- I. Extension of a Decision. Previous approval of Tree Plan Three proposal shall not be extended.

4. **Commercial Timber Harvest.**

- A. Threshold. An application for Commercial Timber Harvest shall be required when none of the actions listed in Section 40.90.10 apply and following threshold applies:
 - 1. Commercial harvest of timber on Tax Lot Identification Nos. 1S132CC11300, 1S132CD09000, and 1S132CD09100.
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35 of this Code, shall apply to an application for Commercial Timber Harvest. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Commercial Timber Harvest application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

APPLICATIONS

Tree Plan

1. The proposal satisfies the threshold requirement for a Commercial Timber Harvest application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code.
 4. The harvest of timber will leave no less than ten (10) living, healthy, and upright trees per acre each of which measure at least ten (10) inches in diameter at four (4) feet above grade.
 5. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Commercial Timber Harvest shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Commercial Timber Harvest application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Appeal of a Decision. Refer to Section 50.60.
- F. Expiration of a Decision. Refer to Section 50.90.
- G. Extension of a Decision. Previous approval of Commercial Timber Harvest proposal shall not be extended.

60.60. TREES AND VEGETATION. [ORD 4224; August 2002]**60.60.05. Purpose**

Healthy trees and urban forests provide a variety of natural resource and community benefits for the City of Beaverton. Primary among those benefits is the aesthetic contribution to the increasingly urban landscape. Tree resource protection focuses on the aesthetic benefits of the resource. In conjunction with processes set forth in Section 40.90 of this Code, this section is intended to help manage changes to the City's urban forest by establishing regulations and standards for the protection, pruning, removal, replacement, and mitigation for removal of Protected Trees (Significant Individual Trees, Historic Trees, and trees within a Significant Natural Resource Area (SNRA) or Significant Grove), Landscape Trees, and Community Trees.

60.60.10. Enforcement

A person found responsible for causing the removal or pruning of a protected tree in violation of the standards set forth in Section 60.60, unless exempt, shall be subject to monetary penalties. In cases of unlawful removal the person must also mitigate the removal as set forth in the mitigation requirements of section 60.60.25.

1. Fine for a violation

Monetary penalties imposed by a court of competent jurisdiction upon conviction for violating any provision of Chapter 60 section 60 of this Ordinance, shall be deposited into the City's Tree Mitigation Fund.

60.60.10. Types of Trees and Vegetation Regulated

Actions regarding trees and vegetation addressed by this section shall be performed in accordance with the regulations established herein and in Section 40.90 of this Code. The City finds that the following types of trees and vegetation are worthy of special protection:

- 1. Significant Individual Trees.**
- 2. Historic Tree.**
- 3. Trees within Significant Natural Resource Areas.**
- 4. Trees within Significant Groves.**
- 5. Landscape Trees.**

6. **Community Trees.**

7. **Mitigation Trees.**

60.60.15 Pruning, Removal, and Preservation Standards

1. Pruning Standards

- A. It shall be unlawful for any person to remove or prune to remove a tree's canopy or disturb the root zone of any Protected Tree , except in accordance with the provisions of this Code.
- B. All pruning of Protected Trees shall be done in accordance with the standards set forth in this section and the City's adopted Tree Planting and Maintenance Policy, also known as Resolution 3391.

2. Removal and Preservation Standards

- A. All removal of Protected Trees shall be done in accordance with the standards set forth in this section.
- B. Removal of Landscape Trees and Protected Trees shall be mitigated, as set forth in section 60.60.25.
- C. For SNRAs and Significant Groves, the following additional standards shall apply:
 - 1. The minimum DBH of non-exempt surveyed trees that must be preserved on a site is as follows:
 - a) Multiple Use Zoning Districts: Fifteen percent (15%) of the DBH of non-exempt surveyed trees found on a project site.
 - b) Residential, Commercial, or Industrial Zoning District: Twenty five percent (25%) of the DBH of non-exempt surveyed trees found on a project site
 - 2. DBH to be retained shall be preserved in cohesive areas, termed Preservation Areas, when development is proposed in SNRAs or Significant Groves.

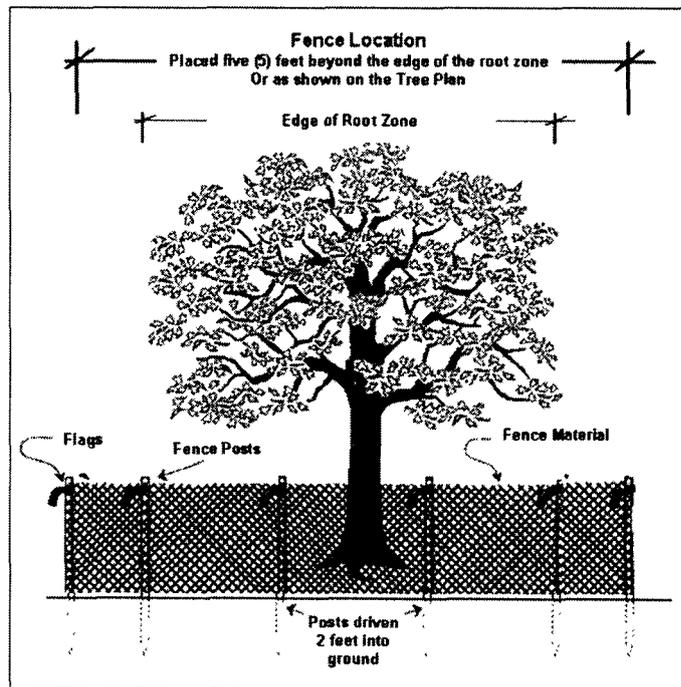
3. Native understory vegetation and trees shall be preserved in Preservation Areas.
4. Preservation Areas, conditioned for protection through the Development Review process, shall be preserved in clusters that are natural in appearance rather than in linear strips. Preservation Areas should connect with adjoining portions of the Significant Grove or SNRA on other sites.
5. Preservation Areas, conditioned for protection through the Design Review process, shall be set aside in conservation easements and recorded with a deed restriction with Washington County, unless otherwise approved by the City. The deed restriction shall prohibit future development and specify the conditions for maintenance if the property is not dedicated to a public agency.
6. Preservation Areas, conditioned for protection through the Land Division process, shall be set aside in tracts and recorded with a deed restriction with Washington County, unless otherwise approved by the City. The deed restriction shall prohibit future development and specify the conditions for maintenance if the property is not dedicated to a public agency.
7. Within the development review process, where a person is presented with a particular decision whether to retain a native or non-native tree, the native species shall be retained provided all other considerations between the two categories of trees remain equal.

Non-native tree species may also be retained for aesthetic, unique condition, size, and wildlife habitat purposes.

8. Hazardous and dead trees within Significant Groves and SNRAs should be fallen only for safety and left at the resource site to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and must be removed from the area to protect the remaining trees.

60.60.20. Tree Protection Standards During Development

1. Trees classified as Protected Trees under this Code shall be protected during development in compliance with the following:
 - A. A construction fence must be placed around a tree or grove beyond the edge of the root zone. The fence shall be placed before physical development starts and remain in place until physical development is complete. The fence shall meet the following:
 1. The fence shall be a four foot (4') tall orange plastic or snow fence, secured to six foot (6') tall metal posts, driven two feet (2') into the ground. Heavy 12 gauge wire shall be strung between each post and attached to the top and midpoint of each post. Colored tree flagging indicating that this area is a tree protection zone is to be placed every five (5) linear feet on the fence to alert construction crews of the sensitive nature of the area.



2. Other City approved protection measures that provide equal or greater protection may be permitted, and may be required as a condition of approval.

- B. Within the protected root zone of each tree, the following development shall not be permitted:
1. Construction or placement of new buildings.
 2. Grade change or cut and fill, except where hand excavation is approved with the submittal of an arborist's report, as part of application approval.
 3. New impervious surfaces.
 4. Trenching for utilities, irrigation, or drainage.
 5. Staging or storage of any kind.
 6. Vehicle maneuvering or parking

60.60.25. Mitigation Requirements

1. The following standards shall apply to mitigation for the removal of Significant Individual Trees or trees within Significant Groves or SNRAs.
 - A. All mitigation tree planting shall take place in conformance with accepted arboricultural practices and shall be spaced a minimum of ten (10) feet apart.
 - B. As of [fill in effective date of ordinance], all trees planted for the purpose of tree removal mitigation shall be maintained in accordance with the approved mitigation plan. Monitoring of mitigation planting shall be the ongoing responsibility of the property owner where mitigation trees are located, unless otherwise approved through Development Review. Monitoring shall take place for a period of two (2) years. Trees that die shall be replaced in accordance with the tree replacement standards of this section.
 - C. As of [fill in effective date of ordinance], all trees planted for the purpose of tree removal mitigation shall be set aside in a conservation easement or a separate tract and shall be designated as "Mitigation Trees" and recorded with a deed restriction identifying the trees as "Mitigation Trees".
 - D. Each Mitigation Tree planted shall be insured through a performance security, equal to 110 percent of the cost of the

landscaping, filed with the City for a period of two (2) years to ensure establishment of the mitigation planting.

- E. Street trees shall not be counted as providing mitigation of a SNRA or Significant Grove.
 - F. Transplanting trees within the project site is not subject to mitigation. However, a performance security is required for transplanted tree(s) to insure that the tree(s) will be replaced if the tree(s) is dead or dying at the end of two (2) years.
2. Mitigation for the removal of trees from Significant Groves or SNRAs shall be required as follows:
- A. Calculate the total DBH of the trees to be removed. Denote both deciduous and coniferous trees in separate tables; however, both tables will result in the sum total of the DBH to be removed.
 - B. If the total DBH of trees to be removed is less than or equal to 50% of the total DBH of surveyed trees on the site, then no mitigation is required for the trees to be removed.
 - C. If the total DBH of trees to be removed is greater than 50% of the total DBH of surveyed trees on site, then mitigation is required for the amount of DBH to be removed that exceeds 50% of the total DBH of surveyed trees on site.

For example, if 75 inches is the total amount of DBH to be removed from a site and 60 inches of DBH represents 50% of the total surveyed DBH, then 15 inches of DBH is the total required amount of mitigation.

3. In addition to the requirements listed in Section 60.60.25.1 Mitigation Requirements, the following mitigation requirements shall apply for the removal of trees from Significant Groves or SNRAs.
- A. Dead or dying trees within a Significant Grove or SNRA shall be fallen when required for safety. Such tree falling shall not require mitigation. However, the fallen log should remain in the Significant Grove or SNRA, to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and the log must be removed from the area to protect the remaining trees.
 - B. All trees planted for mitigation must meet the following minimum requirements:

- i. Deciduous trees shall be replaced with native deciduous trees that are no less than two caliper inches (2") in diameter
- ii. Coniferous trees shall be replaced with native coniferous trees that are no less than three feet (3') in height and no more than four feet (4') in height. A three foot (3') mitigation tree shall equate to 2" DBH and four foot (4') mitigation tree will equate to 3" DBH.
- iii. The total linear DBH measurement of the trees to be removed shall be mitigated with the necessary number of trees at least two caliper inches (2") in diameter.

4. Significant Grove or SNRA On-Site Mitigation, 2:1 Planting Ratio.

- A. Residential, Commercial, or Industrial Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 75% of the surveyed non-exempt DBH, if all mitigation tree planting is to occur on-site, the ratio for planting shall be on a 2:1 basis.

For example, if 20 inches of DBH is the total amount of required mitigation, if all the mitigation planting occurs on the site where the removal is to occur, then only 10 inches of DBH is required to be planted.

- B. Multiple Use Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 85% of the surveyed non-exempt DBH, if all mitigation tree planting is to occur on-site, the ratio for planting shall be on a 2:1 basis.

For example, if 20 inches DBH is the total amount of required mitigation, if all the mitigation planting occurs on the site where the removal is to occur, then only 10 inches of DBH is required to be planted.

5. Significant Grove or SNRA Off-Site Mitigation, 1:1 Planting Ratio.

- A. Residential, Commercial, or Industrial Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 75% of the surveyed non-exempt DBH, if mitigation tree planting is to occur off-site, the ratio for planting shall be on a 1:1 basis.

- B. Multiple Use Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 85% of

the surveyed non-exempt DBH in Multiple Use zones, if mitigation tree planting is to occur off-site, the ratio for planting shall be on a 1:1 basis.

6. Significant Grove or SNRA Tree Plan 3 Mitigation, 1:1 Planting Ratio.

- A. Residential, Commercial, or Industrial Zoning Districts: For tree removal proposals which remove more than 75% and up to and including 100% of the surveyed non-exempt DBH, all of the required mitigation tree planting shall be on a 1:1 basis whether planted on-site or off-site.
- B. Multiple Use Zoning Districts: For tree removal proposals which remove more than 85% and up to and including 100% of the surveyed non-exempt DBH, all of the required mitigation tree planting shall be on a 1:1 basis whether planted on-site or off-site.

7. In-Lieu Fee

If the total caliper inch on-site- or off-site tree planting mitigation does not equal the DBH inch removal or if no tree planting mitigation is proposed, the remaining or total caliper inch tree planting mitigation shall be provided as a fee in-lieu payment. The in-lieu fee shall be specified in the Community Development In-Lieu Fee schedule. Fee revenues shall be deposited in the City’s Tree Mitigation Fund.

The following two tables illustrate how required mitigation will be calculated:

Mitigation Example for Mixed Use Zones – SAMPLE SITE*	
DBH of Surveyed Trees	1318.00
DBH Proposed for Removal (MAXIMUM removal allowed is 85% Surveyed Tree DBH)	1120.00
Mitigation Threshold (50% Surveyed Tree DBH)	659.00
DBH to be Mitigated (85% DBH Removal – 50% DBH Threshold = 25% Surveyed DBH)	461.00
On Site Mitigation (50% of the DBH to be mitigated)	230.50
Off Site OR Partial Off Site Mitigation (100% of the DBH to be mitigated)	461.00

**Please note: This "Sample Site" is fictional and is only meant to be a representation of how the regulations of Section 60.60 Trees and Vegetation could be applied to a site.*

Mitigation Example for All Other Zones – SITE SAMPLE*	
DBH of Surveyed Trees	1318.00
DBH Proposed for Removal (MAXIMUM removal allowed is 75% Surveyed Tree DBH)	988.00
Mitigation Threshold (50% Surveyed Tree DBH)	659.00
DBH to be Mitigated (75% DBH Removal – 50% DBH Threshold = 25% Surveyed DBH)	329.00
On Site Mitigation (50% of the DBH to be mitigated)	164.50
Off Site OR Partial Off Site Mitigation (100% of the DBH to be mitigated)	329.00

**Please note: This "Sample Site" is fictional and is only meant to be a representation of how the regulations of Section 60.60 Trees and Vegetation could be applied to a site.*

8. In addition to the standards in Mitigation Standards 1, the following standards shall apply to mitigation for the removal of a Significant Individual Tree:

- A. A replacement tree shall be a substantially similar species or a tree approved by the City considering site characteristics.
- B. Mitigation for the removal of a Significant Individual Tree shall be the required replacement of each tree on based on the total linear DBH measurement. Replacement of trees shall be as follows:

**Replacement Table for
Significant Deciduous Trees**

Caliper-inches removed	Minimum total caliper-inches of replacement trees
6-12"	4"
13-18"	6"
19-24"	8"
Over 25"	9"

*Minimum replacement tree size is 2 caliper-inches for deciduous trees.

**Replacement Table for
Significant Coniferous Trees**

Caliper-inches removed	Minimum number of replacement Trees
6-12"	1
13-24"	2
Over 25"	3

Minimum replacement tree size is 3-feet minimum to 4-feet maximum height for coniferous trees.

9. The following standards apply to the replacement of a Landscape Tree:

- A. A replacement tree shall be a substantially similar species or a tree approved by the City considering site characteristics.
- B. If a replacement tree of the species of the tree removed or damaged is not reasonably available, the City may allow replacement with a different species.
- C. Replacement of a Landscape Tree shall be based on total linear DBH calculations at a one-to-one ratio depending upon the capacity of the site to accommodate replacement tree or unless

otherwise specified through development review. Replacement of tree on a one-to-one basis shall be as follows:

1. Calculate the sum of the total linear DBH measurement of the tree to be removed.
2. The total linear DBH measurement of the tree to be removed shall be replaced with tree at least 1.5 caliper inches in diameter. The total caliper inches of the replacement tree shall be at least equal to the sum total of the linear DBH measurement of the removed tree.

CHAPTER 90 - DEFINITIONS

The following definitions are proposed for addition, deletion, or modification. Where italicized, additions are proposed, where stricken, deletions are proposed. All other definitions in the Development Code are not proposed for alteration through this amendment.

***Certified Arborist.** An individual who has demonstrated knowledge and competency through obtainment of the current International Society of Arboriculture arborist certification, or who is a member of the American Society of Consulting Arborists.*

***City Arborist.** The person designated as such by the Director of Operations.*

Community Tree. [ORD 4224; August 2002] A healthy tree of at least ten inches (10”) DBH located on developed, partially developed, or undeveloped land. Community Trees are not those trees identified as Significant, Historic, Landscape or Mitigation Trees, trees within a Grove or a Significant Natural Resource Area, or trees that bear edible fruits or nuts grown for human consumption.

Dying Tree. A tree with greater than 20% dead limbs during the growing season.

Enhancement Activities. Activities implemented for the sole purpose of improving or protecting, or both, the ecological functions and values of streams, wetlands and forest resources. Enhancement Activities do not include any excavation, fill, grading, or other form of earth moving of up to and including fifty (5) cubic yards of earth, the disturbance of up to and including 500 gross square feet of surface area, or both.

Hazardous Tree. A tree that possesses a structural defect which poses an imminent risk if the tree, or part of the tree, were to fall on someone or something of value (target).

- **Structural Defect.** Any structural weakness or deformity of a tree or its parts. A tree with a structural defect can be verified to be hazardous by a certified arborist and confirmed as such by the City Arborist.
- **Target.** People, vehicles, structures or property, such as other trees or landscape improvements. A tree may not be a hazard if a ‘target’ is absent within the falling distance of the tree or its parts (e.g., a substandard tree in a non-populated area away from pedestrian pathways may not be considered a hazard).

Invasive. A type of plant that is not local to an area, but rather originates from another place. Also called "exotic," "non-native," or "alien" species.

Mitigation Tree. *A tree planted in an effort to alleviate the impact of the removal of another tree(s). A mitigation tree takes on the designation of the tree(s) removed (i.e. tree(s) planted to mitigate for a tree(s) removed from a grove or SNRA becomes a tree(s) protected as if it were part of a grove or SNRA).*

Native Understory. *Foliage layer located between the floor and the canopy of a forest, wood, or grove containing plant materials that have origins in the Tualatin Valley Region of the state of Oregon. Limited to plant species identified on Metro's Native Plant List or in Clean Water Services' Design and Construction Standards.*

Native Vegetation. *Plant materials that have origins the Tualatin Valley Region of the state of Oregon, as listed on Metro's Native Plant List or in Clean Water Services' Design and Construction Standards.*

Non-Exempt Surveyed Tree. *Trees that fit within the definition of Surveyed Tree, with the exception of Nuisance Trees.*

Non-Native. *A type of plant that is not local to an area, but rather originates from another place.*

Noxious Vegetation. [ORD 4224; August 2002] ~~As applied to Significant Natural Resource Areas (SNRA), lands designated as significant on the Local Wetland Inventory, and Clean Water Services designated sensitive areas, the following plants, bushes, and trees are deemed to be noxious vegetation: Scot's Broom, French Broom, Kudzu, English Ivy, Purple Loosestrife, Reed Canary Grass, Himalayan Blackberry, Evergreen Blackberry, Norway Maple, Tree of Heaven, Garlic Mustard, Lesser Celandine, Canada Thistle, Common Thistle, Western Clematis, Traveler's Joy, Field Morning Glory, Lady's Nigheap, Pampas Grass, Hawthorne (except native species), Queen Anne's Lace, South American Waterweed, Common Horsetail, Giant Horsetail, Crane's Bill, Robert Geranium, Common Bladderwort, St. John's Wort, English Holly, Yellow Flag, Duckweed, Water Lentil, Eurasiona Watermilfoil, Annual Bluegrass, Water Smartweek, Giant Knotweed, English Laurel, Portuguese Laurel, Tansy Ragwort, Blue Bindweed, Climbing Bindweed, Hairy Nightshade, Bamboo, Periwinkle (large and small leaf), and Spiny Cockleb.~~

Nuisance Vegetation. *Plant species that invade natural areas eventually resulting in their domination of native plant species. Includes those nuisance and prohibited species listed on Metro's Native Plant List or in Clean Water Services' Design and Construction Standards. Also see invasive and non-native.*

Protected Tree. *Includes Significant Individual Trees, Historic Trees, Trees within a Significant Natural Resource Area or Significant Grove, and Mitigation Trees.*

Pruning, Minor. [ORD 4224; August 2002] Removal of less than 10% of a tree's canopy or disturbance of less than 10% a tree's root system.

Pruning, Major. [ORD 4224; August 2002] Removal of greater than 10% of the tree's canopy or disturbance of over 10% of the root system.

Reasonably Available. As applied to mitigation tree planting, a plant species shall be considered reasonably available if the plant is found to be available for purchase at up to three separate retail or wholesale nurseries, known to stock native plants, of separate ownership within Washington, Multnomah, or Clackamas counties or a combination thereof. A plant species shall be considered to be reasonably unavailable if the species cannot be readily found at three (3) separate retail or wholesale nurseries, known to stock native plants, of separate ownership within Washington, Multnomah, or Clackamas counties or a combination thereof.

Significant Grove. *Groves that are mapped on the City's Inventory of Significant Trees and Groves, that have a unique identification code and include all species within the grove boundary as listed in the inventory documents for that grove code.*

Significant Tree. *A tree or grouping of trees that is mapped on the City's Inventory of Significant Trees and Groves, which has a unique identification code as listed in the inventory documents for that individual tree code.*

Surveyed Tree. *Trees on a proposed development site that are required to be identified in a Tree Plan application. Trees required to be surveyed include all trees greater than or equal to ten (10) inches DBH (including nuisance trees) and the following trees greater than or equal to six (6) inches DBH: western hemlock (*Tsuga heterophylla*) or mountain hemlock (*Tsuga mertensiana*) trees, Pacific madrone (*Arbutus andrachne*) trees, and big-leaf maple (*Acer macrophyllum*) trees.*

SPACE RESERVED FOR WASHINGTON CO. RECORDERS USE

**BEFORE THE PLANNING
COMMISSION FOR THE CITY OF
BEAVERTON, OREGON**

After recording return to:
City of Beaverton, City Recorder:
4755 SW Griffith Drive
P.O. Box 4755
Beaverton, OR 97076

IN THE MATTER OF A REQUEST TO) ORDER NO.1790
AMEND BEAVERTON DEVELOPMENT) TA2004-0011 RECOMMENDING APPROVAL
CODE SECTIONS 40.90 AND 60.60 AND) OF TEXT AMENDMENT.
CHAPTER 90 TREE CODE TEXT)
AMENDMENT. CITY OF BEAVERTON,)
APPLICANT.)

The matter of TA2004-0011 (Tree Code Text Amendment) was initiated by the City of Beaverton, through the submittal of a text amendment application to the Beaverton Community Development Department.

Pursuant to Ordinance 2050 (Development Code), effective through Ordinance 4332, Section 50.50 (Type 4 Application), the Planning Commission conducted a public hearing on February 2, 2005, February 23, 2005, March 16, 2005, and March 30, 2005 and considered oral and written testimony and exhibits for the proposed amendment to the Beaverton Development Code.

TA2004-0011 proposes to amend Development Code Sections 60.60 (Trees and Vegetation) and Section 40.90 (Tree Plan) and Chapter 90. The modification to Section 60.60 (Trees and Vegetation) clarifies the approval criteria and mitigation requirements for tree removals in certain classifications, Significant Natural Resource Areas, Significant Groves, Significant Individual Trees, Historic Trees, and Community Trees as currently required by the Development Code. The modification to Section 40.90 adds exemptions from the Tree Plan process, adds clear and objective

1 standards for Tree Plan 1 and 2 applications, and allows an optional
2 discretionary approval process for projects that cannot meet the clear and
3 objective standards. Modifications to Chapter 90 either clarify definitions or
4 add definitions in support of the changes to Sections 40.90 and 60.60.

5 The Planning Commission considered testimony from Mark Perniconi
6 representing C.E. John Company, INC., John Nelms representing DECAL
7 Custom Homes & Construction, David R. Cole representing Southwest Hills
8 Baptist Church, Julie Reilly representing Tualatin Hills Park and Recreation
9 District, Kendra Smith representing Clean Water Services, Jim Labbe
10 representing Audubon Society of Portland, Susan Murray, Scott Russell,
11 Quinton Mattson, David Williams, Glenna Grossen, Lou Bauer, Michael Jones,
12 Walter Collins, Mary Hall & Steven West, and Catherine Darby, and
13 deliberated the proposal as presented in the staff reports dated 01/26/05,
14 02/02/05, 02/16/05, 03/02/05, 03/23/05, and memoranda dated 03/25/05 and
15 03/30/05.

16 Findings for proposed amendment to Section 40.90. (Tree Plan).

17 During the March 30, 2005 Planning Commission Hearing, the
18 Commission deliberated over the March 30, 2005 memorandum regarding
19 Commercial Forestry Operations. The March 30, 2005 memorandum proposed
20 a new Type 1 application for Commercial Timber Harvest of Tax Lots
21 1S132CC11300, 1S132CD09000 and 1S132CD09100, based upon staff's
22 concern that the City should be the reviewing body for tree removal for
23 properties within the city limits. The Commission received oral testimony
24 from staff and from Scott Russell who represented the ownership of Tax Lots
25 1S132CC11300, 1S132CD09000 and 1S132CD09100.

26 Subsequent to staff testimony, Commissioners Bliss, Maks, and Winter
27 made known that they arrived at the meeting prepared to approve Option 1, as
28 proposed in the March 23, 2005 staff report. Their reasons for choosing Option
1 of the March 23, 2005 staff report were based on the fact that the noted tax

1 lots have been used as a commercial forest operation subject only to the Forest
2 Practices Act for a number of years and that the continued use of the tax lots
3 for commercial forest operation equates to no more than a non-conforming use
4 that should be allowed to continue as would any non-conforming use. Given
5 that the noted non-conforming use status is the result of a City annexation
6 that is effective March 31, 2005, these commissioners were of the opinion that
7 the Oregon Department of Forestry should continue to be the regulators of
8 commercial timber harvesting.

9 Taking into account Scott Russell's testimony, the commissioners
10 entered into a conversation with Mr. Russell regarding Mr. Russell's standard
11 forestry practices and the proposed Commercial Timber Harvest application.
12 Commissioner Maks reviewed and explained the proposed requirements of the
13 application, identifying Sections 40.90.4.C.4, 40.90.4.C.5 and 40.90.4.E as
14 issue areas. Over the duration of the discussion the Commissioners, Mr.
15 Russell and staff came to an agreement that the Commission could choose to
16 remove Sections 40.90.4.C.5 and 40.90.4.E from Section 40.90.4 and that
17 Section 40.90.4.C.4 could be modified regarding the number of trees per acre to
18 remain after a timber harvest.

19 After closing the hearing to oral testimony, the Commission continued
20 to deliberate. An initial review of each commissioner's stance revealed a split
21 of support between the March 30, 2005 memorandum approach to Chapter 40
22 and the March 25, 2005 Option 1 approach. After comparing the March 30
23 approach to forest practices in place today Commissioner Maks lent his
24 support to the March 30 proposal. On a motion, the Commission
25 recommended approval of the changes proposed in the March 30, 2005
26 memorandum, with the following modifications: removal of proposed Section
27 40.90.4.C.5, removal of proposed Section 40.90.4.E, changing Section
28 40.90.4.C.4 to state, "The harvest of timber will leave no less than ten (10)
living, healthy, and upright trees per acre each of which measure at least ten
(10) inches in diameter at four (4) feet above grade."

1 The Commission found that based upon the testimony, staff report, and
2 exhibits, the specific amendment to Section 40.90 *Tree Plan* is acceptable for a
3 positive recommendation to the City Council, as the Commission agreed with
4 the staff report's conclusion that the proposed amendment meets the criteria
5 for Text Amendment applications in Section 40.85.15.1.C of the Development
6 Code.

7
8 Findings for proposed Amendment to Section 60.60 (Trees and Vegetation).

9 The Planning Commission found that based upon the testimony, staff
10 report, and exhibits, the specific amendment to Section 60.60 *Trees and*
11 *Vegetation* is acceptable for a positive recommendation to the City Council, as
12 the Commission agreed with the staff report's conclusion that the proposed
13 amendment meets the criteria for Text Amendment applications in Section
14 40.85.15.1.C. of the Development Code.

15 Findings for proposed Amendment to Chapter 90 (Definitions).

16 The Planning Commission found that based upon the testimony, staff
17 report, and exhibits, the specific amendment to Chapter 90 *Definitions* is
18 acceptable for a positive recommendation to the City Council, as the
19 Commission agreed with the staff report's conclusion that the proposed
20 amendment meets the criteria for Text Amendment applications in Section
21 40.85.15.1.C. of the Development Code.
22
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28

1 The Planning Commission adopts by reference the January 26, 2005,
2 report as to criteria contained in Section 40.85.15.1.C.1-7 applicable to this
3 request and the supplemental findings contained in staff reports dated
4 February 2, 2005, February 16, 2005, March 2, 2005, March 23, 2005, the
5 memoranda dated March 25, 2005 and March 30, 2005, the Section 40.90 text
6 as modified by Planning Commission March 30, 2005, and the findings
7 contained herein; now, therefore:

8 IT IS HEREBY ORDERED that pursuant to Section 50.50.1 of the
9 Beaverton Development Code, the Planning Commission RECOMMENDS
10 APPROVAL of the modification to Section 40.90 (Tree Plan) and Section 60.60
11 (Trees and Vegetation) and Chapter 90 (Definitions) contained within TA
12 2004-0011. The Planning Commission finds that evidence has been provided
13 demonstrating that all of the approval criteria specified in Section
14 40.85.15.1.C.1-7 are satisfied for the modification to Section 40.90, Section
15 60.60, and Chapter 90.

16
17 Motion CARRIED by the following vote:

18 AYES: 4
19 NAYS: 2
20 ABSTAIN: 0
21 ABSENT: 1

22 Dated this 31st day of March, 2005.

23
24 To appeal the decision of the Planning Commission, as articulated in
25 Land Use Order No. 1790, an appeal must be filed with the City of Beaverton
26 Recorder's Office by no later than 5:00 p.m. on April 11, 2005.

27
28 PLANNING COMMISSION
FOR BEAVERTON, OREGON



CITY of BEAVERTON

4755 S.W. Griffith Drive, P.O. Box 4755, Beaverton, OR 97076 General Information (503) 526-2222 V/TDD

NOTICE OF DECISION

April 1, 2005

To Whom It May Concern:

Attached, please find a copy of the approved Planning Commission Order finalizing the Planning Commission recommendation to the Beaverton City Council on **TA2004-0011** **Tree Code Text Amendment.**

The Planning Commission's recommendation may be appealed within ten (10) calendar days of the date of this notice. The appeal closing date is **5:00 p.m., Monday, April 11, 2005**. Appeals shall be filed pursuant to Section 50.75 of the Beaverton Development Code. Pursuant to Section 50.75, an appeal application shall contain the following minimum information:

1. The case file number designated by the City.
2. The name and signature of each appellant.
3. Reference to the oral or written evidence provided to the decision-making authority by the appellant that is contrary to the decision.
4. If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision-making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.
5. The specific approval criteria, condition, or both being appealed, the reasons why the finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.
6. The appeal fee, as established by resolution of the City Council.

The appellate decision making authority on appeal of a Type 4 decision shall be the City Council. The appeal hearing shall be *de novo*, which means new evidence and argument can be introduced in writing, orally, or both. The hearing of the appeal shall be conducted

in the manner specified in Section 50.85 through 50.88 except as otherwise required by statute.

Please note that the failure to comply with the requirements of Sections 50.75.1 and 50.75.2 is jurisdictional and deprives the appellant of an opportunity for the appellate decision making authority to hear an appeal.

The current appeal fee is \$638.00.

The complete case file is available for review at the Development Services Division, Community Development Department, 2nd Floor, City Hall, 4755 SW Griffith Drive. Hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, except for holidays. For more information about the project, please contact Barbara Fryer, AICP, at 503.526.3718 or Leigh Crabtree at 503.526.2458.

For further information about your appeal rights, please contact the City Recorder at 503.526.2650.

If no valid appeal is filed by 5:00 p.m. April 11, 2005, the City Council will consider the Planning Commission's recommendation at the City Council meeting on April 11, 2005. Council meetings begin at 6:30 p.m. and are in the City Council Chambers, 1st Floor, City Hall, 4755 SW Griffith Drive. City Council consideration will be first ordinance reading.

Sincerely,



Hal Bergsma,
Planning Services Division Manager

cc:	Mark Perniconi	Patrick Flanigan	Quinton Mattson
	John Nelms	Jim Labbe	David Williams
	David Cole	Susan Murray	Glenna Grossen
	Julie Reilly	Scott Russell	Lou Bauer
	Michael Jones	Kendra Smith	Cameron Irtifa
	Walter Collins	Mary Hall & Steve West	Jim Parker
	Catherine Darby	Martin Kagen	Sarwan Singh

PLANNING COMMISSION MINUTES

January 19, 2005

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CALL TO ORDER: Vice-Chairman Shannon Pogue called the meeting to order at 6:30 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL: Present were Vice-Chairman Shannon Pogue; Planning Commissioners Gary Bliss, Dan Maks, Alan DeHarpport, Scott Winter and alternate Wendy Kroeger. Planning Commissioners Bob Barnard and Chairman Eric Johansen were excused.

Planning Services Manager Hal Bergsma, Development Services Manager Steven Sparks, AICP, Senior Planner Barbara Fryer Associate Planner Leigh Crabtree, and Recording Secretary Sheila Martin represented staff.

The meeting was called to order by Vice-Chairman Pogue who presented the format for the meeting.

Vice-Chairman Pogue noted that Alternate Planning Commissioner Wendy Kroger is also in attendance this evening.

VISITORS:

Vice-Chairman Pogue asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

STAFF COMMUNICATION:

Staff indicated that there were no communications at this time.

NEW BUSINESS:

WORK SESSION:

Discussion regarding the upcoming Tree Code Amendments.

1
2 Senior Planner Barbara Fryer introduced Development Services
3 Manager Steven Sparks, Planning Services Manager Hal Bergsma and
4 Associate Planner Leigh Crabtree. She provided a map and a brief
5 history pertaining to the upcoming Tree Code Amendments, observing
6 that the Significant Natural Resource Area Map had been adopted in
7 1984 and pointed out that these areas are indicated in purple on the
8 map. Noting that Tree Regulations had been adopted in 1990 and at
9 that time the Board of Design Review had been given the authority to
10 adopt an inventory of Significant Trees and Groves. This inventory
11 was adopted in 1991, and in 1999, a map was adopted that showed the
12 annexed areas.

13
14 Planning Services Manager Steven Sparks indicated that these areas
15 are shown as they exist today privately, noting that the 1984 map had
16 been created prior to much of the development that exists at this time.

17
18 Referring to Chapter 40, Ms. Fryer explained staff's proposal of a
19 series of exemptions pertaining to Tree Plan requirements, and
20 discussed issues regarding pruning, removal, replacement, mitigation,
21 landscaping, replanting, and re-vegetation. Observing that staff is
22 proposing the addition of two new caveats, she pointed out that this
23 involves removal of up to 85% of the surveyed non-exempt DBH of
24 trees within Mixed-Use zoning districts and up to 75% within all other
25 districts. She discussed the different types of Tree Plans, provided a
26 fictitious site plan, and explained how the various issues would be
27 addressed. Concluding, she offered to respond to questions, noting
28 that she would like to discuss the seven issues listed on the first page
29 of the Staff Memorandum dated January 14, 2005.

30
31 Planning Services Manager Hal Bergsma provided a brief summary of
32 the procedure for discussing and adopting the proposal.

33
34 The Commission discussed the seven issues, as follows:

- 35
36 1. *Section 40.90.10(2): Within Significant Natural Resource Areas*
37 *and Significant Groves, should hazardous and/or dead trees*
38 *(not diseased trees) be required to remain on site, once fallen for*
39 *safety? Pro: provides habitat, returns nutrients to the ground.*
40 *Con: build-up of fuel in area, cause potential spread of tree*
41 *disease.*

42
43 Commissioner Maks indicated that he would prefer that these trees
44 remain on site. Observing that the majority of the Significant Groves

1 are located around the streams and creek beds, he emphasized that
2 these trees are necessary to provide habitat for the wildlife. He
3 pointed out that although there is a potential for spread of tree
4 disease, these trees have lasted a long time already, expressing his
5 opinion that the benefit to the wildlife habitat outweighs this risk.
6

7 Ms. Fryer noted that any tree diagnosed with a disease must be
8 removed from the area in order to protect the remaining trees, adding
9 that this should address the disease issue.
10

11 Observing that he is not an arborist, Commissioner Winter stated that
12 he does not have adequate information to make any determination on
13 this issue. Pointing out that each situation varies, he questioned who
14 is responsible for determining whether a specific tree is hazardous or a
15 nuisance.
16

17 Ms. Fryer explained that nuisance trees listed on page 2 include
18 Lombardy Poplar and birch, adding that Metro lists several others
19 species as nuisance or prohibited.
20

21 Commissioner Winter mentioned that a perfectly healthy and
22 acceptable tree could be a potential nuisance if it is in the wrong
23 location, and requested further information with regard to a hazardous
24 tree.
25

26 Ms. Fryer discussed how a tree is determined to be hazardous, such as
27 a tree that is hanging over a house or a right-of-way.
28

29 Mr. Sparks explained that hazardous is determined terms of
30 applicability.
31

32 Commissioner Kroeger discussed clarification of hazardous and
33 nuisance trees, observing that Metro and Clean Water Services (CWS)
34 have different criteria.
35

36 Ms. Fryer responded that staff has attempted to provide some
37 consistency with the regulations established by CWS.
38

39 Ms. Kroeger expressed her opinion that there is some confusion that
40 should be clarified, adding that it is necessary to establish some
41 criteria identifying what is considered hazardous and/or nuisance in
42 the City of Beaverton. She stated that she is in favor of this section,
43 adding that in the State of Oregon, there is generally no concern with
44 spontaneous combustion due to fuel buildup.

1
2 2. *Street Trees are addressed through the Municipal Code, should*
3 *reference to Street Trees be eliminated throughout Sections 40,*
4 *60, and 90?*

5
6 Commissioner Maks stated that this reference should not be
7 eliminated.

8
9 Mr. Sparks suggested that while this should not be removed in its
10 entirety and mentioned some options.

11
12 Expressing his support of No. 2, Commissioner Maks pointed out that
13 this also pertains to the habitat issue. He mentioned that he does have
14 some concerns with enforcement.

15
16 Commissioner DeHarpport noted that there are always exceptions and
17 questioned whether mitigation would be necessary for a PUD with a
18 meandering chip pathway through an SNRA

19
20 Ms. Fryer advised Commissioner DeHarpport that the trail issue
21 would be addressed through No. 4.

22
23 Commissioner DeHarpport expressed his support of No. 2, adding that
24 he is concerned with trails and water quality facilities.

25
26 3. *Within Significant Natural Resource Areas and Significant*
27 *Groves, the draft text proposes new requirements to 1) retain*
28 *existing native vegetation within the Significant Natural*
29 *Resource Area (SNRA) and Significant Groves; and 2) limit new*
30 *planting in SNRAs, Significant Groves, and Mitigation areas to*
31 *only native plants. Should staff do so? (Section 60.60.12.5(a)*
32 *and 60.60.15.2(c)2.) Pro: promotes habitat, maintains integrity*
33 *of SNRA/grove/mitigation area. Con: enforcement,*
34 *maintenance responsibilities, dictating landscaping choice.*

35
36 Referring to the issue of enforcement, Mr. Sparks pointed out that
37 while he does not particularly care for ivy, there are those who enjoy
38 this vegetation, and expressed concern with becoming the "landscape
39 police". He mentioned that while it is a good idea to provide habitat,
40 he is not certain that any good enforcement mechanism is available.

41
42 Expressing her support of maintenance and replacement of vegetation,
43 Commissioner Kroeger pointed out that while Douglas Fir trees are
44 very susceptible to windfall, planting Rhododendrons in the area

1 provides some stability that they lack on their own and the addition of
2 smaller vegetation also helps the Rhododendrons.

3
4 Commissioners Bliss, DeHarpport and Winter expressed their support
5 of No. 2.

6
7 *4. City of Portland allows limited new development within their E-*
8 *zones (Environmental Overlay Zone) without a development*
9 *review process. Should the City of Beaverton allow similar types*
10 *of activities? (Section 40.90.10.11). Should the City of Beaverton*
11 *allow ½ street improvements without going through a Tree Plan*
12 *application? Should we, alternatively, require sensitive designs*
13 *that avoid the resources?*

14
15 Observing that he has no opinion with regard to No. 4, Commissioner
16 Maks noted that he would like to listen to staff's comments.

17
18 Referring to Nos. 10, 11, and 12 on page 2 of the Memorandum, Ms.
19 Fryer noted that these additional items are very similar to what the
20 City of Portland currently allows in their E zones. She explained that
21 these were included at the request of Mr. Sparks in the event that a
22 developer has to provide mitigation for a half street improvement
23 unless the right-of-way has already been dedicated.

24
25 Commissioner Maks noted that he agrees with staff's recommendation
26 on No. 4.

27
28 Following a discussion with regard to street improvements and
29 dedicated rights-of-way, Commissioner DeHarpport expressed concern
30 with possibly creating regulations that are more restrictive than those
31 imposed by CWS. He pointed out that the City of Beaverton is the only
32 jurisdiction that requires mitigation for street connectivity at this
33 time.

34
35 Ms. Fryer advised Commissioner DeHarpport that at this time, the
36 City of Beaverton requires mitigation for 100% of the trees on any of
37 these sites, regardless of whether or not the trees are within a
38 dedicated right-of-way.

39
40 Commissioner DeHarpport proposed that this regulation should be
41 revised to provide that no mitigation be required for any right-of-way.

42
43 Mr. Sparks discussed several examples pertaining to dedicated right-
44 of-way and potential exemption from mitigation. Observing that Ballot

1 Measure 37 is having an impact on every issue in planning, he pointed
2 out that this proposal involves a decrease in balance of the regulations
3 that have been in effect for approximately three years.
4

5 *5. Should the applicant have the option to remove 100% of the trees*
6 *through a discretionary public hearing (Tree Plan 3). Current*
7 *Code allows up to 95% removal through a TP3 application and*
8 *100% through a TP4 (legislative) application.*
9

10 Mr. Sparks discussed an example involving 1000 dbh on the entire site,
11 noting that 500 dbh of this involves mitigation and expressed his
12 opinion that a Tree Plan 3 should be necessary only if this could not be
13 addressed appropriately through a Tree Plan 2.
14

15 *6. Off-site mitigation, can it be outside the city limits?*
16

17 Observing that the City of Beaverton owns one lot outside the Urban
18 Growth Boundary (UGB), Mr. Sparks noted that a water tank is
19 located on this lot. He pointed out that because it is possible that this
20 lot may not be annexed into the City at some future point, this could be
21 a potentially good site for off-site mitigation, and expressed his opinion
22 that any off-site mitigation should be done within a certain distance of
23 City property.
24

25 *7. Tracts vs. conservation easements, which is a better method for*
26 *the "preservation/conservation area" or mitigation area?*
27

28 Commissioner Bliss expressed his opinion that this may not be
29 practical.
30

31 Noting that a tract involves a completely separate piece of real estate
32 that could potentially be bought, sold or traded, Ms. Fryer explained
33 that this tract is typically dedicated to a park district or a public entity
34 or maintained by a Home Owner's Association (HOA).
35

36 Commissioner Bliss expressed his concern with maintaining public
37 access.
38

39 Mr. Spark explained that when tracts are created for trees, it is not
40 possible to give these tracts away to just anybody. Noting that
41 Tualatin Hills Park & Recreation District (THPRD) will typically
42 accept these tracts providing that there is access to their property, he
43 pointed out that responsibility for maintenance is an issue.
44

1 Commissioner Bliss discussed conservation easements, expressing his
2 opinion that these are simpler than a tract.

3
4 Ms. Fryer pointed that conservation easements involve an enforcement
5 nightmare.

6
7 Commissioner Bliss observed that tracts are an enforcement
8 nightmare also.

9
10 On question, Ms. Fryer advised Commissioner Maks that a tract
11 provides better protection for natural resources than a conservation
12 easement.

13
14 Commissioner Maks discussed the advantages of a HOA, noting that
15 the HOA becomes responsible for addressing problems within the tract.

16
17 Commissioner DeHarpport mentioned that Clean Water Services
18 (CWS) prefers tracts and does not allow conservation easements,
19 adding that he prefers to follow their guidelines.

20
21 Observing that CWS maintains some of these tracts, Commissioner
22 Maks pointed out that while he wants to protect the resources, his
23 preference is not to add taxpayer responsibility for maintenance.

24
25 Commissioner DeHarpport pointed out that the amount of caliper
26 inches planted today would potentially create a greater amount of
27 caliper inches in the future.

28
29 The Commission discussed Section 40.90 pertaining to Tree Plan 1,
30 Tree Plan 2, and Tree Plan 3.

31
32 Referring to Section 60.60 (Trees and Vegetation), Ms. Fryer noted
33 that Assistant City Attorney Ted Naemura would be consulting with
34 Judge Mercer with regard to Section 60.60.07 in order to create
35 appropriate language to address enforcement.

36
37 Referring to Section 60.60.15.C.1, Commissioner Maks suggested that
38 this section should reference area(s) rather than area.

39
40 Ms. Fryer concurred, observing that she is not certain that this would
41 be the final language for this section, adding that this might involve a
42 minimum number of dbh, rather than trees.

43

1 Referring to Section 60.60.25.D, Commissioner Kroeger questioned
2 how enforcement would be achieved for the mitigation planting.

3
4 Ms. Fryer observed that a Performance Bond would guarantee
5 enforcement for a certain period of time, adding that while it is
6 necessary for somebody to provide this mitigation, the developer does
7 not always assume this responsibility.

8
9 Mr. Sparks suggested that any provisions within this proposal should
10 be clarified as being effective by this ordinance, rather than
11 retroactively.

12
13 Referring to Section 60.60.25.1.E., Commissioner Kroeger requested
14 clarification of what is meant by a tree being “not reasonably
15 available”.

16
17 Ms. Fryer advised Commissioner Kroeger that she would add the
18 definition for “not reasonably available” as being unable to obtain a
19 tree from two or three nurseries.

20
21 On question, Ms. Fryer informed Vice-Chairman Pogue that the five
22 years referenced in Section 60.60.25.1.F and Section 60.60.25.1.I would
23 be revised to three years.

24
25 At the request of Commissioner Pogue, Ms. Fryer pointed out that she
26 would clarify the term “successful” in Section 60.60.25.1.I.

27
28 Commissioner DeHarpport reminded Ms. Fryer that he had requested
29 a definition for the term “hazardous” and was advised that she would
30 address this as well.

31
32 Expressing her appreciation to the Commission for their assistance in
33 preparing this proposal, Ms. Fryer pointed out that a final document
34 would be prepared for action in two weeks.

35
36 **MISCELLANEOUS BUSINESS:**

37
38 The meeting adjourned at 9:16 p.m.
39

1 **PLANNING COMMISSION MINUTES**

2
3 **February 2, 2005**

4
5
6 **CALL TO ORDER:** Chairman Eric Johansen called the meeting
7 to order at 6:30 p.m. in the Beaverton City
8 Hall Council Chambers at 4755 SW Griffith
9 Drive.

10
11 **ROLL CALL:** Present were Chairman Eric Johansen;
12 Planning Commissioners Dan Maks, Alan
13 DeHarpport, Scott Winter, Shannon Pogue,
14 and Bob Barnard. Planning Commissioner
15 Gary Bliss was excused.

16
17 Planning Services Manager Hal Bergsma,
18 Development Services Manager Steven
19 Sparks, AICP, Senior Planner Barbara
20 Fryer, AICP, Associate Planner Leigh
21 Crabtree, Assistant City Attorney Ted
22 Naemura and Recording Secretary Sheila
23 Martin represented staff.

24
25
26 The meeting was called to order by Chairman Johansen who presented
27 the format for the meeting.

28
29 **VISITORS:**

30
31 Chairman Johansen asked if there were any visitors in the audience
32 wishing to address the Commission on any non-agenda issue or item.
33 There were none.

34
35 **STAFF COMMUNICATION:**

36
37 Development Services Manager Steven Sparks announced that staff
38 will be holding a work session at the end of next week's hearing.

39 **NEW BUSINESS:**

40
41 **PUBLIC HEARING:**

42
43 **A. TREE CODE TEXT AMENDMENTS**

44 **1. TA 2004-0011 – TEXT AMENDMENTS**

1 The proposed text amendments will modify Development Code Section
2 40.90, 60.60, and Chapter 90, to address new threshold levels allowing
3 applicants the opportunity to proceed through clear and objective
4 standards as a Tree Plan 1 or 2 or through a Tree Plan 3 as a
5 discretionary action when the standards cannot be met. Modifications
6 to Chapter 60 are much more extensive and include provisions for
7 enforcement, exemptions, removal and preservation standards, tree
8 protection standards during development, and mitigation standards.
9 Chapter 90 changes reflect the need to add new definitions based on
10 terms used in Chapter 40 and 60.

11
12 Chairman Johansen briefly summarized the public hearing process.

13
14 Senior Planner Barbara Fryer introduced herself, Associate Planner
15 Leigh Crabtree, Planning Services Manager Hal Bergsma, and
16 Development Services Manager Steven Sparks and explained that the
17 Staff Report outlines the history of tree regulations within the City of
18 Beaverton. Observing that the issues described in the Staff Report
19 include exemptions for street and sidewalk improvements discussed at
20 the work session, she pointed out that enforcement is still being
21 discussed internally. She described the rationale behind this
22 particular proposal and mentioned written testimony she had received
23 from several sources with regard to this issue. Concluding, she
24 recommended that following public testimony, the hearing be
25 continued until February 23, 2005, at which time staff will submit
26 their proposed revisions based upon testimony that has been received.

27 28 PUBLIC TESTIMONY

29
30 SUSAN MURRAY outlined several issues pertaining to the proposed
31 tree regulations that she believes are missing or could be improved, as
32 follows:

- 33
34
- 35 • *The definition of a tree, which currently includes a dbh of*
36 *equal to or greater than 10 inches.* Observing that even a
37 tree with a dbh of only six inches could have a canopy of at
38 least 300 square feet, she pointed out that other local
39 jurisdictions such as West Linn, Forest Grove and
40 Wilsonville use six inches as the cutoff.
 - 41 • *Fear of issues with Ballot Measure 37 may have had an effect*
42 *on these proposed regulations.* Noting that she does not
43 really agree with this rationale, she explained that Ballot
44 Measure 37 states that property owners must be

1 compensated or else regulations shall be forgone if the
2 regulations decrease the value of their property since the
3 property has been in the possession of them or their
4 ancestors.

5
6 Concluding, Ms. Murray encouraged the Commission to consider
7 utilizing incentives, rather than regulations, adding that this could
8 also serve to bridge some gaps between the public sector and the
9 private sector.

10
11 Observing that he has experienced many Tree Plan applications
12 through development he has been involved in over the past few years,
13 **MARK PERNICONI** expressed his opinion that the proposed Tree
14 Plan statute is the single worst piece of regulation he has seen in the
15 entire Portland Metropolitan area. He explained that this is primarily
16 because the end result is generally fewer trees and lower quality
17 design. Emphasizing that he has no objection to the mitigation
18 requirements or any regulations pertaining to Significant Groves,
19 Significant Natural Resources, wetlands or any of the issues that are
20 being addressed, he stated that he does object to the inclusion of
21 landscape trees and community trees. Pointing out that because
22 landscape plans are reviewed during Design Review, a Tree Plan is
23 actually a redundant step in Design Review because there is no point
24 in a separate Tree Plan application. He explained that as written, the
25 Tree Plan has a total cost of ten times the mitigation cost of the tree,
26 noting that for every \$11 spent, \$10 is spent on the process and only \$1
27 goes toward the trees. Noting that the result is less trees and inferior
28 designs, he added that regulated tree pruning does not serve any
29 useful purpose.

30
31 Commissioner Maks questioned whether Mr. Perniconi's main focus is
32 on landscape trees and street trees.

33
34 Mr. Perniconi responded that he is mainly concerned with landscape
35 trees, which he defined as the trees in parking islands and on the
36 perimeters of buildings within a site, emphasizing that these trees are
37 already reviewed through the Design Review process.

38
39 Observing that he manages approximately 800 acres of timberland
40 owned by his family and located within an area that is proposed for
41 annexation into the City of Beaverton, **SCOTT RUSSELL** explained
42 that he is addressing the Supplemental Staff Report. Noting that his
43 family is actively growing timber on this land, he explained that the
44 proposed text amendments would make this difficult, adding that he

1 endorses a certain document that would protect his interests.
2 Concluding, he pointed out that he would not support revising the dbh
3 criteria for a tree from 10 to six inches, emphasizing that he is not
4 addressing any of the elements of the proposal beyond the issue he has
5 mentioned.

6
7 Observing that he is a real estate broker for *Aladdin Real Estate*,
8 **QUINTON MATTSON** explained that he approves of the proposed
9 Tree Code Text Amendments, expressing his opinion that less
10 regulation is more beneficial to the trees. Noting that less regulations
11 provides more rights for property owners, he mentioned that this also
12 enhances the value of the property. Pointing out that he also served as
13 President of Cascade Logging Corporation, he explained that he has
14 seen property owners destroy many trees in an effort to avoid lengthy
15 processes that do not benefit the trees or the community.

16
17 **DAVID WILLIAMS** explained that as the owner of a Significant
18 Grove, while he generally supports the regulations as proposed, he
19 opposes reducing the dbh from 10 inches to six inches and requiring a
20 300 foot canopy. He pointed out that no tree that is less than 100 feet
21 in height has a canopy of that magnitude, adding that there is not
22 adequate light and room within a Significant Grove. Observing that
23 he also has concerns with pruning issues, he explained that every 40
24 mph wind creates a huge pile of limbs three feet high, adding that it is
25 not feasible for him to come in and request permission to prune every
26 time this occurs. Concluding, he noted that he had planted at least
27 100 trees on his property himself, and offered to respond to questions.

28
29 **GLENNA GROSSEN** expressed her opinion that this proposal puts
30 property owners in the position of scapegoats, emphasizing that this
31 problem lies within the City departments. She pointed out that
32 aggressive development appears to be a trigger, she suggested that
33 this issue needs to be addressed prior to imposing more government on
34 the property owners, suggesting that critical attention should be
35 expected within City workings and that requirements and inspections
36 must be considered with an educated eye. Concluding, she offered to
37 respond to questions.

38
39 Observing that he represents the *Hyland Hills Townhouse Estates*
40 *Homeowner's Association* which is located on the northeast corner of
41 SW Murray Boulevard and SW Hart Road, **LOU BAUER** explained
42 that it is his understanding that his townhouse estate has been
43 designated as a Significant Grove. He emphasized that the HOA

1 would like to take this opportunity to register their strongest
 2 objections to the proposed Tree Code Text Amendments, as follows:

- 3
- 4 • The current Significant Grove designation is the result of
- 5 trees left standing when the townhouses were constructed in
- 6 the early 1970's, and the City of Beaverton has not been
- 7 involved in the care and maintenance of these trees. The
- 8 HOA has maintained this Significant Grove, along with
- 9 numerous other landscape trees, for more than 30 years, and
- 10 the result is a fine example of excellent and continuous
- 11 maintenance.
- 12
- 13 • It is not at all clear what specific services the City of
- 14 Beaverton will provide to warrant such costly fees charged for
- 15 Tree Plan services.
- 16
- 17 • Hazardous and dead trees within Significant Groves and
- 18 Significant Natural Resource Areas shall be fallen only for
- 19 safety and left at the reserve site to serve as habitat for
- 20 wildlife. He pointed out that Highland Hills Townhouse
- 21 Estates is not a natural forest, adding that the landscaping
- 22 includes grass, shrubs, and bushes under the canopy of the
- 23 Significant Grove, and it is not prudent to leave dead trees
- 24 lying about on this property.

25

26 Concluding, Mr. Bauer suggested that some better way should be
 27 found to regulate the trees on private land within the City of
 28 Beaverton, and offered to respond to questions.

29

30 Commissioner Maks questioned whether the entire site is identified as
 31 a Significant Grove.

32

33 Mr. Bauer responded that the Significant Grove has been identified in
 34 an area that would amount to the center of the site and extending over
 35 to the east boundary of the site, adding that many trees are excluded.
 36 He clarified that the trees are interspersed between the streets, paths
 37 and houses that exist on the site.

38

39 **MICHAEL JONES** questioned how the proposed Tree Code Text
 40 Amendments related to trees that have been planted, groomed and
 41 maintained by the property owner, and specifically why these
 42 restrictions would be imposed upon the property owner. Expressing
 43 his opinion that these restrictions would reduce the value of the
 44 property, he questioned whether the Commissioners would appreciate

1 having these same restrictions imposed on their property and whether
2 they would be willing and able to pay the associated cost if it reached
3 an amount of \$10,000 or \$20,000.
4

5 Pointing out that staff has requested a continuance until February 23,
6 2005, Chairman Johansen explained that additional information would
7 be available at that time.
8

9 Ms. Fryer noted that supplemental information would be available to
10 the Commissioners by February 16, 2005, adding that this information
11 would also be available to the public on the City's website or at the
12 Planning Department.
13

14 Commissioner Maks noted that the website should clarify that the
15 proposal is less restrictive than the regulations that are currently in
16 effect. He pointed out that staff should also address issues pertaining
17 to sustainability and wind throw, which was addressed differently in
18 the past, adding that he would like information with regard to how
19 many of these unique situations exist.
20

21 In response to Mr. Lou Bauer's testimony, Commissioner DeHarport
22 mentioned the possibility that there had been a mis-designation of that
23 particular grove, suggesting that instead of a Significant Grove, it
24 should be landscape trees.
25

26 Observing that he has concerns with the testimony provided by
27 Perniconi, Commissioner Barnard pointed out that while a retailer
28 should manage trees on a site properly in an effort to beautify the site,
29 there are situations that necessitate some trimming or pruning in
30 order to provide access or parking.
31

32 Ms. Fryer advised Commissioner Barnard that at this time, such
33 minor pruning or trimming would require a permit, pointing out that
34 there are some developments within or adjacent to the City of
35 Beaverton where trees have been pruned nearly to the point of death
36 and that this regulation is an effort to discourage this type of activity.
37

38 Observing that public testimony is complete for this evening,
39 Chairman Johansen noted that more public testimony would be
40 accepted at the meeting on February 23, 2005.
41

42 Noting that he represents the Denney/Whitford NAC, WALTER
43 COLLINS mentioned that his own half acre is located off of SW
44 Scholls Ferry Road and questioned whether he would be required to

1 obtain permission for the removal of two trees that have been on his
 2 property when he purchased it in 1958.

3
 4 Observing that the public testimony is closed for this evening,
 5 Commissioner Barnard advised Mr. Collins to approach staff with any
 6 specific questions.

7
 8 Development Services Manager Steven Sparks informed Mr. Collins
 9 that under current code, if his residential property is not located
 10 within a Significant Grove, he is permitted to remove any number of
 11 trees if his property is ½ acre or less, adding that if the property is
 12 greater than ½ acre in size, the property owner is allowed to remove up
 13 to four trees per year.

14
 15 Commissioner Pogue **MOVED** and Commissioner DeHarpport
 16 **SECONDED** a motion to **CONTINUE** TA 2004-0011 – Tree Code Text
 17 Amendments to a date certain of February 23, 2005.

18
 19 Motion **CARRIED**, unanimously.

20
 21 Mr. Sparks pointed out that staff would prepare a Supplemental Staff
 22 Report that includes responses to testimony and comments received
 23 this evening.

24
 25 **APPROVAL OF MINUTES**

26
 27 Minutes of the meeting December 8, 2004, were submitted.
 28 Commissioner Barnard **MOVED** and Commissioner Maks
 29 **SECONDED** a motion that the minutes be approved as written.

30
 31 Motion **CARRIED** by the following vote:

- 32
 33 **AYES:** Barnard, Maks, DeHarpport, Pogue, Winter, and
 34 Johansen.
 35 **NAYS:** None.
 36 **ABSTAIN:** None.
 37 **ABSENT:** Bliss.

38
 39 Motion **CARRIED**, unanimously.

40
 41 **MISCELLANEOUS BUSINESS:**

42
 43 The meeting adjourned at 7:22 p.m.
 44

1 **PLANNING COMMISSION MINUTES**

2
3 **February 23, 2005**

4
5
6 **CALL TO ORDER:** Chairman Eric Johansen called the
7 meeting to order at 6:30 p.m. in the
8 Beaverton City Hall Council Chambers at
9 4755 SW Griffith Drive.

10
11 **ROLL CALL:** Present were Chairman Eric Johansen;
12 Planning Commissioners Alan
13 DeHarpport, Scott Winter, Gary Bliss,
14 and Bob Barnard. Planning
15 Commissioners Dan Maks and Shannon
16 Pogue were excused.

17
18 Development Services Manager Steven
19 Sparks, AICP, Planning Services
20 Manager Hal Bergsma, Associate Planner
21 Leigh Crabtree, Assistant City Attorney
22 Ted Naemura, and Recording Secretary
23 Sheila Martin represented staff.

24
25
26 The meeting was called to order by Chairman Johansen who
27 presented the format for the meeting.

28
29 **VISITORS:**

30
31 Chairman Johansen asked if there were any visitors in the
32 audience wishing to address the Commission on any non-agenda
33 issue or item. There were none.

34
35 **STAFF COMMUNICATION:**

36
37 Staff indicated that there were no communications at this time.

38
39 **OLD BUSINESS:**

40
41 **CONTINUANCE:**

- 42
43 **I. TREE CODE TEXT AMENDMENTS**
44 **A. TA 2004-0011 – TEXT AMENDMENTS**

1 The proposed text amendments will modify Development Code
2 Section 40.90, 60.60, and Chapter 90, to address new threshold
3 levels allowing applicants the opportunity to proceed through clear
4 and objective standards as a Tree Plan 1 or 2 or through a Tree
5 Plan 3 as a discretionary action when the standards cannot be met.
6 Modifications to Chapter 60 are much more extensive and include
7 provisions for enforcement, exemptions, removal and preservation
8 standards, tree protection standards during development, and
9 mitigation standards. Chapter 90 changes reflect the need to add
10 new definitions based on terms used in Chapter 40 and 60.

11
12 Chairman Johansen briefly summarized the public hearing process.

13
14 Observing that Senior Planner Barbara Fryer is ill this evening,
15 Associate Planner Leigh Crabtree provided a brief summary of the
16 previous hearing of February 2, 2005, and explained that this
17 hearing had been continued in order to provide staff with adequate
18 time to address the diversity of issues raised by written and oral
19 testimony provided at that time as well as the enforcement section
20 of Chapter 60. She highlighted the revisions proposed by staff
21 including those pertaining to the removal of landscape trees,
22 pruning definitions and regulations, mitigation ratios, certain
23 resource designations, thresholds, timber production properties,
24 and enforcement. She distributed copies of written testimony from
25 various individuals, including Mark Perniconi of *C. E. John*
26 *Company, Inc.*, Matt Segrest of *Simpson Housing Limited*
27 *Partnership*, and Susan Murray. Concluding, she recommended
28 approval of the text amendment, and offered to respond to
29 questions, noting that the City Attorney has some information to
30 share at this time.

31
32 Assistant City Attorney Ted Naemura explained that he has three
33 basic points to make, including some suggested text to clarify an
34 item for consideration by the Commission, a recommended change
35 of text, and clarification by way of legislative history with regard to
36 staff understanding of the new definition. Referring to Section
37 60.60.15.C.7 on page 4 of the second exhibit, he suggested emphasis
38 on the review process as the vehicle to determine whether or not
39 any of the species would be retained. He recommended the
40 elimination of the words outside of the mitigation trees quote
41 pertaining to submitting to the same standards in the future on
42 page 7, adding that this would allow mitigation tree tracts to be
43 part of the City's overall future policy considerations. Referring to
44 Chapter 90, specifically the definition of "native understory", he

1 clarified that this involves identification of the foliage area on the
2 ground and the canopy of the tree layer, adding that the intent is to
3 look at the native understory originating in the Tualatin Valley as
4 it relates to natural states. He pointed out that the intent of this
5 section is not to reference the natural states that existed when the
6 first white Caucasian settlers arrived in this area.

7
8 Commissioner DeHarpport requested clarification whether it has
9 been determined that any vegetation that functions as understory
10 should be considered understory, observing that he has some
11 concerns with the term native species.

12
13 Observing that he had discussed this issue with Planning Services
14 Manager Hal Bergsma, Development Services Manager Steven
15 Sparks explained that they had decided that native vegetation,
16 which includes trees, should substitute for native species.

17
18 Referring to the last sentence on page 3 of the Staff Report, which
19 states, as follows: "As a result, no Tree Plan application would be
20 required for any modifications to landscaping," Commissioner
21 DeHarpport questioned whether it is staff's intent to allow removal
22 and pruning of all landscape trees (modifications to landscaping).

23
24 Ms. Crabtree advised Commissioner DeHarpport that because Tree
25 Plans for landscape trees would now be eliminated and these
26 landscape trees would now be reviewed through the Design Review
27 process, a Tree Plan application would no longer be required for any
28 modifications to landscaping.

29
30 Commissioner Bliss suggested that the last line on page 2 of Section
31 60 be revised, as follows: "*Trees shall ~~been~~ be done in...*"

32
33 Commissioner Bliss referred to page 7 of the Staff Report and
34 expressed his opinion that both Sections 40.90.15.2.A. 1 and
35 40.90.15.2.A.2 are redundant.

36
37 Ms. Crabtree advised Commissioner Bliss that this had been
38 requested by Development Services Division in order to clarify
39 another portion of the Development Code that pertains to the ½
40 acre size, with or without a dwelling.

41
42 Commissioner Bliss expressed his opinion that Section
43 40.90.15.2.A.1 supersedes Sections 40.90.15.2.A.2, 40.90.15.2.A.3,

1 and 40.90.15.2.A.4, adding that this could be simplified by
2 eliminating this duplication.

3
4 Referring to Section 60.60.25.3.B.ii, Commissioner Bliss questioned
5 the rationale for the four foot height restriction on coniferous trees.

6
7 Ms. Crabtree advised Commissioner Bliss that smaller trees tend to
8 outgrow larger trees that are planted at the same time.

9
10 Mr. Bergsma pointed out that the larger the tree, the greater the
11 risks that it will die at some point, emphasizing that those less
12 than four feet in height are more likely to survive.

13
14 Commissioner Winter suggested that line 11 of page 8 of the Staff
15 Report be revised, as follows: "...best practice ends up being to cut
16 all the trees and replant."

17
18 Referring to paragraph 5 of page 4 of the Staff Report specifically
19 with regard to the one-inch caliper replacement on site,
20 Commissioner Johansen requested clarification of the current
21 mitigation standard.

22
23 Ms. Crabtree informed Commissioner Johansen that current
24 mitigation standards provide for a minimum 1½-inch caliper
25 replacement on site.

26
27 **PUBLIC TESTIMONY:**

28
29 **SUSAN MURRAY** expressed her appreciation to the Commission
30 for allowing for public comments, adding that she had previously
31 provided some suggestions that she had determined would improve
32 this proposal. She discussed a letter from the *Audubon Society*
33 from the previous hearing that had addressed benefits of trees that
34 are not covered within this proposal, specifically the prevention of
35 deterioration of urban streams and rivers, mainly by controlling the
36 quantity and quality of runoff. She pointed out that trees also help
37 to remove sediment and pollution, adding that they also allow the
38 water to remain within the system to recharge the groundwater,
39 releasing it slowly, in order to avoid flash flooding. Observing that
40 many other local jurisdictions have implemented tree protection
41 programs that are far more stringent, she expressed her opinion
42 that it is clearly not possible to argue that the City of Beaverton is
43 doing everything to the maximum extent practicable to prevent
44 stormwater runoff and pollution and retain high water quality

1 standards. She emphasized that Measure 37 specifically exempts
2 regulations that ensure public health and safety, noting that
3 sanitary drinking water and flood prevention would fall under that
4 category. Concluding, she referred to both the Endangered Species
5 Act and the Clean Water Act, noting that this weak tree protection
6 program is short-sighted and creates a risk for the City of
7 Beaverton for non-compliance and does not address the health of its
8 citizens or the economy.

9
10 Commissioner Winter advised Ms. Murray that her comments are
11 appreciated and considered, mentioned her reference to a weak tree
12 protection plan and questioned whether she has any suggestions
13 that might improve this document.

14
15 Observing that she had provided some recommendations at the
16 previous hearing, Ms. Murray expressed her opinion that the entire
17 document should be revised. She pointed out that various
18 components should be added, including education, incentive, and
19 assigning values to resources.

20
21 Commissioner Johansen questioned whether Ms. Murray is aware
22 of any jurisdictions that have tree plans that accomplish what she
23 feels they should.

24
25 Ms. Murray expressed her opinion that while the City of Portland's
26 tree plan is adequate, as written, enforcement is an issue, adding
27 that the City of Lake Oswego also has a decent tree plan.

28
29 Observing that his family owns timber land in four counties in this
30 area, SCOTT RUSSELL pointed out that he had discussed tree
31 harvesting options that retain an adequate number of trees on a
32 site. He pointed out that while he typically prefers to thin trees
33 rather than clear cut, sometimes clear cutting is the only option
34 following a thinning on a tree farm. Noting that Washington
35 County specifications provide for the retention of 50 trees per acre,
36 he pointed out that this allows for a spacing of approximately 29½
37 feet and emphasized that Douglas Fir trees do not survive under
38 these conditions.

39
40 Commissioner Barnard suggested that the term well-distributed as
41 it relates to the trees could pertain to the success of the growth of
42 the trees, rather than even distribution.

43

1 Mr. Bergsma pointed out that Mr. Russell's issue involves active
2 management of these properties for timber production rather than
3 protecting the clusters of remaining trees in perpetuity and
4 expressed his opinion that due to concerns with Measure 37, staff
5 recommends that the existing language be retained until the issue
6 can be further explored.

7
8 Mr. Russell pointed out that it would not be possible to clearcut the
9 land under these circumstances, adding that it would be difficult to
10 be restricted to a certain number of trees per acre.

11
12 Commissioner DeHarpport suggested a modification to the
13 language clarifying the intent of the term well-distributed, as
14 follows:

15
16 *Forestry management shall not include clearcutting as*
17 *defined herein. Clearcut means any harvest unit that leaves*
18 *fewer than 50 living, healthy, and upright trees per acre that*
19 *are clustered or well-distributed over the unit.*

20
21 Mr. Russell indicated that he is comfortable with Commissioner
22 DeHarpport's suggestion.

23
24 Commissioner Barnard pointed out that he is opposed to creating
25 any specific language in these areas without input from staff.

26
27 Referring to Section 40.90.10.1, which has been revised to provide
28 for the removal of two rather than four Community Trees or up to
29 10% of the number of Community Trees on the site, whichever is
30 greater, **MICHAEL JONES** pointed out that this provides more
31 restrictions imposed upon private property owners and requested
32 that this be changed back to four rather than two trees. He noted
33 out that changing the 20% to 10% is also more restrictive.

34
35 Commissioner DeHarpport referred to the definitions in Chapter
36 90, specifically Pruning Minor, providing for the removal of between
37 5% and up to and including 20% of the tree's canopy or disturbance
38 of 10% or less of the root system; which conflicts with Pruning
39 Major, providing for the removal of greater than 10% of the tree's
40 canopy or disturbance of over 10% of the root system.

41
42 Pointing out that she had thought this had been appropriately
43 revised, Ms. Crabtree concurred with Commissioner DeHarpport's

1 observation, noting that this definition should be amended, as
2 follows:

3
4 **Pruning, Minor.** [ORD 4224; August 2002] Removal
5 of between 5% and up to and including ~~20~~10% of the
6 tree's canopy or disturbance of 10% or less of the root
7 system.

8
9 Observing that he is a real estate broker, QUINTON MATTSON
10 mentioned that as an ex-logger who currently resides in a timber
11 zone, he knows that it is not possible to get 50 Douglas Fir trees in
12 a canopy per acre. He pointed out that there is no sunlight in the
13 canopy and that nothing is growing on the ground, adding that a
14 Douglas Fir tree in a yard is worth approximately \$10,000 and a
15 treed lot has greater value than a non-treed lot. He explained that
16 it is necessary to create fewer restrictions to make certain that the
17 disadvantages of having trees does not outweigh the advantages,
18 adding that any dedicated right-of-way should be exempt.

19
20 Commissioner Bliss advised Mr. Mattson that the Commission had
21 determined at a recent Work Session that any dedicated right-of-
22 way is exempt.

23
24 The public portion of the public hearing was closed.

25
26 Observing that he would like to respond to comments made by Ms.
27 Murray, Mr. Bergsma pointed out that this issue involves an
28 attempt to improve an existing set of regulations that were
29 basically established to address trees as scenic resources while
30 understanding that these trees provide other values. He explained
31 that while some individuals might consider these proposed
32 regulations as excessive, staff feels they are necessary in order to
33 clarify the existing regulations, adding that although nobody is
34 ecstatic about these regulations, they are acceptable to most
35 individuals.

36
37 8:09 p.m. to 8:16 p.m. – recess.

38
39 Observing that some recommended revisions need to be made to
40 this text amendment, Chairman Johansen explained that he would
41 prefer to continue the hearing in order to allow staff adequate time
42 to incorporate the necessary changes into the document to be
43 reviewed for action at the next meeting. He pointed out that the

1 City Attorney's recommended revisions involve three particular
 2 issues, as follows:

- 3
- 4 • Section 60.60.15.7, specifically the preference for the
- 5 term *native vegetation* rather than *native species*. Within
- 6 the Development Review process, where a person is
- 7 presented with a particular decision whether to retain
- 8 the native or non-native tree, the native species should
- 9 be retained provided all other considerations between the
- 10 two tree categories remain equal.

11
 12 Commissioners Barnard, Bliss, Winter, and DeHarpport and
 13 Chairman Johansen expressed their support of this
 14 recommendation.

15
 16 Chairman Johansen noted that the City Attorney had
 17 recommended a revision to pages 6 and 7 of Section 60, as follows:

- 18
- 19 • Section 60.60.25.1.C, "...designated as Mitigation Trees"
- 20 and recorded with a deed restriction identifying the trees
- 21 as "Mitigation Trees" ~~that are subject to these same~~
- 22 ~~standards in the future."~~

23
 24 Chairman Johansen referred to the City Attorney's
 25 recommendation with regard to page 7 of Section 40.

26
 27 Commissioner DeHarpport suggested that this Section
 28 40.90.15.2.A.1 be revised, as follows:

- 29
- 30 1. Removal of more than two (2) Community Trees, or more
- 31 than 10% of the number of Community Trees on the site,
- 32 whichever is greater, within a one (1) calendar year
- 33 period **on properties not zoned for single family**
- 34 **residential dwellings that are greater than ½ acre**
- 35 **in size.**

36
 37 Commissioner Johansen mentioned Section 40.90.10.15 and
 38 questioned whether the Commission has any specific
 39 recommendations.

40
 41 Commissioner DeHarpport referred to his earlier recommendation
 42 pertaining to trees that are clustered or well-distributed over the
 43 unit.

44

1 Commissioner Winter noted that he is not certain why the
2 Commission is imposing regulations on commercial forestry when
3 the intent of the tree plan involves scenic issues and the aesthetic
4 beauty of the City of Beaverton. He pointed out that Section
5 40.90.10.15 states, as follows: "Removal or pruning of trees, or part
6 thereof, as part of a forestry management on properties with
7 document existing forest tax deferral status shall not be subject to
8 the City's tree removal regulations, but rather the Oregon
9 Department of Forestry regulations," emphasizing that it is not
10 appropriate for the Commission to be regulating Mr. Russell's
11 commercial tree farm.
12

13 Observing that he intends no disrespect toward Washington
14 County, Commissioner DeHarpport emphasized that this is the
15 City of Beaverton, adding that he does not agree that County
16 regulations should govern decisions made by the City and that the
17 Commission needs to consider the best interests of this community.
18

19 Noting that Mr. Russell has shown himself to be a good steward of
20 this property in the past, Mr. Bergsma explained that it is possible
21 to simply allow him to continue to do so without imposing any
22 further regulations and pointed out that this property could
23 potentially be sold and developed at any time. He mentioned that
24 this property is presently unincorporated Washington County and
25 is not currently listed on the City's inventory.
26

27 Commissioner Barnard reiterated that Mr. Russell should be
28 allowed to continue to operate this viable commercial business.
29

30 Commissioner Bliss noted that Mr. Russell had not located in this
31 area with the idea that he would eventually be engulfed by this
32 residential community and under the jurisdiction of the City of
33 Beaverton, emphasizing that he should be allowed to continue his
34 operation without being forced to move or go out of business.
35

36 Mr. Bergsma pointed out that Mr. Russell's situation is unique,
37 adding that staff had been unable to find any other similar
38 situations.
39

40 Commissioner Barnard **MOVED** and Commissioner Johansen
41 **SECONDED** a motion to **CONTINUE** TA 2004-0011 – Tree Code
42 Text Amendments to a date certain of March 16, 2005.
43

44 Motion **CARRIED**, unanimously.

1
2
3
4
5
6
7
8
9
10
11
12
13

MISCELLANEOUS BUSINESS:

The meeting adjourned at 8:34 p.m.

1 **PLANNING COMMISSION MINUTES**

2
3 **March 16, 2005**

4
5 **CALL TO ORDER:** Chairman Eric Johansen called the meeting
6 to order at 6:30 p.m. in the Beaverton City
7 Hall Council Chambers at 4755 SW Griffith
8 Drive.

9
10 **ROLL CALL:** Present were Chairman Eric Johansen,
11 Planning Commissioners Bob Barnard, Alan
12 DeHarpport, Dan Maks, Gary Bliss, and
13 Scott Winter. Commissioner Shannon Pogue
14 was excused.

15
16 Planning Services Manager Hal Bergsma,
17 Senior Planner Barbara Fryer, AICP,
18 Associate Planner Leigh Crabtree, Senior
19 Planner Colin Cooper, AICP, Assistant City
20 Attorney Ted Naemura, and Recording
21 Secretary Sheila Martin represented staff.

22
23 The meeting was called to order by Chairman Johansen, who
24 presented the format for the meeting.

25
26 **VISITORS:**

27
28 Chairman Johansen asked if there were any visitors in the audience
29 wishing to address the Commission on any non-agenda issue or item.
30 There were none.

31
32 **STAFF COMMUNICATION:**

33
34 Staff indicated that there were no communications at this time.

35
36 **OLD BUSINESS:**

37
38 **CONTINUANCE:**

39
40 **A. TA 2004-0011 – TREE CODE TEXT AMENDMENTS**

41 *(Continued from February 23, 2005)*

42 The proposed text amendments will modify Development Code
43 Sections 40.90, 60.60, and Chapter 90, to address new threshold
44 levels allowing applicants the opportunity to proceed through clear

1 and objective standards as a Tree Plan 1 or 2 or through a Tree
2 Plan 3 as a discretionary action when the standards cannot be met.
3 Modifications to Chapter 60 are much more extensive and include
4 provisions for enforcement, exemptions, removal and preservation
5 standards, tree protection standards during development, and
6 mitigation standards. Chapter 90 changes reflect the need to add
7 new definitions based on terms used in Chapter 40 and 60.

8
9 Chairman Johansen briefly described the hearing process for the
10 benefit of those in attendance.

11
12 Senior Planner Barbara Fryer clarified that the submitted Staff
13 Report had been incorrectly numbered as Supplemental Staff Report
14 #2, and should read, Supplemental Staff Report #3. She explained
15 that the proposal is encompassed within the 3rd Staff Report based
16 upon the Commission's comments at the previous hearing, internal
17 staff comments and comments from the public.

18
19 Ms. Fryer entered into the record correspondence that had been
20 submitted pertaining to this proposal, as follows:

- 21
22 • From Mark Perniconi with C.E. John Company, Inc., dated
23 March 11, 2005;
24 • From Scott Russell dated March 2, 2005;
25 • From Jim & Elaine Parker, dated March 13, 2005.

26
27 Concluding, Ms. Fryer provided a brief summary of the
28 recommended options within the Staff Report, recommended
29 approval and offered to answer questions.

