

**Potential Regulatory Tools to Preserve Large Trees in Development Situations**

Revised: July 30, 2015

<b>Legislative guidance</b>	<b>Advantages</b>	<b>Disadvantages</b>	<b>Staff Comment</b>	<b>Committee Comments from July</b>
<b>Tool: Threshold (e.g. tree size or species, % of trees allowed to be removed)</b>				
<b>Description: Thresholds establish different regulations for different trees</b>				
Title 11	Establishes new/different regulations for trees that exceed certain size or are a particular species.	There is no objective size number. If the threshold is set too low, it may be seen as burdensome or intrusive. If set too high, a threshold may be seen as ineffective.	Existing Title 11 thresholds are 12 and 20 inches. Depends on where the threshold (presumably tree size) is set. Title 11 also includes some preference/incentives for native tree retention. Anecdotal information gathered from LD reviews is that most trees proposed for removal are 40 inches or less.	-Potentially combine with another tools (e.g. “delay”) -Need more data on species and size of trees in the city; e.g. 30 inch Douglas fir is not exceptional. Size threshold could depend on species -Need to define “large, healthy” tree by species -Ease of implementation
<b>Tool: Mitigation fee</b>				
<b>Description: Must be paid in lieu of compliance with regulation</b>				
Title 11, Interim Rule, UF fee schedule	Higher fees tend to be a disincentive for removal	Increases cost for applicant. Must consider how any increase impacts fees for non-development situations/equity implications.	Existing mitigation fees are based on \$300/inch, which went into effect in 2009. Current fees are tied to cost of planting 2 medium trees and maintenance for 2 years. Mitigation fees must be tied to a rational basis for compensating the lost values or functions of the specific tree (i.e., not a set amount). Replacement cost is a standardized method that does not need to consider the specific circumstances (i.e., not discretionary). Fees may not be arbitrary.	-Ease of implementation

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<b>Tool: Delay</b>				
<b>Description: Delay in issuing permit (35 days, notice, extension, appeal)</b>				
24.500.200, 33.445.150	Provides notice to neighbors and opportunity for alternative development, tree preservation.	Delay in issuing permit. However, over time, applicants learn to build into timeline.	Council recently adopted this provision to provide opportunity to find options to residential demolition. There are demolition provisions for historic landmarks, also.	-Property acquisition could be an option for neighbors -Ease of implementation
<b>Tool: Flexible development option/incentive</b>				
<b>Description: Development standard flexibility in exchange for tree preservation</b>				
33.120.265, 33.430.140 N	Provides incentive for tree preservation and quid pro quo for applicant		Minimum density requirement may be reduced or increased in multi-dwelling zone in exchange for tree protection. In environmental zones, setbacks may be reduced if project avoids environmental zone.	-Requires change to zoning code. -Ease of implementation
<b>Tool: Modify Development Standards</b>				
<b>Description: Change preservation standard from 1/3 of trees on site to something more nuanced (e.g. caliper inches)</b>				
11.50.040 33.630.200	Can give more weight to larger trees, or increase the amount of required tree preservation	Complicates regulation, and increases cost of application submittal. May be difficult to get accurate information short of requiring an arborist report. Consider that this would also apply to Helen Homeowner who is building an addition or covered patio.	The land division code incorporates standards for retention of trees >20 inches + a certain % of caliper inches on the site.	-Title 11 focused -More discussion needed on this option

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<b>Tool: Approval criteria</b>				
<b>Description: Add criteria to Title 11 to determine whether tree may be removed</b>				
11.40.040 B.2 33.630.200	Allows consideration of additional criteria for especially valuable trees. Can be evaluated based on specifics of the tree removal/proposed development situation	Important to ensure application of additional approval criteria do not result in a land use decision.	Current standards for removal of city and street trees are more stringent than removal of private trees. City Forester has authority to exercise discretion when it comes to public trees. Exercising discretion (approval criteria) for onsite trees in development situations would make these decisions land use decisions.	-More discussion needed
<b>Tool: Special designation</b>				
<b>Description: Special rules for special designations (e.g., heritage tree)</b>				
11.20.060	Creates a designation for trees that can establish much more stringent removal standards	Requires property owner consent	Under current heritage tree rules, removal would require affirmative vote from 6 UFC members.	-Tool already exists -Could add a new designation for large trees, e.g. over 30 inches dbh; type of species would affect designation based on size
<b>Tool: Property Acquisition</b>				
<b>Description: Create a fund (\$source??) to purchase property with exceptional trees</b>				
Heritage Tree Park (SW Portland)	Avoids “taking” claims w/o compensation	There is no surplus money available. Would need to carefully craft criteria for when/where purchase would occur/equity issues.	The Tree Planting and Preservation Fund was established for this purpose, however it was acknowledged early on that use of the fund for this purpose was not likely due to the cost to canopy benefit. i.e. tree planting is usually going to be a better “bang for the buck”	-Title 11 allows for acquisition, but funds not available -Criteria needs to be defined: Would owning a property benefit the City? -Acquisition could be used for easement. -Not realistic for City -Lower priority

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<b>Tool: Tree Easement</b>				
<b>Description: Conservation easement</b>				
Not mentioned in Portland regulations	Can be created without land use review.		Tool already exists but is not in code as regulatory tool. Requires property owner consent.	-Added based on Committee suggestion
<b>Tool: Easement modeled on land division</b>				
<b>Description: Creation of a tree tract</b>				
33.630	Will protect trees in perpetuity. Tool already exists.	Can only be created through the land division (LUR) process.	Tree tract creation is same as creation of a parcel.	-Added based on Committee suggestion