

REVIEW AND ANALYSIS OF DESIGN COMMITTEE RECOMMENDATION RE PLANT PROTECTIONS

This document provides a review and analysis of the SROA Design Committee's recommendation for amending the SROA Design Committee Manual, which was submitted *without public notice*, to the SROA Board of Directors at the Board's work session on September 15, 2023.

SROA Design Committee -- Tree Protection Recommendation

as of September 9, 2023, to SROA Board of Directors

Proposed revisions to Section 3.18f of the June 15, 2023, Design Committee Manual (DCM)

INTRODUCTION

Without treading too long over old ground, I'll simply summarize how the Design Committee's recommendation was based on three fundamental errors, which are reflected in multiple, flawed elements in the proposed rules.

1. **A deficient process – excluding the owners.** This error was obvious and could have been easily avoided. Inexplicably, the Design Committee made *zero* effort to engage Sunriver owners.

In fact, as Director Linda Beard confirmed, the committee chair even tried to *prevent owners and her, as a Board member, from observing a meeting* at which the committee deliberated on "tree protections." This attempt was in direct violation of **Policy 13** in the **Sunriver Owners Association Committee Policy** (January 2013):

"13. With the exception of the Nominating and Elections committees, the meetings of all other committees shall be open to members of the SROA."

The committee made no attempt to keep owners informed or to solicit owners' input.

The committee apparently kept no minutes of their deliberations and decisions, in violation of the SROA Committee Policy stating: "[T]he committee secretary will take roll and write the minutes of each meeting for distribution to committee members, the SROA office, and SROA Board Members and for posting on the SROA Website."

The committee's final recommendation provided no supporting evidence and analysis for their proposed rules. This is far below the minimum basic process steps that a *committee of the owners' organization* should follow, and the recommendations reflect how serious that mistake was.

As a consequence of their self-imposed isolation, the committee lacked understanding of facts on the ground, had no comprehension of the general sentiment from hundreds of owners who are protecting valuable native plants in their landscapes, and remained totally unaware of more effective approaches to rules about the use of fencing materials.

2. **Focusing on the wrong issue.** The committee, both in what they said at the meeting that I attended and in the final work product, mistakenly framed the problem as *restricting the protection of different types of plants*, rather than simply *regulating the amount and nature of fencing material* – which was, after all, the whole *raison d'être* for what has been several committee members' protracted campaign to adopt new prohibitions on the use of *fencing material* to protect native plants.

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This mistake inexorably led the committee to get entangled in an unnecessary quandary of how to protect trees, versus shrubs, versus wildflowers. The committee missed the obvious: They needed only to recommend how to regulate the use of fencing materials.

It appears what happened is that the “anti-fencing” campaign’s initial success in getting the Board to *entirely* prohibit all “cages, wire mesh, and fencing” in the newly adopted Design Manual was derailed when photos were provided to the Board showing a mature Aspen tree that had crashed onto an owner’s roof and examples of multiple trees felled beside Lake Aspen on the Sunriver Nature Center. Oops! The Board couldn’t exactly allow that kind of damage to happen, could they?

Since the Board asked the committee to recommend revised rules that would allow at least some protection of *trees*, the “anti-fencing” campaign’s fallback relied on discriminating among *plant types* (*i.e.*, trees versus shrubs and wildflowers). The defensive, fallback position became “limit what’s allowed by limiting fencing to trees.” This position was bolstered by a false narrative that “developing rules to control protection of shrubs and wildflowers was impossibly complicated.”

Those defensive positions have resulted in the committee making the absurd claim that there was no practical way to address protection of shrubs and wildflowers. However, it’s obvious that a four-foot circle of black, 2” x 4”, welded-wire fencing has exactly, precisely, and undeniably *the same impacts* whether a “barrier” is placed around a single tree or a tree surrounded by a two-foot band of wildflowers.

And that, of course, inarguably demonstrates that shrubs and wildflowers could easily and with no downside be included in a set of plant protection rules. In fact, the proposed rules have an unpluggable loophole that allows fencing to protect shrubs and wildflowers by owners simply sticking little saplings beside shrubs or in the middle of wildflowers.

