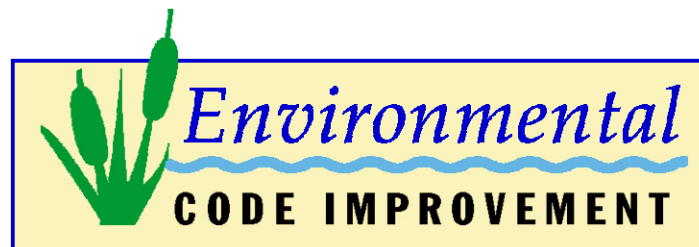


# The Environmental Code Improvement Project



**Adopted Report**

**Ordinance Number 179540**



**August 24, 2005**

**Bureau of Planning**



# Adopted Report, August 24, 2005

# Adopted Report, August 24, 2005



## CITY OF PORTLAND, OREGON PLANNING COMMISSION

c/o Bureau of Planning  
1900 S.W. 4th Ave., Suite 4100  
Portland, OR 97201-5350  
Telephone: 503-823-7700  
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June 30, 2005

Mayor Potter and City Commissioners  
Portland City Council  
1221 SW Fourth Avenue  
Portland, Oregon 97204

Re: Environmental Code Improvement Project

Dear Mayor Potter and City Commissioners:

On behalf of the Portland Planning Commission, I am forwarding our recommendation on the Environmental Code Improvement Project. This project is part of the City's regulatory improvement program and will clarify, simplify, and modify parts of Portland's existing regulations pertaining to environmental overlay zones. The proposal includes amendments to Chapter 33.430 Environmental Zones, of the Portland Zoning Code, as well as improvements to a number of related procedures. The project is also part of Portland's River Renaissance efforts to protect and improve watershed conditions, support a healthy economy, foster neighborhoods, and promote public involvement and education. The proposal will result in a program that will work better for applicants and the community, be more efficient and cost-effective, and will maintain the City's commitment to protect and conserve important natural resource values and functions.

A key item in the package relates to the environmental violation remediation process. The City Council directed the Bureau of Development Services, and later the Bureau of Planning, to develop an alternative to the existing environmental violation remediation process. The purpose of modifying the environmental violation process is to make it more proportional to the violation, resolve violations more quickly, and ensure prompt repair of damage to resources and functions on the site.

Additional items in the package include:

- Clarification or modification of exemptions, environmental development standards, definitions.
- Creation of new environmental development standards to streamline the permitting process for certain types of projects.
- Proposed changes to other City rules and procedures

The project does not affect or change any of the following:

- Environmental zoning maps,
- Columbia South Shore environmental regulations,
- Any property governed by a natural resource management plan (Forest Park, Smith and Bybee Lakes, Pen 1 Drainage District).

Bureau of Planning staff worked closely with other City bureaus and community stakeholders to ensure an inclusive process and allow early participation in the crafting of concepts. Diverse interest groups

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Mayor Potter and City Commissioners  
June 30, 2005  
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were briefed about the project goals early on, including the Development Review Advisory Committee, the Citywide Land Use Group, and the Stormwater Advisory Committee.

A major theme that staff emphasized, and that we heard repeatedly in testimony, is the need to educate citizens about our environmental rules and regulations. For example, people buy property without knowing there are rules governing tree removal. In general, people want to “do the right thing,” but they feel they are not equipped with adequate information when they become property owners in Portland. Unfortunately there are no requirements for “overlay zoning disclosure” when properties are purchased, and it is up to the property owner to do that investigation. The Planning Commission believes that it is critical that the City invest in outreach and education to property owners so that they understand both the importance of conserving Portland’s natural resources and how they can avoid inadvertant violations of City regulations.

## **Recommendation**

The Planning Commission unanimously recommends that the City Council adopt the ordinance and Recommended Draft and amend the City Codes and related documents as indicated in the Recommended Draft. We also recommend that City Council:

- Direct BDS code compliance to develop a method to monitor violations by violator (not only by property owner), where possible.
- Direct BDS code compliance to develop a method to track repeat violation situations by property and by violator, where possible, and to establish new administrative rules for repeat violations as proposed in the report.
- Direct BDS to establish a new policy emphasizing the City’s commitment to providing technical assistance to help prevent and remedy environmental violations.
- Direct BES to initiate and coordinate a discussion to explore streamlined process options for in-water restoration projects that require permits from multiple agencies.
- Direct BOP to research and develop a means to provide outreach, education, and information to real estate agents, title companies, and others in the real estate business to partner with them in providing information on environmental zoning regulations to potential property owners.