30
31 Observing that major pruning is greater than 10 percent,
32 Commissioner Maks questioned how this would relate to trees
33 within a commercial development and when major pruning comes
34 into effect.

35
36 On question, Ms. Fryer pointed out that if the Commission decided to
37 approve the version proposed by staff, then major pruning would not
38 apply to trees within a commercial development as they would be
39 counted as landscape trees. She explained that major pruning would
40 come into effect within designated trees and/or groves.

41
42 Commissioner Barnard questioned whether staff believes that the
43 proposed revision maintains integrity, specifically with regards to
44 orchards and forestry management practices.

1
2 Ms. Fryer stated that this particular recommendation would provide
3 the preservation of the tree groves as currently required in
4 Washington County's Code, adding that this will potentially prohibit
5 a Ballot Measure 37 claim while still providing some protection for
6 the trees. She noted that this recommendation is not intended to
7 regulate orchards of any kind, and other kinds of agricultural
8 practices.

9
10 Commissioner DeHarpport stated that he's in favor of the intent
11 with regard to the addition for "trees that bear edible fruits or nuts
12 grown for human consumption", and expressed his concern that the
13 addition doesn't include commercially farmed trees. He questioned if
14 staff would consider rephrasing the intent to include commercially
15 farmed trees.

16
17 Ms. Fryer indicated that it is not staff's intent to regulate pruning on
18 someone's property that produces fruit, adding that it is difficult to
19 regulate these types of trees as they become diseased. She noted
20 that because there are all kinds of pruning requirements related to
21 fruit trees, regular trees shouldn't be pruned in the same fashion,
22 adding that staff would support the generic statement that applies to
23 all trees that bear edible fruits and nuts.

24
25 Observing the significant amount of pruning done on his neighbor's
26 tree, Commissioner Winter questioned who determines the 10
27 percent line.

28
29 Ms. Fryer stated that it would be a city arborist's determination that
30 someone had crossed the line, and that it would be complaint driven.

31
32 **PUBLIC TESTIMONY**

33
34 **SCOTT RUSSELL** referred to a letter he had submitted to Leigh
35 Crabtree, dated March 2, 2005, and pointed out that he agrees with
36 the suggestions made by the Commission at the February 23, 2005,
37 hearing. He discussed issues with regard to eliminating the Oregon
38 Department of Forestry (ODF), and emphasized that this could put
39 him out of business. He noted that the proposed Options A and B
40 indicate that he is not subject to the City's tree code local
41 regulations, and questioned the regulations that he would be
42 subjected to, adding that ODF has strict regulations that are
43 imposed that he agrees with and works with them on. Concluding,

1 he stated that he doesn't understand why this needs to be eliminated
2 to continue with production.

3
4 The public portion of the Public Hearing was closed.

5
6 Ms. Fryer pointed out that the County's language states "inside the
7 UGB, the harvesting of forest tree species for the commercial value of
8 the timber shall be subject to following additional requirement:

- 9
- 10 • The harvesting of trees shall use a selective cutting
11 procedure. Clear-cutting shall not be permitted. For
12 the purposes of Section 407-3, clear-cut means any
13 harvest unit that leaves fewer than fifty (50) living,
14 healthy and upright trees per acre that are well
15 distributed over the unit, and that measure at least 11
16 in diameter at 4 feet above grade. Species left should
17 reflect the same species proportions existing prior to
18 harvest."

19
20 Ms. Fryer indicated that staff's proposed language is closely matched
21 to that of the county's, emphasizing that the county's language does
22 not reference ODF. She noted that staff had included this
23 language and pointed out that the county is clear about leaving
24 clear-cutting to fewer than fifty trees per acre.

25
26 Commissioner Maks questioned the rationale for striking ODF
27 from the proposed language.

28
29 Referring to the statute, Ms. Fryer explained that it states that if the
30 City applies any regulations to trees specifically within UGB's, that
31 the FPA no longer applies to trees in this regard. She indicated that
32 the City regulates trees within the City limits and the FPA would no
33 longer apply.

34
35 Commissioner Maks pointed out that it states on page 5, first
36 sentence under Option A that the City does not regulate.

37 Ms. Fryer pointed out that when any tree is regulated within the
38 city limits it is no longer subject of the FPA, adding that this is no
39 different from the current situation that they're under today.

40
41 Commissioner Maks pointed out that if the City regulates one tree in
42 the jurisdiction than ODF no longer wants to have anything to do
43 with any of the other trees no matter what they are.

44

1 Chairman Johansen expressed his opinion that Mr. Russell could be
2 at a disadvantage if his tree's are rejected from a mill because he
3 doesn't have the certification.
4

5 Noting that she's unfamiliar with this area of the forestry business,
6 Ms. Fryer stated that she is aware of trees logged on development
7 proposals that are not tagged when shipped to a mill, adding that
8 she believes there is a way for Mr. Russell to do this process as well.
9

10 Referring to ORS 527.722, Ms. Fryer pointed out that this section
11 discusses the restrictions on local government adoption of rules
12 regulating forest operations.
13

14 Commissioner Maks questioned whether the state statute covers
15 anything with regard to clear-cutting, expressing his opinion that it
16 should be removed from the proposed text.
17

18 Ms. Fryer indicated that she's not sure that it is covered within an
19 UGB.
20

21 Following a brief recess, Chairman Johansen requested an update
22 from staff with regard to local government regulations that might
23 supersede the provisions of the Forest Practices Act.
24

25 Observing that the statute allows this to occur, Planning Services
26 Manager Hal Bergsma pointed out that while local governments are
27 also required to consult with the State Forestry Department, this has
28 not been done in conjunction with this particular regulation. He
29 noted that he is not certain whether Washington County may have
30 done so for their very similar version of the regulation, adding that it
31 is necessary to discuss this with the state Forestry Department in
32 order to resolve this issue as quickly as possible.
33

34 Ms. Fryer requested that the motion clarifies that the public hearing
35 is closed and that the purpose of the continuance involves just the
36 one issue.
37

38 Commissioner Maks indicated that he prefers Option A over Option
39 B identified on page 3 of the Staff Report.
40

41 Commissioners Barnard, Winter, and DeHarpport and Chairman
42 Johansen expressed their support of Option A, as well as all other
43 staff recommendations throughout the document.
44

1 Commissioner Bliss noted that he supports staff recommendations
 2 throughout the document.

3
 4 Commissioner Maks **MOVED** and Commissioner Winter **SECONDED**
 5 a motion to **CONTINUE** TA 2004-0011 – Tree Code Text Amendments
 6 to a date certain of March 30, 2005 or the sole purpose of obtaining
 7 additional information from staff and the public addressing only the
 8 forest practices issues pertaining to those parcels.

9
 10 Motion **CARRIED**, unanimously.

11
 12 Assistant City Attorney Naemura clarified that it is the intent of the
 13 motion to close public testimony for the remainder of the hearing.

14
 15 **NEW BUSINESS:**

16
 17 **PUBLIC HEARING:**

18
 19 **A. TA 2004-0009 – COMPLETENESS TEXT AMENDMENTS**

20 Amendment to Section 50.25.7 (Application Completeness) to
 21 require a new application in cases where an application seeks to
 22 submit new information that was originally required during the
 23 completeness process but the applicant refused to provide prior to
 24 the application being deemed complete.

25
 26 Chairman Johansen provided a brief explanation of the criteria and
 27 procedure involved in this issue.

28
 29 Senior Planner Colin Cooper submitted the Staff Report and briefly
 30 described what he referred to as a very simple text amendment in an
 31 effort to discourage applicants from taking advantage of the system,
 32 emphasizing that this is not intended to prevent those applicants
 33 making a simple mistake from having their applications deemed
 34 complete. Concluding, he offered to respond to questions.

35
 36 Expressing his appreciation of this proposal, Commissioner Maks
 37 questioned whether this action is actually legal

38
 39 Mr. Naemura explained that this fits within the boundaries and
 40 process of the 120-day rule.

41
 42 Emphasizing that additional documentation would not actually be
 43 refused, Mr. Cooper pointed out that the applicant would be advised
 44 that without a 30-day continuance of the 120-day rule, staff would

1 move forward without continuing additional material that has been
2 submitted. He noted that this would not allow an applicant to
3 circumvent the 30 days by submitting the refusal.
4

5 Commissioner Maks mentioned that an applicant could potentially
6 produce the Traffic Study on the day of the hearing without being
7 required to agree to a continuance, adding that while a continuance
8 could still occur, the 120-day clock would continue to tick.
9

10 Mr. Cooper expressed his opinion that it would be reasonable to expect
11 that the Commission would deny such an application based upon the
12 untimely submittal of the information.
13

14 **PUBLIC TESTIMONY:**

15
16 No member of the public testified with regard to this proposal.
17

18 The public portion of the Public Hearing was closed.
19

20 Commissioner Winter expressed support of the application.
21

22 Expressing his opinion that this action is not necessary and would
23 create more complications, Commissioner DeHarpport stated that he
24 does not support this application.
25

26 Observing that this proposal would provide clarity, Chairman
27 Johansen noted that he cautiously supports this application.
28

29 Commissioner Maks explained that while he supports this proposal, he
30 has several concerns, adding that the result of this process affects the
31 less qualified developers, rather than the quality developers that come
32 before the Commission. He emphasized that providing all of the
33 information in a timely manner serves the interests of the public, the
34 Commission, and the development community and results in more
35 informed and better decisions.
36

37 Pointing out that it is extremely difficult to make an appropriate
38 decision based upon information that has been submitted just prior to
39 the hearing, Commissioner Bliss expressed his support of the proposal.
40

41 Commissioner Barnard **MOVED** and Commissioner Winter
42 **SECONDED** a motion to **APPROVE** TA 2004-0009 – Completeness
43 Processing Amendment based upon the testimony, reports and
44 exhibits, and new evidence presented during the Public Hearings on

1 the matter, and upon the background facts, findings and conclusions
 2 found in the Staff Report dated March 9, 2005.

3
 4 Motion **CARRIED**, by the following vote:

- 5
- 6 **AYES:** Barnard, Winter, Bliss, Maks, and Johansen.
- 7 **NAYS:** DeHarpport.
- 8 **ABSTAIN:** None.
- 9 **ABSENT:** Pogue.

10
 11 Motion **CARRIED** (5:1)

12
 13 **B. TA 2005-0002 – BEAVERTON CREEK HOUSING TEXT**
 14 **AMENDMENTS**

15 (Request for Continuance to June 15, 2005)
 16 Amendment to Section 50.25.7 (Application Completeness) to
 17 require a new application in cases where an application seeks to
 18 submit new information that was originally required during the
 19 completeness process but the applicant refused to provide prior to
 20 the application being deemed complete.

21
 22 Commissioner Barnard **MOVED** and Commissioner Winter
 23 **SECONDED** a motion to **CONTINUE** TA 2005-0002 – Beaverton
 24 Creek Housing Amendments, to a date certain of June 15, 2005.

25
 26 Motion **CARRIED**, unanimously.

27
 28 **APPROVAL OF MINUTES:**

29
 30 Minutes of the meeting February 9, 2005, were submitted.
 31 Commissioner Maks **MOVED** and Commissioner Barnard
 32 **SECONDED** a motion that the minutes be approved as amended.
 33 Commissioner Bliss abstained.

34
 35 Motion **CARRIED**, unanimously.

36
 37 Minutes of the meeting February 16, 2005, were submitted.
 38 Commissioner Bliss **MOVED** and Commissioner Winter **SECONDED**
 39 a motion that the minutes be approved as amended.

40
 41 Motion **CARRIED**, unanimously.

42
 43 Minutes of the meeting February 23, 2005, were submitted.
 44 Commissioner Barnard **MOVED** and Commissioner Bliss

1 **SECONDED** a motion that the minutes be approved as written.
2 Commissioner Maks abstained.

3
4 Motion **CARRIED**, unanimously.

5
6 **MISCELLANEOUS BUSINESS:**

7
8 The meeting adjourned at 7:52 p.m.

9
10
11
12

DRAFT

PLANNING COMMISSION MINUTES

March 30, 2005

CALL TO ORDER: Chairman Eric Johansen called the meeting to order at 6:30 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL: Present were Chairman Eric Johansen, Planning Commissioners Bob Barnard, Dan Maks, Shannon Pogue, Gary Bliss, and Scott Winter. Commissioner Alan DeHarpport was excused.

Planning Services Manager Hal Bergsma, Associate Planner Leigh Crabtree, Assistant City Attorney Ted Naemura, and Recording Secretary Sheila Martin represented staff.

The meeting was called to order by Chairman Johansen, who presented the format for the meeting.

VISITORS:

Chairman Johansen asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

STAFF COMMUNICATION:

Staff indicated that there were no communications at this time.

OLD BUSINESS:

CONTINUANCE:

A. TA 2004-0011 – TREE CODE TEXT AMENDMENTS

(Continued from March 16, 2005)

The proposed text amendments will modify Development Code Sections 40.90, 60.60, and Chapter 90, to address new threshold levels allowing applicants the opportunity to proceed through clear and objective standards as a Tree Plan 1 or 2 or through a Tree Plan 3 as a discretionary action when the standards cannot be met. Modifications

1 to Chapter 60 are much more extensive and include provisions for
2 enforcement, exemptions, removal and preservation standards, tree
3 protection standards during development, and mitigation standards.
4 Chapter 90 changes reflect the need to add new definitions based on
5 terms used in Chapter 40 and 60.

6
7 Chairman Johansen briefly described the hearing process for the
8 benefit of those in attendance.

9
10 Planning Services Hal Bergsma provided a brief summary of the
11 previous hearing of March 16, 2005, and explained that this hearing
12 had been continued in order to provide staff with adequate time to
13 address issues relating to the regulation of commercial forestry
14 operations on properties being annexed into the City of Beaverton.
15 He noted that it had been determined by staff to coordinate with the
16 State Department of Forestry before adopting any regulations
17 affecting commercial forestry operations, which is required by state
18 statute.

19
20 Mr. Bergsma discussed issues described within the Supplemental
21 Staff Report #4 including written communications from two members
22 of the Forestry Department's staff, Brad Knotts and Mitch Taylor.
23 He emphasized that one of the key statements referenced in Mr.
24 Knott's comments is that under ORS 527.722 either the local
25 government ordinance or the forest practices act will have
26 jurisdiction, but not both. He highlighted key statements from Mr.
27 Taylor's comments which identified the issue of properties that are
28 subject to the FPA based on their forestland property tax deferral
29 status. Observing that forestland property tax deferral is a problem,
30 he noted that this is a problem for the City of Tigard as well. He
31 explained that the properties subject to the City's regulations can
32 avoid those regulations if they obtain a forestland deferral, which
33 allows them to clear-cut the site. He explained that Mr. Taylor
34 suggested mapping properties that would be subject to the forest
35 practices act by identifying them by tax map and lot number, and
36 emphasized that Mr. Taylor would prefer that cities take over all
37 regulations forestry activities in urban areas because "trying to
38 administer the FPA within UGB's and city limits is like pounding a
39 square peg in a round hole".

40
41 Observing that he had discussed the options presented in the
42 Supplemental Staff report with Mayor Drake, Mr. Bergsma
43 explained that Mayor Drake had requested that staff recommend one
44 of the options, specifically option 3. He noted that after further

1 consideration of option 3 by staff, it was concluded to amend option 3
2 to require permitting for commercial forestry operations on the
3 subject property through a Type 1 process rather than accepting that
4 the specified criteria had been met previously. He noted that this
5 would allow staff to be aware of and review any logging operations on
6 the property before it occurs and that it is consistent with the review
7 criteria. He also noted that this would enable an operator the ability
8 to inform neighboring property owners that the operation is
9 conducted under city knowledge and approval.

10
11 Mr. Bergsma referred to pages 14 and 15 of the Staff Memorandum
12 dated March 30, 2005, and noted that it contains the proposed Code
13 language for Commercial Timber Harvest operations, pointing out
14 that staff recommends substituting the version of Chapter 40 from
15 the March 30th memo for the version of Chapter 40 within the March
16 23rd Staff Report. Concluding he referred to staff's memorandum
17 dated March 25th which described the clarifications and corrections
18 needed to the Code text attached to the March 23rd Supplemental
19 Staff Report, recommended approval of the Code changes that staff
20 had proposed, requested a recommendation of adoption to the City
21 Council, and offered to respond to questions.

22
23 Commissioner Winter expressed his opinion that although he's
24 inclined to support Option No. 1, he questioned why Option 1 is not
25 what staff wants to go forward with.

26
27 Mr. Bergsma advised Commissioner Winter that the FPA does not
28 require a landowner to save any trees which would allow a total clear
29 cut of their property. He noted that this issue is of great concern to
30 the Mayor and possibly the neighboring property owners, adding
31 that the Mayor would prefer to have some regulation that requires a
32 landowner to maintain trees on their property, and to go through a
33 process to ensure that the work that is done is consistent with the
34 regulations. He indicated that Mr. Taylor is in support of this idea,
35 pointing out that Mr. Taylor believes that the City should control the
36 forest operation and not the forestry department in urban areas.

37
38 Commissioner Winter expressed his concern that this issue takes the
39 burden of accountability off of the state and places it on the City's
40 Code Enforcement Department which is not a forestry based
41 department.
42

1 Mr. Bergsma indicated that as long as an owner/operator goes
2 through the City's process and complies with the approval, then
3 there should be no problem.
4

5 Commissioner Maks questioned if the properties indicated in Option
6 No. 1 are identified within the Significant Grove Inventory.
7

8 Mr. Bergsma pointed out that these properties are not identified
9 within the Significant Grove Inventory as they are in the process of
10 being annexed into the city.
11

12 Commissioner Maks noted that he does not believe that it is fair to
13 impose regulations on Mr. Russell's tree farm when he has been
14 doing this for a long time, adding that he can understand where
15 staff's coming from if in the future the City may be annexing other
16 properties similar to Mr. Russell's.
17

18 Commissioner Johansen requested that staff expand on the FPA
19 situation within the City of Tigard.
20

21 Associate Planner Leigh Crabtree explained that the City of Tigard's
22 code provides an exception to tree preservation standards for
23 properties that carry a tax deferral for timber practices and that this
24 exception inadvertently created a loop hole for developers. The loop-
25 hole was created by the fact that it is evidently easy to receive a
26 timber harvest deferral. The result has been that property owners
27 have been receiving these deferrals with harvest permits then clear-
28 cutting. Soon afterward the property is included in a development
29 application with little or no trees left to protect, trees that would
30 have been protected had the exception not been included in the code.
31

32 Mr. Bergsma indicated that if properties are identified where an
33 FPA applies, it has to be specific, adding that it can't be anything on
34 timber deferral as this would make it easy to obtain.
35

36 Commissioner Maks expressed concern about Section E. of staff's
37 proposed Code language, which would allow applying conditions to
38 the approval of a Type I application for tree harvesting, and asked
39 Mr. Bergsma if he would be opposed to removing that section. Mr.
40 Bergsma replied "no".
41

42 **PUBLIC TESTIMONY**
43

1 **SCOTT RUSSELL** discussed the revisions with regard to the
2 proposed text amendment, expressing his concern that he's not clear
3 on what has been changed. He pointed out that he does not
4 understand why the language regarding the Department of Forestry
5 regulations had been crossed out, emphasizing that he does not
6 believe that the problem between the Department of Forestry and
7 the City's removal had been properly addressed. Concluding, he
8 requested clarification of the proposed language, specifically with
9 regard to the proposed Commercial Timber Harvest application.

10
11 With the permission of Chairman Johansen, Commissioner Moks
12 reviewed the Commercial Timber Harvest application procedures for
13 Mr. Russell.

14
15 Observing that this covers all of the types of trees involved,
16 Commissioner Moks pointed out that the threshold is met as long as
17 timber is commercially harvested on these three parcels, adding that
18 these trees would not be identified as street trees.

19
20 Noting that he is not familiar with the various terms such as street
21 trees and significant trees, Mr. Russell requested clarification with
22 regard to how these trees would be labeled.

23
24 Pointing out that the Comprehensive Plan and Map is updated every
25 seven to ten years, Commissioner Moks explained that a tree that was
26 not considered significant ten years earlier may have grown to a dbh of
27 40 inches and may now be identified as a significant tree, emphasizing
28 that this procedure causes change. He noted that the Type 1 procedure
29 only requires an applicant to deal with the Director, rather than the
30 Planning Commission, adding that this involves the most simplified
31 procedure in this jurisdiction. He questioned whether Mr. Russell, as a
32 commercial timber harvester, currently meets the first six approval
33 criteria.

34
35 Mr. Russell noted that he has some issues with the language in
36 Approval Criteria No. 4, specifically leaving the 50 trees per acre,
37 emphasizing that it is not possible to replant because new trees will
38 not grow under those 50 existing trees. Observing that he generally
39 begins with 400 trees per acre, he explained that after several
40 thinnings, he may end up leaving only ten trees per acre.

41
42 Commissioner Barnard pointed out that Section 50.2.5.1 deals only
43 with application completeness and the 120-day rule.
44

1 Referring to Approval Criteria No. 5, Mr. Russell mentioned that he is
2 growing a different species – Coastal Redwoods – on his property at
3 this time.

4
5 Commissioner Maks observed that it is not unusual for a farmer to
6 change crops.

7
8 Agreeing with Commissioner Maks, Mr. Russell explained that he is
9 taking into account the issue of global warming, adding that his
10 Coastal Redwoods are doing very well. He noted that it is also
11 beneficial to change crops occasionally simply because different trees
12 absorb different nutrients from the soil, expressing his opinion that the
13 different species benefit one another.

14
15 Observing that he might be comfortable with leaving only ten trees per
16 acre, Commissioner Maks requested clarification with regard to the
17 average dbh of these ten trees.

18
19 Mr. Russell explained that while these ten trees would generally vary
20 in size, the average dbh would generally be 24-36 inches, although
21 some may be greater.

22
23 Commissioner Maks questioned the feasibility of leaving 20 trees per
24 acre, and specifically whether it would create an issue with the forest
25 practices involved.

26
27 Mr. Russell responded that this might be feasible if it is possible to
28 cluster these 20 trees.

29
30 Mr. Bergsma pointed out that while previous Washington County
31 requirements provided for equal distribution of the trees throughout
32 the site, staff had not made this specification in this document.

33
34 Mr. Russell indicated that he would prefer to leave 15 trees per acre,
35 and explained that forest practice regulations require reforestation
36 within a specified period of time and that a certain percentage are still
37 alive and healthy within ten years. He pointed out that reforestation
38 is easier within one year of the harvest, rather than waiting for a
39 longer period of time.

40
41 Emphasizing that Mr. Russell should have the ability to rotate his
42 crops, Commissioner Maks pointed out that the City is also concerned
43 with the possibility of a developer planting trees that will not survive.
44

1 Mr. Russell explained that the site currently includes both evergreen
2 and deciduous trees.

3
4 Commissioner Barnard noted that 50 trees per acre is equal to six
5 trees per R-5 lot, which is not feasible.

6
7 Commissioner Pogue questioned whether a commercial development
8 would even occur on property following a commercial timber harvest.

9
10 Commissioner Maks pointed out that the property is zoned R-5, which
11 allows for commercial development and questioned whether Mr.
12 Russell has any suggestions with regard to survival of the trees in the
13 reforestation.

14
15 Mr. Russell expressed his opinion that any species grown on site must
16 survive for a minimum of five years or be replaced.

17
18 Mr. Bergsma observed that this section really relates to the mix of
19 species of mature trees that are retained on site, not those that are
20 planted, but that it is not real important and suggested that it could be
21 removed.

22
23 Commissioner Maks pointed out that while he still supports leaving 20
24 trees per acre, Mr. Russell would have the option of placing these trees
25 in the location of his choice.

26
27 Commissioner Barnard noted that he is inclined to support leaving 25
28 trees per acre, emphasizing that the Commission is concerned with the
29 property, rather than the timber harvester or developer.

30
31 Commissioner Maks indicated that he would like to make certain that
32 Mr. Russell is able to continue to harvest his timber.

33
34 Mr. Russell expressed his preference for Option No. 1.

35
36 Commissioner Maks advised Mr. Russell that Option No. 1 is still a
37 possibility.

38
39 Commissioner Barnard clarified that the Commission is not
40 considering Options 1, 2 or 3 at this time.

41
42 On question, Mr. Russell responded that he is more comfortable with
43 leaving 20 trees per acre, rather than 50 trees per acre.

44

1 No other members of the public testified with regard to this proposal.

2

3 The public portion of the Public Hearing was closed.

4

5 On question, Mr. Bergsma advised the Commission that staff is
6 comfortable with the reconfigured staff proposal, adding that the
7 Mayor has indicated that he would like the City of Beaverton to retain
8 control over this type of operation.

9

10 Commissioner Winter suggested that if control is the issue, the City
11 could simply mimic the Department of Forestry's rules, rather than
12 reworking these rules.

13

14 Mr. Bergsma informed Commissioner Winter that this had been the
15 intent of staff.

16

17 Commissioner Winter pointed out that the reality of the situation is
18 that this activity has been operating for many years, adding that the
19 quantifiable regulations need to be realistic and feasible.

20

21 Commissioner Barnard noted that he is concerned with the fact that
22 while current forest practices provide for leaving 50 trees per acre, Mr.
23 Russell is requesting to leave only 10 trees per acre and has also
24 indicated that he never even comes close to the current requirement of
25 50 trees per acre. He pointed out that either Mr. Russell
26 misunderstands this regulation, is not complying with this regulation,
27 or the regulations are inappropriate.

28

29 Mr. Bergsma explained that he is not certain that Mr. Russell had
30 been aware that the county regulations might be applicable to his
31 particular property.

32

33 Expressing his concern with instituting some type of a City procedure,
34 Assistant City Attorney Ted Naemura pointed out that this involves a
35 set of processes known to both staff and the neighborhoods.

36

37 Commissioner Barnard stated that he supports sections No. 4, A, B,
38 and C of staff's proposed language, along with the elimination of
39 sections No. 5 and E, adding that he is concerned with the focus of the
40 number of trees that would remain. He expressed his opinion that
41 because a developer or property owner is allowed to cut many of these
42 trees anyway, the 10, 20 or 50 trees per acre is not relevant and that
43 Mr. Russell should be allowed to continue to operate his business. He

1 mentioned that he supports staff's recommendation with regard to the
2 road.

3
4 Commissioner Pogue noted that survival and replacement would only
5 be regulated by Option No. 1, adding that he supports the commercial
6 timber harvest of Mr. Russell, who had made the effort to be here for
7 this meeting. He explained that he is comfortable with leaving either
8 ten or 15 trees per acre.

9
10 Observing that he prefers Option No. 1, Commissioner Maks noted
11 that while he understands Mayor Drake's concerns, Mr. Russell has
12 indicated that he is comfortable with the modified staff proposal.
13 Emphasizing that he seldom loses negotiations, he stated that he
14 would accept leaving 15 trees per acre, rather than 20. He welcomed
15 Mr. Russell to the City of Beaverton, adding that he appreciates any
16 member of the public who participates in this process.

17
18 Commissioner Winter explained that he approves of Option No. 1,
19 adding that while he respects Mayor Drake's intent, he does not
20 believe it is appropriate to regulate Mr. Russell's income.

21
22 Expressing his opinion that Mr. Russell has been very patient,
23 Commissioner Bliss pointed out that this individual has willingly and
24 satisfactorily worked with staff throughout this entire process until
25 politics became involved. He stated that he has some objections to
26 what the City has done, adding that it is not appropriate to be involved
27 in an individual's personal business. Noting that he strongly supports
28 Option No. 1, he stated, "If it isn't broken, don't try to fix it," adding
29 that he supports staff's recommendation with regard to the right-of-
30 way issue.

31
32 Commissioner Winter interjected that he also supports staff's
33 recommendation with regard to the right-of-way issue.

34
35 Chairman Johansen expressed his support of staff's recommendation
36 with regard to the right-of-way issue, adding that it is inevitable that
37 the Commission affects the personal business of some individuals with
38 every decision that is made and that it is necessary to make every
39 effort to use good judgment. Observing that he is comfortable with the
40 modifications to Option 4, he mentioned that it is somewhat odd to be
41 dealing with this particular property within the Urban Growth
42 Boundary (UGB), adding that he supports Mr. Russell's request to
43 leave ten trees per acre.
44

1 Commissioner Maks pointed out that while these decisions affect the
2 business of many individuals through the various application
3 processes, this particular situation involves a business that has
4 actually been operating in this location for 30 years.

5
6 Commissioner Barnard emphasized that while he has no concern with
7 Mr. Russell's intentions, noting that this individual has been very
8 meticulous in his efforts to address these issues, he does have concerns
9 with the development of this property at some point in the future.

10
11 Commissioner Maks pointed out that this property is zoned R-5,
12 adding that he still supports Mr. Russell's request to leave 10 trees per
13 acre.

14
15 Commissioner Pogue **MOVED** to **APPROVE** TA 2004-0011 – Tree Code
16 Text Amendments, based upon the testimony, reports and exhibits,
17 and new evidence presented during the Public Hearings on the matter,
18 and upon the background facts, findings and conclusions found in the
19 Staff Report dated March 23, 2005, as amended by Staff
20 Memorandums dated March 25, 2005 and March 30, 2005, with the
21 following modifications:

- 22
23 • Page 14 of the Staff Memorandum dated March 30, 2005,
24 Section C.4, providing that the harvesting of timber shall leave
25 no less than ten living, healthy, and upright trees; striking
26 Section C.5 and Section E in its entirety.

27
28 On question, Commissioner Pogue advised Commissioner Maks that
29 his motion includes all Staff Reports and Memorandums as amended
30 and any clarifications made by staff.

31
32 Commissioner Barnard **SECONDED** the motion to **APPROVE** TA
33 2004-0011 – Tree Code Text Amendments.

34
35 Motion **CARRIED** by the following vote:

36
37 **AYES:** Pogue, Barnard, Maks, and Johansen.
38 **NAYS:** Bliss and Winter.
39 **ABSTAIN:** None.
40 **ABSENT:** DeHarpport.

41
42 Chairman Johansen expressed his appreciation to Mr. Russell for his
43 efforts and patience.
44

APPROVAL OF MINUTES:

Minutes of the meeting March 9, 2005, were submitted. Commissioner Maki **MOVED** and Commissioner Winter **SECONDED** a motion that the minutes be approved as written. Commissioner Barnard, Bliss, and Pogue abstained.

Motion **CARRIED**, unanimously.

Minutes of the meeting March 16, 2005, were submitted. Commissioner Barnard **MOVED** and Commissioner Bliss **SECONDED** a motion that the minutes be approved as written. Commissioner Pogue abstained.

Motion **CARRIED**, unanimously.

MISCELLANEOUS BUSINESS:

Chairman Johansen reminded his fellow Commissioners to remit their Governmental Practices Committee forms.

The meeting adjourned at 7:58 p.m.

CALENDAR

MAY 11	6:30 PM	PUBLIC HEARINGS	CU2004-0025 DR2004-0136 LD2004-0047 TP2004-0029 Arbor Woods
MAY 18	6:30 PM	PUBLIC HEARINGS	CPA2005-0002 Functional Classification Map Amendment
JUN 15	6:30 PM	CONTINUANCE	TA2005-0002 Beaverton Creek Housing (Cont. from 3/16/05)



MEMORANDUM
CITY OF BEAVERTON
 COMMUNITY DEVELOPMENT DEPARTMENT

"MAKE IT HAPPEN"

To: Planning Commissioners
Date: January 14, 2005
From: Barbara Fryer, AICP *BF*
 Senior Planner
Subject: *Discussion of Proposed Tree Code Regulations*

Attached you will find hard copies of the three code sections proposed for amendment. Although staff would like to review the entirety of the proposed amendments with the Commission, the following is a list of issues staff would like to be sure the Commission addresses in the work session.

1. Section 40.90.10(2): Within Significant Natural Resource Areas and Significant Groves, should hazardous and/or dead trees (not diseased trees) be required to remain on site, once fallen for safety? Pro: provides habitat, returns nutrients to the ground. Con: build-up of fuel in area, cause potential spread of tree disease.
2. Street Trees are addressed through the Municipal Code, should reference to Street Trees be eliminated throughout sections 40, 60, and 90?
3. Within Significant Natural Resource Areas and Significant Groves, the draft text proposes new requirements to 1) retain existing native vegetation within the SNRA and Significant Groves; and 2) limit new planting in SNRAs, Significant Groves, and Mitigation areas to only native plants. Should staff do so? (Section 60.60.12.5(a) and 60.60.15.2(c)2) Pro: promotes habitat, maintains integrity of SNRA/grove/mitigation area. Con: enforcement, maintenance responsibilities, dictating landscaping choice.
4. City of Portland allows limited new development within their E-Zones (Environmental Overlay Zone) without a development review process. Should the City of Beaverton allow similar types of activities? (Section 40.90.10.11). Should the City of Beaverton allow ½ street improvements without going through a Tree Plan application? Should we, alternatively, require sensitive designs that avoid the resources?
5. Should the applicant have the option to remove 100% of the trees through a discretionary public hearing? (Tree Plan 3) Current Code allows up to 95% removal through a TP3 application and 100% through a TP4 (legislative) application.
6. Off site mitigation, can it be outside the city limits?
7. Tracts vs. conservation easements, which is a better method for the "preservation/conservation area" or mitigation area?

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40.90. TREE PLAN**40.90.05. Purpose**

The purpose of a Tree Plan application is to provide a mechanism to regulate pruning, removal, replacement, and mitigation for removal of significant *individual trees, and historic trees, and trees within significant groves and Significant Natural Resource Areas (SNRAs)*, landscape trees, street trees, and community trees thus helping to preserve and enhance the sustainability of the City's urban forest. This Section is carried out by the approval criteria listed herein *and implements the Significant Natural Resource Area, Significant Grove, Significant Individual Tree, and Historic Tree designations as noted in Comprehensive Plan Volume III.*

40.90.10. Applicability.

Different types of resources require different levels of protection. No Tree Plan is required for the following actions:

1. Removal of up to four (4) community trees within an one (1) calendar year period. Properties one-half acre or less in size developed with a detached dwelling may remove any number of community trees.
2. Removal *and pruning* of any hazardous, *dead, or diseased tree or a portion of a hazardous tree* when the tree is identified as such by a *certified arborist, or by the City Arborist* and the removal is required by the City. ~~The removal of the tree is subject to the mitigation requirements of Section 60.60 (Trees and Vegetation) of this Code.~~ *Hazardous and dead trees within significant groves and Significant Natural Resource Areas (SNRAs) shall be fallen only for safety and left at the resource site to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and must be removed from the area to protect the remaining trees.*
3. *In the event of an emergency requiring tree removal or pruning prior to the City Arborist's determination, if evidence justifies the emergency removal after the fact, then no tree plan is required for removal. Hazardous and dead trees within significant groves and Significant Natural Resource Areas (SNRAs) shall be fallen only for safety and left at the resource site to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and must be removed from the area to protect the remaining trees.*

34. Pruning of trees consistent with the Vision Clearance requirements of Section 60.55.50.
45. Pruning of trees by the utility provider for above ground utility power lines following acceptable arboricultural standards and practices.
6. *Pruning of trees to maintain the minimum 8 foot clearance above a sidewalk.*
7. *Removal or pruning of the following nuisance tree species: Lombardy Poplar (*Populus nigra*), and birch (*Betula sp.*).*
8. *Removal and pruning of the following nuisance tree species in Significant Groves and Significant Natural Resource Areas: Norway maple (*Acer platanoides*), Tree-of-Heaven (*Ailanthus altissima*), and Golden Chain Tree (*Laburnum watereri*).*
9. *Removal of a tree listed as a Nuisance or Prohibited Plant on Metro's or Clean Water Services' Native Plant Lists.*
10. *Within Significant Natural Resource Areas and Significant Groves, planting of native vegetation listed on the Metro or Clean Water Services' Native Plant Lists when planted with hand held equipment.*
11. *Public street and sidewalk improvements within Significant Natural Resource Areas or Significant Groves meeting all of the following:*
 - i. *Improvements must be within an existing public right-of-way used by vehicular traffic; and*
 - ii. *Streets and sidewalks must not exceed the minimum width standards of the Engineering Design Manual; and.*
 - iii. *the improvements do not require new dedication.*
12. *Trails within Significant Natural Resource Areas and Significant Groves meeting all of the following:*
 - i. *Trails must be confined to a single residential ownership;*
 - ii. *Construction must take place between May 1 and October 30 with hand held equipment;*
 - iii. *Trail widths must not exceed 30 inches and trail grade must not exceed 20 percent;*
 - iv. *Trail construction must leave no scars greater than three inches in diameter on live parts of native plants; and*
 - v. *Trails must not be placed between the tops of banks of water bodies.*

40.90.15. Application.

There are four (4) Tree Plan applications which are as follows: Tree Plan One, Tree Plan Two, Tree Plan Three, and Tree Plan Four.

1. Tree Plan One.

A. Threshold. An application for Tree Plan One shall be required when none of the actions listed in Section 40.90.10 apply and one or more of the following thresholds apply:

1. ~~Minor pruning of a Significant Tree, Significant Grove, Landscape Tree, tree within a Significant Natural Resource Area (SNRA), Historic tree, or Street Tree~~*protected trees* once within an one year period.
2. Removal of up to and including five (5) Landscape Trees or Street Trees on a site *or five (5) Street Trees within 200 feet of right of way* within a one year period.
3. Removal or pruning of a ~~Significant Tree, Significant Grove, Landscape Tree, tree within a Significant Natural Resource Area (SNRA), a Historic Tree, a Street Tree~~*protected trees*, or part thereof, that constitutes or ~~removes~~*creates* a hazardous condition. Pruning to eliminate a hazardous condition may exceed minor pruning.
4. ~~Mechanized r~~Removal of noxious vegetation, re-planting of trees and shrubs, or both, *or restoration planting* within a *Significant Natural Resource Area (SNRA), Significant Grove* land designated as significant on the City's Local Wetland Inventory, or sensitive area as defined by Clean Water Services.

B. Procedure Type. The Type 1 procedure, as described in Section 50.35 of this Code, shall apply to an application for Tree Plan One. The decision making authority is the Director.

C. Approval Criteria. In order to approve a Tree Plan One application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Tree Plan One application.
2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]
4. ~~If applicable, it is necessary to prune or remove a tree that poses a safety hazard to pedestrians, vehicular traffic, adjacent property, or the general public or that threatens to cause disruption of public service and at least one of the following exist:~~
 - a. ~~The tree or portion of the tree is certified by a qualified professional as dead or dying.~~
 - b. ~~A portion of the tree is only partially attached.~~
 - c. ~~The tree or a portion of the tree has been damaged by a storm, fire, age, or accident and is physically lodged or leaning against a building, transportation facility, or overhead utility line or pole.~~
54. If applicable, pruning a tree will result in removal of no more than 20% of the tree's canopy or disturbance of no more than 10% of the root system. The pruning is needed to improve tree health or to eliminate conflicts with vehicles or structures which includes, but is not limited to, underground utilities and street improvements.
65. If applicable, removal of a landscape tree or street tree or pruning of a tree is necessary to accommodate development where variances to setback provisions of the Development Code will not allow the tree to be saved.
7. ~~If applicable, emergency removal or pruning is necessary due to an immediate threat to public safety documented by photographic evidence supplied by the applicant.~~

~~8. Removal of a tree or grove shall not increase erosion or any resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~

96. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

D. Submission Requirements. An application for a Tree Plan One shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan One application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.

E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan One application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).

F. Appeal of a Decision. Refer to Section 50.60.

G. Expiration of a Decision. Refer to Section 50.90.

H. Extension of a Decision. Previous approval of Tree Plan One proposal shall not be extended.

2. Tree Plan Two

A. Threshold. An application for Tree Plan Two shall be required when none of the actions listed in Section 40.90.10 apply, none of the thresholds listed in Section 40.90.15.1 apply, and one or more of the following thresholds apply:

1. Major pruning of a ~~non-hazardous Significant Tree, Significant Grove, Trees within a Significant Natural Resource Area (SNRA), Historic Trees, Landscape Trees,~~

~~or Street Trees~~ *protected trees* once within a one (1) calendar year period.

2. Removal of more than five (5) and up to and including ten (10) Landscape Trees or Street Trees on a site within a one calendar year period.
3. Removal of five (5) or more Community Trees within a one calendar year period.
4. *Removal of five (5) or more Community Trees on properties zoned single family residential of more than one-half acre in size, without or without a dwelling.*
5. *Removal of up to and including 85% of the total DBH of non-exempt surveyed tree(s) within a SNRA or Significant Grove within any Multiple Use Zone.*
6. *Removal of up to and including 75% of the total DBH of non-exempt surveyed tree(s) within a SNRA or Significant Grove within any Commercial, Residential, or Industrial Zone.*
7. *Removal of a Significant Individual Tree(s).*

B. Procedure Type. The Type 2 procedure, as described in Section 50.40 of this Code, shall apply to an application for Tree Plan Two. The decision making authority is the Director.

C. Approval Criteria. In order to approve a Tree Plan Two application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Tree Plan Two application.
2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. If applicable, pruning of any tree or removal of a landscape, street, or community tree is necessary to enhance the health of the tree, grove, group of trees, or an

adjacent tree or to eliminate conflicts with structures or vehicles.

4. ~~If applicable, it is necessary to remove diseased of landscape, street, or community trees or trees weakened by age, storm, fire, or other condition.~~
54. If applicable, pruning *or removal* of any tree ~~or removal of a landscape, street, or community tree~~ is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995 standards and International Society of Arborists (ISA) standards on the subject.
65. If applicable, pruning *or removal* of any tree ~~or removal of a landscape, street, or community tree~~ is necessary to accommodate development where no reasonable alternative exists for the development at another location on the site, or where variances to setback provisions of this Code will cause other undesirable circumstances on the site or adjacent properties if the tree is saved.
76. If applicable, removal of a ~~landscape tree or street tree or pruning of any tree~~ is necessary because it has become a nuisance by virtue of damage to property or improvements, either public or private, on the subject site or adjacent sites.
87. If applicable, removal of *any tree* ~~landscape, street, or community tree~~ is necessary to accomplish public purposes, such as installation of public utilities, street widening, and similar needs, where no reasonable alternative exists without significantly increasing public costs or reducing safety.
9. ~~Removal of a tree or grove shall not increase erosion or any resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~
8. *If applicable, removal of any tree is necessary to enhance the health of the tree, grove, SNRA, or adjacent tree to reduce maintenance, or to eliminate conflicts with structures or vehicles.*

9. *If applicable, removal of a tree, or trees, within a SNRA or Significant Grove will not reduce the significance of the SNRA or Significant Grove based on its original significance criteria.*

10. *If applicable, removal of a tree, or trees, within a SNRA or Significant Grove will not result in the remaining trees posing a safety hazard due to the effects of windthrow.*

1011. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

D. Submission Requirements. An application for a Tree Plan Two shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan Two application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.

E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan Two application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).

F. Appeal of a Decision. Refer to Section 50.65.

G. Expiration of a Decision. Refer to Section 50.90.

H. Extension of a Decision. Previous approval of Tree Plan Two proposal shall not be extended.

3. Tree Plan Three

A. Threshold. An application for Tree Plan Three shall be required when none of the actions listed in Section 40.90.10 or none of the thresholds listed in Section 40.90.15.1 or Section 40.90.15.2 apply and one or more of the following thresholds apply:

1. ~~Removal of up to and including ninety five percent (95%) of trees within a Significant Natural Resource Area (SNRA). Removal of greater than 85% of the total DBH of non-exempt surveyed trees within a SNRA or significant grove area that is found on the project site within Multiple Use Zones.~~
 2. *Removal of greater than 75% of the total DBH of non-exempt surveyed trees within a SNRA or significant grove area that is found on the project site within Residential, Commercial, and Industrial Zones.*
 2. ~~Removal of an individual Historic Trees, a tree within a Historic Grove, or a Historic Grove.~~
 3. ~~Removal of a Significant Tree, Grove, or portion thereof.~~
 43. Removal of more than ten (10) Landscape or Street Trees.
- B. Procedure Type. The Type 3 procedure, as described in Section 50.45 of this Code, shall apply to an application for Tree Plan Three. Upon determination by the Director, the decision making authority shall be either the Planning Commission or the Board of Design Review. The determination will be based upon the proposal.
- C. Approval Criteria. In order to approve a Tree Plan Three application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Tree Plan Three application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. If applicable, removal of a diseased tree or a tree is necessary because the tree has been weakened by age, storm, fire, or other condition.

4. If applicable, removal is necessary to enhance the health of the tree, grove, or adjacent tree to reduce maintenance, or to eliminate conflicts with structures or vehicles.
5. If applicable, removal is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995 standards and International Society of Arborists (ISA) standards on the subject.
6. If applicable, removal is necessary to accommodate development where no reasonable alternative exists for the development at another location on the site, or where variances to setback provisions of the Development Code will not allow the tree to be saved or will cause other undesirable circumstances on the site or adjacent properties.
7. If applicable, removal is necessary because a tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or on an adjacent site, or that pruning in excess of 20 percent of the canopy is required to prevent damage to such improvements or property.
8. If applicable, removal is necessary to accomplish a public purposes, such as installation of public utilities, street widening, and similar needs where no reasonable alternative exists without significantly increasing public costs or reducing safety.
- ~~9. Removal of a tree or grove shall not increase erosion or resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~
910. If applicable, removal of a tree, or trees, within a SNRA or Significant Grove will not substantially reduce the significance of the natural resource SNRA or Significant Grove based on its original significance criteria.
- ~~11. If applicable, removal of a Significant Tree or tree within a Significant Grove will not eliminate the significance of the grove based upon the original Significant Tree and Grove Inventory analysis.~~

~~1210.~~ If applicable, removal of a tree, or trees, within a SNRA or *Significant Grove* will not result in the ~~reduce the size of the grove to a point where the remaining trees may pose~~ posing a safety hazard due to the effects of windthrow.

~~13.~~ If applicable, removal of tree or trees within a *Significant Grove* will not reduce the size of the grove to a point where the remaining trees may pose a safety hazard due to the effects of windthrow.

~~14.~~ If applicable, removal of a tree within a *Historic Grove* will not substantially reduce the significance of the grove in terms of its original designation on the list of *Historic Groves*.

~~1511.~~ Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

D. Submission Requirements. An application for a Tree Plan Three shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan Three application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), any other information identified through a Pre-Application Conference, and by a report from a qualified professional.

E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan Three application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).

F. Compliance with Approval. All conditions imposed on an approved Tree Plan Three shall be implemented prior to the removal, pruning, or planting of tree unless otherwise noted in the approval. Compliance with the conditions of approval shall be met as long as the tree exist unless otherwise specified or until modified through a City approval process.

- G. Appeal of a Decision. Refer to Section 50.70.
- H. Expiration of a Decision. Refer to Section 50.90.
- I. Extension of a Decision. Previous approval of Tree Plan Three proposal shall not be extended.

4. ~~Tree Plan Four~~

- A. ~~Threshold.~~ An application for Tree Plan Four shall be required when none of the actions listed in Section 40.90.10 or none of the thresholds listed in Section 40.90.15.1 through Section 40.90.15.3 apply and when the following threshold applies:
 - 1. ~~Removal of more than ninety five percent (95%) of trees within a Significant Natural Resource Area (SNRA).~~
- B. ~~Procedure Type.~~ The Tree Plan Four application is a Comprehensive Plan Amendment application. The procedures and criteria specified in Chapter One of the Comprehensive Plan shall apply.

60.60. TREES AND VEGETATION. [ORD 4224; August 2002]**60.60.05. Purpose**

Healthy trees and urban forests provide a variety of natural resource and community benefits for the City of Beaverton. *Primary among those benefits is the aesthetic contribution to the increasingly urban landscape. Tree resource protection focuses on the aesthetic benefits of the resource.* In conjunction with processes set forth in Section 40.90 of this Code, this section is intended to help ~~regulate~~ *manage* changes ~~regarding~~ *to* the City's urban forest by establishing regulations and standards for the protection, pruning, removal, replacement, and mitigation for removal of ~~significant tree, and grove, historic tree, tree within a Significant Natural Resource Area (SNRA), landscape tree, street tree, and community tree~~ *protected trees.*

60.60.07 Enforcement.

A person responsible for causing the removal or pruning of a ~~protected significant tree resource~~ *not* in accordance with the standards set forth in this section and the City's adopted Tree Planting and Maintenance Policy (Resolution 3391) unless exempt, *shall be subject to the payment of a mitigation fee, and is otherwise required to mitigate the removal as set forth in the mitigation standards of this section. Enforcement regulations are established by the City Code (Chapter 9).*

1. Fine for a Violation.

The fine for causing the removal or pruning of a tree without the appropriate permits/review shall be based on the Community Development Department Development Services fee schedule and be deposited in the City's Tree Mitigation Fund.

60.60.10. Types of Trees and Vegetation Regulated

Actions regarding trees and vegetation addressed by this section shall be performed in accordance with the regulations established herein and in Section 40.90 of this Code. The City finds that the following types of trees and vegetation are worthy of special ~~regulation~~ *protection*:

- 1. Significant Individual Tree and**
- 2. Significant Groves.**
- 23. Historic Tree.**

34. **Tree within a Significant Natural Resource Area.**

45. **Landscape Tree.**

56. **Street Tree.**

67. **Community Tree.**

8. ***Mitigation Tree.***

60.60.15 Pruning, Removal, and Preservation Standards

1. Pruning Standards

A. It shall be unlawful for any person to remove or prune to remove a tree's canopy or disturb the root zone of any ~~significant individual tree, and grove, historic tree, tree within a SNRA, landscape tree, and street tree~~*protected tree*, except in accordance with the provisions of this Code.

B. All pruning of a ~~significant individual tree, and grove, historic tree, tree within a SNRA, landscape tree, and street tree~~*protected trees* shall be done in accordance with the standards set forth in this section and the City's adopted Tree Planting and Maintenance Policy, also known as Resolution 3391.

2. Removal and Preservation Standards

A. All removal and planting, including replacement or mitigation planting, of protected trees shall be done in accordance with the standards set forth in this section and the City's adopted Tree Planting and Maintenance Policy (*Resolution 3391*).

B. Removal of a ~~significant individual tree, and significant grove, landscape tree, and street tree~~ shall require mitigation, which may include tree replacement or other mitigation measures.~~protected trees shall be mitigated~~, as set forth in this section *60.60.25*.

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C. For Significant Natural Resource Areas (SNRA) and significant groves, the following additional standards shall apply:

1. *A minimum number of trees shall be preserved in a cohesive area termed a preservation area when development is proposed in a Significant Natural Resource Area (SNRA) or Significant Grove. The minimum number of trees shall be calculated as a percentage of the total DBH of non-exempt surveyed trees within the project site. Trees which are subject to the DBH calculation are as follows:*
 - a) *Big-leaf maple, Pacific madrone, western or mountain hemlock; six inches (6") and greater DBH shall be counted.*
 - b) *All other non-exempt trees; ten inches (10") inches or greater DBH shall be counted.*
2. *The minimum DBH of non-exempt surveyed trees that must be preserved on a site is as follows:*
 - a) *Fifteen percent (15%) of the DBH of non-exempt surveyed trees found on a project site; development located within any Multiple Use zoning district.*
 - b) *Twenty five percent (25%) of the DBH of non-exempt surveyed trees found on a project site; development located within any Residential, Commercial, or Industrial zoning district.*
- ~~1. A minimum of 5% of the trees within a SNRA or significant grove area shall be preserved. The area shall be measured by the area of the tree canopy at maturity. SNRA and significant grove preservation shall include preservation of understory vegetation, as well as trees.~~
23. *Native understory vegetation and trees shall be preserved in the preservation area. Significant groves shall be preserved in rounded clusters rather than in linear strips.*
34. *Preservation areas, conditioned for protection through the Development Review process, shall be preserved in clusters that are natural in appearance rather than in linear strips. Significant groves shall connect with adjoining forested areas, stream corridors, and wildlife areas to the*

~~degree possible. Significant groves shall provide connectivity with adjoining forested areas.~~

45. *Preservation areas, conditioned for protection through the Development Review process, shall be set aside in tracts and recorded with a deed restriction with Washington County, unless otherwise approved by the City. The deed restriction shall prohibit future development and specify the conditions for maintenance if the property is not dedicated to a public agency.*

6. Native species shall be retained to the extent possible. Native *tree* species include, but are not limited to: Grand Fir, Douglas-fir, Western Hemlock, Pacific Yew, Western Red Cedar, Bigleaf Maple, Oregon White Oak, Oregon Ash, Red Alder, Western Flowering Dogwood, Ponderosa Pine, and Black Cottonwood.

Non-native tree species may also be retained for aesthetic, unique condition, size, and wildlife habitat purposes.

~~D. To assist in the preservation of a tree or grove, the following shall not occur within the protected root zone of each tree at any time without prior approval from the City:~~

- ~~1. Construction or placement of new buildings.~~
- ~~2. Grade change or cut and fill.~~
- ~~3. Construction or placement of new impervious surfaces.~~
- ~~4. Trenching for utilities, irrigation, or drainage.~~
- ~~5. Staging or storage of any kind.~~

60.60.20. Tree Protection Standards During Development

1. ~~Trees classified as Significant individual Tree, and significant Grove, historic tree, tree within a SNRA, and Landscape Tree, and street tree protected trees~~ under this Code shall be protected during development in compliance with the following:

A. A construction fence must be placed around a tree or grove at ~~least at~~ beyond the edge of the root zone. The fence shall be

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placed before construction starts and remain in place until construction is complete. The fence shall meet the following:

1. The fence shall be a four foot (4') tall orange plastic or snow fence, secured to six foot (6') tall metal posts, driven two feet (2') into the ground. Heavy 12 gauge 12-wire shall be *strung between each post and* attached to the top and midpoint of each post.
2. Other City approved protection devices—*measures that provide equal or greater protection may be permitted, and may be required as a condition of Tree Plan approval.*

Insert graphic here depicting fencing around dripline

B. Within the protected root zone of each tree, the following development shall not be permitted:

1. *Construction or placement of n*New buildings.
2. *Grade change or cut and fill, during or after construction, except where hand excavation is approved with the submittal of an arborist's report, as part of the Tree Plan approval.*
3. *New impervious surfaces, except where aeration as a tree preservation measure is approved, with the submittal of an arborist's report, as part of the Tree Plan approval.*

4. Trenching for utilities, irrigation, or drainage.
5. Staging or storage of ~~materials and equipment during construction~~ *any kind*.
6. Vehicle maneuvering *or parking* ~~during construction~~.
7. *Within SNRAs or Significant Groves, planting or propagation of any plant identified as a nuisance plant or prohibited plant on the Metro Plant List.*

60.60.25. Mitigation Standards

1. The following standards shall apply to mitigation for the removal of a significant *individual tree or trees within a significant grove or SNRA*.
 - A. *All mitigation tree planting shall take place in conformance with accepted arboricultural practices and the City's Tree Planting and Maintenance Policy (Resolution 3391).*
 - B. *All trees planted for mitigation must have a minimum caliper of two inches (2") for deciduous trees and 3-feet minimum to 4-feet maximum in height for conifers except where other standards are required through development review.*
 - C. *Mitigation may be satisfied by one, or a combination of more than one, of the following options:*
 1. *Planting of trees on the site where tree removal is proposed;*
 2. *Planting of trees off the site at a location or locations to be determined by the City; or*
 3. *A fee paid in lieu of tree planting and deposited in the City's Tree Mitigation Fund for future natural resource mitigation efforts. The assessment of tree mitigation shall be determined by the caliper size of the tree removed in accordance with the mitigation standards.*
 - D. *All trees planted for tree removal mitigation shall be maintained in accordance with the approved mitigation plan. Monitoring of mitigation planting shall be the ongoing responsibility of the*

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property owner where mitigation trees are located, unless otherwise approved through Development Review. Trees that die shall be replaced in accordance with the tree replacement standards of this section.

- E. All trees planted for tree removal mitigation shall be set aside in a separate tract or designated as "Mitigation" and recorded with a deed restriction identifying the trees as Mitigation trees that are subject to these same standards in the future.*
 - F. Each tree planted for tree removal mitigation shall include a performance security, equal to 110 percent of the cost of the landscaping, filed with the City for a period of five years to ensure establishment of the mitigation planting.*
 - G. Street trees shall not be counted as providing mitigation, except when removal of a street tree is being mitigated.*
 - H. If a mitigation tree of the species of the tree removed or damaged is not reasonably available, the City may approve replacement with a different species with equivalent natural resource or aesthetic value.*
 - I. Moving trees within the project site is not subject to mitigation, but is subject to a performance security so that the trees may be replaced if it is not successful in the new location at the end of five years.*
- 2. In addition to the standards listed in Mitigation Standards (Section 60.60.25.1), the following standards shall apply to mitigation for the removal of trees from a **significant grove or SNRA**.*
- A. Mitigation for tree removal in a significant grove or SNRA is only required when 50% or more of the total DBH of non-exempt surveyed trees on the project site are removed.*
 - B. If all mitigation for tree removal occurs on the site where tree removal is proposed, the required replacement of total DBH removed over 50% shall be on a 1:2 basis (equaling replacement of 50% of the total linear DBH measurement of trees removed).*
 - C. If not all mitigation occurs on the site where tree removal is proposed, mitigation shall be on a 1:1 basis according to total linear DBH measurement removed over 50%.*

D. *Replacement of trees shall be as follows:*

1. *Calculate the sum of the cumulative DBH measurement of the tree(s) to be removed. Denote deciduous and coniferous trees separately. If the cumulative DBH of trees to be removed is equal to or greater than 50% of the cumulative DBH of non-exempt surveyed trees on site, then mitigation is required for the amount of DBH to be removed that exceeds 50%.*
2. *The total linear DBH measurement of the trees to be removed shall be replaced with the necessary number of trees at least two caliper inches (2") in diameter. Coniferous trees 3-feet in height will equate to a 2" DBH, and 4-feet in height to a 3" DBH. Deciduous trees will be measured based on the caliper inch tree planted, but must be at least 2 inch caliper minimum.*
3. *If the total caliper inch replacement does not equal the DBH inch removal, the remaining caliper inch replacement will be provided as a fee in-lieu payment. The in-lieu fee shall be specified in the Community Development In-Lieu Fee schedule. Fee revenues shall be deposited in the City's Tree Mitigation Fund.*

D. *Any tree required for mitigation shall be a native species or a tree approved by the City considering site characteristics, such as proximity to natural resource vegetative corridors, or other factors, as listed in Metro's Native Plant List.*

Insert

Table

HERE

3. In addition to the standards in Mitigation Standards 1, the following standards shall apply to mitigation for the removal of a **significant individual tree**:

A. A replacement tree shall be a substantially similar species or a tree approved by the City considering site characteristics.

B. Mitigation for the removal of a significant individual tree shall be the required replacement of each tree on based on the total linear DBH measurement. Replacement of trees shall be as follows:

Replacement Table for Significant Deciduous Trees

Caliper-inches removed	Minimum total caliper-inches of replacement trees
6-12"	4"
13-18"	6"
19-24"	8"
Over 25"	9"

*Minimum replacement tree size is 2 caliper-inches for deciduous trees.

Replacement Table for Significant Coniferous Trees

Caliper-inches removed	Minimum number of replacement Trees
6-12"	1
13-24"	2
Over 25"	3

Minimum replacement tree size is 3-feet minimum to 4-feet maximum height for coniferous trees.

~~A. Mitigation for the removal of a significant tree or grove shall be the required replacement of each tree on a one-to-one basis according to total linear DBH measurement. Replacement of trees shall be as follows:~~

~~1. Calculate the sum of the cumulative DBH measurement of the tree to be removed.~~

~~2. The total linear DBH measurement of the tree to be removed shall be replaced with a tree that is at least two caliper inches (2") in diameter unless otherwise approved by the City. The total caliper inches of the replacement~~

tree shall be at least equal to the sum total of the linear DBH measurement of the removed tree.

~~3. If the total caliper inch replacement does not equal the DBH inch removal, the remaining caliper inch replacement will be provided in lieu. The in lieu fee shall be specified in the Community Development Department fee schedule and be deposited in the City's Tree Mitigation Fund.~~

~~B. Mitigation may be satisfied by one, or a combination of more than one, of the following options:~~

~~1. Planting of trees on the site where tree or grove removal is proposed;~~

~~2. Planting of trees off the site at a location or locations to be determined by the City; or~~

~~3. A fee paid in lieu of tree planting and deposited in the City's Tree Mitigation Fund for future natural resource mitigation efforts. The assessment of tree mitigation shall be determined by the caliper size of the tree removed.~~

~~C. Any tree required for mitigation shall be a similar species or a tree approved by the City considering site characteristics with a preference given to native species, as listed in Section 60.60.15 of this Code.~~

~~D. If a mitigation tree of the species of the tree removed or damaged is not reasonably available, the City may allow replacement with a different species with equivalent natural resource value.~~

~~E. All mitigation tree planting shall take place in conformance with accepted arboricultural practices and the City's Tree Planting and Maintenance Policy.~~

~~F. All trees planted for mitigation must have a minimum caliper of two inches (2") except where other standards are required through development review.~~

~~G. All trees planted for tree removal mitigation shall be maintained in accordance with the approved mitigation plan. Monitoring of~~

~~mitigation planting shall be the ongoing responsibility of the property owner. Trees that die shall be replaced.~~

24. The following standards apply to the replacement of a landscape tree or street tree:
- A. A replacement tree shall be a substantially similar species or a tree approved by the City considering site characteristics.
 - B. If a replacement tree of the species of the tree removed or damaged is not reasonably available, the City may allow replacement with a different species with equivalent natural resource value.
 - C. Replacement of a landscape tree or street tree shall be based on total linear DBH calculations at a one-to-one ratio depending upon the capacity of the site to accommodate replacement tree or unless otherwise specified through development review. Replacement of tree on a one-to-one basis shall be as follows:
 - 1. Calculate the sum of the total linear DBH measurement of the tree to be removed.
 - 2. The total linear DBH measurement of the tree to be removed shall be replaced with tree at least 1.5 caliper inches in diameter. The total caliper inches of the replacement tree shall be at least equal to the sum total of the linear DBH measurement of the removed tree.
 - D. *If a street tree is removed, it must be replaced with another tree on the City's Street Tree list that is appropriate for the size and location of the planter strip.*

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TA2004-0011**New Definitions - To be added to Chapter 90 in alphabetical order.**

Mitigation Tree. A tree planted in an effort to alleviate the impact of the removal of another tree(s). A mitigation tree takes on the designation of the tree(s) removed (i.e. tree(s) planted to mitigate for a tree(s) removed from a grove or SNRA becomes a tree(s) protected as if it were part of a grove or SNRA).

Native. Plant materials that have origins in the Tualatin Valley Region of the state of Oregon. These include, but are not limited to the following species: Grand Fir, Douglas-fir, Western Hemlock, Pacific Yew, Western Red Cedar, Big Leaf Maple, Oregon White Oak, Oregon Ash, Red Alder, Western Flowering Dogwood, Ponderosa Pine, and Black Cottonwood. Species found on the Metro and Clean Water Services Native Plant Lists apply.

Native Understory. Foliage layer located between the floor and the canopy of a forest, wood, or grove containing plant materials that have origins in the Tualatin Valley Region of the state of Oregon, having been allowed to remain in a natural state. Plant species identified on the Metro and Clean Water Services Native Plant Lists apply.

Non-Exempt Surveyed Tree. Trees that fit within the definition of Surveyed Tree, with the exception of Nuisance Trees.

Protected Tree. Includes Significant Individual Trees, Historic Trees, Trees within a Significant Natural Resource Area or Significant Grove, and Mitigation Trees. *Landscape Trees, Street Trees, Community Trees, Conditioned Trees?*

Significant Grove. Groves that are mapped on the City's Inventory of Significant Trees and Groves, that have a unique identification code and include all species within the grove boundary as listed in the inventory documents for that grove code.

Significant Tree. A tree or grouping of trees that is mapped on the City's Inventory of Significant Trees and Groves, which has a unique identification code as listed in the inventory documents for that individual tree code.

Surveyed Tree. Trees upon a site that are required to be reviewed by the city as part of a Tree Plan application. Trees required to be surveyed include all trees greater than or equal to ten (10) inches DBH (including nuisance trees) and the following trees greater than or equal to six (6) inches DBH: western or mountain hemlock trees, Pacific madrone trees, and big-leaf maple trees.

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**CITY OF BEAVERTON
STAFF REPORT AND RECOMMENDATION**

TO: Planning Commission

STAFF REPORT DATE: Wednesday, January 26, 2005

STAFF: Barbara Fryer, AICP, Senior Planner *BF*
Leigh Crabtree, Associate Planner

SUBJECT: TA 2004-0011
(Tree Code Text Amendments)

REQUEST: Amendments to Chapter 40, Chapter 60 and Chapter 90 of the Beaverton Development Code, currently effective through Ordinance 4332 (January 2005) to modify and clarify tree plan regulations.

APPLICANT: City of Beaverton
Planning Services Division
Barbara Fryer, AICP, Senior Planner
4755 SW Griffith Drive
Beaverton Oregon 97006

AUTHORIZATION: Ordinance 2050 (Development Code) effective through Ordinance 4332 (January 2005)

APPLICABLE CRITERIA: Ordinance 2050, effective through Ordinance 4332, Section 40.85.15.1.C.1-7 (Text Amendment Approval Criteria)

HEARING DATE: Wednesday, February 2, 2005

RECOMMENDATION: Staff recommend APPROVAL of text amendment application TA 2004-0011 (Tree Code Text Amendments).

I. SUMMARY OF PROPOSED TEXT AMENDMENT

TA 2004-0011 (Tree Code Text Amendment) proposes amendments to tree-related text in the Beaverton Development Code. This application proposes amendments to Section 40.90 (Tree Plan, Exhibit 2) , Section 60.60 (Trees and Vegetation, Exhibit 3) and Chapter 90 (Definitions, Exhibit 4) of the Beaverton Development Code, currently effective via Ordinance 4332 (January 2005), to modify and clarify regulations related to removal and mitigation of trees and vegetation.

II. STAFF RECOMMENDATION(S)

Staff offers the following recommendation for conduct of the February 2, 2005 public hearing for TA2004-0011 (Tree Code Text Amendment):

1. Open the public hearing.
2. Receive all public testimony.
3. Close the public hearing.
4. Considering the public testimony and the facts and findings presented in the staff report, deliberate on issues identified by the testimony or Planning Commission members.
5. Recommend **APPROVAL** of text amendment application **TA2004-0011 (Tree Code Text Amendment)** to the City Council.

III. BACKGROUND

In 1998, the City contracted with Shapiro and Associates to update the City's Significant Tree Inventory maps by creating computer generated maps. Staff asked the Planning Commission to adopt the maps, but the Planning Commission identified a number of issues. First, they determined that the maps were not as accurate as they would like. Second, the Planning Commission determined that a number of tree groves and individual trees in the community are not reflected on the map. Third, the Planning Commission asked staff to come back with a program to review the tree regulations to address safety issues such as potential for blowdown following preservation of a portion of the grove. In January of 2001, staff outlined the history of the City's regulation of trees. The memorandum to City Council is attached as Exhibit 1. City staff prepared maps and distributed them to the Neighborhood Associations to identify any missing resources. Staff worked with the Planning Commission to develop an inventory methodology following the Statewide Planning Goal 5 processes, focusing on trees as aesthetic or scenic resources. Planning

Commission and staff developed the inventory criteria from January 2001 through July 2001. Staff completed the inventory in late October, with the data compilation, mapping and database development continuing through April 2002.

In September 2001, Planning Services staff held a work session with the Planning Commission to discuss concepts for the protection of the significant tree resources in the City. At the same time, in September of 2001, Development Services staff adopted the interim Development Code regulations in place today.

In April 2002, City staff held an open house to introduce the inventory and potential concepts for protection to property owners throughout the inventory area. In May, city staff discussed the methodology for the Environmental, Social, Economic, and Energy (ESEE) consequences analysis and concepts for protecting the significant resources. In September and October, the Planning Commission held hearings on CPA2002-0007 and CPA2002-0008 amendments to the Comprehensive Plan map and text to:

- delete resources titled “Significant Natural Resources, Important Natural Resources, and Other Natural Resources” adopted by City Council in 1984,
- delete the Significant Tree Inventory Map adopted by the Board of Design Review in 1991,
- delete the Significant Tree Inventory Map of Annexed Areas adopted by City Council in 1999, and
- add four new resource categories titled “Scenic Trees, Scenic Groves, Scenic Neighborhood Groves, and Scenic Corridors.”

The amendment also proposed to amend Volume III to add the Scenic Tree Project inventory information and determination of significant resources. At the hearings, the Planning Commission and staff corrected data and photo errors, identified inventoried resources that had been altered, and reassessed of some resources as requested by participants in the public hearing process. On October 2, the Planning Commission determined that the inventory was adequate to proceed to the next step in the Goal 5 process, and determined that those resources scoring above average using a weighted scoring system would be determined to be significant.

From October 2002 through December 2003, staff worked with the Planning Commission, the Development Liaison Committee and internal staff to develop draft tree regulations that could be used to analyze the Environmental, Social, Economic, and Energy consequences of allowing conflicting uses, limiting conflicting uses (the proposed draft regulations) or prohibiting the conflicting uses. Staff continued to work with GIS to produce the information needed by the consultants to complete the ESEE analysis. Unfortunately, the consultants could not produce the product necessary to adopt the proposed tree regulations under Goal 5.

In November 2004, the voters of Oregon passed Ballot Measure 37, which requires that local jurisdictions compensate property owners when new regulations reduce property value. As a consequence, the proposal will apply only to currently regulated properties, as informed by the Scenic Tree Project. New properties will not be added to the inventories. Regulations are generally proposed as clear and objective standards that can be implemented administratively. An applicant may choose to go through a public hearing process that is subject to more discretionary approval criteria if the applicant does not want to or cannot follow the clear and objective standards. A separate Comprehensive Plan Amendment is proposed to consolidate the various map layers in one digital database.

IV. PROPOSAL OVERVIEW AND ISSUE DISCUSSION

Staff propose modifications to Chapter 40 to address new threshold levels allowing applicants the opportunity to proceed through clear and objective standards as a Tree Plan 1 or 2 or through a Tree Plan 3 as a discretionary action when the standards cannot be met. Modifications to Chapter 60 are much more extensive and include provisions for enforcement, exemptions, removal and preservation standards, tree protection standards during development, and mitigation standards. Chapter 90 changes reflect the need to add new definitions based on terms used in Chapters 40 and 60.

Order of Magnitude for the Tree Plan Applications

Clear and objective standards are the goal of the proposed tree regulations rewrite. Exemptions from Tree Plans are clearly identified with objective criteria that are not debatable from one person to another. Tree Plan 1 applications are actions that affect specific classifications of trees in the City that can be clearly and objectively described and involve minimal removal of trees, or are in the public interest. Clearing and grubbing of vegetation is included in a Tree Plan 1 for the reasons explained below.

Tree Plan 2 applications are an order of magnitude greater in terms of affect on the tree resources. These actions are clearly and objectively described and involve removal of trees and also involved replacement of the trees through mitigation as specified in Chapter 60.

Tree Plan 3 applications involve removal of greater than 85% or 75% of the grove or SNRA, depending on the zoning district. This is the discretionary process that an applicant may propose when the clear and objective standards of Tree Plan 2 applications cannot be met. The amount of tree removal, where the tree removal occurs, how much mitigation and how it is implemented are all discretionary decisions that are subject to a Planning Commission or Board of Design Review

public hearing. The applicant must make the case that the tree removal, proposed mitigation, etc. is the minimum necessary to physically develop the site.

Exemption for Street and Sidewalk Improvements

The text proposed in Section 40.90.10.11 with regard to public street and sidewalk improvements intends to eliminate the Tree Plan application and mitigation requirements for improvements that are described as: half-street improvements where the right-of-way has already been dedicated (Graphic 1a), half-street improvements where the right-of-way has not been dedicated (Graphic 1b), full-street improvements where the street is existing right-of-way, but is not yet constructed (Graphic 1c). Exemptions would not be possible for street improvements that are noted on the Functional Classification map, but are not yet dedicated rights-of-way (Graphic 1d), as these areas could presumably attempt to locate the new roadway so that tree removal is avoided or minimized.

Discussion at the Planning Commission’s January 19, 2005 work session suggested that staff should include a requirement to design around the tree resources. Including the design requirement is not a clear and objective criterion (who determines if the applicant modified the design enough?) and design alterations require approval from the Engineering Director; therefore, the requirement has not been included in the final proposed text. Staff will administratively encourage applicants to work with the Engineering Department on street design modifications where applicable.

Enforcement

Section 60.60.07 Enforcement, is in draft form and is subject to City Attorney and Municipal Judge revision.

Retention of Native Understory

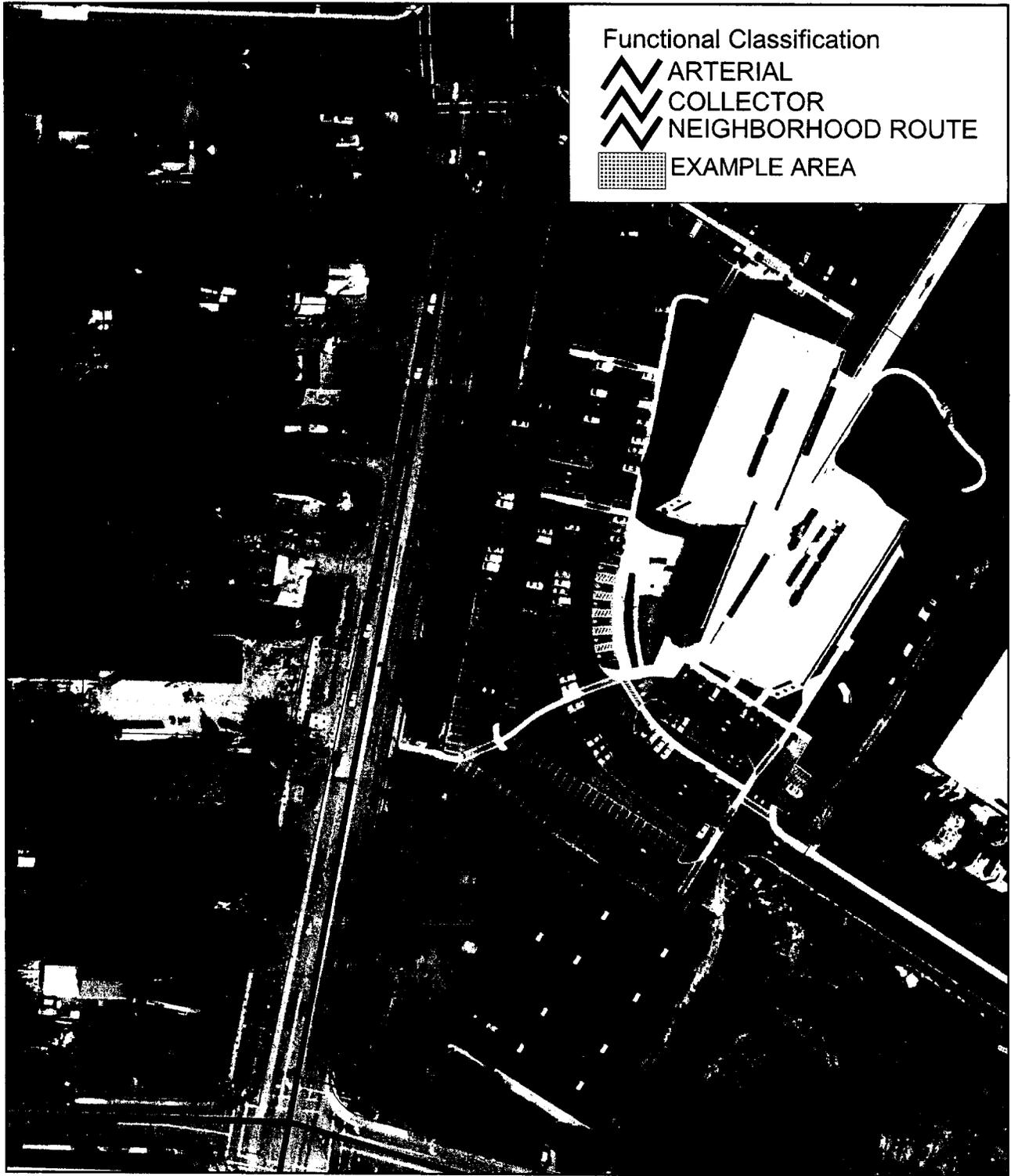
Clearing and grubbing is included in a Tree Plan 1 because the removal of understory vegetation and vegetation less than 10” DBH or 6” DBH for certain species, prior to determining the exact area of preservation can affect the health of the preserved area. Retention of the native understory maintains the fine root structure of the trees, minimizes damage to the “protected” tree trunks, and provides visual diversity in the landscape.

Performance Bonds

After briefly surveying Portland Metropolitan jurisdictions, staff conclude that retaining the existing 2-year performance bond is consistent with other jurisdictions. Portland’s performance bonding is discretionary depending on the project. Most other jurisdictions, including Clean Water Services, require 2-year bonds.

ROW Dedicated

Graphic 1a



Functional Classification

-  ARTERIAL
-  COLLECTOR
-  NEIGHBORHOOD ROUTE
-  EXAMPLE AREA



City of Beaverton

Tree Code Text Amendment

COMMUNITY DEVELOPMENT DEPARTMENT
Planning Services Division

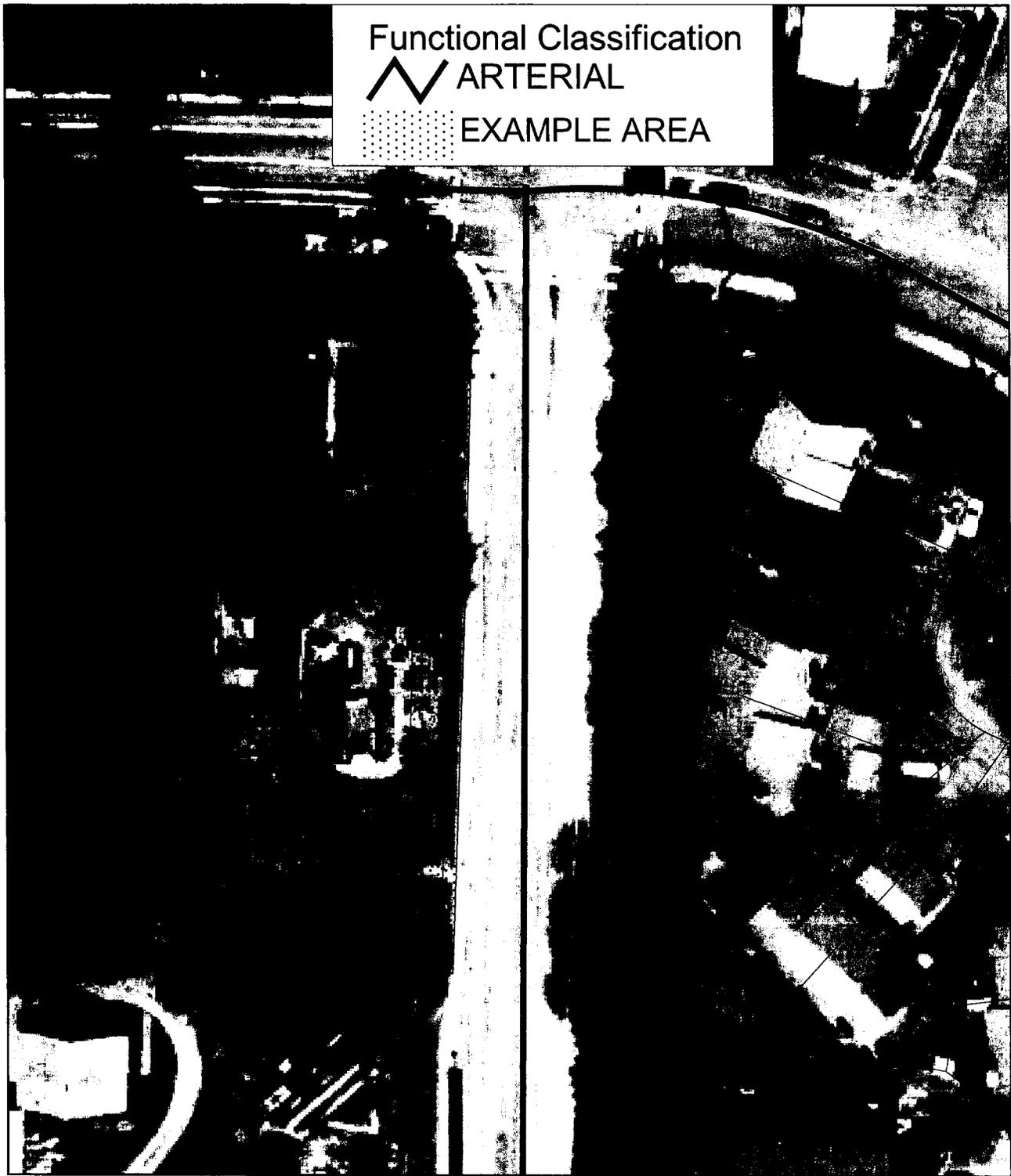
01/25/05

N



Application #
TA 2004-0011

ROW Not Dedicated Graphic 1b



City of Beaverton

Tree Code Text Amendment

COMMUNITY DEVELOPMENT DEPARTMENT
Planning Services Division

01/25/05

N



Application #
TA 2004-0011

Existing ROW

Graphic 1c

Functional Classification
ARTERIAL
PROPOSED ARTERIAL
COLLECTOR
NEIGHBORHOOD ROUTE
EXAMPLE AREA



City of Beaverton

Tree Code Text Amendment

COMMUNITY DEVELOPMENT DEPARTMENT
Planning Services Division

01/25/05

N



Application #
TA 2004-0011

New ROW

Graphic 1d

Functional Classification

 PROPOSED COLLECTOR



City of Beaverton

Tree Code Text Amendment

COMMUNITY DEVELOPMENT DEPARTMENT
Planning Services Division

01/25/05

N



Application #
TA 2004-0011

Tracts versus Conservation Easements

No formal consensus was achieved at the work session. Staff retained the requirement for separate tracts in the text of the proposal, and staff offers the following as an alternative:

Tree preservation areas identified for protection in a Land Division shall be set aside in a tree preservation tract. Tree preservation areas identified for protection associated with a Conditional Use Permit, Design Review or Tree Plans, and all other permit processes shall be protected with a conservation easement recorded as a deed restriction with Washington County. Maintenance requirements as specified by this code for either tree preservation tracts or conservation easements shall be recorded as a deed restriction with Washington County.