Finally, the committee became so derailed from the original target of limiting fencing that their focus metastasized into prohibiting virtually *all* effective plant protections. As explained below, the result is a proposed set of rules that would be extremely onerous on hundreds of owners and for practical purposes unenforceable.

3. **Not enlisting advice from individuals with experience and competency in the relevant factors and code writing.** As the detailed review reveals, the proposed rules have numerous, fatal flaws in terms of definitions, specifications, use of rigorous language, etc.

The committee’s failure to enlist appropriate expertise has resulted in a proposal which, in many parts, is either unclear, unworkable, unenforceable, or can be circumvented because of how defectively the rules are written.

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One example of how this lack of expert advice created problems with the resulting rules is the attempt to prohibit *all* “physical protection barriers”¹ except for limited fencing around up to five trees. As the analysis below demonstrates, that term is absurdly broad. Any experienced and competent person who crafts regulations would have at least looked up the definitions of the three words, and they would have done due diligence to evaluate what the scope of “physical protection barriers” would encompass.² The Design Committee did neither.

DISCLAIMER

The following analysis presents a number of very specific problems with the individual rules, which may to some readers appear overly “legalistic” or even “nit-picking.” However, the fact that there are so many such comments is purely because the rules are so badly written and so many flaws that will bedevil owners who try to comply, while protecting their native plants; and the flaws will be an incredibly difficult and burdensome task for SROA staff to enforce properly and, in some case, for the SROA to defend.

The response should not be to “blame the messenger.” The *pro bono* work that I’ve done should have never been required. However, if given appropriate consideration, this analysis and subsequent replacement of this proposal with one that is simpler, clearer, and more sensible could spare the SROA future conflict and save substantial wasted staff time and money.

DETAILED REVIEW AND ANALYSIS

Based on a careful review of the proposed rules and drawing on my substantial experience and knowledge about crafting well-structured, clear-and-objective residential regulations, I’ve provided detailed analysis for each subsection of the proposed rules (which are shown in blue).

- General structure, terminology, and consistency
 - Follow the hierarchic structure of the Design Manual, e.g., create a new subsection under **Section 3.18 Landscaping**, e.g.:
 - b. Plant Protection**
 - 1. Xxx
 - a. Xxx
 - Each rule should be a complete sentence.

¹ It appears that the committee lifted this term from the proposed standards I had submitted, which introduced the use of “barrier” and defined it as:

“**Barrier object.** A **physical** object that has been installed on a lot in a manner that would significantly **limit** one or more subject animal types from **access** directly past (*i.e.*, over, under, or through) the object to all or a portion of a plant on the other side of the object.”

All the elements were present in this proposed definition for “physical protection barriers.” Unfortunately, the committee overlooked all the other parts of this and other definitions, so they ended up with an undefined, unenforceable term.

² The Board should keep in mind that excuses such as “we know what we meant” or “that’s for the Design Committee to decide when they need to” won’t fly against a legal challenge. HOA’s have a lot of discretion, but they’re legally required to follow their own rules and enforce them *equally* on all owners. To protect owners’ interests, the Board must ensure that prohibitive rules are either clear and objective or have criteria for discretionary application. The proposed rules don’t satisfy either of these requirements, leaving the SROA and Sunriver owners’ interests at risk.

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- The text of common terms should be consistent.
 - Either “welded wire” or “welded-wire”
 - “physical protection barriers” – not “physical tree protection barriers” or “Welded Wire physical-tree protection barriers” as (mis)used in subsection (2) of the “Other Wildlife”
 - Etc.
- In rules, such as these, common standards should be factored out to ensure there aren’t inconsistencies in the specifications. In this case:
 - Specifications for the fencing material (i.e., “welded wire,” coating(s) gauge, color(s), opening size) should be stated once and referred to by a simple term, such as “permitted fencing material.”
 - Prohibition against electric fencing
 - Deadline for compliance
 - Etc.
- Eliminate redundancies. (See specific cases below).

