

ORDINANCE NUMBER 54 -09

AN ORDINANCE AMENDING TITLE 8, SECTIONS 8.52.110 AND 8.52.170 OF THE MASON COUNTY CODE AS THEY RELATE TO DANGER TREES

AN ORDINANCE amending Title 8 (Environmental Policy), Sections 8.52.110 (Wetlands) and 8.52.170 (Fish and Wildlife Habitat Conservation Areas).

WHEREAS, in compliance with the Washington State Growth Management Act (RCW 37.70A.) Mason County adopted Chapter 8.52 (Resource Ordinance) describing regulations to protect the county's natural resource lands and critical areas while; and

WHEREAS, Sections 8.52.110 and 8.52.170 provide, in part, the County's regulations as they relate to the felling and removal of danger trees within wetlands and Fish and Wildlife Habitat Conservation Areas; and

WHEREAS, Sections 8.52.110 and 8.52.170 have been revised to expand regulatory opportunities Mason County with respect to the felling and removal of danger trees; and

WHEREAS, on November 3, 2008 and January 26, 2009, the Mason County Planning Advisory Commission held public hearings to consider revisions to Code and provided the Board of County Commissioners with proposed recommendations; and

WHEREAS, the Mason County Board of Commissioners held a public hearing May 5, 2009 to consider recommendations of the Planning Advisory Commission, the testimony of the Mason County Department of Community Development, and agency comments; and

WHEREAS, based on direction of the Board, additional revisions were made in response to agency comments and submitted for consideration at a public hearing held June 16, 2009.

NOW THEREFORE, BE IT HEREBY ORDAINED, the Mason County Board of Commissioners hereby approves and ADOPTS revisions to Mason County Code, Chapters 8.52.110 and 8.52.170 as described by ATTACHMENT A.

DATED this 16th day of June, 2009.

Board of Commissioners
Mason County, Washington

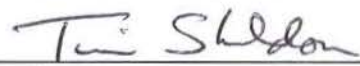
ATTEST:


Shannon Goudy, Clerk of the Board

APPROVED AS TO FORM:


Monty Cobb,
Chief Deputy Prosecuting Attorney

BOARD OF COUNTY COMMISSIONERS
MASON COUNTY, WASHINGTON


Tim Sheldon, Chair


Lynda Ring Erickson, Commissioner


Ross Gallagher, Commissioner



DEPARTMENT OF COMMUNITY DEVELOPMENT
Planning Division

STAFF REPORT
DANGER TREE REGULATIONS

CONTACT PERSON

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INTRODUCTION

Public hearings before the Planning Advisory Committee were held on November 3, 2008 and January 26, 2009 to consider revisions to Mason County's regulations concerning the removal of danger trees within fish and wildlife and wetland areas or their buffers. During the January 26, 2009 hearing, the Planning Commission made further revisions and recommendation adoption of the revised Chapters to the Board of County Commissioners. The County Commissioners held a public hearing to consider the proposed changes on May 5, 2009.

DISCUSSION

In addition to the proposed amendments as recommended by the Planning Advisory Commission, the Board of County Commissioners was provided with additional comments from the Mason County Prosecutor's Office and the Washington Department of Fish and Wildlife. At the conclusion of the May 5th hearing before the County Commissioners accepted Staff's recommendation that the hearing be continued to allow consideration and incorporation of the additional comments received. The hearing was continued until June 16, 2009 at 9:30 a.m. For the June 16 hearing, the proposed Chapter amendments have been revised to address comments received from both the Prosecutor's Office and the Department of Fish and Wildlife. The following table outlines the changes throughout the process:

Current Language	May Hearing Language	June Hearing Language
Tree removal w/documentation by professional forester	Tree felling may require evaluation by arborist or forester	Tree felling may require report by arborist or forester if danger not apparent to



