

June 1, 2015

MEMORANDUM

TO: Tree Project Oversight Committee  
FROM: Tree Project staff  
RE: Response to March 15, 2015, additional/proposed issues to address, prepared by Jim Labbe and Kris Day

Staff appreciates the thought put into this list by Ms. Day and Mr. Labbe, and offers the following comments and recommendations for moving ahead:

**Top Priority Issues**

Issue 1: **Pending policies for Tree mitigation in non-development situations:**  
Does the new policy provide a disincentive to remove trees outside the development review process? Does it fully mitigate tree loss?

Response: An Interim Rule for mitigation planting was implemented effective April 20, 2015. It was necessary to implement the Rule quickly because of pending permits and the need for immediate clarity. During the training, it was explained that there is a comment period during which interested parties can provide input (code allows 180 days for adoption of permanent administrative rule.

Staff will carefully monitor the impacts of this rule during the review period and invites input. Specifically, staff will identify all situations where the Interim Rule applies and examine the impacts on the applicant's decision and further, quantify loss versus the mitigation required. This will be a high priority item and we will report back to the Committee when we have results and further, any required changes will be incorporated in the final version of the Administrative Rule, or may result in a recommended code change.

Recommendation: Committee discussion as part of their final report and recommendation to the City Council. As part of the annual monitoring report, the results of the Interim Rule can be evaluated. Committee comments (under separate cover) will be incorporated. Consider any code amendments that may be warranted.

Issue 2: **Tree preservation and mitigation standards in development situations:** Are Tree Preservation Standards on development sites preserving trees as intended? To what degree are developers opting to cut trees and pay the capped \$1,200 fee in-lieu of preservation? Is the

capped fee in-lieu of preservation adequately mitigating loss of the environmental functions provided by trees? Would a graduated fee in lieu of preservation more fully mitigate tree loss in more circumstances and provide a stronger incentive for tree retention where practical?

Response:

*Are Tree Preservation Standards on development sites preserving trees as intended?*

In order to gauge the efficacy of Tree Preservation Standards, both quantity and quality of trees preserved should be considered. Due to both exemptions in the code and site-specific details (e.g., no trees on site to preserve), not all development permits will “trigger” tree preservation. The number of permits where tree preservation is required compared to the total number of issued development permits is one measure of the code’s success in preserving trees during development. Table 1 below shows that since new tree regulations have come into effect, it is relatively rare for residential or commercial development to trigger tree preservation.

**Table 1: Tree Preservation, January 1 to May 15, 2015**

Development type	Total permits issued	# triggering preservation	% triggered preservation	# of trees preserved	# of permits where fee in lieu was paid
Residential	1,797	139	7.7	269	20
Commercial	794	4	0.5	22	0

The other consideration for determining whether Tree Preservation Standards on development sites are preserving trees as intended is to look at the quality of trees being preserved. The intent of Tree Preservation Standards in Title 11 is clearly to protect high-quality (large, healthy, non-nuisance) trees to the extent practicable. Exemptions from the Standards for trees that are dead, dying, dangerous, or nuisance species were specifically included to encourage their removal. Despite the good intentions of the code, tree inspectors tasked with performing tree preservation inspections have often found themselves at sites where dead, dying, or nuisance trees have been preserved. As these inspections generally happen after site development has begun, planned tree removals may have already occurred and the opportunity to alter Tree Plans to preserve healthy non-nuisance trees passed.

One cause of this issue is the fact that arborist reports are rarely required to be submitted in conjunction with Tree Plans. If applicants do not claim exemptions for dead, dying, dangerous, or nuisance trees, or in other rare cases such as when alternative tree protection measures are proposed, there is no requirement for them to include an arborist report with their permit application. Therefore, species on Tree Plans are commonly misidentified, and in some cases preserved trees identified as non-nuisance species on a plan are nuisance species in reality. While increased requirements for arborist reports to be submitted in conjunction with Tree Plans would reduce misidentifications, on-site verification of Tree Plans by Urban Forestry staff prior to any development activities would be the most effective means of ensuring proper identification of tree species and condition during development.

