



CITY OF BEND

Agenda

TREE REGULATION UPDATE ADVISORY COMMITTEE (TRUAC)

Date/Time: June 28, 2023, 1:00 PM to 3:00 PM

Location: City Council Chambers, Bend City Hall, and remotely via Zoom
710 NW Wall, Bend, Oregon

The hybrid meeting starts at 1:00 PM in person and virtually via Zoom.

For those participating virtually, attendees register by clicking the link below to receive a link to the meeting. You can also copy and paste the link into your browser:

Zoom Meeting Link: <https://bendoregon-gov.zoom.us/s/89251727685?pwd=VVQ5N2pqMDZNaTJaSWZBOU9pK1pvdz09>

Webinar ID: 892 5172 7685

Webinar Passcode: 760743

How to Make a Statement: Individuals who want to make a statement during the public comment portion of the meeting dial in or join 15 minutes before the start of the session.

- Online: Click the "Raise Hand" option in Zoom.
- By Phone: Click *9 (star nine) on your phone.

You will be called in the order received.

Roll Call: Sara Anselment, Sue Gordhammer, Kathy Austin, Kavi Chokshi, Gina Franzosa, Manoj Alipuria, Brett Huet, Cory Bittner, Morgan Greenwood, Karon Johnson, Kristin Sabo, Geoff Harris, Erik Huffman, Chris Madison, Dan Jenkins, Mitch Lex, Jim Roberts, and Councilor Megan Perkins

- 1. Welcome and Introductions (5 minutes)**
- 2. Purpose of TRUAC and Project Scope (Resolution 3323) (5 minutes)**
- 3. Overall Project Schedule (5 minutes)**
- 4. Overview of Legal Requirements for Committee Members (5 minutes)**

5. Review Bend Code (BC) requirements & Bend Development Code (BDC) requirements related to tree preservation and removal. (90 minutes)

6. Public Comments (10 minutes)

Written public comments received can be viewed in the [Online Permit Center Portal](#) on the City of Bend website. Open the Portal and select the *Application Search* link under the Planning & Historic header, then enter the project number PLTEXT20230178 in the search bar to find the project.

7. Next Steps

Webpage link:

<https://www.bendoregon.gov/city-projects/community-priorities/tree-preservation-code>



Accessible Meeting Information

This meeting/event location is accessible. Sign language interpreter service, assistive listening devices, materials in alternate formats such as Braille, large print, electronic formats, CD Formats, or any other accommodations are available upon advance request. Don't hesitate to contact Pauline Hardie at phardie@bendoregon.gov or 541-639-2153 no later than 24 hours before the meeting; Relay Users Dial 7-1-1 and [541-385-6676]. Providing at least 3 days' notice before the event will help ensure availability.

RESOLUTION NO. 3323

A RESOLUTION CREATING A TEMPORARY COMMITTEE FOR POTENTIAL AMENDMENTS TO CITY CODES AND STANDARDS FOR TREE PRESERVATION

FINDINGS

A. The 2022-2023 Bend City Council Goals include an Environment and Climate Goal. That goal commits the City to "(i)mprove the quality of life for more people in Bend by increasing equitable access to clear air, water and to a healthy environment and to implement solutions that fulfill the City's commitment to being good stewards of our natural environment, decreasing carbon emissions and mitigating the effects of climate change." The goal is supported by several guiding principles and action items, one of which provides direction to revise the Bend Development Code and other relevant standards to protect trees while balancing housing affordability and natural resource preservation.

B. The Council Goals also include a Housing Goal, which commits the City to "(t)ake meaningful action to make this statement a reality: People who live and work in Bend can afford housing in Bend." That goal also includes guiding principles and action items, which include reducing regulatory barriers to housing development.

