



DEVELOPMENT SERVICES

RULE INTERPRETATION DETERMINATION

Determination #: 2024-006

Title: *Trees Measurement within ESA and Floodplain*

Drafted by: *Land Development Division*

Rule in Question: *Section 523 – Tree Preservation – Table 523-1A*

Department Action: *This RID is for clarification purposes. And includes suggested UDC amendments for the next Unified Development Code Amendment Cycle.*

Amin Tohmaz

08/16/2024

Amin Tohmaz, PE, CBO
Interim Development Services Director

Date

Effective Date of Determination: Effective Immediately

Please note RIDs often result in direct or related UDC amendments to codify the clarification addressed within the RID. RIDs can also be superseded by subsequent RIDs or UDC amendments. The Development Services Department will remove RIDs from the website when they are no longer valid.

Staff Analysis: Unified Development Code (UDC) Section 35-523 Tree Preservation – Table 523-1A and Section 35-523(h) 100-Year Floodplain(s) and Environmentally Sensitive Areas, contradict each other in what is required to be measured within the floodplain and the environmentally sensitive areas.

Table 523-1A:

Significant Trees	Single-Family Dwellings	Multi-family and Nonresidential Uses
6" DBH or greater	35% within each platted lot, excluding street right-of-way and easements. Plus each builder on a single-family dwelling lot shall also be required to plant two (2) one and one-half (1.5) inch caliper new trees, which trees shall generally be native, large canopy trees.	40% within the entire site excluding the street rights-of-way and easements; or for athletic fields, 25% of the entire site to be developed as such.
Significant Trees under 6" DBH	35% within each platted lot, excluding the street right-of-way and easements or 35% of the number of total count of all such trees.	40% within the entire site, excluding street rights-of-way, and easements; or 40% of the number of total count of all such trees; or for athletic fields, 25% of the entire site to be developed as such.
Heritage Trees	100% within each platted lot	100% within the entire site.
100-year floodplain(s)	80% of all the trees within the floodplain, which shall not apply toward preservation requirements on the remainder of the lot.	80% of the trees within the floodplain, which shall not apply toward preservation requirements on the remainder of the site.
Environmentally Sensitive Areas	80% of all the trees within the environmentally sensitive area including easements and rights-of-way. Such areas shall apply toward preservation on the remainder of the site.	80% of all the trees within the environmentally sensitive area including easements and rights-of-way. Such areas shall apply toward preservation of the remainder of the site.
Mitigation Maximum	Up to 80% of significant and heritage trees may be mitigated rather than preserved.	Up to 80% of significant and heritage trees may be mitigated rather than preserved.

35-523(h) 100-Year Floodplain(s) and Environmentally Sensitive Areas:

Significant trees shall be preserved at eighty (80) percent preservation within both the 100-year floodplains and environmentally sensitive areas. Heritage trees shall be preserved at one hundred (100) percent preservation within both the 100-year floodplains and environmentally sensitive areas. The 100-year floodplain shall be determined by the floodplain administrator...

Staff Position and Interpretation: The intent of environmentally sensitive area (ESA) protections for steep slopes and riparian buffers is to minimize impacts to environmentally sensitive areas, specifically endangered species and environmentally sensitive floodplains and wetlands. At this time, it is staff's interpretation that Sec. 35-523(h) is the controlling language as Sec. 35-107(1) states, "Written text, excluding text in italics, takes precedence over tables, maps and graphics figures." Based on Sec. 35-107, the text will govern, and for floodplains and ESA, significant and heritage trees will be captured and measured for enforcement.

Future UDC Amendments:

Staff proposes updating Table 523-1A to remove the reference to all trees and replace it with significant and heritage trees.

Table 523-1A

Significant Trees	Single-Family Dwellings	Multi-family and Nonresidential Uses
6" DBH or greater	35% within each platted lot, excluding street right-of-way and easements. Plus each builder on a single-family dwelling lot shall also be required to plant two (2) one and one-half (1.5) inch caliper new trees, which trees shall generally be native, large canopy trees.	40% within the entire site excluding the street rights-of-way and easements; or for athletic fields, 25% of the entire site to be developed as such.
Significant Trees under 6" DBH	35% within each platted lot, excluding the street right-of-way and easements or 35% of the number of total count of all such trees.	40% within the entire site, excluding street rights-of-way, and easements; or 40% of the number of total count of all such trees; or for athletic fields, 25% of the entire site to be developed as such.
Heritage Trees	100% within each platted lot	100% within the entire site.
100-year floodplain(s)	80% of all the <u>significant and heritage</u> trees within the floodplain, which shall not apply toward preservation requirements on the remainder of the lot.	80% of the <u>significant and heritage</u> trees within the floodplain, which shall not apply toward preservation requirements on the remainder of the site.
Environmentally Sensitive Areas	80% of all the <u>significant and heritage</u> trees within the environmentally sensitive area including easements and rights-of-way. Such areas shall apply toward preservation on the remainder of the site.	80% of all the <u>significant and heritage</u> trees within the environmentally sensitive area including easements and rights-of-way. Such areas shall apply toward preservation of the remainder of the site.
Mitigation Maximum	Up to 80% of significant and heritage trees may be mitigated rather than preserved.	Up to 80% of significant and heritage trees may be mitigated rather than preserved.