Thank you for consideration of the recommendations of the Portland Planning Commission.

Sincerely,



Ingrid Stevens, President  
Portland Planning Commission

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## **Acknowledgements**

### **Portland City Council**

Tom Potter, Mayor  
Sam Adams, Commissioner  
Randy Leonard, Commissioner  
Dan Saltzman, Commissioner  
Erik Sten, Commissioner

### **Portland Planning Commission**

Ingrid Stevens, President  
Paul R. Schlesinger, Vice President  
Timothy W. Smith, Vice President  
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Michelle Seward, Senior Planner, Bureau of Development Services

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## **Environmental Violations Stakeholder Group**

Susan Barthel, Bureau of Environmental Services  
Linda Bauer, Resident  
Alice Blatt, Resident  
Marisol Caron, Bureau of Development Services  
Tom Carter, Bureau of Development Services  
Stacey Castleberry, Bureau of Development Services  
Bill Freeman, Bureau of Development Services  
Amanda Fritz, Resident  
Dave Hendricks, Multnomah County Drainage District  
Dawn Hottenroth, Bureau of Environmental Services  
Corrine Humphrey, J.D. White Co.  
Christine Hurst, Johnson Creek Watershed Council  
John Killin, Association of Building Contractors  
Arlene Kimura, Resident  
Rick Lapp, Bureau of Water Works  
Bonny McKnight, Resident  
Amy Poe, Resident  
Linda Robinson, Resident  
Kelly Ross, Homebuilders Association of Portland  
Paul Scarlett, Bureau of Development Services  
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## **Resource Enhancement Stakeholder Group**

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Steve Mullinax, Bridlemile Creek Stewards  
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## **Trails Stakeholder Group**

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Courtney Duke, Portland Office of Transportation  
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**The Bureau of Planning is committed to providing equal access to information and hearings. If you need special accommodation, please call Roberta Jortner at 503-823-7855 or Chris Scarzello at 503-823-7716 (TTY 503-823-6868).**

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## I. INTRODUCTION

### A. Project Overview

The Environmental Code Improvement Project is part of the City of Portland's regulatory improvement program. The project focus is Chapter 33.430, Environmental Zones, of *Title 33, Planning and Zoning (Zoning Code)*. This document contains background information and the proposed revisions to Chapter 33.430.

Portland's environmental overlay zones have been in place since the late 1980's. The codes governing proposed development in the environmental overlay zones are intended to protect and conserve significant natural resources such as rivers, streams, wetlands, and forests. The environmental zoning regulations were updated through a major streamline effort in 1995 and through several code maintenance projects.

Over the past several years the Bureau of Planning has received feedback about the environmental regulations, including requests to make the code clearer, simpler and easier to use. City bureaus and community stakeholders also raised concerns about the complexity, cost and time required for certain types of project reviews. In addition, in 2002 the City Council initiated a comprehensive regulatory improvement program and developed a priority list of regulations to be reviewed and potentially streamlined. As part of this effort, the City Council assigned the Bureau of Planning a number of environmental overlay *Zoning Code* items to review and refine.

The Environmental Code Improvement Project addresses the following topic areas:

- Modification to the environmental violation process.
- Modified review procedures for:
  - Public recreational trail projects.
  - Resource enhancement projects.
  - Right-of-way projects.
  - Stormwater outfall projects.
- Modifications to development standards.
- Clarifying exemptions, development standards, definitions.

The Environmental Code Improvement Project began with the development of "issue papers" to ensure that the project staff had a clear understanding of the key concerns. The issue papers contained the following:

- Issue description/problem statement, including nature of issue, history, impacts, affected or concerned parties;
- Goals and criteria for the solution concepts;
- Solution options/concepts with pros and cons; and
- Other related issues.