C. Oregon expresses its housing policies in various ways, including through ORS 197.304, known as the needed housing statute. That statute provides that the availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern. The statute requires that standards, conditions, and procedures regulating development of housing must be clear and objective, and that those standards, conditions, and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

D. On March 15, 2023, the Bend City Council held a work session to review and discuss existing tree preservation code requirements. After discussion, the Council was supportive of developing potential amendments to City codes for large-scale developments to protect larger trees, similar to the approach reflected in the Southeast Area Plan (SEAP), and to increase Bend's urban tree canopy. The Council directed staff to work with the Stewardship Subcommittee on the formation of a temporary committee to advise staff on potential code updates.

E. The Council expressed that this project should be approached with an intent to balance the important goals of tree preservation and housing development, and indicated that proposed new or updated tree preservation standards should not impede the development of housing, which remains a critical need across Oregon and especially in Bend.

F. On April 14, 2023, the Stewardship Subcommittee discussed the formation of a temporary committee and the scope and timeline for bringing potential code updates to the Council for consideration. The Subcommittee was supportive of a temporary committee comprised of the following members: one member of the Human Rights and Equity Commission, one member of the Environment and Climate Committee, one member of the Affordable Housing Advisory Committee, one member of the Neighborhood Leadership Alliance, at least one arborist, developers representing affordable housing, production housing, and/or commercial development, and members from the community at-large or who represent community organizations. The Bend Park and Recreation District will be invited to designate a staff member to act as an *ex officio*, non-voting member that will not count toward the temporary committee's maximum membership of 15 individuals.

G. Bend Code 1.20.015(H) authorizes the City Council to establish temporary committees by resolution to address specific issues or to engage in specific tasks, within identified timeframes, and to establish the scope of the authority and responsibilities of the temporary committee. Through this Resolution, the City Council delegates the selection of the temporary committee members to the Mayor, one Council member, and the City Manager. This group will consider and select members of the temporary committee consistent with these findings. The Council intends to confirm the appointment of committee members selected by this group by motion at a future Council meeting, most likely in June 2023.

H. The temporary committee will work with and advise the City project team, and is charged with making recommendations on potential code changes for tree preservation to the Bend Planning Commission and Bend City Council, as appropriate. The Council directs the temporary committee to consider the issues with the ongoing need for housing in mind, and to develop recommendations that will not have the effect, either individually or cumulatively, of discouraging the development of needed housing in Bend.

I. Creation of the Tree Regulation Update Advisory Committee (TRUAC) is the next step to develop potential amendments to City codes and standards to protect trees while balancing housing affordability and natural resource preservation.

Based on these findings, THE CITY COUNCIL OF THE CITY OF BEND RESOLVES AS FOLLOWS:

To create the Tree Regulation Update Advisory Committee (TRUAC) in accordance with this Resolution, its findings, and the attached Exhibit A, the TRUAC Project Charter.

Adopted by motion on May 3, 2023.

YES: Mayor Melanie Kebler
Councilor Barb Campbell
Councilor Anthony Broadman
Councilor Megan Perkins
Councilor Ariel Méndez
Councilor Megan Norris
Councilor Mike Riley

NO: none



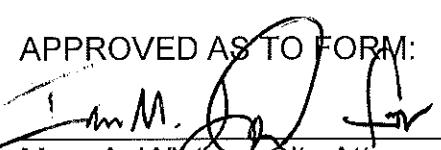
Melanie Kebler, Mayor

ATTEST:



Robyn Christie, City Recorder

APPROVED AS TO FORM:



Mary A. Winters, City Attorney

TREE REGULATION UPDATE ADVISORY COMMITTEE (TRUAC) PROJECT CHARTER

SECTION 1. PROJECT GOAL

A. Develop and propose potential amendments to the Bend Municipal Code (BMC), Bend Development Code (BDC), and the City of Bend Standards and Specifications to improve tree protection standards for larger new development while balancing the need for housing production, housing affordability, and natural resource preservation.