Tree Protection - Deer Browsing:

1.) No physical protection barriers allowed for perennials, grasses, ground cover, shrubs, or other vegetation not listed below. Property owners are encouraged to utilize non-barrier options such as liquids or sprays and motion sensor sprinklers that may work to warn off wildlife from grazing on trees, perennials, grasses, ground cover, shrubs, or other vegetation.

- This rule does not actually prohibit *any* “physical protection barriers” for trees! It quite clearly only disallows “physical protection barriers ... for vegetation not listed below.’ Even with the grammatical problems with this statement, “trees” are clearly intended to be among the “vegetation listed below.” Thus, trees are not within the scope of this prohibition. While subsection (2) described one form of physical protection barrier allowed for trees, that doesn’t necessarily prohibit other forms.

Observation: This ironic example clearly illustrates why rules should be crafted by someone with experience and competency.

- “**physical protection barriers**” is not defined, is not clear and objective, and is unreasonably broad. Below are the applicable definitions from ***Merriam-Webster's Unabridged Dictionary***:
 - **Physical** – 2a: of or belonging to all created existences in nature : relating to or in accordance with the laws of nature

b: of or relating to natural or **material** things as opposed to things mental, moral, spiritual, or imaginary : [MATERIAL](#)
 - **Material** – (1) : of, relating to, or consisting of matter : [PHYSICAL](#)

Synonym Discussion [PHYSICAL](#), [CORPOREAL](#), [PHENOMENAL](#), [SENSIBLE](#), [OBJECTIVE](#): [MATERIAL](#) describes whatever is **formed of tangible matter** and may be used in opposition to *spiritual, ideal, intangible*; ... [PHYSICAL](#) applies especially to things perceived by the senses, things susceptible of treatment in one way or another by the science of physics; it is opposed to *imaginary, psychical, mental, or spiritual* ...

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- **Protection** – 2: the act of protecting : the state or fact of being protected : shelter from danger or harm

3a: one that protects

- **Protect** – 1: to cover or shield from that which would injure, destroy, or detrimentally affect : secure or preserve usually against attack, disintegration, encroachment, or harm

And, from the **FindLaw Legal Dictionary** – shield from injury or harm

<https://dictionary.findlaw.com/definition/protect.html>

- **Barrier** – 2: a material object or set of objects that separates [or] keeps apart ...

The first problem with the term “physical protection barriers” is its scope, which is prohibitively broad. Contrary to the recommendation to “utilize **non-barrier** options such as liquids or sprays and motion sensor sprinklers,” repellent liquids and sprays as well as sprinklers are “physical,” and whose purpose with respect to plant predation by deer is to provide “protection” by “keeping apart” the deer and the plants. Thus, the list of physical objects that would keep deer apart from plants is lengthy. See **Attachment A** for a partial list.

An example of the extreme scope of this term is that it encompasses *other plants*, e.g., dense shrubs adjacent to and around a flower bed, intentionally or coincidentally creating a “barrier.”

Secondly, although the *function* of a “barrier” is fairly clear, the definition doesn’t proscribe any particular physical characteristics. In particular, how the allowed fencing material is placed such that it meets the definition of “barrier.” See the comments under subsection (2).

Thirdly, there is no clear identification of from what potential harm “other vegetation” is to be protected. Whereas there’s an implicit indication by this section’s heading that the *allowable* physical plant protection (*i.e.*, welded-wire fencing) is to protect “trees” from “deer browsing,” that key element is missing for what is *disallowed* for “other vegetation.”

Accordingly, physical protection barriers appear to be prohibited even to protect trees (and other vegetation) from insect and disease infections. A relevant example in Sunriver is the product “Tanglefoot”, which can be used as a physical barrier to protect Aspen from ants that carry aphids onto the foliage, which can cause infections with “Sooty Mold” or “Black Leaf Spot.”