The issue papers were first reviewed by Bureau of Planning and Bureau of Development Services staff. Bureau of Planning staff then convened "working groups" consisting of staff from other city bureaus to further expand and refine the issue papers. Stakeholder groups were formed for the environmental violation, public recreational trails, and resource enhancement issue topics and the issue papers were further modified. The stakeholder groups were comprised of property

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owners, special interest groups, business and industry groups, neighborhood groups, trails advocates, watershed council members, contractors, planning consultants, and city staff.

Once the issues were defined and agreed upon, staff and stakeholders worked together to identify and evaluate goals and criteria for a good solution. Bureau of Planning staff then developed reports and proposed *Zoning Code* amendments that were reviewed by the stakeholder groups. The proposed amendments are intended to clarify and improve the way the code works rather than to make any major policy changes. In addition, there are proposed procedure changes, some of which do not require changing city code.

The Environmental Code Improvement Project is a collaborative effort among staff from the Bureau of Planning, the Bureau of Parks and Recreation, the Bureau of Development Services, the Office of Transportation, the Bureau of Environmental Services, the Bureau of Maintenance, the Bureau of Water Works, and the many citizen, business, and special interest stakeholder participants. The Bureau of Planning provided briefings or information to Portland's Development Review Advisory Committee, the Office of Neighborhood Involvement Land Use Subcommittee, the Stormwater Advisory Committee, the Division of State Lands, the Department of Environmental Quality, and Oregon Department of Fish and Wildlife.

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## **Public Process**

On March 29, 2005, at 6:00 PM, the Planning Commission held a public hearing to take comments. There were 10 testifiers from the public and city bureaus.

Based on testimony and discussions in subsequent work sessions, the Planning Commission recommends the following changes:

- Add a disturbance area setback as a general development standard for proposed buildings.
- Add a development standard for structure removal and replanting to the section for resource enhancement projects.
- Add the public viewing area development standard to the public recreational facilities section.
- Modify the proposed environmental violation process for repeat violation situations so that an incremental fine is applied to each subsequent violation based on a set of pre-determine criteria, rather than using the Type III process.
- Modify the notice requirements for an environmental plan check from a mailed notice to an e-mail notification with electronic posting of the project details, improved information on notice that reduces confusion, elimination of the 2-week waiting period for issuing a building permit, and retention of the on-site posting.

On August 17<sup>th</sup>, 2005 the Portland City Council held a hearing at 6:00 PM to take testimony and make a final decision. Ten people testified at the hearing, 8 in general support and 2 who wish to have the environmental overlay zone removed from their property. Some of the comments resulted in changes, and there were several staff amendments that were accepted by Council. The changes include an exemption for trail steps where the grade is steeper than 20 percent; continue the practice of mailing paper copies of plan check notice; begin e-mailing the notice to both neighborhood associations and coalition offices; continue responding to comments; change "repeat" violations to "recurring" violations; and add a sunset clause to the stormwater outfall development standards. Council voted and passed the amendments on August 24; the changes will become effective on September 26, 2005.

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## B. How To Review This Document

Part II contains the report section for each code improvement topic. The table below lists the report page number and related zoning code pages for each topic from Part III. Reviewers interested in specific topics can refer to the table for the relevant page numbers.

Part III contains the proposed changes to the Zoning Code and includes commentary that supplements the report section.

<b>Code Improvement Topic</b>	<b>Report Page</b>	<b>Commentary/Zoning Code Page</b>
Environmental Violation Process	Page 4	Page 43: Exemption for trash removal Page 95-101: Proposed new process
Public Recreational Trails	Page 8	Page 37: Trail maintenance clarification Page 41: Fence and sign exemption Page 43: Expanded exemptions Page 75: Proposed new standards Page 79: Proposed modification for review procedure
Resource Enhancement	Page 11	Page 41: Fence and sign exemption Page 53-57: Revision to address existing development/disturbance area Page 69: Modify standards
Rights-of-way	Page 14	Page 71: Proposed new standards
Stormwater Outfall	Page 16	Page 73: Proposed new standards
Clarifications and Development Standard Modification	Page 18	Page 37-41: Plant installation and removal exemptions Page 39: Operation/maintenance exemptions Page 41: Exemptions for site investigative work Page 47: Clarify procedure for development standards Page 57: Clarify setback development standard and plant removal/installation Page 59: Clarify maximum setback allowed Page 63: Clarify land division tree removal Page 65: Clarify land division disturbance for utility Page 103-107: Modification to notice and review Page 109-111: Modify/Clarify definitions
Proposed Changes to Other Titles, Rules, and Procedures	Page 19	No proposed code changes
Multiagency Reviews/ Streamlining the Environmental Review Process	Page 23	No proposed code changes