SECTION 2. PROJECT SCOPE

A. Work with City staff to develop and propose potential amendments to the BMC, BDC and the City of Bend Standards and Specifications related to tree preservation for large scale developments including the following:

1. Provide consistency between BMC Chapter 16.10, Clearing, Grading, and Erosion Control on Construction Sites, BDC Chapter 3.2, Landscaping, Street Trees, Fences and Walls and City of Bend Standards and Specifications Chapter 12, Landscape Architecture and Irrigation Systems
2. Provide clear and objective tree preservation standards for the development of housing, including needed housing, and include an optional discretionary process for applicants for development;
3. Consider preservation standards for larger trees similar to the Southeast Area Plan; and
4. Consider alternatives to preserving trees, including tree replacement and a fee-in-lieu of preservation for the purpose of developing and protecting the City's urban tree canopy.

B. Identify tree inventory programs to support preserving and expanding Bend's urban tree canopy.

SECTION 2. TRUAC ROLE AND RESPONSIBILITIES

A. TRUAC will:

1. Advise the City project team on potential amendments to the Bend Municipal Code, Bend Development Code and City of Bend Standards and Specifications related to the project goal and scope;
2. Provide a forum for community input on the development of the potential amendments;

3. Hold open, public meetings in accordance with Oregon Public Records Law, and operate in accordance with the law in all respects;
4. Respect a range of opinions, strive for consensus, and acknowledge points of mutual agreement. If consensus cannot be reached, a concurrence of a majority of TRUAC members present will be required to make recommendations to the Planning Commission and City Council; and
5. Consider adopting procedures for its meetings and reporting to the Planning Commission and City Council.

B. TRUAC will be composed of no less than 11 and no more than 15 members. TRUAC will have members that are or that represent the following:

1. Human Rights and Equity Commission, Environmental and Climate Committee, Affordable Housing Advisory Committee, and Neighborhood Leadership Alliance;
2. At least one arborist;
3. Developers representing affordable housing, production housing, and/or commercial development;
4. Community members at large, including members from one or more community organizations.

C. In addition to the members above, one Bend Park and Recreation District staff member will be invited to act as an *ex officio*, non-voting member.

D. In addition to the members above, the City Council will select one Planning Commissioner liaison and one City Councilor to serve liaison roles to TRUAC. These individuals may participate in TRUAC meetings to the extent of offering input, answering questions, and providing guidance, but may not vote on any matters during TRUAC meetings.

E. The Mayor, a City Councilor and the City Manager will select TRUAC's members, and will designate two of the selected individuals as the chair and vice-chair, respectively. The individuals selected must be appointed by the Mayor with confirmation by the Council, anticipated to occur by Council motion at a City Council meeting in June 2023.

F. The chair and vice chair are expected to work closely with the City project team to advance the project goals.

G. TRUAC will be primarily supported by the Planning Division, but the City project team will include and involve staff throughout the City organization as needed (e.g.,

Engineering, Code Enforcement, Fire, Legal, Utilities, others) on an as-needed basis.

H. The City Council may follow the recommendations, change the recommendations, reject the recommendations, refer the action back to the TRUAC, or take any other action the Council deems appropriate as per Bend Municipal Code section 1.20.015(H). TRUAC will be considered disbanded when the Council acts on its recommendations, or at any other time determined by the Council.

SECTION 3. PROJECT TIMEFRAME

A. The City Council intends TRUAC to operate within the following timeframe:

1. In June 2023, the City Council will appoint TRUAC members.
2. TRUAC will meet at regular intervals between June and October 2023. If needed, TRUAC may continue to meet depending on staff/Council direction.
3. By November 30, 2023, TRUAC will make recommendations on potential Bend Development Code amendments to the Bend Planning Commission, unless this timeline is modified by the Mayor and City Manager.
4. By December 31, 2023, TRUAC will make recommendations on potential amendments to the Bend Municipal Code, Bend Development Code, and City of Bend Standards and Specifications to the City Council, unless this timeline is modified by the Mayor and City Manager.