- Although this subsection’s grammatical and style issues may not be critical, they nonetheless reduce the comprehensibility of the rule.
 - The first “sentence” lacks the verb “are.”
 - There is actually no “list [of other vegetation] below.” There are some rules that reference a single plant type, *i.e.*, “trees.”
 - “**Vegetation**” includes all of the individually enumerated plant types (*i.e.*, trees, perennials, grasses, ground cover, shrubs). Enumerated specific plant types is redundant and has no legal importance.
 - “**Grazing**” does not apply to deer eating tree leaves or beaver chewing trees. The problem here is that the scope of what is allowed in this section is specifically about protecting tree

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foliage from predation by deer. In any case, the entire second sentence in this subsection is not accurate and is internally inconsistent, as explained above.

- Even within the terms of the proposed rule, the whole relevant content of subsection (1) could be stated simply as:

“No physical protection barriers are allowed for any plants other than trees.”

In addition, subsection (2) would need to limit what “physical protection barriers” are allowed for trees.

But see also the comments below on the ambiguity of what is a “tree” versus a “shrub.”

2.) Welded wire physical tree protection barriers allowed for individual or grouping of trees, not to exceed 48” in diameter maximum surrounding the tree(s).

- This doesn’t prohibit other forms of physical tree protection barriers. See comments under subsection (1).
- The other most obvious problem with this rule is that, in combination with subsection (1), it wouldn’t allow the exact same (*e.g.*) 48” diameter circle of fencing around a shrub or area of wildflowers. There is obviously no impact of any kind that would be different.

In addition, the limitation to an “individual tree” provides a loophole that can’t be closed – anyone can plant a 10-inch Lodgepole in the middle of an area of wildflowers and protect that tree with the permitted fencing.

- “Tree” and “grouping of trees” are not defined and not clear and objective. Here is the definitive example from the USDA Plants Database:

“Vine maple is a native, deciduous **shrub or small tree** that ranges between ten to twenty feet.”
https://plants.usda.gov/DocumentLibrary/plantguide/pdf/pg_acci.pdf

There are a number of native plants that can have a size and structure that conform to the criteria for “tree” or for the criteria for “shrub.” These include Serviceberry and Chokecherry, as well as Vine Maple. I even have a rare genetic strain of native Aspen that is naturally growing as a shrub.

The phrase “tree or grouping of trees” is less ambiguously stated as “one or more trees.”

However, the problem remains that, if an owner has planted a relatively tight cluster of (*e.g.*) Aspen, the maximum size in this rule would be too small, but multiple exclosures would be too close (see subsection (6), below).

- Not all geometric shapes, whether closed (*e.g.*, circle or square) or open (*e.g.*, line or arc) have an agreed-upon way (if any) to measure “diameter.” The flaw in this section is the assumption that fencing material will be placed in a perfect circle around a tree or group of trees. That’s both impractical and dysfunctional because, for example, an oval might be the best way to place the same amount of fencing material for a group of two trees. Another example (present on my lot) is use of an arc of fencing (not completely surrounding a tree) to protect a tree close to the front porch.

TIP: There is an easy solution, which I provided in two earlier suggested standards. Just limit the use of any single, continuous section of fencing material to a maximum length and a defined rectangle (or circle) within which each continuous section of fencing material is allowed.

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- A four-foot circle is too small for many individual, “bushy” trees (e.g., vine maples) or tight groups of trees (e.g., multi-trunk Aspens). At least six feet (nominally, see previous bullet item) should be allowed.
- This rule is not a complete sentence (there’s no verb). Standards should use proper grammar.

3.) The welded wire physical tree protection material must be either galvanized (non-reflective) or black in color and a minimum 14-gauge wire.

- There is no empirical data to support black and galvanized, but not green. (The committee provided no explanation for why dark green was excluded while much more visible galvanized was allowed.)
- At even a short distance, it is difficult to determine whether fencing is green or black; whereas galvanized of any type stands out noticeably.
- Green is the most common color of welded-wire fencing present in Sunriver and the most commonly found color in local stores.
- The exclusion of green fencing material inconsistent with allowing green metal posts. Metal posts are by far the most visible part of an enclosure, and using contrasting green posts and black fencing would draw even more attention to an enclosure.
- This will be nothing more than a hassle for owners because they can just spray paint any existing green fencing. The negative consequences would be wasted staff time to attempt to determine and enforce black versus green and subsequent release of pollutants into the air from the spray painting, which owners would apply in response.