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## II. CODE IMPROVEMENT TOPIC BACKGROUND

### A. Environmental Violation Process

#### Background

Portland's *Zoning Code* currently requires all violations of the environmental overlay zoning code to be processed through a Type III land use review. The Type III process is the most costly and time consuming of the City's land use review procedures. In May 2002 the Portland City Council heard an appeal of environmental violation case LUR 01-00408 EV. The case involved violations of several conditions of approval that had been established through a land use review process, including clearing native plants in an area designated to be left intact.

During the appeal hearing the City Council expressed a concern that the cost and level of the review was disproportionately high relative to the level of environmental damage done in this case. Consequentially, City Council directed the Bureau of Development Services (BDS) to craft an interim alternative process for the enforcement of environmental violations and the Bureau of Planning to develop a long-term solution as part of the Council's 2002 Regulatory Improvement Initiative.

Eventually, the two projects were merged into one headed by the Bureau of Planning. This report summarizes the efforts of the Bureau of Planning, the Bureau of Development Services, and the work of the Environmental Violations Stakeholder Group, and presents a proposal for Planning Commission consideration and recommendation to the City Council.

#### What is an Environmental Violation?

Environmental violations occur when disturbance activities that are subject to the environmental overlay zone regulations of the *Zoning Code* take place without appropriate permits or approvals. Owners of the property where the work occurred are cited for the environmental violation, whether or not they conducted the activity in violation of the code, and it is their responsibility to respond to the citation. The Bureau of Development Services (BDS) Code Compliance section enforces the *Zoning Code* when an environmental violation has occurred and requires a land use review as part of the remedy.

#### The Environmental Violation Enforcement Process

The environmental violation review process has been in place since 1995. It was developed specifically to respond to citizen concerns about enforcement of the environmental regulations of the Portland *Zoning Code*. The Citizen Advisory Committee for the 1995 Environmental Zone Streamline Project noted that enforcement of the City's environmental regulations was lax and requested that enforcement of environmental violations be processed through a land use review with a public hearing. During a Planning Commission work session, the Planning Commission reaffirmed the need to retain the environmental violation process in the Zoning Code.

*Zoning Code* regulations require that environmental violations be resolved through a Type III public hearing process, regardless of the magnitude of the violation. Examples of environmental violations include cutting down a five-inch diameter big leaf maple, completely clear-cutting a

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steep slope on the foothills of Powell Butte, or creating a private boat launch on the bank of the Columbia Slough without required reviews, approvals, or permits.

A Type III process costs \$1,526 for a preapplication meeting and from \$5,175 to \$8,332, depending on the zone, for the public hearing. This fee covers environmental planning staff review and recommendation to the Hearings Officer, the public hearing with the Hearings Officer, and the Hearings Officer's decision. A Type III land use review may be appealed to the City Council, and a decision of the City Council may be appealed to the Land Use Board of Appeals.

When an environmental violation is cited, the property owner has 30 days to apply for the first step of the process - the pre-application meeting. To set an appointment the property owner must go to the development services center, fill out an application, provide a site plan with the information to be reviewed at the preapplication meeting, and pay the fee. There is a backlog of preapplication meetings, so applicants usually have to wait from three to five weeks for the meeting to occur. At the preapplication meeting the property owner receives information from BDS and, if appropriate, other bureaus about the land use review requirements and remediation that will be required to mitigate the damage done by the environmental violation. The property owner then has 60 days to apply for the Type III environmental violation review.

BDS staff reviews an environmental violation against all of the applicable approval criteria in Section 33.430.250 of the *Zoning Code* to determine if the work done could have been approved under normal circumstances and makes a recommendation to the Hearings Officer. The Hearings Officer reviews the staff recommendation, holds a hearing, and makes a decision based on the information provided. If the environmental violation review concludes that the work done could have been approved, then the Hearings Officer allows it to remain and the violator is required to mitigate the damage that was done and make environmental improvements to the site. If the Hearings Officer concludes that the work done could not have been approved then it must be removed and the site replanted with native plants.