CITY OF BEND

MEMORANDUM

To: All City of Bend Committees and Commissions

From: Mary Winters, City Attorney

Re: Conflicts of Interest for Public Officials for City Committees, Boards and Commissions (Permanent, Temporary, Ad Hoc)

Date: February 7, 2023

Although you serve on an advisory committee, board, or commission as a volunteer, you are a member of a governing body providing recommendation(s) to the City Council. You are therefore a public official, subject to the conflict of interest laws. The Bend Municipal Code states that board, commission and committee members appointed by the City are considered "public officials" subject to State Ethics Law. [BMC 1.20.015\(E\)](#). These rules are in place to protect you as an appointed member of a public body, participating in official action. The rules distinguish between **actual and potential conflicts of interest**. Because you are making recommendations only, any conflicts will be **potential** conflicts, and only need to be publicly announced prior to taking action and you can continue participating in discussions and decision-making.

Decisions of the committee, board, or commission cannot be invalidated for failing to disclose a conflict but if a complaint is made to the Oregon Ethics Commission and upheld, you could face sanctions, including a letter of reprimand or a personal civil fine of a maximum of \$5,000 for each violation. By disclosing the nature of the conflict and having it reflected in the public record (the minutes) of the public body, you are protected.

A potential conflict is one that could result in a financial benefit or detriment to you, a relative, client, or business with which you, the relative, client, or business, are associated. Employment by a non-profit corporation is considered a business for the purpose of this section. Membership in, participation as a board member, or other unpaid position with a non-profit is not considered an association with a business for purposes of this rule. Government agencies and special districts are not businesses for purposes of the rules about potential conflicts.

If you believe a decision that is before the committee, board, or commission could have a direct financial effect on you, your business, or that of a family member or client, you should announce that conflict before taking part in discussion or a vote on that issue.

In the rare instance that a committee makes a decision and not a recommendation, if the decision of the body **would** financially impact you or a business with which you or a family member or client are associated, as described above, you must declare an **actual conflict**, leave the meeting and not participate in the discussion or decision-making of the committee.

The rules are not concerned with financial benefit or detriment that is merely speculative, or very distant from the committee recommendation – it is more if the recommendation could directly impact you or the other parties mentioned.

As a general rule, if you have the same interest as all residents (for example, if you were making a recommendation on water or sewer rates, or class of individuals), you do not need to declare a conflict, because you have the same general financial interest in rates as all the other rate payers of the city. The same analysis applies to other classes of individuals or businesses.

For more information please see the Oregon Government Ethics Law Guide for Public Officials, especially pages 13-18, which can be found on the Oregon Government Ethics website: [Oregon Guide for Public Officials](#). Ethics Commission staff are available to provide informal telephone advice, or written opinions if needed, to help with compliance. The website also has the contact information for Ethics Commission staff.

The ethics rules apply to the person or official as an individual. However, the City Attorney's office is also here to help you, so if you have a question about a particular association of yours, or want to know if you should declare a conflict at any time throughout this process, feel free to contact any of the attorneys. We can discuss the concern with you, or call the Ethics Commission with or for you.

Mary A. Winters mwinters@bendoregon.gov 541 693 2100

Ian Leitheiser ileitheiser@bendoregon.gov 541 693-2128

Elizabeth Oshel eoshel@bendoregon.gov 541 693 2124

Michael Selkirk mselkirk@bendoregon.gov 541 323-8583

16.10.100 Tree Preservation Performance Standards.

A. General Performance Standards.

1. For clearing and/or grading activities on all undeveloped properties or properties without land use approval, including single-family residential lots greater than one acre in size, the following tree preservation performance standards shall be implemented:
 - a. All trees 12 inches diameter at breast height (dbh) and larger shall be retained on site.
 - b. Fifty percent of all trees between eight inches and 12 inches dbh shall be retained on site.
 - c. The 50 percent retention of trees between eight inches and 12 inches dbh shall result in a tree coverage pattern that is dispersed throughout the site pursuant to on-site tree locations.
 - d. All trees retained on site shall be protected during clearing and grading activities.
2. Clearing and grading activities on sites with an approved development application are not subject to the standards of subsection (A)(1) of this section; however, trees shall be preserved as specified in the development approval. [Ord. NS-2176, 2012]

The Bend Code is current through Ordinance NS-2466, passed March 1, 2023.