Nomenclature and Lists

Comment was made at the Planning Commission work session that staff should be consistent when using botanical and common names for plant materials and with regard to native, nuisance, hazardous, and lists such as Metro and Clean Water Services. To be clear, staff eliminated reference to botanical and common names, where possible; where not possible, staff included both. "Native plant species", "nuisance plants", and "hazardous" is defined in the proposed Chapter 90. To provide clarity, existing tree-related definitions are included in the Chapter 90 attachment, new definitions are provided in *italic* type-face. Metro and Clean Water Service lists change over time; it is helpful to include these as lists so that they can change without a change in the Development Code.

V. PUBLIC COMMENTS

The January 12, 2005 notice of application specified January 25, 2005 as the due date for written comments to be addressed in the staff report and recommendation. As of the date of issuance of this staff report and recommendation, there were no written comments submitted for the record.

VI. FACTS AND FINDINGS

Section 40.85.15.1.C of the Development Code specifies that in order to approve a Text Amendment application, the decision-making authority shall make findings of fact, based on evidence provided by the applicant, that all of the criteria specified in Section 40.85.15.1.C.1-7 are satisfied. The following are the findings of fact for TA 2004-0011 (Tree Code Text Amendments):

40.85.15.1.C.

1. **The proposal satisfies the threshold requirements for a Text Amendment application.**

Section 40.85.15.1.A specifies that an application for a text amendment shall be required when there is proposed any change to the Development Code, excluding changes to the zoning map. TA 2004-0011 (Tree Code Text Amendments) proposes to amend Sections 40.90, 60.60 and Chapter 90 of the Beaverton Development Code currently effective through Ordinance 4332 (January 2005). Therefore, staff find that approval criterion one has been met.

2. **All City application fees related to the application under consideration by the decision-making authority have been submitted.**

Policy Number 470.001 of the City's Administrative Policies and Procedures manual states that fees for a City initiated application are not required where the application fee would be paid from the City's General Fund. The Development Services Division, which is a General Fund program, initiated the application. Therefore, the payment of an application fee is not required. Staff find that approval criterion two is not applicable.

3. **The proposed text amendment is consistent with the provisions of the Metro Urban Growth Management Functional Plan.**

This application for Text Amendment is the modification of Section 40.85 (Tree Plan), Section 60.60 (Trees and Vegetation) and Chapter 90 (Definitions). These modifications provide a more comprehensive approach to tree removal and mitigation requirements. The Metro Urban Growth Management Functional Plan contains twelve titles covering twelve separate sets of policy. The proposed Development Code modifications must comply with the following titles:

Title 1 (Metro Code Sections 3.07.110 - 3.07.170)

Requirements for Housing and Employment Accommodation

One goal of the Framework Plan is the efficient use of land. Title 1 intends to use land within the UGB efficiently by increasing its capacity to accommodate housing and employment. Title 1 directs each city and county in the region to consider actions to increase its capacity and to take action if necessary to accommodate its share of regional growth as specified in this title.

The proposal identifies clear and objective standards for tree removal and sets forth clear and objective mitigation standards. The modification of the existing tree regulations provide a clear, quick process for applicants, thereby making development applications proceed more easily through the process. Applicants in

Multiple Use zoning districts may remove up to 85% of the trees on site, as measured by DBH, while all other zoning districts may remove up to 75%. Retaining fewer trees on Multiple Use district sites will allow the applicant to develop at higher densities in centers and station communities, consistent with the Urban Growth Management Functional Plan and the Metro 2040 Growth Concept that it implements.

Title 2 (Metro Code Sections 3.07.210 - 3.07.220)

Regional Parking Policy

The State's Transportation Planning Rule calls for reductions in vehicle miles traveled per capita and restrictions on construction of new parking spaces as a means of responding to transportation and land use impacts of growth. The Metro 2040 Growth Concept calls for more compact development as a means to encourage more efficient use of land, promote non-auto trips and protect air quality. In addition, the federally mandated air quality plan adopted by the state relies on the 2040 Growth Concept fully achieving its transportation objectives. Notably, the air quality plan relies upon reducing vehicle trips per capita and related parking spaces through minimum and maximum parking ratios. This title addresses these state and federal requirements and preserves the quality of life of the region.

A compact urban form requires that each use of land is carefully considered and that more efficient forms are favored over less efficient ones. Parking, especially that provided in new developments, can result in a less efficient land usage and lower floor to area ratios. Parking also has implications for transportation. In areas where transit is provided or other non-auto modes (walking, biking) are convenient, less parking can be provided and still allow accessibility and mobility for all modes, including autos. Reductions in auto trips when substituted by non-auto modes can reduce congestion and increase air quality.

The proposal does not affect the City's parking standards.

Title 3 (Metro Code Sections 3.07.310 - 3.07.370)

Water Quality, Flood Management and Fish and Wildlife Conservation

To protect the beneficial water uses and functions and values of resources within the Water Quality and Flood Management Areas by limiting or mitigating the impact on these areas from development activities, protecting life and property from dangers associated with flooding and working toward a regional coordination program of protection for Fish and Wildlife Habitat Areas.

The proposal provides for a clear and objective process to preserve 15% (Multiple Use zoning districts) and 25% (all other zoning districts) of the trees, as measured by DBH, on a resource site. Previously, applicants were required to retain only 5% of the total trees on site. The new regulations reduce the mitigation required, but increase the retention, resulting in more cohesive stands of trees while reducing the number of protected and mitigation trees that do not survive after development. Clear standards for mitigation will likely result in greater success.

Title 4 (Metro Code Sections 3.-07.410 - 3.07.440)

Industrial and Other Employment Areas

The Regional Framework Plan calls for a strong economic climate. To improve the region's economic climate, Title 4 seeks to provide and protect a supply of sites for employment by limiting the types and scale of non-industrial uses in Regionally Significant Industrial Areas (RSIAs), Industrial and Employment Areas. Title 4 also seeks to provide the benefits of "clustering" to those industries that operate more productively and efficiently in proximity to one another than in dispersed locations. Title 4 further seeks to protect the capacity and efficiency of the region's transportation system for the movement of goods and services and to encourage the location of other types of employment in Centers, Employment Areas, Corridors, Main Streets and Station Communities. The Metro Council will evaluate the effectiveness of Title 4 in achieving these purposes as part of its periodic boundary.

The proposal has limited applicability in the City's industrial and employment areas. Where the proposal applies, the clear and objective standards will reduce the processing time required to develop the site and will result in more efficient use of the site and its associated resource areas.

Title 5 (Metro Code Sections 3.07.510-3.07.540)

Neighbor Cities and Rural Reserves

The intent of this title is to clearly define Metro policy with regard to areas outside the Metro Urban Growth Boundary. NO PORTION OF THIS TITLE CAN REQUIRE ANY ACTIONS BY NEIGHBORING CITIES. Metro, if neighboring cities jointly agree, will adopt or sign rural reserve agreements for those areas designated rural reserve in the Metro 2040 Growth Concept with Multnomah, Clackamas, and Washington County, and Neighbor City Agreements with Sandy, Canby, and North Plains. Metro would welcome discussion about agreements with other cities if they request such agreements. In addition, counties and cities within the Metro boundary are hereby required to amend their comprehensive plans and implementing ordinances within twenty-four months to reflect the rural reserves and green corridors policies described in the Metro 2040 Growth Concept.

This title is not applicable to the proposed amendment.

Title 6 (Metro Code Sections 3.07.610 - 3.07.650)
Central City, Regional Centers, Town Centers and Station Communities

The success of the 2040 Growth Concept depends upon the maintenance and enhancement of the Central City, Regional and Town Centers and Station Communities as the principal centers of urban life in the region. Title 6 intends to enhance Centers by encouraging development in these Centers that will improve the critical roles they play in the region and by discouraging development outside Centers that will detract from those roles. As used in this title, the term "Centers" includes the Central City, Regional and Town Centers and Station Communities.

As noted earlier in this staff report, increasing the minimum retention area while reducing the required mitigation will result in more efficient use of land. Minimum retention in Mixed Use areas is 15% while all other areas is 25%. This should encourage these areas to develop more intensely, in line with the intended development pattern, while allowing some resource areas to be retained.

Title 7 (Metro Code Sections 3.07.710-3.07.760)
Affordable Housing

The Regional Framework Plan stated the need to provide affordable housing opportunities through: a) a diverse range of housing types, available within the region, and within cities and counties inside Metro's Urban Growth Boundary; b) sufficient and affordable housing opportunities available to households of all income levels that live or have a member working in each jurisdiction and subregion; c) an appropriate balance of jobs and housing of all types within subregions; d) addressing current and future need for and supply of affordable housing in the process used to determine affordable housing production goals; and e) minimizing any concentration of poverty. The Regional Framework Plan directs that Metro's Urban Growth Management Functional Plan include voluntary affordable housing production goals to be adopted by local jurisdictions in the region as well as land use and non-land use affordable housing tools and strategies. The Regional Framework Plan also directs that Metro's Urban Growth Management Functional Plan include local governments' reporting progress towards increasing the supply of affordable housing.

Title 1 of this functional plan requires cities and counties to change their zoning to accommodate development at higher densities in locations supportive of the transportation system. Increasing

allowable densities and requiring minimum densities encourage compact communities, more efficient use of land and should result in additional affordable housing opportunities. These Title 1 requirements housing strategy.

Clear and objective standards that allow an applicant to proceed through administrative rather than discretionary processes automatically reduces the costs borne by the applicant through reduction in processing time. Thus, the overall costs to develop the site should not preclude efforts to achieve affordable housing in areas of the city that would be subject to the proposed regulations.

Title 8 (Metro Code Sections 3.07.810-3.07.890)

Compliance Procedures

- D. Cities and counties that amend their comprehensive plans or land use regulations after the effective date of the functional plan shall make the amendments in compliance with the functional plan. The Chief Operating Officer shall notify cities and counties of the effective date.*
- F. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan if no appeal to the Land Use Board of Appeals is made within the 21-day period set forth in ORS 197.830(9), or if the amendment is acknowledged in periodic review pursuant to ORS 197.633 or 197.644. If an appeal is made and the amendment is affirmed, the amendment shall be deemed to comply with the functional plan upon the final decision on appeal. Once the amendment is deemed to comply with the functional plan, the functional plan shall no longer apply to land use decisions made in conformance with the amendment.*
- G. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan as provided in subsection F only if the city or county provided notice to the Chief Operating Officer as required by Section 3.07.820(A).*

The DLCD Notice of Proposed Amendment was mailed and emailed to Metro on December 28, 2004.

Title 9 (Metro Code Sections 3.07.910-3.07.920)

Performance Measures

In order to monitor progress in implementation of the Urban Growth Management Functional Plan and to evaluate and improve the plan over time, Metro shall measure and report on progress toward achievement and expected outcomes resulting from the implementation of the functional plan.

This Functional Plan requirement is irrelevant to the proposal.

Title 10 (Metro Code Section 3.07.1010)

Definitions

This title defines the words and terms used in the document.

This Functional Plan requirement is irrelevant to the proposal.

Title 11 (Metro Code Sections 3.07.1105 - 3.07.1140)

Planning for New Urban Areas

It is the purpose of Title 11 to require and guide planning for conversion from rural to urban use of areas brought into the UGB. It is the intent of Title 11 that development of areas brought into the UGB implement the Regional Framework Plan and 2040 Growth Concept.

This Functional Plan requirement is irrelevant to the proposal.

Title 12 (Metro Code Sections 3.07.1210 - 3.07.1240)

Protection of Residential Neighborhoods

Existing neighborhoods are essential to the success of the 2040 Growth Concept. The intent of Title 12 of the Urban Growth Management Functional Plan is to protect the region's residential neighborhoods. The purpose of Title 12 is to help implement the policy of the Regional framework Plan to protect existing residential neighborhoods from air and water pollution, noise and crime and to provide adequate levels of public services.

This Functional Plan requirement is irrelevant to the proposal.

Conclusion

Based on the analysis above, staff find that the proposal complies with the Urban Growth Management Functional Plan.

- 4. The proposed text amendment is consistent with the City's Comprehensive Plan.**

There are no specific Comprehensive Plan policies that address the proposed amendments. The proposed text amendments will not change the intent of the existing Development Code regulations, such that goals and policies of the Comprehensive Plan will be impacted. The following policies are addressed generally:

Chapter 2 – Public Involvement Element

City Council Goal: Enhance citizen involvement and participation.

Comprehensive Plan Public Involvement Goal: The Commission, Council, and other decision making bodies shall use their best efforts to involve the public in the planning process.

Chapter 2 of the Comprehensive Plan (Public Involvement Element) is relevant to the proposed amendments. Although Chapter 2 of the Comprehensive Plan does not contain discrete policies to which the proposed amendments are applicable, the public outreach conducted by staff thus far for this proposal provides for adequate public involvement. As noted earlier in the staff report, in the past few years staff has discussed this issue with the Committee for Citizen Involvement (CCI), Neighborhood Associations (when requested), and the Development Liaison Committee. Staff conducted an all day Open House to consider alternative approaches to tree protection on a Saturday in April, 2002 at the Beaverton Public Library. Several Planning Commission work sessions and public hearings have also been held on the issue. Additionally, this proposal in its final form is scheduled for a public hearing before the Planning Commission followed by subsequent City Council consideration.

Chapter 3 – Land Use Element

3.4.1 Goal: Provide a policy framework for a community designed to establish a positive identity while enhancing livability.

3.4.2 Goal: Proper relationships between residential, commercial, industrial, mixed and public land uses to provide a sound basis for urbanization.

3.5.1 Goal: Beaverton mixed use areas that develop in accordance with community vision and consistent with the 2040 Regional Growth Concept Map.

3.6.1 Goal: Regional Centers that develop in accordance with community vision and consistent with the 2040 Regional Growth Concept Map.

3.7.1 Goal: Town Centers that develop in accordance with community vision and consistent with the 2040 Regional Growth Concept Map.

3.8.1 Goal: Station Communities that develop in accordance with community vision and consistent with the 2040 Regional Growth Concept Map.

3.8.2 Goal: Develop Station Communities with sufficient intensities to generate light rail ridership and around-the-clock activity.

3.9.1 Goal: Main Street Areas with a vibrant mix of neighborhood commercial and residential uses in a pedestrian friendly environment that includes wide sidewalks with pedestrian amenities.

3.10.1 Goal: An attractive mix of commercial and higher density residential uses along major roads through the City that invites pedestrian activity where appropriate.

3.11.1 Goal: Regulate development in Employment Areas to accommodate changing market trends while maintaining the City's

employment base.

3.12.1 Goal: Attractive, compatible industrial, manufacturing, warehouse, and heavy industrial development at locations in the City served by good transportation networks.

3.13.1 Goal: Provide for the establishment and maintenance of safe, convenient, attractive and healthful places to live.

3.13.2 Goal: Retain established large lot zoning in limited areas.

3.13.3 Goal: Establish Standard Density Residential areas to provide moderate sized lots for typical single family residences with private open space.

3.13.4 Goal: Establish Medium Density Residential areas to allow for single family attached and detached, and multiple-family developments.

3.13.5 Goal: Establish High Density Residential areas to allow for a variety of housing types.

The aforementioned goals are met by the flexibility built into the proposal. By allowing the applicant the opportunity to follow clear and objective standards or a public hearing process, staff believe that the proposal continues to allow applicants to meet the goals through the development process.

Chapter 4 – Housing Element

Through comprehensive planning, the City of Beaverton can help guide the quantity, types, and affordability of its housing. Goal 10 of Oregon’s Statewide Planning Goals and Guidelines pertains specifically to housing. It stipulates that in preparing Comprehensive Plans, “Buildable lands for residential use shall be inventoried and plans shall encourage availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type, and density.” In conformance with this provision, as well as those specified in Oregon Revised Statute (ORS) section 197.295 -.314, Oregon Administrative Rules (OAR) section 660-007-008, Metro’s Urban Growth Management Functional Plan (UGMFP) - Title 1, and Metro’s Regional Affordable Housing Strategy (RAHS), the City conducted a buildable lands analysis and various housing needs studies and has adopted the following goals, policies, and actions to address the City’s housing needs as they pertain to the availability of housing supply, housing type, and housing affordability as specified below.

Please note the Title 7 discussion under Metro Urban Growth Management Functional Plan compliance, which is also relevant to this Comprehensive Plan chapter.

Chapter 5 – Public Facilities and Services Element

5.3.1 Goal: *Ensure long-term provision of adequate urban services within existing City limits and areas to be annexed in the future.*

5.4.1 Goal: *Ensure long-term provision of adequate storm water management within existing City limits and areas to be annexed in the future.*

5.5.1 Goal: *The City shall continue to participate in the Joint Water Commission and work with the West Slope, Raleigh and Tualatin Valley Water Districts to ensure the provision of adequate water service to present and future customers in Beaverton.*

5.6.1. Goal: *The City shall continue to cooperate with CWS to ensure long-term provision of an adequate sanitary sewer system within existing City limits and areas to be annexed in the future.*

5.7.1 Goal: *Cooperate with the Beaverton School District in its efforts to provide the best possible educational facilities and services to Beaverton residents.*

5.8.1 Goal: *Cooperate with THPRD in implementation of its 20-Year Comprehensive Master Plan and Trails Master Plan in order to ensure adequate parks and recreation facilities and programs for current and future City residents.*

5.9.1 Goal: *Provide full service police protection to the City's incorporated area and to new areas as they are annexed.*

5.10.1 Goal: *Cooperate with TVF&RD to insure adequate fire and emergency medical services for the current and future residents of the City.*

The proposal provides new regulations for restoration, road construction, trail construction, and other public improvements necessary for adequate public services.

Chapter 6 – Transportation Element

6.2.1. Goal: *Transportation facilities designed and constructed in a manner to enhance Beaverton's livability and meet federal, state, regional, and local requirements.*

6.2.2. Goal: *A balanced transportation system.*

6.2.3. Goal: *A safe transportation system.*

6.2.4. Goal: *An efficient transportation system that reduces the percentage of trips by single occupant vehicles, reduces the number and length of trips, limits congestion, and improves air quality.*

6.2.5. Goal: *Transportation facilities that serve and are accessible to all members of the community.*

6.2.6. Goal: *Transportation facilities that provide efficient movement of goods.*

6.2.7. Goal: *Implement the transportation plan by working cooperatively with federal, State, regional, and local governments, the private sector, and residents. Create a stable, flexible financial system.*

The proposal includes a new provision exempting minimal transportation improvements from tree protection requirements, reducing the difficulty and cost of achieving the goals listed above.

Chapter 7 – Natural, Cultural, Historic, Scenic, Energy, and Groundwater Resources Element

7.1.1 Goal: Balance development rights with natural resource protection.

7.2.1 Goal: Preserve, manage and encourage restoration of historic sites, structures, and objects designated as Significant Historic Landmarks, and protect the character of the Downtown Historic District as listed on the National Register of Historic Places.

7.3.1.1 Goal: Conserve, protect, enhance or restore the functions and values of inventoried Significant Natural Resources.

7.3.2.1 Goal: Promote a healthy environment and natural landscape in riparian corridors, and manage conflicting uses through education, and adoption and enforcement of regulations.

7.3.3.1 Goal: Protect or enhance wetlands adopted as Significant Wetlands in the Local Wetland Inventory.

7.3.4.1 Goal: Protect wildlife habitat in the city in association with protecting significant natural resources.

7.4.1 Goal: Conserve Significant Scenic Views and Sites, and the value they add to community.

7.5.1 Goal: Development projects and patterns in the City that result in reduced energy consumption.

7.5.2 Goal: Increased use of solar energy and other renewable energy resources in new development in the City.

7.6.1 Goal: Protect groundwater in the City from contamination.

The proposal attempts to balance the need to retain trees, tree canopy and habitat throughout the city while allowing development of the urban area at appropriate densities.

Chapter 8 – Environmental Quality and Safety Element

8.2.1. Goal: Maintain and improve water quality, and protect the beneficial uses, functions and values of water resources.

8.3.1. Goal: Maintain and improve Beaverton's air quality to increase livability and quality of life.

The proposal does not affect the existing water quality regulations, but may increase the city's ability to ensure that the existing regulations are implemented properly. By calling for a higher percentage of trees in inventoried groves to be protected from development through clear and objective processes, as well as the protection of native understory vegetation in the preserved areas of groves, the

proposal should reduce the amount of impervious surface created as a result of development, thereby reducing surface water runoff and resulting water pollution.

Chapter 9 – Economy Element

9.2.2.1 Goal: To support business development through an effective transportation system, targeted land (re)development, and adequate infrastructure.

9.2.2.2 Goal: To enable businesses to easily start or expand their enterprise.

9.2.3.1 Goal: To support a high quality of life for all of Beaverton's citizens.

The proposal provides a mechanism for land development and redevelopment to proceed through processing more easily via the clear and objective procedures. Adequate infrastructure and effective transportation systems may be implemented without mitigation and without tree plan applications in the proposal. Businesses can more readily expand into treed areas by following the clear and objective criteria established through this proposal. By balancing business needs and the natural resource environment, tree resources, the proposal will support a high quality of life for the residents and property owners in Beaverton.

Conclusion

Staff find that the proposed text amendments are consistent with the provisions of the Beaverton Comprehensive Plan. Therefore, staff find that approval criterion four has been met.

5. The proposed text amendment is consistent with other provisions within the City's Development Code.

The proposed amendments include changes to Chapter 40 to maintain consistency with Chapter 60. Chapter 90 amendments are to ensure that the terms used in Chapters 40 and 60 are clear. Thus, the proposal does not create impacts or conflicts with other provisions within the Development Code. Staff find that proposed amendments are consistent with the other provisions of the Development Code. Staff concludes, therefore, that approval criterion five has been met.

6. The proposed amendment is consistent with all applicable City ordinance requirements and regulations.

The current Development Code and Ordinance No. 4187, which adopted the current Comprehensive Plan, are applicable to the proposed text amendment and are addressed in the findings of fact for approval criterion four and five. Staff did not identify any other applicable City ordinance requirements and regulations that

would be affected by the proposed text amendments. Therefore, staff find that approval criterion six has been met.

7. **Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.**

Staff have determined that there are no other applications and documents related to the request that will require further City approval. Therefore, staff find that approval criterion seven has been met.

VII. CONFORMANCE WITH STATEWIDE PLANNING GOALS

GOAL 1 - CITIZEN INVOLVEMENT

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Numerous opportunities for public involvement were identified in the discussion under Comprehensive Plan Chapter 2.

GOAL 2 - LAND USE PLANNING

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The City of Beaverton has adopted a Comprehensive Plan that includes text and maps (Ordinance 4187) along with implementation measures such as the Development Code (Ordinance 2050, effective through Ordinance No. 4332). These land use planning processes and policy framework form the basis for decisions and actions, such as the subject text amendment proposal. The proposed Development Code amendment has been processed in accordance with Section 40.85 (Text Amendment) and Section 50.50 (Type 4 Application) of the Development Code. Section 40.85 contains specific approval criteria for the decision-making authority to apply during its consideration of the text amendment application. Section 50.50 (Type 4 Application) specifies the minimum required public notice procedures to insure public input into the decision-making process. The City of Beaverton's Comprehensive Plan has been acknowledged by the State Department of Land Conservation and Development to be consistent with Statewide Planning Goal 2.

GOAL 5 - OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

To conserve open space and protect natural and scenic resources.

The City has an active Goal 5 component in its Comprehensive Plan known as the Local Wetland Inventory and Riparian Assessment (Ordinance 4125). Wetlands on the Local Wetland Inventory and Significant Riparian Corridors are defined in the Development Code as being Significant Natural Resource Areas (SNRAs). Trees in SNRAs are subject to protection under existing City regulations and the regulations proposed by this application. Historic Trees are also Goal 5 resources and are also subject to both existing tree protection regulations and the regulations proposed by this application. Separately from Goal 5 resources inventoried by the city, the city protects trees on a Board of Design Review approved Inventory of Significant Trees and Groves. The proposal clarifies the roles of these seemingly disparate inventories covering similar resources.

GOAL 6 – AIR, WATER AND LAND RESOURCES QUALITY

To maintain and improve the quality of air, water and land resources of the state.

As noted above in findings addressing Chapter 8 of the Comprehensive Plan, retaining trees on site and requiring mitigation may contribute to the urban forest's capacity reduce the impacts of development on water quality and quantity, as well as to clean the air.

GOAL 7 – AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS

To protect life and property from natural disasters and hazards.

Protected trees and understory vegetation help to reduce flooding by absorbing rainfall and slowing surface water runoff, thereby reducing the rise in stream levels after rain storms. The roots of protected trees and understory vegetation also stabilize soils on steep slopes, thereby reducing landslide potential. To the extent that the tree protection regulations proposed by this application increase the protection of trees and understory vegetation in the city, achievement of Goal 7 will be furthered.

GOAL 8 – RECREATIONAL NEEDS

To satisfy the recreational need of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

The proposal includes new limited development opportunities for trail construction, allowing greater access to forested areas within the city. To the extent that the aesthetic value of trees also has recreational value, the proposal should also further compliance with Goal 8.

GOAL 9 – ECONOMY OF STATE

To diversify and improve the economy of the state.

See the discussion under the Metro Urban Growth Management Functional Plan and the City's Comprehensive Plan.

GOAL 10 - HOUSING

To provide for the housing needs of citizens of the state.

See the discussion under the Metro Urban Growth Management Functional Plan.

GOAL 12 - TRANSPORTATION

To provide and encourage a safe, convenient and economic transportation system.

See the discussion under the Metro Urban Growth Management Functional Plan and under Chapter 6 of the City's Comprehensive Plan.

VIII. CONCLUSION AND STAFF RECOMMENDATION

Based on the facts and findings presented, staff conclude that the proposed amendment to the Development Code is consistent with all the text amendment approval criteria of Section 40.85.15.1.C.1-7. Therefore, staff recommend the Planning Commission **APPROVE** TA 2004-0011 (Tree Code Text Amendments) at the February 2, 2005 regular Commission hearing.

IX. EXHIBITS

Exhibit 1: January 2001 Memorandum to City Council

Exhibit 2: Proposed Amendments to Chapter 40, section 90 (Tree Plan)

Exhibit 3: Proposed Amendments to Chapter 60, section 60 (Trees and Vegetation)

Exhibit 4: Proposed Amendments to Chapter 90, Definitions

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EXHIBIT 1
January 2001 Memorandum to City Council



MEMORANDUM
CITY OF BEAVERTON
COMMUNITY DEVELOPMENT DEPARTMENT

"MAKE IT HAPPEN"

To: City Council
Date: January 26, 2005
From: Barbara Fryer, AICP
Senior Planner
Subject: *Background Information regarding Contract Award Agenda
Bill for Statewide Planning Goal 5 Implementation Professional
Planning Services*

A number of issues and historical facts are pertinent to the reasoning behind the approach to this project. The following information details the history of the City's implementation of Statewide Planning Goal 5 and raises a number of issues that staff attempts to address as part of this project.

SIGNIFICANT NATURAL RESOURCES HISTORY:

In May of 1985, the City adopted Ordinance 3439, which amended the Comprehensive Plan by adopting A Comprehensive Plan for Beaverton's Natural Resources (GPA 2-84, TA 8-84), dated July 1984. This amendment, adopted pursuant to Goal 5, assigned significance to Beaverton's natural resources in the following manner: "Areas designated on the plan map as Significant Natural Resources generally contain wetlands and/or riparian-stream corridors that are important principally for their wildlife habitat value. Other areas shown on the map that contain *major stands of trees*, drainage swales, and other natural vegetation were determined to be primarily important for their *aesthetic value* although many also provide wildlife habitat of some, although relatively less, importance." (Italics added for emphasis.) The primary policy adopted with respect to trees, under this Goal 5 effort, is as follows: "Upland vegetation areas are particularly valuable for mature trees or shrubs and these should be retained to the extent feasible in the development of these areas." The Department of Land Conservation and Development (DLCD) acknowledged this amendment as complying with Statewide Planning Goal 5.

SIGNIFICANT TREE INVENTORY HISTORY:

In August 1990, City Council approved Ordinance 3740, which adopted a new Development Code section on Tree Regulations. The ordinance adopted tree regulations requiring Board of Design Review approval of a new "significant tree

inventory". The inventory was to be conducted in compliance with the new regulations adopted. In February 1991, the Board of Design Review approved the "significant tree inventory" and forwarded it to the City Council for their consent. The "significant tree inventory consisted of a map that shows the location of the designated significant trees and the approximate location of significant groves, a one page document per significant tree or grove providing information on tree species and size, and a photograph.

The inventory was "adopted" on consent at City Council in April of 1991, with the exception of two groves. These two groves of trees were "appealed" for Council consideration in a public hearing. In June of 1991, the City Council held a hearing to consider adoption of two groves of trees. At the June 24, 1991 Council meeting, City Council adopted Order No. G-39/G-41/683, Order granting appeal and removing groves from inventory. The 1991 "significant tree inventory" map was never formally adopted by ordinance, nor was it prepared in accordance with the requirements of Statewide Planning Goal 5.

It is unclear whether the inventory was intended to serve either as compliance with a Goal 5 requirement or the Oregon Forest Practices Act (OFPA). Presumably, if adopted under either provision, findings or discussion would have been provided in the accompanying staff report prepared for the Board of Design Review or the City Council actions. Under ORS 527.722, the OFPA permits local governments "to allow, prohibit or regulate forest practices on lands within an acknowledged urban growth boundary." Furthermore, in jurisdictions where local regulations have been adopted before 1991, the "existence or adoption of such policies or regulations relieves the State Forester of responsibility to administer the Oregon Forest Practices Act within the affected area."

In 1996, DLCD adopted amendments to Statewide Planning Goal 5, including classification of Scenic Views and Sites, Open Space and Historic Resources inventories as optional. As part of the Periodic Review work program, staff identified that the City's Goal 5 program required completion of a Local Wetland Inventory and Riparian Assessment, two inventories that were not required in 1984. Also, staff identified a need to revise the City's Historic Resources Inventory to provide a mechanism for property owners to opt out if they so chose. Finally, staff identified a need to update the Goal 5 resource maps through digitization in the computer, including the 1984 Natural Resources map and the 1991 significant tree inventory.

PERIODIC REVIEW WORK PROGRAM FOR GOAL 5:

In developing the City's Periodic Review Work Program, staff intended to nest the existing Significant Natural Resource Map, the Significant Tree Inventory Map, the Local Wetland Inventory and Urban Riparian Assessment Map, and the Historic Resources Map as different layers of a composite resource map.

Pursuant to Statewide Planning Goal 5, the City contracted with Shapiro and Associates to complete a number of inventories, including a tree inventory of areas that annexed since the 1991 inventory was adopted. A Goal 5 advisory committee was established to assist staff and the consultant in developing the information to be inventoried on each site, the significance criteria, and in conducting an analysis of the Environmental, Economic, Social, and Energy (ESEE) consequences of protecting the significant tree groves and allowing conflicting uses.

PERIODIC REVIEW AMENDMENTS:

Shapiro and Associates completed an inventory of tree groves greater than 2 acres in size in areas that annexed since the 1991 significant tree inventory was conducted. The consultants also conducted an ESEE analysis and recommended some modifications to the existing Development Code regulations. In September 1999, City Council adopted Ordinance No. 4065, amending the Comprehensive Plan by adopting the significant tree inventory map (CPA 99-0007) for annexed areas and supporting documentation (CPA 99-0008). The supporting documentation included inventory information on the groves, a determination of significance, and an ESEE consequences analysis for the annexed areas only. The ordinance refers to the map amendment (CPA 99-0007) as amending the City's Comprehensive Plan Significant Natural Resource Map to update the City's current Significant Tree Inventory Map with information regarding areas that have annexed since the original map was adopted in 1991.

Shapiro and Associates were also contracted to update the 1991 tree inventory information for areas within the city. The work scope specified that the consultants would review aerial photography and visit sites to determine if trees had been removed since the 1991 inventory and to determine tree health. Photographs of each site were taken and inventory forms were updated. The resulting groves and trees were then digitized (mapped via the computer). Staff proposed a Comprehensive Plan Amendment to adopt this work (CPA 99-0017 and CPA 99-00018), which first came before the Planning Commission on September 15, 1999. At the September 15, 1999 hearing, the Planning Commissioners questioned the accuracy of the maps and the "project". Commissioners were concerned that the aerial interpretation of existing resources was not accurate enough. Also, the Commissioners questioned whether the "project" truly updated the inventory. Commissioners asked that staff return with answers to their questions.

Staff returned to the Planning Commission on November 17, 1999. Staff identified that the "project" was not intended to re-evaluate the tree resources within the City and propose new tree resources as significant. The "project" was to update the 1991 inventory map using current technology, provide information regarding relative tree health and tree resources removed, and provide a current photograph. The Planning Commission requested staff revisit the inventory to look at trees and groves that had not previously been designated and to prepare a map with tree preservation tracts and tree preservation plans approved through the development review process. Staff requested a continuance of the project to December 15, 1999.

Concurrent with the inventory amendments, staff proposed amendments to both the Comprehensive Plan (CPA99-00013) and Development Code (TA99-00004) text. The Goal 5 tree regulation amendments came before the Planning Commission on September 15, 1999. The proposal was continued to November 3, 1999 and again to December 15, 1999 to coincide with the inventory amendments. The Goal 5 committee, referenced earlier, identified a number of issues that could be addressed in amendments to the regulatory framework, including more clear and objective standards for tree preservation. At the same time the Development Services Division staff identified a number of outstanding issues related to the tree regulations adopted in 1990 and anticipated modifying the text to provide more clarity. Development Services Division staff removed the non-Goal 5 related tree regulations amendments within TA 99-00004 and included them with the amendment to Chapter 40 of the Development Code.

At the December 15, 1999 meeting, staff provided considerable information to the Planning Commission with regard to the Oregon Forest Practices Act, including draft guidelines for Developing Urban Forest Practices Ordinances. At this meeting, staff also provided the Planning Commission with information related to the adoption of the 1991 significant tree inventory. Staff discovered that the inventory was not adopted via ordinance by the City Council and the Goal 5 procedures were not followed in developing the inventory. Staff requested a continuance to February 9, 2000 to prepare appropriate significance criteria, complete an ESEE analysis for the tree resources pursuant to the Open Space and Scenic Views and Sites categories of Goal 5, make appropriate Oregon Forest Practices Act findings, and modify the staff report appropriately. At the February 9, 2000 meeting, staff proposed applying for the Oregon Department of Forestry Grant to contract with a consultant for assistance in the project. Staff anticipated that a Planning Commission hearing would be held on August 9, 2000 with regard to the updated inventory, ESEE analysis and draft regulations. At the August 9, 2000 hearing, staff requested a continuance to February 28, 2001 to bring forward the updated inventory, ESEE analysis and draft regulations.

Due to the concerns raised at the Planning Commission hearing (September 1999) regarding the Tree Preservation Plans (TPPs), staff has been researching past TPPs. Tree Preservation Plans were required when development was proposed on sites identified on the Significant Tree Inventory (1991) or Natural Resources Maps (1984). Pertinent information such as the map, final order, arborist report, and other data deemed important by staff is being bound together for future use. Once complete, staff will digitize this information into a data layer that is used for information purposes only. Due to the fact that the TPPs were adopted as part of a land use action and that they were prepared only for "significant" sites, the information will be used to inform and update the inventory by providing information to compare the actual tree preservation areas with the preservation areas adopted via the land use action. This information will not be subsequently adopted as a map, but rather will be used as supplemental data to staff and the public. The map will not be published, but will be available for use as a resource.

Additionally, the Planning Commission requested staff review all trees and groves in the City, including those that had not been adopted as "significant" in the 1991 inventory. To accomplish this and adopt a new inventory of trees pursuant to Goal 5, staff determined that the optional "Open Space" and "Scenic Views and Sites" categories of Goal 5 should be addressed. (There is no category under the Goal that directly addresses trees.) For the purposes of Goal 5, open space includes "parks, forests, wildlife preserves, nature reservations or sanctuaries, and public or private golf courses." Scenic views and sites are "lands that are valued for their aesthetic appearance."

The standard Goal 5 process is as follows:

1. Inventory the resource (specify the location, quality and quantity of the resource),
2. Determine the significance of the resource,
3. Conduct an analysis of the ESEE consequences of fully allowing conflicting uses, partially allowing conflicting uses and full protection of the resource
4. Adopt a program to implement the Goal based on the ESEE analysis. This program could fully protect the resource, partially protect the resource, or fully allow the conflicting uses if deemed to be more important than the resource.

Goal 5 provides a safe harbor protection option for some resources, however, in the case of Open Space and Scenic View and Sites, safe harbor is not an option. Consequently, an ESEE analysis is required.

Based on these facts, staff determined that the most cost effective and expeditious approach would be to contract with a consultant for assistance in the process. The consultant would review inventory forms and evaluation criteria developed by staff, staff would conduct the inventory and determine significance of sites, and the consultant would then conduct an ESEE analysis and propose a program to implement the Goal. Opportunities for public involvement and review and approval by the Planning Commission are factored into work scope as identified in the RFP and the consultant's scope of work (Exhibits B and D of the Agenda Bill, respectively).

SUMMARY OF PERTINENT FACTS:

1. The 1991 Significant Tree Inventory was adopted by the Board of Design Review, but was not adopted by the City Council by ordinance.
2. The 1991 Significant Tree Inventory was not prepared following Statewide Planning Goal 5 procedures.
3. It is unknown if the 1991 Significant Tree Inventory was intended to supplant the Oregon Forest Practices Act.
4. Ordinance 4065 adopted CPA 99-0007 and CPA 99-0008.
5. CPA 99-0007 and CPA99-0008 included a tree inventory, significance determination, ESEE analysis and program decision with regard to identified groves of trees greater than 2 acres in size in areas that annexed to the City after the 1991 inventory was completed.
6. CPA99 -00017 and CPA99-0018 proposed to adopt the 1991 inventory with minimal new information. The new information included relative tree health, areas that had been removed as determined via aerial photography and a site visit, and a photograph of the tree/grove. A digitized (computer mapped) map was also proposed for adoption to replace the 1991 map.
7. The Planning Commission, at the request of staff, continued CPA99-00017 and CPA99-00018 five times in order to attempt resolution of the aforementioned issues.
8. CPA99 -00013 and TA99-00004 proposed new tree regulations based on suggestions by the Goal 5 committee and the Development Services Division. Non-Goal 5 related tree regulations were folded into the Development Code Chapter 40 amendment and removed from TA99-00004. Procedural issues were addressed, however, substantive issues related to trees are still unresolved and are on the same continuance schedule as CPA99-00017 and CPA99-00018.
9. This contract, if awarded, will assist staff in resolving the aforementioned issues.

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Exhibit 2
Proposed Amendments to Chapter 40, Section 90
(Tree Plan)
(File name: Chapter 40.pdf)

40.90. TREE PLAN**40.90.05. Purpose**

Healthy trees and urban forests provide a variety of natural resource and community benefits for the City of Beaverton. Primary among those benefits is the aesthetic contribution to the increasingly urban landscape. Tree resource protection focuses on the aesthetic benefits of the resource. The purpose of a Tree Plan application is to provide a mechanism to regulate pruning, removal, replacement, and mitigation for removal of Protected Trees (sSignificant Individual Trees, and hHistoric tTrees, and trees within Significant gGroves and Significant Natural Resource Areas (SNRAs)), lLandscape tTrees, street tree, and eCommunity Ttrees thus helping to preserve and enhance the sustainability of the City's urban forest. This Section is carried out by the approval criteria listed herein and implements the SNRA, Significant Grove, Significant Individual Tree, and Historic Tree designations as noted or mapped in Comprehensive Plan Volume III.

40.90.10. Applicability.

Different types of resources require different levels of protection. No Tree Plan is required for the following actions:

1. Removal of up to four (4) eCommunity tTrees within an one (1) calendar year period. Properties one-half acre or less in size developed with a detached dwelling may remove any number of eCommunity tTrees.
2. Removal and pruning of any hazardous, dead, or diseased tree ~~or a portion of a hazardous tree~~ when the tree is identified as such by a certified arborist, or by the City Arborist and the removal is required by the City. ~~The removal of the tree is subject to the mitigation requirements of Section 60.60 (Trees and Vegetation) of this Code.~~ Hazardous and dead trees within Significant Groves and SNRAs shall be fallen only for safety and left at the resource site to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and must be removed from the area to protect the remaining trees.
3. In the event of an emergency requiring tree removal or pruning prior to the City Arborist's determination, if evidence justifies the emergency removal after the fact, then no tree plan is required for removal. Hazardous and dead trees within Significant Groves and SNRAs shall be fallen only for safety and left at the resource site to serve as habitat

for wildlife, unless the tree has been diagnosed with a disease and must be removed from the area to protect the remaining trees.

34. Pruning of trees consistent with the Vision Clearance requirements of Section 60.55.50.
45. Pruning of trees by the utility provider for above ground utility power lines following acceptable arboricultural standards and practices.
6. *Pruning of trees to maintain the minimum 8 foot clearance above a sidewalk.*
7. *Removal or pruning of the following nuisance tree species anywhere in the city: Lombardy Poplar (*Populus nigra*), and birch (*Betula sp.*).*
8. *Removal and pruning of the following nuisance tree species in Significant Groves and SNRAs: Norway maple (*Acer platanoides*), Tree-of-Heaven (*Ailanthus altissima*), and Golden Chain Tree (*Laburnum watereri*).*
9. *Removal of a tree listed as a Nuisance or Prohibited Plant on Metro's or Clean Water Services' Native Plant Lists.*
10. *Within SNRAs and Significant Groves, planting of native vegetation listed on the Metro or Clean Water Services' Native Plant Lists when planted with non-mechanized hand held equipment.*
11. *Public street and sidewalk improvements within SNRAs or Significant Groves that meet i. or ii. and iii.:*
 - i. *Improvements within an existing public right-of-way; or*
 - ii. *Improvements within a public right-of-way that are required of development in order to meet functional classification standards, such as half-street improvements; and*
 - iii. *The proposed improvements do not exceed the minimum width standards of the Engineering Design Manual.*
12. *Trails within SNRAs and Significant Groves meeting all of the following:*
 - i. *Construction must take place between May 1 and October 30 with hand held equipment;*
 - ii. *Trail widths must not exceed 30 inches and trail grade must not exceed 20 percent;*
 - iii. *Trail construction must leave no scars greater than three inches in diameter on live parts of native plants; and*

- iv. Trails must be placed outside the top of bank of any stream, river, or pond, and
- v. Trails must be 100% pervious.

13. Street Trees are covered by the Beaverton Municipal Code and Section 60.15.15.3.G.

40.90.15. Application.

There are ~~four (4)~~ *three (3)* Tree Plan applications which are as follows: Tree Plan One, Tree Plan Two, *and* Tree Plan Three, ~~and Tree Plan Four.~~

1. Tree Plan One.

A. Threshold. An application for Tree Plan One shall be required when none of the actions listed in Section 40.90.10 apply and one or more of the following thresholds apply:

1. Minor pruning of a ~~Significant Tree, Significant Grove, Landscape Trees and Protected Trees, tree within a Significant Natural Resource Area (SNRA), Historic tree, or Street Tree~~ once within an one year period.
2. Removal of up to and including five (5) Landscape Trees ~~or Street Trees~~ on a site within a one year period.
3. Removal or pruning of a ~~Significant Tree, Significant Grove, Landscape Trees and Protected Trees, tree within a Significant Natural Resource Area (SNRA), a Historic Tree, a Street Tree,~~ or part thereof, that constitutes or ~~removes~~ *creates* a hazardous condition. Pruning to eliminate a hazardous condition may exceed minor pruning.
4. Removal of noxious vegetation, ~~re-planting of trees and shrubs, or both and clearing and grubbing of vegetation~~ within a SNRAs, ~~Significant Groves and designated as significant on the City's Local Wetland Inventory,~~ or Sensitive ~~a~~Areas as defined by Clean Water Services.
5. *Mechanized re-planting of trees and shrubs, or both, or restoration planting within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services.*

6. *Trails greater than 30 inches in width, or trail grade exceeding 20 percent, trail surfaces less than 100% pervious surface, or any combination thereof within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services that does not result in tree removal.*

B. Procedure Type. The Type 1 procedure, as described in Section 50.35 of this Code, shall apply to an application for Tree Plan One. The decision making authority is the Director.

C. Approval Criteria. In order to approve a Tree Plan One application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Tree Plan One application.
2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]
4. ~~If applicable, it is necessary to prune or remove a tree that poses a safety hazard to pedestrians, vehicular traffic, adjacent property, or the general public or that threatens to cause disruption of public service and at least one of the following exist:~~
 - a. ~~The tree or portion of the tree is certified by a qualified professional as dead or dying.~~
 - b. ~~A portion of the tree is only partially attached.~~
 - c. ~~The tree or a portion of the tree has been damaged by a storm, fire, age, or accident and is physically lodged or leaning against a building, transportation facility, or overhead utility line or pole.~~

54. If applicable, pruning a tree will result in removal of no more than 20% of the tree's canopy or disturbance of no more than 10% of the root system. The pruning is needed to improve tree health or to eliminate conflicts with vehicles or structures which includes, but is not limited to, underground utilities and street improvements.
65. If applicable, removal of a ~~Landscape~~ ~~Tree~~ or street tree or pruning of a tree is necessary to accommodate development where variances to setback provisions of the Development Code will not allow the tree to be saved.
6. *If applicable, the removal of vegetation or clearing and grubbing is necessary to accommodate physical development in the area in which the removal is proposed.*
- ~~7. If applicable, emergency removal or pruning is necessary due to an immediate threat to public safety documented by photographic evidence supplied by the applicant.~~
- ~~8. Removal of a tree or grove shall not increase erosion or any resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~
97. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

D. Submission Requirements. An application for a Tree Plan One shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan One application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.

E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan One application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).

- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Previous approval of Tree Plan One proposal shall not be extended.

2. Tree Plan Two

- A. Threshold. An application for Tree Plan Two shall be required when none of the actions listed in Section 40.90.10 apply, none of the thresholds listed in Section 40.90.15.1 apply, and one or more of the following thresholds apply:
 - 1. Major pruning of a ~~non-hazardous Significant Tree, Significant Grove, Trees within a Significant Natural Resource Area (SNRA), Historic Trees, Landscape Trees and Protected Trees, or Street Trees~~ once within a one (1) calendar year period.
 - 2. Removal of more than five (5) and up to and including ten (10) Landscape Trees ~~or Street Trees~~ on a site within a one calendar year period.
 - 3. Removal of five (5) or more Community Trees within a one calendar year period.
 - 4. *Removal of five (5) or more Community Trees on properties zoned for single family residential dwellings that are more than one-half acre in size, with or without an existing dwelling.*
 - 5. *Removal of up to and including 85% of the total DBH of non-exempt surveyed tree(s) within a SNRA or Significant Grove within any Multiple Use Zone.*
 - 6. *Removal of up to and including 75% of the total DBH of non-exempt surveyed tree(s) within a SNRA or Significant Grove within any Commercial, Residential, or Industrial Zone.*
 - 7. *Removal of a Significant Individual Tree(s).*

- B. Procedure Type. The Type 2 procedure, as described in Section 50.40 of this Code, shall apply to an application for Tree Plan Two. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Tree Plan Two application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Tree Plan Two application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. If applicable, pruning of any tree or removal of a ~~landscape, street, or eCommunity t~~Trees is necessary to enhance the health of the tree, grove, group of trees, or an adjacent tree or to eliminate conflicts with structures or vehicles.
 4. ~~If applicable, it is necessary to remove diseased of landscape, street, or community trees or trees weakened by age, storm, fire, or other condition.~~
 54. If applicable, pruning *or removal* of any tree ~~or removal of a landscape, street, or community tree~~ is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995 standards and International Society of Arborists (ISA) standards on the subject.
 65. If applicable, pruning *or removal* of any tree ~~or removal of a landscape, street, or community tree~~ is necessary to accommodate *physical* development where no reasonable alternative exists ~~for the development at another location on the site, or where variances to setback provisions of this Code will cause other undesirable circumstances on the site or adjacent properties if the tree is saved.~~
 76. If applicable, removal of a ~~landscape tree or street tree or pruning of any tree~~ is necessary because it has become a

nuisance by virtue of damage to property or improvements, either public or private, on the subject site or adjacent sites.

87. If applicable, removal of *any tree landscape, street, or community tree* is necessary to accomplish public purposes, such as installation of public utilities, *street widening*, and similar needs, where no reasonable alternative exists without significantly increasing public costs or reducing safety.
- ~~9. Removal of a tree or grove shall not increase erosion or any resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~
8. *If applicable, removal of any tree is necessary to enhance the health of the tree, grove, SNRA, or adjacent trees to eliminate conflicts with structures or vehicles.*
9. *If applicable, removal of a tree, or trees, within a SNRA or Significant Grove will not result in a reversal of the original determination that the SNRA or Significant Grove is significant based on criteria used in making the original significance determination.*
10. *If applicable, removal of a tree, or trees, within a SNRA or Significant Grove will not result in the remaining trees posing a safety hazard due to the effects of windthrow.*
11. *If applicable, removal of a tree, or trees, within a SNRA or Significant Grove will not result in the remaining trees posing a safety hazard due to edge effects.*
1012. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

- D. Submission Requirements. An application for a Tree Plan Two shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan Two application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan Two application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).
- F. Appeal of a Decision. Refer to Section 50.65.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Previous approval of Tree Plan Two proposal shall not be extended.

3. Tree Plan Three

- A. Threshold. An application for Tree Plan Three shall be required when none of the actions listed in Section 40.90.10 or none of the thresholds listed in Section 40.90.15.1 or Section 40.90.15.2 apply and one or more of the following thresholds apply:
1. ~~Removal of up to and including ninety five percent (95%) of trees within a Significant Natural Resource Area (SNRA). Removal of greater than 85% of the total DBH of non-exempt surveyed trees within a SNRA or Significant Grove area that is found on the project site within Multiple Use Zones.~~
 2. *Removal of greater than 75% of the total DBH of non-exempt surveyed trees within a SNRA or Significant Grove area that is found on the project site within Residential, Commercial, and Industrial Zones.*
 23. ~~Removal of an individual Historic Trees, a tree within a Historic Grove, or a Historic Grove.~~
 3. ~~Removal of a Significant Tree, Grove, or portion thereof.~~
 4. ~~Removal of more than ten (10) Landscape or Street Trees.~~

- B. Procedure Type. The Type 3 procedure, as described in Section 50.45 of this Code, shall apply to an application for Tree Plan Three. Upon determination by the Director, the decision making authority shall be either the Planning Commission or the Board of Design Review. The determination will be based upon the proposal.
- C. Approval Criteria. In order to approve a Tree Plan Three application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Tree Plan Three application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. If applicable, removal of a diseased tree or a tree is necessary because the tree has been weakened by age, storm, fire, or other condition.
 4. If applicable, removal is necessary to enhance the health of the tree, grove, or adjacent tree to reduce maintenance, or to eliminate conflicts with structures or vehicles.
 5. If applicable, removal is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995 standards and International Society of Arborists (ISA) standards on the subject.
 6. If applicable, removal is *the minimum* necessary to accommodate *physical* development ~~because~~ where no reasonable alternative exists for the development at another location on the site ~~and, or where~~ variances to setback provisions of the Development Code will not allow the tree(s) to be saved or will cause other undesirable circumstances on the site or adjacent properties.
 7. If applicable, removal is necessary because a tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the

subject site or on an adjacent site, or that pruning in excess of 20 percent of the canopy is required to prevent damage to such improvements or property.

8. If applicable, removal is necessary to accomplish a public purposes, such as installation of public utilities, street widening, and similar needs where no reasonable alternative exists without significantly increasing public costs or reducing safety.
- ~~9. Removal of a tree or grove shall not increase erosion or resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~
- ~~10. If applicable, removal of a tree within a SNRA will not substantially reduce the significance of the natural resource.~~
- ~~11. If applicable, removal of a Significant Tree or tree within a Significant Grove will not eliminate the significance of the grove based upon the original Significant Tree and Grove Inventory analysis.~~
1210. If applicable, removal of a tree, or trees, within a SNRA or *Significant Grove* will not result in the reduce the size of the grove to a point where the remaining trees may pose posing a safety hazard due to the effects of windthrow.
11. *If applicable, removal of a tree, or trees, within a SNRA or Significant Grove will not result in the remaining trees pcsing a safety hazard due to edge effects.*
- ~~13. If applicable, removal of tree or trees within a Significant Grove will not reduce the size of the grove to a point where the remaining trees may pose a safety hazard due to the effects of windthrow.~~
- ~~14. If applicable, removal of a tree within a Historic Grove will not substantially reduce the significance of the grove in terms of its original designation on the list of Historic Groves.~~

4512. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

- D. Submission Requirements. An application for a Tree Plan Three shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan Three application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), any other information identified through a Pre-Application Conference, and by a report from a qualified professional.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan Three application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).
- F. Compliance with Approval. All conditions imposed on an approved Tree Plan Three shall be implemented prior to the removal, pruning, or planting of tree unless otherwise noted in the approval. Compliance with the conditions of approval shall be met as long as the tree exist unless otherwise specified or until modified through a City approval process.
- G. Appeal of a Decision. Refer to Section 50.70.
- H. Expiration of a Decision. Refer to Section 50.90.
- I. Extension of a Decision. Previous approval of Tree Plan Three proposal shall not be extended.

~~4. Tree Plan Four~~

- ~~A. Threshold. An application for Tree Plan Four shall be required when none of the actions listed in Section 40.90.10 or none of the thresholds listed in Section 40.90.15.1 through Section 40.90.15.3 apply and when the following threshold applies:~~

APPLICATIONS

Tree Plan

1. ~~Removal of more than ninety five percent (95%) of trees within a Significant Natural Resource Area (SNRA).~~

B. ~~Procedure Type. The Tree Plan Four application is a Comprehensive Plan Amendment application. The procedures and criteria specified in Chapter One of the Comprehensive Plan shall apply.~~

Exhibit 3
Proposed Amendments to Chapter 60, Section 60
(Trees and Vegetation)
(File name: Chapter 60.pdf)

60.60. TREES AND VEGETATION. [ORD 4224; August 2002]

60.60.05. Purpose

Healthy trees and urban forests provide a variety of natural resource and community benefits for the City of Beaverton. *Primary among those benefits is the aesthetic contribution to the increasingly urban landscape. Tree resource protection focuses on the aesthetic benefits of the resource. In conjunction with processes set forth in Section 40.90 of this Code, this section is intended to help regulate-manage changes regarding-to the City's urban forest by establishing regulations and standards for the protection, pruning, removal, replacement, and mitigation for removal of Protected Trees (Ssignificant Individual Trees, and grove, hHistoric tTrees, and trees within a Significant Natural Resource Area (SNRA) or Significant Grove), lLandscape tTrees, street tree, and eCommunity tTrees.*

60.60.07 Enforcement.

A person responsible for causing the removal or pruning of a *Protected significant tTree resource* not in accordance with the standards set forth in this section ~~and the City's adopted Tree Planting and Maintenance Policy (Resolution 3391)~~ unless exempt, shall be subject to the payment of a mitigation fee, and is otherwise required to mitigate the removal as set forth in the mitigation standards of this section. *Enforcement regulations are established by the City Code (Chapter 9).*

1. Fine for a Violation.

The fine for causing the removal or pruning of a tree without the appropriate permits/review shall be based on the Community Development Department Development Services fee schedule and be deposited in the City's Tree Mitigation Fund.

60.60.10. Types of Trees and Vegetation Regulated

Actions regarding trees and vegetation addressed by this section shall be performed in accordance with the regulations established herein and in Section 40.90 of this Code. The City finds that the following types of trees and vegetation are worthy of special ~~regulation~~protection:

1. Significant Individual Trees and Groves.

2. Historic Tree.

3. Trees within a Significant Natural Resource Areas.

4. *Trees within Significant Groves.*

5. **Landscape Trees.**

~~5. Street Tree.~~

6. **Community Trees.**

7. *Mitigation Trees.*

60.60.15 Pruning, Removal, and Preservation Standards

1. Pruning Standards

A. It shall be unlawful for any person to remove or prune to remove a tree's canopy or disturb the root zone of any ~~significant individual tree, and grove, historic tree, tree within a SNRA, Protected Tree and Landscape Tree, and street tree,~~ except in accordance with the provisions of this Code.

B. All pruning of a ~~significant individual tree, and grove, historic tree, tree within a SNRA, Landscape Trees and Protected Trees, and street tree~~ shall be done in accordance with the standards set forth in this section and the City's adopted Tree Planting and Maintenance Policy, also known as Resolution 3391.

2. Removal and Preservation Standards

A. ~~All removal and planting, including replacement or mitigation planting, of protected trees shall be done in accordance with the standards set forth in this section and the City's adopted Tree Planting and Maintenance Policy (Resolution 3391).~~

B. ~~Removal of a significant individual tree, and significant grove, Landscape Trees and Protected Trees, and street tree shall require mitigation, which may include tree replacement or other mitigation measures be shall be mitigated, as set forth in this section 60.60.25.~~

C. For ~~Significant Natural Resource Areas (SNRA)~~ SNRAs and ~~Significant Groves~~, the following additional standards shall apply:

1. *The minimum DBH of non-exempt surveyed trees that must be preserved on a site is as follows:*
 - a) *Fifteen percent (15%) of the DBH of non-exempt surveyed trees found on a project site; development located within any Multiple Use zoning district.*
 - b) *Twenty five percent (25%) of the DBH of non-exempt surveyed trees found on a project site; development located within any Residential, Commercial, or Industrial zoning district.*
2. *DBH to be retained shall be preserved in cohesive areas, termed Preservation Areas, when development is proposed in SNRAs or Significant Groves.*
- ~~1. A minimum of 5% of the trees within a SNRA or significant grove area shall be preserved. The area shall be measured by the area of the tree canopy at maturity. SNRA and significant grove preservation shall include preservation of understory vegetation, as well as trees.~~
23. *Native understory vegetation and trees shall be preserved in Preservation Areas. Significant groves shall be preserved in rounded clusters rather than in linear strips.*
34. *Preservation Areas, conditioned for protection through the Development Review process, shall be preserved in clusters that are natural in appearance rather than in linear strips. Preservation Areas should connect with adjoining portions of the Significant Grove or SNRA on other sites. Significant groves shall provide connectivity with adjoining forested areas.*
45. *Preservation Areas, conditioned for protection through the Development Review process, shall be set aside in tracts and recorded with a deed restriction with Washington County, unless otherwise approved by the City. The deed restriction shall prohibit future development and specify*

the conditions for maintenance if the property is not dedicated to a public agency.

6. Native species shall be retained to the extent possible. ~~Native species include, but are not limited to: Grand Fir, Douglas fir, Western Hemlock, Pacific Yew, Western Red Cedar, Bigleaf Maple, Oregon White Oak, Oregon Ash, Red Alder, Western Flowering Dogwood, Ponderosa Pine, and Black Cottonwood.~~

Non-native tree species may also be retained for aesthetic, unique condition, size, and wildlife habitat purposes.

~~D. To assist in the preservation of a tree or grove, the following shall not occur within the protected root zone of each tree at any time without prior approval from the City:~~

- ~~1. Construction or placement of new buildings.~~
- ~~2. Grade change or cut and fill.~~
- ~~3. Construction or placement of new impervious surfaces.~~
- ~~4. Trenching for utilities, irrigation, or drainage.~~
- ~~5. Staging or storage of any kind.~~

60.60.20. Tree Protection Standards During Development

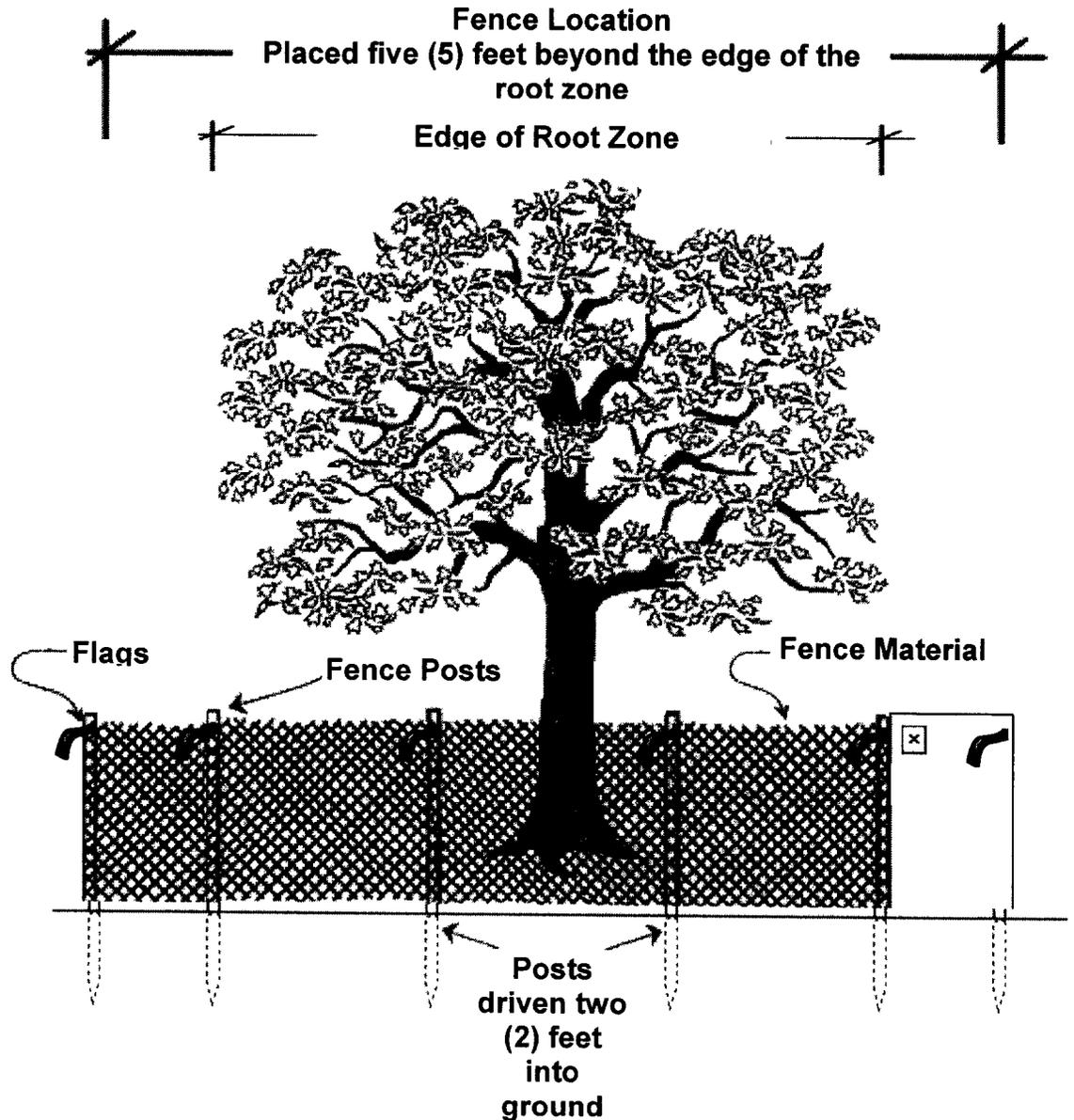
1. Trees classified as ~~Significant individual Tree, and significant Grove, historic tree, tree within a SNRA, and Landscape Tree, and street tree~~ protected trees under this Code shall be protected during development in compliance with the following:

A. A construction fence must be placed around a tree or grove ~~at least at~~ beyond the edge of the root zone. The fence shall be placed before *physical development* ~~construction~~ starts and remain in place until ~~construction~~ *physical development* is complete. The fence shall meet the following:

1. The fence shall be a four foot (4') tall orange plastic or snow fence, secured to six foot (6') tall metal posts, driven two feet (2') into the ground. Heavy 12 gauge ~~12~~ wire shall be *strung between each post and* attached to the top and midpoint of each post. *Colored tree flagging*

indicating that this area is a tree protection zone is to be placed every five (5) linear feet on the fence to alert construction crews of the sensitive nature of the area.

2. Other City approved protection devices—measures that provide equal or greater protection may be permitted, and may be required as a condition of Tree Plan approval.



- B. Within the protected root zone of each tree, the following development shall not be permitted:

1. *Construction or placement of nNew buildings.*
2. *Grade change or cut and fill, ~~during or after construction,~~ except where hand excavation is approved with the submittal of an arborist's report, as part of the Tree Plan approval.*
3. *New impervious surfaces.*
4. *Trenching for utilities, irrigation, or drainage.*
5. *Staging or storage of ~~materials and equipment during construction~~any kind.*
6. *Vehicle maneuvering or parking ~~during construction.~~*

60.60.25. Mitigation StandardsRequirements

1. The following standards shall apply to mitigation for the removal of a ~~sSignificant iIndividual tTrees~~ or trees within Significant ~~gGroves or SNRAs.~~
 - A. All mitigation tree planting shall take place in conformance with accepted arboricultural practices ~~and the City's Tree Planting and Maintenance Policy (Resolution 3391)~~ and shall be spaced a minimum of ten (10) feet apart.
 - B. *As of [fill in effective date of ordinance], all trees planted for tree removal mitigation shall be maintained in accordance with the approved mitigation plan. Monitoring of mitigation planting shall be the ongoing responsibility of the property owner where mitigation trees are located, unless otherwise approved through Development Review. Trees that die shall be replaced in accordance with the tree replacement standards of this section.*
 - C. *As of [fill in effective date of ordinance], all trees planted for tree removal mitigation shall be set aside in a separate tract or designated as "Mitigation" and recorded with a deed restriction identifying the trees as Mitigation trees that are subject to these same standards in the future.*
 - D. *Each tree planted for tree removal mitigation shall include a performance security, equal to 110 percent of the cost of the landscaping, filed with the City for a period of three years to ensure establishment of the mitigation planting.*

E. Street trees shall not be counted as providing mitigation of a SNRA or Significant Grove.

H. Moving trees within the project site is not subject to mitigation, but is subject to a performance security so that the trees may be replaced if the moved tree is dead or dying (defined in this provision as greater than 20% dead limbs) in the new location at the end of three years.

2. Mitigation for the removal of trees from Significant Groves or SNRAs shall occur in the following manner:-

A. Calculate the total DBH of the trees to be removed. Denote both deciduous and coniferous trees in separate tables; however, both tables will result in the sum total of the trees to be removed.

B. If the total DBH of trees to be removed is less than or equal to 50% of the total DBH of surveyed trees on the site, then no mitigation is required for the trees to be removed.

C. If the total DBH of trees to be removed is greater than 50% of the total DBH of surveyed trees on site, then mitigation is required for the amount of DBH to be removed that exceeds 50% of the total DBH of surveyed trees on site.

For example, if 75 inches is the total amount of DBH to be removed from a site and 60 inches of DBH represents 50% of the total surveyed DBH, then 15 inches of DBH is the total required amount of mitigation.

3. In addition to the requirements listed in Section 60.60.25.1 Mitigation Requirements, the following mitigation requirements shall apply for the removal of trees from Significant Groves or SNRAs.

A. Dead or dying trees within a Significant Grove or SNRA shall be fallen when required for safety. Such tree falling shall not require mitigation. However, the fallen log shall remain in the Significant Grove or SNRA, to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and the log must be removed from the area to protect the remaining trees.

B. All trees planted for mitigation must meet the following minimum requirements:

- i. *Deciduous trees shall be replaced with native deciduous trees that are no less than two caliper inches (2") in diameter*
- ii. *Coniferous trees shall be replaced with native coniferous trees that are no less than three feet (3') in height and no more than four feet (4') in height. A three foot (3') mitigation tree shall equate to 2" DBH and four foot (4') mitigation tree will equate to 3" DBH.*
- iii. *The total linear DBH measurement of the trees to be removed shall be mitigated with the necessary number of trees at least two caliper inches (2") in diameter.*

4. *Significant Grove or SNRA On-Site Mitigation, 1:2 Planting Ratio.*

- A. *For tree removal proposals which remove more than 50% and up to and including 75% of the surveyed non-exempt DBH in Residential, Commercial, or Industrial zones, if all mitigation tree planting is to occur on-site, the ratio for planting shall be on a 1:2 basis.*

For example, if 20 inches of DBH is the total amount of required mitigation, if all the mitigation planting occurs on the site where the removal is to occur, then only 10 inches of DBH is required to be planted.

- B. *For tree removal proposals which remove more than 50% and up to and including 85% of the surveyed non-exempt DBH in Multiple Use zones, if all mitigation tree planting is to occur on-site, the ratio for planting shall be on a 1:2 basis.*

For example, if 20 inches DBH is the total amount of required mitigation, if all the mitigation planting occurs on the site where the removal is to occur, then only 10 inches of DBH is required to be planted.

5. *Significant Grove or SNRA Off-Site Mitigation, 1:1 Planting Ratio.*

- A. *For tree removal proposals which remove more than 50% and up to and including 75% of the surveyed non-exempt DBH in Residential, Commercial, or Industrial zones or which remove more than 50% and up to and including 85% of the surveyed non-exempt DBH in Multiple Use zones, if mitigation tree planting is to occur off-site, the ratio for planting shall be on a 1:1 basis.*

B. For tree removal proposals which remove more than 75% and up to and including 100% of the surveyed non-exempt DBH in Residential, Commercial, or Industrial zones, all of the required mitigation tree planting shall be on a 1:1 basis whether planted on-site or off-site. This requirement does not supersede or otherwise nullify the on-site mitigation planting provisions of 60.60.xx.x above.

C. For tree removal proposals which remove more than 85% and up to and including 100% of the surveyed non-exempt DBH in Multiple Use zones, all of the required mitigation tree planting shall be on a 1:1 basis whether planted on-site or off-site. This requirement does not supersede or otherwise nullify the on-site mitigation planting provisions of 60.60.xx.x above.

6. In-Lieu Fee

If the total caliper inch on-site- or off-site tree planting mitigation does not equal the DBH inch removal or if no tree planting mitigation is proposed, the remaining or total caliper inch tree planting mitigation shall be provided as a fee in-lieu payment. The in-lieu fee shall be specified in the Community Development In-Lieu Fee schedule. Fee revenues shall be deposited in the City's Tree Mitigation Fund.

The following two tables illustrate how required mitigation will be calculated:

Mitigation Example for Mixed Use Zones – SAMPLE SITE*	
DBH of Surveyed Trees	1318.00
DBH Proposed for Removal (MAXIMUM removal allowed is 85% Surveyed Tree DBH)	1120.00
Mitigation Threshold (50% Surveyed Tree DBH)	659.00
DBH to be Mitigated (85% DBH Removal – 50% DBH Threshold = 25% Surveyed DBH)	461.00
On Site Mitigation (50% of the DBH to be mitigated)	230.50
Off Site OR Partial Off Site Mitigation (100% of the DBH to be mitigated)	461.00

*Please note: This "Sample Site" is fictional and is only meant to be a representation of how the regulations of Section 60.60 Trees and Vegetation could be applied to a site.

Mitigation Example for All Other Zones – SITE SAMPLE*	
DBH of Surveyed Trees	1318.00
DBH Proposed for Removal (MAXIMUM removal allowed, is 75% Surveyed Tree DBH)	988.00
Mitigation Threshold (50% Surveyed Tree DBH)	659.00
DBH to be Mitigated (75% DBH Removal – 50% DBH Threshold = 25% Surveyed DBH)	329.00
On Site Mitigation (50% of the DBH to be mitigated)	164.50
Off Site OR Partial Off Site Mitigation (100% of the DBH to be mitigated)	329.00

*Please note: This "Sample Site" is fictional and is only meant to be a representation of how the regulations of Section 60.60 Trees and Vegetation could be applied to a site.

7.. In addition to the standards in Mitigation Standards 1, the following standards shall apply to mitigation for the removal of a Significant Individual Tree:

- A. A replacement tree shall be a substantially similar species or a tree approved by the City considering site characteristics.
- B. Mitigation for the removal of a **Significant Individual Tree** shall be the required replacement of each tree on based on the total linear DBH measurement. Replacement of trees shall be as follows:

**Replacement Table for
Significant Deciduous Trees**

Caliper-inches removed	Minimum total caliper-inches of replacement trees
6-12"	4"
13-18"	6"
19-24"	8"
Over 25"	9"

**Minimum replacement tree size is 2 caliper-inches for deciduous trees*

**Replacement Table for
Significant Coniferous Trees**

Caliper-inches removed	Minimum number of replacement Trees
6-12"	1
13-24"	2
Over 25"	3

Minimum replacement tree size is 3-feet minimum to 4-feet maximum height for coniferous trees.

- ~~A. Mitigation for the removal of a significant tree or grove shall be the required replacement of each tree on a one to one basis according to total linear DBH measurement. Replacement of trees shall be as follows:~~
- ~~1. Calculate the sum of the cumulative DBH measurement of the tree to be removed.~~
 - ~~2. The total linear DBH measurement of the tree to be removed shall be replaced with a tree that is at least two caliper inches (2") in diameter unless otherwise approved by the City. The total caliper inches of the replacement tree shall be at least equal to the sum total of the linear DBH measurement of the removed tree.~~

~~3. If the total caliper inch replacement does not equal the DBH inch removal, the remaining caliper inch replacement will be provided in-lieu. The in-lieu fee shall be specified in the Community Development Department fee schedule and be deposited in the City's Tree Mitigation Fund.~~

B. Mitigation may be satisfied by one, or a combination of more than one, of the following options:

1. Planting of trees on the site where tree or grove removal is proposed;

2. Planting of trees off the site at a location or locations to be determined by the City; or

~~3. A fee paid in-lieu of tree planting and deposited in the City's Tree Mitigation Fund for future natural resource mitigation efforts. The assessment of tree mitigation shall be determined by the caliper size of the tree removed.~~

~~C. Any tree required for mitigation shall be a similar species or a tree approved by the City considering site characteristics with a preference given to native species, as listed in Section 60.60.15 of this Code.~~

D. If a mitigation tree of the species of the tree removed or damaged is not reasonably available, the City may allow replacement with a different species with equivalent natural resource value.

~~E. All mitigation tree planting shall take place in conformance with accepted arboricultural practices and the City's Tree Planting and Maintenance Policy.~~

~~F. All trees planted for mitigation must have a minimum caliper of two inches (2") except where other standards are required through development review.~~

~~G. All trees planted for tree removal mitigation shall be maintained in accordance with the approved mitigation plan. Monitoring of mitigation planting shall be the ongoing responsibility of the property owner. Trees that die shall be replaced.~~

21. The following standards apply to the replacement of a ~~Landscape Tree or street tree~~:

- A. A replacement tree shall be a substantially similar species or a tree approved by the City considering site characteristics.
- B. If a replacement tree of the species of the tree removed or damaged is not reasonably available, the City may allow replacement with a different species with equivalent natural resource value.
- C. Replacement of a ~~Landscape Tree or street tree~~ shall be based on total linear DBH calculations at a one-to-one ratio depending upon the capacity of the site to accommodate replacement tree or unless otherwise specified through development review. Replacement of tree on a one-to-one basis shall be as follows:
 - 1. Calculate the sum of the total linear DBH measurement of the tree to be removed.
 - 2. The total linear DBH measurement of the tree to be removed shall be replaced with tree at least 1.5 caliper inches in diameter. The total caliper inches of the replacement tree shall be at least equal to the sum total of the linear DBH measurement of the removed tree.

H:\Scenic Trees\TA2004-0011\TA2004-0011 Ch60 SR Version 01 25 05.doc

Exhibit 4
Proposed Amendments to Chapter 90, Definitions
(File Name: Chapter 90.pdf)

The following text includes existing definitions from Chapter 90 that relate to the changes in Chapters 40 and 60 related to tree regulations in normal typeface. New definitions proposed to be included in Chapter 90 are shown in *italic typeface*.

CHAPTER 90 - DEFINITIONS

The following words and phrases shall be construed to have the specific meanings assigned to them by definition.

Words used in present tense include the future tense, and the singular includes the plural, unless the context clearly indicates the contrary.

The term “shall” is always mandatory and the word “may” is permissive.

The masculine gender includes the feminine and neuter.

Caliper Measurement. [ORD 4224; August 2002] The thickness of trees measured in inches. A caliper measurement for trees shall be measured 12 inches above the soil line, or across the stump if the tree has been severed at less than 12 inches above the soil line.

Canopy. Area of the tree above ground including the trunk and branches measured in mass or volume.

Certified Arborist. *An individual who has demonstrated knowledge and competency through obtainment of the current International Society of Arboriculture arborist certification, or who is a member of the American Society of Consulting Arborists.*

City Arborist. *The person designated as such by the Director of Operations.*

Community Tree. [ORD 4224; August 2002] A healthy tree of at least ten inches (10”) DBH located on developed, partially developed, or undeveloped land. Community trees are not those trees identified as significant, historic, street, or conditioned trees or trees within a Significant Natural Resource Area.

Crown Cover. The area within the drip line or perimeter of the foliage of a tree.

Dead Tree. [ORD 4224; August 2002] A tree that is lifeless. Evidence of lifelessness may include unseasonable lack of foliage, brittle dry branches, or lack of any growth during the growing season.

Development. The act of bringing about growth; to construct or alter a structure, to make a change in use or appearance of land, to divide land into parcels, or to create or terminate rights of access. [ORD 4111; June 2000]

Development. Any plat, partition, subdivision or planned unit development that is created under the city's land division or zoning regulations. [ORD 4111; June 2000]

Development. Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard. (ORD 3563)

Diameter at Breast Height (DBH). [ORD 4224; August 2002] The diameter of the trunk of a tree measured at 54 inches above natural grade.

Disease. An impairment of the living plant or its components that interrupts or modifies the performance of the vital functions, as applied to trees and vegetation.

Drip Line: [ORD 4224; August 2002] A line on the ground below the edge of the maximum overhead canopy of a tree.

Exempt Tree or Vegetation. The full height and breadth of vegetation that the Planning Director has identified as "solar friendly"; any vegetation listed on a plat map, a document recorded with the plat, or a solar access permit as exempt.

Grove. A stand of three or more trees of the same or mixed species. [ORD 4224; August 2002]

Hazardous Tree. A tree that possesses a structural defect which poses an imminent risk if the tree, or part of the tree, were to fall on someone or something of value (target).

- *Structural Defect.* Any structural weakness or deformity of a tree or its parts. A tree with a structural defect can be verified to be hazardous by a certified arborist and confirmed as such by the City Arborist.
- *Target.* People, vehicles, structures or property, such as other trees or landscape improvements. A tree may not be a hazard if a 'target' is absent within the falling distance of the tree or its parts (e.g., a substandard tree in a non-populated area away from pedestrian pathways may not be considered a hazard).

Historic Tree or Historic Grove. [ORD 4224; August 2002] Tree(s) designated by the City to be of historic significance based on their association with historic figures, properties, or the general growth and development of the City.

Invasive. A type of plant that is not local to an area, but rather originates from another place. Also called "exotic," "non-native," or "alien" species.