4.) The welded wire physical tree protection pattern shall be either 2” x 3” or 2” x 4” openings only.

- No basis has been identified for prohibiting larger openings. Obviously, there is less fencing material with larger openings. I have experimented with cutting away some of the wire in sections of 2” x 3” green, welded-wire fencing; and the result has *less* visual impact with larger openings.
- While a larger opening *might* provide less protection, that would impact *only* the owner’s interests. The committee has provide no explanation for why larger openings are prohibited.

5.) Each welded wire physical tree protection barrier shall not exceed 5' in height.

- This height is adequate for certain trees *only* if the enclosure can be further away from the foliage than subsection (2) allows.
- Less amount of fencing and better protection would be provided by restricting the width of the fencing material to 4 feet and the top of the fencing limited to 6 feet above grade. This would allow flexibility for different ages and types of trees (*i.e.*, the bottom could be lower to the ground for young trees and raised as the tree gets taller).

6.) Minimum of 6' spacing between each welded wire physical tree protection barrier.

- There is no evidence that a separation as great as six feet is required, and the Design Committee provided no explanation for why six feet is proposed.

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- The outside width of mature male, Mule Deer rarely, if ever, exceeds two feet. A 4-foot spacing would be double their width and be more than adequate for unimpeded deer passage between barriers.
- 7.) Welded wire physical tree protection barrier support posts shall not exceed four support posts per barrier, shall be no higher than the barrier itself, and shall be either natural wood, or metal post (green or black in color).
- Four posts would be adequate for enclosures no larger than the overly restrictive maximum size in subsection (2) and even somewhat larger enclosures. However, with a more flexible and effective set of rules, there may be occasions where more posts would be necessary. The use of posts is, for practical purposes, “self-limiting” – no one wants to have to buy and place more posts than necessary, and welded-wire fencing has substantial rigidity across the spans between post.
- 8.) Each welded wire physical tree protection barrier shall be installed and maintained as per Items 2-7 noted above and Section 4.02 of the Sun river Rules & Regulations.
- This seems redundant. All it appears to state is the obvious barriers – have to remain in conformance with adopted rules.
- 9.) Five welded wire physical tree protection barriers maximum, per existing landscaping on each property. Properties that are submitting a new/amended landscape plan may be allowed to have more than five welded wire tree protection barriers per property (for a specific timeframe), upon Design Committee approval of the proposed landscape plan and at the discretion of the Design Committee
- Limiting protection to five trees (and no shrubs or wildflowers) is Draconian, and there is no evidence in the record that Sunriver owners generally support such a level of restriction on protection of native plants. The committee provided no analysis of how many trees that may need protection currently exist.
 - The discretionary provision doesn’t even have any subjective criteria and is fraught with being unequally applied. This is almost certain to cause disputes and potentially SROA liability under the “equal protection” rights of the U.S. Constitution. An HOA is allowed to have discretionary restrictions; however, to avoid legal jeopardy, there must be relevant criteria that enable discretionary decisions to have a nexus with a legitimate purpose and to be applied evenly.
- Observation: The omission of any criteria for a Design Committee decision truly tells the whole story – there is no basis – *other than the personal preferences of a handful of owners* – for imposing such severe restrictions on owners who are the ones supporting the vision in the **Sunriver Consolidate Plan** by nurturing native plants of all types.
- The first sentence of this rule is not a complete sentence. Standards should use proper grammar.
- 10.) Welded wire physical tree protection barriers are allowed to remain in place for up to four years from the date of installation. Any deviation from these guidelines must be approved by the Design Committee.
- This rule is going to create a HUGE, HUGE staff workload to track and enforce. Is an application going to be required for every “barrier” that’s installed? Since whoever might want to file a

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complaint won't be able to know when some owner's barrier was installed, enforcing this restriction will require staff to go around and check every lot for compliance.

