

## CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

### Study Session Worksheet

Presentation Date: May 18, 2010      Time: 2:30 p.m.      Length: 1 hour

Presentation Title: Draft Trees Ordinance and Related Tree Programs

Department: Transportation and Development

Presenter: Cam Gilmour, Jennifer Hughes

### POLICY QUESTION

What action would the Board of County Commissioners like the Planning Division to take to prepare for the June 8, 2010, Board Public Hearing on the proposed draft tree ordinance?

### ISSUE & BACKGROUND

**Process:** During two study sessions last fall, the Board of County Commissioners reviewed a draft tree ordinance (attached, as amended in response to input from the Board and the Planning Commission) and a *Parking Lot List* (attached) of tree-related issues produced by the Board-appointed Trees Task Force. Following those discussions, the Board initiated an amendment to the Zoning and Development Ordinance to adopt tree preservation regulations and forwarded the matter to the Planning Commission. In addition, the Board tabled items on the *Parking Lot List* that were unrelated to the draft ordinance.

March 22, 2010: The Planning Commission held a public hearing on the draft ordinance. As shown on the attached summary, the testimony was uniformly in opposition to the proposed ordinance, with some calling for no tree ordinance and others calling for a more restrictive or otherwise changed tree ordinance. Common concerns were the complexity of the ordinance and the belief that it would create bureaucracy with little benefit for the urban tree canopy.

April 12, 2010: The Planning Commission, after extensive discussion, voted 6 to 1 to recommend to the Board that the draft ordinance not be adopted. The reasons given for the vote were diverse, but mirrored those heard in public testimony.

June 8, 2010: The Board has a hearing on the proposed ordinance scheduled at 6:30 p.m..

**Brief Overview of Draft Ordinance:** The draft ordinance, which is applicable only to unincorporated areas inside the Portland Metropolitan Urban Growth Boundary (UGB), is a regulatory approach to tree preservation. It requires tree removal permits (which could be denied in some cases), mitigation for some removed trees and protection of

preserved trees during construction. It addresses pre-development tree cutting, as well as tree preservation during development review.

The draft ordinance also includes two significant provisions that limit its impact.

1. It does not apply to developed single-family lots that cannot be divided.
2. It allows owners of rural-zoned properties, and *divisible*, developed, urban single-family lots, to remove trees before development and without mitigation, provided that they consent to a five-year moratorium on most types of development.

The draft ordinance requires the county to assume jurisdiction for the Oregon Forest Practices Act inside the UGB, although the effect of this would be lessened by the proposed exemption for properties specially assessed as forestland.

**Next Steps:** The immediate matter before the Board is the draft ordinance, which is the topic of the June 8 public hearing. However, items on the Trees Task Force *Parking Lot List* and issues raised by the public and the Planning Commission could be addressed through two additional work programs.

- The first would concentrate on landscaping standards and street trees as part of the upcoming sustainability zoning code amendments.
- The second would focus on non-regulatory approaches, such as education and outreach, tree planting incentives and canopy management.

### **QUESTIONS PRESENTED FOR CONSIDERATION**

1. Should Planning staff prepare alternatives to the draft ordinance prior to the June 8, 2010, public hearing?
2. If the Board would like an alternative ordinance, what elements should it include?

### **OPTIONS AVAILABLE**

#### **Question 1 - Alternatives to the Draft Ordinance**

- A. **Direct staff not to prepare alternatives to the draft ordinance**, at least until after public testimony is taken on June 8. At that point, at the end of the hearing, the Board could take one or more of the following actions:
- 1) Adopt the ordinance as presented
  - 2) Amend the ordinance and adopt it as amended (typically these would be minor amendments that could be made at the hearing)
  - 3) Direct staff to prepare a revised version of the ordinance for consideration at a later date
  - 4) Decide not to adopt an ordinance
  - 5) Direct staff to focus tree canopy enhancement and preservation efforts into the upcoming sustainability zoning code amendments (including landscaping and street trees)

