



January 12, 2016

Dear Chair Baugh and Members of the Portland Planning and Sustainability Commission,

Please accept the following comments from the Audubon Society of Portland regarding Tree Preservation in Development Situations (both proposals by Portland Parks and Recreation and the Bureau of Development Services).

Comments on Amanda Fritz's Proposed Temporary Amendment to Title 11

Implementation of Title 11 over the last year clearly indicates that Portland's Tree Code has not met expectations of Portlanders to ensure the preservation of large healthy trees in development situations, even where tree preservation is feasible. Portland is needlessly losing large healthy trees that could be accommodated with new development at desired and even allowed densities. The purpose of 11.50.010, Trees in Development Situations, calls for "baseline tree preservation" and emphasizes the need to "incorporate existing trees, particularly high quality or larger trees and groves, into site design, to retain sufficient space to plant new trees, and ensure suitable tree replacement when trees are removed." However the code that follows is totally inadequate to achieve this purpose especially given the current pace of the real estate market. These market conditions were not anticipated when Title 11 was developed and adopted between 2008-2010 (during the Great Recession). In addition key policy objectives were not achieved in the process of legislating Title 11 such that Title 11 does not achieve its stated purpose. Consequently the community's expectations for the new tree code are not being met with respect to trees in development situations. While Title 11 established a viable framework for managing trees and development, it has fallen short in three primary areas:

1. **No Preservation Standard:** Despite confusing terminology within Title 11 suggesting otherwise, Title 11.50 governing trees in development situations does not have a preservation standard; it only has a partial mitigation standard. The so-called "preservation standard" doesn't actually require any tree be preserved that a developer does not want to preserve. This confusion has been a major source of continued frustration in the community and unfortunately is perpetuated by a December 11 BDS memoranda (see our comments below) that inaccurately talks about a Title 11 "preservation requirement" that is not in fact a requirement. Title 11 needs a preservation requirement, especially for large healthy trees that can be accommodated with new development.
2. **Partial and Arbitrary Mitigation Standard:** Title 11.50 only requires 1/3 of trees on site to be mitigated if removed and does not require tree replacement in proportion to the size or value of the species removed. Therefore tree mitigation for even a giant paradox walnut or a massive redwood sequoia not certain and, if required, is equal to that required of an ornamental maple or cherry tree. This is entirely at variance with the original goals of the City-wide tree project to make tree mitigation proportional to value of trees removed. Tree replanting requirements are inadequate to ensure large healthy trees are even partially replaced over long time

periods. Title 11 needs to fully account for trees removed, compensating for the ecological value of trees, especially as it relates to size and species.

3. The "City-wide Tree Project" is not City-Wide. The original "City-wide Tree Project" meant to provide a comprehensive tree code for the City. However Title 11 did not actually result in City-wide Tree applicability. Title 11 exempts lots less than 5,000 square feet and sites with greater than 85% building coverage. Most importantly Title 11 exempts most commercial and industrial zones. Together these exemptions mean Title 11 does not apply to 1/3 to 1/2 of the City. Title 11 needs to be applied City-wide, across all zones to some degree. Not surprisingly, the City is falling farthest behind in achieving its tree canopy cover targets in the commercial and industrial zones exempted from Title 11.

Title 11's preservation standards and its applicability clearly needs to be reformed. Over the last year the Portlanders have had ample experience with the shortcomings of Title 11 even in achieving its stated purpose. However, before addressing its shortcomings, the City Council must first stem the loss of large healthy trees resulting from the demonstrable inadequacies of Title 11 in the current real estate market.

We urge the Planning and Sustainable Commission to recommend that the City Council adopt Amanda Fritz's proposed "stop-gap" amendment to Title 11 until more permanent reforms to preserve more large healthy trees in development can be adopted. However we share concerns of the UFC and the Title 11 OAC that Amanda Fritz's proposal is an inadequate short-term measure because it provides only a limited dis-incentive to cut the very largest of large trees. Also, in failing to address trees in non-development situations, it risks encouraging more tree removal for development under the false-pretense of non-development. The Planning and Sustainable Commission should recommend the following modifications to Amanda Fritz's proposal in order to adequately discourage the removal large healthy trees- public and private trees in both development and non-development situations:

1. All trees greater than 30" in DBH that are permitted for removal in development situations under Title 11 will be require inch for inch mitigation.
2. Removal of all trees greater than 30" in development situations should require posting and delay for 30 days.
3. Properties where trees greater than 30" are removed in non-development situations should be illegible for building permits for 12 months.

These provisions should apply to both public and private trees.

In addition we urge the Planning and Sustainability Commission to recommend that the City Council task BDS and Urban Forestry with proposing reforms Title 11's preservation standards over the next 9 months. Reforms should be based on the recent recommendations of the Title 11 Oversight Advisory Committee. They should be consistent with new Comprehensive Plan's urban forestry related policies (Policy 7.11 for the Urban Forest) that include: "Tree preservation. Require or encourage preservation of large healthy trees, native trees and vegetation, tree groves, and forested areas."

Comments on December 11, BDS Memorandum "Proposed Amendments to Title 11, Trees, Chapter 11.50, Trees in Development Situations"

We have both procedural and substantive concerns with the BDS Title 11 amendments proposed in a December 11, 2015 memoranda. In addition, the memoranda perpetuates some inaccurate, confusing, or miss-leading

language and terminology about the substance and applicability of Title 11 that needs to be clarified before a meaningful discussion of reform can proceed. We urge the PSC to recommend these proposed amendments NOT be adopted by the City Council at this time and in this form.