Concerns pertaining to enforcement of environmental regulations have been raised during every legislative environmental zoning project since 1995. Portland citizens are concerned about the health and protection of natural resources, including those resources (such as trees) that are located outside the environmental overlay zones. Stakeholders want to have the ability to notify the City when resources are being damaged and to know that the City has the tools it needs to protect sensitive environmental resources. Some citizens have indicated that they do not trust the City to meaningfully implement and enforce the regulations that it adopts. Citizens also express strong beliefs that violators should not be let "off the hook" when they violate the city code and hope the revised environmental violation enforcement process that comes out of this project does not make it easier to disobey city code than to comply.

On the other hand, the "one size fits all" land use review that is required when an environmental violation takes place is perceived by many as unfair and ineffective. Stakeholders are concerned that the process for responding to violations is time consuming and costly, and causes delays in fixing the problem. Environmental violations should be repaired as soon as possible because exposed soil is subject to erosion, and damaged vegetation may not recover if left unattended for a period of time. However, using the existing process, environmental damage is usually not repaired until after the public hearing is held, sometimes as much as 6-12 months after initial damage. Property owner delays in responding to the violation are attributed to the cost of the process and the length of time required to schedule the preapplication meeting and the land use review intake.

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Some citizens have also expressed frustration because they have inadvertently violated the code because they were not told by their realtor, title company or the previous property owner that the property they purchased is within an environmental zone. In some cases, citizens did not find out that their property is within the environmental zone until they violated the environmental regulations.

## **Stakeholder Group Process**

The Bureau of Planning convened a stakeholder group in January 2004 to help define and shape a new process for reviewing the enforcement process for environmental violations. The main purpose of the group was to assist the staff in evaluating the existing environmental violation enforcement process, to help generate potential solutions for consideration, and to review any proposed *Zoning Code* changes. Stakeholder group members included representatives of the Bureau of Development Services (BDS) code compliance section, permitting section, and land use review section; Bureau of Environmental Services; Bureau of Water Works; neighborhood associations; the Homebuilders Association; Association of Building Contractors; the Multnomah County Drainage District; the Johnson Creek Watershed Council; and a citizen and a land use planning consultant who have had experience with the environmental violation enforcement process.

The stakeholder group met nine times from January through August 2004. Meeting discussions focused on identifying problems with the existing process, goals for a solution, and on potential different levels of review for environmental violations. The group also reviewed approximately 30 environmental violation cases in detail, and evaluated the various solution options against the goals.

The stakeholder group discussions were focused, specific, and lively. Most of the participants have experience with environmental violations or projects involving environmental zoning and are therefore familiar with the City's environmental zoning regulations. All of the stakeholder group participants support the intent of the regulations and would like to see better enforcement and coordination, faster remediation of damaged areas, and a process that does not make it easier to violate than to comply with the regulations. Specific stakeholder group recommendations are noted in the commentary section of the proposed *Zoning Code*.

Some key messages that emerged from the stakeholder group discussions include:

- Initial contact with a property owner should be respectful and not create a barrier between the property owner and the city -- many violators did not know that they were violating the code.
- Repeat and flagrant violators should be subject to higher penalty fees and/or a more stringent review that involves a public hearing (such as the Type III land use review process).
- The process should not create a barrier between citizens and the City.
- The process should not be used as the penalty. Develop a quicker process to fix the problem and establish penalty fees as consequence or deterrent.
- Process and penalties should be proportionate to the violation.
- The revised environmental violation process should not provide an incentive to violate rather than to follow the regulations (e. g., the violation review process must be equal to or

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more stringent than the environmental regulations that would have been applied to a similar project proposal).