Inventory. A census (survey) of historical, architectural, archeological or cultural buildings, structures, objects, districts or sites. Each resource (i.e. building, structure, etc.) shall have a location; a physical description, photograph, and a discussion of the resource's significance.

Landmark. Those buildings, structures, objects or sites that are fifty (50) years old or older that are significant or important because of historic, architectural, archeological, or cultural value as shall be designated by the Beaverton City Council. All designated Landmarks shall have a location, a physical description, photograph and a discussion of the landmark's significance. Buildings, structures, objects or sites that are less than 50 years old may be designated if they are exceptional in terms of historic, architectural, archeological or cultural value.

Landscaping. The combination of natural elements such as trees, shrubs, ground covers, vines, and other living organic and inorganic material which are installed for purposes such as creating an attractive and pleasing environment and screening unsightly views. Other improvements that promote an attractive and pleasing environment that may be included as landscaping includes features such as fountains, patios, decks, fences, street furniture and ornamental concrete or stonework areas. [ORD 4224; August 2002]

Landscaping Area(s). [ORD 4224; August 2002] An open area unoccupied except for landscaping. Pathways sufficient to provide access to buildings and utility equipment are permitted within a landscape area.

Landscape Tree. [ORD 4224; August 2002] A tree, other than a Significant Tree, Historic Tree, or Tree within a Significant Natural Resource Area, that has been preserved or planted as a component of an approved landscaping plan.

Mitigation Tree. *A tree planted in an effort to alleviate the impact of the removal of another tree(s). A mitigation tree takes on the designation of the tree(s) removed (i.e. tree(s) planted to mitigate for a tree(s) removed from a grove or SNRA becomes a tree(s) protected as if it were part of a grove or SNRA).*

Native Understory. *Foliage layer located between the floor and the canopy of a forest, wood, or grove containing plant materials that have origins in the Tualatin Valley Region of the state of Oregon, having been allowed to remain in a natural state. Limited to Pplant species identified on the Metro and/or Clean Water Services Native Plant Lists-apply.*

Native Vegetation. *Plant materials that have origins the Tualatin Valley Region of the state of Oregon, as listed on the Metro and/or Clean Water Services Native Plant Lists.*

Natural areas. [ORD 4332; November 2004] Natural areas may include, but are not limited to, wetlands, riparian areas, Significant Natural Resource Areas, and significant groves of trees.

Non-Exempt Surveyed Tree. *Trees that fit within the definition of Surveyed Tree, with the exception of Nuisance Trees.*

Non-Native. *A type of plant that is not local to an area, but rather originates from another place.*

Noxious Vegetation. [ORD 4224; August 2002] As applied to Significant Natural Resource Areas (SNRA), lands designated as significant on the Local Wetland Inventory, and Clean Water Services designated sensitive areas, ~~the following plants, bushes, and trees are deemed to be noxious vegetation: Scot's Broom, French Broom, Kudzu, English Ivy, Purple Loosestrife, Reed Canary Grass, Himalayan Blackberry, Evergreen Blackberry, Norway Maple, Tree of Heaven, Garlic Mustard, Lesser Celandine, Canada Thistle, Common Thistle, Western Clematis, Traveler's Joy, Field Morning Glory, Lady's Nightcap, Pampas Grass, Hawthorne (except native species), Queen Anne's Lace, South American Waterweed, Common Horsetail, Giant Horsetail, Crane's Bill, Robert Geranium, Common Bladderwort, St. John's Wort, English Holly, Yellow Flag, Duckweed, Water Lentil, Eurasiana Watermilfoil, Annual Bluegrass, Water Smartweed, Giant Knotweed, English Laurel, Portuguese Laurel, Tansy Ragwort, Blue Bindweed, Climbing Bindweed, Hairy Nightshade, Bamboo, Periwinkle (large and small leaf), and Spiny Cockleb.~~

Nuisance Plants. *Plant species that intrude/invade natural areas eventually resulting in their domination of, dominate (or both) areas without receiving direct competition from native plant species. Also includes those nuisance and prohibited species listed on Metro's Native Plant List. Also see invasive and non-native.*

Protected Tree. *Includes Significant Individual Trees, Historic Trees, Trees within a Significant Natural Resource Area or Significant Grove, and Mitigation Trees.*

Open Space, Active. [ORD 4332; November 2004] Open space where human activities include recreational and social opportunities such as play fields, playgrounds, swimming pools, plazas and other recreational facilities.

Open Space, Passive. [ORD 4332; November 2004] Open space where human activities are limited to defined walking and seating areas. Does not include environmentally sensitive areas such as a wetland.

Preservation. The identification, study, protection, restoration, rehabilitation, or enhancement of designated Landmarks.

Preservation District. A geographic area with a lesser concentration of historical or architectural significant landmarks or a concentration of contributing resources.

Preservation Resource Center. Research repository for historic resource inventory documents and related historic materials.

Pruning, Minor. [ORD 4224; August 2002] Removal of between 5% and up to and including 20% of the tree's canopy or disturbance of 10% or less of the root system.

Pruning, Major. [ORD 4224; August 2002] Removal of greater than 20% of the tree's canopy or disturbance of over 10% of the root system.

Qualified Professional. [ORD 4224; August 2002] As the term applies to trees, a professional with academic and field experience that demonstrates expertise in urban forestry. This may include arborists certified by the International Society of Arboriculture, foresters certified by the Society of American Foresters, a registered landscape architect, or silvaculturalist. A qualified professional must possess the ability to evaluate the health and hazard potential of existing trees, and the ability to prescribe appropriate measures for preservation of trees during land development.

Reasonably Available. As applied to mitigation tree planting, a plant species shall be considered to be reasonably available if the species is stocked in sufficient quantities needed for a mitigation project at three (3) or more separate retail or wholesale nurseries, known to stock native plants, of separate ownership within Washington, Multnomah or Clackamas counties.

As applied to mitigation tree planting, a plant species shall be considered reasonably available if the plant is found to be available for purchase at up to three separate retail or wholesale nurseries, known to stock native plants, of separate ownership within Washington, Multnomah, or Clackamas counties or a combination thereof. A plant species shall be considered to be reasonably unavailable if the species cannot be readily found at three (3) separate retail or wholesale nurseries, known to stock native plants, of separate ownership within Washington, Multnomah, or Clackamas counties or a combination thereof.

Shade. A shadow cast by the shade point of a structure or vegetation when the sun is at an altitude of 21.3 degrees and an azimuth ranging from 22.7 degrees east and west of true south.

Shade Point. The part of a structure or non-exempt tree that casts the longest shadow onto the adjacent northern lot(s) when the sun is at an altitude of 21.3 degrees and an azimuth ranging from 22.7 degrees east and west of true south;

except a shadow caused by a narrow object such as a mast or whip antenna, a dish antenna with a diameter of 3 feet or less, a chimney, utility pole, or wire. The height of the shade point shall be measured from the shade point to either the average elevation at the front lot line or the elevation at the midpoint of the front lot line. If the shade point is located at the north end of the ridgeline of a structure oriented within 45 degrees of a true north-south line, the shade point height computed according to the preceding sentence may be reduced by 3 feet. If a structure has a roof oriented within 45 degrees of a true east-west line with a pitch that is flatter than 5 feet (vertical) in 12 feet (horizontal) the shade point will be the eave of the roof. If such a roof has a pitch that is 5 feet in 12 feet or steeper, the shade point will be the peak of the roof (see Figures 4 and 5 - SOL).

Shade Reduction Line. A line drawn parallel to the northern lot line that intersects the shade point (see Figure 6 - SOL).

Shadow Pattern. A graphic representation of an area that would be shaded by the shade point of a structure or vegetation when the sun is at an altitude of 21.3 degrees and an azimuth ranging between 22.7 degrees east and west of true south (see Figure 12 - SOL).

Significant Grove. *Groves that are mapped on the City's Inventory of Significant Trees and Groves, that have a unique identification code and include all species within the grove boundary as listed in the inventory documents for that grove code.*

Significant Natural Resource Area (SNRA). [ORD 4224; August 2002] Resources identified in Volume III of the Comprehensive Plan as "significant" pursuant to Statewide Planning Goal 5.

Significant Tree. *A tree or grouping of trees that is mapped on the City's Inventory of Significant Trees and Groves, which has a unique identification code as listed in the inventory documents for that individual tree code.*

Significant Tree and Grove Inventory Analysis. [ORD 4224; August 2002] The inventory of significant trees and groves conducted under the direction of the Beaverton Board of Design Review in 1991. The criteria on which listed trees and groves were determined to be significant are as follows:

1. An individual tree shall be considered significant if the Board finds:
 - (a) The tree has a distinctive size, shape, or location which warrants a significant status; or
 - (b) The tree possesses exceptional beauty which warrants a significant status; or

- (c) The tree is significant due to a functional or aesthetic relationship to a natural resource.
2. A grove as defined in Section 90 shall be considered significant if the Board finds that:
- (a) The grove is relatively mature and evenly aged; and
 - (b) The grove has a purity of species composition or is of a rare or unusual nature; and
 - (c) The grove is in a healthy growing condition; or
 - (d) The grove has a crucial functional and/or aesthetic relationship to a natural resource.

Site. That parcel of real property in common ownership, notwithstanding that the particular application may be for development of a portion of the site only. Conveyance of less than fee title to different persons, such as by ground lease, shall not operate to prevent the requiring of Master Site Plan review and action by the Board of Design Review on the complete parcel.

Solar Friendly Tree. A tree which the Director has determined does not cause significant winter shade due to foliar period and branch structure. The Director shall maintain a list of generally recognized solar friendly trees.

Street Tree. [ORD 3989, July 1997] Any tree located within the public or private right of way or easement for vehicular access, or associated public utility easements.

Surveyed Tree. *Trees on a proposed development site that are required to be identified in a Tree Plan application. Trees required to be surveyed include all trees greater than or equal to ten (10) inches DBH (including nuisance trees) and the following trees greater than or equal to six (6) inches DBH: western or mountain hemlock trees, Pacific madrone trees, and big-leaf maple trees.*

Tract. [ORD 4224; August 2002] A non-buildable unit of land created by a partition, subdivision, deed, or other instrument recorded with the appropriate county recorder. This includes a lot, a lot of record, or a piece of land created through other methods.

Undevelopable area. An area that cannot be used practicably for a habitable structure, because of natural conditions, such as slopes exceeding 20% in a direction greater than 45 degrees east and west of true south, severe topographic relief, water

bodies, or conditions that isolate one portion of a property from another portion so that access is not practicable to the unbuildable portion; or manmade conditions, such as existing development which isolates a portion of the site and prevents its further development; setbacks or development restrictions that prohibit development of a given area of a lot by law or private agreement; or existence or absence of easements or access rights that prevent development of a given area.

Vegetation. Any woody, perennial plant, deciduous, evergreen or coniferous which is not defined as a tree.

Windthrow. [ORD 4224; August 2002] A tree or trees uprooted or felled by the wind.



CITY of BEAVERTON

4755 S.W. Griffith Drive, P.O. Box 4755, Beaverton, OR 97076 General Information (503) 526-2222 V/TDD

CITY OF BEAVERTON SUPPLEMENTAL STAFF REPORT

TO: Planning Commission

STAFF REPORT DATE: Wednesday, February 2, 2005

STAFF: Barbara Fryer, AICP, Senior Planner *BF*

SUBJECT: TA 2004-0011
(Tree Code Text Amendments)

REQUEST: Amendments to Chapter 40, Chapter 60 and Chapter 90 of the Beaverton Development Code, currently effective through Ordinance 4332 (January 2005) to modify and clarify tree plan regulations.

APPLICANT: City of Beaverton
Planning Services Division
Barbara Fryer, AICP, Senior Planner
4755 SW Griffith Drive
Beaverton Oregon 97006

AUTHORIZATION: Ordinance 2050 (Development Code) effective through Ordinance 4332 (January 2005)

APPLICABLE CRITERIA: Ordinance 2050, effective through Ordinance 4332, Section 40.85.15.1.C.1-7 (Text Amendment Approval Criteria)

HEARING DATE: Wednesday, February 2, 2005

I. LIST OF WRITTEN TESTIMONY RECEIVED TO DATE

- Fax from Mark Perniconi dated January 28, 2005
- Email from Julie Reilly dated January 31, 2005
- Letter from David R. Cole date stamped January 31, 2005
- Fax from Mark Perniconi dated February 1, 2005
- Letter from John Nelms, DeCal Custom Homes and Construction dated February 2, 2005
- Letter from Kendra Smith dated February 2, 2005

The issues raised in the letters need additional staff time to consider and to incorporate appropriate changes to the draft proposal.

II. ADDITIONAL ISSUES RAISED

Active Timber Production Land

As a separate City-Initiated application, the City proposes to annex lands that include properties in active timber production. Two tax lots (1S132CC11300 and 1S132CD09000) have tax deferral status with Washington County Assessment and Taxation for the purposes of timber production. The legislature found that timber on private lands managed on a sustained yield basis should be treated as a crop and not taxed as real property and that forestland should be taxed based on the value of the forestland in timber production. The tax deferral status changes when the land is no longer under forest production, or a subdivision is platted on the property. Location of the property inside or outside of the Urban Growth Boundary or corporate city limits is irrelevant to the tax deferral status. Under the proposal, the Community Tree provisions would apply to the subject property, upon annexation.

Consequently, staff propose to add applicable language based on provisions in the County Community Development Code and the Aloha-Reedville-Cooper Mountain Community Plan. The Community Plan language includes Design Element 5 from the Scholls Ferry Road Sub Area. County Community Development Code language is from Section 407-3.5 regarding harvesting of trees within the UGB. The proposed text would be added to Section 40 and is included in Exhibit 1 to this Supplemental Staff Report. Exhibit 2 is a map of the areas that staff could quickly confirm have a tax deferral status. One additional parcel may have the tax deferral status, but it was not possible to determine prior to tonight's hearing.

III. STAFF RECOMMENDATION

Based on the diversity of issues raised in the written testimony received to date, and the need to address the Enforcement section of Chapter 60, staff recommend the Planning Commission **CONTINUE** TA 2004-0011 (Tree Code Text Amendments) to the February 23, 2005 Planning Commission meeting.

IX. EXHIBITS

- Exhibit 1: New additional Text for Chapter 40
- Exhibit 2: Verified Timber Tax Deferral Lands

New Text to be added to Chapter 40

40.90.10.14

40.90.10.14

Removal or pruning of trees, or part thereof, as part of forestry management on properties with documented existing forest tax deferral status shall not be subject to the City's tree removal regulations, but rather the Oregon Department of Forestry regulations. Forestry management for the purposes of this section includes an established practice of intermittent maintenance, thinning, harvesting and planting vegetation, including commercial forest harvesting. Forestry management shall not include clear-cutting as defined herein: clear-cut means any harvest unit that leaves fewer than fifty (50) living, healthy and upright trees per acre that are well-distributed over the unit and measure at least ten (10) inches in DBH. Species left should reflect the same species proportions existing prior to harvest. Trees to be removed for development purposes shall fall under the City's Protected Tree classification.

VICINITY

EXHIBIT



CITY OF BEAVERTON

Verified Timber Tax Deferral

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Services Division

02/02/05

Map #

1S132011300 &
1S132CD09000

N



Application #

TA 2004-01180



CITY of BEAVERTON

4755 S.W. Griffith Drive, P.O. Box 4755, Beaverton, OR 97076 General Information (503) 526-2222 V/TDD

CITY OF BEAVERTON SUPPLEMENTAL STAFF REPORT *BF*

TO: Planning Commission

STAFF REPORT DATE: Wednesday, February 16, 2005

STAFF: Barbara Fryer, AICP, Senior Planner *BF*

SUBJECT: TA 2004-0011
(Tree Code Text Amendments)

REQUEST: Amendments to Chapter 40, Chapter 60 and Chapter 90 of the Beaverton Development Code, currently effective through Ordinance 4332 (January 2005) to modify and clarify tree plan regulations.

APPLICANT: City of Beaverton
Planning Services Division
Barbara Fryer, AICP, Senior Planner
4755 SW Griffith Drive
Beaverton Oregon 97006

AUTHORIZATION: Ordinance 2050 (Development Code) effective through Ordinance 4332 (January 2005)

APPLICABLE CRITERIA: Ordinance 2050, effective through Ordinance 4332, Section 40.85.15.1.C.1-7 (Text Amendment Approval Criteria)

HEARING DATE: Wednesday, February 23, 2005

RECCOMENDATION: Staff recommends the Planning Commission **APPROVE** TA 2004-0011 (Tree Code Text Amendments), as attached as Exhibits 1, 2, and 3 of this Supplemental Staff Report.

I. LIST OF WRITTEN TESTIMONY RECEIVED TO DATE

- Fax from Mark Perniconi, CE John Company, dated January 28, 2005
- Email from Julie Reilly, Tualatin Hills Park and Recreation District, dated January 31, 2005
- Letter from David R. Cole, Southwest Hills Baptist Church, date stamped January 31, 2005
- Fax from Mark Perniconi, CE John Company, dated February 1, 2005
- Letter from John Nelms, DeCal Custom Homes and Construction dated February 2, 2005
- Letter from Kendra Smith, Clean Water Services, dated February 2, 2005
- Letter from Jim Labbe, Audubon Society of Portland, dated February 2, 2005
- Letter from Susan Murray, dated February 3, 2005, received February 2, 2005 at hearing

The issues raised in the letters have been considered and are addressed in Section III of this supplemental staff report.

II. SUMMARY OF ORAL TESTIMONY RECEIVED

During the public testimony portion of the February 2, 2005 Planning Commission Hearing, many issues were raised. The following is a paraphrased summary of those issues:

Susan Murray

- Change the definition of tree to include all trees greater than or equal to six (6) inches DBH.
- The passage of Ballot Measure 37 should not be the rationale for the proposed Code changes.
- Consider using incentives rather than regulations.

Mark Perniconi

- The Tree Plan is a redundant process for reviewing Landscape Trees already covered under Design Review.
- Objects to Community Tree regulation.
- Does not like that there is no “look-back” when reviewing these types of applications.

Scott Russell

- The proposed amendments would make timber harvesting more difficult, but he supports the text in the supplemental staff report.
- Does not support re-defining tree to include everything greater than or equal to six (6) inches DBH, as suggested by Ms. Murray.

Quinton Mattson

- Approves of the proposed TA.
- Less regulation is more beneficial to trees, increases property value.
- Lengthy processes do not benefit the trees or the community.

David Williams

- Supports the regulations as proposed.
- Opposes re-defining Tree to include everything ≥ 6 " DBH, as suggested by Ms. Murray in her testimony.
- Concerned with pruning regulations, especially as associated with high winds downing branches and the need to prune in order to avoid the kind of damage that can be done during a large wind storm.

Glenna Grossen

- Property owners are being used as scapegoats - aggressive development seems to be the trigger.
- City staff should be more attentive to the existing regulations instead of creating new regulations.

Lou Bauer

- Not sure why the trees within Hyland Hills Townhouse Estates are considered to be a Significant Grove.
- Not sure what services the City will provide in exchange for fees charged.
- Downing and leaving hazardous and dead trees upon their property creates a separate safety hazard.

Michael Jones

- How does the Tree Code relate to trees that have been planted, groomed and maintained by the property owner - why are they restricted?
- Mr. Jones expressed his opinion that the proposed regulations would reduce the value of his property.

The issues raised in the public hearing testimony have been considered and are addressed in Section III of this supplemental staff report.

III. DISCUSSION OF ISSUES

Landscape Trees and Pruning

Mr. Perniconi is correct in his statements regarding other sections of the Beaverton Development Code addressing regulation of Landscape Trees. Thus, staff has proposed to remove Landscape Trees from the regulated portions of Section 40.90, but has inserted a statement directing the reader to Section 40.20, the Design Review regulations (new 40.90.10.16). As a result, no Tree Plan application would be required for any modifications to landscaping.

Mr. Perniconi raised concerns about regulating pruning. As a result of internal staff review, the definition of Major Pruning is proposed to be modified to greater than 10% of the live branches and has been demoted to a Tree Plan One. Changes were made throughout Chapter 40 to accommodate this change. Pruning regulations would only apply to the classification of Protected Trees, i.e. Significant Trees, Historic Trees, and Trees within Significant Groves or Significant Natural Resource Areas. Pruning as a result of a hazardous condition (Mr. William's verbal testimony) will still be exempt as identified in 40.90.10.2 and 40.90.10.3.

Public Projects, Enhancement, and Invasive Removal

Julie Reilly raised concerns on behalf of the Tualatin Hills Park and Recreation District. Similar to those raised by Kendra Smith of Clean Water Services, Ms. Reilly is concerned with the costs of permits for restoration or enhancement activities that are conducted by public agencies for the public good. To accommodate both agencies, and our own staff, we have added Ms. Smith's definition of enhancement (without the specific examples cited by Ms. Smith as many of the examples can be considered more than minor enhancement activities) and have added enhancement activities as an exempt activity (40.90.10.17.). Additionally, staff is committed to processing multiple public projects together, as one application, to minimize fees for public agencies conducting larger scale projects for the public good.

Ms. Reilly and Ms. Smith raised a concern about restrictions on the removal of invasive species. As Ms. Smith recommends, staff added "and non-native vegetation" to 40.90.10.9 (new 40.90.10.10), thereby making removal of invasive species exempt from regulation.

Ms. Smith asked that staff add English or Common Hawthorne to the list of nuisance tree species within 40.90.10.8 (new 40.90.10.9). Staff complied. Ms. Smith recommended that staff add the word "Mechanized" to 40.90.15.1.A.4 (new 40.90.15.1.A.2). Staff complied.

Both Ms. Reilly and Ms. Smith raised concerns about the size of plant material required for mitigation planting of deciduous plants. Ms. Smith recommends one (1) inch caliper replacement on site. Staff did not make this change, but is open to further discussion with the Planning Commission.

Ms. Reilly notes that the Staff Report, dated January 26, 2005 should also reference the Tualatin Hills Park and Recreation District Natural Resources Management Plan adopted in 2002 on page 19. Ms. Reilly's comment is so noted and the reference is hereby incorporated into the sentence.

Ms. Smith noted that 60.60.25.1.B does not specify a time period for monitoring. Staff inserted two (2) years to be consistent with other provisions in this section.

Vesting Concerns

Mr. Cole, on behalf of Southwest Hills Baptist Church, submitted a letter regarding future expansion of the buildings on the church property at 9100 SW 135th. Mr. Cole notes that in 1981 the city approved CUP20-81. The CUP allowed three phases of construction for the church property. The first two phases have been constructed. In April of 2000, staff noted in the staff report for BDR 99-00194/TPP99-00111 that the CUP was approved prior to the City applying the Significant Grove designation on the property. The appropriate course of action for this property is to remove the designation of Significant Grove on the property when staff comes forward with the amendment combining the Significant Natural Resource Area, Significant Grove and Annexed Areas maps later this spring.

Support for the Proposal

In the letters submitted by Julie Reilly, Kendra Smith, John Nelms of DeCal Custom Homes, and Jim Labbe of the Audubon Society of Portland, positive support of the proposed changes were expressed. While some of the cited letters provide additional recommendations, all provide support for portions of the proposed changes. Additionally, Mr. Quentin Mattson offered support for the proposal. He suggested that less regulation increases property values and that less lengthy processing benefits trees and the community.

Audubon Society of Portland Recommendations

Jim Labbe identifies five specific recommendations. The first recommendation suggests that the City should “explicitly articulate the full range of economic, environmental and public health values to be protected in the purpose of the proposed tree protection ordinance.” Mr. Labbe cited many studies in pages 1 and 2 of his comment letter that clearly identify the values that trees provide. City staff acknowledges that these benefits exist; however, including them in the purpose statement without having approval criteria related to the loss of the benefits upon removal of the tree resource could provide an avenue for legal challenges to future decisions. Thus, no changes are proposed.

Secondly, Mr. Labbe suggests that the enforcement provisions should be expanded both in terms of the monetary impact and staffing. The City Attorney’s office is reviewing the enforcement provisions in terms of appropriate fines. Staffing for enforcement is a City Council decision made by balancing the overall staffing levels of all the services provided by the City, not a decision made by the Planning Commission on an amendment to a particular Development Code provision.

Third, Mr. Labbe states that the Audubon Society of Portland does not feel that the 85% and 75% thresholds provide enough protection of the City's urban forest canopy over time, especially larger stands of trees. Mr. Labbe suggests that these areas should receive greater protection and should require a hearing in front of the Planning Commission. Staff acknowledges Mr. Labbe's and the members of the Audubon Society of Portland's concern about the loss of urban forest canopy. No change is proposed. It should be noted that at present, up to 95% of the DBH in a Significant Grove or Significant Natural Resource Area can be removed.

Mr. Labbe and Ms. Reilly suggest that replacing mature trees with saplings does little in the present day to make up for functions and values lost from tree removal. To remedy this, Mr. Labbe suggests in his fourth point that mitigation ratios should be at least 1:1 regardless of the amount of removal or, whether the mitigation is planted on or off site. Mr. Labbe correctly pointed out that the mitigation ratio identified in the example for on-site mitigation is 2:1, not 1:2 as previously noted. This error has been corrected. The mitigation ratios have been established to provide incentives for replanting on-site, thus, no change is proposed.

Lastly, Mr. Labbe recommends that the trail exemption in 40.90.10.12 (new 40.90.10.13) should be modified to exclude trails within 50 feet of the water body. Staff acknowledges that ecologically the standard should be at least 50 feet from the water body, yet also acknowledges that soft path trails will likely be created much closer due to people's desires to get closer to the resource. The provision limits these paths to narrow pervious pathways. No change is proposed.

Susan Murray's Concerns

Susan Murray also raises five points in her comment letter. In the first point, Ms. Murray recommends defining a tree as at least 6" DBH. Ms. Murray provided oral testimony to this effect at the public hearing with Mr. Williams and Mr. Russell providing dissenting opinions. Staff researched the size of trees throughout the Portland Metropolitan Region while developing the proposal. Jurisdictions vary on the size of "trees" that will be regulated from 6 inches at the low end of the scale and 12 inches at the high end. Historically, the City has identified a "tree" as being 10 inches DBH and has memorialized that as the dimension for Community Trees. Due to rarity or slow growth, staff proposed that selected species be identified as "trees" at 6 inches DBH. No change is proposed.

Ms. Murray suggests that approval criterion 40.90.15.2.C.5 (new 40.90.15.2.C.6) is not clear and objective. Ms. Murray suggests requiring that applicants prove that any change in design that would spare more trees would add more than 15% to the overall cost of the project. No change is proposed because staff does not have an adequate knowledge base to establish the rationale for one particular percentage over any other.

Ms. Murray states that it is not clear what protection will be provided to trees that are planted for mitigation purposes. Section 60.60.15.2.C.5 and 6 requires that the mitigation area be set aside as a separate tract or in a conservation easement with specific conditions for maintenance. Similarly, the mitigation plantings require a conservation easement or separate tract and a deed restriction (60.60.25.1.C).

Ms. Murray suggests that the City should include all property in the new tree regulations and not limit the regulations to only those properties that are currently regulated. No change is proposed because of concerns that if additional properties are regulated, then the City may be subject to Measure 37 claims. When the effects of Measure 37 become clear, additional resources may be added to the City's natural resource inventories.

Ms. Murray suggests that an incentive component should be included in the proposal. Ms. Murray cites several ideas for incentives to property owners that could be pursued by the City, but are not appropriate to include in a regulatory ordinance such as the Beaverton Development Code. The proposal includes an incentive to plant the mitigation trees on site by reducing the amount of mitigation, if planted all on site.

Additional Concerns Orally Presented at the Hearing

Glenna Grossen suggested that property owners should not be regulated, but development should be regulated. The proposal lessens the regulatory burdens of property owners, regardless of whether they are a single family property owner or a developer attempting to expand the City's employment base and housing stock.

Lou Bauer questioned why the trees within the Hyland Hills Townhouse Estates are identified as a Significant Grove. The site was identified as a significant grove in the 1991 Inventory adopted by the Board of Design Review. However, as part of the mapping proposal, coming forward later this spring, the trees located on this property would no longer be represented as a Significant Grove. They would be regulated as Community Trees. Similar to the solution for the Southwest Hills Baptist Church, the solution for the Hyland Hills Townhouse Estates is to remove the Significant Grove designation from the property through the map amendment process later this spring.

Michael Jones questions why trees that have been planted, groomed and maintained by the property owner are proposed for regulation. Staff has not expanded the universe of regulated trees. Trees that are regulated today would continue to be regulated in the future. This proposal, if adopted, would lessen the restrictions on private property owners to remove trees, would lessen the mitigation required when those trees are removed, and would provide for less lengthy processing than the regulations that are currently in effect.

Additional Concerns orally presented to Staff after the hearing

Scott Russell visited the Community Development Department February 3, 2005. During the visit, Mr. Russell discussed with staff the proposed text for Section 40.90.10.15, included in the February 2, 2005 Supplemental Staff Report, regarding active timber production land. Concerns were raised by Mr. Russell that the provision does not provide for sustainable forestry practices given that retaining 50 trees per acre results in an array of approximately one (1) tree every thirty feet. This resulting array does not allow the appropriate amount of light to reach newly planted saplings; therefore, the new saplings do not grow at a sufficient rate for presumed harvesting timelines, according to Mr. Russell. Eventually, he said, the best practice ends up being cut all the trees and replant. One solution that Mr. Russell suggested was providing the ability to clump the remnant trees rather than leave them scattered. He noted that clumping would be more in line with other provisions within the City's proposed Code.

No change to the proposed code language has been drafted. This decision was made in light of the fact that the proposed language is the language timber operators within the UGB and within Washington County currently operate under. Staff believes that to remove the proposed code language for timber production land would lead the City to regulate timber production properties no differently than other properties within the limits of the City of Beaverton. In the event that 40.90.10.15 is not adopted, staff recommends that the Community Tree regulations apply to the eastern tax lots and the Significant Natural Resource Area regulations apply to the western tax lot. If this is the course of action taken, staff recommends that the property owner sign a Measure 37 claim waiver, alleviating the City of any future Measure 37 claim with regard to tree regulations. This would be required as we would be placing restrictions on the property not currently applicable in the County. Removing the proposed text for Section 40.90.10.15 would not be a benefit for timber operators.

Additional Staff Changes to the Proposal

After internally reviewing the proposal, staff concluded that additional changes are needed. They have been made to the attached proposal.

Changes include:

- Modifying the threshold for Community Tree removal that is exempt from City review from four (4) trees per year to two (2) trees per year or 10% of the number of trees on the site, whichever is greater (40.90.10.1, 40.90.15.2.A.1 and 2).
- Adding the exemption for minor pruning in 40.90.10.4.
- Adding the exemption for forest practices as stated in Exhibit 1 to the Supplemental Staff Report dated February 2, 2005. (40.90.10.15).

- Moving the statement “Hazardous and dead trees within Significant Groves and SNRAs shall be fallen only for safety and left at the resource sit to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and must be removed from the area to protect the remaining trees.” from Sections 40.90.10.2 and 3 to 60.60.15.2.C.8. Additionally, staff changed the word “shall” to the word “should”.
- Adding Approval Criterion 40.90.15.1.C.3 to 40.90.15.2.C and 40.90.15.3.C for consistency.
- Modifying language previously proposed as “...of a tree, or trees,” to “...tree(s)”.
- Modifying the language regarding the threshold criteria for Tree Plan 3 and mitigation standards to accommodate internal staff (see 40.90.15.3.A.1 and 2, 60.60.15.2.C.1 and 2, and 60.60.25.4, 5, and 6.).
- Modified 60.60.15.2.C.5 to clarify that the BDR process can result in a conservation easement for the preservation area.
- Added 60.60.15.2.C.6 to clarify that the land division process can result in a separate tract for the preservation area.
- Modified 60.60.15.2.C.7 to clarify how the statement “to the extent possible” would be determined.
- Modified 60.60.25.1.C to clarify that the mitigation can be set aside in a separate tract or a conservation easement.
- Modified 60.60.25.1.D and F to be clear.
- Changed “should” to “shall” in 60.60.25.3.A.
- Modified numbering throughout to correspond to the additions and deletions made throughout.

IV. STAFF RECOMMENDATION

Staff recommends the Planning Commission **APPROVE** TA 2004-0011 (Tree Code Text Amendments), as attached as Exhibits 1, 2, and 3 of this Supplemental Staff Report.

V. EXHIBITS

- Exhibit 1: Chapter 40 Modified Text
- Exhibit 2: Chapter 60 Modified Text
- Exhibit 3: Chapter 90 Modified Text

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Exhibit 1

Proposed Amendments to Chapter 40, Section 90
(Tree Plan)
(File name on the web: Revised Chapter 40.pdf)

40.90. TREE PLAN**40.90.05. Purpose**

Healthy trees and urban forests provide a variety of natural resource and community benefits for the City of Beaverton. Primary among those benefits is the aesthetic contribution to the increasingly urban landscape. Tree resource protection focuses on the aesthetic benefits of the resource. The purpose of a Tree Plan application is to provide a mechanism to regulate pruning, removal, replacement, and mitigation for removal of Protected Trees (sSignificant Individual Trees, and hHistoric tTrees, and trees within Significant gGroves and Significant Natural Resource Areas (SNRAs)), Landscape tTrees, street tree, and eCommunity Ttrees thus helping to preserve and enhance the sustainability of the City's urban forest. This Section is carried out by the approval criteria listed herein and implements the SNRA, Significant Grove, Significant Individual Tree, and Historic Tree designations as noted or mapped in Comprehensive Plan Volume III.

40.90.10. Applicability.

Different types of resources require different levels of protection. No Tree Plan is required for the following actions:

1. Removal of up to ~~four (4)~~two (2) eCommunity tTrees or up to 10% of the number of Community Trees on the site, whichever is greater, within an one (1) calendar year period. Properties one-half acre or less in size developed with a detached dwelling may remove any number of eCommunity tTrees.
2. Removal and pruning of any hazardous, dead, or diseased tree ~~or a portion of a hazardous tree~~ when the tree is identified as such by a certified arborist, or by the City Arborist and the removal is required by the City. ~~The removal of the tree is subject to the mitigation requirements of Section 60.60 (Trees and Vegetation) of this Code. Hazardous and dead trees within Significant Groves and SNRAs shall be fallen only for safety and left at the resource site to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and must be removed from the area to protect the remaining trees.~~
3. In the event of an emergency requiring tree removal or pruning prior to the City Arborist's determination, if evidence justifies the emergency removal after the fact, then no tree plan is required for removal.

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~~Hazardous and dead trees within Significant Groves and SNRAs shall be fallen only for safety and left at the resource site to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and must be removed from the area to protect the remaining trees.~~

- ~~34.~~ Minor pruning, as defined in Chapter 90.
5. Pruning of trees consistent with the Vision Clearance requirements of Section 60.55.50.
- ~~456.~~ Pruning of trees by the utility provider for above ground utility power lines following acceptable arboricultural standards and practices.
- ~~67.~~ Pruning of trees to maintain the minimum 8 foot clearance above a sidewalk.
- ~~78.~~ Removal or pruning of the following nuisance tree species anywhere in the city: Lombardy Poplar (*Populus nigra*), and birch (*Betula* sp.).
- ~~89.~~ Removal and pruning of the following nuisance tree species in Significant Groves and SNRAs: Norway maple (*Acer platanoides*), Tree-of-Heaven (*Ailanthus altissima*), ~~and~~ Golden Chain Tree (*Laburnum watereri*), and English or Common Hawthorne (*Crataegus monogyna*).
- ~~910.~~ Removal of a tree or nonnative vegetation listed as a Nuisance or Prohibited Plant on Metro's or Clean Water Services' Native Plant Lists.
- ~~1011.~~ Within SNRAs and Significant Groves, planting of native vegetation listed on the Metro or Clean Water Services' Native Plant Lists when planted with non-mechanized hand held equipment.
- ~~1112.~~ Public street and sidewalk improvements within SNRAs or Significant Groves that meet i. or ii. and iii.:
- i. Improvements within an existing public right-of-way; or
 - ii. Improvements within a public right-of-way that are required of development in order to meet functional classification standards, such as half-street improvements; and
 - iii. The proposed improvements do not exceed the minimum width standards of the Engineering Design Manual.

- ~~13~~13. Trails within SNRAs and Significant Groves meeting all of the following:
- i. Construction must take place between May 1 and October 30 with hand held equipment;
 - ii. Trail widths must not exceed 30 inches and trail grade must not exceed 20 percent;
 - iii. Trail construction must leave no scars greater than three inches in diameter on live parts of native plants; and
 - iv. Trails must be placed outside the top of bank of any stream, river, or pond, and
 - v. Trails must be 100% pervious.

~~14~~14. Street Trees are covered by the Beaverton Municipal Code and Section 60.15.15.3.G.

15. Removal or pruning of trees, or part thereof, as part of forestry management on properties with documented existing forest tax deferral status shall not be subject to the City's tree removal regulations, but rather the Oregon Department of Forestry regulations. Forestry management for the purposes of this section includes an established practice of intermittent maintenance, thinning, harvesting and planting vegetation, including commercial forest harvesting. Forestry management shall not include clear-cutting as defined herein: clear-cut means any harvest unit that leaves fewer than fifty (50) living, healthy and upright trees per acre that are well-distributed over the unit and measure at least ten (10) inches in DBH. Species left should reflect the same species proportions existing prior to harvest. Trees to be removed for development purposes shall fall under the City's Protected Tree classification.

16. Landscape Trees are covered by Section 40.20 Design Review and Section 60.60 Trees and Vegetation.

17. Enhancement activities conducted by a public agency for the sole purpose of improving the ecological health of forest and water resources.

40.90.15. Application.

There are ~~four (4)~~three (3) Tree Plan applications which are as follows: Tree Plan One, Tree Plan Two, and Tree Plan Three, ~~and Tree Plan Four.~~

1. Tree Plan One.

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A. Threshold. An application for Tree Plan One shall be required when none of the actions listed in Section 40.90.10 apply and one or more of the following thresholds apply:

1. ~~Minor~~ *Major* pruning of a ~~Significant Tree, Significant Grove, Landscape Trees and Protected Trees, tree within a Significant Natural Resource Area (SNRA), Historic tree, or Street Tree~~ once within an one year period.
2. ~~Removal of up to and including five (5) Landscape Trees or Street Trees on a site within a one year period.~~
3. ~~Removal or pruning of a Significant Tree, Significant Grove, Landscape Trees and Protected Trees, tree within a Significant Natural Resource Area (SNRA), a Historic Tree, a Street Tree, or part thereof, that constitutes or removes~~ creates a hazardous condition. ~~Pruning to eliminate a hazardous condition may exceed minor pruning.~~
42. ~~Mechanized Removal~~ *removal* of noxious vegetation, ~~re-planting of trees and shrubs, or both and clearing and grubbing of vegetation~~ within a SNRAs, ~~Significant Groves~~ land designated as significant on the City's Local Wetland Inventory, or Sensitive aAreas as defined by Clean Water Services.
53. *Mechanized re-planting of trees and shrubs, or both, or restoration planting* within SNRAs, *Significant Groves, or Sensitive Areas* as defined by Clean Water Services.
64. *Trails greater than 30 inches in width, or trail grade exceeding 20 percent, trail surfaces less than 100% pervious surface, or any combination thereof* within SNRAs, *Significant Groves, or Sensitive Areas* as defined by Clean Water Services that does not result in tree removal.

B. Procedure Type. The Type 1 procedure, as described in Section 50.35 of this Code, shall apply to an application for Tree Plan One. The decision making authority is the Director.

C. Approval Criteria. In order to approve a Tree Plan One application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Tree Plan One application.
2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]
4. ~~If applicable, it is necessary to prune or remove a tree that poses a safety hazard to pedestrians, vehicular traffic, adjacent property, or the general public or that threatens to cause disruption of public service and at least one of the following exist:~~
 - a. ~~The tree or portion of the tree is certified by a qualified professional as dead or dying.~~
 - b. ~~A portion of the tree is only partially attached.~~
 - c. ~~The tree or a portion of the tree has been damaged by a storm, fire, age, or accident and is physically lodged or leaning against a building, transportation facility, or overhead utility line or pole.~~
54. If applicable, ~~pruning a tree will result in removal of no more than 20% of the tree's canopy or disturbance of no more than 10% of the root system.~~ The pruning is needed *necessary* to improve tree health or to eliminate conflicts with vehicles or structures which includes, but is not limited to, underground utilities and street improvements.
65. ~~If applicable, removal of a Landscape Tree or street tree or pruning of a tree is necessary to accommodate~~

~~development where variances to setback provisions of the Development Code will not allow the tree to be saved.~~

65. *If applicable, the removal of vegetation or clearing and grubbing is necessary to accommodate physical development in the area in which the removal is proposed.*

~~7. If applicable, emergency removal or pruning is necessary due to an immediate threat to public safety documented by photographic evidence supplied by the applicant.~~

~~8. Removal of a tree or grove shall not increase erosion or any resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~

976. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

- D. Submission Requirements. An application for a Tree Plan One shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan One application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan One application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Previous approval of Tree Plan One proposal shall not be extended.

2. Tree Plan Two

A. Threshold. An application for Tree Plan Two shall be required when none of the actions listed in Section 40.90.10 apply, none of the thresholds listed in Section 40.90.15.1 apply, and one or more of the following thresholds apply:

- ~~1. Major pruning of a non-hazardous Significant Tree, Significant Grove, Trees within a Significant Natural Resource Area (SNRA), Historic Trees, Landscape Trees and Protected Trees, or Street Trees once within a one (1) calendar year period.~~
- ~~2. Removal of more than five (5) and up to and including ten (10) Landscape Trees or Street Trees on a site within a one calendar year period.~~
31. Removal of more than two (2) ~~five (5) or more~~ Community Trees, or more than 10% of the number of Community Trees on the site, whichever is greater, within a one (1) calendar year period.
42. Removal of more than two (2) ~~five (5) or more~~ Community Trees, or more than 10% of the number of Community Trees on the site, whichever is greater, within a one (1) calendar year period, on properties zoned for single family residential dwellings that are more than one-half acre in size, with or without an existing dwelling.
53. Multiple Use Zoning District: Removal of up to and including 85% of the total DBH of non-exempt surveyed tree(s) within a SNRA or Significant Grove ~~within any Multiple Use Zone.~~
64. Commercial, Residential, or Industrial Zoning District: Removal of up to and including 75% of the total DBH of non-exempt surveyed tree(s) within a SNRA or Significant Grove ~~within any Commercial, Residential, or Industrial Zone.~~
75. Removal of a Significant Individual Tree(s).

- B. Procedure Type. The Type 2 procedure, as described in Section 50.40 of this Code, shall apply to an application for Tree Plan Two. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Tree Plan Two application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Tree Plan Two application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. *The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]*
 34. If applicable, ~~pruning of any tree or removal of a Landscape, street, or ea Community #Tree(s)~~ is necessary to enhance the health of the tree, grove, group of trees, or an adjacent tree or to eliminate conflicts with structures or vehicles.
 4. ~~If applicable, it is necessary to remove diseased of landscape, street, or community trees or trees weakened by age, storm, fire, or other condition.~~
 545. If applicable, ~~pruning or removal of any tree or removal of a landscape, street, or community tree~~ is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995 standards and International Society of Arborists (ISA) standards on the subject.
 656. If applicable, ~~pruning or removal of any tree or removal of a landscape, street, or community tree~~ is necessary to accommodate *physical* development where no reasonable alternative exists ~~for the development at another location on the site, or where variances to setback provisions of~~

~~this Code will cause other undesirable circumstances on the site or adjacent properties if the tree is saved.~~

~~767.~~ If applicable, removal of a landscape tree or street tree or pruning of any tree is necessary because it has become a nuisance by virtue of damage to property or improvements, either public or private, on the subject site or adjacent sites.

~~878.~~ If applicable, removal of any tree landscape, street, or community tree is necessary to accomplish public purposes, such as installation of public utilities, street widening, and similar needs, where no reasonable alternative exists without significantly increasing public costs or reducing safety.

~~9.~~ Removal of a tree or grove shall not increase erosion or any resulting erosion shall be controlled consistent with City and Clean Water Services regulations.

~~89.~~ If applicable, removal of any tree is necessary to enhance the health of the tree, grove, SNRA, or adjacent trees to eliminate conflicts with structures or vehicles.

~~910.~~ If applicable, removal of a tree(s), or trees, within a SNRA or Significant Grove will not result in a reversal of the original determination that the SNRA or Significant Grove is significant based on criteria used in making the original significance determination.

~~1011.~~ If applicable, removal of a tree(s), or trees, within a SNRA or Significant Grove will not result in the remaining trees posing a safety hazard due to the effects of windthrow.

~~1112.~~ If applicable, removal of a tree(s), or trees, within a SNRA or Significant Grove will not result in the remaining trees posing a safety hazard due to edge effects.

~~101213.~~ Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

D. Submission Requirements. An application for a Tree Plan Two shall be made by the owner of the subject property, or the

owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan Two application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan Two application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).
- F. Appeal of a Decision. Refer to Section 50.65.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Previous approval of Tree Plan Two proposal shall not be extended.

3. Tree Plan Three

- A. Threshold. An application for Tree Plan Three shall be required when none of the actions listed in Section 40.90.10 or none of the thresholds listed in Section 40.90.15.1 or Section 40.90.15.2 apply and one or more of the following thresholds apply:
 1. ~~Removal of up to and including ninety five percent (95%) of trees within a Significant Natural Resource Area (SNRA). Multiple Use Zoning Districts: Removal of greater than 85% of the total DBH of non-exempt surveyed trees within a SNRA or Significant Grove area that is found on the project site within Multiple Use Zones.~~
 2. *Residential, Commercial, and Industrial Zoning Districts: Removal of greater than 75% of the total DBH of non-exempt surveyed trees within a SNRA or Significant Grove area that is found on the project site within Residential, Commercial, and Industrial Zones.*

~~23. Removal of an individual Historic Trees, a tree within a Historic Grove, or a Historic Grove.~~

~~3. Removal of a Significant Tree, Grove, or portion thereof.~~

~~4. Removal of more than ten (10) Landscape or Street Trees.~~

B. Procedure Type. The Type 3 procedure, as described in Section 50.45 of this Code, shall apply to an application for Tree Plan Three. Upon determination by the Director, the decision making authority shall be either the Planning Commission or the Board of Design Review. The determination will be based upon the proposal.

C. Approval Criteria. In order to approve a Tree Plan Three application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Tree Plan Three application.

2. All City application fees related to the application under consideration by the decision making authority have been submitted.

3. *The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]*

34. If applicable, removal of a diseased tree or a tree is necessary because the tree has been weakened by age, storm, fire, or other condition.

45. If applicable, removal is necessary to enhance the health of the ~~tree,~~ grove, or adjacent tree(s) to reduce maintenance, or to eliminate conflicts with structures or vehicles.

56. If applicable, removal is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995

standards and International Society of Arborists (ISA) standards on the subject.

67. If applicable, removal is *the minimum* necessary to accommodate *physical* development ~~because~~ where no reasonable alternative exists for the development at another location on the site ~~and, or where~~ variances to setback provisions of the Development Code will not allow the tree(s) to be saved or will cause other undesirable circumstances on the site or adjacent properties.
78. If applicable, removal is necessary because a tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or on an adjacent site, ~~or that pruning in excess of 20 percent of the canopy is required to prevent damage to such improvements or property.~~
89. If applicable, removal is necessary to accomplish a public purposes, such as installation of public utilities, street widening, and similar needs where no reasonable alternative exists without significantly increasing public costs or reducing safety.
- ~~9. Removal of a tree or grove shall not increase erosion or resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~
- ~~10. If applicable, removal of a tree within a SNRA will not substantially reduce the significance of the natural resource.~~
- ~~11. If applicable, removal of a Significant Tree or tree within a Significant Grove will not eliminate the significance of the grove based upon the original Significant Tree and Grove Inventory analysis.~~
1210. If applicable, removal of a tree(s), ~~or trees,~~ within a SNRA *or Significant Grove* will not result in the ~~reduce the size of the grove to a point where the remaining trees may pose~~ *posing* a safety hazard due to the effects of windthrow.

11. *If applicable, removal of a tree(s), ~~or trees,~~ within a SNRA or Significant Grove will not result in the remaining trees posing a safety hazard due to edge effects.*

~~13. If applicable, removal of tree or trees within a Significant Grove will not reduce the size of the grove to a point where the remaining trees may pose a safety hazard due to the effects of windthrow.~~

~~14. If applicable, removal of a tree within a Historic Grove will not substantially reduce the significance of the grove in terms of its original designation on the list of Historic Groves.~~

~~15~~12. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

- D. Submission Requirements. An application for a Tree Plan Three shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan Three application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), any other information identified through a Pre-Application Conference, and by a report from a qualified professional.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan Three application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).
- F. Compliance with Approval. All conditions imposed on an approved Tree Plan Three shall be implemented prior to the removal, pruning, or planting of tree unless otherwise noted in the approval. Compliance with the conditions of approval shall be met as long as the tree exist unless otherwise specified or until modified through a City approval process.

- G. Appeal of a Decision. Refer to Section 50.70.
- H. Expiration of a Decision. Refer to Section 50.90.
- I. Extension of a Decision. Previous approval of Tree Plan Three proposal shall not be extended.

4. ~~Tree Plan Four~~

A. ~~Threshold.~~ An application for Tree Plan Four shall be required when none of the actions listed in Section 40.90.10 or none of the thresholds listed in Section 40.90.15.1 through Section 40.90.15.3 apply and when the following threshold applies:

- 1. ~~Removal of more than ninety five percent (95%) of trees within a Significant Natural Resource Area (SNRA).~~

B. ~~Procedure Type.~~ The Tree Plan Four application is a Comprehensive Plan Amendment application. The procedures and criteria specified in Chapter One of the Comprehensive Plan shall apply.

Exhibit 2

Proposed Amendments to Chapter 60, Section 60
(Trees and Vegetation)
(File name on the web: Revised Chapter 60.pdf)

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60.60. TREES AND VEGETATION. [ORD 4224; August 2002]

60.60.05. Purpose

Healthy trees and urban forests provide a variety of natural resource and community benefits for the City of Beaverton. *Primary among those benefits is the aesthetic contribution to the increasingly urban landscape. Tree resource protection focuses on the aesthetic benefits of the resource.* In conjunction with processes set forth in Section 40.90 of this Code, this section is intended to help ~~regulate~~*manage* changes ~~regarding~~ to the City's urban forest by establishing regulations and standards for the protection, pruning, removal, replacement, and mitigation for removal of *Protected Trees* (~~S~~*significant Individual Trees, and grove, h*Historic ~~t~~*Trees, and trees within a Significant Natural Resource Area (SNRA) or Significant Grove,* ~~L~~*andscape t*Trees, ~~street tree, and e~~*Community t*Trees.

60.60.07 Enforcement.

A person found responsible for causing the removal or pruning of a protected tree in violation of the standards set forth in Section 60.60, unless exempt, shall be subject to monetary penalties. In cases of unlawful removal the person must also mitigate the removal as set forth in the mitigation requirements of section 60.60.25.

1. Fine for a violation

Monetary penalties imposed by a court of competent jurisdiction upon conviction for violating any provision of Chapter 60 section 60 of this Ordinance, shall be deposited into the City's Tree Mitigation Fund.

~~A person responsible for causing the removal or pruning of a Protected, Landscape, or Community Tree significant tTree resource not in accordance with the standards set forth in this sSection 60.60.25. and the City's adopted Tree Planting and Maintenance Policy (Resolution 3391) unless exempt, shall be subject to the payment of a mitigation fee, and is otherwise required to mitigate the removal as set forth in the mitigation standards of this section. Enforcement regulations are established by the City Code (Chapter 9).~~

1. Fine for a Violation.

~~The fine for causing the removal or pruning of a tree without the appropriate permits/review shall be based on the Community Development Department Development Services fee schedule and be deposited in the City's Tree Mitigation Fund.~~

60.60.10. Types of Trees and Vegetation Regulated

Actions regarding trees and vegetation addressed by this section shall be performed in accordance with the regulations established herein and in Section 40.90 of this Code. The City finds that the following types of trees and vegetation are worthy of special ~~regulation~~ *protection*:

1. **Significant *Individual Trees and Groves*.**
2. **Historic Tree.**
3. **Trees within a Significant Natural Resource Areas.**
4. ***Trees within Significant Groves.***
5. **Landscape Trees.**
5. ~~Street Tree.~~
6. **Community Trees.**
7. ***Mitigation Trees.***

60.60.15 Pruning, Removal, and Preservation Standards

1. Pruning Standards

- A. It shall be unlawful for any person to remove or prune to remove a tree's canopy or disturb the root zone of any ~~significant individual tree, and grove, historic tree, tree within a SNRA, Protected Tree and Landscape Tree, and street tree,~~ except in accordance with the provisions of this Code.
- B. All pruning of a ~~significant individual tree, and grove, historic tree, tree within a SNRA, Landscape Trees and Protected Trees, and street tree~~ shall be done in accordance with the standards set forth in this section and the City's adopted Tree Planting and Maintenance Policy, also known as Resolution 3391.

2. Removal and Preservation Standards

- A. All removal ~~and planting, including replacement or mitigation planting, of protected Protected trees Trees~~ shall be done in

accordance with the standards set forth in this section ~~and the City's adopted Tree Planting and Maintenance Policy (Resolution 3391).~~

- B. ~~Removal of a significant individual tree, and significant grove, Landscape Trees and Protected Trees, and street tree shall require mitigation, which may include tree replacement or other mitigation measures shall be mitigated, as set forth in this section 60.60.25.~~
- C. ~~For Significant Natural Resource Areas (SNRA) SNRAs and Significant Groves, the following additional standards shall apply:~~
1. *The minimum DBH of non-exempt surveyed trees that must be preserved on a site is as follows:*
 - a) *Multiple Use Zoning Districts: Fifteen percent (15%) of the DBH of non-exempt surveyed trees found on a project site; ~~development located within any Multiple Use zoning district.~~*
 - b) *Residential, Commercial, or Industrial Zoning District: Twenty five percent (25%) of the DBH of non-exempt surveyed trees found on a project site; ~~development located within any Residential, Commercial, or Industrial zoning district.~~*
 2. *DBH to be retained shall be preserved in cohesive areas, termed Preservation Areas, when development is proposed in SNRAs or Significant Groves.*
 1. ~~A minimum of 5% of the trees within a SNRA or significant grove area shall be preserved. The area shall be measured by the area of the tree canopy at maturity. SNRA and significant grove preservation shall include preservation of understory vegetation, as well as trees.~~
 23. *Native understory vegetation and trees shall be preserved in Preservation Areas. Significant groves shall be preserved in rounded clusters rather than in linear strips.*

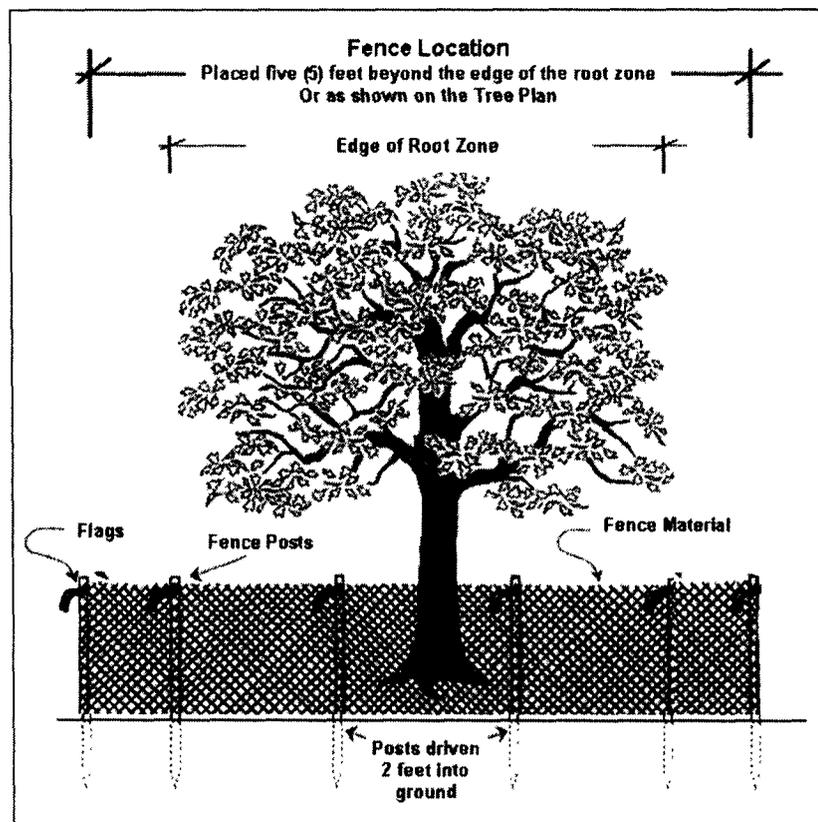
34. *Preservation Areas, conditioned for protection through the Development Review process, shall be preserved in clusters that are natural in appearance rather than in linear strips. Preservation Areas should connect with adjoining portions of the Significant Grove or SNRA on other sites. ~~Significant groves shall provide connectivity with adjoining forested areas.~~*
45. *Preservation Areas, conditioned for protection through the Design Review process, shall be set aside in conservation easements and recorded with a deed restriction with Washington County, unless otherwise approved by the City. The deed restriction shall prohibit future development and specify the conditions for maintenance if the property is not dedicated to a public agency.*
6. *Preservation Areas, conditioned for protection through the Land Division process, shall be set aside in tracts and recorded with a deed restriction with Washington County, unless otherwise approved by the City. The deed restriction shall prohibit future development and specify the conditions for maintenance if the property is not dedicated to a public agency.*
67. *Native species shall be retained to the extent possible as determined through the development review process. ~~Native species include, but are not limited to: Grand Fir, Douglas fir, Western Hemlock, Pacific Yew, Western Red Cedar, Bigleaf Maple, Oregon White Oak, Oregon Ash, Red Alder, Western Flowering Dogwood, Ponderosa Pine, and Black Cottonwood.~~*
- Non-native tree species may also be retained for aesthetic, unique condition, size, and wildlife habitat purposes.*
8. *Hazardous and dead trees within Significant Groves and SNRAs should be fallen only for safety and left at the resource site to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and must be removed from the area to protect the remaining trees.*

60.60.20. Tree Protection Standards During Development

1. Trees classified as ~~Significant individual Tree, and significant Grove, historic tree, tree within a SNRA, and Landscape Tree, and street tree~~ *Protected Trees* under this Code shall be protected during development in compliance with the following:

A. A construction fence must be placed around a tree or grove at ~~least at~~ *beyond* the edge of the root zone. The fence shall be placed before *physical development* ~~construction~~ starts and remain in place until ~~construction~~ *physical development* is complete. The fence shall meet the following:

1. The fence shall be a four foot (4') tall orange plastic or snow fence, secured to six foot (6') tall metal posts, driven two feet (2') into the ground. Heavy 12 gauge ~~12~~-wire shall be *strung between each post and* attached to the top and midpoint of each post. *Colored tree flagging indicating that this area is a tree protection zone is to be placed every five (5) linear feet on the fence to alert construction crews of the sensitive nature of the area.*
2. Other City approved protection ~~devices~~ *measures* that provide equal or greater protection may be permitted, *and may be required as a condition of approval.*



B. Within the protected root zone of each tree, the following development shall not be permitted:

1. *Construction or placement of nNew buildings.*
2. *Grade change or cut and fill, ~~during or after construction,~~ except where hand excavation is approved with the submittal of an arborist's report, as part of application approval.*
3. *New impervious surfaces.*
4. *Trenching for utilities, irrigation, or drainage.*
5. *Staging or storage of ~~materials and equipment during construction~~any kind.*
6. *Vehicle maneuvering or parking ~~during construction.~~*

60.60.25. Mitigation StandardsRequirements

1. The following standards shall apply to mitigation for the removal of a ~~sSignificant iIndividual tTrees~~ or *trees within Significant gGroves or SNRAs.*
 - A. *All mitigation tree planting shall take place in conformance with accepted arboricultural practices ~~and the City's Tree Planting and Maintenance Policy (Resolution 3391)~~ and shall be spaced a minimum of ten (10) feet apart.*
 - B. *As of [fill in effective date of ordinance], all trees planted for the purpose of tree removal mitigation shall be maintained in accordance with the approved mitigation plan. Monitoring of mitigation planting shall be the ongoing responsibility of the property owner where mitigation trees are located, unless otherwise approved through Development Review. Monitoring shall take place for a period of two (2) years. Trees that die shall be replaced in accordance with the tree replacement standards of this section.*
 - C. *As of [fill in effective date of ordinance], all trees planted for the purpose of tree removal mitigation shall be set aside in a conservation easement or a separate tract ~~or~~ and shall be designated as "Mitigation Trees" and recorded with a deed*

restriction identifying the trees as "Mitigation ~~t~~Trees" that are subject to these same standards in the future.

- D. ~~Each tree~~ Mitigation Tree planted ~~for tree removal mitigation~~ shall ~~include~~ be insured through a performance security, equal to 110 percent of the cost of the landscaping, filed with the City for a period of ~~three~~ two (2) years to ensure establishment of the mitigation planting.
- E. Street trees shall not be counted as providing mitigation of a SNRA or Significant Grove.
- F. Transplanting trees within the project site is not subject to mitigation. However, a performance security is required for transplanted tree(s) to insure that the tree(s) will be replaced if the tree(s) is dead or dying at the end of two (2) years.
- ~~H. Moving trees within the project site is not subject to mitigation, but is subject to a performance security so that the trees may be replaced if the moved tree is dead or dying (defined in this provision as greater than 20% dead limbs) in the new location at the end of three years.~~

2. Mitigation for the removal of trees from Significant Groves or SNRAs shall ~~occur in the following manner~~ be required as follows:

- A. Calculate the total DBH of the trees to be removed. Denote both deciduous and coniferous trees in separate tables; however, both tables will result in the sum total of the ~~trees~~ DBH to be removed.
- B. If the total DBH of trees to be removed is less than or equal to 50% of the total DBH of surveyed trees on the site, then no mitigation is required for the trees to be removed.
- C. If the total DBH of trees to be removed is greater than 50% of the total DBH of surveyed trees on site, then mitigation is required for the amount of DBH to be removed that exceeds 50% of the total DBH of surveyed trees on site.

For example, if 75 inches is the total amount of DBH to be removed from a site and 60 inches of DBH represents 50% of the total surveyed DBH, then 15 inches of DBH is the total required amount of mitigation.

3. *In addition to the requirements listed in Section 60.60.25.1 Mitigation Requirements, the following mitigation requirements shall apply for the removal of trees from Significant Groves or SNRAs.*
- A. *Dead or dying trees within a Significant Grove or SNRA shall be fallen when required for safety. Such tree falling shall not require mitigation. However, the fallen log shall remain in the Significant Grove or SNRA, to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and the log must be removed from the area to protect the remaining trees.*
 - B. *All trees planted for mitigation must meet the following minimum requirements:*
 - i. *Deciduous trees shall be replaced with native deciduous trees that are no less than two caliper inches (2") in diameter*
 - ii. *Coniferous trees shall be replaced with native coniferous trees that are no less than three feet (3') in height and no more than four feet (4') in height. A three foot (3') mitigation tree shall equate to 2" DBH and four foot (4') mitigation tree will equate to 3" DBH.*
 - iii. *The total linear DBH measurement of the trees to be removed shall be mitigated with the necessary number of trees at least two caliper inches (2") in diameter.*

4. *Significant Grove or SNRA On-Site Mitigation, 1:22:1 Planting Ratio.*

- A. *Residential, Commercial, or Industrial Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 75% of the surveyed non-exempt DBH in Residential, Commercial, or Industrial zones, if all mitigation tree planting is to occur on-site, the ratio for planting shall be on a 1:22:1 basis.*

For example, if 20 inches of DBH is the total amount of required mitigation, if all the mitigation planting occurs on the site where the removal is to occur, then only 10 inches of DBH is required to be planted.

- B. *Multiple Use Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 85% of the surveyed non-exempt DBH in Multiple Use zones, if all mitigation tree planting is to occur on-site, the ratio for planting shall be on a 1:22:1 basis.*

For example, if 20 inches DBH is the total amount of required mitigation, if all the mitigation planting occurs on the site where

the removal is to occur, then only 10 inches of DBH is required to be planted.

5. Significant Grove or SNRA Off-Site Mitigation, 1:1 Planting Ratio.

- A. *Residential, Commercial, or Industrial Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 75% of the surveyed non-exempt DBH in Residential, Commercial, or Industrial zones or which remove more than 50% and up to and including 85% of the surveyed non-exempt DBH in Multiple Use zones, if mitigation tree planting is to occur off-site, the ratio for planting shall be on a 1:1 basis.*
- B. *Multiple Use Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 85% of the surveyed non-exempt DBH in Multiple Use zones, if mitigation tree planting is to occur off-site, the ratio for planting shall be on a 1:1 basis.*

6. Significant Grove or SNRA Tree Plan 3 Mitigation, 1:1 Planting Ratio.

- BA. *Residential, Commercial, or Industrial Zoning Districts: For tree removal proposals which remove more than 75% and up to and including 100% of the surveyed non-exempt DBH in Residential, Commercial, or Industrial zones, all of the required mitigation tree planting shall be on a 1:1 basis whether planted on-site or off-site. This requirement does not supersede or otherwise nullify the on-site mitigation planting provisions of 60.60.xx.x above.*
- CB. *Multiple Use Zoning Districts: For tree removal proposals which remove more than 85% and up to and including 100% of the surveyed non-exempt DBH in Multiple Use zones, all of the required mitigation tree planting shall be on a 1:1 basis whether planted on-site or off-site. This requirement does not supersede or otherwise nullify the on-site mitigation planting provisions of 60.60.xx.x above.*

67. In-Lieu Fee

If the total caliper inch on-site- or off-site tree planting mitigation does not equal the DBH inch removal or if no tree planting mitigation is proposed, the remaining or total caliper inch tree planting mitigation shall be provided as a fee in-lieu payment. The in-lieu fee shall be specified in the Community Development In-Lieu Fee schedule. Fee revenues shall be deposited in the City's Tree Mitigation Fund.

The following two tables illustrate how required mitigation will be calculated:

Mitigation Example for Mixed Use Zones – SAMPLE SITE*	
DBH of Surveyed Trees	1318.00
DBH Proposed for Removal (MAXIMUM removal allowed is 85% Surveyed Tree DBH)	1120.00
Mitigation Threshold (50% Surveyed Tree DBH)	659.00
DBH to be Mitigated (85% DBH Removal – 50% DBH Threshold = 25% Surveyed DBH)	461.00
On Site Mitigation (50% of the DBH to be mitigated)	230.50
Off Site OR Partial Off Site Mitigation (100% of the DBH to be mitigated)	461.00

*Please note: This "Sample Site" is fictional and is only meant to be a representation of how the regulations of Section 60.60 Trees and Vegetation could be applied to a site.

Mitigation Example for All Other Zones – SITE SAMPLE*	
DBH of Surveyed Trees	1318.00
DBH Proposed for Removal (MAXIMUM removal allowed is 75% Surveyed Tree DBH)	988.00
Mitigation Threshold (50% Surveyed Tree DBH)	659.00
DBH to be Mitigated (75% DBH Removal – 50% DBH Threshold = 25% Surveyed DBH)	329.00
On Site Mitigation (50% of the DBH to be mitigated)	164.50
Off Site OR Partial Off Site Mitigation (100% of the DBH to be mitigated)	329.00

*Please note: This "Sample Site" is fictional and is only meant to be a representation of how the regulations of Section 60.60 Trees and Vegetation could be applied to a site.

7.8. In addition to the standards in Mitigation Standards 1, the following standards shall apply to mitigation for the removal of a Significant Individual Tree:

- A. A replacement tree shall be a substantially similar species or a tree approved by the City considering site characteristics.
- B. Mitigation for the removal of a Significant Individual Tree shall be the required replacement of each tree on based on the total linear DBH measurement. Replacement of trees shall be as follows:

**Replacement Table for
Significant Deciduous Trees**

Caliper-inches removed	Minimum total caliper-inches of replacement trees
6-12"	4"
13-18"	6"
19-24"	8"
Over 25"	9"

*Minimum replacement tree size is 2 caliper-inches for deciduous trees.

**Replacement Table for
Significant Coniferous Trees**

<i>Caliper-inches removed</i>	<i>Minimum number of replacement Trees</i>
<i>6-12"</i>	<i>1</i>
<i>13-24"</i>	<i>2</i>
<i>Over 25"</i>	<i>3</i>

Minimum replacement tree size is 3-feet minimum to 4-feet maximum height for coniferous trees.

~~A. Mitigation for the removal of a significant tree or grove shall be the required replacement of each tree on a one to one basis according to total linear DBH measurement. Replacement of trees shall be as follows:~~

~~1. Calculate the sum of the cumulative DBH measurement of the tree to be removed.~~

~~2. The total linear DBH measurement of the tree to be removed shall be replaced with a tree that is at least two caliper inches (2") in diameter unless otherwise approved by the City. The total caliper inches of the replacement tree shall be at least equal to the sum total of the linear DBH measurement of the removed tree.~~

~~3. If the total caliper inch replacement does not equal the DBH inch removal, the remaining caliper inch replacement will be provided in lieu. The in lieu fee shall be specified in the Community Development Department fee schedule and be deposited in the City's Tree Mitigation Fund.~~

~~B. Mitigation may be satisfied by one, or a combination of more than one, of the following options:~~

~~1. Planting of trees on the site where tree or grove removal is proposed;~~

~~2. Planting of trees off the site at a location or locations to be determined by the City; or~~

~~3. A fee paid in lieu of tree planting and deposited in the City's Tree Mitigation Fund for future natural resource mitigation efforts. The assessment of tree mitigation shall be determined by the caliper size of the tree removed.~~

- ~~C. Any tree required for mitigation shall be a similar species or a tree approved by the City considering site characteristics with a preference given to native species, as listed in Section 60.60.15 of this Code.~~
- ~~D. If a mitigation tree of the species of the tree removed or damaged is not reasonably available, the City may allow replacement with a different species with equivalent natural resource value.~~
- ~~E. All mitigation tree planting shall take place in conformance with accepted arboricultural practices and the City's Tree Planting and Maintenance Policy.~~
- ~~F. All trees planted for mitigation must have a minimum caliper of two inches (2") except where other standards are required through development review.~~
- ~~G. All trees planted for tree removal mitigation shall be maintained in accordance with the approved mitigation plan. Monitoring of mitigation planting shall be the ongoing responsibility of the property owner. Trees that die shall be replaced.~~

29. The following standards apply to the replacement of a ~~Landscape Tree or street tree~~:

- A. A replacement tree shall be a substantially similar species or a tree approved by the City considering site characteristics.
- B. If a replacement tree of the species of the tree removed or damaged is not reasonably available, the City may allow replacement with a different species ~~with equivalent natural resource value~~.
- C. Replacement of a ~~Landscape Tree or street tree~~ shall be based on total linear DBH calculations at a one-to-one ratio depending upon the capacity of the site to accommodate replacement tree or unless otherwise specified through development review. Replacement of tree on a one-to-one basis shall be as follows:
 - 1. Calculate the sum of the total linear DBH measurement of the tree to be removed.

2. The total linear DBH measurement of the tree to be removed shall be replaced with tree at least 1.5 caliper inches in diameter. The total caliper inches of the replacement tree shall be at least equal to the sum total of the linear DBH measurement of the removed tree.

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Exhibit 3

Proposed Amendments to Chapter 90, Definitions
(File Name on the web : Revised Chapter 90.pdf)

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The following text includes existing definitions from Chapter 90 that relate to the changes in Chapters 40 and 60 related to tree regulations in normal typeface. New definitions proposed to be included in Chapter 90 are shown in *italic typeface*.

CHAPTER 90 - DEFINITIONS

The following words and phrases shall be construed to have the specific meanings assigned to them by definition.

Words used in present tense include the future tense, and the singular includes the plural, unless the context clearly indicates the contrary.

The term “shall” is always mandatory and the word “may” is permissive.

The masculine gender includes the feminine and neuter.

Caliper Measurement. [ORD 4224; August 2002] The thickness of trees measured in inches. A caliper measurement for trees shall be measured 12 inches above the soil line, or across the stump if the tree has been severed at less than 12 inches above the soil line.

Canopy. Area of the tree above ground including the trunk and branches measured in mass or volume.

Certified Arborist. *An individual who has demonstrated knowledge and competency through obtainment of the current International Society of Arboriculture arborist certification, or who is a member of the American Society of Consulting Arborists.*

City Arborist. *The person designated as such by the Director of Operations.*

Community Tree. [ORD 4224; August 2002] A healthy tree of at least ten inches (10”) DBH located on developed, partially developed, or undeveloped land. Community trees—Trees are not those trees identified as ~~significant~~ Significant, ~~historic~~ Historic, ~~street~~ Landscape, or ~~conditioned~~ Mitigation trees—Trees or trees within a Grove or a Significant Natural Resource Area.

Crown Cover. The area within the drip line or perimeter of the foliage of a tree.

Dead Tree. [ORD 4224; August 2002] A tree that is lifeless. Evidence of lifelessness may include unseasonable lack of foliage, brittle dry branches, or lack of any growth during the growing season.

Development. The act of bringing about growth; to construct or alter a structure, to make a change in use or appearance of land, to divide land into parcels, or to create or terminate rights of access. [ORD 4111; June 2000]

Development. Any plat, partition, subdivision or planned unit development that is created under the city's land division or zoning regulations. [ORD 4111; June 2000]

Development. Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard. (ORD 3563)

Dying Tree. *A tree with greater than 20% dead limbs during the growing season.*

Edge Effect. *The result of the presence of two adjoining plant communities on the numbers and kinds of animals present in the immediate vicinity (Webster's) The negative impacts on wildlife that occur along the border of a fish and wildlife habitat area such as greater vulnerability to predators, nonnative plants, traffic and noise. (Metro) habitat conditions (such as degree of humidity and exposure to light or wind) created at or near the more-or-less well-defined boundary between ecosystems, as, for example, between open areas and adjacent forest. (www.for.gov.bc.ca glossary)*

Enhancement Activities. *Activities implemented for the sole purpose of improving or protecting, or both, the ecological functions and values of streams, wetlands and forest resources. Enhancement Activities do not include any excavation, fill, grading, or other form of earth moving of up to and including fifty (5) cubic yards of earth, the disturbance of up to and including 500 gross square feet of surface area, or both.*

Diameter at Breast Height (DBH). [ORD 4224; August 2002] The diameter of the trunk of a tree measured at 54 inches above natural grade.

Disease. *An impairment of the living plant or its components that interrupts or modifies the performance of the vital functions, as applied to trees and vegetation.*

Drip Line: [ORD 4224; August 2002] A line on the ground below the edge of the maximum overhead canopy of a tree.

Exempt Tree or Vegetation. The full height and breadth of vegetation that the Planning Director has identified as "solar friendly"; any vegetation listed on a plat map, a document recorded with the plat, or a solar access permit as exempt.

Grove. A stand of three or more trees of the same or mixed species. [ORD 4224; August 2002]

Hazardous Tree. *A tree that possesses a structural defect which poses an imminent risk if the tree, or part of the tree, were to fall on someone or something of value (target).*

- *Structural Defect. Any structural weakness or deformity of a tree or its parts. A tree with a structural defect can be verified to be hazardous by a certified arborist and confirmed as such by the City Arborist.*
- *Target. People, vehicles, structures or property, such as other trees or landscape improvements. A tree may not be a hazard if a 'target' is absent within the falling distance of the tree or it's parts (e.g., a substandard tree in a non-populated area away from pedestrian pathways may not be considered a hazard).*

Historic Tree or Historic Grove. [ORD 4224; August 2002] Tree(s) designated by the City to be of historic significance based on their association with historic figures, properties, or the general growth and development of the City.

Invasive. A type of plant that is not local to an area, but rather originates from another place. Also called "exotic," "non-native," or "alien" species.

Inventory. A census (survey) of historical, architectural, archeological or cultural buildings, structures, objects, districts or sites. Each resource (i.e. building, structure, etc.) shall have a location; a physical description, photograph, and a discussion of the resource's significance.

Landmark. Those buildings, structures, objects or sites that are fifty (50) years old or older that are significant or important because of historic, architectural, archeological, or cultural value as shall be designated by the Beaverton City Council. All designated Landmarks shall have a location, a physical description, photograph and a discussion of the landmark's significance. Buildings, structures, objects or sites that are less than 50 years old may be designated if they are exceptional in terms of historic, architectural, archeological or cultural value.

Landscaping. The combination of natural elements such as trees, shrubs, ground covers, vines, and other living organic and inorganic material which are installed for purposes such as creating an attractive and pleasing environment and screening unsightly views. Other improvements that promote an attractive and pleasing environment that may be included as landscaping includes features such as fountains, patios, decks, fences, street furniture and ornamental concrete or stonework areas. [ORD 4224; August 2002]

Landscaping Area(s). [ORD 4224; August 2002] An open area unoccupied except for landscaping. Pathways sufficient to provide access to buildings and utility equipment are permitted within a landscape area.

Landscape Tree. [ORD 4224; August 2002] A tree, other than a Significant Tree, Historic Tree, or Tree within a Significant Natural Resource Area, that has been preserved or planted as a component of an approved landscaping plan.

Mitigation Tree. *A tree planted in an effort to alleviate the impact of the removal of another tree(s). A mitigation tree takes on the designation of the tree(s) removed (i.e. tree(s) planted to mitigate for a tree(s) removed from a grove or SNRA becomes a tree(s) protected as if it were part of a grove or SNRA).*

Native Understory. *Foliage layer located between the floor and the canopy of a forest, wood, or grove containing plant materials that have origins in the Tualatin Valley Region of the state of Oregon, having been allowed to remain in a natural state. Limited to plant species identified on the Metro ~~and~~ or Clean Water Services Native Plant Lists ~~apply~~.*

Native Vegetation. *Plant materials that have origins the Tualatin Valley Region of the state of Oregon, as listed on the Metro ~~and~~ or Clean Water Services Native Plant Lists.*

Natural areas. [ORD 4332; November 2004] Natural areas may include, but are not limited to, wetlands, riparian areas, Significant Natural Resource Areas, and significant groves of trees.

Non-Exempt Surveyed Tree. *Trees that fit within the definition of Surveyed Tree, with the exception of Nuisance Trees.*

Non-Native. *A type of plant that is not local to an area, but rather originates from another place.*

Noxious Vegetation. [ORD 4224; August 2002] As applied to Significant Natural Resource Areas (SNRA), lands designated as significant on the Local Wetland Inventory, and Clean Water Services designated sensitive areas, ~~the following plants, bushes, and trees are deemed to be noxious vegetation: Scot's Broom, French Broom, Kudzu, English Ivy, Purple Loosestrife, Reed Canary Grass, Himalayan Blackberry, Evergreen Blackberry, Norway Maple, Tree of Heaven, Garlic Mustard, Lesser Celandine, Canada Thistle, Common Thistle, Western Clematis, Traveler's Joy, Field Morning Glory, Lady's Nightcap, Pampas Grass, Hawthorne (except native species), Queen Anne's Lace, South American Waterweed, Common Horsetail, Giant Horsetail, Crane's Bill, Robert Geranium, Common Bladderwort, St. John's Wort, English Holly, Yellow Flag, Duckweed, Water Lentil, Eurasian Watermilfoil, Annual Bluegrass, Water Smartweed, Giant Knotweed, English Laurel, Portuguese Laurel, Tansy Ragwort, Blue Bindweed, Climbing Bindweed, Hairy Nightshade, Bamboo, Periwinkle (large and small leaf), and Spiny Cockleb.~~

Nuisance Plants. *Plant Species that intrude/invade natural areas eventually resulting in their domination of, ~~dominate (or both) areas without receiving direct competition from~~ native plant species. Also ~~i~~Includes those nuisance and prohibited species listed on Metro's Native Plant List. Also see invasive and non-native.*

~~**Protected Tree.** *Includes Significant Individual Trees, Historic Trees, Trees within a Significant Natural Resource Area or Significant Grove, and Mitigation Trees.*~~

Open Space, Active. [ORD 4332; November 2004] Open space where human activities include recreational and social opportunities such as play fields, playgrounds, swimming pools, plazas and other recreational facilities.

Open Space, Passive. [ORD 4332; November 2004] Open space where human activities are limited to defined walking and seating areas. Does not include environmentally sensitive areas such as a wetland.

Preservation. The identification, study, protection, restoration, rehabilitation, or enhancement of designated Landmarks.

Preservation District. A geographic area with a lesser concentration of historical or architectural significant landmarks or a concentration of contributing resources.

Preservation Resource Center. Research repository for historic resource inventory documents and related historic materials.