Preliminary inspections would have the added benefit of allowing inspectors to discuss Tree Plans with applicants prior to any development activities, identifying opportunities to retain the highest quality, most suitable trees on site as well potential tree impacts. Title 11 requires these preliminary consultations for development on City-owned and managed sites and in rights-of-way, with the intent of preserving significant trees where possible. Extending this requirement to private development would similarly keep quality, rather than just quantity of preserved trees as a consideration for any Tree Plan.

*To what degree are developers opting to cut trees and pay the capped \$1200 fee in-lieu of preservation?*

Since Title 11 came into effect on January 2<sup>nd</sup>, it has been relatively uncommon for developers to decide to pay a fee-in-lieu of preserving trees. These fees have been paid in less than 15% of development permits that triggered preservation. See table 1 for details.

*Is the capped fee in-lieu of preservation adequately mitigating loss of the environmental functions provided by trees?*

In order to assess whether the \$1,200 cap adequately accounts for the loss of benefits provided by trees that are removed below the 1/3 preservation requirement, detailed analysis of individual site plans is necessary, taking into account tree species and location. Using iTree Design software developed by the US Forest Service, environmental and aesthetic benefits can be estimated for individual trees over a given time period.

A preliminary analysis of removed trees where developers opted to pay a fee-in-lieu of preservation in 2015 demonstrated a wide range of potential benefits lost. Over a 30-year time period (2015-2045), benefit estimates of

removed trees ranged from \$585-\$5,800. Generally, small stature trees generate fewer estimated benefits using this tool, while large stature trees will generate more. Further analysis identifying the distribution in mature form of trees removed below the 1/3 requirement will aid in answering whether the \$1200 cap is adequate for mitigating loss of environmental function in these situations.

*Would a graduated fee in lieu of preservation more fully mitigate tree loss in more circumstances and provide a stronger incentive for tree retention where practical?*

See previous question regarding mitigation of tree loss. In the first 5 months of 2015, developers opted to preserve in more than 85% of cases where preservation requirements were triggered. Whether or not current mitigation requirements are responsible for such a high rate is unknown.

Recommendation: Committee discussion as part of their report to Council.

Issue 3: **Data Collection and Performance Monitoring:** What data is the City collecting to track implementation? What is the most important and cost-effective information to track to assess the effectiveness of code in achieving its purpose (11.05.010)?

Response: Members of the OAC have been sent the draft Tree Program Evaluation Plan, which outlines the information that is being collected by PP&R Urban Forestry and the Bureau of Development Services to evaluate the effectiveness of the regulatory changes under Title 11 in meeting the goals of the Citywide Tree Project. While long-term monitoring objectives will require complicated datasets and cooperation with other City bureaus and outside institutions, metrics within the Evaluation Plan are currently available and can provide a detailed picture of the code's impacts thus far.

Recommendation: Committee discussion as part of the monitoring report conversation

Issue 4: **Programmatic Permit:** Is the programmatic permit working as intended? Is it functioning to preserve and plant trees, especially in City Capital Improvement Projects?

Response: Most of the Programmatic Permits have not yet been issued. We will not be able to evaluate their performance until after issuance, and some time under the permits has passed. (Capital Improvement Projects (CIPs) do not receive Programmatic Permits. CIPs are development projects, and therefore must receive any required development permits, including from Urban Forestry in regards to tree preservation, placement and mitigation. Programmatic Permits specifically cannot be used for development

situations and are intended to address ongoing tree maintenance needs such as pruning, over a two-year period of time.

Recommendation: Review Programmatic Permit chapter 11.45 if requested.

Issue 5: **Land Divisions:** Are the new Title 33 (Zoning) criteria for tree preservation during land division functioning to preserve trees? Is the 10-year sunset for tree plans sufficient?