- The rule is also completely unenforceable because a barrier can be reconfigured in placement, shape, material, size and thus not have been "in place" at the four-year mark of the previous barrier.
- A barrier could be removed during the Winter and replaced in the Spring, thus not having *remained* in place for any four-year period.
- Even if the loopholes in this rule weren't exploited, many owners may choose to protect other plants when the four-year period is up for some previously protected plant. Thus, this rule is not going to somehow eliminate up to five "barriers" being on a lot for the indefinite future. As the rule is written, the "clock" continues to run on a particular barrier even when an owner moves that same barrier to protect a different tree.
- There is no point to this rule. If owners who are offended by wire fencing can abide four years of the barriers, then it would appear the impact to those owners is not actually serious enough that the owners couldn't stand a longer period.

Observation: This nonfunctional rule provides a good example of how the committee lacked the experience and expertise that's necessary to construct well-formed rules. In this case, it should have been obvious that, when there is no time limit on *having* five barriers, it's practically impossible and serves no purpose to attempt to control individual barriers. (To do so, as this rule is written, would actually require providing a tamper-proof tag with a unique serial number on each barrier and keeping records of each barrier's physical properties.)

11.) Any existing non-approved physical tree protection barrier in place on private property (that has exceeded four years as of October 1, 2023), must be removed within 90 days. Any existing non-approved physical tree protection barrier that doesn't meet the above rules (regardless of maximum timeline), as of October 1, 2023, must be removed within 90 days.

- An equivalent and appropriate rule (in terms of these rules) would be simply one that allows owners 90 days to comply, i.e., delete the first sentence and edit the second sentence to read:
"Existing non-approved physical tree protection barriers that don't meet the requirements in subsections (1) through (10), above, must be brought into compliance or removed within 90 days of the adoption of these rules."
- The first sentence is utterly unenforceable (see comments on subsection (10) and would be a huge extra load on SROA staff, as well as being punitive on some owners and serving no good purpose. All owners should face the future with the same burden, *i.e.*, by the terms here, that they have to conform within 90 days and they can maintain their existing barriers for four years from the adoption of the new restrictions. (Note that the four year limit is actually not a good idea in any case.)

12.) No electrified physical protection barriers allowed.

- This rule is probably unnecessary because, as far as I know, no one electrifies welded-wire fencing.

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- By explicitly stating a specific kind of “physical protection barrier” that is not allowed, and by *not* specifying any other prohibitions against “physical protection barrier,” the rules of statutory construction would potentially require interpreting this whole section as allowing other kinds of “physical protection barriers.” See comments under subsections (1) and (2).

Observation: An experienced, competent professional would not have made the readily apparent mistakes in subsections (1), (2), and (3), which together leave unsettled what the rules actually allow and disallow. Crafting a clear and objective of what is allowed and what is not allowed is the most basic requirement for a set of rules and, in this case, would not have been very difficult to articulate, irrespective of the particular policy was intended.

Tree Protection - Other Wildlife:

- The section heading limits the scope of the rules – including prohibitions – below to all wildlife, *except deer*. Consequently, none of the prohibitions below apply to protection against harm from deer, such as bucks rubbing their antlers.
- Subsection (9) under the “Deer Browsing” section states: “Five welded wire physical tree protection barriers maximum, ...” There is no clarification of whether additional welded wire physical tree protection barriers to prevent male deer from rubbing antlers against tree trunks would be allowed. Of course, an owner could get around this by claiming, whether true or not, that the barriers were to protect against beavers or porcupines.

However, if the intent in these rules (which are not clear at all) is to allow additional welded-wire physical tree protection barriers to prevent damage from antler rubbing, then the 3-foot height limit under subsection (5), below, is inadequate.


1.) No physical protection barriers allowed for perennials, grasses, ground cover, shrubs, or other vegetation not listed below.

- See comments under subsection (1) in the “Deer Browsing” section.

2.) Welded Wire physical-tree protection barriers allowed for individual trees. Each protection barrier shall be between a minimum 4” and maximum 11” away from the trunk of the tree. Staking not required.