~~**Protected Tree.** *Includes Significant Individual Trees, Historic Trees, Trees within a Significant Natural Resource Area or Significant Grove, and Mitigation Trees.*~~

Pruning, Minor. [ORD 4224; August 2002] Removal of between 5% and up to and including 20% of the tree's canopy or disturbance of 10% or less of the root system.

Pruning, Major. [ORD 4224; August 2002] Removal of greater than ~~20~~10% of the tree's canopy or disturbance of over 10% of the root system.

Qualified Professional. [ORD 4224; August 2002] As the term applies to trees, a professional with academic and field experience that demonstrates expertise in urban forestry. This may include arborists certified by the International Society of Arboriculture, foresters certified by the Society of American Foresters, a registered landscape architect, or silvaculturalist. A qualified professional must possess the ability to evaluate the health and hazard potential of existing trees, and the ability to prescribe appropriate measures for preservation of trees during land development.

Reasonably Available. *As applied to mitigation tree planting, a plant species shall be considered to be reasonably available if the species is stocked in sufficient quantities needed for a mitigation project at three (3) or more separate retail or wholesale nurseries, known to stock native plants, of separate ownership within Washington, Multnomah or Clackamas counties.*

As applied to mitigation tree planting, a plant species shall be considered reasonably available if the plant is found to be available for purchase at up to three separate retail or wholesale nurseries, known to stock native plants, of separate ownership within Washington, Multnomah, or Clackamas counties or a combination thereof. A plant species shall be considered to be reasonably unavailable if the species cannot be readily found at three (3) separate retail or wholesale nurseries, known to stock native plants, of separate ownership within Washington, Multnomah, or Clackamas counties or a combination thereof.

Shade. A shadow cast by the shade point of a structure or vegetation when the sun is at an altitude of 21.3 degrees and an azimuth ranging from 22.7 degrees east and west of true south.

Shade Point. The part of a structure or non-exempt tree that casts the longest shadow onto the adjacent northern lot(s) when the sun is at an altitude of 21.3 degrees and an azimuth ranging from 22.7 degrees east and west of true south; except a shadow caused by a narrow object such as a mast or whip antenna, a dish antenna with a diameter of 3 feet or less, a chimney, utility pole, or wire. The height of the shade point shall be measured from the shade point to either the average elevation at the front lot line or the elevation at the midpoint of the front lot line. If the shade point is located at the north end of the ridgeline of a structure oriented within 45 degrees of a true north-south line, the shade point height computed according to the preceding sentence may be reduced by 3 feet. If a structure has a roof oriented within 45 degrees of a true east-west line with a pitch that is flatter than 5 feet (vertical) in 12 feet (horizontal) the shade point will be the eave of the roof. If such a roof has a pitch that is 5 feet in 12 feet or steeper, the shade point will be the peak of the roof (see Figures 4 and 5 - SOL).

Shade Reduction Line. A line drawn parallel to the northern lot line that intersects the shade point (see Figure 6 - SOL).

Shadow Pattern. A graphic representation of an area that would be shaded by the shade point of a structure or vegetation when the sun is at an altitude of 21.3 degrees and an azimuth ranging between 22.7 degrees east and west of true south (see Figure 12 - SOL).

Significant Grove. *Groves that are mapped on the City's Inventory of Significant Trees and Groves, that have a unique identification code and include all species within the grove boundary as listed in the inventory documents for that grove code.*

Significant Natural Resource Area (SNRA). [ORD 4224; August 2002] Resources identified in Volume III of the Comprehensive Plan as "significant" pursuant to Statewide Planning Goal 5.

Significant Tree. *A tree or grouping of trees that is mapped on the City's Inventory of Significant Trees and Groves, which has a unique identification code as listed in the inventory documents for that individual tree code.*

Significant Tree and Grove Inventory Analysis. [ORD 4224; August 2002] The inventory of significant trees and groves conducted under the direction of the Beaverton Board of Design Review in 1991. The criteria on which listed trees and groves were determined to be significant are as follows:

1. An individual tree shall be considered significant if the Board finds:
 - (a) The tree has a distinctive size, shape, or location which warrants a significant status; or
 - (b) The tree possesses exceptional beauty which warrants a significant status; or
 - (c) The tree is significant due to a functional or aesthetic relationship to a natural resource.
2. A grove as defined in Section 90 shall be considered significant if the Board finds that:
 - (a) The grove is relatively mature and evenly aged; and
 - (b) The grove has a purity of species composition or is of a rare or unusual nature; and
 - (c) The grove is in a healthy growing condition; or
 - (d) The grove has a crucial functional and/or aesthetic relationship to a natural resource.

Site. That parcel of real property in common ownership, notwithstanding that the particular application may be for development of a portion of the site only. Conveyance of less than fee title to different persons, such as by ground lease, shall

not operate to prevent the requiring of Master Site Plan review and action by the Board of Design Review on the complete parcel.

Solar Friendly Tree. A tree which the Director has determined does not cause significant winter shade due to foliar period and branch structure. The Director shall maintain a list of generally recognized solar friendly trees.

Street Tree. [ORD 3989, July 1997] Any tree located within the public or private right of way or easement for vehicular access, or associated public utility easements.

Surveyed Tree. *Trees on a proposed development site that are required to be identified in a Tree Plan application. Trees required to be surveyed include all trees greater than or equal to ten (10) inches DBH (including nuisance trees) and the following trees greater than or equal to six (6) inches DBH: western hemlock (*Tsuga heterophylla*) or mountain hemlock (*Tsuga mertensiana*) trees, Pacific madrone (*Abutus andrachne*) trees, and big-leaf maple (*Acer macrophyllum*) trees.*

Tract. [ORD 4224; August 2002] A non-buildable unit of land created by a partition, subdivision, deed, or other instrument recorded with the appropriate county recorder. This includes a lot, a lot of record, or a piece of land created through other methods.

Undevelopable area. An area that cannot be used practicably for a habitable structure, because of natural conditions, such as slopes exceeding 20% in a direction greater than 45 degrees east and west of true south, severe topographic relief, water bodies, or conditions that isolate one portion of a property from another portion so that access is not practicable to the unbuildable portion; or manmade conditions, such as existing development which isolates a portion of the site and prevents its further development; setbacks or development restrictions that prohibit development of a given area of a lot by law or private agreement; or existence or absence of easements or access rights that prevent development of a given area.

Vegetation. Any woody, perennial plant, deciduous, evergreen or coniferous which is not defined as a tree.

Windthrow. [ORD 4224; August 2002] A tree or trees uprooted or felled by the wind.



CITY of BEAVERTON

4755 S.W. Griffith Drive, P.O. Box 4755, Beaverton, OR 97076 General Information (503) 526-2222 V/TDD

CITY OF BEAVERTON SUPPLEMENTAL STAFF REPORT # 13

TO: Planning Commission

STAFF REPORT DATE: Wednesday, March 2, 2005

STAFF: Barbara Fryer, AICP, Senior Planner *BF*
Leigh Crabtree, Associate Planner *LMC*

SUBJECT: TA 2004-0011
(Tree Code Text Amendments)

REQUEST: Amendments to Chapter 40, Chapter 60 and Chapter 90 of the Beaverton Development Code, currently effective through Ordinance 4332 (January 2005) to modify and clarify tree plan regulations.

APPLICANT: City of Beaverton
Planning Services Division
Barbara Fryer, AICP, Senior Planner
4755 SW Griffith Drive
Beaverton Oregon 97006

AUTHORIZATION: Ordinance 2050 (Development Code) effective through Ordinance 4332 (January 2005)

APPLICABLE CRITERIA: Ordinance 2050, effective through Ordinance 4332, Section 40.85.15.1.C.1-7 (Text Amendment Approval Criteria)

HEARING DATE: Wednesday, March 16, 2005

RECCOMENDATION: Staff recommends the Planning Commission **APPROVE** TA 2004-0011 (Tree Code Text Amendments), as attached as Exhibits 1, 2, and 3 of this Supplemental Staff Report.

I. LIST OF WRITTEN TESTIMONY RECEIVED AFTER FEBRUARY 16, 2005

- Fax from Mark Perniconi, CE John Company, dated February 22, 2005 (followed in letter form received February 23, 2005).
- Fax from John Nelms, DeCal Custom Homes and Construction, dated February 22, 2005 that included a letter from Matt Segrest, Simpson Housing Limited Partnership, dated February 18, 2005.

The issues raised in the letters were addressed in a Memorandum from Leigh Crabtree to the Planning Commission dated February 23, 2005.

II. SUMMARY OF ORAL TESTIMONY RECEIVED

During the public testimony portion of the February 23, 2005 Planning Commission Hearing, many issues were raised. The following is a paraphrased summary of those issues:

Susan Murray

- Would prefer that the City look at the big picture, start over, and begin with a new purpose statement.
- Ms. Murray would like to see the use of education, incentives and more stringent regulations with associated values.
- It was noted that Measure 37 allows for regulations that protect from hazards.
- Ms. Murray summarized that the City needs a good code with good enforcement.

Scott Russell

- Wondered why the proposed language for Section 40.90.10.15 included a change from 11 inches to 10 inches.

Michael Jones

- Mr. Jones requested that the threshold for Community Tree removal be returned to four (4) trees rather than the proposed, "two (2) or 10%, whichever is greater."

Quinton Mattson

- Agreed with Mr. DeHarport, that dedicated right-of-way should be exempt.

The issues raised in the public hearing testimony have been considered and are addressed in Section III of this supplemental staff report.

III. DISCUSSION OF ISSUES

Community Trees

Michael Jones requested that Section 40.90.10.1 be returned to its previous written form. This would adjust the exemption threshold for removal of Community Trees from “up to two (2) Community Trees or up to 10% of the number of Community Trees on the site, whichever is greater” back to “up to four (4) Community Trees.”

Recommendation: Staff recommends the Planning Commission consider and choose one of two options for 40.90.10.1:

- Option a.** Retain the adopted language and insert “up to 10% of the number of Community Trees on the site, whichever is greater” (which would provide scalability to the regulations on these properties),

Proposed Language: “Removal of up to four (4), or up to 10% of the total number of Community Trees on the site, whichever is greater, within a one (1) calendar year period.”

- Option b.** Reduce the number of Community Trees to two (2) and insert “up to 10% of the number of Community Trees on the site, whichever is greater”.

Proposed Language: “Removal of up to two (2), or up to 10% of the number of Community Trees on the site, whichever is greater, within a one (1) calendar year period.”

Commissioner Bliss did not understand the need for both 40.90.15.2.C.1 and 2, considering them redundant given 40.90.10.1. One option presented was to remove 40.90.15.2.C.2. from the Code and another option was to add “for properties not residentially zoned” to the end of 40.90.15.2.C.1. Staff continues to consider the existing language as providing a loophole for properties that are less than ½ acre in size but do not contain a dwelling. To counter this loophole, staff propose adding “on any property, except as allowed in 40.90.10.1” to 40.90.15.1 and eliminating 40.90.15.2. Consistent with the discussion above, the Planning Commission has two options for language, but the decision must be consistent with the decision made on the issue above.

Recommendation: Staff recommends the Planning Commission consider and choose one of two options for 40.90.15.2.C:

- Option a.** Retain the adopted language and insert “more than 10% of the number of Community Trees on the site, whichever is greater”

Proposed Language: "Removal of five (5) or more Community Trees, or more than 10% of the total number of Community Trees on the site, whichever is greater, within a one (1) calendar year period, except as allowed in 40.90.10.1."

- Option b.** Reduce the number of Community Trees to three (3) and insert "more than 10% of the number of Community Trees on the site, whichever is greater".

Proposed Language: "Removal of three (3) or more Community Trees, or more than 10% of the total number of Community Trees on the site, whichever is greater, within a one (1) calendar year period except as allowed in 40.90.10.1."

Commissioner Barnard wanted clarification that the regulations would not apply to orchards. None of the inventoried trees (Significant Natural Resource Areas, Significant Individual Trees or Significant Groves) include orchard trees. To be clear that a Community Tree does not include orchard trees, staff proposes to add language to the definition of Community Tree.

Recommendation: Staff recommends the Planning Commission approve the following definition for Community Tree:

Proposed Language: "Community Tree. {ORD 4224; August 2002] A healthy tree of at least ten inches (10") DBH located on developed, partially developed, or undeveloped land. Community Trees are not those trees identified as Significant, Historic, Landscape or Mitigation Trees, ~~or~~ trees within a Grove or Significant Natural Resource Area, *or trees that bear edible fruits or nuts grown for human consumption.*

Public Street and Sidewalk Improvements

Commissioner DeHarpport questioned the accuracy of Section 40.90.10.12.ii. and asked staff to clarify the proposed exemption. In addition, Mr. DeHarpport reiterated his stance, from the Commission's work session of January 19, 2005, that where any dedication of right-of-way is to occur the trees within that right-of-way should be exempt from the tree regulations. Quinton Mattson provided oral testimony to concur with Mr. DeHarpport's stance. However, the remainder of the Commission stayed with their previous direction to staff to only exempt those trees that are within existing rights-of-way and those new rights-of-way that are required by the Comprehensive Plan. In order to clarify the issue, staff added the word "widened" to 40.90.10.12.ii.

Recommendation: Staff recommends the Planning Commission approve the text with the clarifying word “widened” added to 40.90.10.12.ii.

Active Timber Production Land

As reflected in the minutes from the February 23, 2005 Commission hearing, the dialogue about active timber production lands and other agricultural types of uses was varied. Commissioner DeHarpport suggests adding the words “clustered or” prior to “well-distributed” in Section 40.90.10.15. Commissioner Winter requested that staff remove all language after the first sentence. As noted earlier, Commissioner Barnard had a concern about the applicability of the regulations to orchards, which was addressed in the definition of Community Trees.

After additional research into the Forest Practices Act has led staff to remove the second portion of the first sentence “, but rather the Oregon Department of Forestry regulations.” Specifically, ORS 527.722.7 states “The existence or adoption by local governments of a comprehensive plan policy or land use regulation regulating forest practices consistent with subsections (1) through (5) of this section shall relieve the State Forester of responsibility to administer the Oregon Forest Practices Act within the affected area.” Thus, any local government regulations that are adopted for the specific purpose of directing how forest operations and practices may be conducted eliminate the state obligations.

Staff continues to emphasize that use of the County’s language would parallel the existing annexation policy of applying a City zoning designation that is equivalent to the County’s zoning designation. Additionally, applying the County’s language would continue the existing regulations on the property as suggested by Commissioner Bliss. His point of view suggested that residences surrounding a non-residential use shouldn’t mean that the non-residential use becomes constrained, the operation should continue as-is. Retaining the County’s current regulatory framework for the use would allow the operation to continue as currently allowed in the County.

Recommendation: Staff recommends the Planning Commission consider and choose one of two options for 40.90.10.15:

Option a. Retain the County’s language

Proposed Language: “Removal or pruning of trees, or part thereof, as part of forestry management on properties with documented existing forest tax deferral status shall not be subject to the City’s tree removal regulations, ~~but rather the Oregon Department of Forestry regulations.~~ Forestry management for the purposes of this section includes an established practice of intermittent maintenance, thinning, harvesting, and planting vegetation,

including commercial forest harvesting. Forestry management shall not include clear-cutting as defined herein: clear-cut means any harvest unit that leaves fewer than fifty (50) living, healthy and upright trees per acre that are well-distributed over the unit and measure at least ten (10) inches in DBH. Species left should reflect the same species proportions existing prior to harvest. Trees to be removed for development purposes shall fall under the City's Protected Tree classification."

Option b. Insert the words "clustered or" before well-distributed.

Proposed Language: "Removal or pruning of trees, or part thereof, as part of forestry management on properties with documented existing forest tax deferral status shall not be subject to the City's tree removal regulations, ~~but rather the Oregon Department of Forestry regulations.~~ Forestry management for the purposes of this section includes an established practice of intermittent maintenance, thinning, harvesting, and planting vegetation, including commercial forest harvesting. Forestry management shall not include clear-cutting as defined herein: clear-cut means any harvest unit that leaves fewer than fifty (50) living, healthy and upright trees per acre that are *clustered or* well-distributed over the unit and measure at least ten (10) inches in DBH. Species left should reflect the same species proportions existing prior to harvest. Trees to be removed for development purposes shall fall under the City's Protected Tree classification."

Noxious vegetation

Staff questioned the use of Nuisance and Noxious vegetation. Staff removed the definition of Noxious Vegetation from Chapter 90 and, where used in the text (40.90.15.1.A.2.), replaced it with "non-native or invasive".

Edge Effects

Staff previously proposed three separate definitions for Edge Effect in Chapter 90. Upon completing additional research, staff concludes that the terminology does not apply to this proposal.

As forests are cut, edges are created. An edge is the boundary or interface, between two ecological communities or between different landscape elements. Edges can be inherent, a natural feature of the landscape, such as soil types, topographical differences, presence of water, or geomorphic. Edges can also be induced, caused by natural and human disturbances, including fire, flooding, erosion, timber harvest, road construction, planting or grazing. In order to minimize the edge effects at the stand level, the British Columbia Ministry of Forests Research Program suggests

feathering the edges, preserving the understory and retaining more green trees, especially near the edge.

Research in Douglas-fir forests of Washington and Oregon indicates that patch sizes of 50 hectares or larger will be required to provide significant amounts of unmodified interior forest. Nike Woods represents the largest patch size in Beaverton at almost 30 hectares. Thus, staff concludes that the provisions in the current draft regarding retention of the native understory and the 25% and 15% cap on removal will address the edge effects as best as can be accomplished in the relative small patches that we have in the city.

Recommendation: Staff recommends the Planning Commission approve removal of the definition of edge effects and approve removal of 40.90.15.2.C.12 and 40.90.15.3.C.11.

Removal and Preservation Standards

The City Attorney proposed, and the Commission concurred, that the language of Section 60.60.15.2.C.7 is vague and should be changed.

Recommendation: Staff recommends the Planning Commission approve the replacement of the previously proposed language with the City Attorney's proposed language in Section 60.60.15.2.C.7.

Mitigation Requirements

The City Attorney proposed, and the Commission concurred, that Section 60.60.25.1.C. should not include "...that are subject to these same standards in the future."

Recommendation: Staff recommends the Planning Commission approve the removal of the cited language in Section 60.60.25.1.C.

Native Understory

The City Attorney was concerned about the use of the phrase "natural state" in the definition of Native Understory.

Recommendation: Staff recommends the Planning Commission approve the removal of the phrase "having been allowed to remain in a natural state" from the definition of Native Understory.

Native Vegetation

Commissioner DeHarpport requested staff check the Metro and CWS plant lists for inclusion of non-natives. Staff found that both CWS and Metro include non-natives and invasive species in sections of their respective regulations. For further clarification, staff replaced the language "Metro or Clean Water Services' Native

Plant Lists” with “Metro’s Native Plant List or in Clean Water Services’ Design and Construction Standards” throughout the proposal.

Recommendation: Staff recommends the Planning Commission approve the Metro and CWS reference citation clarifications in 40.90.10.10. and 11, and the definitions of Native Understory, Native Vegetation, and Nuisance Vegetation.

Pruning, Minor

At one point staff proposed removing pruning, minor altogether. After internal debate, staff decided to add pruning, minor to the exemptions in Chapter 40. Upon doing so, staff overlooked changing the definition to reflect the changes in pruning, major.

Recommendation: Staff recommends the Planning Commission approve the change in the definition of pruning, minor to removal of less than 10% of the tree’s canopy or root system.

Capitalization

Commissioner DeHarpport requested that staff review the document and capitalize all of the defined terms. Staff consulted with an esteemed English teacher, who had stated: “*The rules for caps is somewhat flexible for specialized language, as in your tree categories. If a person understands the nature of the document, "Community Trees" would not bother him as caps.*” Only those defined terms that are proper pronouns should be capitalized. Therefore, staff has not revised the document to capitalize all of the defined terms.

Double Definition

After reviewing the proposed text once again, staff found that two definitions were included for Reasonably Available. Consequently, staff chose the definition that most closely matched the intent of their position.

Recommendation: Staff recommends the Planning Commission approve the deletion of the first definition for Reasonably Available.

Susan Murray’s Concerns

Ms. Murray presented a number of ideas that would result in an overhaul of the existing and proposed Code, yet did not offer specific changes for staff to focus on.

IV. STAFF RECOMMENDATION

Staff recommends the Planning Commission:

- select options a or b for 40.90.10.1., 40.90.15.2.C., 40.90.10.15, and
- **APPROVE** TA 2004-0011 (Tree Code Text Amendments), as proposed in Exhibits 1, 2, and 3 of this Supplemental Staff Report, as modified by the

Planning Commission's selections of one of two options for the
aforementioned sections within Exhibit 1.

V. EXHIBITS

Exhibit 1: Chapter 40 Modified Text, with options a and b for 40.90.10.1,
40.90.15.2.C., and 40.90.10.15.

Exhibit 2: Chapter 60 Modified Text

Exhibit 3: Chapter 90 Modified Text

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Exhibit 1
Proposed Amendments to Chapter 40, Section 90
(Tree Plan)
(File name on the web: Chapter 40 revision 3.pdf)

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40.90. TREE PLAN

40.90.05. Purpose

Healthy trees and urban forests provide a variety of natural resource and community benefits for the City of Beaverton. Primary among those benefits is the aesthetic contribution to the increasingly urban landscape. Tree resource protection focuses on the aesthetic benefits of the resource. The purpose of a Tree Plan application is to provide a mechanism to regulate pruning, removal, replacement, and mitigation for removal of Protected Trees (sSignificant Individual Trees, and hHistoric tTrees, and trees within Significant gGroves and Significant Natural Resource Areas (SNRAs)), Landscape tTrees, street tree, and eCommunity Ttrees thus helping to preserve and enhance the sustainability of the City's urban forest. This Section is carried out by the approval criteria listed herein and implements the SNRA, Significant Grove, Significant Individual Tree, and Historic Tree designations as noted or mapped in Comprehensive Plan Volume III.

40.90.10. Applicability.

Different types of resources require different levels of protection. No Tree Plan is required for the following actions:

**OPTION
A**

1. Removal of up to ~~four (4)~~ *four (4)* eCommunity tTrees or up to 10% of the number of Community Trees on the site, whichever is greater, within an one (1) calendar year period. Properties one-half acre or less in size developed with a detached dwelling may remove any number of eCommunity tTrees.

**OPTION
B**

1. Removal of up to ~~two (2)~~ *two (2)* Community Trees or up to 10% of the number of Community Trees on the site, whichever is greater, within a one (1) calendar year period. Properties one-half acre or less in size developed with a detached dwelling may remove any number of Community Trees.

2. Removal and pruning of any hazardous, dead, or diseased tree ~~or a portion of a hazardous tree~~ when the tree is identified as such by a certified ~~arborist,~~ arborist or by the City Arborist and the removal is required by the City. The removal of the tree is subject to the mitigation requirements of Section 60.60 (Trees and Vegetation) of this Code. ~~Hazardous and dead trees within Significant Groves and SNRAs shall be fallen only for safety and left at the resource site to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and must be removed from the area to protect the remaining trees.~~

3. *In the event of an emergency requiring tree removal or pruning prior to the City Arborist's determination, if evidence justifies the emergency removal after the fact, then no tree plan is required for removal. ~~Hazardous and dead trees within Significant Groves and SNRAs shall be fallen only for safety and left at the resource site to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and must be removed from the area to protect the remaining trees.~~*
34. *Minor pruning, as defined in Chapter 90.*
5. *Pruning of trees consistent with the Vision Clearance requirements of Section 60.55.50.*
456. *Pruning of trees by the utility provider for above ground utility power lines following acceptable arboricultural standards and practices.*
67. *Pruning of trees to maintain the minimum 8 foot clearance above a sidewalk.*
78. *Removal or pruning of the following nuisance tree species anywhere in the city: Lombardy Poplar (*Populus nigra*), and birch (*Betula sp.*).*
89. *Removal and pruning of the following nuisance tree species in Significant Groves and SNRAs: Norway maple (*Acer platanoides*), Tree-of-Heaven (*Ailanthus altissima*), ~~and~~ Golden Chain Tree (*Laburnum watereri*), and English or Common Hawthorne (*Crataegus monogyna*).*
910. *Removal of a tree or nonnative vegetation listed as a Nuisance or Prohibited Plant on Metro's Native Plant List or in Clean Water Services' Design and Construction Standards ~~Native Plant Lists~~.*
1011. *Within SNRAs and Significant Groves, planting of native vegetation listed on the ~~Metro Metro's Native Plant List or in Clean Water Services' Design and Construction Standards or Clean Water Services' Native Plant Lists~~ when planted with non-mechanized hand held equipment.*
1112. *Public street and sidewalk improvements within SNRAs or Significant Groves that meet i. or ii. and iii.:*
- i. *Improvements within an existing public right-of-way; or*
 - ii. *Improvements within a widened public right-of-way that are required of development in order to meet functional classification standards, such as half-street improvements; and*

iii. *The proposed improvements do not exceed the minimum width standards of the Engineering Design Manual.*

~~1213.~~ *Trails within SNRAs and Significant Groves meeting all of the following:*

- i. *Construction must take place between May 1 and October 30 with hand held equipment;*
- ii. *Trail widths must not exceed 30 inches and trail grade must not exceed 20 percent;*
- iii. *Trail construction must leave no scars greater than three inches in diameter on live parts of native plants; and*
- iv. *Trails must be placed outside the top of bank of any stream, river, or pond, and*
- v. *Trails must be 100% pervious.*

~~1314.~~ *Street Trees are covered by the Beaverton Municipal Code and Section 60.15.15.3.G.*

**OPTION
A**

15. *Removal or pruning of trees, or part thereof, as part of forestry management on properties with documented existing forest tax deferral status shall not be subject to the City's tree removal regulations, ~~but rather the Oregon Department of Forestry regulations.~~ Forestry management for the purposes of this section includes an established practice of intermittent maintenance, thinning, harvesting and planting vegetation, including commercial forest harvesting. Forestry management shall not include clear-cutting as defined herein: clear-cut means any harvest unit that leaves fewer than fifty (50) living, healthy and upright trees per acre that are well-distributed over the unit and measure at least ten (10) inches in DBH. Species left should reflect the same species proportions existing prior to harvest. Trees to be removed for development purposes shall fall under the City's Protected Tree classification.*

**OPTION
B**

15. *Removal or pruning of trees, or part thereof, as part of forestry management on properties with documented existing forest tax deferral status shall not be subject to the City's tree removal regulations, ~~but rather the Oregon Department of Forestry regulations.~~ Forestry management for the purposes of this section includes an established practice of intermittent maintenance, thinning, harvesting and planting vegetation, including commercial forest harvesting. Forestry management shall not include clear-cutting as defined herein: clear-cut means any harvest unit that leaves fewer than fifty (50) living, healthy and upright trees per acre that are clustered or well-distributed over the unit and measure at least ten (10) inches in DBH. Species left should*

reflect the same species proportions existing prior to harvest. Trees to be removed for development purposes shall fall under the City's Protected Tree classification.

16. *Landscape Trees are covered by Section 40.20 Design Review and Section 60.60 Trees and Vegetation.*
17. *Enhancement activities conducted by a public agency for the sole purpose of improving the ecological health of forest and water resources.*

40.90.15. Application.

There are ~~four (4)~~*three (3)* Tree Plan applications which are as follows: Tree Plan One, Tree Plan Two, *and Tree Plan Three,* ~~and Tree Plan Four.~~

1. Tree Plan One.

- A. Threshold. An application for Tree Plan One shall be required when none of the actions listed in Section 40.90.10 apply and one or more of the following thresholds apply:

1. ~~Minor-Major pruning of a Significant Tree, Significant Grove, Landscape Trees and Protected Trees, tree within a Significant Natural Resource Area (SNRA), Historic tree, or Street Tree once within an one year period.~~
2. ~~Removal of up to and including five (5) Landscape Trees or Street Trees on a site within a one year period.~~
3. ~~Removal or pruning of a Significant Tree, Significant Grove, Landscape Trees and Protected Trees, tree within a Significant Natural Resource Area (SNRA), a Historic Tree, a Street Tree, or part thereof, that constitutes or removes/creates a hazardous condition. Pruning to eliminate a hazardous condition may exceed minor pruning.~~
42. ~~Mechanized Removal~~ *removal of ~~noxious non-native or invasive~~ vegetation, re-planting of trees and shrubs, or both and clearing and grubbing of vegetation within a SNRAs, Significant Groves land designated as significant on the City's Local Wetland Inventory, or Sensitive Areas as defined by Clean Water Services.*

53. *Mechanized re-planting of trees and shrubs, or both, or restoration planting within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services.*
64. *Trails greater than 30 inches in width, or trail grade exceeding 20 percent, trail surfaces less than 100% pervious surface, or any combination thereof within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services that does not result in tree removal.*

B. Procedure Type. The Type 1 procedure, as described in Section 50.35 of this Code, shall apply to an application for Tree Plan One. The decision making authority is the Director.

C. Approval Criteria. In order to approve a Tree Plan One application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Tree Plan One application.
2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]
- ~~4. If applicable, it is necessary to prune or remove a tree that poses a safety hazard to pedestrians, vehicular traffic, adjacent property, or the general public or that threatens to cause disruption of public service and at least one of the following exist:~~
 - ~~a. The tree or portion of the tree is certified by a qualified professional as dead or dying.~~
 - ~~b. A portion of the tree is only partially attached.~~
 - ~~c. The tree or a portion of the tree has been damaged by a storm, fire, age, or accident and is physically~~

~~lodged or leaning against a building, transportation facility, or overhead utility line or pole.~~

- ~~54. If applicable, pruning a tree will result in removal of no more than 20% of the tree's canopy or disturbance of no more than 10% of the root system. The pruning is needed necessary to improve tree health or to eliminate conflicts with vehicles or structures which includes, but is not limited to, underground utilities and street improvements.~~
- ~~65. If applicable, removal of a Landscape Tree or street tree or pruning of a tree is necessary to accommodate development where variances to setback provisions of the Development Code will not allow the tree to be saved.~~
- 65. If applicable, the removal of vegetation or clearing and grubbing is necessary to accommodate physical development in the area in which the removal is proposed.*
- ~~7. If applicable, emergency removal or pruning is necessary due to an immediate threat to public safety documented by photographic evidence supplied by the applicant.~~
- ~~8. Removal of a tree or grove shall not increase erosion or any resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~
- ~~976. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.~~

- D. Submission Requirements. An application for a Tree Plan One shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan One application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan One application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Previous approval of Tree Plan One proposal shall not be extended.

2. **Tree Plan Two**

A. Threshold. An application for Tree Plan Two shall be required when none of the actions listed in Section 40.90.10 apply, none of the thresholds listed in Section 40.90.15.1 apply, and one or more of the following thresholds apply:

~~1. Major pruning of a non-hazardous Significant Tree, Significant Grove, Trees within a Significant Natural Resource Area (SNRA), Historic Trees, Landscape Trees and Protected Trees, or Street Trees once within a one (1) calendar year period.~~

~~2. Removal of more than five (5) and up to and including ten (10) Landscape Trees or Street Trees on a site within a one calendar year period.~~

~~3. Removal of five (5) or more Community Trees, or more than 10% of the number of Community Trees on the site, whichever is greater, within a one (1) calendar year period, except as allowed in 40.90.10.1.~~

**OPTION
A**

**OPTION
B**

~~1. Removal of three (3) or more Community Trees, or more than 10% of the number of Community Trees on the site, whichever is greater, within a one (1) calendar year period, except as allowed in 40.90.10.1.~~

~~4. Removal of five (5) or more Community Trees on properties zoned for single family residential dwellings that are more than one half acre in size, with or without an existing dwelling.~~

~~52. Multiple Use Zoning District: Removal of up to and including 85% of the total DBH of non-exempt surveyed tree(s) within a SNRA or Significant Grove within any Multiple Use Zone.~~

~~63. Commercial, Residential, or Industrial Zoning District: Removal of up to and including 75% of the total DBH of non-exempt surveyed tree(s) within a SNRA or Significant Grove within any Commercial, Residential, or Industrial Zone.~~

~~74. Removal of a Significant Individual Tree(s).~~

B. Procedure Type. The Type 2 procedure, as described in Section 50.40 of this Code, shall apply to an application for Tree Plan Two. The decision making authority is the Director.

C. Approval Criteria. In order to approve a Tree Plan Two application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Tree Plan Two application.
2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. *The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]*
34. If applicable, ~~pruning of any tree or removal of a Landscape, street, or ea Community tTree(s)~~ pruning of any tree or removal of a Landscape, street, or ea Community tTree(s) is necessary to enhance the health of the tree, grove, group of trees, or an adjacent tree or to eliminate conflicts with structures or vehicles.

4. ~~If applicable, it is necessary to remove diseased of landscape, street, or community trees or trees weakened by age, storm, fire, or other condition.~~
545. If applicable, ~~pruning or removal~~ of any tree ~~or removal of a landscape, street, or community tree~~ is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995 standards and International Society of Arborists (ISA) standards on the subject.
656. If applicable, ~~pruning or removal~~ of any tree ~~or removal of a landscape, street, or community tree~~ is necessary to accommodate *physical* development where no reasonable alternative exists ~~for the development at another location on the site, or where variances to setback provisions of this Code will cause other undesirable circumstances on the site or adjacent properties if the tree is saved.~~
767. If applicable, ~~removal of a landscape tree or street tree or pruning of any tree~~ is necessary because it has become a nuisance by virtue of damage to property or improvements, either public or private, on the subject site or adjacent sites.
878. If applicable, ~~removal of any tree landscape, street, or community tree~~ is necessary to accomplish public purposes, such as installation of public utilities, ~~street widening,~~ and similar needs, where no reasonable alternative exists without significantly increasing public costs or reducing safety.
- ~~9. Removal of a tree or grove shall not increase erosion or any resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~
89. *If applicable, removal of any tree is necessary to enhance the health of the tree, grove, SNRA, or adjacent trees to eliminate conflicts with structures or vehicles.*
910. *If applicable, removal of a tree(s), or trees, within a SNRA or Significant Grove will not result in a reversal of the original determination that the SNRA or Significant Grove is significant based on criteria used in making the original significance determination.*

~~1011. If applicable, removal of a tree(s), or trees, within a SNRA or Significant Grove will not result in the remaining trees posing a safety hazard due to the effects of windthrow.~~

~~1112. If applicable, removal of a tree(s), or trees, within a SNRA or Significant Grove will not result in the remaining trees posing a safety hazard due to edge effects.~~

~~1012~~12. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

- D. Submission Requirements. An application for a Tree Plan Two shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan Two application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan Two application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).
- F. Appeal of a Decision. Refer to Section 50.65.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Previous approval of Tree Plan Two proposal shall not be extended.

3. Tree Plan Three

- A. Threshold. An application for Tree Plan Three shall be required when none of the actions listed in Section 40.90.10 or none of the thresholds listed in Section 40.90.15.1 or Section 40.90.15.2 apply and one or more of the following thresholds apply:

1. ~~Removal of up to and including ninety five percent (95%) of trees within a Significant Natural Resource Area (SNRA). Multiple Use Zoning Districts: Removal of greater than 85% of the total DBH of non-exempt surveyed trees within a SNRA or Significant Grove area that is found on the project site within Multiple Use Zones.~~
2. ~~Residential, Commercial, and Industrial Zoning Districts: Removal of greater than 75% of the total DBH of non-exempt surveyed trees within a SNRA or Significant Grove area that is found on the project site within Residential, Commercial, and Industrial Zones.~~
23. ~~Removal of an individual Historic Trees, a tree within a Historic Grove, or a Historic Grove.~~
3. ~~Removal of a Significant Tree, Grove, or portion thereof.~~
4. ~~Removal of more than ten (10) Landscape or Street Trees.~~

B. Procedure Type. The Type 3 procedure, as described in Section 50.45 of this Code, shall apply to an application for Tree Plan Three. Upon determination by the Director, the decision making authority shall be either the Planning Commission or the Board of Design Review. The determination will be based upon the proposal.

C. Approval Criteria. In order to approve a Tree Plan Three application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Tree Plan Three application.
2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. *The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]*

34. If applicable, removal of a diseased tree or a tree is necessary because the tree has been weakened by age, storm, fire, or other condition.
45. If applicable, removal is necessary to enhance the health of the ~~tree, grove,~~ or adjacent tree(s) to reduce maintenance, or to eliminate conflicts with structures or vehicles.
56. If applicable, removal is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995 standards and International Society of Arborists (ISA) standards on the subject.
67. If applicable, removal is *the minimum* necessary to accommodate *physical* development ~~because~~ where no reasonable alternative exists for the development at another location on the site ~~and, or where~~ variances to setback provisions of the Development Code will not allow the tree(s) to be saved or will cause other undesirable circumstances on the site or adjacent properties.
78. If applicable, removal is necessary because a tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or on an adjacent site, ~~or that pruning in excess of 20 percent of the canopy is required to prevent damage to such improvements or property.~~
89. If applicable, removal is necessary to accomplish a public purposes, such as installation of public utilities, street widening, and similar needs where no reasonable alternative exists without significantly increasing public costs or reducing safety.
- ~~9. Removal of a tree or grove shall not increase erosion or resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~
- ~~10. If applicable, removal of a tree within a SNRA will not substantially reduce the significance of the natural resource.~~

~~11. If applicable, removal of a Significant Tree or tree within a Significant Grove will not eliminate the significance of the grove based upon the original Significant Tree and Grove Inventory analysis.~~

~~1210. If applicable, removal of a tree(s), or trees, within a SNRA or Significant Grove will not result in the reduce the size of the grove to a point where the remaining trees may pose posing a safety hazard due to the effects of windthrow.~~

~~11. If applicable, removal of a tree(s), or trees, within a SNRA or Significant Grove will not result in the remaining trees posing a safety hazard due to edge effects.~~

~~13. If applicable, removal of tree or trees within a Significant Grove will not reduce the size of the grove to a point where the remaining trees may pose a safety hazard due to the effects of windthrow.~~

~~14. If applicable, removal of a tree within a Historic Grove will not substantially reduce the significance of the grove in terms of its original designation on the list of Historic Groves.~~

~~151211.~~ Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

- D. Submission Requirements. An application for a Tree Plan Three shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan Three application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), any other information identified through a Pre-Application Conference, and by a report from a qualified professional.

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan Three application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).
- F. Compliance with Approval. All conditions imposed on an approved Tree Plan Three shall be implemented prior to the removal, pruning, or planting of tree unless otherwise noted in the approval. Compliance with the conditions of approval shall be met as long as the tree exist unless otherwise specified or until modified through a City approval process.
- G. Appeal of a Decision. Refer to Section 50.70.
- H. Expiration of a Decision. Refer to Section 50.90.
- I. Extension of a Decision. Previous approval of Tree Plan Three proposal shall not be extended.

~~4. Tree Plan Four~~

- ~~A. Threshold. An application for Tree Plan Four shall be required when none of the actions listed in Section 40.90.10 or none of the thresholds listed in Section 40.90.15.1 through Section 40.90.15.3 apply and when the following threshold applies:~~
 - ~~1. Removal of more than ninety five percent (95%) of trees within a Significant Natural Resource Area (SNRA).~~
- ~~B. Procedure Type. The Tree Plan Four application is a Comprehensive Plan Amendment application. The procedures and criteria specified in Chapter One of the Comprehensive Plan shall apply.~~

Exhibit 2

Proposed Amendments to Chapter 60, Section 60
(Trees and Vegetation)
(File name on the web: Chapter 60 revision 3.pdf)

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60.60. TREES AND VEGETATION. [ORD 4224; August 2002]

60.60.05. Purpose

Healthy trees and urban forests provide a variety of natural resource and community benefits for the City of Beaverton. *Primary among those benefits is the aesthetic contribution to the increasingly urban landscape. Tree resource protection focuses on the aesthetic benefits of the resource.* In conjunction with processes set forth in Section 40.90 of this Code, this section is intended to help ~~regulate~~ *manage* changes ~~regarding~~ *to* the City's urban forest by establishing regulations and standards for the protection, pruning, removal, replacement, and mitigation for removal of *Protected Trees (Significant Individual Trees, and grove, Historic Trees, and trees within a Significant Natural Resource Area (SNRA) or Significant Grove), Landscape Trees, street tree, and Community Trees.*

60.60.07 Enforcement.

A person found responsible for causing the removal or pruning of a protected tree in violation of the standards set forth in Section 60.60, unless exempt, shall be subject to monetary penalties. In cases of unlawful removal the person must also mitigate the removal as set forth in the mitigation requirements of section 60.60.25.

1. Fine for a violation

Monetary penalties imposed by a court of competent jurisdiction upon conviction for violating any provision of Chapter 60 section 60 of this Ordinance, shall be deposited into the City's Tree Mitigation Fund.

~~A person responsible for causing the removal or pruning of a Protected, Landscape, or Community Tree significant Tree resource not in accordance with the standards set forth in this Section 60.60.25. and the City's adopted Tree Planting and Maintenance Policy (Resolution 3391) unless exempt, shall be subject to the payment of a mitigation fee, and is otherwise required to mitigate the removal as set forth in the mitigation standards of this section. Enforcement regulations are established by the City Code (Chapter 9).~~

~~**1. Fine for a Violation.**~~

~~The fine for causing the removal or pruning of a tree without the appropriate permits/review shall be based on the Community Development Department Development Services fee schedule and be deposited in the City's Tree Mitigation Fund.~~

60.60.10. Types of Trees and Vegetation Regulated

Actions regarding trees and vegetation addressed by this section shall be performed in accordance with the regulations established herein and in Section 40.90 of this Code. The City finds that the following types of trees and vegetation are worthy of special regulation~~protection~~:

1. **Significant *Individual Trees and Groves*.**
2. **Historic Tree.**
3. **Trees within a Significant Natural Resource Areas.**
4. *Trees within Significant Groves.*
5. **Landscape Trees.**
- ~~5. **Street Tree.**~~
6. **Community Trees.**
7. *Mitigation Trees.*

60.60.15 Pruning, Removal, and Preservation Standards

1. Pruning Standards

- A. It shall be unlawful for any person to remove or prune to remove a tree's canopy or disturb the root zone of any ~~significant individual tree, and grove, historic tree, tree within a SNRA, Protected Tree and Landscape tTree, and street tree,~~ except in accordance with the provisions of this Code.
- B. All pruning of a ~~significant individual tree, and grove, historic tree, tree within a SNRA, Landscape tTrees and Protected Trees, and street tree~~ shall be done in accordance with the standards set forth in this section and the City's adopted Tree Planting and Maintenance Policy, also known as Resolution 3391.

2. Removal and Preservation Standards

- A. All removal and planting, including replacement or mitigation planting, of protected ~~Protected trees~~ *Trees* shall be done in accordance with the standards set forth in this section and the City's adopted ~~Tree Planting and Maintenance Policy (Resolution 3391)~~.
- B. Removal of a significant ~~individual tree, and significant grove, Landscape Trees and Protected Trees,~~ and street tree shall require mitigation, which may include tree replacement or other mitigation measures *be shall be mitigated*, as set forth in this section 60.60.25.
- C. For Significant Natural Resource Areas (SNRA) *SNRAs* and Significant ~~g~~ *Groves*, the following additional standards shall apply:
1. *The minimum DBH of non-exempt surveyed trees that must be preserved on a site is as follows:*
 - a) *Multiple Use Zoning Districts: Fifteen percent (15%) of the DBH of non-exempt surveyed trees found on a project site; development located within any Multiple Use zoning district.*
 - b) *Residential, Commercial, or Industrial Zoning District: Twenty five percent (25%) of the DBH of non-exempt surveyed trees found on a project site; development located within any Residential, Commercial, or Industrial zoning district.*
 2. *DBH to be retained shall be preserved in cohesive areas, termed Preservation Areas, when development is proposed in SNRAs or Significant Groves.*
 1. ~~A minimum of 5% of the trees within a SNRA or significant grove area shall be preserved. The area shall be measured by the area of the tree canopy at maturity. SNRA and significant grove preservation shall include preservation of understory vegetation, as well as trees.~~
 23. *Native understory vegetation and trees shall be preserved in Preservation Areas. Significant groves shall be preserved in rounded clusters rather than in linear strips.*

34. *Preservation Areas, conditioned for protection through the Development Review process, shall be preserved in clusters that are natural in appearance rather than in linear strips. Preservation Areas should connect with adjoining portions of the Significant Grove or SNRA on other sites. Significant groves shall provide connectivity with adjoining forested areas.*

45. *Preservation Areas, conditioned for protection through the Design Review process, shall be set aside in conservation easements and recorded with a deed restriction with Washington County, unless otherwise approved by the City. The deed restriction shall prohibit future development and specify the conditions for maintenance if the property is not dedicated to a public agency.*

6. *Preservation Areas, conditioned for protection through the Land Division process, shall be set aside in tracts and recorded with a deed restriction with Washington County, unless otherwise approved by the City. The deed restriction shall prohibit future development and specify the conditions for maintenance if the property is not dedicated to a public agency.*

67. ~~*Native species shall be retained to the extent possible as determined through the development review process. Within the development review process, where a person is presented with a particular decision whether to retain a native or non-native tree, the native species shall be retained provided all other considerations between the two categories of trees remain equal. Native species include, but are not limited to: Grand Fir, Douglas fir, Western Hemlock, Pacific Yew, Western Red Cedar, Bigleaf Maple, Oregon White Oak, Oregon Ash, Red Alder, Western Flowering Dogwood, Ponderosa Pine, and Black Cottonwood.*~~

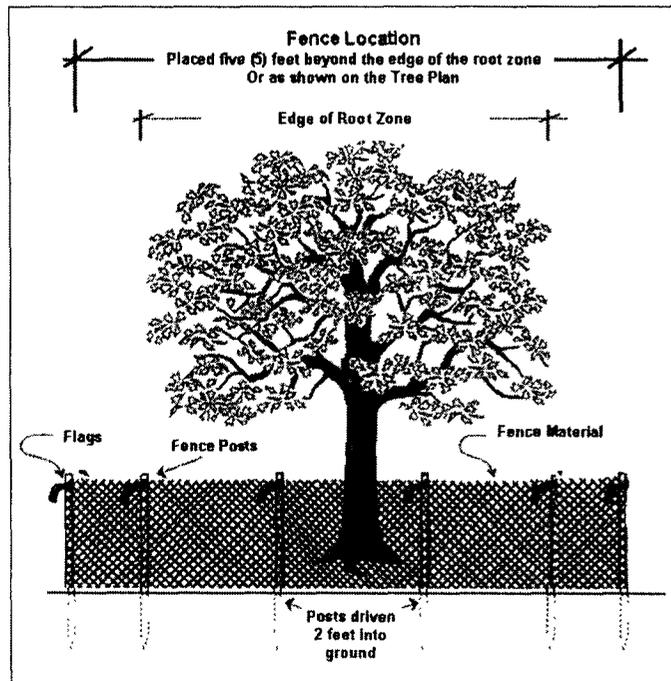
Non-native tree species may also be retained for aesthetic, unique condition, size, and wildlife habitat purposes.

8. *Hazardous and dead trees within Significant Groves and SNRAs should be fallen only for safety and left at the resource site to serve as habitat for wildlife, unless the tree*

has been diagnosed with a disease and must be removed from the area to protect the remaining trees.

60.60.20. Tree Protection Standards During Development

1. Trees classified as ~~Significant individual Tree, and significant Grove, historic tree, tree within a SNRA, and Landscape Tree, and street tree~~ *Protected Trees* under this Code shall be protected during development in compliance with the following:
 - A. A construction fence must be placed around a tree or grove at ~~least at~~ *beyond* the edge of the root zone. The fence shall be placed before *physical development* ~~construction~~ starts and remain in place until ~~construction~~ *physical development* is complete. The fence shall meet the following:
 1. The fence shall be a four foot (4') tall orange plastic or snow fence, secured to six foot (6') tall metal posts, driven two feet (2') into the ground. Heavy 12 gauge 12-wire shall be *strung between each post and* attached to the top and midpoint of each post. Colored tree flagging indicating that this area is a tree protection zone is to be placed every five (5) linear feet on the fence to alert construction crews of the sensitive nature of the area.



2. Other City approved protection ~~devices~~ *measures* that provide equal or greater protection may be permitted, *and may be required as a condition of approval.*

B. Within the protected root zone of each tree, the following development shall not be permitted:

1. *Construction or placement of n*New buildings.
2. *Grade change or cut and fill, ~~during or after construction,~~ except where hand excavation is approved with the submittal of an arborist's report, as part of application approval.*
3. New impervious surfaces.
4. Trenching for utilities, irrigation, or drainage.
5. *Staging or storage of materials ~~and equipment during construction~~any kind.*
6. *Vehicle maneuvering or parking ~~during construction.~~*

60.60.25. Mitigation Standards~~Standards~~*Requirements*

1. The following standards shall apply to mitigation for the removal of a ~~s~~Significant ~~i~~Individual ~~t~~Trees or trees within Significant ~~g~~Groves or SNRAs.

A. All mitigation tree planting shall take place in conformance with accepted arboricultural practices ~~and the City's Tree Planting and Maintenance Policy (Resolution 3391)~~ and shall be spaced a minimum of ten (10) feet apart.

B. *As of [fill in effective date of ordinance], all trees planted for the purpose of tree removal mitigation shall be maintained in accordance with the approved mitigation plan. Monitoring of mitigation planting shall be the ongoing responsibility of the property owner where mitigation trees are located, unless otherwise approved through Development Review. Monitoring shall take place for a period of two (2) years. Trees that die shall be replaced in accordance with the tree replacement standards of this section.*

- C. *As of [fill in effective date of ordinance], all trees planted for the purpose of tree removal mitigation shall be set aside in a conservation easement or a separate tract ~~and~~ shall be designated as "Mitigation Trees" and recorded with a deed restriction identifying the trees as "Mitigation Trees". ~~that are subject to these same standards in the future.~~*
 - D. *Each ~~tree~~ Mitigation Tree planted for ~~tree removal mitigation~~ shall ~~include~~ be insured through a performance security, equal to 110 percent of the cost of the landscaping, filed with the City for a period of ~~three~~ two (2) years to ensure establishment of the mitigation planting.*
 - E. *Street trees shall not be counted as providing mitigation of a SNRA or Significant Grove.*
 - F. *Transplanting trees within the project site is not subject to mitigation. However, a performance security is required for transplanted tree(s) to insure that the tree(s) will be replaced if the tree(s) is dead or dying at the end of two (2) years.*
 - ~~H. *Moving trees within the project site is not subject to mitigation, but is subject to a performance security so that the trees may be replaced if the moved tree is dead or dying (defined in this provision as greater than 20% dead limbs) in the new location at the end of three years.*~~
2. *Mitigation for the removal of trees from Significant Groves or SNRAs shall ~~occur in the following manner~~ be required as follows:*
- A. *Calculate the total DBH of the trees to be removed. Denote both deciduous and coniferous trees in separate tables; however, both tables will result in the sum total of the ~~trees~~ DBH to be removed.*
 - B. *If the total DBH of trees to be removed is less than or equal to 50% of the total DBH of surveyed trees on the site, then no mitigation is required for the trees to be removed.*
 - C. *If the total DBH of trees to be removed is greater than 50% of the total DBH of surveyed trees on site, then mitigation is required for the amount of DBH to be removed that exceeds 50% of the total DBH of surveyed trees on site.*

For example, if 75 inches is the total amount of DBH to be removed from a site and 60 inches of DBH represents 50% of the total surveyed DBH, then 15 inches of DBH is the total required amount of mitigation.

3. *In addition to the requirements listed in Section 60.60.25.1 Mitigation Requirements, the following mitigation requirements shall apply for the removal of trees from Significant Groves or SNRAs.*
 - A. *Dead or dying trees within a Significant Grove or SNRA shall be fallen when required for safety. Such tree falling shall not require mitigation. However, the fallen log shall remain in the Significant Grove or SNRA, to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and the log must be removed from the area to protect the remaining trees.*
 - B. *All trees planted for mitigation must meet the following minimum requirements:*
 - i. *Deciduous trees shall be replaced with native deciduous trees that are no less than two caliper inches (2") in diameter*
 - ii. *Coniferous trees shall be replaced with native coniferous trees that are no less than three feet (3') in height and no more than four feet (4') in height. A three foot (3') mitigation tree shall equate to 2" DBH and four foot (4') mitigation tree will equate to 3" DBH.*
 - iii. *The total linear DBH measurement of the trees to be removed shall be mitigated with the necessary number of trees at least two caliper inches (2") in diameter.*

4. *Significant Grove or SNRA On-Site Mitigation, 1:22:1 Planting Ratio.*

- A. *Residential, Commercial, or Industrial Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 75% of the surveyed non-exempt DBH in Residential, Commercial, or Industrial zones, if all mitigation tree planting is to occur on-site, the ratio for planting shall be on a 1:22:1 basis.*

For example, if 20 inches of DBH is the total amount of required mitigation, if all the mitigation planting occurs on the site where the removal is to occur, then only 10 inches of DBH is required to be planted.

- B. *Multiple Use Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 85% of the surveyed non-exempt DBH in ~~Multiple Use zones~~, if all mitigation tree planting is to occur on-site, the ratio for planting shall be on a ~~1:22:1~~ basis.*

For example, if 20 inches DBH is the total amount of required mitigation, if all the mitigation planting occurs on the site where the removal is to occur, then only 10 inches of DBH is required to be planted.

5. *Significant Grove or SNRA Off-Site Mitigation, 1:1 Planting Ratio.*

- A. *Residential, Commercial, or Industrial Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 75% of the surveyed non-exempt DBH in ~~Residential, Commercial, or Industrial zones~~ or which remove more than 50% and up to and including 85% of the surveyed non-exempt DBH in ~~Multiple Use zones~~, if mitigation tree planting is to occur off-site, the ratio for planting shall be on a 1:1 basis.*

- B. *Multiple Use Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 85% of the surveyed non-exempt DBH in ~~Multiple Use zones~~, if mitigation tree planting is to occur off-site, the ratio for planting shall be on a 1:1 basis.*

6. *Significant Grove or SNRA Tree Plan 3 Mitigation, 1:1 Planting Ratio.*

- BA. *Residential, Commercial, or Industrial Zoning Districts: For tree removal proposals which remove more than 75% and up to and including 100% of the surveyed non-exempt DBH in ~~Residential, Commercial, or Industrial zones~~, all of the required mitigation tree planting shall be on a 1:1 basis whether planted on-site or off-site. ~~This requirement does not supersede or otherwise nullify the on-site mitigation planting provisions of 60.60.xx.x above.~~*

- CB. *Multiple Use Zoning Districts: For tree removal proposals which remove more than 85% and up to and including 100% of the surveyed non-exempt DBH in ~~Multiple Use zones~~, all of the required mitigation tree planting shall be on a 1:1 basis whether planted on-site or off-site. ~~This requirement does not supersede or otherwise nullify the on-site mitigation planting provisions of 60.60.xx.x above.~~*

67. In-Lieu Fee

If the total caliper inch on-site- or off-site tree planting mitigation does not equal the DBH inch removal or if no tree planting mitigation is proposed, the remaining or total caliper inch tree planting mitigation shall be provided as a fee in-lieu payment. The in-lieu fee shall be specified in the Community Development In-Lieu Fee schedule. Fee revenues shall be deposited in the City's Tree Mitigation Fund.

The following two tables illustrate how required mitigation will be calculated:

Mitigation Example for Mixed Use Zones – SAMPLE SITE*	
DBH of Surveyed Trees	1318.00
DBH Proposed for Removal (MAXIMUM removal allowed is 85% Surveyed Tree DBH)	1120.00
Mitigation Threshold (50% Surveyed Tree DBH)	659.00
DBH to be Mitigated (85% DBH Removal – 50% DBH Threshold = 25% Surveyed DBH)	461.00
On Site Mitigation (50% of the DBH to be mitigated)	230.50
Off Site OR Partial Off Site Mitigation (100% of the DBH to be mitigated)	461.00

**Please note: This "Sample Site" is fictional and is only meant to be a representation of how the regulations of Section 60.60 Trees and Vegetation could be applied to a site.*

Mitigation Example for All Other Zones – SITE SAMPLE*	
DBH of Surveyed Trees	1318.00
DBH Proposed for Removal (MAXIMUM removal allowed is 75% Surveyed Tree DBH)	988.00
Mitigation Threshold (50% Surveyed Tree DBH)	659.00
DBH to be Mitigated (75% DBH Removal – 50% DBH Threshold = 25% Surveyed DBH)	329.00
On Site Mitigation (50% of the DBH to be mitigated)	164.50
Off Site OR Partial Off Site Mitigation (100% of the DBH to be mitigated)	329.00

**Please note: This "Sample Site" is fictional and is only meant to be a representation of how the regulations of Section 60.60 Trees and Vegetation could be applied to a site.*

7.8. *In addition to the standards in Mitigation Standards 1, the following standards shall apply to mitigation for the removal of a Significant Individual Tree:*

- A. *A replacement tree shall be a substantially similar species or a tree approved by the City considering site characteristics.*
- B. *Mitigation for the removal of a Significant Individual Tree shall be the required replacement of each tree on based on the total linear DBH measurement. Replacement of trees shall be as follows:*

**Replacement Table for
Significant Deciduous Trees**

<i>Caliper-inches removed</i>	<i>Minimum total caliper-inches of replacement trees</i>
<i>6-12"</i>	<i>4"</i>
<i>13-18"</i>	<i>6"</i>
<i>19-24"</i>	<i>8"</i>
<i>Over 25"</i>	<i>9"</i>

**Minimum replacement tree size is 2 caliper-inches for deciduous trees.*

**Replacement Table for
Significant Coniferous Trees**

<i>Caliper-inches removed</i>	<i>Minimum number of replacement Trees</i>
<i>6-12"</i>	<i>1</i>
<i>13-24"</i>	<i>2</i>
<i>Over 25"</i>	<i>3</i>

Minimum replacement tree size is 3-feet minimum to 4-feet maximum height for coniferous trees.

~~A. Mitigation for the removal of a significant tree or grove shall be the required replacement of each tree on a one-to-one basis according to total linear DBH measurement. Replacement of trees shall be as follows:~~

- ~~1. Calculate the sum of the cumulative DBH measurement of the tree to be removed.~~
- ~~2. The total linear DBH measurement of the tree to be removed shall be replaced with a tree that is at least two caliper inches (2") in diameter unless otherwise approved by the City. The total caliper inches of the replacement tree shall be at least equal to the sum total of the linear DBH measurement of the removed tree.~~
- ~~3. If the total caliper inch replacement does not equal the DBH inch removal, the remaining caliper inch replacement will be provided in lieu. The in lieu fee shall be specified in the Community Development Department fee schedule and be deposited in the City's Tree Mitigation Fund.~~

~~B. Mitigation may be satisfied by one, or a combination of more than one, of the following options:~~

- ~~1. Planting of trees on the site where tree or grove removal is proposed;~~
- ~~2. Planting of trees off the site at a location or locations to be determined by the City; or~~
- ~~3. A fee paid in lieu of tree planting and deposited in the City's Tree Mitigation Fund for future natural resource mitigation efforts. The assessment of tree mitigation shall be determined by the caliper size of the tree removed.~~

~~C. Any tree required for mitigation shall be a similar species or a tree approved by the City considering site characteristics with a preference given to native species, as listed in Section 60.60.15 of this Code.~~

~~D. If a mitigation tree of the species of the tree removed or damaged is not reasonably available, the City may allow replacement with a different species with equivalent natural resource value.~~

~~E. All mitigation tree planting shall take place in conformance with accepted arboricultural practices and the City's Tree Planting and Maintenance Policy.~~

~~F. All trees planted for mitigation must have a minimum caliper of two inches (2") except where other standards are required through development review.~~

~~G. All trees planted for tree removal mitigation shall be maintained in accordance with the approved mitigation plan. Monitoring of mitigation planting shall be the ongoing responsibility of the property owner. Trees that die shall be replaced.~~

29. The following standards apply to the replacement of a ~~Landscape~~ ~~Tree or street tree~~:

A. A replacement tree shall be a substantially similar species or a tree approved by the City considering site characteristics.

B. If a replacement tree of the species of the tree removed or damaged is not reasonably available, the City may allow replacement with a different species ~~with equivalent natural resource value.~~

C. Replacement of a ~~Landscape~~ ~~Tree or street tree~~ shall be based on total linear DBH calculations at a one-to-one ratio depending upon the capacity of the site to accommodate replacement tree or unless otherwise specified through development review. Replacement of tree on a one-to-one basis shall be as follows:

1. Calculate the sum of the total linear DBH measurement of the tree to be removed.
2. The total linear DBH measurement of the tree to be removed shall be replaced with tree at least 1.5 caliper inches in diameter. The total caliper inches of the replacement tree shall be at least equal to the sum total of the linear DBH measurement of the removed tree.

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Exhibit 3

Proposed Amendments to Chapter 90, Definitions
(File name on the web: Chapter 90 revision 3.pdf)

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CHAPTER 90 - DEFINITIONS

The following words and phrases shall be construed to have the specific meanings assigned to them by definition.

Words used in present tense include the future tense, and the singular includes the plural, unless the context clearly indicates the contrary.

The term "shall" is always mandatory and the word "may" is permissive.

The masculine gender includes the feminine and neuter.

Caliper Measurement. [ORD 4224; August 2002] The thickness of trees measured in inches. A caliper measurement for trees shall be measured 12 inches above the soil line, or across the stump if the tree has been severed at less than 12 inches above the soil line.

Canopy. Area of the tree above ground including the trunk and branches measured in mass or volume.

Certified Arborist. *An individual who has demonstrated knowledge and competency through obtainment of the current International Society of Arboriculture arborist certification, or who is a member of the American Society of Consulting Arborists.*

City Arborist. *The person designated as such by the Director of Operations.*

Community Tree. [ORD 4224; August 2002] A healthy tree of at least ten inches (10") DBH located on developed, partially developed, or undeveloped land. Community trees—~~Trees~~ are not those trees identified as ~~significant~~ *Significant*, ~~historic~~ *Historic*, ~~street~~ *Landscape*, or ~~conditioned~~ *Mitigation trees*—~~Trees~~, or trees within a Grove or a Significant Natural Resource Area, ~~or trees that bear edible fruits or nuts grown for human consumption.~~

Crown Cover. The area within the drip line or perimeter of the foliage of a tree.

Dead Tree. [ORD 4224; August 2002] A tree that is lifeless. Evidence of lifelessness may include unseasonable lack of foliage, brittle dry branches, or lack of any growth during the growing season.

Development. The act of bringing about growth; to construct or alter a structure, to make a change in use or appearance of land, to divide land into parcels, or to create or terminate rights of access. [ORD 4111; June 2000]

Development. Any plat, partition, subdivision or planned unit development that is created under the city's land division or zoning regulations. [ORD 4111; June 2000]

Development. Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard. (ORD 3563)

Dying Tree. *A tree with greater than 20% dead limbs during the growing season.*

~~**Edge Effect.** *The result of the presence of two adjoining plant communities on the numbers and kinds of animals present in the immediate vicinity (Webster's)*
The negative impacts on wildlife that occur along the border of a fish and wildlife habitat area such as greater vulnerability to predators, nonnative plants, traffic and noise. (Metro)
habitat conditions (such as degree of humidity and exposure to light or wind) created at or near the more or less well defined boundary between ecosystems, as, for example, between open areas and adjacent forest. (www.for.gov.bc.ca glossary)~~

Enhancement Activities. *Activities implemented for the sole purpose of improving or protecting, or both, the ecological functions and values of streams, wetlands and forest resources. Enhancement Activities do not include any excavation, fill, grading, or other form of earth moving of up to and including fifty (5) cubic yards of earth, the disturbance of up to and including 500 gross square feet of surface area, or both.*

Diameter at Breast Height (DBH). [ORD 4224; August 2002] The diameter of the trunk of a tree measured at 54 inches above natural grade.

Disease. *An impairment of the living plant or its components that interrupts or modifies the performance of the vital functions, as applied to trees and vegetation.*

Drip Line: [ORD 4224; August 2002] A line on the ground below the edge of the maximum overhead canopy of a tree.

Exempt Tree or Vegetation. The full height and breadth of vegetation that the Planning Director has identified as "solar friendly"; any vegetation listed on a plat map, a document recorded with the plat, or a solar access permit as exempt.

Grove. A stand of three or more trees of the same or mixed species. [ORD 4224; August 2002]

Hazardous Tree. *A tree that possesses a structural defect which poses an imminent risk if the tree, or part of the tree, were to fall on someone or something of value (target).*

- *Structural Defect. Any structural weakness or deformity of a tree or its parts. A tree with a structural defect can be verified to be hazardous by a certified arborist and confirmed as such by the City Arborist.*
- *Target. People, vehicles, structures or property, such as other trees or landscape improvements. A tree may not be a hazard if a 'target' is absent within the falling distance of the tree or it's parts (e.g., a substandard tree in a non-populated area away from pedestrian pathways may not be considered a hazard).*

Historic Tree or Historic Grove. [ORD 4224; August 2002] Tree(s) designated by the City to be of historic significance based on their association with historic figures, properties, or the general growth and development of the City.

Invasive. A type of plant that is not local to an area, but rather originates from another place. Also called "exotic," "non-native," or "alien" species.

Inventory. A census (survey) of historical, architectural, archeological or cultural buildings, structures, objects, districts or sites. Each resource (i.e. building, structure, etc.) shall have a location; a physical description, photograph, and a discussion of the resource's significance.

Landmark. Those buildings, structures, objects or sites that are fifty (50) years old or older that are significant or important because of historic, architectural, archeological, or cultural value as shall be designated by the Beaverton City Council. All designated Landmarks shall have a location, a physical description, photograph and a discussion of the landmark's significance. Buildings, structures, objects or sites that are less than 50 years old may be designated if they are exceptional in terms of historic, architectural, archeological or cultural value.

Landscaping. The combination of natural elements such as trees, shrubs, ground covers, vines, and other living organic and inorganic material which are installed for purposes such as creating an attractive and pleasing environment and screening unsightly views. Other improvements that promote an attractive and pleasing environment that may be included as landscaping includes features such as fountains, patios, decks, fences, street furniture and ornamental concrete or stonework areas. [ORD 4224; August 2002]

Landscaping Area(s). [ORD 4224; August 2002] An open area unoccupied except for landscaping. Pathways sufficient to provide access to buildings and utility equipment are permitted within a landscape area.

Landscape Tree. [ORD 4224; August 2002] A tree, other than a Significant Tree, Historic Tree, or Tree within a Significant Natural Resource Area, that has been preserved or planted as a component of an approved landscaping plan.

Mitigation Tree. A tree planted in an effort to alleviate the impact of the removal of another tree(s). A mitigation tree takes on the designation of the tree(s) removed (i.e. tree(s) planted to mitigate for a tree(s) removed from a grove or SNRA becomes a tree(s) protected as if it were part of a grove or SNRA).

Native Understory. Foliage layer located between the floor and the canopy of a forest, wood, or grove containing plant materials that have origins in the Tualatin Valley Region of the state of Oregon, ~~having been allowed to remain in a natural state. Limited to Pplant species identified on the MetroMetro's Native Plant List or in Clean Water Services' Design and Construction Standards and or Clean Water Services Native Plant Lists apply.~~

Native Vegetation. Plant materials that have origins the Tualatin Valley Region of the state of Oregon, as listed on ~~the MetroMetro's Native Plant List or in Clean Water Services' Design and Construction Standards and or Clean Water Services Native Plant Lists.~~

Natural areas. [ORD 4332; November 2004] Natural areas may include, but are not limited to, wetlands, riparian areas, Significant Natural Resource Areas, and significant groves of trees.

Non-Exempt Surveyed Tree. Trees that fit within the definition of Surveyed Tree, with the exception of Nuisance Trees.

Non-Native. A type of plant that is not local to an area, but rather originates from another place.

Noxious Vegetation. [ORD 4224; August 2002] ~~As applied to Significant Natural Resource Areas (SNRA), lands designated as significant on the Local Wetland Inventory, and Clean Water Services designated sensitive areas, the following plants, bushes, and trees are deemed to be noxious vegetation: Scot's Broom, French Broom, Kudzu, English Ivy, Purple Loosestrife, Reed Canary Grass, Himalayan Blackberry, Evergreen Blackberry, Norway Maple, Tree of Heaven, Garlic Mustard, Lesser Celandine, Canada Thistle, Common Thistle, Western Clematis, Traveler's Joy, Field Morning Glory, Lady's Nightcap, Pampas Grass, Hawthorne (except native species), Queen Anne's Lace, South American Waterweed, Common Horsetail, Giant Horsetail, Crane's Bill, Robert Geranium, Common Bladderwort, St. John's Wort, English Holly, Yellow Flag, Duckweed, Water Lentil, Eurasiana Watermilfoil, Annual Bluegrass, Water Smartweek, Giant Knotweed, English~~

~~Laurel, Portuguese Laurel, Tansy Ragwort, Blue Bindweed, Climbing Bindweed, Hairy Nightshade, Bamboo, Periwinkle (large and small leaf), and Spiny Cockleb.~~

Nuisance PlantsVegetation. ~~Plant Sspecies that intrudeinvade natural areas eventually resulting in their domination of, dominate (or both) areas without receiving direct competition from native plant species. Also iIncludes those nuisance and prohibited species listed on MetroMetro's Native Plant List or in Clean Water Services' Design and Construction Standards's Native Plant List. Also see invasive and non-native.~~

~~**Protected Tree.** Includes Significant Individual Trees, Historic Trees, Trees within a Significant Natural Resource Area or Significant Grove, and Mitigation Trees.~~

Open Space, Active. [ORD 4332; November 2004] Open space where human activities include recreational and social opportunities such as play fields, playgrounds, swimming pools, plazas and other recreational facilities.

Open Space, Passive. [ORD 4332; November 2004] Open space where human activities are limited to defined walking and seating areas. Does not include environmentally sensitive areas such as a wetland.

Preservation. The identification, study, protection, restoration, rehabilitation, or enhancement of designated Landmarks.

Preservation District. A geographic area with a lesser concentration of historical or architectural significant landmarks or a concentration of contributing resources.

Preservation Resource Center. Research repository for historic resource inventory documents and related historic materials.

~~**Protected Tree.** Includes Significant Individual Trees, Historic Trees, Trees within a Significant Natural Resource Area or Significant Grove, and Mitigation Trees.~~

~~**Pruning, Minor.** [ORD 4224; August 2002] Removal of between 5% and up to and including 20%less than 10% of the a tree's canopy or disturbance of less than 10% or less of a tree's the root system.~~

~~**Pruning, Major.** [ORD 4224; August 2002] Removal of greater than 2010% of the tree's canopy or disturbance of over 10% of the root system.~~

Qualified Professional. [ORD 4224; August 2002] As the term applies to trees, a professional with academic and field experience that demonstrates expertise in urban forestry. This may include arborists certified by the International Society of Arboriculture, foresters certified by the Society of American Foresters, a registered

landscape architect, or silvaculturalist. A qualified professional must possess the ability to evaluate the health and hazard potential of existing trees, and the ability to prescribe appropriate measures for preservation of trees during land development.

~~**Reasonably Available.** As applied to mitigation tree planting, a plant species shall be considered to be reasonably available if the species is stocked in sufficient quantities needed for a mitigation project at three (3) or more separate retail or wholesale nurseries, known to stock native plants, of separate ownership within Washington, Multnomah or Clackamas counties.~~

As applied to mitigation tree planting, a plant species shall be considered reasonably available if the plant is found to be available for purchase at up to three separate retail or wholesale nurseries, known to stock native plants, of separate ownership within Washington, Multnomah, or Clackamas counties or a combination thereof. A plant species shall be considered to be reasonably unavailable if the species cannot be readily found at three (3) separate retail or wholesale nurseries, known to stock native plants, of separate ownership within Washington, Multnomah, or Clackamas counties or a combination thereof.

Shade. A shadow cast by the shade point of a structure or vegetation when the sun is at an altitude of 21.3 degrees and an azimuth ranging from 22.7 degrees east and west of true south.

Shade Point. The part of a structure or non-exempt tree that casts the longest shadow onto the adjacent northern lot(s) when the sun is at an altitude of 21.3 degrees and an azimuth ranging from 22.7 degrees east and west of true south; except a shadow caused by a narrow object such as a mast or whip antenna, a dish antenna with a diameter of 3 feet or less, a chimney, utility pole, or wire. The height of the shade point shall be measured from the shade point to either the average elevation at the front lot line or the elevation at the midpoint of the front lot line. If the shade point is located at the north end of the ridgeline of a structure oriented within 45 degrees of a true north-south line, the shade point height computed according to the preceding sentence may be reduced by 3 feet. If a structure has a roof oriented within 45 degrees of a true east-west line with a pitch that is flatter than 5 feet (vertical) in 12 feet (horizontal) the shade point will be the eave of the roof. If such a roof has a pitch that is 5 feet in 12 feet or steeper, the shade point will be the peak of the roof (see Figures 4 and 5 - SOL).

Shade Reduction Line. A line drawn parallel to the northern lot line that intersects the shade point (see Figure 6 - SOL).

Shadow Pattern. A graphic representation of an area that would be shaded by the shade point of a structure or vegetation when the sun is at an altitude of 21.3

degrees and an azimuth ranging between 22.7 degrees east and west of true south (see Figure 12 - SOL).

Significant Grove. *Groves that are mapped on the City's Inventory of Significant Trees and Groves, that have a unique identification code and include all species within the grove boundary as listed in the inventory documents for that grove code.*

Significant Natural Resource Area (SNRA). [ORD 4224; August 2002] Resources identified in Volume III of the Comprehensive Plan as "significant" pursuant to Statewide Planning Goal 5.

Significant Tree. *A tree or grouping of trees that is mapped on the City's Inventory of Significant Trees and Groves, which has a unique identification code as listed in the inventory documents for that individual tree code.*

Significant Tree and Grove Inventory Analysis. [ORD 4224; August 2002] The inventory of significant trees and groves conducted under the direction of the Beaverton Board of Design Review in 1991. The criteria on which listed trees and groves were determined to be significant are as follows:

1. An individual tree shall be considered significant if the Board finds:
 - (a) The tree has a distinctive size, shape, or location which warrants a significant status; or
 - (b) The tree possesses exceptional beauty which warrants a significant status; or
 - (c) The tree is significant due to a functional or aesthetic relationship to a natural resource.
2. A grove as defined in Section 90 shall be considered significant if the Board finds that:
 - (a) The grove is relatively mature and evenly aged; and
 - (b) The grove has a purity of species composition or is of a rare or unusual nature; and
 - (c) The grove is in a healthy growing condition; or
 - (d) The grove has a crucial functional and/or aesthetic relationship to a natural resource.

Site. That parcel of real property in common ownership, notwithstanding that the particular application may be for development of a portion of the site only. Conveyance of less than fee title to different persons, such as by ground lease, shall not operate to prevent the requiring of Master Site Plan review and action by the Board of Design Review on the complete parcel.

Solar Friendly Tree. A tree which the Director has determined does not cause significant winter shade due to foliar period and branch structure. The Director shall maintain a list of generally recognized solar friendly trees.

Street Tree. [ORD 3989, July 1997] Any tree located within the public or private right of way or easement for vehicular access, or associated public utility easements.

Surveyed Tree. Trees on a proposed development site that are required to be identified in a Tree Plan application. Trees required to be surveyed include all trees greater than or equal to ten (10) inches DBH (including nuisance trees) and the following trees greater than or equal to six (6) inches DBH: western hemlock (Tsuga heterophylla) or mountain hemlock (Tsuga mertensiana) trees, Pacific madrone (Arbutus andrachne) trees, and big-leaf maple (Acer macrophyllum) trees.

Tract. [ORD 4224; August 2002] A non-buildable unit of land created by a partition, subdivision, deed, or other instrument recorded with the appropriate county recorder. This includes a lot, a lot of record, or a piece of land created through other methods.

Undevelopable area. An area that cannot be used practicably for a habitable structure, because of natural conditions, such as slopes exceeding 20% in a direction greater than 45 degrees east and west of true south, severe topographic relief, water bodies, or conditions that isolate one portion of a property from another portion so that access is not practicable to the unbuildable portion; or manmade conditions, such as existing development which isolates a portion of the site and prevents its further development; setbacks or development restrictions that prohibit development of a given area of a lot by law or private agreement; or existence or absence of easements or access rights that prevent development of a given area.

Vegetation. Any woody, perennial plant, deciduous, evergreen or coniferous which is not defined as a tree.

Windthrow. [ORD 4224; August 2002] A tree or trees uprooted or felled by the wind.



CITY of BEAVERTON

4755 S.W. Griffith Drive, P.O. Box 4755, Beaverton, OR 97076 General Information (503) 526-2222 V/TDD

CITY OF BEAVERTON SUPPLEMENTAL STAFF REPORT # 4

TO: Planning Commission

STAFF REPORT DATE: Wednesday, March 23, 2005

STAFF: Barbara Fryer, AICP, Senior Planner
Leigh Crabtree, Associate Planner

SUBJECT: TA 2004-0011
(Tree Code Text Amendments)

REQUEST: Amendments to Chapter 40, Chapter 60 and Chapter 90 of the Beaverton Development Code, currently effective through Ordinance 4332 (January 2005) to modify and clarify tree plan regulations.

APPLICANT: City of Beaverton
Planning Services Division
Barbara Fryer, AICP, Senior Planner
4755 SW Griffith Drive
Beaverton Oregon 97006

AUTHORIZATION: Ordinance 2050 (Development Code) effective through Ordinance 4332 (January 2005)

APPLICABLE CRITERIA: Ordinance 2050, effective through Ordinance 4332, Section 40.85.15.1.C.1-7 (Text Amendment Approval Criteria)

HEARING DATE: Wednesday, March 30, 2005

RECCOMENDATION: Staff recommends the Planning Commission choose option 1, 2 or 3 for Section 40.90.10.15 and **APPROVE** TA 2004-0011 (Tree Code Text Amendments), as attached as Exhibits 1, 2, and 3 of this Supplemental Staff Report as modified by the selection of Option 1, 2 or 3.

I. SUMMARY OF THE MARCH 16, 2005 PLANNING COMMISSION HEARING

- The Planning Commission expressed general support for option A for section 40.90.10.1 and 40.90.15.2.C. Staff made the appropriate change and only option A is shown in Exhibit 1 to this staff report.
- The Planning Commission expressed general support for the changes that staff made to the text, except the issue regarding Active Timber Production Lands.
- The subject of the March 30, 2005 Planning Commission hearing is the Active Timber Production Land issue.

II. ACTIVE TIMBER PRODUCTION LAND ISSUE

Considerable dialogue among the Planning Commissioners has occurred regarding active timber harvest and issues that have resulted from potential language in the Development Code. Staff consulted with the Oregon Department of Forestry (ODF) to clarify the roles of the City and ODF. Brad Knotts of ODF reviewed the draft code language that staff submitted in the last supplemental staff report (dated March 2, 2005). Mr. Knotts replied as follows:

“1. The proposed language in 40.90.15 (either option a or b) presents a problem. Either of the options apparently would exempt forestland in forest tax deferral status from the city ordinance, but at the same time prohibit clear cutting, as defined in the ordinance. Exempting parcels from local forest practice ordinances (and leaving them under the Forest Practices Act) based on tax deferral status is acceptable, although it does make it difficult for the Forestry Department, local government, and landowner to keep track of what applies where, especially as tax designations change for a property over time. However, as indicated in the publication *Guidelines for Developing Urban Forest Practices Ordinances* (see page 5) the intent of ORS 527.722 is that for a particular area, either the local government ordinance or the Forest Practices Act will have jurisdiction, but not both. The proposed language violates this principle by leaving parcels taxed as forestland under the Forest Practices Act, but then prohibiting one of the forest practices allowed under the act. Noted: The guideline publication mentioned above is available at <http://www.odf.state.or.us/pcf/Pub/ucf/UrbanFP.pdf>.

The issue is a little more clouded in that the proposed language parallels what is in the existing Washington County ordinance, to which a property outside the city but inside the UGB is currently subject (I am going on what I understood you to be saying – I didn't have time to look up the county ordinance). I realize that the county ordinance has been around for some time, and objecting to it now creates some confusion. However, the Forestry

Department recommends that newer ordinances conform to current statutory requirements and interpretations.

2. ORS 527.722 requires local government forest practice regulations to protect soil, air, water, and fish and wildlife resources. No particular level of protection is specified, but it should be something that is reasonable for the natural resources and the city. At first glance, it appears that the ordinances provide adequate protection, but I didn't have time to consider them in depth. The city staff should review them to ensure that those resources will be protected."

The *Guidelines for Development Urban Forest Practices Ordinances* are attached as Exhibit 4. Mr. Knotts also sent the email to other forestry department personnel. The Protection Unit Forester for the Forest Grove District, Mitch Taylor, also sent comments. His comments are as follows:

"In light of your very quick turn-around time for review I have looked over the attached documents and can only offer my support for the issues that Brad has already raised. I, too, have concerns with the language in 40.90.10.15, either option.