- Citizens and other bureaus and agencies want to retain access to the City's decision-making process, to receive notification of the violation, and be able to appeal the decision.
- There is a desire for better coordination between BDS enforcement staff and other City, state, and possibly federal enforcement staff.
- There is a desire for improved coordination and communication between BDS and citizens. (One suggestion was to form an enforcement advisory board comprised of multiple interest groups that will review all code issues and help decide how to resolve complex violation situations. The board would be advisory to the director of BDS.)
- The process should be legal, enforceable, consistent, and predictable (objective).
- The City should educate property owners or violators about the importance of environmental resources protected within the environmental zone as part of all violation enforcement contacts.
- The City should explore opportunities to provide zoning information to new property owners to prevent future violations -- focus on environmental properties first, then others.
- The process should be flexible, faster, proportional, and cost-effective.
- The process should deter both first-time and repeat violators.
- The City should remove disincentives and create incentives for violators to promptly participate in the enforcement process and to correct environmental violations right away.
- The process should be designed to reduce the number of appeals to City Council.
- Ensure that environmental violations are assessed by trained staff who are knowledgeable about water bodies, plants, fish and wildlife habitat, regulations and procedures.
- Staff should be able to help people through the process.
- The process changes should reflect City watershed health goals and best science.
- The process should provide more certainty to all parties.
- All parties should understand what their role is in the process.
- The process should support the primary purpose of the environmental zone regulations, which is to protect the environment.
- The process should be directed toward the violator and not toward property owners if they are not responsible for the violation.

## Stakeholder Proposed Solutions

- Violations will be treated as all other *Zoning Code* violations are treated.
- A violation will be reviewed as if the work already done were a proposal, with some exceptions.
- Violators will be given the opportunity to "undo" the work if they can meet some simple parameters, or to keep the work done if they can meet environmental development standards or environmental review -- with some exceptions.
- Violators will be charged a "penalty" fee.
- Exceptions: people who continually violate the *Zoning Code*, who do work in a water body, or remove a lot of trees will be subject to a Type III review.

See page 95 for the recommended code language.

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## **B. Public Recreational Trail Projects**

### **Background**

Trails serve a positive social purpose by providing routes to work, school, transit, shopping, parks, and natural areas. Trails contribute to Portland's quality of life by providing access to nature, and help to build bonds between people and the environment. In urban areas, trails control the access and flow of people in natural areas and parks, and actually help to minimize the damage from "social" or "demand" trails that would occur without planned trails. And trails contribute to healthy lifestyles by providing alternative transportation options for commuting, places to recreate, and the opportunity to "get into nature" when traversing public parks and open spaces.

However, the construction, maintenance, and use of trails can have a negative impact on natural resources and natural habitats. Trail construction can include topography changes; tree, shrub, other understory, and ground cover plant removal or damage where the trail is placed; off-trail damage by machinery and trail users; increased erosion and sedimentation in streams; increased slope instability; soil compaction around stream crossings. Maintenance and repair of trails can reduce erosion but can also involve the above disturbances and may affect a wider area than the original trail construction, depending on the method of maintenance and extent of repair. Maintenance and repair of trails may include the re-routing of trails, trail closure, construction of a bridge where a trail originally crossed a water body, or the restoration of an overgrown trail.

Within the City of Portland, trails are constructed by the Bureau of Parks and Recreation, Multnomah County Drainage District, Portland Office of Transportation, friends groups, trail groups, private property owners, State Parks Department, Metro, and contractors. Parks and Portland Office of Transportation do not have official trail standards that can be used by other groups to guide trail design.

Current regulations in the Portland *Zoning Code* (33.430.080.D.8 Exemptions) allow trails in environmental zones without requiring environmental review if they can meet the following:

- confined to a single residential ownership
- no wider than 30 inches and no steeper than 20 percent
- no plant scars greater than three inches in diameter
- no trails between tops of banks of water bodies

As these exemptions only apply to trails confined to properties in single residential ownership, they would rarely, if ever, apply to projects proposed by community trail groups, Oregon Parks Department, and the Bureau of Parks and Recreation. In addition, the *Zoning Code* does not include standards for the construction of new trails. Therefore, trail project sponsors must apply for environmental review to construct any new public trails that cross through an environmental overlay zone.

The trail project sponsors have expressed concern that the environmental review process is too costly and time consuming. The cost may be a barrier for some volunteer-operated trail groups who have limited access to funding. The actual review timeline creates unexpected delays, which can lead to lost funding opportunities, less than optimal construction start dates, or what are perceived to be unnecessary steps. In addition, unclear maintenance and repair exemptions

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in Chapter 33.430 of the *Zoning Code* impede the maintenance needed to address trail erosion problems.