Disclaimer: The city recorder's office has the official version of the Bend Code. Users should contact the city recorder's office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.bendoregon.gov](http://www.bendoregon.gov)

[Code Publishing Company, A General Code Company](http://www.codepublishing.com)

2.7.3360 Tree Preservation and Rock Outcropping Standards.

A. *Applicability.* The following preservation and landscaping standards are required in addition to the requirements in BDC Chapter [3.2](#), Landscaping, Street Trees, Fences and Walls.

B. *Tree Preservation.*

1. For sites two acres or larger, at least 50 percent of all trees measuring 24 inches in diameter or greater as measured four feet above the ground (known as DBH, "diameter at breast height") must be retained on site unless exempted in subsection [\(B\)\(4\)](#) of this section.

2. *Site Plan Review Incentives.* As part of a site plan review application under BDC [4.2.500](#), the City may allow one or more of the following incentives when more than 50 percent trees with a DBH of 24 inches are preserved:

- a. Reduction of setbacks up to 30 percent.
- b. Increased lot coverage up to 20 percent.
- c. Reduced landscape coverage up to 10 percent.

d. A 10-foot increase in building height above the height of the underlying zone and in addition to the increase in building height allowance for affordable housing units per BDC [3.6.200\(C\)\(4\)\(b\)](#).

3. *Land Division Incentive.* As part of a land division application, the City may allow the following incentive when more than 50 percent of individual trees with a DBH of 24 inches are preserved on the development site:

- a. Reduction to lot dimensions, including lot size, by up to 10 percent.

4. *Exemptions.* Trees protected under subsection [\(B\)](#) of this section may be removed only if:

a. The minimum density for the zone cannot be met after exhausting all available incentives in subsections [\(B\)\(2\)](#) and [\(3\)](#) of this section, as demonstrated on the Tree Protection Plan. In this case, up to 70 percent may be removed to accommodate the minimum density. For housing projects, including needed housing projects, the

developer must make a request in writing in order for the City to apply the exception as a discretionary alternative.

b. A site undergoing development review includes a public facility or school and the removal of trees with a DBH of 24 inches or greater is necessary to accommodate buildings or accessory uses (e.g., ball fields) as demonstrated on the Tree Protection Plan. Trees not within the building footprint or footprint of the accessory use(s) must be retained.

c. The trees are located within an existing public right-of-way, in existence on the date this code becomes effective (May 21, 2021).

d. The trees are located within an existing or proposed arterial or collector identified in Figure 2.7.3370-1, Street Plan for Southeast Area Plan.

C. *Rock Outcrops.* Existing on-site rock outcrops, defined as lava rocks or clusters of naturally occurring lava rock that are incorporated into the development's landscaping that do not qualify as significant rock outcrop areas, may be credited toward meeting the minimum landscape area standards in BDC [3.2.300\(C\)](#). Credit will be granted based on the total square footage of the preserved rock outcrop area.

D. *Significant Rock Outcrop Areas.* Significant rock outcrop areas are defined as rocks or clusters of naturally occurring rock that (1) have at least one point a height of at least eight feet from the surrounding terrain, and (2) are over 3,000 square feet in area.

1. *Mapping Required.* Significant rock outcrop areas must be identified in an inventory and a map, and included with a development application.

2. *Protection Standards.*

a. No development may occur in a significant rock outcrop area except pedestrian amenities, multi-use trails, and multi-use paths, or unless exempted in subsection [\(D\)\(5\)](#) of this section.

b. Grading, operation of vehicles and heavy equipment, and storage of supplies and construction materials are prohibited within a significant rock outcrop area, except as approved in writing by the City for installation of streets and public utilities that are located within public and/or private streets and/or easement. Such approval will only

be granted after the City concludes in writing that there is no other reasonable alternative to avoid the protected area. The written approval must include the specific facts that support the conclusion.

