July 10, 2015

MEMORANDUM

TO: Tree Project Oversight Advisory Committee
FROM: Tree Project staff
RE: Potential regulatory tools for preserving large trees in development situations

Recently, a building permit application was submitted to the Bureau of Development Services for a new single dwelling property in the Eastmoreland Neighborhood. Among other things, the applicant proposed to remove 3 large sequoias on the site and pay the in lieu mitigation fee. Those three trees averaged almost 90 inches in size. Commissioner Amanda Fritz asked the Committee to consider means by which the frequency of the removal of such large trees in development situations could be reduced. The purpose of this memorandum is to provide the Committee with a list of potential tools that could be utilized to achieve this objective.

This memorandum discusses existing tools, though this discussion is not limited to those tools. Additionally, this memorandum assumes that Commissioner Fritz is particularly concerned about especially large trees. Finally, this memorandum relies heavily upon established policies, including the importance of balancing potentially conflicting city policies. Further elaboration on the assumptions upon which much of the analysis is based will be offered orally during the meeting and additional material otherwise can be provided by staff. Staff notes that code amendments must be approved by the Urban Forestry Commission and the Planning and Sustainability Commission. The Development Review Advisory Committee will also be invited to provide comments.

Potential Regulatory Tools to Preserve Large Trees in Development Situations

Tool	Description	Legislative guidance	Advantages	Disadvantages	Comment
Threshold (e.g. tree size or species, % of trees allowed to be removed)	Thresholds establish different regulations for different trees	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/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.
Mitigation fee	Must be paid in lieu of compliance with regulation	Title 11, Interim Rule, UF fee schedule	Higher fees tend to disincentivize removal	Increases cost for applicant. Must consider how any increase impacts fees for nondevelopment situations/equity implications.	Existing mitigation fees is 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/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.
Delay	Delay in issuing permit (35 days, notice, extension, appeal)	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.

Flexible development option/incentive	Development standard flexibility in exchange for tree preservation	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 multidwelling zone in exchange for tree protection. In environmental zones, setbacks may be reduced if project avoids environmental zone.
Modify Development Standards	Change preservation standard from 1/3 of trees on site to something more nuanced (e.g. caliper inches)	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.
Approval criteria	Add criteria to Title 11 to determine whether tree may be removed	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.
Special designation	Special rules for special designations (e.g., heritage tree)	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.
Property Acquisition	Create a fund ($source??) to purchase property with exceptional trees	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"