Concerned groups have expressed an interest in streamlined permitting for new trail construction including, but not limited to, trails that are described in city-adopted trail plans. City adopted trail plans are included in several natural resource management plans and plan districts, in the *Columbia South Shore Slough Trail Master Plan*, and in the Willamette River greenway. The trails described in these documents vary in design elements, proposed user groups, and construction methods, so creation of environmental standards to cover all types of trails could be difficult. The Bureau of Parks and Recreation is interested in clarifying the definition of “maintenance” to allow trail maintenance, repair, and replacement without a land use review.

## **Stakeholder Group Process**

The Bureau of Planning convened a stakeholder group in March 2004 to help define the issues and craft solution options for the processes that apply to public recreational trail projects. The main purpose of the group was to assist the staff in evaluating the existing environmental regulations, to help generate potential solutions for consideration, and to review any proposed *Zoning Code* changes. Stakeholder group members included representatives of the Bureau of Development Services (BDS) permitting section and environmental land use review section; Bureau of Environmental Services; Bureau of Parks and Recreation; neighborhood representatives; Portland Office of Transportation, Friends of Forest Park, and SW Trails.

The stakeholder group met five times from March through October 2004. Meeting discussions focused on identifying problems with the existing process, goals for a solution, alternative ways to streamline the process, and reviewing solution concepts. The group spent three hours in the field walking trails with the SW Trail group and the Bureau of Parks and Recreation representatives to see newly-created trails and to get a better sense of the environment in which trails are constructed.

Some key messages that emerged from the stakeholder group discussions include:

- The solution needs to be simple, easy to understand and implement.
- The solution should apply equitably to any person, organization, or agency wishing to construct or manage trails.
- The solution should ensure environmental protection and promote restoration.
- The solution should streamline the process for maintenance activities that reduce erosion.
- The solution should facilitate the installation of trails in residential areas while avoiding adverse impacts.
- The solution should consider scale of impact of trail construction and maintenance and apply regulations accordingly and equitably.
- The solution should address special circumstances such as a Columbia Slough trail on top of bank.
- The City needs to develop a policy regarding the use of certain trail materials, such as creosote-treated railroad ties.
- The City needs to address water trail launches and landings, preferably through standards, such as the canoe trail in the Columbia Slough.

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## **Stakeholder Proposed Solutions**

- Clarify trail maintenance activities that are exempt.
- Expand existing exemptions that apply to new trails.
- Create new standards for trails.
- Modify the land use review process for trails from a Type II to a Type I process.

See page 41 for expanded exemptions, page 75 for proposed new standards, and page 79 for recommended modification for review procedure.

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## C. Resource Enhancement Projects

### Background

“Resource enhancement” is defined in the *Zoning Code* as:

”The modification of resources or functional values to improve the quality or quantity of the resource or functional values. It can include actions that result in increased animal and plant species, increased numbers of types of natural habitat, and/or increased amount of area devoted to natural habitat. It may also include improvements in scenic views and sites, increased capacity for stormwater detention, changes in water quantity or quality, or other improvements to resources or functional values. A resource enhancement project must result in no loss of any resource or functional values, and the gain of at least one.”

Resource enhancement projects differ from other types of development in that they usually do not involve the installation of structures, are often conducted on public property, and their core objective is to enhance the ecological function of the landscape.

Many resource enhancement projects conducted by the City of Portland are designed and implemented by the Bureau of Environmental Services’ Watershed Revegetation Team and/or the Bureau of Parks and Recreation. Other project sponsors include the Johnson Creek, Columbia Slough and Tryon Creek Watershed Councils, and neighborhood groups such as the Bridlemile Creek Stewards and the No Ivy League.

Resource enhancement projects are distinguished from required mitigation projects in that they are initiated by an applicant on a voluntary basis, while mitigation projects are usually required to offset the loss of some resource function.

The environmental zoning regulations currently do not regulate the planting of native plants or the hand removal of nuisance and prohibited plants from the resource area of an environmental zone. These exemptions are usually enough to allow small enhancement projects without any process or permits. Large-scale projects, however, cannot meet the exemptions.