It is very difficult for our field foresters to process notifications of operations that originate from the City of Tigard, for instance, which uses the same forestland deferral filter you are proposing. There is not yet a consistent way for us to get up to date information on the changes in deferral status, so our reference maps can be out of date at any time. This results in confusion for the regulating authorities, not to mention the landowners and their operators/contractors. It would be even more impractical for us to then have to make further clarification as to the type of harvest operation, down to the number of trees of a certain diameter, vigor and species mix to be left per acre, before we could determine whose jurisdiction it is. In the case where the harvest plan specifies leaving 50 ten inches trees per acre, ODF would have jurisdiction, but the city would have the responsibility to enforce the 50 trees per acre requirement., as well as to make an assessment of the health, diameter and species proportion requirements it proposes. My strong suspicion is that nearly all of these deferral pieces undergo a land use change and are taken off the deferral roles once the harvest is completed. Whether they fall under the FPA or the municipal ordinance for the harvest, they are most likely never going to see another commercial harvest of timber as the primary land use.

It is probably obvious that I have an opinion. I much prefer to see local jurisdictions develop ordinances for which it is easy to determine where they apply on a resource map and that the maps do not have the potential to

change in the short term. It is also quite clear that the limits of the FPA do not begin to serve the purposes of the protection of urban and community forests, as envisioned by Beaverton, Tigard and probably all other municipal jurisdictions. Trying to administer the FPA within UGB's and city limits is like pounding a square peg in a round hole.

I suggest looking for a cleaner break where cities can take an all or nothing approach. Decide what you want to protect, where and how to protect it and then write and administer your own ordinance. Get the FPA out of urban forestry.

I truly mean for this to be helpful. I hope it is."

In light of the learned information of our colleagues at the Oregon Department of Forestry, staff proposes three options:

Option 1 (Exclusive ODF jurisdiction)

40.90.10.15 The harvesting of forest tree species for the commercial value of the timber on tax lots 1S132CD09100, 1S132CD09000, and 1S132CC11300 is exempt from the City's Tree Regulations and the Forest Practices Act applies.

Option 2 (Exclusive City jurisdiction, but verbatim County rules)

40.90.10.15 The harvesting of forest tree species for the commercial value of the timber on tax lots 1S132CD09100, 1S132CD09000, and 1S132CC11300 shall use a selective cutting procedure and clear cutting shall not be permitted. For the purposes of this exemption, clear-cut means any harvest unit that leaves fewer than fifty (50) living, healthy and upright trees per acre that are well-distributed over the unit and that measure at least eleven (11) inches in diameter at four (4) feet above grade. Species left should reflect the same species proportions existing prior to harvest.

Option 3 (Exclusive City jurisdiction, but modified description of County rules)

40.90.10.15 The harvesting of forest tree species for the commercial value of the timber on tax lots 1S132CD09100, 1S132CD09000, and 1S132CC11300 shall use a selective cutting procedure and clear cutting shall not be permitted. For the purposes of this exemption, clear-cut means any harvest unit that leaves fewer than fifty (50) living, healthy and upright trees per acre that are clustered or well-distributed over the unit and that measure at least ten (10) inches in diameter at four (4) feet above grade. Species left should reflect the same species proportions existing prior to harvest.

Analysis: All options would not change ODF authority to regulate "branding" or identification of forest products. Branding forest products and booming equipment

is required pursuant to ORS Chapter 532. This law requires every person who puts into any of the waters of the state, ships on any motor vehicle or railroad any forest products, or uses any booming equipment as a part of an operation in securing, rafting or floating forest products shall have a mark or brand previously selected by the person and registered with the State Forester or the Public Utilities Commission. Forest products branding is option east of the crest of the Cascade Mountains, if those forest products stay on the east side of the mountains.

Option 1 relegates all authority to regulate the referenced tax lots to the Oregon Department of Forestry. Option 1 would allow the owner to clear cut the property, pursuant to the Oregon Department of Forestry rules. If the property owner/timber operator does not reforest the property within 2 years of logging the property, then the ODF would cite the property owner/operator for not complying with the FPA. If the property owner came in for a land use change within that two year period, reforestation would no longer be required, but they would be subject to any city regulations at that time.

Option 2 is the exact language that currently applies to all properties in the urban unincorporated portion of Washington County under harvesting of forest tree species, with the caveat that the language only applies to the specified properties. This language is remarkably similar to ORS 527.620(9)(a) (ORS 527 is attached as Exhibit 5). ORS 527.620(9) applies moderate regulation on the harvest in that it requires "wildlife leave trees", but does not require reforestation. The most stringent regulation requires reforestation and wildlife leave trees. ORS 527.620(9) allows three types of wildlife leave trees, depending on the forest classification. Of the three, the requirement for 50 11-inch DBH trees is found in ORS 527.620(9)(a). Option 3 includes the clustered or well-distributed statement desired by some members of the Planning Commission.

Options 2 and 3 would absolve the ODF from applying the FPA. In doing so, the City takes on the requirement to protect soil, air, water, and fish and wildlife resources. The City currently applies the Clean Water Services Design and Construction Standards to applications that could affect water resources. The City applies its erosion control standards found in the Municipal Code, which protects soil resources. Fish and wildlife habitat would be protected by requiring the same wildlife leave trees as ODF Harvest type 2 found in ORS 527.620(9)(a), although Option 3 would lower the DBH to 10-inches. In the case of options 2 and 3, if the timber operator wanted to exceed the 50 trees per acre threshold, they could proceed under the Tree Plan 3 application, but they would be subject to mitigation just as a development application.

Recommendation: Staff recommends the Planning Commission consider and choose one of three options for 40.90.10.15.

III. STAFF RECOMMENDATION

Staff recommends the Planning Commission:

- select option a, b or c for 40.90.10.15, and
- **APPROVE** TA 2004-0011 (Tree Code Text Amendments), as proposed in Exhibits 1, 2, and 3 of this Supplemental Staff Report, as modified by the Planning Commission's selections of one of three options for the aforementioned section within Exhibit 1.

IV. EXHIBITS

Exhibit 1: Chapter 40 Modified Text, with options a, b and c for 40.90.10.15.

Exhibit 2: Chapter 60 Modified Text

Exhibit 3: Chapter 90 Modified Text

Exhibit 4: Guidelines for Developing Urban Forest Practice Ordinances

Exhibit 5: ORS Chapter 527

Exhibit 1
Proposed Amendments to Chapter 40, Section 90
(Tree Plan)
(File name on the web: Chapter 40 revision 4.pdf)

40.90. TREE PLAN**40.90.05. Purpose**

Healthy trees and urban forests provide a variety of natural resource and community benefits for the City of Beaverton. Primary among those benefits is the aesthetic contribution to the increasingly urban landscape. Tree resource protection focuses on the aesthetic benefits of the resource. The purpose of a Tree Plan application is to provide a mechanism to regulate pruning, removal, replacement, and mitigation for removal of Protected Trees (Significant Individual Trees, and Historic Trees, and trees within Significant Groves and Significant Natural Resource Areas (SNRAs)), Landscape Trees, street tree, and Community Trees thus helping to preserve and enhance the sustainability of the City's urban forest. This Section is carried out by the approval criteria listed herein and implements the SNRA, Significant Grove, Significant Individual Tree, and Historic Tree designations as noted or mapped in Comprehensive Plan Volume III.

40.90.10. Applicability.

Different types of resources require different levels of protection. No Tree Plan is required for the following actions:

1. Removal of up to four (4) Community Trees, or up to 10% of the number of Community Trees on the site, whichever is greater, within an one (1) calendar year period. Properties one-half acre or less in size developed with a detached dwelling may remove any number of Community Trees.
2. Removal and pruning of any hazardous, dead, or diseased tree or a portion of a hazardous tree when the tree is identified as such by a certified arborist or by the City Arborist and the removal is required by the City. The removal of the tree is subject to the mitigation requirements of Section 60.60 (Trees and Vegetation) of this Code.
3. In the event of an emergency requiring tree removal or pruning prior to the City Arborist's determination, if evidence justifies the emergency removal after the fact, then no tree plan is required for removal.
34. Minor pruning, as defined in Chapter 90.
5. Pruning of trees consistent with the Vision Clearance requirements of Section 60.55.50.

46. Pruning of trees by the utility provider for above ground utility power lines following acceptable arboricultural standards and practices.
7. Pruning of trees to maintain the minimum 8 foot clearance above a sidewalk.
8. Removal or pruning of the following nuisance tree species anywhere in the city: Lombardy Poplar (*Populus nigra*), and birch (*Betula* sp.).
9. Removal and pruning of the following nuisance tree species in Significant Groves and SNRAs: Norway maple (*Acer platanoides*), Tree-of-Heaven (*Ailanthus altissima*), Golden Chain Tree (*Laburnum watereri*), and English or Common Hawthorne (*Crataegus monogyna*).
10. Removal of a tree or nonnative vegetation listed as a Nuisance or Prohibited Plant on Metro's Native Plant List or in Clean Water Services' Design and Construction Standards.
11. Within SNRAs and Significant Groves, planting of native vegetation listed on the Metro's Native Plant List or in Clean Water Services' Design and Construction Standards when planted with non-mechanized hand held equipment.
12. Public street and sidewalk improvements within SNRAs or Significant Groves that meet i. or ii. and iii.:
 - i. Improvements within an existing public right-of-way; or
 - ii. Improvements within a widened public right-of-way that are required of development in order to meet functional classification standards, such as half-street improvements; and
 - iii. The proposed improvements do not exceed the minimum width standards of the Engineering Design Manual.
13. Trails within SNRAs and Significant Groves meeting all of the following:
 - i. Construction must take place between May 1 and October 30 with hand held equipment;
 - ii. Trail widths must not exceed 30 inches and trail grade must not exceed 20 percent;
 - iii. Trail construction must leave no scars greater than three inches in diameter on live parts of native plants; and
 - iv. Trails must be placed outside the top of bank of any stream, river, or pond, and
 - v. Trails must be 100% pervious.

14. *Street Trees are covered by the Beaverton Municipal Code and Section 60.15.15.3.G.*

**OPTION
1**

15. *The harvesting of forest tree species for the commercial value of the timber on tax lots 1S132CD09100, 1S132CD09000, and 1S132CC11300 is exempt from the City's Tree Regulations and the Forest Practices Act applies.*

**OPTION
2**

15. *The harvesting of forest tree species for the commercial value of the timber on tax lots 1S132CD09100, 1S132CD09000, and 1S132CC11300 shall use a use a selective cutting procedure and clear cutting shall not be permitted. For the purposes of this exemption, clear-cut means any harvest unit that leaves fewer than fifty (50) living, healthy and upright trees per acre that are well-distributed over the unit and that measure at least eleven (11) inches in diameter at four (4) feet above grade. Species left should reflect the same species proportions existing prior to harvest.*

**OPTION
3**

15. *The harvesting of forest tree species for the commercial value of the timber on tax lots 1S132CD09100, 1S132CD09000, and 1S132CC11300 shall use a use a selective cutting procedure and clear cutting shall not be permitted. For the purposes of this exemption, clear-cut means any harvest unit that leaves fewer than fifty (50) living, healthy and upright trees per acre that are clustered or well-distributed over the unit and that measure at least eleven (11) inches in diameter at four (4) feet above grade. Species left should reflect the same species proportions existing prior to harvest.*

16. *Landscape Trees are covered by Section 40.20 Design Review and Section 60.60 Trees and Vegetation.*

17. *Enhancement activities conducted by a public agency for the sole purpose of improving the ecological health of forest and water resources.*

40.90.15. Application.

There are ~~four (4)~~three (3) Tree Plan applications which are as follows: Tree Plan One, Tree Plan Two, and Tree Plan Three, ~~and Tree Plan Four.~~

1. Tree Plan One.

- A. Threshold. An application for Tree Plan One shall be required when none of the actions listed in Section 40.90.10 apply and one or more of the following thresholds apply:
1. ~~Minor-Major pruning of a Significant Tree, Significant Grove, Landscape Trees and Protected Trees, tree within a Significant Natural Resource Area (SNRA), Historic tree, or Street Tree once within an one year period.~~
 2. ~~Removal of up to and including five (5) Landscape Trees or Street Trees on a site within a one year period.~~
 3. ~~Removal or pruning of a Significant Tree, Significant Grove, Landscape Trees and Protected Trees, tree within a Significant Natural Resource Area (SNRA), a Historic Tree, a Street Tree, or part thereof, that constitutes or removes/creates a hazardous condition. Pruning to eliminate a hazardous condition may exceed minor pruning.~~
 42. ~~Mechanized Removal-removal of noxious-non-native or invasive vegetation, re-planting of trees and shrubs, or both and clearing and grubbing of vegetation within a SNRAs, Significant Groves and designated as significant on the City's Local Wetland Inventory, or Sensitive Areas as defined by Clean Water Services.~~
 53. ~~Mechanized re-planting of trees and shrubs, or both, or restoration planting within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services.~~
 64. ~~Trails greater than 30 inches in width, or trail grade exceeding 20 percent, trail surfaces less than 100% pervious surface, or any combination thereof within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services that do not result in tree removal.~~
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35 of this Code, shall apply to an application for Tree Plan One. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Tree Plan One application, the decision making authority shall make findings

of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Tree Plan One application.
2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]
4. ~~If applicable, it is necessary to prune or remove a tree that poses a safety hazard to pedestrians, vehicular traffic, adjacent property, or the general public or that threatens to cause disruption of public service and at least one of the following exist:~~
 - a. ~~The tree or portion of the tree is certified by a qualified professional as dead or dying.~~
 - b. ~~A portion of the tree is only partially attached.~~
 - c. ~~The tree or a portion of the tree has been damaged by a storm, fire, age, or accident and is physically lodged or leaning against a building, transportation facility, or overhead utility line or pole.~~
54. If applicable, pruning a tree will result in removal of no more than 20% of the tree's canopy or disturbance of no more than 10% of the root system. The pruning is needed necessary to improve tree health or to eliminate conflicts with vehicles or structures which includes, but is not limited to, underground utilities and street improvements.
65. ~~If applicable, removal of a Landscape Tree or street tree or pruning of a tree is necessary to accommodate development where variances to setback provisions of the Development Code will not allow the tree to be saved.~~

65. *If applicable, the removal of vegetation or clearing and grubbing is necessary to accommodate physical development in the area in which the removal is proposed.*

~~7. If applicable, emergency removal or pruning is necessary due to an immediate threat to public safety documented by photographic evidence supplied by the applicant.~~

~~8. Removal of a tree or grove shall not increase erosion or any resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~

976. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

D. Submission Requirements. An application for a Tree Plan One shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan One application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.

E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan One application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).

F. Appeal of a Decision. Refer to Section 50.60.

G. Expiration of a Decision. Refer to Section 50.90.

H. Extension of a Decision. Previous approval of Tree Plan One proposal shall not be extended.

2. Tree Plan Two

A. Threshold. An application for Tree Plan Two shall be required when none of the actions listed in Section 40.90.10 apply, none

of the thresholds listed in Section 40.90.15.1 apply, and one or more of the following thresholds apply:

- ~~1. Major pruning of a non-hazardous Significant Tree, Significant Grove, Trees within a Significant Natural Resource Area (SNRA), Historic Trees, Landscape Trees and Protected Trees, or Street Trees once within a one (1) calendar year period.~~
- ~~2. Removal of more than five (5) and up to and including ten (10) Landscape Trees or Street Trees on a site within a one calendar year period.~~
31. Removal of five (5) or more Community Trees, *or more than 10% of the number of Community Trees on the site, whichever is greater*, within a one (1) calendar year period, *except as allowed in 40.90.10.1.*
2. *Multiple Use Zoning District: Removal of up to and including 85% of the total DBH of non-exempt surveyed tree(s) within a SNRA or Significant.*
63. *Commercial, Residential, or Industrial Zoning District: Removal of up to and including 75% of the total DBH of non-exempt surveyed tree(s) within a SNRA or Significant Grove.*
74. *Removal of a Significant Individual Tree(s).*

B. Procedure Type. The Type 2 procedure, as described in Section 50.40 of this Code, shall apply to an application for Tree Plan Two. The decision making authority is the Director.

C. Approval Criteria. In order to approve a Tree Plan Two application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Tree Plan Two application.
2. All City application fees related to the application under consideration by the decision making authority have been submitted.

3. *The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]*
34. If applicable, ~~pruning of any tree or removal of a~~ *landscape, street, or ea* Community ~~tree(s)~~ *tree(s)* is necessary to enhance the health of the tree, grove, group of trees, or an adjacent tree or to eliminate conflicts with structures or vehicles.
4. If applicable, ~~it is necessary to remove diseased of~~ *landscape, street, or community trees or trees weakened* ~~by age, storm, fire, or other condition.~~
5. If applicable, ~~pruning or removal of any tree or removal of~~ *a landscape, street, or community tree* is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995 standards and International Society of Arborists (ISA) standards on the subject.
6. If applicable, ~~pruning or removal of any tree or removal of~~ *a landscape, street, or community tree* is necessary to accommodate *physical* development where no reasonable alternative exists ~~for the development at another location on the site, or where variances to setback provisions of this Code will cause other undesirable circumstances on the site or adjacent properties if the tree is saved.~~
7. If applicable, ~~removal of a landscape tree or street tree or~~ *pruning of any tree* is necessary because it has become a nuisance by virtue of damage to property or improvements, either public or private, on the subject site or adjacent sites.
88. If applicable, removal of *any tree* ~~landscape, street, or~~ *community tree* is necessary to accomplish public purposes, such as installation of public utilities, ~~street~~ *widening,* and similar needs, where no reasonable alternative exists without significantly increasing public costs or reducing safety.

~~9. Removal of a tree or grove shall not increase erosion or any resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~

9. *If applicable, removal of any tree is necessary to enhance the health of the tree, grove, SNRA, or adjacent trees to eliminate conflicts with structures or vehicles.*

10. *If applicable, removal of a tree(s) within a SNRA or Significant Grove will not result in a reversal of the original determination that the SNRA or Significant Grove is significant based on criteria used in making the original significance determination.*

11. *If applicable, removal of a tree(s) within a SNRA or Significant Grove will not result in the remaining trees posing a safety hazard due to the effects of windthrow.*

1012. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

D. Submission Requirements. An application for a Tree Plan Two shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan Two application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.

E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan Two application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).

F. Appeal of a Decision. Refer to Section 50.65.

G. Expiration of a Decision. Refer to Section 50.90.

H. Extension of a Decision. Previous approval of Tree Plan Two proposal shall not be extended.

3. Tree Plan Three

- A. Threshold. An application for Tree Plan Three shall be required when none of the actions listed in Section 40.90.10 or none of the thresholds listed in Section 40.90.15.1 or Section 40.90.15.2 apply and one or more of the following thresholds apply:
1. ~~Removal of up to and including ninety five percent (95%) of trees within a Significant Natural Resource Area (SNRA). Multiple Use Zoning Districts: Removal of greater than 85% of the total DBH of non-exempt surveyed trees within a SNRA or Significant Grove area that is found on the project site.~~
 2. *Residential, Commercial, and Industrial Zoning Districts: Removal of greater than 75% of the total DBH of non-exempt surveyed trees within a SNRA or Significant Grove area that is found on the project site.*
 23. ~~Removal of an individual Historic Trees, a tree within a Historic Grove, or a Historic Grove.~~
 3. ~~Removal of a Significant Tree, Grove, or portion thereof.~~
 4. ~~Removal of more than ten (10) Landscape or Street Trees.~~
- B. Procedure Type. The Type 3 procedure, as described in Section 50.45 of this Code, shall apply to an application for Tree Plan Three. Upon determination by the Director, the decision making authority shall be either the Planning Commission or the Board of Design Review. The determination will be based upon the proposal.
- C. Approval Criteria. In order to approve a Tree Plan Three application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Tree Plan Three application.

2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. *The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]*
34. If applicable, removal of a diseased tree or a tree is necessary because the tree has been weakened by age, storm, fire, or other condition.
45. If applicable, removal is necessary to enhance the health of the ~~tree,~~ grove, or adjacent tree(s) to reduce maintenance, or to eliminate conflicts with structures or vehicles.
56. If applicable, removal is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995 standards and International Society of Arborists (ISA) standards on the subject.
67. If applicable, removal is *the minimum* necessary to accommodate *physical* development ~~because~~ where no reasonable alternative exists for the development at another location on the site ~~and,~~ or where variances to setback provisions of the Development Code will not allow the tree(s) to be saved or will cause other undesirable circumstances on the site or adjacent properties.
78. If applicable, removal is necessary because a tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or on an adjacent site, ~~or that pruning in excess of 20 percent of the canopy is required to prevent damage to such improvements or property.~~
89. If applicable, removal is necessary to accomplish a public purposes, such as installation of public utilities, street widening, and similar needs where no reasonable alternative exists without significantly increasing public costs or reducing safety.

- ~~9. Removal of a tree or grove shall not increase erosion or resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~
- ~~10. If applicable, removal of a tree within a SNRA will not substantially reduce the significance of the natural resource.~~
- ~~11. If applicable, removal of a Significant Tree or tree within a Significant Grove will not eliminate the significance of the grove based upon the original Significant Tree and Grove Inventory analysis.~~
1210. If applicable, removal of a tree(s), or trees, within a SNRA or Significant Grove will not result in the ~~reduce the size of the grove to a point where the remaining trees may pose~~ posing a safety hazard due to the effects of windthrow.
1311. If applicable, removal of tree or trees within a Significant Grove will not reduce the size of the grove to a point where the remaining trees may pose a safety hazard due to the effects of windthrow.
1412. If applicable, removal of a tree within a Historic Grove will not substantially reduce the significance of the grove in terms of its original designation on the list of Historic Groves.
1513. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

- D. Submission Requirements. An application for a Tree Plan Three shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan Three application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), any other information identified through a Pre-Application Conference, and by a report from a qualified professional.

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan Three application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).
- F. Compliance with Approval. All conditions imposed on an approved Tree Plan Three shall be implemented prior to the removal, pruning, or planting of tree unless otherwise noted in the approval. Compliance with the conditions of approval shall be met as long as the tree exist unless otherwise specified or until modified through a City approval process.
- G. Appeal of a Decision. Refer to Section 50.70.
- H. Expiration of a Decision. Refer to Section 50.90.
- I. Extension of a Decision. Previous approval of Tree Plan Three proposal shall not be extended.

~~4. Tree Plan Four~~

- ~~A. Threshold. An application for Tree Plan Four shall be required when none of the actions listed in Section 40.90.10 or none of the thresholds listed in Section 40.90.15.1 through Section 40.90.15.3 apply and when the following threshold applies:~~
- ~~1. Removal of more than ninety five percent (95%) of trees within a Significant Natural Resource Area (SNRA).~~
- ~~B. Procedure Type. The Tree Plan Four application is a Comprehensive Plan Amendment application. The procedures and criteria specified in Chapter One of the Comprehensive Plan shall apply.~~

Exhibit 2

Proposed Amendments to Chapter 60, Section 60
(Trees and Vegetation)
(File name on the web: Chapter 60 revision 3.pdf)

60.60. TREES AND VEGETATION. [ORD 4224; August 2002]

60.60.05. Purpose

Healthy trees and urban forests provide a variety of natural resource and community benefits for the City of Beaverton. *Primary among those benefits is the aesthetic contribution to the increasingly urban landscape. Tree resource protection focuses on the aesthetic benefits of the resource.* In conjunction with processes set forth in Section 40.90 of this Code, this section is intended to help ~~regulate~~-*manage* changes ~~regarding~~-to the City's urban forest by establishing regulations and standards for the protection, pruning, removal, replacement, and mitigation for removal of *Protected Trees (Significant Individual Trees, and grove, Historic Trees, and trees within a Significant Natural Resource Area (SNRA) or Significant Grove), Landscape Trees, street tree, and Community Trees.*

60.60.10. Enforcement

A person found responsible for causing the removal or pruning of a protected tree in violation of the standards set forth in Section 60.60, unless exempt, shall be subject to monetary penalties. In cases of unlawful removal the person must also mitigate the removal as set forth in the mitigation requirements of section 60.60.25.

1. Fine for a violation

Monetary penalties imposed by a court of competent jurisdiction upon conviction for violating any provision of Chapter 60 section 60 of this Ordinance, shall be deposited into the City's Tree Mitigation Fund.

60.60.10. Types of Trees and Vegetation Regulated

Actions regarding trees and vegetation addressed by this section shall be performed in accordance with the regulations established herein and in Section 40.90 of this Code. The City finds that the following types of trees and vegetation are worthy of special ~~regulation~~*protection*:

- 1. Significant ~~Individual Trees and Groves.~~**
- 2. Historic Tree.**
- 3. Trees within a Significant Natural Resource Areas.**
- 4. Trees within Significant Groves.**

5. **Landscape Trees.**

~~5. **Street Tree.**~~

6. **Community Trees.**

7. **Mitigation Trees.**

60.60.15 Pruning, Removal, and Preservation Standards

1. Pruning Standards

- A. It shall be unlawful for any person to remove or prune to remove a tree's canopy or disturb the root zone of any ~~significant tree, and grove, historic tree, tree within a SNRA, Protected Tree and Landscape Tree, and street tree,~~ except in accordance with the provisions of this Code.
- B. All pruning of a ~~significant tree, and grove, historic tree, tree within a SNRA, Landscape Trees and Protected Trees, and street tree~~ shall be done in accordance with the standards set forth in this section and the City's adopted Tree Planting and Maintenance Policy, also known as Resolution 3391.

2. Removal and Preservation Standards

- A. All removal and ~~planting, including replacement or mitigation planting, of protected Protected trees Trees~~ shall be done in accordance with the standards set forth in this section ~~and the City's adopted Tree Planting and Maintenance Policy.~~
- B. Removal of a ~~significant tree, and grove, Landscape Trees and Protected Trees, and street tree~~ shall require mitigation, which ~~may include tree replacement or other mitigation measures~~ shall be mitigated, as set forth in ~~this section~~ 60.60.25.
- C. For ~~Significant Natural Resource Areas (SNRA) SNRAs and sSignificant gGroves,~~ the following additional standards shall apply:
 - 1. *The minimum DBH of non-exempt surveyed trees that must be preserved on a site is as follows:*

- a) *Multiple Use Zoning Districts: Fifteen percent (15%) of the DBH of non-exempt surveyed trees found on a project site.*
 - b) *Residential, Commercial, or Industrial Zoning District: Twenty five percent (25%) of the DBH of non-exempt surveyed trees found on a project site; —.*
2. *DBH to be retained shall be preserved in cohesive areas, termed Preservation Areas, when development is proposed in SNRAs or Significant Groves.*
 - ~~1. A minimum of 5% of the trees within a SNRA or significant grove area shall be preserved. The area shall be measured by the area of the tree canopy at maturity. SNRA and significant grove preservation shall include preservation of understory vegetation, as well as trees.~~
 23. *Native understory vegetation and trees shall be preserved in Preservation Areas. Significant groves shall be preserved in rounded clusters rather than in linear strips.*
 34. *Preservation Areas, conditioned for protection through the Development Review process, shall be preserved in clusters that are natural in appearance rather than in linear strips. Preservation Areas should connect with adjoining portions of the Significant Grove or SNRA on other sites. Significant groves shall provide connectivity with adjoining forested areas.*
 45. *Preservation Areas, conditioned for protection through the Design Review process, shall be set aside in conservation easements and recorded with a deed restriction with Washington County, unless otherwise approved by the City. The deed restriction shall prohibit future development and specify the conditions for maintenance if the property is not dedicated to a public agency.*
 6. *Preservation Areas, conditioned for protection through the Land Division process, shall be set aside in tracts and recorded with a deed restriction with Washington County, unless otherwise approved by the City. The deed restriction shall prohibit future development and specify the conditions for maintenance if the property is not dedicated to a public agency.*

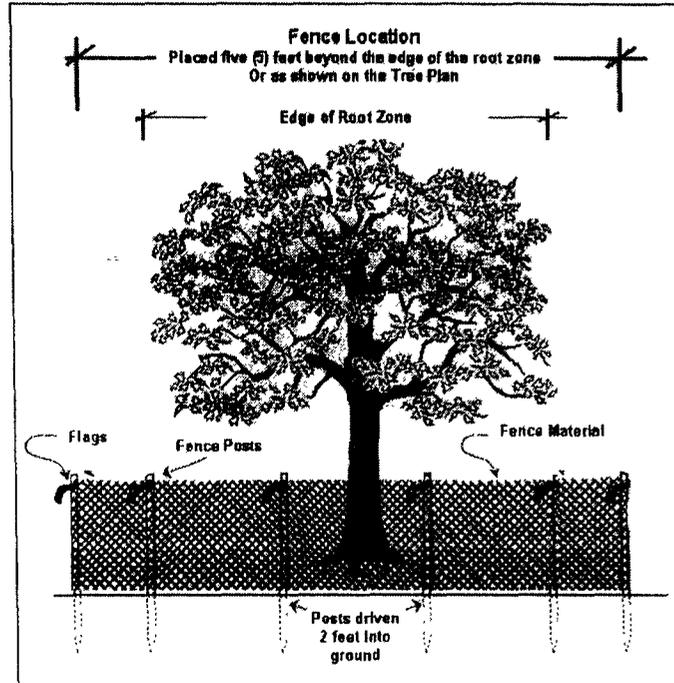
67. *Within the development review process, where a person is presented with a particular decision whether to retain a native or non-native tree, the native species shall be retained provided all other considerations between the two categories of trees remain equal. ~~Native species shall be retained to the extent possible. Native species include, but are not limited to: Grand Fir, Douglas fir, Western Hemlock, Pacific Yew, Western Red Cedar, Bigleaf Maple, Oregon White Oak, Oregon Ash, Red Alder, Western Flowering Dogwood, Ponderosa Pine, and Black Cottonwood.~~*

Non-native tree species may also be retained for aesthetic, unique condition, size, and wildlife habitat purposes.

8. *Hazardous and dead trees within Significant Groves and SNRAs should be fallen only for safety and left at the resource site to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and must be removed from the area to protect the remaining trees.*

60.60.20. Tree Protection Standards During Development

1. ~~Trees classified as Significant Tree, and Grove, and Landscape Tree,~~ Protected Trees under this Code shall be protected during development in compliance with the following:
 - A. A construction fence must be placed around a tree or grove at ~~least at~~ beyond the edge of the root zone. The fence shall be placed before *physical development construction* starts and remain in place until ~~construction~~ *physical development* is complete. The fence shall meet the following:
 1. The fence shall be a four foot (4') tall orange plastic or snow fence, secured to six foot (6') tall metal posts, driven two feet (2') into the ground. Heavy 12 gauge ~~12~~-wire shall be *strung between each post and* attached to the top and midpoint of each post. Colored tree flagging indicating that this area is a tree protection zone is to be placed every five (5) linear feet on the fence to alert construction crews of the sensitive nature of the area.



2. Other City approved protection devices—measures that provide equal or greater protection may be permitted, and may be required as a condition of approval.

B. Within the protected root zone of each tree, the following development shall not be permitted:

1. Construction or placement of ~~n~~New buildings.
2. Grade change or cut and fill, ~~during or after construction,~~ except where hand excavation is approved with the submittal of an arborist's report, as part of application approval.
3. New impervious surfaces.
4. Trenching for utilities, irrigation, or drainage.
5. Staging or storage of materials and equipment ~~during construction~~any kind.
6. Vehicle maneuvering or parking ~~during construction.~~

60.60.25. Mitigation StandardsRequirements

1. The following standards shall apply to mitigation for the removal of ~~a~~ ~~s~~ ~~Significant~~ ~~Individual~~ ~~Trees~~ or trees within ~~Significant~~ ~~Groves~~ or SNRAs.
 - A. All mitigation tree planting shall take place in conformance with accepted arboricultural practices ~~and the City's Tree Planting and Maintenance Policy (Resolution 3291)~~ and shall be spaced a minimum of ten (10) feet apart.
 - B. As of [fill in effective date of ordinance], all trees planted for the purpose of tree removal mitigation shall be maintained in accordance with the approved mitigation plan. Monitoring of mitigation planting shall be the ongoing responsibility of the property owner where mitigation trees are located, unless otherwise approved through Development Review. Monitoring shall take place for a period of two (2) years. Trees that die shall be replaced in accordance with the tree replacement standards of this section.
 - C. As of [fill in effective date of ordinance], all trees planted for the purpose of tree removal mitigation shall be set aside in a conservation easement or a separate tract and shall be designated as "Mitigation Trees" and recorded with a deed restriction identifying the trees as "Mitigation Trees".
 - D. Each Mitigation Tree planted shall be insured through a performance security, equal to 110 percent of the cost of the landscaping, filed with the City for a period of two (2) years to ensure establishment of the mitigation planting.
 - E. Street trees shall not be counted as providing mitigation of a SNRA or Significant Grove.
 - F. Transplanting trees within the project site is not subject to mitigation. However, a performance security is required for transplanted tree(s) to insure that the tree(s) will be replaced if the tree(s) is dead or dying at the end of two (2) years.
2. Mitigation for the removal of trees from Significant Groves or SNRAs shall be required as follows:
 - A. Calculate the total DBH of the trees to be removed. Denote both deciduous and coniferous trees in separate tables; however, both tables will result in the sum total of the DBH to be removed.

- B. *If the total DBH of trees to be removed is less than or equal to 50% of the total DBH of surveyed trees on the site, then no mitigation is required for the trees to be removed.*
- C. *If the total DBH of trees to be removed is greater than 50% of the total DBH of surveyed trees on site, then mitigation is required for the amount of DBH to be removed that exceeds 50% of the total DBH of surveyed trees on site.*

For example, if 75 inches is the total amount of DBH to be removed from a site and 60 inches of DBH represents 50% of the total surveyed DBH, then 15 inches of DBH is the total required amount of mitigation.

- 3. *In addition to the requirements listed in Section 60.60.25.1 Mitigation Requirements, the following mitigation requirements shall apply for the removal of trees from Significant Groves or SNRAs.*

- A. *Dead or dying trees within a Significant Grove or SNRA shall be fallen when required for safety. Such tree falling shall not require mitigation. However, the fallen log shall remain in the Significant Grove or SNRA, to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and the log must be removed from the area to protect the remaining trees.*
- B. *All trees planted for mitigation must meet the following minimum requirements:*
 - i. *Deciduous trees shall be replaced with native deciduous trees that are no less than two caliper inches (2") in diameter*
 - ii. *Coniferous trees shall be replaced with native coniferous trees that are no less than three feet (3') in height and no more than four feet (4') in height. A three foot (3') mitigation tree shall equate to 2" DBH and four foot (4') mitigation tree will equate to 3" DBH.*
 - iii. *The total linear DBH measurement of the trees to be removed shall be mitigated with the necessary number of trees at least two caliper inches (2") in diameter.*

- 4. *Significant Grove or SNRA On-Site Mitigation, 2:1 Planting Ratio.*

- A. *Residential, Commercial, or Industrial Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 75% of the surveyed non-exempt DBH, if all mitigation tree planting is to occur on-site, the ratio for planting shall be on a 2:1 basis.*

For example, if 20 inches of DBH is the total amount of required mitigation, if all the mitigation planting occurs on the site where the removal is to occur, then only 10 inches of DBH is required to be planted.

- B. Multiple Use Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 85% of the surveyed non-exempt DBH, if all mitigation tree planting is to occur on-site, the ratio for planting shall be on a 2:1 basis.*

For example, if 20 inches DBH is the total amount of required mitigation, if all the mitigation planting occurs on the site where the removal is to occur, then only 10 inches of DBH is required to be planted.

5. Significant Grove or SNRA Off-Site Mitigation, 1:1 Planting Ratio.

- A. Residential, Commercial, or Industrial Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 75% of the surveyed non-exempt DBH ~~in Residential, Commercial, or Industrial zones or which remove more than 50% and up to and including 85% of the surveyed non-exempt DBH in Multiple Use zones~~, if mitigation tree planting is to occur off-site, the ratio for planting shall be on a 1:1 basis.*

- B. Multiple Use Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 85% of the surveyed non-exempt DBH in Multiple Use zones, if mitigation tree planting is to occur off-site, the ratio for planting shall be on a 1:1 basis.*

6. Significant Grove or SNRA Tree Plan 3 Mitigation, 1:1 Planting Ratio.

- BA. Residential, Commercial, or Industrial Zoning Districts: For tree removal proposals which remove more than 75% and up to and including 100% of the surveyed non-exempt DBH, all of the required mitigation tree planting shall be on a 1:1 basis whether planted on-site or off-site.*

- CB. Multiple Use Zoning Districts: For tree removal proposals which remove more than 85% and up to and including 100% of the surveyed non-exempt DBH, all of the required mitigation tree planting shall be on a 1:1 basis whether planted on-site or off-site.*

7. *In-Lieu Fee*

If the total caliper inch on-site- or off-site tree planting mitigation does not equal the DBH inch removal or if no tree planting mitigation is proposed, the remaining or total caliper inch tree planting mitigation shall be provided as a fee in-lieu payment. The in-lieu fee shall be specified in the Community Development In-Lieu Fee schedule. Fee revenues shall be deposited in the City's Tree Mitigation Fund.

The following two tables illustrate how required mitigation will be calculated:

Mitigation Example for Mixed Use Zones – SAMPLE SITE*	
DBH of Surveyed Trees	1318.00
DBH Proposed for Removal (MAXIMUM removal allowed is 85% Surveyed Tree DBH)	1120.00
Mitigation Threshold (50% Surveyed Tree DBH)	659.00
DBH to be Mitigated (85% DBH Removal – 50% DBH Threshold = 25% Surveyed DBH)	461.00
On Site Mitigation (50% of the DBH to be mitigated)	230.50
Off Site OR Partial Off Site Mitigation (100% of the DBH to be mitigated)	461.00

**Please note: This "Sample Site" is fictional and is only meant to be a representation of how the regulations of Section 60.60 Trees and Vegetation could be applied to a site*

Mitigation Example for All Other Zones – SITE SAMPLE*	
DBH of Surveyed Trees	1318.00
DBH Proposed for Removal (MAXIMUM removal allowed is 75% Surveyed Tree DBH)	988.00
Mitigation Threshold (50% Surveyed Tree DBH)	659.00
DBH to be Mitigated (75% DBH Removal – 50% DBH Threshold = 25% Surveyed DBH)	329.00
On Site Mitigation (50% of the DBH to be mitigated)	164.50
Off Site OR Partial Off Site Mitigation (100% of the DBH to be mitigated)	329.00

**Please note: This "Sample Site" is fictional and is only meant to be a representation of how the regulations of Section 60.60 Trees and Vegetation could be applied to a site.*

8. *In addition to the standards in Mitigation Standards 1, the following standards shall apply to mitigation for the removal of a Significant Individual Tree:*

- A. *A replacement tree shall be a substantially similar species or a tree approved by the City considering site characteristics.*
- B. *Mitigation for the removal of a Significant Individual Tree shall be the required replacement of each tree on based on the total linear DBH measurement. Replacement of trees shall be as follows:*

**Replacement Table for
Significant Deciduous Trees**

Caliper-inches removed	Minimum total caliper-inches of replacement trees
6-12"	4"
13-18"	6"
19-24"	8"
Over 25"	9"

**Minimum replacement tree size is 2 caliper-inches for deciduous trees.*

**Replacement Table for
Significant Coniferous Trees**

Caliper-inches removed	Minimum number of replacement Trees
6-12"	1
13-24"	2
Over 25"	3

Minimum replacement tree size is 3-feet minimum to 4-feet maximum height for coniferous trees.

A. ~~Mitigation for the removal of a significant tree or grove shall be the required replacement of each tree on a one to one basis according to total linear DBH measurement. Replacement of trees shall be as follows:~~

1. ~~Calculate the sum of the cumulative DBH measurement of the tree to be removed.~~

2. ~~The total linear DBH measurement of the tree to be removed shall be replaced with a tree that is at least two caliper inches (2") in diameter unless otherwise approved by the City. The total caliper inches of the replacement tree shall be at least equal to the sum total of the linear DBH measurement of the removed tree.~~

3. ~~If the total caliper inch replacement does not equal the DBH inch removal, the remaining caliper inch replacement will be provided in lieu. The in-lieu fee shall be specified in the Community Development Department fee schedule and be deposited in the City's Tree Mitigation Fund.~~

B. ~~Mitigation may be satisfied by one, or a combination of more than one, of the following options:~~

- ~~1. Planting of trees on the site where tree or grove removal is proposed;~~
- ~~2. Planting of trees off the site at a location or locations to be determined by the City; or~~
- ~~3. A fee paid in lieu of tree planting and deposited in the City's Tree Mitigation Fund for future natural resource mitigation efforts. The assessment of tree mitigation shall be determined by the caliper size of the tree removed.~~

~~C. Any tree required for mitigation shall be a similar species or a tree approved by the City considering site characteristics with a preference given to native species, as listed in Section 60.60.15 of this Code.~~

~~D. If a mitigation tree of the species of the tree removed or damaged is not reasonably available, the City may allow replacement with a different species with equivalent natural resource value.~~

~~E. All mitigation tree planting shall take place in conformance with accepted arboricultural practices and the City's Tree Planting and Maintenance Policy.~~

~~F. All trees planted for mitigation must have a minimum caliper of two inches (2") except where other standards are required through development review.~~

~~G. All trees planted for tree removal mitigation shall be maintained in accordance with the approved mitigation plan. Monitoring of mitigation planting shall be the ongoing responsibility of the property owner. Trees that die shall be replaced.~~

29. The following standards apply to the replacement of a ~~l~~Landscape ~~t~~Tree or street tree:

A. A replacement tree shall be a substantially similar species or a tree approved by the City considering site characteristics.

B. If a replacement tree of the species of the tree removed or damaged is not reasonably available, the City may allow replacement with a different species ~~with equivalent natural resource value.~~

C. Replacement of a ~~Landscape tree~~ ~~Tree or street tree~~ shall be based on total linear DBH calculations at a one-to-one ratio depending upon the capacity of the site to accommodate replacement tree or unless otherwise specified through development review. Replacement of tree on a one-to-one basis shall be as follows:

1. Calculate the sum of the total linear DBH measurement of the tree to be removed.
2. The total linear DBH measurement of the tree to be removed shall be replaced with tree at least 1.5 caliper inches in diameter. The total caliper inches of the replacement tree shall be at least equal to the sum total of the linear DBH measurement of the removed tree.

Exhibit 3

Proposed Amendments to Chapter 90, Definitions
(File name on the web: Chapter 90 revision 3.pdf)

CHAPTER 90 - DEFINITIONS

The following definitions are proposed for addition, deletion, or modification. Where italicized, additions are proposed, where stricken, deletions are proposed. All other definitions in the Development Code are not proposed for alteration through this amendment.

***Certified Arborist.** An individual who has demonstrated knowledge and competency through obtainment of the current International Society of Arboriculture arborist certification, or who is a member of the American Society of Consulting Arborists.*

***City Arborist.** The person designated as such by the Director of Operations.*

Community Tree. [ORD 4224; August 2002] A healthy tree of at least ten inches (10") DBH located on developed, partially developed, or undeveloped land. ~~Community trees—~~Trees are not those trees identified as ~~significant~~Significant, ~~historic~~Historic, ~~street~~Landscape, ~~or conditioned—~~Mitigation ~~trees—~~Trees, ~~or—~~trees within a Grove or a Significant Natural Resource Area, ~~or trees that bear edible fruits or nuts grown for human consumption.~~

***Dying Tree.** A tree with greater than 20% dead limbs during the growing season.*

***Enhancement Activities.** Activities implemented for the sole purpose of improving or protecting, or both, the ecological functions and values of streams, wetlands and forest resources. Enhancement Activities do not include any excavation, fill, grading, or other form of earth moving of up to and including fifty (5) cubic yards of earth, the disturbance of up to and including 500 gross square feet of surface area, or both.*

***Hazardous Tree.** A tree that possesses a structural defect which poses an imminent risk if the tree, or part of the tree, were to fall on someone or something of value (target).*

- *Structural Defect.* Any structural weakness or deformity of a tree or its parts. A tree with a structural defect can be verified to be hazardous by a certified arborist and confirmed as such by the City Arborist.
- *Target.* People, vehicles, structures or property, such as other trees or landscape improvements. A tree may not be a hazard if a 'target' is absent within the falling distance of the tree or its parts (e.g., a substandard tree in a non-populated area away from pedestrian pathways may not be considered a hazard).

***Invasive.** A type of plant that is not local to an area, but rather originates from another place. Also called "exotic," "non-native," or "alien" species.*

Mitigation Tree. *A tree planted in an effort to alleviate the impact of the removal of another tree(s). A mitigation tree takes on the designation of the tree(s) removed (i.e. tree(s) planted to mitigate for a tree(s) removed from a grove or SNRA becomes a tree(s) protected as if it were part of a grove or SNRA).*

Native Understory. *Foliage layer located between the floor and the canopy of a forest, wood, or grove containing plant materials that have origins in the Tualatin Valley Region of the state of Oregon. Limited to plant species identified on Metro's Native Plant List or in Clean Water Services' Design and Construction Standards.*

Native Vegetation. *Plant materials that have origins the Tualatin Valley Region of the state of Oregon, as listed on Metro's Native Plant List or in Clean Water Services' Design and Construction Standards.*

Non-Exempt Surveyed Tree. *Trees that fit within the definition of Surveyed Tree, with the exception of Nuisance Trees.*

Non-Native. *A type of plant that is not local to an area, but rather originates from another place.*

Nuisance Vegetation. *Plant species that invade natural areas eventually resulting in their domination of native plant species. Includes those nuisance and prohibited species listed on Metro's Native Plant List or in Clean Water Services' Design and Construction Standards. Also see invasive and non-native.*

~~**Noxious Vegetation.** [ORD 4224; August 2002] As applied to Significant Natural Resource Areas (SNRA), lands designated as significant on the Local Wetland Inventory, and Clean Water Services designated sensitive areas, the following plants, bushes, and trees are deemed to be noxious vegetation: Scot's Broom, French Broom, Kudzu, English Ivy, Purple Loosestrife, Reed Canary Grass, Himalayan Blackberry, Evergreen Blackberry, Norway Maple, Tree of Heaven, Garlic Mustard, Lesser Celandine, Canada Thistle, Common Thistle, Western Clematis, Traveler's Joy, Field Morning Glory, Lady's Nightcap, Pampas Grass, Hawthorne (except native species), Queen Anne's Lace, South American Waterweed, Common Horsetail, Giant Horsetail, Crane's Bill, Robert Geranium, Common Bladderwort, St. John's Wort, English Holly, Yellow Flag, Duckweed, Water Lentil, Eurasiana Watermilfoil, Annual Bluegrass, Water Smartweck, Giant Knotweed, English Laurel, Portuguese Laurel, Tansy Ragwort, Blue Bindweed, Climbing Bindweed, Hairy Nightshade, Bamboo, Periwinkle (large and small leaf), and Spiny Cockleb.~~

Protected Tree. *Includes Significant Individual Trees, Historic Trees, Trees within a Significant Natural Resource Area or Significant Grove, and Mitigation Trees.*

Pruning, Minor. [ORD 4224; August 2002] Removal of ~~between 5% and up to and including 20%~~ less than 10% of the a tree's canopy or disturbance of less than 10% ~~or less of a tree's the~~ root system.

Pruning, Major. [ORD 4224; August 2002] Removal of greater than ~~20~~10% of the tree's canopy or disturbance of over 10% of the root system.

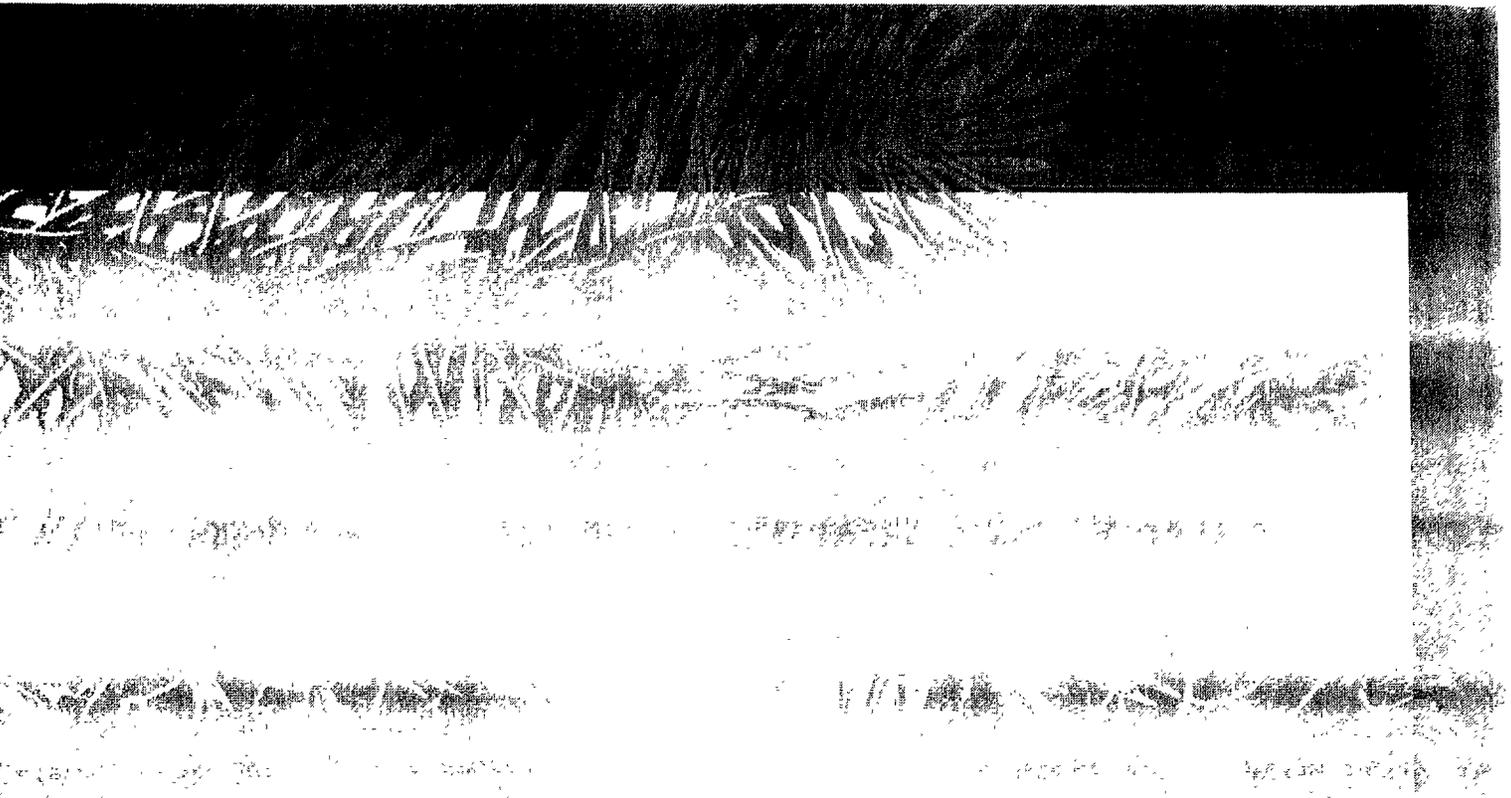
Reasonably Available. As applied to mitigation tree planting, a plant species shall be considered reasonably available if the plant is found to be available for purchase at up to three separate retail or wholesale nurseries, known to stock native plants, of separate ownership within Washington, Multnomah, or Clackamas counties or a combination thereof. A plant species shall be considered to be reasonably unavailable if the species cannot be readily found at three (3) separate retail or wholesale nurseries, known to stock native plants, of separate ownership within Washington, Multnomah, or Clackamas counties or a combination thereof.

Significant Grove. Groves that are mapped on the City's Inventory of Significant Trees and Groves, that have a unique identification code and include all species within the grove boundary as listed in the inventory documents for that grove code.

Significant Tree. A tree or grouping of trees that is mapped on the City's Inventory of Significant Trees and Groves, which has a unique identification code as listed in the inventory documents for that individual tree code.

Surveyed Tree. Trees on a proposed development site that are required to be identified in a Tree Plan application. Trees required to be surveyed include all trees greater than or equal to ten (10) inches DBH (including nuisance trees) and the following trees greater than or equal to six (6) inches DBH: western hemlock (*Tsuga heterophylla*) or mountain hemlock (*Tsuga mertensiana*) trees, Pacific madrone (*Arbutus andrachne*) trees, and big-leaf maple (*Acer macrophyllum*) trees.

Exhibit 4
Guidelines for Developing Urban Forest Practice
Ordinances
(File name on the web: UrbanFP.pdf)



Guidelines For Developing Urban Forest Practice Ordinances



"STEWARDSHIP IN FORESTRY"

Oregon Department of Forestry
Forest Practices Program
Urban and Community Forestry Program

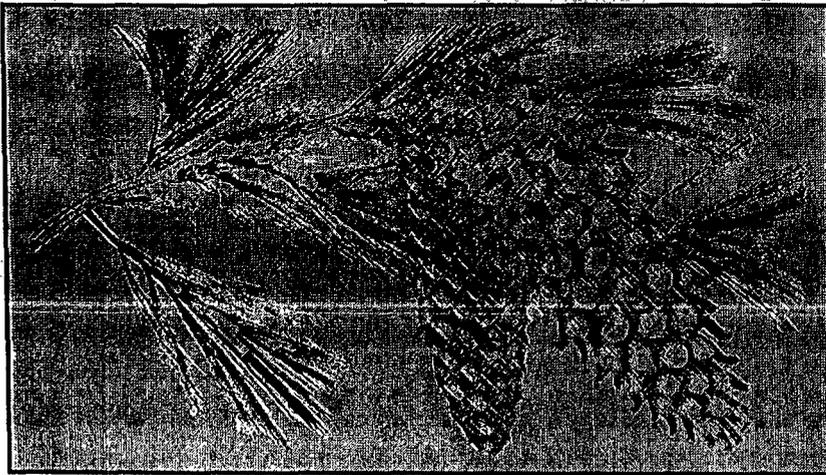


Oregon Department of Land Conservation and Development

November 1999

Acknowledgments

We greatly appreciate the efforts of the Urban Growth Boundary Committee formed to address urban forest practices in Oregon. Input and review by the members of this committee have greatly improved the content and cohesiveness of this publication. Members of the committee are: Jim Jacks, Planning Director, City of Tualatin; Walt Knapp, private consultant; Jon Jinings and Jeffery Weber, Oregon Department of Land Conservation and Development; Darrel Spiesschaert, Dan Christensen, Gary Schulz, Kevin Birch, and Paul Ries, Oregon Department of Forestry.

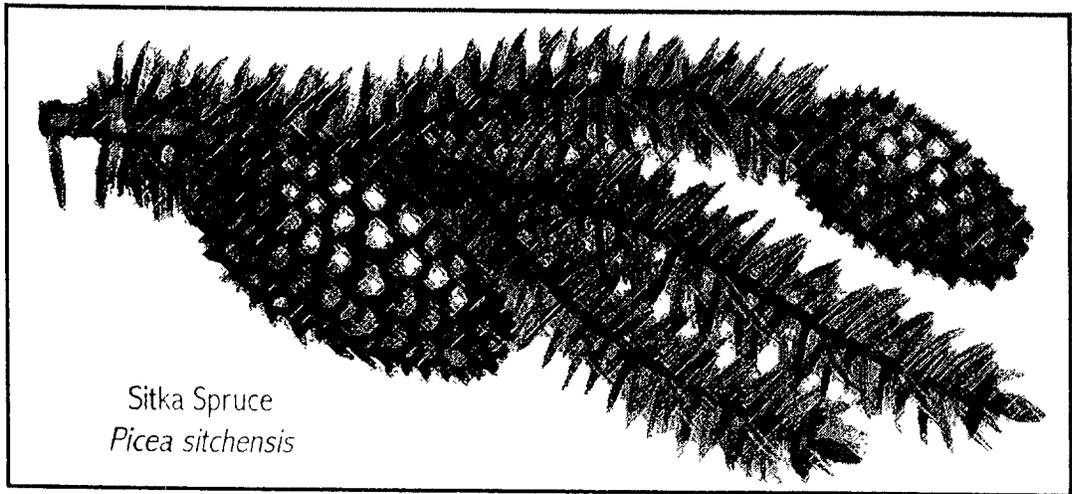


Western White Pine
Pinus monticola

Paul C. Bell, Forest Practice Policy Analyst, ODF
Scott Plamondon, Urban and Community Forestry Program Manager, ODF
Michael Rupp, Rural Planning Coordinator, DLCD

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Sitka Spruce
Picea sitchensis

1.0 INTRODUCTION

Trees are an important part of Oregon's economy, its environment and its identity. Trees provide a myriad of benefits such as lumber, helping to protect our air and water, and shade for our homes in the summer. Trees are even found on our car license plates. The importance of trees and the need to effectively manage our forests was recognized by the Oregon Legislature, which passed the nation's first Forest Practices Act (FPA) in 1971. This law provided unprecedented levels of environmental protection and, for the first time, required reforestation after harvest. The FPA has been amended over the years to include protection for sensitive nesting sites for wildlife, stream and riparian area protection, and protection for a variety of other resource needs.

Since the FPA's adoption 28 years ago, issues regarding the application of the FPA within urban areas have increased. As parcels closer to and within urban areas have been harvested, citizens have voiced a desire for greater levels and different types of forest protection than provided by administration of the FPA.

The FPA was designed to promote the proper management of Oregon's forests. Its mandates for reforestation and resource protection have ensured that forestland remains healthy and productive. The FPA was not designed to regulate forest practices to meet individual community goals within urban settings. This publication has been developed to help cities and counties decide whether the level and type of protection offered by the

FPA within urban growth boundaries (UGBs) and city limits as administered by the Oregon Department of Forestry (ODF) is appropriate for their needs. Where the FPA does not meet the goals and objectives of local government within UGBs and city limits, this publication can also help in the preparation of locally administered forest regulations.

The Oregon Legislature has given cities and counties the authority to regulate forest practices within UGBs in place of having ODF administer the FPA. This "local option" has been used by many cities in Oregon. The law is designed to have either ODF or the local government regulating forest operations in the designated area, but not both. If local governments regulate, the FPA no longer applies. Some cities have unknowingly invoked this provision by passing ordinances that regulate the harvesting of trees while creating unintended consequences such as the failure to address other resource protection issues covered by the FPA.

their particular goals while meeting state and federal legislative mandates to protect soil, air, water, and fish and wildlife resources.

These guidelines provide several model ordinance clauses that may address local objectives in an urban forest practices program. However, it is not advisable for any city to merely adopt these model clauses and expect the regulations to be useful. The most successful local regulations are those that meet community goals and objectives while addressing applicable statewide land use planning goals that protect specific natural resources and provide for orderly development.

1.1 This Publication

The Oregon Department of Forestry, in cooperation with the Oregon Department of Land Conservation and Development, offers this publication as a guide for cities and counties to use in the development of urban forest practice regulations. This publication is designed to assist local governments in balancing community objectives with economic and environmental concerns as they relate to forest regulations. It outlines a process by which cities or counties can develop regulations that meet

While most local governments are aware the state has a Forest Practices Act, they do not know how it works or to what extent it may apply to timber harvesting and other forest practices within their jurisdiction. This section provides a brief overview of the FPA and examples of how various resources are protected. As a city or county considers developing local forest practice regulations, it is important to evaluate current forest practice regulations against what may be proposed.

Specific resources that receive protection under the FPA include environmentally sensitive sites, riparian areas and stream corridors, air, soil, and water quality, and fish and wildlife habitat. The FPA, adopted by the Oregon Legislative Assembly and administered by the Oregon State Board of Forestry through the Oregon Department of Forestry (ODF), applies to all commercial forest operations on non-federal forestlands in Oregon.

The FPA establishes standards for forest practices, including timber harvesting, road building and maintenance, slash disposal, reforestation and use of pesticides and fertilizer. Monitoring by ODF staff shows a high degree of compliance by landowners and operators with the law, assuring that trees are being planted for tomorrow's forests and that other forest resources are being protected.

3 The FPA has evolved over the years. Protection measures have been strengthened as more scientific data has become available and as social values and federal requirements have changed. The Oregon Forest Practice Rules, which interpret and establish specific standards

under the FPA, are administered and enforced in the field by ODF Forest Practices Foresters (FPFs). FPFs operate out of local field offices, with each FPF responsible for a specific geographic area.

Oregon law (ORS 527.670) requires that the operator, timber owner or landowner notify ODF before commencing any forest operation activity. The FPF then reviews operation notifications filed in their area. Notifications are prioritized for field inspections according to type of operation and the resources involved. Depending on the nature of the activity and resources involved, a written plan may be required which describes how the operator will conduct an operation while protecting certain resources as required by the FPA. For example, harvesting timber within 100 feet of a fish-bearing stream requires special attention to protect the stream's temperature, water quality and the riparian area's habitat values.

2.1 Examples of FPA Resource Protection

Some resource protection standards, required by the FPA, are provided below as examples to convey how and what resources are protected by the FPA. As local governments consider developing their own forest practices regulations which would replace the FPA, the following examples show types of regulations that could be developed and adopted to protect soil, air and water quality, and fish and wildlife.

2.1.1 Water Protection Rules

The FPA's water protection rules set standards for vegetation retention within riparian management areas (RMAs). RMAs are areas along each side of specified waters of the state within which vegetation retention and special management practices are required to protect water quality, hydrologic functions, and fish and wildlife habitat. The rules require that trees and understory vegetation be retained within RMAs, and that written plans describe how resource protection will be accomplished during the operation. Standards for tree retention vary by stream size (large, medium, or small) and beneficial uses of water (fish or domestic uses). For example, a large stream used by fish requires the following standards:

- Riparian management area 100 feet wide on each side of the stream.
- All understory vegetation within 10 feet of the high water level.
- All trees within 20 feet of the high water level.
- All trees leaning over the channel.
- Additional trees as needed to meet rule required targets (minimum of 50 to maximum 250 per 1000 ft).
- Retention of all downed wood and snags that are not safety or fire hazards within the RMA.

2.1.2 Significant Wetland Protection

Significant wetlands include wetlands larger than eight acres, estuaries, bogs and important springs in eastern Oregon. Operators are required to submit written plans describing how they will prevent adverse effects to wetland vegetation required to be retained, and on water quality, hydrologic functions or soil productivity. Significant wetland protection standards include:

- Retention of approximately 50 percent of the live trees, by species and diameter class
- Minimizing disturbances to soil and hydrologic functions
- Retention of understory vegetation.
- Retention of all snags and downed trees within the wetlands and the applicable riparian management areas.

2.1.3 Chemical Application

Statewide, the application of chemicals on all land uses is regulated by the Oregon Department of Agriculture. However, to ensure protection of forest resources, the FPA contains additional rules regulating the application of forest chemicals. Some of these include:

- F Aerial applications of chemicals may not be directly applied within 60 feet of:
 - Significant wetlands.
 - The aquatic areas of fish and domestic use streams.
 - the aquatic areas of large lakes, or any lakes with fish use
- F Ground applications of chemicals may not be directly

applied within 10 feet of the above resources.

- F Daily records of chemical applications must be maintained.

2.1.4 Road Construction and Maintenance

The FPA provides standards for the construction and maintenance of roads that provide the maximum practical protection to maintain forest productivity, water quality, and fish and wildlife habitat.

These standards require prior approval for road construction:

- Where a risk exists for road materials to enter waters of the state.
- Where use of machine activity is planned in fish-bearing and domestic use streams, lakes and significant wetlands;
- In riparian management areas;
- On high risk sites prone to landslides, and
- Before constructing stream-crossing fills over 15 feet deep.

2.1.5 Harvesting

The FPA rules set standards for harvesting that maintain the productivity of the land, minimize soil and debris entering waters of the state, and protect fish and wildlife habitat. These standards apply to:

- Log skidding and yarding practices.
- Landing construction;
- Drainage systems for landings, skid trails and fire trails;

- Treatment of waste materials;
- Harvesting on high risk sites;
- Slash treatment; and
- Reforestation.

2.2 Where The FPA Applies and Where it Does Not

Under the FPA, "forest practices" refers to the way in which "commercial" forest "operations" are conducted on "forestland." These operations can involve a number of different activities including but not limited to.

- Harvesting of forest tree species;
- Reforestation,
- Road construction and maintenance;
- Application of chemicals; and
- Disposal of slash.

The key words within this definition are "operation", "commercial" and "forestland".

- "Operation" means any commercial activity relating to the growing or harvesting of forest tree species.
- "Commercial" means engaged in work designed for the market: the exchange or buying and selling of commodities or services.
- "Forestland" means land used for the growing and harvesting of forest tree species, **regardless of how the land is zoned, taxed or how any state statutes or local ordinances, rules or regulations are applied.**

The FPA rules apply to all non-federal forestland, including private, state-owned and local government-owned forestlands. However, the Oregon Forest

Practices Act does not prevent the conversion of forestland to another use. Where a landowner is actively converting forestland to a land use not compatible with forestry, the land is considered forestland until the trees are cleared and one of two things happen:

1. Forest practices related to stabilizing the site, such as water barring skid trails and revegetating soils, are completed; or
2. Non-forest related development activities begin.

Also, in the event of a land use change in conjunction with a harvest operation, the department may modify its procedures for protecting significant resources. For example, the FPA requires the retention of trees, understory vegetation and other attributes within riparian management areas (RMA) adjacent to fish-bearing streams. The width of the RMA, the number of trees retained and the harvest activities that could occur within the RMA is dependent on the size classification of the stream (small, medium or large). Landowners invoking a land use change (i.e., proving the new use to be incompatible with these FPA protection requirements) could be exempt from applying some forest practice regulations. Such exemptions require prior approval by ODF

5 However, in such cases the landowner is still responsible for meeting other state regulations normally met by applying the FPA. Such regulations would likely include the Division of State Lands removal and fill

regulations, the Department of Environmental Quality water quality standards, and local comprehensive and zoning code requirements.

2.3 Local Government Option

In 1987, the Legislature enacted a law (ORS 527.722) affecting local government's ability to regulate forest operations. Prior to 1987, local governments were thought to be prohibited from regulating forest operations except within a city's boundaries (city limits). However, with the change in statute local governments (generally cities) could choose to regulate all forest operations in any way or choose not to regulate them within UGBs and city limits.

In 1991, the Legislature amended ORS 527.722 to clarify ODF's role in applying the forest practice rules to forest operations conducted within UGBs. This amendment established that the Oregon Forest Practices Act applied to forestland within UGBs unless local governments adopted their own regulations governing forest practices. Existence or adoption of acknowledged local government forest practice regulations within UGBs relieves the State Forester of the responsibility to administer the Forest Practices Act within the affected areas. As a result of the 1991 legislative changes, ODF is responsible for administering the Oregon Forest Practices Act on forestland within UGBs except where acknowledged local forest practice regulations have been applied

ODF worked closely with the Legislature in the development of these 1991 amendments to ORS 527.722. ***The clear intent of the bill was to ensure that all forest operations within the state are regulated to protect soil, air, water, and fish and wildlife resources.*** However, if a local government desires different regulation than provided by the FPA, then the local government may regulate forest practices within all or a portion of an acknowledged UGB. ***Also, legislative intent was very clear that forest practices were to be regulated by either the FPA or local government regulation, not both.***

2.4 When Will ODF Not Administer the FPA?

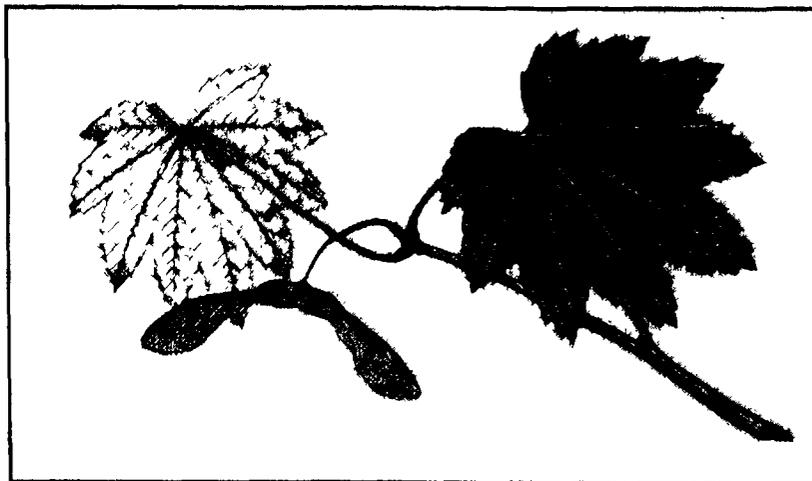
It is ODF's interpretation that any acknowledged local ordinance that regulates harvesting, such as how or which trees may be harvested within a UGB,¹ constitutes local forest practices regulations under ORS 527.722. Where such regulations apply, ODF is relieved from administering the FPA.

For example, a local jurisdiction may choose to adopt an ordinance indicating that only selective harvesting (i.e., only so many trees per acre maybe harvested) may occur on forestland within their UGB. In this case, ODF would not administer the FPA within this jurisdiction's UGB.

Another example is a jurisdiction addressing the requirements of Statewide Planning Goal 5 by adopting the "safe harbor"

provisions² or other ordinances for protecting riparian vegetation along stream corridors and applying those ordinances or provisions to forest practices. In this case, the jurisdiction would administer its regulations within its riparian corridors, and the ODF would administer the FPA for those forestlands within the UGB not included within the riparian buffer

1 Except those regulations governing the removal of trees associated with certain other land use actions. For example, an ordinance regulating the removal of trees associated with the construction of a dwelling is not considered a forest practice regulation. Also, regulations that control the cutting of local "street trees" are not considered as forest practice regulations.



Vine Maple
Acer circinatum Pursh

2 Currently, the Goal 5 rule safe harbor for streams with average stream flows greater than 1,000 cubic feet per second (cfs) is a 75 foot corridor on both sides of the stream, streams with an average flow of 1,000 cfs or less protect a 50 foot corridor on both sides.

3.0 URBAN FOREST PRACTICES OBJECTIVES

As stated, Oregon law provides cities and counties the opportunity to regulate forest practices within UGBs¹. However, local governments that choose to regulate forest practices need to ensure that forest operations are conducted in a manner that protect soil, air, water, and fish and wildlife habitat. Local forest practice regulations that do not provide adequate protection for those resources could be regarded as deficient in meeting other state laws (e.g., the Department of Environmental Quality's water quality standards).

The scope of a forest practices program (determining exactly what trees and sites a local program should cover) is an important consideration since the type of standards and the

extent of their application will depend upon this decision. Regulations designed to protect a limited number of specific trees (e.g., mature trees, heritage trees, or landscape trees) are completely different than regulations designed to regulate the removal of trees from managed forestland or trees growing on lands designated for development.

As with all regulations, programs designed to regulate forest operations within UGBs and/or city limits need to address specific objectives, as they do place limitations on private property. Programs that regulate individual private properties need broad community support and a demonstrated need in order to survive both politically and legally.

Protecting trees can be a useful complement to regulations already existing within a city's development code. In Oregon, cities already govern development through planning and zoning laws designed to provide for orderly development. Adding forest practices to the list of development standards may help a city maintain or improve its livability and the area's environment as well as ensure that aesthetically pleasing development occurs. To ensure that trees are not removed before a parcel is ready to be developed, cities should apply forest practice regulations to lands designated for future development.

For local forest regulations to be successful, trees need to be viewed from both the

community and individual property owners' perspectives. From the community perspective, trees need to be viewed not only as part of the overall landscape, but also as an important contributor to the overall environmental health of the community. For example, established trees within riparian corridors are critical for the conservation of fish and wildlife and maintaining water quality. Trees help in reducing both stream turbidity and higher water temperatures during the summer, and they provide a source of future large woody debris for fish habitat.

When developing a forest practices program specifically designed to transition from commercial timber land to a residential neighborhood, it is important to ensure that the development fits the site rather than clearing and grading the site to fit a preconceived development plan. Successful urban forest regulations do not attempt to save every tree. Instead, they protect the most valuable trees; those with the most potential to become assets to the site. Conversely, planners and landowners must be cognizant of stand age, topography and wind firmness when deciding which trees to retain.

7 Although this document does not address the issue of wildfire in the urban interface, communities within wildfire prone areas which are developing forest practice regulations should be cognizant of the need to maintain defensible space and nonflammable vegetation around structures. Included in Appendix 8.3 are reference materials which can be helpful in addressing these issues.

In preparing plan policies and implementing land use regulations to retain forestlands primarily to benefit other resource or community values, a local government may need to follow the procedures established by the Land Conservation and Development Commission (LCDC) in their Oregon Administrative Rules (OARs). Specifically, OAR 660, Division 23, which implements Goal 5, specifies a process for protecting riparian areas, wetlands, and fish and wildlife habitats. In addition, ordinance provisions developed to regulate forest practices may also need to include requirements addressing other statewide planning goals⁴, as well as those of the Division of State Lands and the Department of Environmental Quality.

3.1 City and County Intergovernmental Agreement

Generally, city land use policies are found in the comprehensive land use plan and apply within the city limits and possibly to lands within the urban growth area (the area outside the city limits and inside the UGB). A county's tree-cutting land use regulations would only apply within the urban growth area unless the city and the county adopt the same regulations for lands inside the UGB. If a city wants its or the county's forest practices regulations to apply inside the UGB, it may be necessary for the city and county to amend their intergovernmental agreement (sometimes referred to as an Urban Growth Agreement or Urban Growth Management Agreement).

3.2 Preparing an Urban Forest Practices Program

The first step in developing a local urban forest practice program is to answer the following questions: Why does our community need an urban forest practices program? What problems are we trying to address? What can we gain in addition to what the Oregon Forest Practices Act already provides? Or what do we not want that the Forest Practices Act requires? Examples of issues addressed by urban forest practice programs may include:

- Maintaining forest canopy.
- Reducing tree loss during development.
- Retaining trees as a buffer between residential and industrial uses.
- Retaining trees within riparian corridors.
- Reducing damage to existing trees during construction.
- Strategically retaining trees while allowing harvests for solar access.
- Shade retention.
- Street/bikeway/pedestrian path beautification.
- Scenic view preservation.
- Strategically retaining trees or allowing harvests for view enhancement.

⁴ Goals 5 (Open Spaces, Scenic and Cultural Areas) and Natural Resources (15 (Wildlife, Greenway) and 17 (Coastal Shoreland)).

Once reasons for developing forest practice regulations has been determined, specific goal or objective statements should be developed. For example, one goal may be to have newer residential neighborhoods blend with older established neighborhoods. To meet this goal, not only would street patterns need to be coordinated, but also older trees would have to be retained on new lots, in street rights-of-way, and in future park and school locations. Such a goal may read as follows. *Ensure that new development near older neighborhoods is designed to blend with and compliment the attributes found in our older neighborhoods.* This goal could then lead to the development of **specific plan policies** specifying the need to leave trees on undeveloped forestlands located near existing residential neighborhoods.

For example, the following policy provides specific directions for retaining trees to achieve the previously stated goal

It is the policy of the city to retain trees between 20 and 70 years old so that new developments can safely provide the following benefits: (1) Shade for future homes, schools, parks and streams; (2) An aesthetic buffer between automobiles and pedestrians and homes; and (3) Habitat for wildlife.

After a community determines precisely why they want to regulate forest practices, an **inventory or assessment** of the forestland resource should occur next. This inventory should identify the quantity, quality and location of the type or types of forestland the community wants to protect. This may be accomplished a number of ways, including "windshield" surveys, tree inventories, aerial

photography, or the use of geographic information systems (GIS). Based on this inventory, the community has a number of decisions to make regarding what **type of regulations to adopt**, if any, and where to apply them.

After the community completes the inventory, it may be useful to examine alternatives to achieving the community's identified goals. For example, teaching landowners about the need to protect a certain type or number of trees in a given area may achieve the community's goal without having to prepare and apply regulations. In some cases, acquisition, covenants, deed restrictions, open space tax incentives or land trades can be used to achieve the same results. Involving the news media in the community's effort to achieve its goals and objectives may be useful in drawing attention to the need to protect certain trees or specific forestlands, thus rendering the need for an urban forest practice ordinance unnecessary.

A jurisdiction may choose to rely on the FPA to achieve its goals and objectives for certain types of inventoried forestlands while developing local regulations for other types of forestlands within the UGB. Under this scenario, **detailed mapping** of the properties subject to the FPA is necessary so that ODF knows which forestlands are still under its administration.

When a decision has been made that forest practices regulations may be appropriate and necessary, the next step should be to involve the public. In as much as the goals of a program reflect community values and opinions, an open and public process is an important element. Successful

regulations have broad community and political support. If the citizens of a community do not agree with the need to develop and apply urban forest regulations, independent of the FPA, they will be even less willing to approve the funding necessary to see that the regulations are enforced.

As a forest practices program is developed, a process for evaluating the success of the regulations should also be developed. This step serves two purposes. First, most new programs need more than one revision before they successfully implement the stated policies. Second, by stating "up-front" that the community will reevaluate specific provisions of the program at a specific time (e.g., 2 years), it reinforces the attitude that the regulations are not "cast in stone." Thus, regulations that do not work, can be changed.

Once a need for local forest practice regulation is identified, determine if meeting the need will involve any Statewide Planning Goals, such as Goal 5. Some cities have adopted "tree protection regulations" without going through the post-acknowledgment plan amendment process (ORS 197.610). They have simply adopted a stand-alone ordinance to regulate tree cutting that requires, for example, a tree-cutting permit be obtained prior to cutting trees. It is strongly recommended that the city attorney or county counsel be consulted as to the need to go through post-acknowledgment plan amendment process or to adopt a stand-alone ordinance.

4.0 DEVELOPING AN URBAN FOREST PRACTICES ORDINANCE

Urban forest practice regulations should be tailored specifically to the needs of the community. A model ordinance does not exist that would meet the goals and ... expectations of every community. However, there are examples of regulatory language that can be tailored to address certain issues.

The following examples of regulatory language with accompanying descriptions are provided to help jurisdictions construct regulations that might meet local needs. These suggestions will need to be edited to fit the needs of the particular situation. Each clause is listed by title, includes a brief description, and is followed by sample language that addresses the specific issues.

4.1 Title

The title should be a brief description of the program:

This program shall be known as the [jurisdiction's name] Forest Practices Ordinance.

4.2 Purpose or Preamble

The purpose or preamble should clearly state the reasons or need for the program and should relate directly to the community's stated goals.

9 *The city desires to provide for the orderly transition from open space and forestland to residential neighborhoods. The city recognizes the need to preserve some open space and maintain certain forest lands for their environmental and aesthetic values, which include wildlife habitat and clean water. This ordinance is intended to*

implement the goals and policies found in the "Urban Forest Program" section of the comprehensive plan. Upon application of this ordinance to the lands identified in the plan's "Urban Forest" section, the city assumes the responsibility of regulating forest practices on those lands under the authority granted the city by ORS 527.722.

The purpose or preamble of an urban forest practices ordinance is the place where the city or county "makes its case" for applying the ordinance (also known as the "nexus" between the ordinance and the goals and policies to be implemented). Statements regarding the economic, social and environmental benefits of the forestlands in question can be included. Clearly stating the purpose of an ordinance is an important step in avoiding future legal misunderstandings.

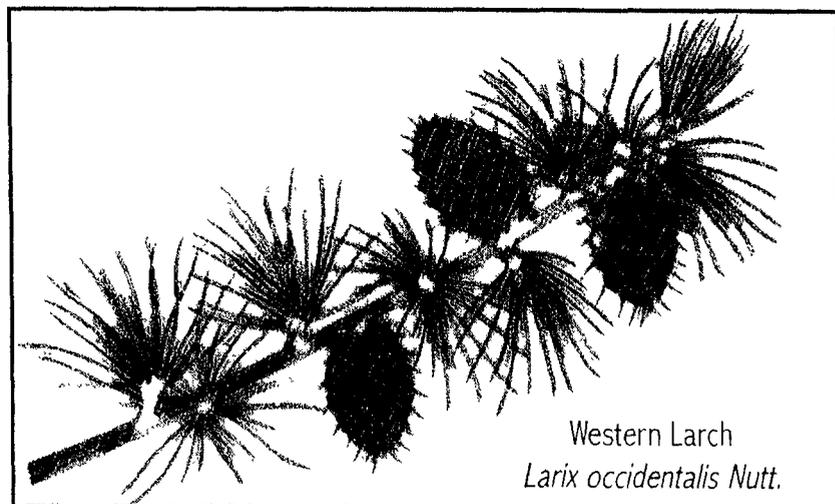
4.3 Definitions

Definitions are important to clarify the meaning of certain words, phrases or terms used in the ordinance. Some of the more

common terms needing definitions may include: forest practice, developable land, certified arborist, forest operation, etc.

For the purposes of this program, the following words and phrases shall have the following meanings: . . . "Certified Arborist" means an individual who has passed certification exams and holds current status as a Certified Arborist through the International Society of Arboriculture. "Tree" means. . .