3. *Site Plan Review Incentives.* As part of a site plan review application under BDC [4.2.500](#), the City may allow one or more of the following incentives when a significant rock outcrop area is preserved:

- a. Reduction of setbacks up to 30 percent.
- b. Increased lot coverage up to 20 percent.
- c. For public facilities, an increase in maximum parking by up to 15 percent.
- d. Reduced landscape area requirements. Significant rock outcrop areas may be credited toward meeting the minimum landscape area standards in BDC [3.2.300\(C\)](#). Credit will be granted based on the total square footage of the preserved area.
- e. A 10-foot increase in building height, above the height of the underlying zone and in addition to the increase in building height allowance for affordable housing units per BDC [3.6.200\(C\)\(4\)\(b\)](#).

4. *Land Division Incentive.* As part of a land division application, the City may allow the following incentive when a significant rock outcrop area is preserved:

- a. Reduction to lot dimensions, including lot size, by up to 10 percent.

5. *Exemptions.*

- a. If a significant rock outcrop area exceeds more than three percent of a total development site area, the area in excess of three percent may be developed and is not subject to the protection standards in subsection [\(D\)\(2\)](#) of this section.
- b. Where the minimum density for the zone cannot be met without removing significant rock outcrop areas after exhausting all available incentives identified in subsections [\(D\)\(3\)](#) and [\(4\)](#) of this section as demonstrated in an inventory and map. For housing projects, including needed housing projects, the developer must make a request in writing in order for the City to apply the exception as a discretionary

alternative. Significant rock outcrop areas not located within the building footprint or footprint of the accessory use(s) or accessory structure(s) must be retained.

c. Significant rock outcrops located within a public right-of-way in existence on the date this code becomes effective (May 21, 2021) are not required to be preserved under these regulations. [Ord. NS-2462, 2023; Ord. NS-2405, 2021]

The Bend Development Code is current through Ordinance NS-2466, passed March 1, 2023.

Disclaimer: The city recorder's office has the official version of the Bend Development Code. Users should contact the city recorder's office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.bendoregon.gov](http://www.bendoregon.gov)

[Code Publishing Company, A General Code Company](http://www.GeneralCodeCompany.com)

3.2.200 Landscape Conservation.

Landscape Conservation prevents the indiscriminate removal of significant trees and other vegetation, including vegetation associated with streams, wetlands and other protected natural resource areas. This section cross-references BDC [2.7.600](#) and [2.7.700](#), which regulate development of areas of special interest.

The purpose of this section is to incorporate significant native vegetation into the landscapes of development. The use of existing mature, native vegetation within developments is a preferred alternative to removal of vegetation and re-planting. Mature landscaping provides summer shade and wind breaks, allows for water conservation due to larger plants having established root systems, and assists with erosion control within disturbed construction sites.

A. *Applicability.* The standards in this section shall apply to all development sites containing significant vegetation, as defined below, except for residential development on Residential District lots that were created through a subdivision or partition plat filed with Deschutes County prior to the effective date of the ordinance codified in this code.

B. *Significant Vegetation.* **Significant vegetation** means individual trees with a specific trunk diameter as measured four feet above the ground (known as DBH, "diameter at breast height"); shall be inventoried during the site design process and protected during construction unless otherwise approved for removal through the site plan review process. For the purpose of this section, deciduous trees measuring six inches or greater and coniferous trees measuring 10 inches or greater shall be considered significant vegetation.

C. *Mapping and Protection Required.* A Tree Protection Plan shall be prepared and submitted with the development application. Significant vegetation shall be inventoried and mapped as required by BDC Chapter [4.2](#), Site Plan Review and Design Review, BDC [2.7.600](#), Waterway Overlay Zone (WOZ), and [2.7.700](#), Upland Areas of Special Interest Overlay Zone. Trees shall be mapped individually and identified by species and size (DBH). A **protection** area shall be defined around the edge of all branches (drip-line) of each tree (drip-lines may overlap between trees) or stand of trees. The City also may require an inventory, survey, or assessment prepared by a qualified professional when necessary to determine tree health, vegetation boundaries, building setbacks, and other protection or mitigation requirements.