- See comments under subsection (2) in the “Deer Browsing” section.
- There is no evidence provided for requiring the fencing material to be at least 4 inches from the trunk. While this might be a horticultural recommendation, these are “design” standards. As far as I’m aware no where else in the manual are there recommendations on (e.g.) how to plant trees, how to water lawns, etc. In my survey of existing protections of tree trunks, there are many cases where the fencing material surrounding the trunks would not conform to this standard.
- In another example of flawed code – nothing actually states that the fencing material must go *around the trunk*. And, since there’s no limit to the number of these protections or their spacing, they could be used in combination to effectively create much more extensive barriers to “keep apart” the porcupines from the trees.

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- 3.) The welded wire tree protection material must be either galvanized (non-reflective) or black in color and a minimum 14-gauge wire.
- See comments under subsection (3) in the “Deer Browsing” section.
 - Black is going to be especially high contrast against white-ish Aspen trunks.
- 4.) The welded wire physical tree protection pattern shall be either 2"x 3" or 2"x 4" openings only.
- See comments under subsection (4) in the “Deer Browsing” section.
 - There are many, many existing uses of “chicken wire” (galvanized, woven-wire mesh
 - Interestingly, in those cases where the wire mesh is wrapped right against the trunk of older trees, it’s very hard to see at a distance. Existing cases should be permitted to remain, rather than replaced with welded wire, 14-gauge fencing that is much more visible.
- 5.) Each welded wire physical tree protection barrier shall not exceed 3’ in height.
- This is too low to protect tree trunks from male deer antler rubbing.
 - This may be too low to protect against porcupines climbing and reach bark above 3 feet.
 - There are excellent, more attractive, columnar trunk protection products available, for example, EVERSPROUT Tree Protector
- 
- 6.) No electrified physical tree protection barriers allowed.
- See comments under subsection (12) in the “Deer Browsing” section.
- 7.) Any existing non-approved physical tree protection barrier in place on private property (that has exceeded four years as of October 1, 2023), must be removed within 90 days. Any existing non-approved physical tree protection barrier that doesn't meet the above rules (regardless of maximum timeline), as of October 1, 2023, must be removed within 90 days.
- See comments under subsection (11) in the “Deer Browsing” section.

RECOMMENDATIONS

1. Replace the current Design Manual proposal in its entirety. It isn’t salvageable, and it would have significant negative impacts on owners and staff.
2. Replace with standards that are focused specifically on the use of fencing material.
3. Engage homeowners, including reaching out to owners who are currently have plant protections in place, and engage the owners in active, multi-way discussions.
4. Engage individuals who have experience and expertise in writing professional-quality rules and regulations.
5. Use the draft on the next page to provide all parties with an example of simple, clear-and-objective rules.

EXAMPLE DESIGN MANUAL RULES FOR PLANT PROTECTIONS

Section 3.18 Landscaping

b. Native Plant Protection

Metal fencing materials may be used to protect native trees, shrubs, and wildflowers as long as such use conforms to the following criteria:

1. For purposes of this standard, a “fence” is any continuous length of metal fencing material.
2. All fences must be made of welded-wire fencing material with dark green or black vinyl coating and openings of at least 6 square inches (e.g., 2” x 3”).
3. The highest point anywhere on all fences must be no more than 5 feet above grade.
4. A maximum of 20 fences are allowed per lot.
5. The total length of installed fences must not exceed 300 feet per lot.
6. Each fence must fit completely inside a square of 15 feet by 15 feet.
[This essentially defines the maximum dimensions and area of any enclosure.]
7. All portions of each fence must be at least 5 feet from any portion of all other fences.
[This prevents any combination of fences from creating a full barrier across a lot. The most extreme configuration that would be permitted would be a linear series of 15-foot fences with 5-foot gaps between them.]
8. Exceptions.
 - a. Trunks. Any columnar (e.g., formed as a tube) protection of tree trunks is exempt from the above standards if it meets the following criteria:
 - i. The maximum inner dimension of the protection is no greater than the maximum diameter of the portion of the trunk it encloses plus 6 inches; and
 - ii. No portion of the protection is more than 6 feet above the base of the tree; and
 - iii. It is colored dark green, dark brown, black, or “camouflage mixture.”
 - b. Small fences. The fence is no higher than 18 inches and is not longer than 5 feet.

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