- 6) Direct staff to develop proposals for non-regulatory alternatives, including public education, outreach, incentives and canopy management.
- B. **Direct staff to prepare a conceptual alternative to the draft ordinance.**  
Broad policy changes to the draft ordinance would be suggested by staff, to address concerns identified by the Board. However, a revised ordinance would not be prepared, at least until after June 8.
- C. **Direct staff to prepare an alternative in ordinance form, prior to June 8.**
- D. **Direct staff to prepare, or to begin to prepare proposals for non-regulatory alternatives, including such items as public education, outreach, incentives and canopy management**

### **Question 2 - Essential Elements of an Alternative Ordinance**

There are numerous options for amending the draft ordinance, with the caveat that changes must be consistent with the public notice previously given or new notice must be provided. Staff has identified several alternatives for consideration.

**1. Continue toward adoption of a comprehensive regulatory tree protection ordinance.** The framework of this approach is contained in the draft ordinance, but changes could be made either to limit or expand the scope.

- a) Complexity concerns could be addressed by reducing the number of permit types.
- b) Concerns about ineffectiveness could be addressed by reducing the number of exemptions, requiring increased mitigation for removed trees, or replacing the "moratorium option" with one that requires tree preservation and mitigation where preservation is not practicable.

**2. Focus the ordinance on tree preservation and protection standards applied at the development review stage, combined with a "moratorium option" for developable property.**

- a) New preservation standards would be applied to land divisions, conditional uses and commercial/industrial/multifamily design review.
- b) A five-year moratorium on land divisions, conditional uses and design review would act as a disincentive to clear-cutting prior to the filing of a development application. This approach would require "clear-cutting" to be defined.
- c) Enforcement of the moratorium would occur at the development review stage, with denial of the development application if the tree removal threshold was exceeded within the previous five (or more?) years.
- d) Administration of the Oregon Forest Practices Act would remain with the State.

**3. Focus the ordinance on tree preservation and protection standards applied at the development review stage, combined with an over-the-counter tree removal permit for trees over 8" in diameter at breast height (with exceptions for certain trees identified previously by the Trees Task Force) and required mitigation.**

- a) New preservation standards would be applied to land divisions, conditional uses and commercial/industrial/multifamily design review.
- b) There would be no restrictions on pre-development tree cutting, and automatic approval of an over-the-counter permit in many cases. However, mitigation would be mandatory, in the form of on-site planting, off-site planting on a site approved by the county or payment into a county tree fund.
- c) Administration of the Oregon Forest Practices Act would be assumed by the county for regulated properties, with some applicants required to retain a professional forester to demonstrate compliance with the Act. Applying the Act would necessitate more than an over-the-counter permit, but full land use review could be avoided. Exempting properties specially assessed as forestland would reduce the number of property owners required to comply with the Act at the county level, because the state would retain jurisdiction for those lands.

## **RECOMMENDATIONS**

### **Question 1 - Alternatives to the Draft Ordinance**

Staff recommends preparation of a conceptual alternative to the draft ordinance and initial proposals for non-regulatory options.

Preparing a revised draft ordinance prior to public testimony on June 8 may be premature because the testimony may raise additional issues beyond those discussed by the Planning Commission, and may lead the Board in a different direction. However, it is clear from the public testimony and the Planning Commission recommendation that there are significant concerns with the current draft ordinance.

Staff is also concerned, believing that the current ordinance is complex, and that complexity is not justified by the level of tree protection the ordinance is likely to achieve. It makes sense for staff to be prepared at the June 8 hearing with policy alternatives that could be discussed following public testimony.

### **Question 2 - Essential Elements of an Alternative Ordinance**

Staff believes that any of the three alternatives outlined above would result in a more workable and effective ordinance than the draft ordinance in its current form.

## **SCHEDULE FOR STUDY SESSION**

Division Director/Head Approval \_\_\_\_\_  
Department Director/Head Approval \_\_\_\_\_  
County Administrator Approval \_\_\_\_\_

Attachments: Draft Tree Ordinance, as amended  
Parking Lot List  
Summary of Testimony at March 22, 2010, Planning Commission  
Hearing

For information on this issue or copies of attachments, please contact Jennifer Hughes @ 503-742-4518