The definitions section should clearly define words or terms that embody concepts that can be misinterpreted. Terms like "cut" or "damage" may have different meanings depending upon the circumstances. In some cases, an urban forest practices program may need to use the same term to implement different regulations. If that case arises, the jurisdiction may need to define the same term differently in specific sections of the ordinance. Such precision may be important in providing flexibility.



Western Larch
Larix occidentalis Nutt.

4.4 Scope and Application

Based on the policies in the comprehensive plan, the ordinance should clearly identify the types of forest practices to be regulated and the forestlands on which the particular program provisions will apply. For example, regulations contained within an urban forest practices ordinance could apply to one or more of the following situations:

- Forestland designated for development - any forested parcel or lot that can be subdivided and developed.
- Private trees - trees over a certain diameter size or of a particular species growing on private property.
- Historic Trees - trees with some historical significance
- Tax-deferred lands and dedicated forestland - land currently under tax deferral through state and county programs to defer property taxes and encourage forest productivity
- Riparian corridors - lands adjacent to wetlands, creeks, streams and rivers.
- Trees separating residential from industrial lands
- Forestlands associated with identified scenic values.
- Trees valued for their proximity to certain streets, bike and pedestrian paths.

In some cases, communities may not want the same regulations to apply everywhere. For example, a community may want to regulate forestlands that are being harvested for the purpose of converting the land for development while not wanting the same regulations to apply to other forestland that continues to be used for growing and harvesting commercial timber. This may be done using a

statement like the one that follows:

This forest practices ordinance applies to all forested parcels within the urban growth boundary that are designated in the comprehensive plan for residential, commercial or industrial development except for those forested parcels currently managed as forestland which are receiving a forest tax deferral.

It should be noted that regulations must be consistent with other state and local laws, and city policies or procedures. For example, some forested parcels within urban growth boundaries may be in a forest tax deferral status. In this situation, the county is allowing a landowner to pay a reduced level of taxes with the expectation that at the time of harvest, the county will recoup those revenues. Forestland receiving a tax deferral should be made part of the initial inventory so that an assessment can be made to determine whether or not an urban forest ordinance should be applied to those lands

Another factor to consider is whether or not there is a need to apply an urban forest practices ordinance to all lands within the UGB or city limits to ensure adequate tree retention on forested lands designated for development. If a program is designed to regulate only forestlands involved in the development process, a landowner may clear the land of trees valued by the community before an application to develop is submitted, thus, circumventing the urban forest ordinance

4.5 Operating Procedures

Below are examples of provisions a jurisdiction may want to include within an urban forest ordinance. These examples address the application process, the application review procedure, notifications, permit requirements, fees, and the appeal procedure. Some cities may want to add provisions or develop more than one permit procedure (e.g., one for individual lots and another for reviewing subdivision proposals), depending on local circumstances

Before any trees over ___ inches in diameter are removed, a permit shall be obtained from — (e.g., the Planning Department). Before a permit can be issued, the following must be obtained by the owner and submitted as part of the permit application: A survey of all trees over ___ inches in diameter, a report by a Certified Arborist identifying those trees that can safely be retained as: (1) shade trees for home or water bodies that provide fish and wildlife habitat; and (2) a buffer between cars and proposed pedestrian walkways

Ordinance Standards- The standards by which applications must be judged are crucial to the success of an urban forest practice program. Such standards could address:

- Tree retention - the number and types of trees that must be left on the site
- Tree replacement - the number and types of trees that must be replanted.
- Air, water, soil, fish and wildlife habitat protection.

Examples of possible standards are as follows:

- Subdivisions and planned unit development applications shall include findings which show how the proposed development will be consistent with urban forest policies of the comprehensive plan.
- Trees smaller than ___ inches in diameter may be removed
- Where necessary, certain trees of ___ inches in diameter, consistent with the Arborist's report, may also be removed to facilitate the construction of home sites and roads, provided no feasible alternative exists.
- Trees identified as diseased or structurally unsafe may also be removed.
- Proposed developments are required to maintain ___ percent of the existing tree canopy. Where a development is not able to maintain this standard, a mitigation requirement of three trees of ___ inches in diameter will be planted for every tree removed below the ___ percent standard
- Trees within ___ feet of a stream or water body must be left (see also LCDC Goal 5 rules - OAR Chapter 660, Division 23).
- ANSI A300 Standards for Tree Maintenance and ANSI Z60.1 Standards for Nursery Stock will be required for all trees covered by this section

11

To protect soil, air, water, and fish and wildlife resources, the ODF highly recommends communities adopt standards consistent with

those in the FPA and the Forest Practices Rules. For example, a local jurisdiction developing tree retention standards along streams could adopt tree retention and understory vegetation requirements similar to those required by the FPA. FPA vegetation retention requirements are based on beneficial use of the water (fish or domestic) and stream size (large, medium or small). ODF has stream classification maps developed for the FPA that could be made available to local jurisdictions for the development of their ordinance. The benefits of having consistent statewide standards are (1) at least an acceptable level of protection for these resources is provided; and (2) landowner/operator confusion is reduced when operations occur across jurisdictional boundaries.

Standards for tree retention and replacement will vary based on the community's objectives, the type of trees that grow within the region, the types of resources receiving some form of protection, and the types of land uses to be proposed. While ORS 527.722 dictates that cities must provide protection for air, water, soil, and fish and wildlife resources, it does not stipulate what level of protection is required. Cities must ensure that these resources are protected and that they satisfy other regulations such as the Clean Water Act (normally met by administering the FPA). Development of a local program will need to consider and ultimately decide on the levels of protection.

Enforcement - The local agency responsible for enforcement, the penalties for violating the

program regulations, and the method of enforcement should be included in the urban forest practices program. The following is an example addressing these points:

The planning department is charged with the responsibility of enforcing the regulations of the forest practices program. Parties proposing developments will not be issued permits until proof is provided that the proposal complies with the urban forest practices program.

Where development permits have been issued and a violation has occurred, fines of \$250 a day for every day not in compliance with these regulations will be assessed.

Penalties for unauthorized tree removal shall be assessed per offense.

Fines collected under this program shall be deposited into a special account to be used for enforcing this program. Any money collected beyond that shall be deposited into a special account to be used for tree planting within the city.

Fees - The city will need to adopt a fee schedule that reflects the cost of administering the program. Funding an enforcement mechanism is often accomplished by application fees. The use of consultants may be necessary where a community's size does not allow for the hiring of a code enforcement officer. Incentives and education should also be a part of the implementation strategy. Mitigation measures and penalties for violating program regulations should be clear and should be strong enough to dissuade violators.

Appeals Process - The standard appeals process found in the existing development code or zoning ordinance should be referenced in the local jurisdiction's urban forest practices program.

As a result of the passage of Ballot Measure 56 by the Oregon voters in 1998, adoption of any new local regulations will likely require notification of those property owners affected. According to the law, such notices must be sent at least 20 (but not more than 40 days) days before the date of the first hearing.

The law requires that the notice **describe in detail** how the proposed ordinance would affect the use of the property. The law also requires that the notice "contain substantially" the following language in boldfaced type extending from the left-hand margin to the right-hand margin across the face page of the notice:

THIS IS TO NOTIFY YOU THAT THE (jurisdiction name goes here) HAS PROPOSED A LAND USE REGULATION THAT WILL AFFECT THE PERMISSIBLE USES OF YOUR LAND

The body of the notice must also contain substantially the following language:

On (date of public hearing), (jurisdiction name) will hold a public hearing regarding the adoption of Ordinance Number _____. The (jurisdiction name) has determined that adoption of this ordinance will affect the permissible uses of your property and may reduce the value of your property.

Ordinance Number _____ is available for inspection at (identify place) located at (list address here). A copy of Ordinance Number _____ also is available for purchase at a cost of (price here).

For additional information concerning Ordinance Number _____, you may call the (identify staff person or office to call) at () ____-_____.

If you need further assistance regarding notice obligations under the law, please seek assistance from your legal counsel.

Perhaps the greatest challenge facing local government is how to administer an urban forest practices program. While the Oregon Department of Forestry can provide technical guidance to help with the development of forest practices programs, the Department cannot be involved in the enforcement of local forest regulations. Most counties and cities do not have technical forestry expertise, so such expertise must either be acquired or contracted.

Local governments lacking forestry expertise may want to consider contracting with a consulting forester or arborist to handle inspections of projects. Consultants could also be used to monitor technical compliance and to enforce program standards as well as to review technical specifications. In order to avoid "reinventing the wheel," cities should consider reviewing and, where feasible, borrowing existing technical standards and adapting them to address local issues and need.

With any regulations, there are bound to be inconsistencies or unintended consequences that must be addressed. Anticipating the loopholes is a challenge all cities face while developing an urban forest practice ordinance.

7.0 SUMMARY

The Oregon Department of Forestry encourages cities and counties, where possible, to regulate forest practices inside Urban Growth Boundaries. As local governments evaluate the need for local forest practices regulations, ODF's Forest Practices and Urban Community Forestry Programs can provide technical assistance and review in the development and draft of ordinances.

Local governments that want to replace state administration of the forest practices act are encouraged to contact their local ODF field office. In order to provide smooth transition, ODF will provide information about active or planned operations within areas that will fall under local regulation.

The appendices contain a list of publications and documents which may be helpful in developing local forest regulations.

8.0 APPENDICES

8.1 List of Acronyms

FPA	Forest Practices Act	HB	House Bill
ODF	Oregon Department of Forestry	SB	Senate Bill
13 UGB	Urban Growth Boundary	OAR	Oregon Administrative Rule
FPF	Forest Practice Forester	LCDC	Land Conservation and Development Commission
ORS	Oregon Revised Statute	GIS	Geographic Information System
RMA	Riparian Management Area	ANSI	American National Standards Institute

8.2 Sources of Assistance

For more information about the Oregon Forest Practices Act or the Forest Practice Rules, please contact your local Oregon Department of Forestry district office listed below or the headquarters office at 2600 State Street, Salem, Oregon 97310, 503-945-7470. For information related to urban forestry and community assistance contact, the above address, phone number 503-945-7391

Eastern Oregon

3501 E 3rd, Prineville 97754	541-447-5658
3701 W 13th, The Dalles 97058	541-296-4626
400 NW 9th, John Day 97845	541-575-1139
3200 DeLap Road, Klamath Falls 97601	541-883-5681
2290 4th Street, Lakeview 97630	541-947-3311
611 20th Street, La Grande 98750	541-963-3168
1055 Airport Road, Pendleton 97801	541-276-3491
802 West Hwy 82, Wallowa 97885	541-886-2881

Northwest Oregon

801 Gales Creek Road, Forest Grove 97116	503-357-2191
Route 1, Box 950, Astoria 97103	503-325-5451
405 E Street, Columbia City 97108	503-397-2636
4907 East 3rd Street, Tillamook 97141	503-842-2545
14995 South Hwy 211, Molalla 97038	503-829-2216
22965 North Fork Road SE, Lyons 97358	541-859-2151
24533 Alsea Highway, Philomath 97370	541-929-3266
825 Oak Villa, Dallas 97338	503-623-8146
763 Forestry Road, Toledo 97391	541-336-2273

Southern Oregon

1758 NE Airport Road, Roseburg 97470	541-440-3412
300 5th Street, Bay Park, Coos Bay 97420	541-267-4136
4690 Highway 20, Sweet Home 97386	541-367-6108
3150 Main Street, Springfield 97478	541-726-3588
87950 Territorial Highway, Veneta 97487	541-935-2283
5286 Table Rock, Central Point 97502	541-664-3328
5375 Monument Drive, Grants Pass 97526	541-474-3152

For current Oregon forest practice rule information, connect to the Oregon Department of Forestry's Forest Practices Program world wide web page at:

<http://www.odf.state.or.us/forprac.htm>

For Urban Forestry and Community assistance.

<http://www.odf.state.or.us/urban.htm>

8.3 References

"Oregon Forest Practices Act". ORS 527.610 to 527.992. Oregon Department of Forestry, Forest Practices Program, 2600 State Street, Salem, Oregon 97310.

"Oregon Forest Practice Administrative Rules". Division 600 to Division 665. Oregon Department of Forestry, Forest Practices Program, 2600 State Street, Salem, Oregon 97310

"Stream Classification Maps". Oregon Department of Forestry, Forest Practices Program, 2600 State Street, Salem, Oregon 97310.

"Criteria For Determination of Wildfire Zones". OAR 629-044-0200 to 629-044-0260. These rules must be applied to activate the provisions of ORS 93.270(4) and portions of the Oregon One and Two Family Dwelling Specialty Code. Oregon Department of Forestry, 2600 State Street, Salem, Oregon 97310.

Division 23, Procedures and Requirements For Complying With Goal 5, OAR 660-023-000 to 660-023-0250. Oregon Department of Land Conservation and Development. Salem, Oregon.

Bernhardt, E. A.; Swiecki, T.J. 1991. Guidelines for Developing and Evaluating Tree Ordinances. California Department of Forestry and Fire Protection Urban Forestry Program. 76p

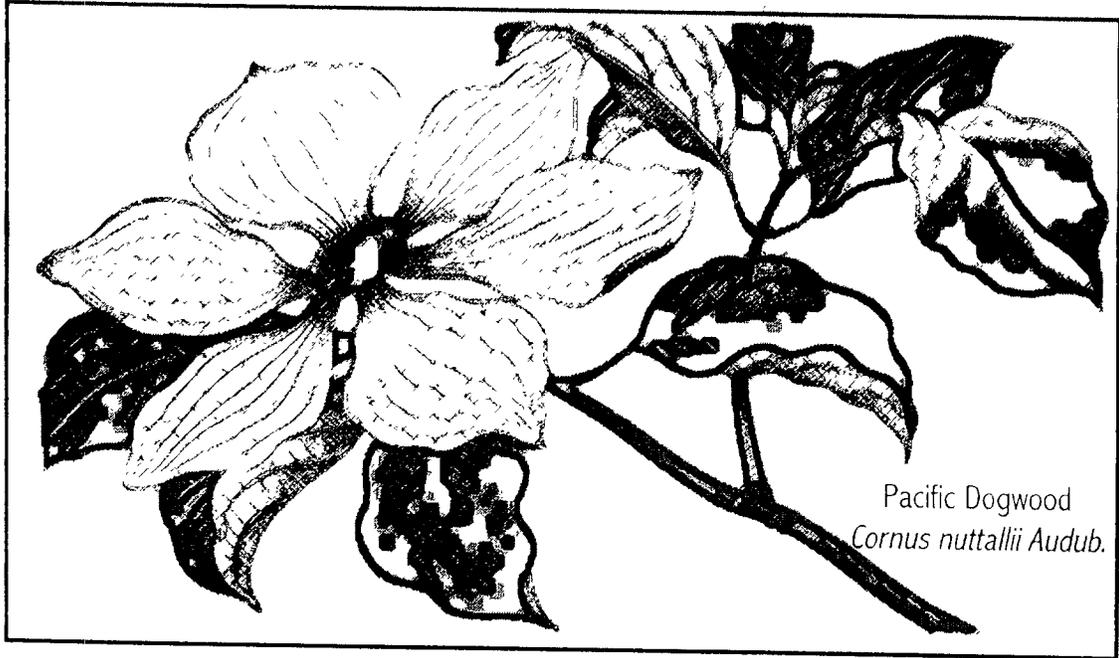
Duerksen, C. J.; Richman, S. 1993. Tree Conservation Ordinances. PAS Report Number 446. American Planning Association and Scenic America. Washington, DC. 107p.

Fazio, J. R., ed 1993. "Tree Protection Ordinances". Tree City USA Bulletin No. 30. The National Arbor Day Foundation. Nebraska City, Nebraska. 8p.

Minnesota Department of Natural Resources. 1995. "A Guide to Developing a Community Tree Preservation Ordinance" Department of Natural Resources Division of Forestry. St. Paul, Minnesota 13p.

15 Oregon Department of Forestry. 1991. "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads." Land Use Planning Notes. Salem, Oregon. 8p.

Washington State Department of Natural Resources. 1990 " Home Protection Guide." Olympia, Washington. 32p.



Pacific Dogwood
Cornus nuttallii Audub.

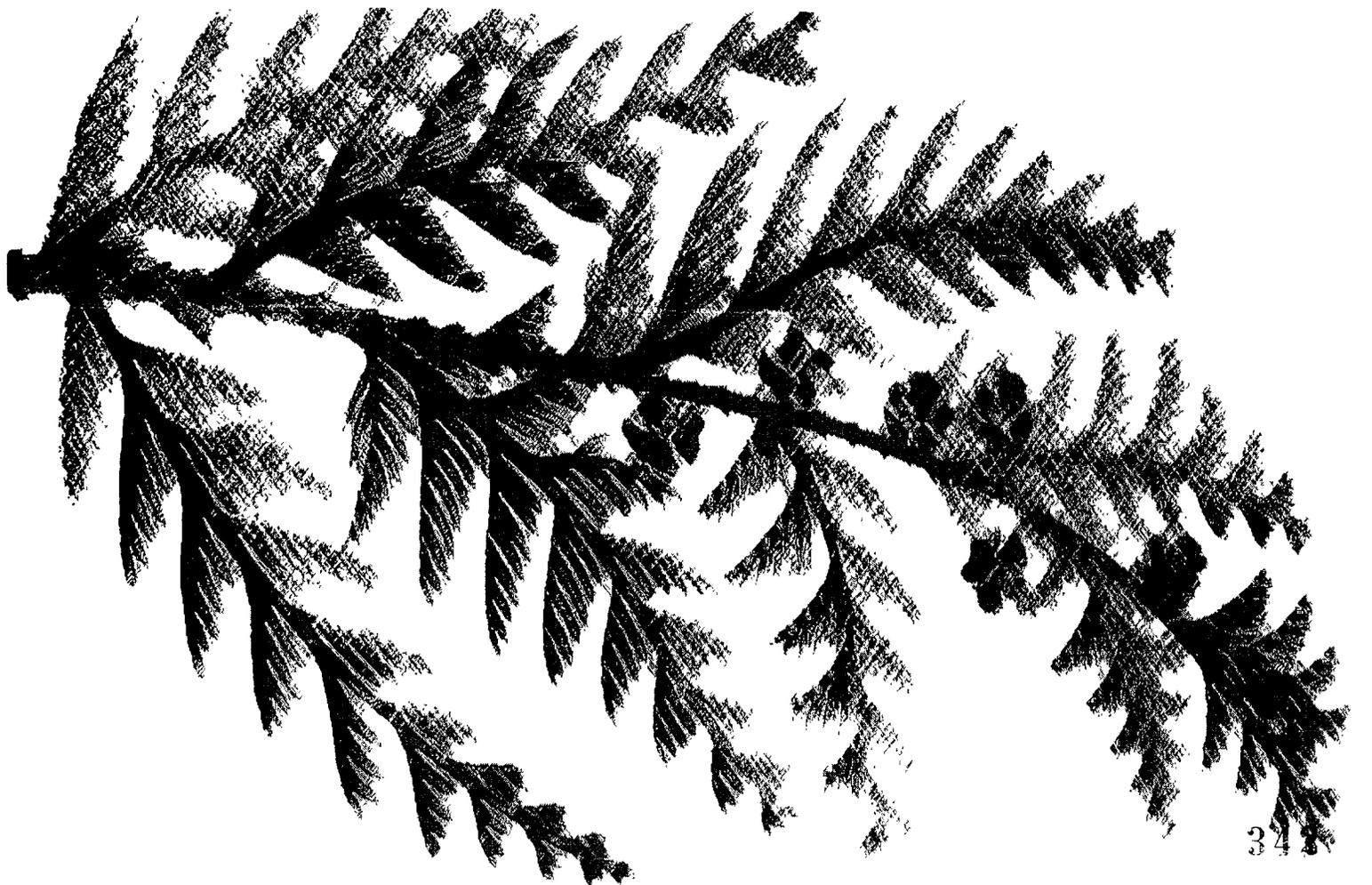


Exhibit 5
Oregon Revised Statutes Chapter 527
(File name on the web: ORS 527.pdf)

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Chapter 527 — Insect and Disease Control; Forest Practices

2003 EDITION

INSECT AND DISEASE CONTROL; FOREST PRACTICES

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PROHIBITED ACTS

527.260 Injuring forest tree of another or extracting pitch without, or in violation of, a permit prohibited; permit to extract pitch. (1) No person shall willfully and unlawfully:

- (a) Bore or cut any forest tree belonging to another for the purpose of extracting pitch;
- (b) Cut, injure or deface any such tree for the purpose of taking any part of it; or
- (c) Injure or destroy any such tree.

(2) **The State Forester, with the consent of the owner of the land, shall issue permits for the extraction of pitch from forest trees.** The terms of the permits shall clearly describe the area to which the extraction shall be confined and state the precautions necessary, in the judgment of the State Forester, to be taken by the permittee, so that the extraction will not result in an increased fire hazard to life and adjoining property.

(3) No person shall:

- (a) Bore or cut any forest tree for the purpose of extracting pitch without having first obtained a permit to do so;
- or
- (b) Willfully or negligently fail to comply with the terms of the permit. [Amended by 1995 c.79 §299]

527.280 [1953 c.375 §24; 1957 c.654 §2; 1961 c.297 §8; 1965 c.253 §83; renumbered 477.440]

527.282 [1953 c.375 §25; 1961 c.297 §9; renumbered 477.445]

527.284 [1953 c.375 §26; 1957 c.309 §12; repealed by 1961 c.297 §12]

527.286 [1953 c.357 §27; 1957 c.309 §13; subsection (2) of 1959 Replacement Part enacted as 1957 c.216 §1; repealed by 1961 c.297 §12]

527.288 [1953 c.375 §28; 1961 c.297 §10; renumbered 477.450]

527.290 [1953 c.375 §29; renumbered 477.455]

527.292 [1953 c.375 §30; 1961 c.297 §11; renumbered 477.460]

527.294 [1961 c.689 §10; repealed by 1965 c.253 §153]

INTEGRATED PEST MANAGEMENT

527.310 Definitions for ORS 527.310 to 527.370. As used in and for the purposes of ORS 527.310 to 527.370:

- (1) "Control" means reduction of resource losses or pest occurrences to an acceptable level by direct and immediate application of effective prevention, suppression or eradication strategies, or any combination thereof.
- (2) "Eradication" means the implementation of strategies through host or pest destruction or removal, or by the use of pesticides, to contain or completely eliminate exotic pests in a specific area, or both.
- (3) "Exotic" means any pest that has been accidentally or deliberately introduced into an area where it does not naturally occur.
- (4) "Forestland" means any nonfederal land which has enough timber or forest growths, standing or down,

constitute, in the judgment of the State Board of Forestry, forest pests of a nature to be harmful, detrimental and injurious to the management objectives for the site.

(5) "Integrated pest management" means a coordinated decision-making process that utilizes the most appropriate of all reasonably available means, tactics or strategies blended together to minimize the impact of forest pests in an environmentally and economically sound manner to meet site specific management objectives.

(6) "Native" means any pest that is indigenous or naturally occurring in a particular area.

(7) "Owner" means any person owning nonfederal forestlands or timber as shown on the latest records of the tax collector of the county in which the forestlands or timber is situated. Where timber is owned entirely separate and apart from the land whereon it grows or is situated, "owner" means any person owning such timber as shown on the latest records of the tax collector of the county in which the timber is situated.

(8) "Pest" means any forest insect or disease which causes or may cause damage that prevents or interferes with management objectives in a specific area.

(9) "Pesticide" has the meaning given that term in ORS 634.006.

(10) "Prevention" means the implementation of strategies designed to minimize the impact of a pest before an outbreak occurs, including but not limited to, release or enhancement of natural enemies and silvicultural activities to increase tree vigor or otherwise reduce tree susceptibility to pest damage. "Prevention" requires the incorporation of integrated pest management into overall forest resource management in order to create ecological conditions unfavorable for the reproduction or survival of pest organisms.

(11) "Strategies" may include, but are not limited to, physical and biological methods and application of pesticides.

(12) "Suppression" means the implementation of intervention strategies designed to reduce native pest populations to acceptable levels necessary to meet forest resource management objectives in a specified area. [Amended by 1967 c.87 §1; 1991 c.686 §1]

527.315 Process components. The integrated pest management process shall consist of:

(1) Defining the management unit or area of concern.

(2) Defining site specific management objectives that are compatible with the ecosystem of concern and that are achievable within the economic, logistical and regulatory constraints that apply.

(3) Establishing or maintaining routine detection and monitoring systems of major pests and their damage through ground and aerial surveys.

(4) Evaluating forest and pest conditions on specified site.

(5) Establishing pest population thresholds or acceptable levels of damage, or both, but not taking action until those levels are exceeded or where historical documentation has verified a reoccurring problem.

(6) Developing and evaluating potential strategies.

(7) Considering the following in selecting a strategy:

(a) Effectiveness;

(b) Operational feasibility;

(c) Cost-effectiveness;

(d) Ecological soundness;

(e) Environmental impact; and

(f) Site specific resource management objectives.

(8) Implementing the strategy selected.

(9) Timing actions for maximum effectiveness by monitoring pest, host development and weather.

(10) Monitoring and evaluating results of activities and strategies.

(11) Keeping current, accurate records.

(12) Structuring the program so that it can be adjusted to meet changes or varying situations. [1991 c.686 §3]

527.320 [Repealed by 1991 c.686 §11]

527.321 Implementation of process by State Forester. The State Forester shall implement the integrated pest management process as provided in ORS 527.315 on department-managed lands and encourage the process on other nonfederal lands by setting examples on department lands and through training workshops, demonstration areas and on-site technical advice. [1991 c.686 §4]

527.330 [Repealed by 1991 c.686 §11]

527.335 Investigations by State Forester concerning pests; access to privately owned lands. (1) The State Forester shall conduct surveys and evaluations on nonfederal forestlands to determine the presence, extent, trend and impact of native and exotic pests, as well as overall forest health monitoring. In so doing, the forester or representatives of the forester may go upon privately owned lands with permission of the respective owners thereof, and should any owner withhold such permission and the forester believes an emergency exists, the forester may petition that circuit court of this state having jurisdiction over the lands involved for a warrant authorizing the forester or representatives of the forester to go upon such lands. Upon petition being made the court shall forthwith summarily determine whether or not such emergency exists, and if determining such emergency exists, immediately issue a warrant authorizing the forester or representatives of the forester to go upon such lands for the purposes of this section.

(2) The State Forester may cooperate with the United States or agencies thereof, other agencies of the state, county or municipal governments, agencies of other states or other public or private organizations or individuals and may accept such funds, equipment, supplies or services from cooperators and others as it may deem appropriate for the purposes of subsections (1) and (4) of this section.

(3) The State Forester is authorized to enter into contracts for selected services or accept moneys from private and public sources for the purposes stated in subsections (1) and (4) of this section; provided, however, that such moneys shall be placed in the State Forestry Department Account and shall be continuously appropriated for such purposes.

(4) The State Forester shall also provide on-site technical advice regarding insect and disease management to nonfederal land owners who request such services. [1961 c.212 §1; 1991 c.686 §7]

527.340 [Amended by 1955 c.116 §1; 1967 c.87 §2; repealed by 1991 c.686 §11]

527.341 Forestland owners to implement strategies to carry out resource management objectives. Every owner of forestlands or timber shall implement prevention and suppression strategies to meet their own forest resource management objectives. [1991 c.686 §5]

527.346 State Forester to assist landowners unable to take action against pest. (1) Whenever the State Forester determines, using criteria approved by the State Board of Forestry, that owners are unable to take action against a pest that is threatening Oregon's economic, social and environmental well-being, the State Forester shall, using funds appropriated by the Legislative Assembly, declare a control district and implement the appropriate strategy.

(2) The State Forester shall, within 15 days after receiving state funds, notify in writing all owners of forestlands within the control district of the declared control project. The notice shall be served by return receipt mail addressed to the last-known address of the owner. In addition, there shall be published an article describing the nature of the control district, including a legal description of the area and vicinity map, at least once a week for two consecutive weeks in a newspaper having a general circulation in the area in which the control district is situated. Other methods of notification may be used in the future as new technology becomes available. [1991 c.686 §6]

527.350 [Amended by 1967 c.87 §3; repealed by 1991 c.686 §11]

527.360 Costs of eradication; state to contribute; unpaid costs to be charge against timber; collection of charge. Upon completion of any work authorized and performed under the provisions of ORS 527.346, the State Forester shall prepare a certified statement of the expenses necessarily incurred in performing the work. The state shall assist in the payment of control costs from funds available for that purpose. The balance of the expenses, after deducting the sum of such amounts as may be contributed by the state, the federal government or any other agencies or persons to defray control costs, shall constitute a charge against the forestlands or timber involved and shall be collected in the same manner as forest patrol assessments under the provisions of ORS chapter 477. [Amended by 1967 c.87 §4; 1991 c.686 §8]

527.370 Disposition of receipts. All moneys collected under ORS 527.335 and 527.346, together with such moneys as have been and may be appropriated by the legislature for the purposes of ORS 527.310 to 527.370, and with such moneys as may be contributed by the federal government or any agencies or persons, shall be placed into the State Forestry Department Account. [Amended by 1953 c.15 §3; 1955 c.116 §2; 1957 c.83 §11; 1967 c.34 §5; 1991 c.686 §9]

527.380 [Repealed by 1991 c.686 §11]

527.390 [Amended by 1957 c.83 §12; repealed by 1967 c.34 §8]

527.400 [Repealed by 1991 c.686 §11]

527.410 [Repealed by 1957 c.83 §26]

527.420 [Repealed by 1957 c.83 §26]

527.430 [Repealed by 1957 c.83 §26]

527.510 [Repealed by 1991 c.686 §11]

527.520 [Repealed by 1975 c.771 §33]

527.530 [Repealed by 1975 c.302 §15]

527.540 [Repealed by 1991 c.686 §11]

OREGON FOREST PRACTICES ACT

(Generally)

527.610 Short title. ORS 527.610 to 527.770, 527.990

(1) and 527.992 are known as the Oregon Forest Practices Act. [Formerly 527.010; 1991 c.634 §2]

527.620 Definitions for ORS 527.610 to 527.770. As used in ORS 527.610 to 527.770, 527.990 and 527.992:

(1) "Board" means the State Board of Forestry.

(2) "Cumulative effects" means the impact on the environment which results from the incremental impact of the forest practice when added to other past, present and reasonably foreseeable future forest practices regardless of what governmental agency or person undertakes such other actions.

(3) "DBH" means the diameter at breast height which is measured as the width of a standing tree at four and one-half feet above the ground, on the uphill side.

(4) "Edge of the roadway" means:

(a) For interstate highways, the fence.

(b) For all other state highways, the outermost edge of pavement, or if unpaved, the edge of the shoulder.

(5) "Forest practice" means any operation conducted on or pertaining to forestland, including but not limited to:

(a) Reforestation of forestland;

(b) Road construction and maintenance;

(c) Harvesting of forest tree species;

(d) Application of chemicals; and

(e) Disposal of slash.

(6) "Forest tree species" means any tree species capable of producing logs, fiber or other wood materials suitable for the production of lumber, sheeting, pulp, firewood or other commercial forest products except trees grown to be Christmas trees as defined in ORS 571.505 on land used solely for the production of Christmas trees.

(7) "Forestland" means land that is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(8) "Harvest type 1" means an operation that requires reforestation but does not require wildlife leave trees. A harvest type 1 is an operation that leaves a combined stocking level of free to grow seedlings, saplings, poles and larger trees that is less than the stocking level established by rule of the board that represents adequate utilization of the productivity of the site.

(9) "Harvest type 2" means an operation that requires wildlife leave trees but does not require reforestation. A harvest type 2 does not require reforestation because it has an adequate combined stocking of free to grow seedlings,

saplings, poles and larger trees, but leaves:

(a) On Cubic Foot Site Class I, II or III, fewer than 50 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre;

(b) On Cubic Foot Site Class IV or V, fewer than 30 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre; or

(c) On Cubic Foot Site Class VI, fewer than 15 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre.

(10) "Harvest type 3" means an operation that requires reforestation and requires wildlife leave trees. This represents a level of stocking below which the size of operations is limited under ORS 527.740 and 527.750.

(11) "Landowner" means any individual, combination of individuals, partnership, corporation or association of whatever nature that holds an ownership interest in forestland, including the state and any political subdivision thereof.

(12) "Operation" means any commercial activity relating to the establishment, management or harvest of forest tree species except as provided by the following:

(a) The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.

(b) The establishment, management or harvest of hardwood timber, including but not limited to hybrid cottonwood, that is:

(A) Grown on land that has been prepared by intensive cultivation methods and that is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;

(C) Harvested on a rotation cycle that is 12 or fewer years after planting; and

(D) Subject to intensive agricultural practices such as fertilization, cultivation, irrigation, insect control and disease control.

(c) The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.

(d) The establishment, management or harvest of ornamental, street or park trees within an urbanized area, as that term is defined in ORS 221.010.

(e) The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.

(f) The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.

(g) The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.

(13) "Operator" means any person, including a landowner or timber owner, who conducts an operation.

(14) "Single ownership" means ownership by an individual, partnership, corporation, limited liability company, trust, holding company or other business entity, including the state or any political subdivision thereof. Single ownership includes ownership held under different names or titles where the same individual or individuals, or their heirs or assigns, are shareholders (other than those of public corporations whose stock is traded on the open market), partners, business trustees or officers, or otherwise have an interest in or are associated with each property.

(15) "State Forester" means the State Forester or the duly authorized representative of the State Forester.

(16) "Suitable hardwood seedlings" means any hardwood seedling that will eventually yield logs or fiber, or both, sufficient in size and quality for the production of lumber, plywood, pulp or other forest products.

(17) "Timber owner" means any individual, combination of individuals, partnership, corporation or association of whatever nature, other than a landowner, that holds an ownership interest in any forest tree species on forestland.

(18) "Visually sensitive corridor" means forestland extending outward 150 feet, measured on the slope, from the outermost edge of the roadway of a scenic highway referred to in ORS 527.755, along both sides for the full length of the highway.

(19) "Wildlife leave trees" means trees or snags required to be retained as described in ORS 527.676 (1).

(20) "Written plan" means a document prepared by an operator, timber owner or landowner that describes how the operation is planned to be conducted. [1971 c.316 §3; 1987 c.919 §9; 1991 c.547 §1; 1991 c.634 §3; 1991 c.919 §1; 1995 s.s. c.3 §39; 1996 c.9 §2; 1999 c.59 §166; 2001 c.451 §1; 2003 c.740 §2]

527.630 Policy; rules. (1) Forests make a vital contribution to Oregon by providing jobs, products, tax base and

other social and economic benefits, by helping to maintain forest tree species, soil, air and water resources and by providing a habitat for wildlife and aquatic life. Therefore, it is declared to be the public policy of the State of Oregon to encourage economically efficient forest practices that ensure the continuous growing and harvesting of forest tree species and the maintenance of forestland for such purposes as the leading use on privately owned land, consistent with sound management of soil, air, water, fish and wildlife resources and scenic resources within visually sensitive corridors as provided in ORS 527.755 and to ensure the continuous benefits of those resources for future generations of Oregonians.

(2) It is recognized that operations on forestland are already subject to other laws and to regulations of other agencies which deal primarily with consequences of such operations rather than the manner in which operations are conducted. It is further recognized that it is essential to avoid uncertainty and confusion in enforcement and implementation of such laws and regulations and in planning and carrying out operations on forestlands.

(3) To encourage forest practices implementing the policy of ORS 527.610 to 527.770 and 527.990 and 527.992, it is declared to be in the public interest to vest in the State Board of Forestry exclusive authority to develop and enforce statewide and regional rules pursuant to ORS 527.710 and to coordinate with other state agencies and local governments which are concerned with the forest environment.

(4) The board may adopt and enforce rules addressing scenic considerations only in accordance with ORS 527.755.

(5) The board shall adopt and enforce forest practice rules to reduce the risk of serious bodily injury or death from a rapidly moving landslide only in accordance with ORS 527.710 (10). As used in this subsection, "rapidly moving landslide" has the meaning given in ORS 195.250.

(6) The State of Oregon should provide a stable regulatory environment to encourage investment in private forestlands. [1971 c.316 §4; 1987 c.919 §10; 1991 c.634 §4; 1991 c. 919 §10; 1995 s.s. c.3 §39L; 1996 c.9 §14; 1999 c.1103 §11; 2003 c.740 §9]

Note: Section 14, chapter 740, Oregon Laws 2003, provides:

Sec. 14. (1) If a rule adopted by the State Board of Forestry prior to the effective date of this 2003 Act [August 29, 2003] requires prior approval of a written plan, the requirement for prior approval is void. Written plans submitted under such a requirement shall be reviewed under ORS 183.700, 195.260, 527.620, 527.630, 527.670, 527.700, 527.710, 527.714, 527.750 and 527.992 as amended by sections 1 to 10 of this 2003 Act.

(2) Notwithstanding subsection (1) of this section, any substantive standard contained within a rule described in subsection (1) of this section that governs the conduct of forest practices remains enforceable under ORS 527.680, 527.683, 527.685, 527.687, 527.690, 527.990 and 527.992. [2003 c.740 §14]

527.640 Forest regions. The State Board of Forestry shall establish a number of forest regions, but not less than three, necessary to achieve the purposes described in ORS 527.630. [1971 c.316 §6]

527.650 Forest practice committees; members; qualifications; appointment; terms. (1) The State Board of Forestry shall establish a forest practice committee for each forest region established pursuant to ORS 527.640. Each such committee shall consist of nine members, a majority of whom must reside in the region. Members of each committee shall be qualified by education or experience in natural resource management and not less than two-thirds of the members of each committee shall be private landowners, private timber owners or authorized representatives of such landowners or timber owners who regularly engage in operations.

(2) Members of forest practice committees shall be appointed by the board for three-year terms. Appointments under this subsection shall be made by the board within 60 days after July 1, 1972. If there is a vacancy for any cause, the board shall make an appointment to become immediately effective for the unexpired term. Each such committee shall select a chairperson from among its members. A staff member of the State Forestry Department shall be designated by the State Forester to serve as the secretary, without voting power, for each such committee.

(3) Notwithstanding the terms of the committee members specified by subsection (2) of this section, of the members first appointed to each such committee:

(a) Three shall serve for a term of one year.

(b) Three shall serve for a term of two years.

(c) Three shall serve for a term of three years. [1971 c.316 §7]

527.660 Committees to review rules. Each forest practice committee shall review proposed forest practice rules in order to assist the State Board of Forestry in developing rules appropriate to the forest conditions within its region.

Committee recommendations are advisory only and the committees need not be consulted prior to the adoption of any forest practice rule. [1971 c.316 §8; 1987 c.919 §11]

527.662 [1997 c.413 §4; 1999 c.849 §105; 2003 c.75 §93; repealed by 2003 c.539 §37]

527.665 Notice of reforestation requirements to be given in forestland transfers; effect of failure to notify; damages. (1) In any transaction for the conveyance of an ownership interest in forestland, the transferor must provide to the transferee, prior to the date of execution of the conveyance, written notice of any reforestation requirements imposed upon the land pursuant to the Oregon Forest Practices Act.

(2) The failure of the transferor to comply with subsection (1) of this section does not invalidate an instrument of conveyance executed in the transaction. However, for any such failure the transferee may bring against the transferor an appropriate action to recover the costs of complying with the reforestation requirements. The court may award reasonable attorney fees to the prevailing party in an action brought under the provisions of this section. [1983 c.759 §4; 1995 c.618 §79]

527.670 Commencement of operations; rules; written plan; effect of plan; notice of chemical application.

(1) The State Board of Forestry shall designate the types of operations for which notice shall be required under this section.

(2) The board shall determine by rule what types of operations require a written plan.

(3) The board's determination under subsection (2) of this section shall require a written plan for operations:

(a) Within one hundred feet of a stream determined by the State Forester to be used by fish or for domestic use, unless the board, by rule, provides that a written plan is not required because the proposed operation will be conducted according to a general vegetation retention prescription described in administrative rule; or

(b) Within three hundred feet of a resource site inventoried pursuant to ORS 527.710 (3)(a).

(4) The distances set forth in subsection (3)(a) and (b) of this section are solely for the purpose of defining an area within which a hearing may be requested under ORS 527.700 and not the area to be protected by the board's rules adopted pursuant to ORS 527.710 (3)(c).

(5) For the purpose of determining the distances set forth in subsection (3)(a) and (b) of this section "site" means the specific resource site and not any additional buffer area.

(6) An operator, timber owner or landowner, before commencing an operation, shall notify the State Forester. The notification shall be on forms provided by the State Forester and shall include the name and address of the operator, timber owner and landowner, the legal description of the operating area, and any other information considered by the State Forester to be necessary for the administration of the rules promulgated by the board pursuant to ORS 527.710. Promptly upon receipt of such notice, the State Forester shall send a copy of the notice to whichever of the operator, timber owner or landowner did not submit the notification. The State Forester shall send a copy of notices involving chemical applications to persons within 10 miles of the chemical application who hold downstream surface water rights pursuant to ORS chapter 537, if such a person has requested that notification in writing. The board shall adopt rules specifying the information to be contained in the notice. All information filed with the State Forester pertaining to chemical applications shall be public record.

(7) An operator, timber owner or landowner, whichever filed the original notification, shall notify the State Forester of any subsequent change in the information contained in the notification.

(8) Within three working days of receipt of a notice or a written plan filed under subsection (6) or (7) of this section, the State Forester shall send a copy of the notice or written plan to any person who requested of the State Forester in writing that the person be sent copies of notice and written plan and who has paid any applicable fee established by the State Forester for such service. The State Forester may establish a fee for sending copies of notices and written plans under this subsection not to exceed the actual and reasonable costs. In addition, the State Forester shall send a copy of the notification to the Department of Revenue and the county assessor for the county in which the operation is located, at times and in a manner determined through written cooperative agreement by the parties involved.

(9) Persons may submit written comments pertaining to the operation to the State Forester within 14 calendar days of the date the notice or written plan was filed with the State Forester under subsection (2), (6) or (7) of this section. Notwithstanding the provisions of this subsection, the State Forester may waive any waiting period for operations not requiring a written plan under subsection (3) of this section, except those operations involving aerial application of chemicals.

(10) If an operator, timber owner or landowner is required to submit a written plan of operations to the State

Forester under subsection (3) of this section:

(a) The State Forester shall review a written plan and may provide comments to the person who submitted the written plan;

(b) The State Forester may not provide any comments concerning the written plan earlier than 14 calendar days following the date that the written plan was filed with the State Forester nor later than 21 calendar days following the date that the written plan was filed; and

(c) Provided that notice has been provided as required by subsection (6) of this section, the operation may commence on the date that the State Forester provides comments or, if no comments are provided within the time period established in paragraph (b) of this subsection, at any time after 21 calendar days following the date that the written plan was filed.

~~(11)~~(a) Comments provided by the State Forester, or by the board under ORS 527.700 (6), to the person who submitted the written plan are for the sole purpose of providing advice to the operator, timber owner or landowner regarding whether the operation described in the written plan is likely to comply with ORS 527.610 to 527.770 and rules adopted thereunder. Comments provided by the State Forester or the board do not constitute an approval of the written plan or operation.

(b) If the State Forester or the board does not comment on a written plan, the failure to comment does not mean that an operation carried out in conformance with the written plan complies with ORS 527.610 to 527.770 or rules adopted thereunder nor does the failure to comment constitute a rejection of the written plan or operation.

(c) In the event that the State Forester or board determines that an enforcement action may be appropriate concerning the compliance of a particular operation with ORS 527.610 to 527.770 or rules adopted thereunder, the State Forester or board shall consider, but are not bound by, comments that the State Forester provided under this section or comments that the board provided under ORS 527.700.

(12) When the operation is required to have a written plan under subsection (3) of this section and comments have been timely filed under subsection (9) of this section pertaining to the operation requiring a written plan, the State Forester shall:

(a) Send a copy of the State Forester's review and comments, if any, to persons who submitted timely written comments under subsection (9) of this section pertaining to the operation; and

(b) Send to the operator, timber owner and landowner a copy of all timely comments submitted under subsection (9) of this section. [1971 c.316 §9; 1987 c.919 §12; 1991 c.634 §5; 1991 c.919 §11; 1995 s.s. c.3 §39a; 1996 c.9 §3; 1997 c.413 §1; 2003 c.539 §39; 2003 c.740 §3]

527.674 Rules requiring approval of written plan prohibited. The State Board of Forestry may not adopt or enforce a rule under ORS 527.610 to 527.770 that requires that the board or the State Forester approve written plans as a required precedent to conducting a forest practice or operation. [2003 c.740 §13]

527.675 [1995 s.s. c.3 §39g; repealed by 1996 c.9 §8 (527.676 enacted in lieu of 527.675)]

527.676 Leaving snags and downed logs in harvest type 2 or 3 units; green trees to be left near certain streams. (1) In order to contribute to the overall maintenance of wildlife, nutrient cycling, moisture retention and other resource benefits of retained wood, when a harvest type 2 unit exceeding 25 acres or harvest type 3 unit exceeding 25 acres occurs the operator shall leave on average, per acre harvested, at least:

(a) Two snags or two green trees at least 30 feet in height and 11 inches DBH or larger, at least 50 percent of which are conifers; and

(b) Two downed logs or downed trees, at least 50 percent of which are conifers, that each comprise at least 10 cubic feet gross volume and are no less than six feet long. One downed conifer or suitable hardwood log of at least 20 cubic feet gross volume and no less than six feet long may count as two logs.

(2) In meeting the requirements of this section, the operator has the sole discretion to determine the location and distribution of wildlife leave trees, including the ability to leave snags, trees and logs in one or more clusters rather than distributed throughout the unit and, if specifically permitted by the State Board of Forestry by rule, to meet the wildlife leave tree requirements by counting snags, trees or logs otherwise required to be left in riparian management areas or resource sites listed in ORS 527.710, subject to:

(a) Safety and fire hazard regulations;

(b) Rules or other requirements relating to wildlife leave trees established by the State Board of Forestry or the State Forester; and

(c) All other requirements pertaining to forest operations.

(3) In meeting the requirements of this section, the State Forester:

(a) Shall consult with the operator concerning the selection of wildlife leave trees when the State Forester believes that retaining certain trees or groups of trees would provide increased benefits to wildlife.

(b) May approve alternate plans submitted by the operator to meet the provisions of this section, including but not limited to waiving:

(A) The requirement that at least 50 percent of wildlife leave trees be conifers, upon a showing that a site is being intensively managed for hardwood production; and

(B) In whole or in part, the requirements of this section for one operation if an alternate plan provides for an equal or greater number of wildlife leave trees in another harvest type 2 or harvest type 3 operation, that the State Forester determines would achieve better overall benefits for wildlife.

(c) May require, for operations adjacent to a fish-bearing or domestic use stream, in addition to trees otherwise required to be left in riparian management areas, up to 25 percent of the green trees required to be retained under this section to be left in or adjacent to the riparian management area of the stream.

(d) May require by rule, for operations adjacent to a small, nonfish-bearing stream subject to rapidly moving landslides as defined in ORS 195.250, that available green trees and snags be left in or adjacent to the stream. The operator must leave available green trees and snags under this paragraph within an area that is 50 feet on each side of the stream and no more than 500 feet upstream from a riparian management area of a fish-bearing stream.

(4) When a harvest type 2 or harvest type 3 unit occurs adjacent to a prior harvest type 2 or harvest type 3 unit, resulting in a combined total contiguous acreage of harvest type 2 or harvest type 3 under single ownership exceeding 25 acres, the wildlife leave tree and downed log requirements of subsection (1) of this section apply to the combined total contiguous acreage. [1996 c.9 §9 (enacted in lieu of 527.675); 2001 c.340 §1]

527.680 Violation by operator; citation; order to cease violation; order to repair damage; temporary order where violation continuing; service on operator. (1) Whenever the State Forester determines that an operator has committed a violation under ORS 527.990 (1), the State Forester may issue and serve a citation upon the operator or authorized representative. The State Forester shall cause a copy of the citation to be mailed or delivered to the timber owner and landowner. Whenever the State Forester determines that the landowner has failed to comply with the reforestation rules under ORS 527.710, the State Forester may issue and serve a citation upon the landowner or authorized representative. Each citation issued under this section shall specify the nature of the violation charged and any damage or unsatisfactory condition that has occurred as the result of such violation.

(2) Whenever a citation is served pursuant to subsection (1) of this section, the State Forester:

(a) Shall issue and serve upon the landowner or operator or authorized representative an order directing that the landowner or operator cease further violation. If the order is served upon an operator, the State Forester shall cause a copy of such order to be mailed or delivered to the timber owner and landowner; and

(b) May issue and serve an order upon the landowner or operator and shall cause a copy of such order to be mailed or delivered to the timber owner and landowner, directing the landowner or operator, where practical and economically feasible, to make reasonable efforts to repair the damage or correct the unsatisfactory condition specified in the citation within a period specified by the State Forester.

(3) In the event the order issued under subsection (2)(a) of this section has not been complied with, and the violation specified in such order is resulting in continuing damage, the State Forester by temporary order, may direct the landowner or operator to cease any further activity in that portion of the operation that is resulting in such damage. Such temporary order shall be in effect until the date of the expiration of the period as prescribed in subsection (4) of this section or until the date that the violation ceases, whichever date occurs first.

(4) A temporary order issued under subsection (3) of this section shall be served upon the landowner or operator or authorized representative, and the State Forester shall cause a copy of such temporary order to be mailed or delivered to the operator, timber owner and landowner. If requested by the operator, timber owner or landowner, the State Board of Forestry, following the appeal procedures of ORS 527.700, must hold a hearing on the temporary order within five working days after the receipt by the board of the request. A temporary order issued and served pursuant to subsection (3) of this section shall remain in effect not more than five working days after such hearing unless the order is sooner affirmed, modified or revoked by the board.

(5) If a landowner or operator fails to comply with a final order issued under subsection (2)(b) of this section within the time specified in the order, or if the landowner or operator fails to comply with a final order imposing civil penalties for violation of any provision of the Oregon Forest Practices Act, the State Forester may issue an order that prohibits the affected landowner or operator from conducting any new operations on any forestland in this state until the landowner or operator has complied with the order to correct an unsatisfactory condition, make repair or pay the

civil penalty, as the case may be, to the satisfaction of the State Forester. [1971 c.316 §10; 1983 c.759 §1; 1997 c.306 §1]

527.683 Notice of violation. (1) No civil penalty prescribed in ORS 527.992 shall be imposed until the person incurring the penalty has received notice in writing from the State Forester specifying the violation. Such notice is in addition to the notice required in ORS 183.745.

(2) The citation issued pursuant to ORS 527.680 (1) and the order issued pursuant to ORS 527.680 (2)(b) shall each constitute the notice required by subsection (1) of this section. [1987 c.919 §25; 1991 c.734 §48]

~~**527.685 Civil penalty considerations; rules.**~~ (1) ~~The State Board of Forestry shall by rule establish the amount of civil penalty that may be imposed for a particular violation. No civil penalty shall exceed \$5,000 per violation.~~

(2) In imposing a penalty authorized by this section, the State Forester may consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits pertaining to the Oregon Forest Practices Act.

(c) The gravity and magnitude of the violation.

(d) Whether the violation was repeated or continuous.

(e) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(f) **The size and type of ownership of the operation.**

(g) Any relevant rule of the board.

(h) The violator's cooperativeness and efforts to correct the violation.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the board determines to be proper and consistent with the public benefit. Upon the request of the person incurring the penalty, the board shall consider evidence of the economic and financial condition of the person in determining whether a penalty shall be remitted or mitigated.

(4) The board, by rule, may delegate to the State Forester upon such conditions as deemed necessary, all or part of the authority of the board provided in subsection (3) of this section to assess, remit or mitigate civil penalties. [1987 c.919 §26]

527.687 Civil penalty procedure. (1) Subject to the notice provisions of ORS 527.683, any civil penalty under ORS 527.992 shall be imposed in the manner provided in ORS 183.745.

(2) In no case shall a hearing requested under ORS 183.745 be held less than 45 days from the date of service of the notice of penalty to allow the party to prepare testimony. The hearing shall be held not more than 180 days following issuance of the notice unless all parties agree on an extension.

(3) Hearings under this section shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605.

(4) All civil penalties recovered under ORS 527.610 to 527.770, 527.990 and 527.992 shall be paid to the General Fund. [1987 c.919 §27; 1991 c.634 §6; 1991 c.734 §121; 1995 s.s. c.3 §39k; 1996 c.9 §13; 1999 c.849 §§107,108; 2003 c.75 §45]

527.690 Failure to comply with order to reforest or repair damage; estimate of cost of repair; notification; board may order repair completed; cost of repair as lien upon operator, timber owner or landowner. (1) In the event an order issued pursuant to ORS 527.680 (2)(b) directs the repair of damage or correction of an unsatisfactory condition, including compliance with reforestation requirements, and if the operator or landowner does not comply with the order within the period specified in such order and the order has not been appealed to the State Board of Forestry within 30 days, the State Forester based upon a determination by the forester of what action will best carry out the purposes of ORS 527.630 shall:

(a) Maintain an action in the Circuit Court for Marion County or the circuit court for the county in which the violation occurred for an order requiring the landowner or operator to comply with the terms of the forester's order or to restrain violations thereof; or

(b) Estimate the cost to repair the damage or the unsatisfactory condition as directed by the order and shall notify the operator, timber owner and landowner in writing of the amount of the estimate. Upon agreement of the operator, timber owner or the landowner to pay the cost, the State Forester may proceed to repair the damage or the unsatisfactory condition. In the event approval of the expenditure is not obtained within 30 days after notification to

the operator, timber owner and landowner under this section, the State Forester shall present to the board the alleged violation, the estimate of the expenditure to repair the damage or unsatisfactory condition and the justification for the expenditure.

(2) The board shall review the matter presented to it pursuant to subsection (1) of this section and shall determine whether to authorize the State Forester to proceed to repair the damage or correct the unsatisfactory condition and the amount authorized for expenditure. The board shall afford the operator, timber owner or landowner the opportunity to appear before the board for the purpose of presenting facts pertaining to the alleged violation and the proposed expenditure.

(3) If the board authorizes the State Forester to repair the damage or correct the unsatisfactory condition, the State Forester shall proceed, either with forces of the State Forester or by contract, to repair the damage or correct the unsatisfactory condition. The State Forester shall keep a complete account of direct expenditures incurred, and upon completion of the work, shall prepare an itemized statement thereof and shall deliver a copy to the operator, timber owner and landowner. In no event shall the expenditures exceed the amount authorized by subsection (2) of this section. An itemized statement of the direct expenditures incurred by the State Forester, certified by the State Forester, shall be accepted as prima facie evidence of such expenditures in any proceeding authorized by this section. If the State Forester's action to repair the damage or correct the unsatisfactory condition arose from an operation for which a bond, cash deposit or other security was required under ORS 527.760, the State Forester shall retain any applicable portion of a cash deposit and the surety on the bond or holder of the other security deposit shall pay the amount of the bond or other security deposit to the State Forester upon demand. If the amount specified in the demand is not paid within 30 days following the demand, the Attorney General, upon request by the State Forester, shall institute proceedings to recover the amount specified in the demand.

(4) The expenditures in cases covered by this section, including cases where the amount collected on a bond, deposit or other security was not sufficient to cover authorized expenditures, shall constitute a general lien upon the real and personal property of the operator, timber owner and landowner within the county in which the damage occurred. A written notice of the lien, containing a statement of the demand, the description of the property upon which the expenditures were made and the name of the parties against whom the lien attaches, shall be certified under oath by the State Forester and filed in the office of the county clerk of the county or counties in which the expenditures were made within six months after the date of delivery of the itemized statement referred to in subsection (3) of this section, and may be foreclosed in the manner provided in ORS chapter 88.

(5) All moneys recovered under this section shall be paid into the State Forestry Department Account. [1971 c.316 §11; 1981 c.757 §10; 1983 c.28 §1; 1991 c.919 §12]

527.700 Appeals from orders of State Forester; hearing procedure; stay of operation. (1) Any operator, timber owner or landowner affected by any finding or order of the State Forester issued under ORS 527.610 to 527.770 and 527.992 may request a hearing within 30 days after issuance of the order. The hearing shall be commenced within 14 days after receipt of the request for hearing and a final order shall be issued within 28 days of the request for the hearing unless all parties agree to an extension of the time limit.

(2) The State Board of Forestry may delegate to the administrative law judge the authority to issue final orders on matters under this section. Hearings provided under this section shall be conducted as contested case hearings under ORS 183.413 to 183.470. The board may establish such rules as it deems appropriate to carry out the provisions of this section. Appeals from final hearing orders under this section shall be provided in ORS 183.482, except that the comments of the board or the State Forester concerning a written plan are not reviewable orders under ORS 183.480.

(3) Any person adversely affected or aggrieved by an operation described in subsection (4) of this section may file a written request to the board for a hearing if the person submitted written comments pertaining to the operation within the time limits established under ORS 527.670 (9).

(4) A request for hearing may be filed under subsection (3) of this section only if a written plan was required pursuant to ORS 527.670 (3).

(5) A request for hearing filed under subsection (3) of this section shall be filed within 14 calendar days of the date the State Forester completed review of the written plan and issued any comments. Copies of the complete request shall be served, within the 14-day period, on the operator, timber owner and landowner. The request shall include:

- (a) A copy of the written plan on which the person is requesting a hearing;
- (b) A copy of the comments pertaining to the operation that were filed by the person requesting the hearing;
- (c) A statement that shows the person is adversely affected or aggrieved by the operation and has an interest which is addressed by the Oregon Forest Practices Act or rules adopted thereunder; and
- (d) A statement of facts that establishes that the operation is of the type described in ORS 527.670 (3).

(6) If the board finds that the person making the request meets the requirement of subsection (5)(c) of this section, the board shall set the matter for hearing within 21 calendar days after receipt of the request for hearing. The operator, timber owner and landowner shall be allowable parties to the hearing. The person requesting the hearing may raise, in the hearing, only those issues that the person raised in written comments filed under ORS 527.670 (9) relating to conformity with the rules of the board. The board shall issue its own comments, which may affirm, modify or rescind comments of the State Forester, if any, on the written plan within 45 days after the request for hearing was filed, unless all parties agree to an extension of the time limit. The comments of the board or of the State Forester concerning a written plan are not reviewable orders under ORS 183.480.

(7) The board may award reasonable attorney fees and expenses to each of the prevailing parties against any other party who the board finds presented a position without probable cause to believe the position was well-founded, or made a request primarily for a purpose other than to secure appropriate action by the board.

(8)(a) Upon the written request of a person requesting a hearing under subsection (3) of this section, a stay of the operation subject to the hearing may be granted upon a showing that:

(A) Commencement or continuation of the operation will constitute a violation of the rules of the board;

(B) The person requesting the stay will suffer irreparable injury if the stay is not granted; and

(C) The requirements of subsections (3), (4) and (5) of this section are met.

(b) If the board grants the stay, it shall require the person requesting the stay to give an undertaking which may be in the amount of the damages potentially resulting from the stay, but in any event shall not be less than \$15,000. The board may impose other reasonable requirements pertaining to the grant of the stay. The board shall limit the effect of the stay to the specific geographic area or elements of the operation for which the person requesting the stay has demonstrated a violation of the rules and irreparable injury under paragraph (a) of this subsection.

(c) If the board determines in its comments that the written plan pertaining to the operation for which the stay was granted is likely to result in compliance with ORS 527.610 to 527.770 or the rules of the board, the board may award reasonable attorney fees and actual damages in favor of each of the prevailing parties, to the extent incurred by each, against the person requesting the stay.

(9) If the board rescinds or modifies the comments on the written plan as submitted by the State Forester pertaining to any operation, the board may award reasonable attorney fees and costs against the state in favor of each of the prevailing parties.

(10) As used in this section, "person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character. [Formerly 527.240; 1983 c.28 §2; 1987 c.919 §13; 1999 c.849 §110; 2003 c.75 §94; 2003 c.740 §4]

527.710 Duties and powers of board; rules; inventory for resource protection; consultation with other agencies required. (1) In carrying out the purposes of ORS 527.610 to 527.770, 527.990 (1) and 527.992, the State Board of Forestry shall adopt, in accordance with applicable provisions of ORS chapter 183, rules to be administered by the State Forester establishing standards for forest practices in each region or subregion.

(2) The rules shall ensure the continuous growing and harvesting of forest tree species. Consistent with ORS 527.630, the rules shall provide for the overall maintenance of the following resources:

(a) Air quality;

(b) Water resources, including but not limited to sources of domestic drinking water;

(c) Soil productivity; and

(d) Fish and wildlife.

(3)(a) In addition to its rulemaking responsibilities under subsection (2) of this section, the board shall collect and analyze the best available information and establish inventories of the following resource sites needing protection:

(A) Threatened and endangered fish and wildlife species identified on lists that are adopted, by rule, by the State Fish and Wildlife Commission or are federally listed under the Endangered Species Act of 1973 as amended;

(B) Sensitive bird nesting, roosting and watering sites;

(C) Biological sites that are ecologically and scientifically significant; and

(D) Significant wetlands.

(b) The board shall determine whether forest practices would conflict with resource sites in the inventories required by paragraph (a) of this subsection. If the board determines that one or more forest practices would conflict with resource sites in the inventory, the board shall consider the consequences of the conflicting uses and determine appropriate levels of protection.

(c) Based upon the analysis required by paragraph (b) of this subsection, and consistent with the policies of ORS 527.630, the board shall adopt rules appropriate to protect resource sites in the inventories required by paragraph (a)

of this subsection.

(4) Before adopting rules under subsection (1) of this section, the board shall consult with other agencies of this state or any of its political subdivisions that have functions with respect to the purposes specified in ORS 527.630 or programs affected by forest operations. Agencies and programs subject to consultation under this subsection include, but are not limited to:

(a) Air and water pollution programs administered by the Department of Environmental Quality under ORS chapters 468A and 468B and ORS 477.013 and 477.515 to 477.532;

(b) Mining operation programs administered by the Department of Geology and Mineral Industries under ORS 516.010 to 516.130 and ORS chapter 517;

(c) Game fish and wildlife, commercial fishing, licensing, wildlife and bird refuge and fish habitat improvement tax incentive programs administered by the State Department of Fish and Wildlife under ORS 272.060, 315.134 and ORS chapters 496, 498, 501, 506 and 509;

(d) Park land, Willamette River Greenway, scenic waterway and recreation trail programs administered by the State Parks and Recreation Department under ORS 358.480 to 358.545, 390.310 to 390.368, 390.805 to 390.925, 390.950 to 390.989 and 390.121;

(e) The programs administered by the Columbia River Gorge Commission under Public Law 99-663 and ORS 196.110 and 196.150;

(f) Removal and fill, natural heritage conservation and natural heritage conservation tax incentive programs administered by the State Land Board and the Department of State Lands under ORS 196.800 to 196.900 and 273.553 to 273.591;

(g) Federal Safe Drinking Water Act programs administered by the Department of Human Services under ORS 448.273 to 448.990;

(h) Natural heritage conservation programs administered by the Natural Heritage Advisory Council under ORS 273.553 to 273.591;

(i) Open space land tax incentive programs administered by cities and counties under ORS 308A.300 to 308A.330;

(j) Water resources programs administered by the Water Resources Department under ORS 536.220 to 536.540; and

(k) Pesticide control programs administered by the State Department of Agriculture under ORS chapter 634.

(5) In carrying out the provisions of subsection (4) of this section, the board shall consider and accommodate the rules and programs of other agencies to the extent deemed by the board to be appropriate and consistent with the purposes of ORS 527.630.

(6) The board shall adopt rules to meet the purposes of another agency's regulatory program where it is the intent of the board to administer the other agency's program on forestland and where the other agency concurs by rule. An operation performed in compliance with the board's rules shall be deemed to comply with the other agency's program.

(7)(a) The board may enter into cooperative agreements or contracts necessary in carrying out the purposes specified in ORS 527.630.

(b) The State Forestry Department shall enter into agreements with appropriate state agencies for joint monitoring of the effectiveness of forest practice rules in protecting forest resources and water quality.

(8) If, based upon the study completed pursuant to section 15 (2)(f), chapter 919, Oregon Laws 1991, the board determines that additional rules are necessary to protect forest resources pursuant to ORS 527.630, the board shall adopt forest practice rules that reduce to the degree practicable the adverse impacts of cumulative effects of forest practices on air and water quality, soil productivity, fish and wildlife resources and watersheds. Such rules shall include a process for determining areas where adverse impacts from cumulative effects have occurred or are likely to occur, and may require that a written plan be submitted for harvests in such areas.

(9)(a) The State Forester, in cooperation with the State Department of Fish and Wildlife, shall identify streams for which restoration of habitat would be environmentally beneficial. The State Forester shall select as a priority those streams where restoration efforts will provide the greatest benefits to fish and wildlife, and to streambank and streambed stability.

(b) For those streams identified in paragraph (a) of this subsection, the State Forester shall encourage landowners to enter into cooperative agreements with appropriate state agencies for conduct of restoration activities.

(c) The board, in consultation with appropriate state agencies, shall study and identify methods for restoring or enhancing fish and wildlife populations through restoration and rehabilitation of sites beneficial to fish and wildlife.

(d) The board shall adopt rules to implement the findings of this subsection.

(10) In addition to its responsibilities under subsections (1) to (3) of this section, the board shall adopt rules to reduce the risk of serious bodily injury or death caused by a rapidly moving landslide directly related to forest practices. The rules shall consider the exposure of the public to these safety risks and shall include appropriate practices designed to reduce the occurrence, timing or effects of rapidly moving landslides. As used in this subsection, "rapidly moving landslide" has the meaning given that term in ORS 195.250. [1971 c.316 §5; 1987 c.919 §14a; 1989 c.171 §69; 1989 c.904 §38; 1991 c.634 §7; 1991 c.919 §13; 1993 c.18 §126; 1995 c.79 §300; 1997 c.274 §54; 1997 c.413 §2; 1999 c.1103 §12; 2001 c.114 §52; 2001 c.540 §24; 2003 c.14 §342; 2003 c.539 §40; 2003 c.740 §7]

527.713 [1995 s.s. c.3 §39n; repealed by 1996 c.9 §15 (527.714 enacted in lieu of 527.713)]

527.714 Types of rules; procedure; findings necessary; rule analysis. (†) The rulemaking authority of the State Board of Forestry under ORS 527.610 to 527.770 consists generally of the following three types of rules:

(a) Rules adopted to implement administration, procedures or enforcement of ORS 527.610 to 527.770 that support but do not directly regulate standards of forest practices.

(b) Rules adopted to provide definitions or procedures for forest practices where the standards are set in statute.

(c) Rules adopted to implement the provisions of ORS 527.710 (2), (3), (6), (8), (9) and (10) that grant broad discretion to the board and that set standards for forest practices not specifically addressed in statute.

(2) When considering the adoption of a rule, and prior to the notice required pursuant to ORS 183.335, the board shall determine which type of rule described in subsection (1) of this section is being considered.

(3) If the board determines that a proposed rule is of the type described in subsection (1)(a) or (b) of this section, or if the proposed rule is designed only to clarify the meaning of rules already adopted or to make minor adjustments to rules already adopted that are of the type described in subsection (1)(c) of this section, rulemaking may proceed in accordance with ORS 183.325 to 183.410 and is not subject to the provisions of this section.

(4) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, and the proposed rule would change the standards for forest practices, the board shall describe in its rule the purpose of the rule and the level of protection that is desired.

(5) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, including a proposed amendment to an existing rule not qualifying under subsection (3) of this section, and the proposed rule would provide new or increased standards for forest practices, the board may adopt such a rule only after determining that the following facts exist and standards are met:

(a) If forest practices continue to be conducted under existing regulations, there is monitoring or research evidence that documents that degradation of resources maintained under ORS 527.710 (2) or (3) is likely, or in the case of rules proposed under ORS 527.710 (10), that there is a substantial risk of serious bodily injury or death;

(b) If the resource to be protected is a wildlife species, the scientific or biological status of a species or resource site to be protected by the proposed rule has been documented using best available information;

(c) The proposed rule reflects available scientific information, the results of relevant monitoring and, as appropriate, adequate field evaluation at representative locations in Oregon;

(d) The objectives of the proposed rule are clearly defined, and the restrictions placed on forest practices as a result of adoption of the proposed rule:

(A) Are to prevent harm or provide benefits to the resource or resource site for which protection is sought, or in the case of rules proposed under ORS 527.710 (10), to reduce risk of serious bodily injury or death; and

(B) Are directly related to the objective of the proposed rule and substantially advance its purpose;

(e) The availability, effectiveness and feasibility of alternatives to the proposed rule, including nonregulatory alternatives, were considered, and the alternative chosen is the least burdensome to landowners and timber owners, in the aggregate, while still achieving the desired level of protection; and

(f) The benefits to the resource, or in the case of rules proposed under ORS 527.710 (10), the benefits in reduction of risk of serious bodily injury or death, that would be achieved by adopting the rule are in proportion to the degree that existing practices of the landowners and timber owners, in the aggregate, are contributing to the overall resource concern that the proposed rule is intended to address.

(6) Nothing in subsection (5) of this section:

(a) Requires the board to call witnesses;

(b) Requires the board to allow cross-examination of witnesses;

(c) Restricts ex parte communications with the board or requires the board to place statements of such communications on the record;

(d) Requires verbatim transcripts of records of proceedings; or

(e) Requires depositions, discovery or subpoenas.

(7) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, and the proposed rule would require new or increased standards for forest practices, as part of or in addition to the economic and fiscal impact statement required by ORS 183.335 (2)(b)(E), the board shall, prior to the close of the public comment period, prepare and make available to the public a comprehensive analysis of the economic impact of the proposed rule. The analysis shall include, but is not limited to:

(a) An estimate of the potential change in timber harvest as a result of the rule;

(b) An estimate of the overall statewide economic impact, including a change in output, employment and income;

(c) An estimate of the total economic impact on the forest products industry and common school and county forest trust land revenues, both regionally and statewide; and

(d) Information derived from consultation with potentially affected landowners and timber owners and an assessment of the economic impact of the proposed rule under a wide variety of circumstances, including varying ownership sizes and the geographic location and terrain of a diverse subset of potentially affected forestland parcels.

(8) The provisions of this section do not apply to temporary rules adopted by the board. [1996 c.9 §16 (enacted in lieu of 527.713); 1999 c.1103 §13; 2003 c.740 §10]

Note: 527.714 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 527 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

527.715 Rules to establish standards and procedures. The State Board of Forestry shall establish, by rule, the standards and procedures to implement the provisions of ORS 197.180, 197.270, 197.825, 215.050, 477.090, 477.440, 477.455, 477.460, 526.009, 526.016, 526.156, 527.620, 527.630, 527.660, 527.670, 527.683 to 527.724, 527.736 to 527.760 and 527.992. [1987 c.919 §28; 1991 c.919 §14]

527.720 [1971 c.316 §5a; repealed by 1987 c.919 §15 (527.721 enacted in lieu of 527.720)]

527.721 Coordination with state and local agencies for review and comment on operations. By rule or by cooperative agreement entered into following an opportunity for public comment before the State Board of Forestry, the board shall provide for coordination with appropriate state and local agencies regarding procedures to be followed for review and comment on individual forest operations. [1987 c.919 §16 (enacted in lieu of 527.720)]

527.722 Restrictions on local government adoption of rules regulating forest operations; exceptions. (1) Notwithstanding any provisions of ORS chapters 195, 196, 197, 215 and 227, and except as provided in subsections (2), (3) and (4) of this section, no unit of local government shall adopt any rules, regulations or ordinances or take any other actions that prohibit, limit, regulate, subject to approval or in any other way affect forest practices on forestlands located outside of an acknowledged urban growth boundary.

(2) Nothing in subsection (1) of this section prohibits local governments from adopting and applying a comprehensive plan or land use regulation to forestland to allow, prohibit or regulate:

(a) Forest practices on lands located within an acknowledged urban growth boundary;

(b) Forest practices on lands located outside of an acknowledged urban growth boundary, and within the city limits as they exist on July 1, 1991, of a city with a population of 100,000 or more, for which an acknowledged exception to an agriculture or forestland goal has been taken;

(c) The establishment or alteration of structures other than temporary on-site structures which are auxiliary to and used during the term of a particular forest operation;

(d) The siting or alteration of dwellings;

(e) Physical alterations of the land, including but not limited to those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities, when such uses are not auxiliary to forest practices; or

(f) Partitions and subdivisions of the land.

(3) Nothing in subsection (2) of this section shall prohibit a local government from enforcing the provisions of ORS 455.310 to 455.715 and the rules adopted thereunder.

(4) Counties may prohibit, but in no other manner regulate, forest practices on forestlands:

(a) Located outside an acknowledged urban growth boundary; and

(b) For which an acknowledged exception to an agricultural or forest land goal has been taken.

(5) To ensure that all forest operations in this state are regulated to achieve protection of soil, air, water, fish and

wildlife resources, in addition to all other forestlands, the Oregon Forest Practices Act applies to forest operations inside any urban growth boundary except in areas where a local government has adopted land use regulations for forest practices. For purposes of this subsection, "land use regulations for forest practices" means local government regulations that are adopted for the specific purpose of directing how forest operations and practices may be conducted. These local regulations shall:

- (a) Protect soil, air, water, fish and wildlife resources;
- (b) Be acknowledged as in compliance with land use planning goals;
- (c) Be developed through a public process;
- (d) Be developed for the specific purpose of regulating forest practices; and
- (e) Be developed in coordination with the State Forestry Department and with notice to the Department of Land Conservation and Development.

(6) To coordinate with local governments in the protection of soil, air, water, fish and wildlife resources, the State Forester shall provide local governments with a copy of the notice or written plan for a forest operation within any urban growth boundary. Local governments may review and comment on an individual forest operation and inform the landowner or operator of all other regulations that apply but that do not pertain to activities regulated under the Oregon Forest Practices Act.

(7) The existence or adoption by local governments of a comprehensive plan policy or land use regulation regulating forest practices consistent with subsections (1) to (5) of this section shall relieve the State Forester of responsibility to administer the Oregon Forest Practices Act within the affected area.

(8) The Director of the Department of Land Conservation and Development shall provide the State Forester copies of notices submitted pursuant to ORS 197.615, whenever such notices concern the adoption, amendment or repeal of a comprehensive land use regulation allowing, prohibiting or regulating forest practices. [1979 c.400 §2; 1987 c.919 §17; 1991 c.919 §29; 2001 c.268 §1]

527.724 Forest operations to comply with air and water pollution control rules and standards; effect of violation. Subject to ORS 527.765 and 527.770, any forest operations on forestlands within this state shall be conducted in full compliance with the rules and standards of the Environmental Quality Commission relating to air and water pollution control. In addition to all other remedies provided by law, any violation of those rules or standards shall be subject to all remedies and sanctions available under statute or rule to the Department of Environmental Quality or the Environmental Quality Commission. [1979 c.400 §3; 1991 c.919 §19]

527.725 [1975 c.185 §5; repealed by 1975 c.185 §6]

527.726 [1979 c.400 §4; 1983 c.827 §55; repealed by 1987 c.919 §29]

527.730 Conversion of forestland to other uses. Nothing in the Oregon Forest Practices Act shall prevent the conversion of forestland to any other use. [1971 c.316 §12; 1991 c.634 §8]

527.735 [1987 c.919 §6a; renumbered 526.156 in 1991]

(Harvest Type; Water Quality Regulation)

527.736 Forest practice standards for operations on public and private land. (1) The standards established in ORS 527.740 to 527.750 shall be administered by the State Forester as standards applying to all operations in the state, including those on forestland owned by the state or any political subdivision thereof. Pursuant to ORS 527.710 the State Board of Forestry shall adopt, repeal or amend forest practice rules as necessary to be consistent with and to implement the standards established in ORS 527.740 to 527.750. Except as provided in ORS 527.714, nothing in ORS 468B.100 to 468B.110, 477.562, 527.620, 527.670, 527.690, 527.710, 527.715, 527.722, 527.724 and 527.736 to 527.770 shall affect the powers and duties of the board to adopt, or the State Forester to administer, all other regulations pertaining to forest practices under applicable state law.

(2) Nothing in ORS 527.740 to 527.750 is intended to apply to cutting of trees that is for growth enhancement treatments, as defined by the State Forester, such as thinning or precommercial thinning. [1991 c.919 §3; 1993 c.657 §5; 1995 s.s. c.3 §39r; 1996 c.9 §20]

527.740 Harvest type 3 limitations; exceptions. (1) No harvest type 3 unit within a single ownership shall **362**

exceed 120 acres in size, except as provided in ORS 527.750.

(2) No harvest type 3 unit shall be allowed within 300 feet of the perimeter of a prior harvest type 3 unit within a single ownership if the combined acreage of the harvest type 3 areas subject to regulation under the Oregon Forest Practices Act would exceed 120 acres in size, unless the prior harvest type 3 unit has been reforested as required by all applicable regulations and:

(a) At least the minimum tree stocking required by rule is established per acre; and either

(b) The resultant stand of trees has attained an average height of at least four feet; or

(c) At least 48 months have elapsed since the stand was created and it is "free to grow" as defined by the State Board of Forestry.

(3) Any acreage attributable to riparian areas or to resource sites listed in ORS 527.710 (3) that is located within a harvest unit shall not be counted in calculating the size of a harvest type 3 unit.

(4) The provisions of this section shall not apply when the land is being converted to managed conifers or managed hardwoods from brush or hardwood stands that contain less than 80 square feet of basal area per acre of trees 11 inches DBH or greater or when the harvest type 3 results from disasters such as fire, insect infestation, disease, windstorm or other occurrence that the State Forester determines was beyond the landowner's control and has substantially impaired productivity or safety on the unit or jeopardizes nearby forestland. The prior approval of the State Forester shall be required for such conversion or harvest type 3 operations that exceed 120 acres in size.

(5) The provisions of this section do not apply to any operation where the operator demonstrates to the State Forester that:

(a) The trees are subject to a cutting right created by written contract prior to October 1, 1990, which provides that the trees must be paid for regardless of whether the trees are cut, or subject to a cutting right created by reservation in a deed prior to October 1, 1990; and

(b) If the provisions of this section were applied, the cutting right would expire before all the trees subject to the cutting right could reasonably be harvested. [1991 c.919 §4; 1995 s.s. c.3 §39b; 1996 c.9 §4]

527.745 Reforestation of certain harvest types; adoption of standards; rules. (1) The State Board of Forestry shall adopt standards for the reforestation of harvest type 1 and harvest type 3. Unless the board makes the findings for alternate standards under subsection (2) of this section, the standards for the reforestation of harvest type 1 and harvest type 3 shall include the following:

(a) Reforestation, including site preparation, shall commence within 12 months after the completion of harvest and shall be completed by the end of the second planting season after the completion of harvest. By the end of the fifth growing season after planting or seeding, at least 200 healthy conifer or suitable hardwood seedlings or lesser number as permitted by the board by rule, shall be established per acre, well-distributed over the area, which are "free to grow" as defined by the board.

(b) Landowners may submit plans for alternate practices that do not conform to the standards established under paragraph (a) of this subsection or the alternate standards adopted under subsection (2) of this section, including but not limited to variances in the time in which reforestation is to be commenced or completed or plans to reforest sites by natural reforestation. Such alternate plans may be approved if the State Forester determines that the plan will achieve equivalent or better regeneration results for the particular conditions of the site, or the plan carries out an authorized research project conducted by a public agency or educational institution.

(2) The board, by rule, may establish alternate standards for the reforestation of harvest type 1 and harvest type 3, in lieu of the standards established in subsection (1) of this section, but in no case can the board require the establishment of more than 200 healthy conifer or suitable hardwood seedlings per acre. Such alternate standards may be adopted upon finding that the alternate standards will better assure the continuous growing and harvesting of forest tree species and the maintenance of forestland for such purposes, consistent with sound management of soil, air, water, fish and wildlife resources based on one or more of the following findings:

(a) Alternate standards are warranted based on scientific data concerning biologically effective regeneration;

(b) Different standards are warranted for particular geographic areas of the state due to variations in climate, elevation, geology or other physical factors; or

(c) Different standards are warranted for different tree species, including hardwoods, and for different growing site conditions.

(3) Pursuant to ORS 527.710, the board may adopt definitions, procedures and further regulations to implement the standards established under subsection (1) of this section, without making the findings required in subsection (2) of this section, if those procedures or regulations are consistent with the standards established in subsection (1) of this section.

(4) The board shall encourage planting of disease and insect resistant species in sites infested with root pathogens or where planting of susceptible species would significantly facilitate the spread of a disease or insect pest and there are immune or more tolerant commercial species available which are adapted to the site.