D. *Protection Standards.* Significant trees identified as meeting the criteria in subsection (B) of this section shall be retained unless approved by the City to be removed for development. Preservation shall be considered impracticable when it would prevent development of public streets, public utilities, needed housing or land uses permitted by the applicable land use district. The term **prevent** in this standard means that the development cannot be designed to avoid the significant tree(s). An inability to achieve maximum permitted density by complying with this subsection shall not in itself be considered to prevent development. Building envelopes commensurate with the lot coverage standard of the zone shall be depicted on the Tree Protection Plan. Trees outside the envelope shall be protected unless they prevent development. In instances where applying exceptions to certain development standards would make tree preservation practical, the City may allow one or more of the following exceptions to the development standards when individual trees with a DBH of 24 inches or larger or stands of trees that are in good health as determined by a qualified professional, are preserved by a proposed development with an approved tree preservation plan:

- Reductions of setbacks up to 25 percent.
- Reduction of required on-site parking up to 10 percent.
- Increased lot coverage up to 15 percent.
- Reduced landscape coverage up to five percent.

1. *Protection of Significant Trees.* The applicant must submit a Tree Protection Plan on a site plan map, drawn to scale, that includes the following provisions where appropriate:

- a. *Inventory of Significant Vegetation.* Depict all significant vegetation by DBH and species, showing property lines, two-foot contours and rock outcroppings.
- b. *Building Envelopes.* The developer shall depict the buildable area of a lot that is consistent with the lot coverage area of the zone.
- c. *Barriers.* The developer shall depict protection barriers on the site plan and locate and mark with flagging and/or signs all construction roads, parking places for workers, and areas for the storage of building materials, gravel and soil; stake out the exact locations of all utility trenches; erect physical barriers around all trees to be retained or groups of trees around the work site. Barriers that extend beyond the drip-line of the tree are preferred.

- d. *Soil Compaction.* The Tree Protection Plan shall depict typical details of methods for protecting the critical root zone. If barriers are not feasible to keep away vehicles and foot traffic, use six to eight inches of wood chips spread over the root zone or bridge root area overlaid by plates of steel or other suitable material.
- e. *Grade Changes.* If a grade change is unavoidable, retaining walls shall be used to protect the root system.
- f. *Severing Roots.* Avoid cutting anchoring roots if possible. Tunneling for smaller household utility lines may be an option for tree preservation. When root cuts are unavoidable, the cuts shall be made with a pruning saw.
- g. *Above-Ground Injuries to Trees.* Do not use trees for posting signs, electrical wires and pulleys. Keep trees free of nails, screws, and other fastening devices. Prevent trunk injuries by surrounding trunk with one-inch by four-inch wooden slats and securing in place with gauge wire around slats.
- h. *Soil Contamination.* Altering the soil chemistry can result in weakened trees, making them more susceptible to insects and disease. Prevent adverse effects on soil chemistry by spreading heavy plastic tarping where concrete is to be mixed or sheet rock cut; do not clean paintbrushes and tools over tree roots; dispose of chemical wastes properly and do not drain onto soil.
- i. *Altering the Natural Drainage Course.* When the natural drainage of a site is altered, watering for existing trees must be augmented by an irrigation system. Prior to site grading, prepare a site drainage plan. Sometimes surface water containment can sustain existing stands of trees without artificial irrigation.

2. The City may approve the provision for substituting the retention of smaller trees in lieu of significant trees if it can be determined by a qualified professional that the small trees have equal or greater measurable benefits as specified in the purpose of this section and/or that the significant trees will not survive.
3. All existing trees in good health, as determined by a qualified professional, which are located within the front yard setback or within an undeveloped public right-of-way shall be conserved whenever practical.