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		Dept.
County required documentation	County notification of felling only, no documentation required	County approval required. Additional language for approval process and emergency situations.
Mitigation:	Mitigation:	Mitigation:
<ul style="list-style-type: none"> 6 new tree seedlings, 3 years old 	<ul style="list-style-type: none"> 6 new native trees, three feet in height min. 	<ul style="list-style-type: none"> 6 new tree seedlings, 3 years old
<ul style="list-style-type: none"> tree species same as removed or native 	<ul style="list-style-type: none"> tree species and location approved by county 	<ul style="list-style-type: none"> tree species native, or as specified by professional
<ul style="list-style-type: none"> County <u>may</u> require downed trees to remain, if replacement deemed not necessary 	<ul style="list-style-type: none"> County requires cut trees remain in area 	<ul style="list-style-type: none"> County requires cut trees remain in area unless directed to remove by professional
<ul style="list-style-type: none"> No further language addressing downed trees left in area 	<ul style="list-style-type: none"> Cut trees may be segmented, but should be as large segments; branches may be cut 	<ul style="list-style-type: none"> Cut trees may be segmented, but should be as large segments; branches may be cut
<ul style="list-style-type: none"> No further language addressing number of felled trees or additional mitigation 	<ul style="list-style-type: none"> Additional mitigation required for 3+ trees felled within 10 years 	<ul style="list-style-type: none"> Additional mitigation MAY be required for 3+ trees felled within 10 years

Changes to the Chapter have incorporated most of Fish and Wildlife’s concerns, while also address those of the Prosecutor’s Office. The proposed Chapters are now more restrictive than current language and the language as proposed by the Planning Advisory Commission.

SUMMARY

The proposed code amendments have been set for public hearing before the Board of County Commissioners on June 16, 2009. The proposed version includes edits in response to comments received. The version before the Board of County Commissioners is not reflective of the suggested edits by the Planning Advisory Commission and contains items in contrast to their recommendations.

RECOMMENDATION



DEPARTMENT OF COMMUNITY DEVELOPMENT
Planning Division

Staff would recommend adoption of the proposed revisions to Chapter 8.52, Sections 8.52.170 and .110 as written.

Attachments:

Proposed Code Revisions Sections 8.52.110 and 8.52.170

**June 16, 2009 DRAFT Amendments to the Mason County Code,
Section 8.52.110 Wetlands, regarding "Danger Trees"**

8.52.110 Wetlands. Mason County Code

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(4) Land Uses.

(A) Mason Environmental Permit Required Uses and Activities. A Mason Environmental Permit shall be obtained from the county, using the administrative review process in this chapter, prior to undertaking, in a regulated wetland or its buffer, for the following activities.

.....

(vi) The destruction or alteration of wetlands and wetland buffer through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a designated wetland or buffer, provided that this subsection shall not apply to the following activities undertaken in a manner which minimizes impacts:

.....

~~G. The removal of a danger tree, provided that such removal is mitigated by planting in the vicinity of the removed tree a total of six new trees, each of a minimum three feet in height and each of the same species or native species as the removed tree. If the replacement tree planting is judged to be unnecessary to replace the canopy structure of a vegetation area, the director may request the applicant leave or place the danger tree within the vegetation area as habitat.~~

(B) Activities Permitted without a Mason Environmental Permit. The following uses shall be allowed, in addition to those defined in General Exemptions (see Section 8.52.190), within a wetland or wetland buffer to the extent that they are not prohibited by the Shorelines Management ACT of 1971 (Chapter 90.58 RCW), Federal Water Pollution Control Act (Clean Water ACT), State Water Pollution Control Act (Chapter 90.48 RCW), State Hydraulic Code (RCW 75.20.100 - .140), Forest Practices Act (Chapter 76.09 RCW and Chapter 222-16 WAC) or any other applicable ordinance or law and provided they are conducted using best management practices, except where such activities result in the conversion of a regulated wetland or wetland buffer to a use to which it was not previously subjected and provided further that forest practices and conversions from forest land shall be governed by Chapter 76.09 RCW and its rules:

.....

~~(ix) The cutting down of a danger tree in the buffer or critical area which poses a direct threat to property and life, provided that both conditions A. and B. are met.
A. The county is notified and approves of the felling and mitigation. The county may require evaluation by an arborist or forester if the hazard is not readily apparent.~~

**June 16, 2009 DRAFT Amendments to the Mason County Code,
Section 8.52.110 Wetlands, regarding "Danger Trees"**

~~B. Mitigation is provided as approved by the county by:~~(ix) The felling of danger trees within buffers providing the following conditions are met:

- A. When it is demonstrated to the satisfaction of the Mason County Director of Community Development or his or her designee ("Department") that an imminent threat exists to public health or safety, or the safety of private or public property. Landowner shall provide to the Department a written statement describing tree location, danger it poses, and proposed mitigation.
- B. Should the imminent threat not be apparent to the Department (as danger trees are defined in Section 8.52.030), the Department may require the landowner submit a report from a professional forester or certified arborist.
- C. Before a danger tree may be felled or removed, with the exception of an emergency pursuant to Section 8.52.240, the landowner shall obtain written approval from the Department. This approval shall be processed promptly and may not be unreasonably withheld. If the Department fails to respond to a danger tree removal request within 10 business days, the landowner's request shall be conclusively allowed.
- D. Trees felled as danger trees shall be counted in the allowed amounts under Section 8.52.170(F)(4).
- E. Mitigation as approved by the Department to include:
 - i. ~~1. the planting within the critical area or its buffer a total of six new native trees ; each of a minimum three feet in height, with species and location approved by the county;~~ trees, each a minimum three years old. Should a report be submitted under subsection 5(b), it shall contain recommendations for suitable replacement trees.
 - ii. ~~2. the cut tree is left or placed within the buffer or the critical area as habitat;~~ felled trees shall be left within the critical area or buffer unless a submitted report warrants its removal to avoid spreading disease or pests;
 - iii. ~~3. the trunk of the cut tree may be segmented, but should be left in as large of segments as possible to provide habitat;~~ habitat;
 - iv. ~~4. the branches from the cut tree may be removed to control fire hazard; and~~
 - v. ~~5. additional mitigation shall~~may be required if three or more trees are to be felled on one property within a 10 year period.

**June 16, 2009 DRAFT Amendments to the Mason County Code,
Section 8.52.170 Fish and wildlife habitat conservation areas,
regarding "Danger Trees"**

8.52.170 Fish and wildlife habitat conservation areas.

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(f) Activities Which Do Not Require a Mason Environmental Permit. The following uses shall be allowed, within a FWHCA or its buffer to the extent that they are not prohibited by any other applicable law or ordinance, provided they are conducted so as to minimize any impact on the values and functions of the FWHCA, and provided they are consistent with any county-approved resource ordinance special study (such as a habitat management plan or geotechnical report) or any state or federally approved management plan for an endangered, threatened, or sensitive species.

.....

(5) ~~The removal within buffers of danger trees that pose a direct threat to property and life, provided the danger trees are documented by a professional forester. Removal of danger trees shall be mitigated by planting a total of six new trees seedlings each a minimum three years old and each of the same species as the removed felling of danger trees within buffers providing the following conditions are met:~~

~~tree or native species trees. If the replacement is judged to be unnecessary, Mason County may require the applicant to place the downed danger tree within the buffer as habitat.~~

~~The cutting down of a danger tree in the buffer or critical area which poses a direct threat to property and life, provided that both conditions A. and B. are met.~~

~~A. The county is notified and approves of the felling and mitigation. The county may require evaluation by an arborist or forester if the hazard is not readily apparent.~~

- ~~a) B. Mitigation is provided as approved by the county by: When it is demonstrated to the satisfaction of the Mason County Director of Community Development or his or her designee ("Department") that an imminent threat exists to public health or safety, or the safety of private or public property. Landowner shall provide to the Department a written statement describing tree location, danger it poses, and proposed mitigation.~~
- ~~b) Should the imminent threat not be apparent to the Department (as danger trees are defined in Section 8.52.030), the Department may require the landowner submit a report from a professional forester or certified arborist.~~
- ~~c) Before a danger tree may be felled or removed, with the exception of an emergency pursuant to Section 8.52.240, the landowner shall obtain written approval from the Department. This approval shall be processed promptly and may not be unreasonably withheld. If the Department fails to respond to a danger tree removal request within 10 business days, the landowner's request shall be conclusively allowed.~~
- ~~d) Trees felled as danger trees shall be counted in the allowed amounts under Section 8.52.170(F)(4).~~
- ~~e) Mitigation as approved by the Department to include:
 - ~~i. 1. the planting within the critical area or its buffer a total of six new native trees; each of a minimum three feet in height, with species and location approved by the county; trees, each a minimum three years old. Should a report be submitted under subsection 5(b), it shall contain recommendations for suitable replacement trees.~~~~

**June 16, 2009 DRAFT Amendments to the Mason County Code,
Section 8.52.170 Fish and wildlife habitat conservation areas,
regarding "Danger Trees"**

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- ii. ~~2. the cut tree is left or placed within the buffer or the critical area as habitat; felled trees shall be left within the critical area or buffer unless a submitted report warrants its removal to avoid spreading disease or pests;~~
 - iii. ~~3. the trunk of the cut tree may be segmented, but should be left in as large of segments as possible to provide habitat; habitat;~~
 - iv. ~~4. the branches from the cut tree may be removed to control fire hazard; and~~
 - v. ~~5. additional mitigation shall may be required if three or more trees are to be felled on one property within a 10 year period.~~
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