(5) Notwithstanding subsections (1), (2) and (3) of this section, in order to remove potential disincentives to the conversion of underproducing stands, as defined by the board, or the salvage of stands that have been severely damaged by wildfire, insects, disease or other factors beyond the landowner's control, the State Forester may suspend the reforestation requirements for specific harvest type 1 or harvest type 3 units in order to take advantage of the Forest Resource Trust provisions, or other cost-share programs administered by the State Forester or where the State Forester is the primary technical adviser. Such suspension may occur only on an individual case basis, in writing, based on a determination by the State Forester that the cost of harvest preparation, harvest, severance and applicable income taxes, logging, site preparation, reforestation and any other measures necessary to establish a free to grow forest stand will likely exceed the gross revenues of the harvest. The board shall adopt rules implementing this subsection establishing the criteria for and duration of the suspension of the reforestation requirements. [1991 c.919 §6; 1993 c.562 §1; 1995 s.s. c.3 §39c; 1996 c.9 §5]

527.750 Exceeding harvest type 3 size limitation; conditions. (1) Notwithstanding the requirements of ORS 527.740, a harvest type 3 unit within a single ownership that exceeds 120 acres but does not exceed 240 acres may be approved by the State Forester if all the requirements of this section and any additional requirements established by the State Board of Forestry are met. Proposed harvest type 3 units that are within 300 feet of the perimeter of a prior harvest type 3 unit, and that would result in a total combined harvest type 3 area under a single ownership exceeding 120 acres but not exceeding 240 acres, may be approved by the State Forester if the additional requirements are met for the combined area. No harvest type 3 unit within a single ownership shall exceed 240 contiguous acres. No harvest type 3 unit shall be allowed within 300 feet of the perimeter of a prior harvest type 3 unit within a single ownership if the combined acreage of the areas subject to regulation under the Oregon Forest Practices Act would exceed 240 acres, unless the prior harvest type 3 unit has been reforested by all applicable regulations and:

- (a) At least the minimum tree stocking required by rule is established per acre; and either
- (b) The resultant stand of trees has attained an average height of at least four feet; or
- (c) At least 48 months have elapsed since the stand was created and it is "free to grow" as defined by the board.

(2) The requirements of this section are in addition to all other requirements of the Oregon Forest Practices Act and the rules adopted thereunder. The requirements of this section shall be applied in lieu of such other requirements only to the extent the requirements of this section are more stringent. Nothing in this section shall apply to operations conducted under ORS 527.740 (4) or (5).

(3) The board shall require that a plan for an alternate practice be submitted prior to approval of a harvest type 3 operation under this section. The board may establish by rule any additional standards applying to operations under this section.

(4) The State Forester shall approve the harvest type 3 operation if the proposed operation would provide better overall results in meeting the requirements and objectives of the Oregon Forest Practices Act.

(5) The board shall specify by rule the information to be submitted for approval of harvest type 3 operations under this section, including evidence of past satisfactory compliance with the Oregon Forest Practices Act. [1991 c.919 §7; 1995 s.s. c.3 §39d; 1996 c.9 §6; 2003 c.740 §5]

527.755 Scenic highways; visually sensitive corridors; operations restricted. (1) The following highways are hereby designated as scenic highways for purposes of the Oregon Forest Practices Act:

- (a) Interstate Highways 5, 84, 205, 405; and
- (b) State Highways 6, 7, 20, 18/22, 26, 27, 30, 31, 34, 35, 36, 38, 42, 58, 62, 66, 82, 97, 101, 126, 138, 140, 199, 230, 234 and 395.

(2) The purpose of designating scenic highways is to provide a limited mechanism that maintains roadside trees for the enjoyment of the motoring public while traveling through forestland, consistent with ORS 527.630, safety and other practical considerations.

(3) The State Board of Forestry, in consultation with the Department of Transportation, shall establish procedures and regulations as necessary to implement the requirements of subsections (4), (5) and (6) of this section, consistent with subsection (2) of this section, including provisions for alternate plans. Alternate plans that modify or waive the requirements of subsection (4), (5) or (6) of this section may be approved when, in the judgment of the State Forester, circumstances exist such as:

- (a) Modification or waiver is necessary to maintain motorist safety, protect improvements such as dwellings and

bridges, or protect forest health;

(b) Modification or waiver will provide additional scenic benefits to the motoring public, such as exposure of distant scenic vistas;

(c) Trees that are otherwise required to be retained will not be visible to motorists;

(d) The operation involves a change of land use that is inconsistent with maintaining a visually sensitive corridor;

or

(e) The retention of timber in a visually sensitive corridor will result in severe economic hardship for the owner because all or nearly all of the owner's property is within the visually sensitive corridor.

(4)(a) For harvest operations within a visually sensitive corridor, at least 50 healthy trees of at least 11 inches DBH, or that measure at least 40 square feet in basal area, shall be temporarily left on each acre.

(b) Overstory trees initially required to be left under paragraph (a) of this subsection may be removed when the reproduction understory reaches an average height of at least 10 feet and has at least the minimum number of stems per acre of free to grow seedlings or saplings required by the board for reforestation, by rule.

(c) Alternatively, when the adjacent stand, extending from 150 feet from the outermost edge of the roadway to 300 feet from the outermost edge of the roadway, has attained an average height of at least 10 feet and has at least the minimum number of stems per acre of free to grow seedlings or saplings required by the board for reforestation, by rule, or at least 40 square feet of basal area per acre, no trees are required to be left in the visually sensitive corridor, or trees initially required to be left under paragraph (a) of this subsection may be removed. When harvests within the visually sensitive corridor are carried out under this paragraph, the adjacent stand, extending from 150 feet from the outermost edge of the roadway to 300 feet from the outermost edge of the roadway, shall not be reduced below the minimum number of stems per acre of free to grow seedlings or saplings at least 10 feet tall required by the board for reforestation, by rule, or below 40 square feet of basal area per acre until the adjacent visually sensitive corridor has been reforested as required under subsection (6) of this section and the stand has attained an average height of at least 10 feet and has at least the minimum number of stems per acre.

(5) Harvest areas within a visually sensitive corridor shall be cleared of major harvest debris within 30 days of the completion of the harvest, or within 60 days of the cessation of active harvesting activity on the site, regardless of whether the harvest operation is complete.

(6) Notwithstanding the time limits established in ORS 527.745 (1)(a), when harvesting within a visually sensitive corridor results in a harvest type 1 or harvest type 3, reforestation shall be completed by the end of the first planting season after the completion of the harvest. All other provisions of ORS 527.745 shall also apply to harvest type 1 or harvest type 3 within visually sensitive corridors.

(7) Landowners and operators shall not be liable for injury or damage caused by trees left within the visually sensitive corridor for purposes of fulfilling the requirements of this section, when carried out in compliance with the provisions of the Oregon Forest Practices Act.

(8) Harvest on single ownerships less than five acres in size are exempt from this section. [1991 c.919 §17; 1993 c.306 §1; 1995 s.s. c.3 §39e; 1996 c.9 §7; 1997 c.249 §179]

527.760 Reforestation exemptions for land use changes. (1) The State Board of Forestry shall review its rules governing changes in land use and adopt or amend rules as necessary to assure that only bona fide, established and continuously maintained changes from forest uses are provided an exemption from reforestation requirements. The board shall set specific time periods for the completion of land use conversions. Among other factors, the board shall condition exemptions from reforestation requirements upon:

(a) Demonstrating the intended change in land use is authorized under local land use and zoning ordinances, including obtaining and maintaining all necessary land use or construction permits and approvals for the intended change in land use;

(b) Demonstrating progress toward the change in land use within the time required for planting of trees, and substantial completion and continuous maintenance of the change in land use in a time certain;

(c) Allowing an exemption for only the smallest land area necessary to carry out the change in land use, and requiring that additional land area within the harvest unit remains subject to all applicable reforestation requirements; and

(d) Allowing an exemption only to the extent that the proposed land use is not compatible with the maintenance of forest cover.

(2) The board may require that, prior to commencing an operation where a change in land use is proposed, a bond, cash deposit, irrevocable letter of credit or other security be filed with the State Forester in an amount determined by the State Forester sufficient to cover the cost of site preparation and reforestation for the area subject to an exemption

from reforestation due to a change in land use, and shall require that provisions be made for the administration and collection on such bond or security deposit in the event that the change in land use is not established or continuously maintained within a time certain.

(3) Nothing in this section is intended to exempt any change in land use from, nor affect the applicability and administration of, any planning, zoning or permitting requirements provided under state or local laws or regulations. [1991 c.919 §8]

527.765 Best management practices to maintain water quality; rules. (1) The State Board of Forestry shall establish best management practices and other rules applying to forest practices as necessary to insure that to the maximum extent practicable nonpoint source discharges of pollutants resulting from forest operations on forestlands do not impair the achievement and maintenance of water quality standards established by the Environmental Quality Commission for the waters of the state. Such best management practices shall consist of forest practices rules adopted to prevent or reduce pollution of waters of the state. Factors to be considered by the board in establishing best management practices shall include, where applicable, but not be limited to:

- (a) Beneficial uses of waters potentially impacted;
- (b) The effects of past forest practices on beneficial uses of water;
- (c) Appropriate practices employed by other forest managers;
- (d) Technical, economic and institutional feasibility; and
- (e) Natural variations in geomorphology and hydrology.

(2) The board shall consult with the Environmental Quality Commission in adoption and review of best management practices and other rules to address nonpoint source discharges of pollutants resulting from forest operations on forestlands.

(3)(a) Notwithstanding ORS 183.310 (8), upon written petition for rulemaking under ORS 183.390 of any interested person or agency, the board shall review the best management practices adopted pursuant to this section. In addition to all other requirements of law, the petition must allege with reasonable specificity that nonpoint source discharges of pollutants resulting from forest operations being conducted in accordance with the best management practices are a significant contributor to violations of such standards.

(b) Except as provided in paragraph (c) of this subsection, if the board determines that forest operations being conducted in accordance with the best management practices are neither significantly responsible for particular water quality standards not being met nor are a significant contributor to violations of such standards, the board shall issue an order dismissing the petition.

(c) If the petition for review of best management practices is made by the Environmental Quality Commission, the board shall not terminate the review without the concurrence of the commission, unless the board commences rulemaking in accordance with paragraph (e) of this subsection.

(d) If a petition for review is dismissed, upon conclusion of the review, the board shall issue an order that includes findings regarding specific allegations in the petition and shall state the board's reasons for any conclusions to the contrary.

(e) If, pursuant to review, the board determines that best management practices should be reviewed, the board shall commence rulemaking proceedings for that purpose. Rules specifying the revised best management practices must be adopted not later than two years from the filing date of the petition for review unless the board, with concurrence of the Environmental Quality Commission, finds that special circumstances require additional time.

(f) Notwithstanding the time limitation established in paragraph (e) of this subsection, at the request of the Environmental Quality Commission, the board shall take action as quickly as practicable to prevent significant damage to beneficial uses identified by the commission while the board is revising its best management practices and rules as provided for in this section. [1991 c.919 §20; 2003 c.75 §95; 2003 c.749 §11]

527.770 Good faith compliance with best management practices not violation of water quality standards; subsequent enforcement of standards. A forest operator conducting, or in good faith proposing to conduct, operations in accordance with best management practices currently in effect shall not be considered in violation of any water quality standards. When the State Board of Forestry adopts new best management practices and other rules applying to forest operations, such rules shall apply to all current or proposed forest operations upon their effective dates. However, nothing in this section prevents enforcement of water quality standards against a forest operator conducting operations after the time provided in ORS 527.765 (3)(e) for adoption of revised best management practices if the board either has not adopted revised management practices or has not made a finding that such revised best management practices are not required. [1991 c.919 §21; 2003 c.749 §12]

527.780 Exemption from liability for trees or debris left on property. (1) A landowner is not liable in tort for any personal injury, death or property damage that arises out of the leaving of trees and other debris on the property of the landowner under the provisions of ORS 527.610 to 527.770, under any rules adopted pursuant to ORS 527.610 to 527.770, or under any other law or rule requiring trees and debris to be left upon property after logging or other activity on the land.

(2) The limitation on liability provided by this section applies to any injury, death or damage arising out of wildfire, erosion, flooding, diversion of waters, damage to public improvements and any other injury, death or damage caused by trees or debris left by the landowner.

(3) The limitation on liability provided by this section does not apply if the injury, death or damage was caused by the intentional tort of the landowner or by the gross negligence of the landowner. As used in this subsection, "gross negligence" means negligence that is materially greater than the mere absence of reasonable care under the circumstances, and that is characterized by indifference to or reckless disregard of the rights of others.

(4) The limitation on liability provided by this section is in addition to any limitation on liability provided under ORS 105.672 to 105.696.

(5) The limitation on liability provided by this section does not apply to any liability established by the provisions of ORS chapter 477. [1999 c.543 §1]

527.785 Exemption from liability for large woody debris left on property. (1) A landowner is not liable in tort for any personal injury, death or property damage that arises out of the leaving of large woody debris on the property of the landowner under the provisions of ORS 527.610 to 527.770, under any rules adopted pursuant to ORS 527.610 to 527.770, or under any other law or rule requiring trees and large woody debris to be left upon property after logging or other activity on the land.

(2) The limitation on liability provided by this section applies to any injury, death or damage arising out of wildfire, erosion, flooding, diversion of waters, damage to public improvements and any other injury, death or damage caused by the large woody debris left by the landowner.

(3) The limitation on liability provided by this section does not apply if the injury, death or damage was caused by the intentional tort of the landowner or by the gross negligence of the landowner. As used in this subsection, "gross negligence" means negligence that is materially greater than the mere absence of reasonable care under the circumstances, and that is characterized by indifference to or reckless disregard of the rights of others.

(4) The limitation on liability provided by this section is in addition to any limitation on liability provided under ORS 105.672 to 105.696.

(5) The limitation on liability provided by this section does not apply to any liability established by the provisions of ORS chapter 477. [1999 c.863 §2]

527.800 [1985 c.347 §1; repealed by 1993 c.792 §55]

527.805 [1985 c.347 §2; repealed by 1993 c.792 §55]

527.810 [1985 c.347 §3; repealed by 1993 c.792 §55]

PENALTIES

527.990 Criminal penalties. (1) Subject to ORS 153.022, violation of ORS 527.670, 527.676, 527.740, 527.750 or 527.755, or any rule promulgated under ORS 527.710 is punishable, upon conviction, as a misdemeanor. Each day of operation in violation of an order issued under ORS 527.680 (3) shall be deemed to be a separate offense.

(2) Violation of ORS 527.260 (1) is a misdemeanor. Violation of ORS 527.260 is punishable, upon conviction, by a fine of not more than \$250 or by imprisonment in the county jail for not more than 60 days, or both. [Amended by 1953 c.262 §2; 1971 c.316 §14; 1987 c.919 §32; 1991 c.686 §10; 1995 s.s. c.3 §39h; 1996 c.9 §10; 1999 c.1051 §317]

527.992 Civil penalties. (1) In addition to any other penalty provided by law, any person who fails to comply with any of the following may incur a civil penalty in the amount adopted under ORS 527.685:

(a) The requirements of ORS 527.670, 527.676, 527.740, 527.750 or 527.755.

(b) The terms or conditions of any order of the State Forester issued in accordance with ORS 527.680.

(c) Any rule or standard of the State Board of Forestry adopted or issued pursuant to ORS 527.710.

(d) Any term or condition of a written waiver, or prior approval granted by the State Forester pursuant to the rules adopted under ORS 527.710.

(2) Imposition or payment of a civil penalty under this section shall not be a bar to actions alleging trespass under ORS 105.810, nor to actions under ORS 161.635 or 161.655 seeking to recover an amount based on the gain resulting from individual or corporate criminal violations. [1987 c.919 §24; 1995 s.s. c.3 §39i; 1996 c.9 §11; 2003 c.740 §6]



MEMORANDUM

CITY OF BEAVERTON

COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING SERVICES DIVISION

"MAKE IT HAPPEN"

To: Planning Commission
Date: March 25, 2005
From: Barbara Fryer, Senior Planner, AICP *BF*
Subject: *TA 2004-0011 Clarifications needed*

Upon further review of the proposal, staff found a few areas where additional clarification is needed or scrivener's errors need correction. They are as follows:

Clarification

40.90.10.12 The exemptions include existing right-of-way and road widening required of development such as half-street improvements. Staff is unclear whether the Planning Commission intended the road widening exemption to include only development related projects or all widening projects – including public improvement, CIP or MSTIP projects. The wording in the text attached to Supplemental Staff Report # 4 does not address public road widening projects. If the Planning Commission intended the exemption to cover road widening, regardless of purpose (development or public), then the following #12 should replace the #12 in Exhibit 1 to Supplemental Staff Report # 4.

12. *Public street and sidewalk improvements within SNRAs or Significant Groves that meet i. or ii. and iii.:*
 - i. *Improvements within an existing public vehicular right-of-way; or*
 - ii. *Improvements to a public vehicular right-of-way in order to meet functional classification standards, such as widening or half-street improvements; and*
 - iii. *The proposed improvements do not exceed the minimum width standards of the Engineering Design Manual.*

Scrivener's Error # 1

40.90.15.2 A. 2 and 3 should be written, as noted below, to be consistent with 40.90.15.3.A. 1 and 2. in limiting the review to the project site. If the Planning Commission agrees, then 40.90.15.2.A.2 and 40.90.15.2.A.3 below should replace 40.90.15.2.A.2 and 40.90.15.2.A.3, respectively, in Exhibit 1 to Supplemental Staff Report # 4.

40.90.15.2. A

2. *Multiple Use Zoning District: Removal of up to and including 85% of the total DBH of non-exempt surveyed tree(s) within a SNRA or Significant Grove area that is found on the project site.*
3. *Commercial, Residential, or Industrial Zoning District: Removal of up to and including 75% of the total DBH of non-exempt surveyed tree(s) within a SNRA or Significant Grove area that is found on the project site.*

Scrivener's Error # 2

40.90.15.2 C. 8 should be written, as noted below, to be consistent with 40.90.15.3.C.9. to include street widening. If the Planning Commission agrees, then 40.90.15.2.C.8 below should replace 40.90.15.2.C.8 in Exhibit 1 to Supplemental Staff Report # 4.

40.90.15.2.C

8. If applicable, removal of ~~any tree~~ landscape, street or community tree is necessary to accomplish public purposes, such as installation of public utilities, street widening, and similar needs, where no reasonable alternative exists without significantly increasing public costs or reducing safety.

RECOMMENDATION:

Staff proposes the Planning Commission consider clarifying the intent of the public street improvement exemption so that it is clear that public projects that propose to widen roads are exempt or not exempt. Staff proposes the Planning Commission accept staff corrections in the form of scrivener's errors numbers 1 and 2.



MEMORANDUM
CITY OF BEAVERTON
COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING SERVICES DIVISION

"MAKE IT HAPPEN"

To: Planning Commission
Date: March 30, 2005
From: Hal Bergsma, Planning Services Division Manager
Barbara Fryer, AICP, Senior Planner *BF*
Subject: *Commercial Forestry Operations*

Upon further review of the options described in the staff report, staff concludes that an exemption from the Tree Plan application process is inappropriate for the use of the land as a Commercial Forestry Operation within the Urban Growth Boundary and especially within the Beaverton city limits. To provide a mechanism for the continued commercial harvest on the specific properties in question, staff proposes to include the commercial forestry operation as a specific tree plan application. The specific application applies only to the three parcels in question. Processing would follow a Type 1 procedure, so notice would not be necessary. The approval criteria require that the applicant leave no fewer than 50 10 inch DBH trees per acre. If the applicant proposes to remove trees in excess of the approval criteria, the application would be a Tree Plan 3 as a discretionary action which would require mitigation as required of all other Tree Plan 3 applications.

The new text relating to the Commercial Timber Harvest application begins on page 14 of the attachment. Page 10 includes the requirement for the Tree Plan 3 application for applications exceeding the proposal beginning on page 14.

The proposal attached to this memorandum assumes that the Planning Commission agrees with the clarification provided in the staff memorandum dated March 25, 2005 and the correction of scrivener's errors found therein. Thus, the changes proposed in the March 25, 2005 memo are incorporated into the attached Chapter 40.

Staff recommends the Planning Commission substitute the Chapter 40 attached to this staff memorandum for the Chapter 40 in the staff report dated March 23, 2005.

40.90. TREE PLAN**40.90.05. Purpose**

Healthy trees and urban forests provide a variety of natural resource and community benefits for the City of Beaverton. Primary among those benefits is the aesthetic contribution to the increasingly urban landscape. Tree resource protection focuses on the aesthetic benefits of the resource. The purpose of a Tree Plan application is to provide a mechanism to regulate pruning, removal, replacement, and mitigation for removal of Protected Trees (Significant Individual Trees, and Historic Trees, and trees within Significant Groves and Significant Natural Resource Areas (SNRAs)), Landscape Trees, street tree, and Community Trees thus helping to preserve and enhance the sustainability of the City's urban forest. This Section is carried out by the approval criteria listed herein and implements the SNRA, Significant Grove, Significant Individual Tree, and Historic Tree designations as noted or mapped in Comprehensive Plan Volume III.

40.90.10. Applicability.

Different types of resources require different levels of protection. No Tree Plan is required for the following actions:

1. Removal of up to four (4) Community Trees, or up to 10% of the number of Community Trees on the site, whichever is greater, within an one (1) calendar year period. Properties one-half acre or less in size developed with a detached dwelling may remove any number of Community Trees.
2. Removal and pruning of any hazardous, dead, or diseased tree or a portion of a hazardous tree when the tree is identified as such by a certified arborist or by the City Arborist and the removal is required by the City. ~~The removal of the tree is subject to the mitigation requirements of Section 60.60 (Trees and Vegetation) of this Code.~~
3. *In the event of an emergency requiring tree removal or pruning prior to the City Arborist's determination, if evidence justifies the emergency removal after the fact, then no tree plan is required for removal.*
34. *Minor pruning, as defined in Chapter 90.*
5. Pruning of trees consistent with the Vision Clearance requirements of Section 60.55.50.

46. Pruning of trees by the utility provider for above ground utility power lines following acceptable arboricultural standards and practices.
7. *Pruning of trees to maintain the minimum 8 foot clearance above a sidewalk.*
8. *Removal or pruning of the following nuisance tree species anywhere in the city: Lombardy Poplar (*Populus nigra*), and birch (*Betula* sp.).*
9. *Removal and pruning of the following nuisance tree species in Significant Groves and SNRAs: Norway maple (*Acer platanoides*), Tree-of-Heaven (*Ailanthus altissima*), Golden Chain Tree (*Laburnum watereri*), and English or Common Hawthorne (*Crataegus monogyna*).*
10. *Removal of a tree or nonnative vegetation listed as a Nuisance or Prohibited Plant on Metro's Native Plant List or in Clean Water Services' Design and Construction Standards.*
11. *Within SNRAs and Significant Groves, planting of native vegetation listed on the Metro's Native Plant List or in Clean Water Services' Design and Construction Standards when planted with non-mechanized hand held equipment.*
12. *Public street and sidewalk improvements within SNRAs or Significant Groves that meet i. or ii. and iii.:*
 - i. *Improvements within an existing public vehicular right-of-way; or*
 - ii. *Improvements to a public vehicular right-of-way in order to meet functional classification standards, such as widening or half-street improvements; and*
 - iii. *The proposed improvements do not exceed the minimum width standards of the Engineering Design Manual.*
13. *Trails within SNRAs and Significant Groves meeting all of the following:*
 - i. *Construction must take place between May 1 and October 30 with hand held equipment;*
 - ii. *Trail widths must not exceed 30 inches and trail grade must not exceed 20 percent;*
 - iii. *Trail construction must leave no scars greater than three inches in diameter on live parts of native plants; and*
 - iv. *Trails must be placed outside the top of bank of any stream, river, or pond, and*
 - v. *Trails must be 100% pervious.*

14. *Street Trees are covered by the Beaverton Municipal Code and Section 60.15.15.3.G.*

**OPTION
1**

~~15. The harvesting of forest tree species for the commercial value of the timber on tax lots 1S132CD09100, 1S132CD09000, and 1S132CC11300 is exempt from the City's Tree Regulations and the Forest Practices Act applies.~~

**OPTION
2**

~~15. The harvesting of forest tree species for the commercial value of the timber on tax lots 1S132CD09100, 1S132CD09000, and 1S132CC11300 shall use a use a selective cutting procedure and clear cutting shall not be permitted. For the purposes of this exemption, clear cut means any harvest unit that leaves fewer than fifty (50) living, healthy and upright trees per acre that are well distributed over the unit and that measure at least eleven (11) inches in diameter at four (4) feet above grade. Species left should reflect the same species proportions existing prior to harvest.~~

**OPTION
3**

~~15. The harvesting of forest tree species for the commercial value of the timber on tax lots 1S132CD09100, 1S132CD09000, and 1S132CC11300 shall use a use a selective cutting procedure and clear cutting shall not be permitted. For the purposes of this exemption, clear cut means any harvest unit that leaves fewer than fifty (50) living, healthy and upright trees per acre that are clustered or well distributed over the unit and that measure at least eleven (11) inches in diameter at four (4) feet above grade. Species left should reflect the same species proportions existing prior to harvest.~~

156. *Landscape Trees are covered by Section 40.20 Design Review and Section 60.60 Trees and Vegetation.*

167. *Enhancement activities conducted by a public agency for the sole purpose of improving the ecological health of forest and water resources.*

40.90.15. Application.

There are four (4) Tree Plan applications which are as follows: Tree Plan One, Tree Plan Two, Tree Plan Three, and ~~Commercial Timber Harvest, and Tree Plan Four.~~

1. Tree Plan One.

- A. Threshold. An application for Tree Plan One shall be required when none of the actions listed in Section 40.90.10 apply and one or more of the following thresholds apply:
1. ~~Minor~~ *Major* pruning of a ~~Significant Tree, Significant Grove, Landscape Trees and Protected Trees, tree within a Significant Natural Resource Area (SNRA), Historic tree, or Street Tree~~ once within an one year period.
 2. ~~Removal of up to and including five (5) Landscape Trees or Street Trees on a site within a one year period.~~
 3. ~~Removal or pruning of a Significant Tree, Significant Grove, Landscape Trees and Protected Trees, tree within a Significant Natural Resource Area (SNRA), a Historic Tree, a Street Tree, or part thereof, that constitutes or removes~~ *creates a hazardous condition. Pruning to eliminate a hazardous condition may exceed minor pruning.*
 42. ~~Mechanized Removal~~ *removal of noxious non-native or invasive vegetation, re-planting of trees and shrubs, or both and clearing and grubbing of vegetation within a SNRAs, Significant Groves and designated as significant on the City's Local Wetland Inventory, or Sensitive Areas as defined by Clean Water Services.*
 53. *Mechanized re-planting of trees and shrubs, or both, or restoration planting within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services.*
 64. *Trails greater than 30 inches in width, or trail grade exceeding 20 percent, trail surfaces less than 100% pervious surface, or any combination thereof within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services that do not result in tree removal.*
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35 of this Code, shall apply to an application for Tree Plan One. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Tree Plan One application, the decision making authority shall make findings

of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Tree Plan One application.
2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]
- ~~4. If applicable, it is necessary to prune or remove a tree that poses a safety hazard to pedestrians, vehicular traffic, adjacent property, or the general public or that threatens to cause disruption of public service and at least one of the following exist:
 - ~~a. The tree or portion of the tree is certified by a qualified professional as dead or dying.~~
 - ~~b. A portion of the tree is only partially attached.~~
 - ~~e. The tree or a portion of the tree has been damaged by a storm, fire, age, or accident and is physically lodged or leaning against a building, transportation facility, or overhead utility line or pole.~~~~
54. If applicable, pruning a tree will result in removal of no more than 20% of the tree's canopy or disturbance of no more than 10% of the root system. The pruning is needed *necessary* to improve tree health or to eliminate conflicts with vehicles or structures which includes, but is not limited to, underground utilities and street improvements.
- ~~65. If applicable, removal of a Landscape Tree or street tree or pruning of a tree is necessary to accommodate development where variances to setback provisions of the Development Code will not allow the tree to be saved.~~

65. *If applicable, the removal of vegetation or clearing and grubbing is necessary to accommodate physical development in the area in which the removal is proposed.*

~~7. If applicable, emergency removal or pruning is necessary due to an immediate threat to public safety documented by photographic evidence supplied by the applicant.~~

~~8. Removal of a tree or grove shall not increase erosion or any resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~

976. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

- D. Submission Requirements. An application for a Tree Plan One shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan One application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan One application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Previous approval of Tree Plan One proposal shall not be extended.

2. Tree Plan Two

- A. Threshold. An application for Tree Plan Two shall be required when none of the actions listed in Section 40.90.10 apply, none

of the thresholds listed in Section 40.90.15.1 apply, and one or more of the following thresholds apply:

- ~~1. Major pruning of a non-hazardous Significant Tree, Significant Grove, Trees within a Significant Natural Resource Area (SNRA), Historic Trees, Landscape Trees and Protected Trees, or Street Trees once within a one (1) calendar year period.~~
 - ~~2. Removal of more than five (5) and up to and including ten (10) Landscape Trees or Street Trees on a site within a one calendar year period.~~
 31. Removal of five (5) or more Community Trees, or more than 10% of the number of Community Trees on the site, whichever is greater, within a one (1) calendar year period, except as allowed in 40.90.10.1.
 2. *Multiple Use Zoning District: Removal of up to and including 85% of the total DBH of non-exempt surveyed tree(s) within a SNRA or Significant Grove area that is found on the project site.*
 63. *Commercial, Residential, or Industrial Zoning District: Removal of up to and including 75% of the total DBH of non-exempt surveyed tree(s) within a SNRA or Significant Grove area that is found on the project site.*
 74. *Removal of a Significant Individual Tree(s).*
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40 of this Code, shall apply to an application for Tree Plan Two. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Tree Plan Two application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Tree Plan Two application.

2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. *The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]*
34. If applicable, ~~pruning of any tree or removal of a~~ Landscape, street, or ~~ea~~ Community ~~†~~Tree(s) is necessary to enhance the health of the tree, grove, group of trees, or an adjacent tree or to eliminate conflicts with structures or vehicles.
4. ~~If applicable, it is necessary to remove diseased of landscape, street, or community trees or trees weakened by age, storm, fire, or other condition.~~
5. If applicable, ~~pruning or removal of any tree or removal of a~~ landscape, street, or ~~community tree~~ is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995 standards and International Society of Arborists (ISA) standards on the subject.
6. If applicable, ~~pruning or removal of any tree or removal of a~~ landscape, street, or ~~community tree~~ is necessary to accommodate *physical* development where no reasonable alternative exists ~~for the development at another location on the site, or where variances to setback provisions of this Code will cause other undesirable circumstances on the site or adjacent properties if the tree is saved.~~
7. If applicable, ~~removal of a landscape tree or street tree or~~ pruning of any tree is necessary because it has become a nuisance by virtue of damage to property or improvements, either public or private, on the subject site or adjacent sites.
88. If applicable, removal of ~~landscape, street, or community tree~~ is necessary to accomplish public purposes, such as installation of public utilities, street widening, and similar needs, where no reasonable alternative exists

without significantly increasing public costs or reducing safety.

~~9. Removal of a tree or grove shall not increase erosion or any resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~

9. *If applicable, removal of any tree is necessary to enhance the health of the tree, grove, SNRA, or adjacent trees to eliminate conflicts with structures or vehicles.*

10. *If applicable, removal of a tree(s) within a SNRA or Significant Grove will not result in a reversal of the original determination that the SNRA or Significant Grove is significant based on criteria used in making the original significance determination.*

11. *If applicable, removal of a tree(s) within a SNRA or Significant Grove will not result in the remaining trees posing a safety hazard due to the effects of windthrow.*

1012. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

D. Submission Requirements. An application for a Tree Plan Two shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan Two application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.

E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan Two application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).

F. Appeal of a Decision. Refer to Section 50.65.

G. Expiration of a Decision. Refer to Section 50.90.

H. Extension of a Decision. Previous approval of Tree Plan Two proposal shall not be extended.

3. Tree Plan Three

A. Threshold. An application for Tree Plan Three shall be required when none of the actions listed in Section 40.90.10 or none of the thresholds listed in Section 40.90.15.1 or Section 40.90.15.2 apply and one or more of the following thresholds apply:

1. ~~Removal of up to and including ninety five percent (95%) of trees within a Significant Natural Resource Area (SNRA). Multiple Use Zoning Districts: Removal of greater than 85% of the total DBH of non-exempt surveyed trees within a SNRA or Significant Grove area that is found on the project site.~~
2. *Residential, Commercial, and Industrial Zoning Districts: Removal of greater than 75% of the total DBH of non-exempt surveyed trees within a SNRA or Significant Grove area that is found on the project site.*
23. ~~Removal of an individual Historic Trees, a tree within a Historic Grove, or a Historic Grove.~~
4. *Commercial timber harvest of trees which fail to meet the approval criterion specified in Section 40.90.15.4.C.4.*
3. ~~Removal of a Significant Tree, Grove, or portion thereof.~~
4. ~~Removal of more than ten (10) Landscape or Street Trees.~~

B. Procedure Type. The Type 3 procedure, as described in Section 50.45 of this Code, shall apply to an application for Tree Plan Three. Upon determination by the Director, the decision making authority shall be either the Planning Commission or the Board of Design Review. The determination will be based upon the proposal.

C. Approval Criteria. In order to approve a Tree Plan Three application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Tree Plan Three application.
2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. *The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]*
34. If applicable, removal of a diseased tree or a tree is necessary because the tree has been weakened by age, storm, fire, or other condition.
45. If applicable, removal is necessary to enhance the health of the ~~tree,~~ grove, or adjacent tree(s) to reduce maintenance, or to eliminate conflicts with structures or vehicles.
56. If applicable, removal is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995 standards and International Society of Arborists (ISA) standards on the subject.
67. If applicable, removal is *the minimum* necessary to accommodate *physical* development ~~because~~ where no reasonable alternative exists for the development at another location on the site ~~and,~~ ~~or~~ ~~where~~ variances to setback provisions of the Development Code will not allow the tree(s) to be saved or will cause other undesirable circumstances on the site or adjacent properties.
78. If applicable, removal is necessary because a tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or on an adjacent site, ~~or that pruning in excess of 20 percent of the canopy is required to prevent damage to such improvements or property.~~
89. If applicable, removal is necessary to accomplish a public purposes, such as installation of public utilities, street

widening, and similar needs where no reasonable alternative exists without significantly increasing public costs or reducing safety.

~~9. Removal of a tree or grove shall not increase erosion or resulting erosion shall be controlled consistent with City and Clean Water Services regulations.~~

~~10. If applicable, removal of a tree within a SNRA will not substantially reduce the significance of the natural resource.~~

~~11. If applicable, removal of a Significant Tree or tree within a Significant Grove will not eliminate the significance of the grove based upon the original Significant Tree and Grove Inventory analysis.~~

~~1210.~~ If applicable, removal of a tree(s), or trees, within a SNRA or Significant Grove will not result in the reduce the size of the grove to a point where the remaining trees may pose posing a safety hazard due to the effects of windthrow.

~~1311.~~ If applicable, removal of tree or trees within a Significant Grove will not reduce the size of the grove to a point where the remaining trees may pose a safety hazard due to the effects of windthrow.

~~1412.~~ If applicable, removal of a tree within a Historic Grove will not substantially reduce the significance of the grove in terms of its original designation on the list of Historic Groves.

~~1513.~~ Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

- D. Submission Requirements. An application for a Tree Plan Three shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan Three application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), any other information identified through a Pre-

Application Conference, and by a report from a qualified professional.

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan Three application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).
- F. Compliance with Approval. All conditions imposed on an approved Tree Plan Three shall be implemented prior to the removal, pruning, or planting of tree unless otherwise noted in the approval. Compliance with the conditions of approval shall be met as long as the tree exist unless otherwise specified or until modified through a City approval process.
- G. Appeal of a Decision. Refer to Section 50.70.
- H. Expiration of a Decision. Refer to Section 50.90.
- I. Extension of a Decision. Previous approval of Tree Plan Three proposal shall not be extended.

~~4. Tree Plan Four~~

- ~~A. Threshold. An application for Tree Plan Four shall be required when none of the actions listed in Section 40.90.10 or none of the thresholds listed in Section 40.90.15.1 through Section 40.90.15.3 apply and when the following threshold applies:~~
 - ~~1. Removal of more than ninety five percent (95%) of trees within a Significant Natural Resource Area (SNRA).~~
- ~~B. Procedure Type. The Tree Plan Four application is a Comprehensive Plan Amendment application. The procedures and criteria specified in Chapter One of the Comprehensive Plan shall apply.~~

4. *Commercial Timber Harvest.*

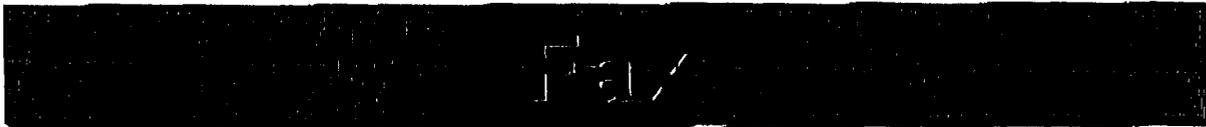
- A. Threshold. *An application for Commercial Timber Harvest shall be required when none of the actions listed in Section 40.90.10 apply and following threshold applies:*
1. *Commercial harvest of timber on Tax Lot Identification Nos. 1S132CC11300, 1S132CD09000, and 1S132CD09100.*
- B. Procedure Type. *The Type 1 procedure, as described in Section 50.35 of this Code, shall apply to an application for Commercial Timber Harvest. The decision making authority is the Director.*
- C. Approval Criteria. *In order to approve a Commercial Timber Harvest application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:*
1. *The proposal satisfies the threshold requirement for a Commercial Timber Harvest application.*
 2. *All City application fees related to the application under consideration by the decision making authority have been submitted.*
 3. *The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code.*
 4. *The harvest of timber will leave no less than fifty (50) living, healthy, and upright trees per acre each of which measure at least ten (10) inches in diameter at four (4) feet above grade.*
 5. *Species retained on site are in the same species proportions existing prior to harvest.*
 6. *Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.*

- D. Submission Requirements. An application for a Commercial Timber Harvest shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Commercial Timber Harvest application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Commercial Timber Harvest application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60 (Trees and Vegetation).
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Previous approval of Commercial Timber Harvest proposal shall not be extended.

CE JOHN CO., INC.

1701 Columbia River Dr.
Vancouver, WA 98661

JOHN



COMPANY: City of Beaverton Development Services
NAME: Barbara Fryer
FAX NUMBER: (503) 528-3720
PAGES: 3

From: Mark Perniconi
Fax Number: (360) 696-1007
Phone: (360) 696-0837/(503) 283-5365
EMail: mjp@cejohnco.com
Date: Friday, January 28, 2005
Time: 10:59 AM
Operator: mjp

COMMENTS: RE: TA2004-0011

Dear Barbara,

I would like to reintroduce into the record a letter I wrote to Steve Sparks dated 7/31/03 regarding the Tree Plan. It is still valid today. I hope to attend the PC meeting Wednesday to testify.

Please call me at (503) 283-5365 if you have any questions.

Mark Perniconi

CC:

July 31, 2003

Mr. Steve Sparks
 City of Beaverton
 Development Services Department
 P.O. Box 4755
 Beaverton, OR 97076-4755

RE: Tree Plan Applications
 The Consequences of Unintended Consequences

Dear Steve:

Since the Tree Plan applications have been added to the Code, we have had several opportunities to experience the impact. Although we are in agreement with the concept, the real world application of the Code language, as written, results in unintended consequences that may not have been anticipated. Our issues with the Tree Plan language are both general to the Code language and specific to our property (more specifically, the redevelopment process).

In general, we have two issues with the Code language as written. First, the Tree Plan thresholds are not scalable. The conditions of the Tree Plan language are identically applicable to the prototypical 2,500 sf taco stand on a 10,000 sf site with a total of 7 trees as it is to our 50 acre site with thousands of trees. Impacting 5 trees when you only have a total of 7 trees is a big issue. Impacting 5 trees when you have thousands of trees is not a big issue. Based on our history, and compounded by the scale of the property, the cost of the Tree Plan application process is up to TEN TIMES the cost of actual tree mitigation. Does this make sense? Suggestion – The thresholds should be defined as a percentage of site area impacted, not tree count (at least as related to landscape trees).

Secondly, for projects that are already undergoing a Design Review, the Tree Plan application is redundant and unnecessary. The tree mitigation requirements are clearly spelled out in the Code. In Design Review, the landscaping plan is already being reviewed for compliance. The addition of the Tree Plan application just adds more cost and process with no resulting benefit. In fact, due to the extraordinary cost of the Tree Plan application process relative to the cost of the actual tree mitigation, it could be argued that the Tree Plan process is resulting in inferior landscape designs. Suggestion – For projects undergoing Design Review, there should be no Tree Plan application required.

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Mr. Steve Sparks
RE: Tree Plan Applications
July 31, 2003
Page 2

The issue related specifically to the Cedar Hills Crossing redevelopment is the most frustrating. In the course of redevelopment, we have added hundreds of new trees, most of which are not required by any specific Code language. In the last 6 months, due to design refinements, we have made several minor site changes that have impacted, in most cases, just enough trees to meet the threshold for a Tree Plan application. The problem is that we are given no credit for all of the additional trees already added to the property during the redevelopment and we simply have no locations available to us for tree mitigation. Besides the outrageous cost per tree to just go through the Tree Plan application process, we are now forced to "stuff" trees into any location we can find that will hold the new tree, not for landscape design purposes, but simply to comply with misguided regulations. The unintended consequence of the Tree Plan here is bad landscape designs induced by misapplied Code language. Suggestion - In a redevelopment (or new development) adjusting tree counts and locations during the development process is simply an adjustment to the approved design and should be dealt with in the Design Review for the design change with no tree mitigation requirements.

Our experiences with the Tree Plan application process have not been positive and we see absolutely no compensating benefit. We have no objections to enforcing the Tree Plan application process for design changes that only impact trees. For all other applications, the Tree Plan process is just simply expensive and redundant over-burdensome regulation. Finally, as enforced, the Tree Plan process is extremely unfair to ongoing redevelopments and new developments.

Please call me at (503) 283-5365 if you have any questions or need any additional information.

Sincerely,



Mark J. Perniconi
Vice President - Development

Cc: Jim John
Walker John
Joe Grillo - City of Beaverton

Barbara Fryer

From: Julie Reilly [Jreilly@thprd.com]
Sent: Monday, January 31, 2005 2:13 PM
To: Barbara Fryer
Cc: Bruce Barbarasch
Subj ct: Re: City of Beaverton Proposed Tree Code Text Amendment _Planning Commission Public Hearing February 2,

Barbara,

The document reads well, as far as I can see. It is obviously focused on protecting trees within the city through careful attempts to regulate tree trimming, tree removal, and the cutting of trees deemed to be hazardous.

From the perspective of restoration and enhancement of natural areas, there are some problems. First, restoration is not taken into account.

For example, within Tualatin Hills Nature Park, there are some very large oak trees that must be at least 150 years old, judging from their dbh of >30". These trees are shade intolerant, and are in decline due to overtopping from Oregon ash trees and younger (30 yr old) Douglas fir trees. All are native species, but slow-growing Oregon white oak are a conservation target in Oregon and difficult to replace. They are, in my mind, much more valuable than the other species. The only way to save these historic specimens is to remove ash and young Doug fir. How are we to address this issue within the City Code? Would it be appropriate to mention enhancement and restoration efforts within the Tree Plan as an approved activity (with appropriate plan submittals to the city)?

There are a number of experts who are currently working to promote oak savannah and oak woodland restoration efforts throughout the state of Oregon. THPRD Natural Resources Department is at this time designing an oak restoration protocol for our parks (my project).

A second concern is in regard to the removal of non-native and invasive vegetation, which currently requires a permit. This seems to me to discourage the removal of noxious weeds such as Himalayan blackberry and English ivy, both of which are extremely detrimental to native trees and supporting understory. I understand that there is a concern over wholesale destruction of vegetation communities during the process of clearing invasives, but shouldn't restoration efforts be encouraged?

"Enhancement" and "Restoration" are not defined within Chapter 90.

Another concern has to do with "replacement" of cut trees, although this is not discussed within the documents under review. First, DBH (diameter breast height) is the standard method for measuring trees although it is my understanding that caliper measurement (at 12" above ground) determines the tree replacement ratio. Replanting many smaller trees does not replace the larger specimen, of course, but an attempt to plant that many saplings can actually be detrimental to appropriate restoration. Not all areas should be densely planted with trees; shrubs and open meadows are also desirable vegetation communities.

Finally, Tualatin Hills Park and Recreation District adopted a Natural Resources Management Plan in 2002. This plan addresses restoration and enhancement activities as one component of natural resource management.

On page 19 of the Staff Report and Recommendation, Goal 5.8.1 specifies cooperation with Tualatin Hills Park and Recreation District in implementation of the 20-Year Master Plan and Trails Master Plan. The Natural Resources Management Plan might be mentioned as well.

I applaud the City of Beaverton's efforts to protect trees and groves while allowing development to proceed. I

would appreciate it if you would present this additional perspective to the Planning Commission.
If you have any questions or need more information, please call me.
Thank you.
- Julie

Julie Reilly, Natural Resource Specialist TUALATIN HILLS PARK & RECREATION DISTRICT 5500 SW Artic Way,
Suite 2 Beaverton, OR 97005
(503) 629-6305 Ext. 2951 fax: (503) 629-6307
jreilly@thprd.com
<http://www.thprd.org/facilities/nr.cfm>

REC'D
JAN 31 2005
COMMUNITY DEVELOPMENT DEPT.

*Barbara Fryer, AICP
City of Beaverton
Community Development Department
PO Box 4755
Beaverton, OR 97076*

Dear Ms. Fryer,

Re:TA2004-0011 Tree Code Text Amendments

I am writing in behalf of Southwest Hills Baptist Church at 9100 SW 135th in Beaverton, 97008.

Recently I talked to you regarding this amendment and you called me back after reviewing the status of our CUP 20-81/276/282 and the impact of the proposed amendment on our property. The CUP allows the addition of church buildings that will require removal of nearly 95% of the existing trees that the City has since declared a "Significant Grove". You indicated that the new code would require retention of no less than 25% of the existing trees.

We have designed an additional building within the criteria of our CUP. The permits have not been obtained awaiting completion of financing for the facility.

The amendment to the code, years after we received a permit to construct a church complex, that restricts completion of the plan as approved, would create a very significant inconvenience and create a severe financial loss to Southwest Hills Baptist Church.

We have strongly supported the City of Beaverton and recently erected an 1,100 long sound barrier that is 8 feet in height to mitigate any noise that might be created on the site at a very significant cost.

We must strongly oppose any code modification that reduces the value and functionality of the property.

*David R. Cole
Southwest Hills Baptist Church
9100 SW 135th Avenue
Beaverton, OR 97008
503-524-8686*

JOHN

February 1, 2005

Ms. Barbara Fryer, Senior Planner
City of Beaverton
Development Services Department
P.O. Box 4755
Beaverton, OR 97076-4755

RE: TA 2004-0011

Dear Barbara:

In addition to the previous letter dated July 31, 2003 addressed to Steve Sparks, please add this letter to the public record as our comments to the Staff Report and Recommendation regarding proposed changes to the Tree Plan language.

We have had the opportunity to review the Staff Report dated January 26, 2005. In the redevelopment of Beaverton Mall into Cedar Hills Crossing we have had numerous experiences with the Tree Plan process as it relates to Landscape Trees only. We have no comments on Significant Groves, Historic Trees, wetlands, etc. Our opinion, which we will elaborate on later, is that the Tree Plan requirements in to the City of Beaverton is the single worse piece of regulation we have encountered anywhere in the Portland Metropolitan Area. In summary, as written and proposed to be amended, the Tree Plan language will result in the following impacts with regard to Landscape Trees:

1. The outrageous cost and time required for the Tree Plan applications will result in less compliance with the regulations, less trees actually planted and inferior landscape designs. This summary is not based on theory, but on real life conditions.
2. Regulation of tree maintenance included in the Tree Plan application process will result in less compliance with the regulations and worse of all, less tree maintenance actually performed.

The inclusion of Landscape Trees (and Community Trees since a Community Tree, as defined, is just an older Landscape Tree) is inappropriate for the following reasons:

1. Landscape Trees are already regulated through the Design Review Process. Mitigation requirements are just additional Design Guidelines or Design Standards. The Tree Plan is just unnecessary and redundant regulation.

2. Landscape Trees, just like cutting the grass, rotating the flowers and painting the buildings need to be managed as part of the normal maintenance of a retail center. Regulating maintenance will only result in the lack of maintenance.

In reviewing the Staff Report, we would like to make the following observations:

1. Landscape Trees appear nowhere in Goal 5 or in the definition of Significant Tree or Grove.
2. A significant component of Design Review is the landscape plan. For developments that contain only Landscape Trees, what purpose is served by the Tree Plan other than additional fees and time delays.
3. What authority does the City have to regulate the maintenance of non-significant trees (such as Landscape Trees) on private property? Why not regulate mowing the lawn, trimming the hedge, pruning flowers and sweeping the sidewalks.
4. We have no objections to the mitigation requirements as written or as proposed to be amended.
5. We suggest that section 9.2.2.2 of the City's Comprehensive Plan be reviewed and studied. It states "*Goal: To enable business to easily start or expand their enterprises.*" The City has an opportunity to actually reduce regulation and process by deleting Landscape Trees from the Tree Plan language.

Suggestions:

1. Delete Landscape Trees (and Community Trees) from section 40.90.05.
2. Delete sections 40.90.15.1.A.1. and 40.90.15.1.A.2.
3. Delete sections 40.90.15.2.A.1. and 40.90.15.2.A.2.
4. Delete sections 40.90.15.3.A.1. and 40.90.15.3.A.2.
5. Delete sections 60.60.10.5 and 60.60.10.6.
6. Eliminate all regulations concerning pruning for Landscape Trees and Community Trees.

Ms. Barbara Fryer
RE: TA 2004-0011
February 1, 2005
Page 3

7. Incorporate mitigations standards for Landscape Trees and Community Trees into Design Guidelines and Standards and out of the Tree Plan language.

The City has an opportunity to do the right thing to correct and eliminate a bad regulation. Clearly, the negative impacts of the unintended consequences of the Tree Plan far outweigh the benefits as related to Landscape Trees and Community Trees. The changes, as proposed with TA 2004-0011, do nothing to eliminate the fundamental flaw of the Tree Plan. We feel the City has an obligation to eliminate bad regulation and we encourage the City to do so in this case. The Tree Plan has been in force for a couple of years and can only be classified as a colossal failure as related to Landscape Trees and Community Trees.

We are participating in this public process because we care. As you know we have made significant investments in the City of Beaverton and hope to continue to do so in the coming years. To be frank, the planning process in the City of Beaverton is daunting and expensive and makes it extremely expensive to invest capital. Modifying the Tree Plan as suggested in this letter is a great opportunity to eliminate bad regulation and make a step in the right direction.

Please call me at (503) 283-5365 if you have any questions or need any additional information.

Sincerely,



Mark J. Perniconi
Vice President – Development

ENCLOSURES

cc: Jim John
Joe Grillo – City of Beaverton
Mayor Drake – City of Beaverton

DECAL CUSTOM HOMES & CONSTRUCTION, INC.

CCB: 153395

PHONE: 503-366-0797

FAX: 503-366-0810

FACSIMILE TRANSMITTAL SHEET

TO:

Barbara Fryer

FROM:

John Nelms

COMPANY:

City of Beaverton

DATE:

2/2

FAX NUMBER:

503-526-3720

TOTAL NO. OF PAGES INCLUDING COVER:

2

PHONE NUMBER:

SENDER'S REFERENCE NUMBER:

RE:

YOUR REFERENCE NUMBER:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Thank you, I hope this helps.



Dear Commissioners:

DeCal Custom Homes supports amendment of your tree code regulations as proposed by staff. Due to the close proximity to employment centers such as Nike Inc. and a light rail station, this site is ideally suited for accommodating a fairly high-density mixed use development. This Commission has planned and designed this site to accommodate urban scale development; however, we are unable to meet the intense urban-scale density standards and, at the same time, save all the trees and mitigating impacts to the site to the extent required by the existing tree code.

We believe that the proposed tree code regulations are a step in the right direction because they allow development at the urban densities dictated by the comprehensive plan and zoning designations, while at the same time encouraging tree preservation and mitigation. The proposed regulations require preservation of at least 15% of the DBH of trees in multi-use areas which, in many cases, will result in greater trees retention than the 5% tree retention requirement contained in the existing code. The current regulations require mitigation on a 1:1 basis; however, there is no incentive at present to mitigate impacts occurring on the property rather than paying a fee in lieu of mitigation or planting trees elsewhere. The new regulations encourage mitigation within the impacted significant grove by lowering the mitigation requirement to a 1:2 basis. Notwithstanding a reduction in the overall mitigation obligation, the new regulations provide the City with greater control to dictate which trees are removed and where mitigation efforts occur.

By adopting this new ordinance, the City will allow the most healthy and unique elements of a significant grove along with the understory to remain and be further enhanced by additional native plantings. The new requirements dictate that retained trees must be in clusters rather than linear patterns, remain in a natural configuration, and connect with adjoining forested areas, streams corridors and wildlife areas. The proposed plan recognizes the need to preserve urban trees while at the same time allowing tree removal after notice and comment to neighboring property owners with review criteria that direct development away from the most significant and healthy forested areas.

For these reasons, adoption of the proposed amendments will allow developers much more flexibility to create housing and mixed use communities that cultivate an urban forest while at the same time, allowing urban dwelling to savor that forest by living within it. We believe that this is a balanced and sensible approach to regulating tree removal. We encourage you to adopt the amendments proposed by staff.

Sincerely,

John Nelms, CFO



DATE: February 2, 2005
TO: Barbara Fryer, City of Beaverton Planning
FROM: Kendra Smith, Clean Water Services
RE: Proposed changes to tree protection related regulations Chapters 40, 60 and 90

Clean Water Services (District) applauds efforts made by the City of Beaverton to protect trees and forest resources in the urban environment. As the regional surface water and wastewater utility, the District has an aggressive program to revegetate stream corridors to help reduce water temperature, improve aquatic habitat, restore in-stream flow, and regulate watershed hydrology. The District encourages the City to promote preservation of and mitigation with **native** trees and vegetation wherever practicable, in order to reduce water and pesticide use, effectively manage stormwater, and increase micro-habitats in the urban environment. Urban forests and trees also offer benefits to the City in terms of air quality improvement, aesthetics, and higher property values.

Upon close examination of the proposed changes to Chapters 40, 60, and 90 of the Development code, the District identified a few items we encourage you to consider. Outlined below, the bolded italics refer to suggested additions to text, while quotes (“ ”) and comments reference to suggested changes in text. A justification as to why, in our opinion, the changes are needed is also provided.

Please feel free to contact me at 503.681.4425 or via email at smithk@cleanwaterservices.org if you have any questions. Thank you for your time and consideration.

Chapter 40.90 TREE PLAN

40.90.10.

8.golden chain tree (*Laburnum watereri*) and ***English or Common Hawthorne (Crataegus monogyna)***.

Justification: English hawthorne forms invasive dense thickets that out compete the native hawthorne and other tree and shrub species. **The District considers it a nuisance ornamental tree and removes it from sites whenever possible.**

9. Removal of a tree ***or nonnative vegetation*** listed as nuisance...

Justification: A reference is needed to nonnative vegetation other than trees to avoid conflict with section 40.90.15 .1.A.4. The District encourages the removal on nonnative invasive vegetation whenever practicable.

10. Remove “Within SNRA and Significant Groves” and start with Planting native vegetation....

Justification: Planting native vegetation by hand should not require a tree plan, regardless of its location. The time and cost to prepare a tree plan could be a disincentive to plant.

13. ***Enhancement activities conducted by Clean Water Services, City, or Tualatin Hills Park and Recreation District for the sole purpose of improving the ecological health of forest and water resources.***

Justification: Preparing a tree plan for projects implemented solely for the benefit of restoring ecological functions of an area, takes valuable time and resources away from on-the-ground improvements. Such projects are designed to expand healthy resource features and tree impacts, if any, are minimized to the maximum extent practicable. Ecological enhancement is not development; any impacts are temporary and are for the long term viability of the resource. The District, City and THPRD have staff with advanced degrees trained in stream ecology, botany, horticulture, and forestry that are qualified to make the determinations regarding tree protection. A definition of enhancement activities is proposed in Chapter 90.

40.90.15

- 1.A. 4. ***Mechanized*** removal of noxious vegetation....

Justification: Removal of non-native vegetation by hand should be exempt as noted in 40.90.10.9.

- 1.A. 5. Comment: “Mechanized” planting is rare, unless the size of the tree is so large that it can not be lifted by landscapers. Given the caliper size of trees required for mitigation, the City actually forces the need for mechanized replanting in many cases. Consideration of smaller native stock in areas where mechanized equipment would do more harm, would resolve the conflict.

Chapter 60.60 TREES AND VEGETATION

60.60.25

- 1.B. Comment: A time frame for how long the monitoring of the mitigation planting is required (example 3 years), should probably be specified.
- 3.B Comment: 2” caliper trees are quite large and in many cases will require mechanical installation. Larger tree stock is prone to shock and death unless handled at the right time of year and are regularly watered and maintained. This may not be a problem for urban landscaping, but in more natural areas and parks there are alternatives.

Native tree stock of smaller caliper (1” and under) trees with a max height of 4 feet (without a caliper designation for conifers) are more likely to survive and rapidly grow to the larger size desired. To meet the mitigation requirements in tight urban sites, the smaller native stock could be installed and the difference in caliper could be paid as a fee in lieu to the City tree fund which would be used to plant additional native trees on public lands to make up the difference.

Chapter 90 - DEFINITIONS

Add ***Enhancement Activities: Activities implemented for the sole purpose of improving and/or protecting the ecological functions and values of streams, wetlands, and forest resources. Common enhancement activities include: large wood placement, stream channel re-meandering, floodplain grading, rock and boulder placement for habitat, bank repair using bioengineering techniques, in-stream pond reconfiguration, stream channel restoration, revegetation, invasive species removal, selective thinning to preserve forest health (particularly white oak woodlands), mowing and clearing associated with site maintenance during project establishment.***

Justification: The District and City collect limited funds to improve the quality of our water resources; stream enhancement activities are implemented solely for that purpose. Dollars and time spent negotiating permits and preparing plans to demonstrate avoidance of impact for public projects that are inherently designed to improve resource value, is an inefficient use of limited ratepayer funds. For Tualatin Hills Parks and Recreation District, it is important they have the ability to actively manage their forests in order to minimize fire hazard and disease, and preserve unique forest communities and visitor experiences. Any opportunity to streamline the approval process of such public enhancement projects should be encouraged.



5151 NW Cornell Rd.
Portland, OR 97210

February 2, 2005

Beaverton Planning Commission
City of Beaverton -
4755 SW Griffith Dr.,
Beaverton, OR 97005

Dear Beaverton Planning Commission,

I am writing behalf of the Audubon Society of Portland including our 2400 members residing in the Tualatin Basin and 650 living within the City of Beaverton. Our comments below relate to Beaverton's draft tree protection ordinance chapter/sections 40.90 and 60.60.

We praise the City of Beaverton's efforts to protect urban forests through its local development code in order to maintain the multiple natural resource and community benefits provided by urban trees. An increasing body of literature documents the wildlife, water quality, property value and human health benefits of urban trees. The extent of forest cover within our watersheds relates directly to aquatic health of streams and rivers, a relationship documented by local studies in the Tualatin Basin.¹ This relationship clearly results from the documented capacity of trees control the quality and quantity of urban stormwater run-off.² Patches of native vegetation and forest cover also support numerous native bird species, particularly neotropical migrants.³ A growing body of literature also links the presence of urban trees to child development, crime reduction, local business activity, lower domestic violence, and mental and physical health.⁴ In addition, recent research documents the significant contribution of trees to neighborhood property values. Research comparing different tree resources with sales prices of residential

¹ Booth, D. 1991 "Urbanization and the Natural Drainage System-Impacts, Solutions and Prognoses " Northwest Environmental Journal 7 (1): 93-118 Cole, M. B. 2002 Assessment of Macroinvertebrate Communities in Relation to Land Use, Physical Habitat, and Water Quality in the Tualatin River Basin, Oregon. Prepared for Clean Water Services by ABR, Inc.-Environmental Research Services, Forest Grove, OR, pp. 38. Frady C. Gerth, B., Li, J., and Hennings, L. Portland Benthic Invertebrate Analysis, Metro Regional Services, Portland, OR, pp. 87

² McPherson, G.E., Maco, S.E., Simpson, J.R., Peper, P.J., Xiao, Q., VanDerZanden, A.M., and Bell, N. 2002. Western Washington and Oregon Community Tree Guide: Benefits, Costs and Strategic Planting. Center for Urban Forest Research, USDA Forest Service, Pacific Southwest Research Station, Davis California, pp. 76.

³ Hennings, L.A. 2001. Riparian bird communities in Portland, Oregon: Habitat, urbanization, and spatial scale patterns. Masters' Thesis, Oregon State University Department of Fisheries and Wildlife, Corvallis, Oregon.

⁴ Kuo, F. & Sullivan, W. (May 2001). Environment and Crime in the Inner City: Does Vegetation Reduce Crime? *Environment and Behavior*, 33:3, 343-367, Lyman, F. (August 2002). The Geography of Health. *Land & People Magazine*; Taylor, A.F., Kuo, F.E. & Sullivan, W.C. (2001) Views of Nature and Self-Discipline: Evidence from Inner-City Children. *Journal of Environmental Psychology*, 21; Trees in Business Districts: Positive Effects on Consumer Behavior!, University of Washington; Ulrich, R. (1984). View Through a Window May Influence Recovery from Surgery. *Science*, 224, 420-421.

properties suggests individuals will pay 3-7% more for properties with significant tree resources versus properties with few or no trees. One of the most comprehensive studies based on the actual sales prices found that each large front-yard tree was associated with about a 1% increase in the sales price.⁵ A much greater value of 9% (\$15,000) was determined in a U.S. Tax Court case for the loss of a large Black Oak on a property valued \$164,500⁶. These values approximate those reported locally. Recently a Portland developer was quoted that "A nice tree in a back yard can raise a lot's value by \$5,000."⁷ The research summarized above would all suggest that urban trees also contribute significantly to a cities' property tax base.

Unfortunately, the loss of urban tree canopy, which is severest in suburban areas in the Portland-Metro region, threatens all of the above values at the neighborhood, watershed, and regional scale.⁸ Development of strong local ordinances to protect urban trees and forest canopy is one important measure to reverse these trends. Research indicates that local tree protection measures and active tree planting efforts have contributed in the net gain of forest canopy in some Portland neighborhoods.⁹ We urge the City of Beaverton to actively pursue the full range of urban tree conservation efforts, coordinate these programs with other local governments in the Tualatin Basin and the entire Portland-Metropolitan region, and monitor progress for retaining and increasing forest canopy within the City's watersheds. Metro is currently developing watershed-based urban forest canopy protection and enhancement targets as part of regional fish and wildlife plan and could be part of Beaverton's local monitoring of tree protection efforts.

By way of general comments on the proposed tree ordinance, we applaud Beaverton for providing some additional protection for trees and understory vegetation during construction and site development in the Significant Natural Resource Areas (SNRAs). The City has prudently included measures, such as performance bonds for mitigation and deed restrictions for trees designated for future protection, to ensure that developers comply with the conditions placed upon their permits. The protection for landscape and community trees via a three-tiered application process designed for: 5 trees, 5-10 trees, and more than 10 trees is also represents important progress.

We are however concerned that the proposed tree ordinance will be insufficient to maintain the values and benefits of urban forest canopy over time, especially as they relate to water quality. Recent revisions to the local tree ordinance meant to respond to Measure 37 are of greatest concern. We urge the Planning Commission to not adopt revisions to this ordinance that would diminish its ability to protect urban trees for their water quality and public health benefits that- under Measure 37 exemptions- are not a basis of making property compensation claims. Moreover, the contributions of trees to the development value of a property, outlined above, indicate that regulations limiting tree removal should certainly not be assumed to decrease property values.

⁵ Anderson, L.M ; Cordell, H.K. 1988 Residential property values improve by landscaping trees. *Southern Journal of Applied Forestry*. 9: 162-166.

⁶ Neely, D. 1988. *Valuation of Landscape Trees, Shrubs, and other plants*. Seventh Edition. Urbana, IL: International Society of Arboriculture. 50p

⁷ Lutzenhiser, M. and N. R. Netusil. 2001. The Effect of Open Spaces on a Home's Sale Price. *Contemporary Economic Policy* 19 (July): 291-298, *Oregonian*, February 27, 2004, <http://www.urbanfauna.org/Trees.html>.

⁸ *American Forests*. 2001. Regional ecosystem analysis for the Willamette/Lower Columbia region of northwestern Oregon and southwestern Washington State. pp. 16.

⁹ Poracsky, J, and Lackner M. 2004. Urban Forest Canopy Report in Portland, Oregon, 1972-2002, Cartographic Center, Geography Department, Portland State University, Portland, OR, p. 42.

In order to fully protect urban trees and forest canopy in Beaverton and the multiple values they support, The Audubon Society of Portland has the following specific comments and recommendations:

60.60.05 Purpose: We encourage the City of Beaverton to explicitly articulate the full range of economic, environmental and public health values to be protected in the purpose of the proposed tree protection ordinance.

60.60.07 Enforcement provisions should function as an active deterrent to avoiding the law. The current sanctions require that an individual in non-compliance pay the same fee that an individual who is in compliance would pay as a fee-in-lieu of mitigation. This fine should be increased. There appears to be no enforcement mechanisms for individuals who do not appropriately protect trees during construction. How will Beaverton propose to enforce the new standards?

60.60.15 The City has articulated a bottom-line desire to not have more than 85% of the trees removed in a Multiple-Use SNRA zone; or, 75% of the trees in a Commercial, Industrial, or Residential SNRA zone. We do not feel this is sufficient to protect Beaverton's urban forest canopy over time. Larger stands, such as the Nike site at the SW corner of Murray and Jenkins provide proportionally greater habitat and water quality functions and values. These should receive greater protection. We would suggest establishing standards for native soil and vegetation removal in SNRAs that are consistent with those currently proposed under the Tualatin Basin Goal 5 Program for moderately and strictly limit habitat areas. At very least, in order to prevent the removal beyond what is currently proposed, a Type 3 application should always require a hearing in front of the Planning Commission.

60.60.25 Tree mitigation measures, which replace mature trees with saplings, do little in the present day to make up for functions and values lost from tree removal. Given that the City has opted to allow 50% of the trees to be removed in a SNRA without any mitigation, the mitigation ratios for tree removals beyond the 50% level should serve as a stronger deterrent. Currently, the plan states that on-site mitigation ratios are 1:2, however the example provided indicates that they are actually 2:1, a removal of 20 inches of D.B.H. is replaced with 10 inches of on-site mitigation. The mitigation ratios should be *at least* 1:1 on-site.

40.90.10.12 Allows removal of trees for trails in SNRA outside the top of bank of any stream, river, or pond. This provision could allow for significant removal of riparian vegetation and degradation water quality and habitat protection functions and values in sensitive areas. Tree removal for trees should not be allowed within 50 of water bodies except under limited and proscribed situations.

Thanks you for considering our comments.

Sincerely,

Jim Labbe
Urban Conservationist
Audubon Society of Portland

To: City of Beaverton Planning Commission
Date: 2/3/05
Subject: Proposed amendments to the City's tree regulations

Trees are crucial to curbing pollution of our streams and creeks from storm water runoff, to providing critical habitat for species that are in danger of ESA listing, to decreasing energy costs and associated air pollution, and to maintaining a high aesthetic value to our city. I am concerned that without a strong and proactive tree protection program, the quality of life for citizens and wildlife will decline.

I would like to express some concerns and suggestions for improvement regarding the proposed amendments to the City's tree regulations.

1. The definition of a tree as having a DBH ≥ 10 " for all but 3 species is not sufficiently inclusive. A 6" DBH (deciduous) tree can provide 300 ft² of canopy. Other local jurisdictions including Wilsonville, Forest Grove, and West Linn define a non-exempt tree as ≥ 6 " DBH. Beaverton should adopt a similar definition.
2. I understand the desire to have "clear and objective" criteria for tree plan requirements and that this precluded a requirement to "design around the tree resource" (page 5 of Staff Report and Recommendation). However, I disagree that satisfying a criterion that states "removal if any tree is necessary to accommodate physical development where no reasonable alternative exists" is any more clear and objective. Who decides what is reasonable? One suggestion is to require applicants to prove that any change in design that would spare more trees would add, say, more than 15% to the overall cost of the project. If they can't show this level of impact, then the application would be denied.
3. It is not clear what protection trees that are planted for mitigation purposes would receive. If they "become" the same as any other non-exempt tree, this would mean that the next time that site is re-developed, up to 85% of those mitigation trees could be removed, or worse—all of them could be removed if they haven't yet reached 10" DBH. The regulations need to be clear that any trees planted for mitigation must be unconditionally protected from any future development.
4. Fear of offending Ballot Measure 37 is not an acceptable reason to restrict regulations to currently regulated properties. Measure 37 states that property owners must be compensated or else can forgo regulations that decrease their property value. It refers only to regulations imposed since that person or one of their relatives owned that property. Thus, if you apply these new regulations to all properties, the worst that can happen is that if someone files a claim they must be allowed to forgo the regulations (no different from the current proposal where the owner "forfeits" the regulation automatically since it was never imposed). However, once that property changes hands (which all property does eventually), it will be "safe from measure 37 claims. I strongly urge you to include ALL property in the new tree regulations.
5. Last, but certainly not least, an incentive component is crucial to effective tree protection. By providing developers who exceed the minimum tree protection with tax incentives, streamlined approval processes, or even local recognition (=free advertising), you not only improve the health of the natural resource, but also create allies rather than enemies.

Thank you for considering my concerns.
Sincerely,


11555 SW Denfield St. 97203

Barbara Fryer

From: Jim Labbe [jlabbe@pdxstreams.org]
Sent: Monday, February 07, 2005 1:18 PM
To: Barbara Fryer
Cc: susan_murray@comcast.net
Subj ct: trails

Barbara,

Did you see my comment about the allounces for trails above the "top of bank." Is this anywhere and everywhere or only at stream crossings. The location of trails in sensitive areas is a major concern throughout the region.

Have you seen Metro's newly released green trails guide:

http://www.metro-region.org/library_docs/parks_green/greentrails_intro.pdf

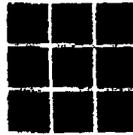
You can get a full copy from Jennifer Buddahbatti. They have guidance for avoiding riparian habitat.

Jim

Jim Labbe
Urban Conservationist
Audubon Society of Portland
5151 N.W. Cornell
Portland, OR 97210
(503)292-6855 x. 112
www.urbanfauna.org

"The movement for the conservation of wild life and the larger movement for the conservation of all our natural resources are essentially democratic in spirit, purpose, and method."

- Theodore Roosevelt,
Book-Lover's Holidays in the Open, 1916



SHLP

February 18, 2005

City of Beaverton
Planning Commission
4755 SW Griffith Drive
Beaverton, OR 97005

Dear Commissioners:

Simpson Housing supports Amendments to Chapter 40, Chapter 60 and Chapter 90 of the Beaverton Development Code, as proposed and recommended by staff.

Simpson Housing is the owner of a 9.65-acre parcel at the corner of Murray and Jenkins Roads in Beaverton. We have attempted to design a high-density mixed-use project for the site for a number of years, but the current Tree Ordinance has made development of the site economically infeasible due to the significant tree mitigation costs. We think the adoption of the proposed amendments are a step in the right direction and will provide developers much more flexibility to create housing and mixed-use communities within an urban forest.

The amendments provide a win-win situation for both the city and developers. The city will gain considerably more control over onsite preservation through having the authority to ensure significant groves are preserved in natural configurations (rather than artificial linear patterns) and connected with adjoining forests, stream corridors and wildlife areas. Additionally, as in the case of our property, the city will encourage new development of areas consistent with the zoning intent of the Comprehensive Plan. For developers, given the amendments lower the mitigation requirement from a 1:1 to a 1:2 caliper-inch basis, development of property becomes feasible once again.

We believe the amendment is a fair compromise that meets the intent of urban preservation and represents a balanced and sensible approach to regulating tree removal. We encourage you to adopt the amendments proposed by staff.

Sincerely,

Matt Segrest
Senior Vice President, Development
Simpson Housing Limited Partnership, L.L.P.

RECEIVED
FEB 22 2005
City of Beaverton
Development Services

JOHN

February 22, 2005

Ms. Barbara Fryer, Senior Planner
City of Beaverton
Development Services Department
P.O. Box 4755
Beaverton, OR 97076-4755

RE: TA 2004-0011

Dear Barbara:

Thank you for sending me a copy of the Supplemental Staff Report for TA2004-0011. I have had an opportunity to briefly review the proposed changes and we certainly agree with the Staff's recommendations to defer the issue of Landscape Trees to Design Review rather than as a Tree Plan application.

The one question I do have is the issue of Community Trees. Chapter 90 definitely states that a Landscape Tree is not a Community Tree. My question is will a Landscape Tree be both a Landscape Tree and a Community Tree over time? Stated differently, is an old Landscape Tree (over 10" DBH) now a Community Tree? If so, is this really the intent? We suggest that once a Landscape Tree, always a Landscape Tree and the appropriate procedures apply.

We appreciate the efforts of Staff to incorporate public comments into the text amendment. The language proposed that is attached to the Supplemental Staff Report dated February 16, 2005 is far superior to the existing Tree Plan language.

Please call me at (503) 283-5365 if you have any questions or need any additional information.

Sincerely,



Mark J. Perniconi
Vice President – Development

ENCLOSURES

cc: Jim John
Joe Grillo – City of Beaverton
Mayor Drake – City of Beaverton

1701 SE COLUMBIA RIVER DRIVE
VANCOUVER, WASHINGTON 98661
TEL : VANCOUVER 360.696.0837
TEL : PORTLAND 503.283.5365
FAX : 360.696.1007

RECEIVED
FEB 23 2005
City of Beaverton
Development Services

Beaverton Planning Commission
City of Beaverton
4755 SW Griffith Dr.
Beaverton, OR 97005

February 23, 2005

Dear Beaverton Planning Commission,

As a citizen of Beaverton I am concerned that the proposed tree regulations are insufficient to protect public health, ensure adequate water quality, and comply with state and federal regulations. Trees provide multiple well-documented benefits to urban areas (as aptly discussed by the Audubon Society in their February 2, 2005 letter to the Commission)

One of the primary benefits of trees is to prevent deterioration of streams and rivers by controlling the quality and quantity of storm-water runoff^{1,2}. Run-off (and not just during storms) from impervious surfaces collects oil, detergents, chemicals, debris—anything found on the road—and funnels it directly to the nearest stream. This constitutes the largest single contributor to water pollution. Trees filter runoff, removing sediment and pollutants. They also recharge ground water, allowing slow release back into waterways rather than flash flooding, which causes erosion and can result in serious property damage and even loss of life.

Oregon DEQ made the unprecedented move of rescinding local MS4 storm water permits because they did not meet the condition that storm water run-off must be controlled to the maximum extent practicable. By having a weak tree ordinance, Beaverton is clearly not controlling its run-off to the *maximum extent practicable*. In fact, many other local jurisdictions, including Portland, Lake Oswego, and Wilsonville, to name just a few, have much stronger tree protection plans.

Moreover, if Beaverton does not address water quality now, we likely will face issues of non-compliance with the Clean Water and Endangered Species Acts. Importantly, Measure 37 exempts regulations that 1) ensure public health and safety—clean drinking water and flood control clearly fall into this category, 2) prevent pollution, and 3) are designed to comply with federal laws (such as CWA and ESA). A well-crafted tree protection program with a purpose that encompasses the myriad benefits of trees and a complement of regulatory and incentive-based components would easily fit all three of these categories. Unfortunately, the current proposal shows neither the intent nor the will to grant trees their true value to healthy streams, healthy citizens, and a healthy economy. I fear this short-sightedness will cost Beaverton dearly in the near future.

Thank you for your consideration.

Sincerely,



Susan Murray
11555 SW Denfield St.
Beaverton, OR 97005

EXHIBIT # _____
DATE 2-23-05

¹ American Forests. Regional Ecosystem Analysis for the Willamette/Lower Columbia Region of Northwestern Oregon and Southwestern Washington State 2001.

² World Bank/WWF Alliance for Forest Conservation and Sustainable Use. Running Pure: The Importance of Forest Protected Areas to Drinking Water 2003.

March 2, 2005

Leigh M. Crabtree
Associate Planner
Community Development Department
City of Beaverton
4755 S.W. Griffith Drive
Beaverton, OR 97076

Hand-delivered
RECEIVED
MAR 07 2005
COMMUNITY DEVELOP DEPT.

Re:TA 2004-0011
(Tree Code Text Amendments)

Dear Leigh,

I want to verify that I agree with the suggestions made by the members of the Planning Commission at the Feb.23,2005 meeting. I don't think that the City wants to get into the business of forest practices. One example given was to specify how many rows of strawberries should a farmer plant. The following is my response to the Commission when asked what would I propose:

40.90.10.15 Removal or pruning of trees, or part thereof, as part of forestry management on properties with documented existing forest tax deferral status shall not be subject to the City's tree regulations, but rather the Department of Forestry regulations. Forestry management for the purposes of this section includes an established practice of intermittent maintenance, thinning, harvesting and planting vegetation, including commercial forest harvesting.

We have talked about the problems with the original language which is similar to the County's, and that it doesn't allow for any management of trees after you reach 50 trees per acre. This new language allows for a forest to be enjoyed by the City as well as our family.

Thank you for your consideration,
Scott Russell
31291 Raymond Creek Road
Scappoose, OR 97056
503-543-2434



JOHN

March 11, 2005

Ms. Barbara Fryer, Senior Planner
City of Beaverton
Development Services Department
P.O. Box 4755
Beaverton, OR 97076-4755

RECEIVED
MAR 14 2005
COMMUNITY DEVELOP. DEPT.

RE: TA 2004-0011

Dear Barbara:

Thank you for sending me a copy of the Supplemental Staff Report #2 for TA2004-0011.

We are in agreement with the proposed procedure to address Landscape Trees in design review. We are also in agreement with the revised definition of Community Trees in Supplemental Staff Report #2.

Once again we appreciate the efforts of Staff to incorporate public comments into the text amendment. We look forward to the approval of TA 2004-0011 by the Planning Commission.

Please call me at (503) 283-5365 if you have any questions or need any additional information.

Sincerely,



Mark J. Perniconi
Vice President – Development

ENCLOSURES

cc: Jim John
Joe Grillo – City of Beaverton
Mayor Drake – City of Beaverton

Barbara Fryer

From: Jim & Elaine Parker [jjesp@comcast.net]
Sent: Sunday, March 13, 2005 11:48 AM
To: Barbara Fryer
Cc: Dennis Doyle
Subject: TA 2004-0011 Tree Code Text Amendment

Dear Commissioners

During the late '70's early '80's I sat where you are sitting. I understand the need for concern for public health and safety. I was recently told that the 60 douglas fir trees on the rear portion of my property are considered "Community Trees". How can that be? Forty years ago I bought and paid for the land. Thirty-five years ago I planted the 60 fir trees and have nurtured them into a fine little forest. No one from the "community" helped pay for the property or pay my taxes or helped plant and care for the trees. Why should the "community" have any claim or say over my private property?

There is a theory that advocates the elimination of private property (rights), It's called communism. I feel the city is over-stepping its bounds. Did you not hear the voice of the voters in favor of measure 37? Once again the city is stomping on my freedom. What is happening to my individual rights?

Thanks for listening.

James A. Parker
5675 SW Stott Ave
Beaverton, OR 97005

Please acknowledge receipt.

March 24, 2005

Barbara Fryer.AICP,Senior planner
Community Development Department
City of Beaverton
4755 S.W. Griffith Drive
Beaverton, OR 97076

RECEIVED
MAR 28 2005
COMMUNITY DEVELOP DEPT

Re; TA 2004-0011 Tree code text amendments

Dear Barbara,

I received the Supplemental Staff Report # 4 today and I appreciate the work and research that you did with the Department of Forestry. I am pleased that my comments and concerns are the same as their's. The option number 1 (40.90.10.15 The harvesting of forest tree species for the commercial value of the timber on tax lots 1S132CD09100, 1S132CD09000, and 1S132CC11300 is exempt from the City's Tree Regulations and the Forest Practices Act applies.) will work for our land and the use of the land to grow trees.

Thank you for you help,



Scott Russell
31291 Raymond Creek Road
Scappoose, OR 97056

↙ Cc City of Beaverton Planning Commission