Response: Tree preservation requirements for land division applications have been in place since 2002 when the new land division regulations were adopted. The amendments that went into effect in January 2015 were intended to provide more emphasis on preserving high quality mature trees and tree groves. It does this part by giving more discretion to decision makers to evaluate specific circumstances and develop the most appropriate tree preservation and/or mitigation plan for each site. It is too early to tell how the amended code will change tree preservation outcomes. To date, there have been no decisions issued on land division cases where the new regulations applied. However, there are a number of cases under review where staff have asked applicants to consider development alternatives that would allow for preservation of high priority trees. There is no proposal to implement a monitoring program specific to land division cases. Tree preservation will be monitored at the time of development permit review and will include preservation that is triggered by Title 11, as well as any other zoning regulations (i.e. overlay zones – environmental, scenic, plan districts – Johnson Creek, Rocky Butte) or conditions of a land use review (i.e. land division, conditional use, environmental review). We are not aware of any tree cutting issues that have resulted from the 10-year sunset for tree preservation conditions. It is important to note that once the conditions expire, Title 11 requirements will apply. Areas within the Multnomah County Urban Pockets, where Title 11 tree permit requirements do not apply, are specifically excluded from the sunset provision.

Recommendation: Committee discussion as part of the monitoring report conversation.

Issue 6: **Exempted Industrial and Commercial Zones:** The purpose of Title 11 is to implement the Urban Forest Plan including the City-wide Urban Forest Canopy Targets. However Title 11 exempts some expansive industrial and commercial zones. How is the City monitoring implementation on industrial and commercial properties currently exempted from the code? Should exempted areas be included in the future?

Response: These zones were specifically excluded because the challenges to the River Plan at the time of code development, with the understanding that the

issue would be revisited at a later time. Bureau of Planning and Sustainability (BPS) staff indicates that (a) the initial decision to exclude these zones was, in part, tied to issues raised in court during the River Plan appeal; (b) a review of the economic opportunities analysis (EOA) being conducted as part of the Comprehensive Planning process will be critical in determining future opportunities to revisit this issue; and (c) there may be some opportunities in the Mixed Use Zone project for reconsideration (see below for additional comments on this issue).

Recommendation: Discuss at a future Committee. Request BPS presentation. Make recommendation to BPS.

### **Other Important Issues**

Issue 7: **Development Impact Areas:** Should the larger “development impacts area” (defined in Section 11.80.020.13) be required to determine the “Required Tree Area?” Should this broader area be required for projects on City land or publicly owned land?

Response: Applicants have the option of defining a development impact area if a site is larger than one acre. This was put in place to isolate an affected area of a site from the remainder of a site that will be left undisturbed. Tree preservation and density requirements are based on the area inside the impact area. The code definitions includes all areas that are proposed for development as well as those areas that will be disturbed during construction, including storage and areas that will be impacted by site work. This definition is being applied when administering Title 11.

Recommendation: Committee can discuss concerns of members.

Issue 8: **Tree Planting Credit:** Is the City providing tree planting credit option for mitigation? Is it being used?

Response: Committee staff understands that there is no planting credit option for mitigation. Any previous policies that provided “extra credit” based on the quality of the tree being planted was not incorporated into the Interim Rule on mitigation planting.

Recommendation: Include this concept on the list of issues pertaining to the Interim Rule to be discussed by the Committee.

Issue 9: **Mixed Use Zone Project:** Is the Mixed-Use Zone Project addressing trees in proposed changes to zoning and design standards? How will proposed zone changes impact tree preservation and planting? Are there sufficient

provisions to ensure adequate space for trees or to require burying of power lines for healthier tree canopy?

Response: According to Bureau of Planning and Sustainability (BPS) staff, the Mixed Use Zone Project is in its early stages and its scope is being developed. BPS staff has been informed that the Committee is interested in these issues and will take them into consideration.

Recommendation: Discuss at a future Committee. Request BPS presentation. Make recommendation to BPS.

Issue 10: **Greenstreets:** How does the City make decisions about tree removal for green street construction? Could greenstreet construction replace a street tree planting requirement if both are not feasible?

Response: The conflict between stormwater facilities and street trees has been an ongoing issue and remains under discussion between interagency partners. An internal committee was formed in 2014 to discuss development of design guidelines, but due to limited resources, this process has not moved forward. However, under the Title 11, a tree planted in a greenstreet facility is considered a street tree.

Recommendation: Request BES/PBOT presentation and/or recommend this item be considered for review as part of the Commission's report.