4. When the removal of significant trees cannot be avoided, the City may require, as part of the required landscaping plan for the development site, the replacement of trees in size and number equivalent to the square inch measurement at DBH.

E. *Construction.* All areas of significant vegetation shall be protected prior to, during, and after construction. Grading, operation of vehicles and heavy equipment, and storage of supplies and construction materials are prohibited within significant vegetation areas, except as approved in writing by the City for installation of utilities or streets. Such approval shall only be granted after the City concludes in writing that there is no other reasonable alternative to avoid the protected area, and any required mitigation is provided in conformance with BDC [1.3.300\(C\)](#), Mitigation for the Removal of Vegetation. The written approval shall include the specific facts that support the conclusion.

F. *Performance Bond.* To ensure that the significant trees identified through the development review process will be retained and protected, the Review Authority may require the developer to post a performance bond in an amount determined by the size of the trees being preserved as shown below:

Tree Size	Bond Amount
4 – 6 inches DBH	\$1,000
6 – 10 inches DBH	\$1,500
10 – 16 inches DBH	\$3,000
Greater than 16 inches DBH	\$5,000

The amount of the required performance bond shall be determined by totaling the number of trees being preserved based on size and bonding value in the above table. The developer may utilize one of the following methods to assure full and faithful performance:

1. A surety bond executed by a surety company authorized to transact business in the State of Oregon in a form approved by the City Attorney.
2. A cash deposit in a City account at an approved lending institution.

3. An irrevocable standby letter of credit from a federally insured banking institution or savings and loan operating in Oregon that unconditionally promises to pay the funds pledged upon demand by the City. Such obligation must be unaffected by the financial status of the person who has obtained the letter of credit.
4. An "assurance provider" arrangement between the developer, the City and a federally insured financial institution which assures the City that funds to mitigate the loss or damage of significant trees identified through the development review process for preservation and protection will be provided by the federally insured financial institution to the City in the event the developer does not perform in conformance with the Land Use Development Agreement, and the federally insured financial institution must be satisfactory to the City.
5. The City may place a second position lien on the subject property. The lien shall accrue interest at the rate of six percent until such time the lien amount has been collected. The lien amount shall be paid to the City in full prior to the final occupancy of a building or final plat recordation of a subdivision or partition plat.

G. *Termination of Bond.* If the developer fails to carry out the provisions of the agreement, the City shall call upon the bond, or letter of credit or cash deposit or property lien or assurance provider arrangement, to finance any cost or expenses resulting from said failure. If the amount of the deposit, letter of credit, bond, or property lien or assurance provider arrangement exceeds the cost and expense incurred by mitigating the loss or damage of the significant trees, the City shall deposit the remainder into a City account for the purpose of tree preservation education, tree planting and maintenance. If the amount of the deposit, letter of credit, bond or assurance provider arrangement is less than the cost and expense incurred by the City for the improvements and repairs, the developer shall be liable to the City for the difference.

H. *Exemptions.* The mitigation standards in BDC [1.3.300\(C\)](#) shall not apply in the following situations:

1. *Dead, Diseased, and/or Hazardous Trees.* Trees that are dead or diseased, or pose a hazard to personal safety, property or the health of other trees, may be removed if the Planning Director approves a report and recommendation from a certified arborist or other qualified professional. Prior to tree removal, the applicant shall provide a report from a certified arborist or other qualified professional to determine whether the subject tree is

diseased or poses a hazard, and any possible treatment to avoid removal, except as provided by subsection (H)(2) of this section.

2. *Emergencies.* Significant vegetation may be removed in the event of an emergency without land use approval pursuant to BDC Title 4, when the vegetation poses an immediate threat to life or safety, as determined by the Planning Director based on a certified arborist's report submitted to the City. [Ord. NS-2016, 2006]

The Bend Development Code is current through Ordinance NS-2466, passed March 1, 2023.

Disclaimer: The city recorder's office has the official version of the Bend Development Code. Users should contact the city recorder's office for ordinances passed subsequent to the ordinance cited above.

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