Procedural Concerns: BDS proposed Title 11 amendments without review by the Title 11 Oversight Advisory Committee (OAC) or the Urban Forestry Commission. In the former case, the BDS amendments were developed before the Title 11 OAC report and recommendations were complete and were only reviewed by DRAC at one meeting. After such a limited and expedited review, BDS proposes reforms that are meant to be permanent, not temporary. It would be a mistake for the City Council to adopt a staff proposal that has had such limited review. Finally as detailed below, the December 11 BDS proposed Title 11 amendments clearly do not consider the new Urban Forestry related Comprehensive Plan Policies. Policy 7.11a specifically calls for: "Tree preservation. Require or encourage preservation of large healthy trees, native trees and vegetation, tree groves, and forested areas."

Substantive Concerns: We have numerous substantive concerns with the policy assumptions and the specifics of BDS proposal, many of which are a result of the process-related concerns. We do not provide a full summary of our concerns here but outline major issues.

BDS's proposed amendments work from a select set of specific policy goals that were apparently defined internally, without a public discussion. Many of these goals are a variance with the conclusions of the Title 11 OAC and UFC as well as the new Comprehensive Plan. Rather than accept BDS's select policy objectives, the City needs to review Title 11 in light of the the OAC and UFC recommendations and incorporate new Comprehensive Plan policies. Many of these new policies are consistent with the goals and objectives of the original City-wide Tree Project but were not adequately incorporated into Title 11. Ultimately the gap between the community's expectations for the City-Wide Tree Project that led to Title 11 and the inadequacies of Title 11 to balance and integrate trees and development is the most urgent reason why broader reform is needed. The BDS-proposed amendments fail to do this for the following reasons:

1. Under the BDS proposed amendments there is still no requirement to preserve trees- regardless of size, health, or the feasibility of preservation. The decision to preserve a large healthy tree is left entirely to the developer without any review or requirement that any trees be preserved.
2. The BDS proposed amendments continue to provide only partial and limited tree compensation for the loss of large healthy trees. It does establish a graduated mitigation system for 1/3 of non-exempt trees on site, but the system is very flat requiring a maximum of \$6,000 to mitigate the removal of even truly exceptionally large trees. The BDS proposal fails to adequately mitigate for the loss of large healthy trees and the many public values they provide in the developed landscape, especially if these trees could be preserved while accommodating development.
3. Finally the BDS amendments do not remove the exemptions for Title 11 in commercial and industrial zones. The Economic Opportunities Analysis has already documented a surplus of commercial land. It is time to finally time to apply Title 11 Citywide. Title 11 and BDS amendments fall far short of this original intent of the Citywide Tree Project.

Additional Comments on BDS Memorandum

In the December 11 memo, BDS staff raises concerns about maintaining "consistency with basic code constructs already in place" as a justification for not establishing stronger mitigation requirements. These concerns are misplaced for a variety of reasons; they include:

Consistency with Environmental Zones: BDS staff claim that their proposed amendments are "in scale" with the Environmental overlay zones in not requiring mitigation standards in excess of those required in Environmental zones. This is an inappropriate comparison. First, trees in environmental zones and in built environment provide different, if overlapping, functions and values but the assumption that trees in the built environment (regulated under Title 11) provide less value and should be held to a lower mitigation standard than trees in Environmental Zones is not justified. Trees in natural areas likely have vital biodiversity values but trees in the built environment are more important for human health and livability and all trees within Portland's watersheds are critical to water quality, quantity and overall watershed health. Indeed, the City Council just recently put new emphasis on the health and livability values of green infrastructure in the Comprehensive Plan. Second, the concern about Title 11's mitigation standards being in excess of those in the Environmental zones is an incomplete comparison. It overlooks the fact that trees in environmental zones are subject to preservation requirements but nothing in Title 11 requires a developer to preserve a tree.

Number vs. Caliper inches of Trees: BDS staff implies that their proposal is more consistent with existing code and precedent by regulating the number rather than the size of trees measured in caliper inches. This is not true. Title 33's land division code requires measuring and replacing trees by caliper inches. So did the initial versions of Title 11- proposed in 2010. We believe the City needs to revisit a caliper inches standard for Title 11. Such an approach is entirely practicable and would help address a demonstrable failure of Title 11 achieve its purpose of preserving large healthy trees that do not need to be removed to accommodate development.

Confusing and misleading terminology: The December 11 BDS memo perpetuates confusing language and terminology about the substance and applicability of Title 11 that needs to be clarified before a meaningful discussion of reform can proceed. Specifically the BDS memo refers to a preservation "standard" or "requirement" but again Title 11 does not include any requirement that any tree in development situations be preserved. Specifically the second sentence of the third paragraph on Page 4 is entirely inaccurate in stating, "The tree preservation standard requires that 1/3 of healthy, non-nuisance trees be preserved." Title 11 does not require this at all. What BDS staff means is that 1/3 of healthy, non-nuisance trees are subject to a partial mitigation requirement. Finally as noted above the BDS memo overstates the applicability of Title 11 which currently exempts all sites greater than 5000 square feet, sites where building lot coverage is greater than 85%, and on many commercial and industrial zones. The BDS memo speaks of a need for amendments are "financially equitable." It is not clear what this means and where this policy objective comes from, but we agree that in exempting large segments of the City- including most commercial and industrial zones, Title 11 if applied very inequitably across the landscape. This confusion highlights the need to ensure that Title 11 amendments are grounded in current policies and includes the recommendations of committees and commissions directly involved with tracking Title 11 implementation.