If a resource enhancement project is not exempt, it is subject to one of two review tracks. The “plan-check” track involves checking the proposal against environmental development standards, a process done in conjunction with the application for a building permit. The plan check process is intended to be a relatively simple, objective, and streamlined review process and does not include subjective review elements. The types of resource enhancement projects that can use the plan check track include those that:

- propose work only in the conservation zone area;
- do not disturb a wetland or other water body;
- do not excavate, fill, or change the topography of the site;
- do not remove native plants; and,
- do not include construction of any structures.

There are very few projects that can stay within the parameters of the plan check standards. Projects that are not exempt, and can’t meet the standards, need environmental review.

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The environmental review track involves reviewing the proposal against approval criteria, a process done prior to application for a building or zoning permit. Environmental reviews are discretionary which means they involve professional judgment (subjective but related to specific *Zoning Code* criteria) by review staff.

To approve a resource enhancement project through an environmental review process, the Bureau of Development Services must find that the following approval criteria are met:

1. There will be no loss of total resource area;
2. There will be no significant detrimental impact on any resources and functional values;  
and
3. There will be a significant improvement of at least one functional value.

The environmental land use review is conducted prior to the application for a building or zoning permit, as a proposal may need to be modified in terms of location, scale, and/or design changes. For a resource enhancement project, the environmental review is a Type I process. This process takes 45 days and costs approximately \$534. Actual process time varies but usually takes many months, sometimes more than a year, to get to completion. Depending on the scope of the project -- number of properties involved, number of notices that need to be sent out -- the cost to the applicant can increase as they are required to cover the additional expense of mailed notices.

The Type I review is the least expensive of all environmental reviews, but because many of the projects are funded by grants or organized by nonprofit organizations, the fee can sometimes affect the feasibility of a project. In addition, some projects require extensive engineering, soil movement, and additional agency review which increases overall project costs substantially.

## **Stakeholder Group Process**

The Bureau of Planning convened a stakeholder group in March 2004 to help define the issues and craft solution options for the processes that apply to resource enhancement projects. The main purpose of the group was to assist the staff in evaluating the existing environmental regulations, to help generate potential solutions for consideration, and to review any proposed *Zoning Code* changes. Stakeholder group members included representatives of the Bureau of Development Services (BDS) permitting section and environmental land use review section, Bureau of Environmental Services, Bureau of Parks and Recreation, neighborhood associations; the Port of Portland, the Tryon Creek Watershed Council, and interested neighborhood stream groups.

The stakeholder group met five times from March through October 2004. Meeting discussions focused on identifying problems with the existing process, goals for a solution, and on alternative ways to streamline the process. The group also discussed herbicide application within the environmental and greenway zones, various differences in regulations between environmental and greenway zones, and possible new exemptions and standards for resource enhancement projects. A subgroup met to discuss alternative methods for approving development expansions in areas already disturbed when site restoration options are used to offset the development.

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Some key messages that emerged from the stakeholder group discussions include:

- Facilitate restoration of natural resource values and functions.
- Create easy access to regulatory information, and provide the information in an easy-to-understand format.
- Include review for future management process of the resource area.
- Spend more time at the front end of the process and allow a longer approval period (beyond three years).
- Reduce time and public and private cost to make restoration projects more efficient and affordable.
- Be appropriate and equitable for any person, organization, or agency wanting to implement or maintain an enhancement project.
- Reduce duplication of work associated with multiple city, state, and federal permits AND avoid conflicts with those agencies.
- Identify/implement a joint application process for aquatic projects that go through multiple permitting agencies for review.
- Ensure adequate opportunity for public and other City bureau involvement.

## **Stakeholder Proposed Solutions**

- Modify existing development standards to broaden the applicability of the standards for more resource enhancement projects.
- Continue to research streamlining the land use review process with other state and federal agencies (see “Multiagency Reviews/Streamlining the Environmental Review Process” on page 24)

See page 69 for recommended modifications to existing standards.

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## **D. Right-of-Way Improvement Projects**

The City of Portland has platted rights-of-way (ROW) that are the result of turn-of-the last century subdivisions; most of these ROWs are developed, or improved, with a combination of the following: paved roadways, sidewalks, parking strips, curbs, and stormwater basins. Many improved ROWs also have utilities installed below ground. However, there are many unimproved ROWs within environmental areas, likely due to the steep terrain or presence of streams or wetlands. There are also newly-created ROWs that are the result of recent land divisions. New ROWs that have been platted within environmental zones have been approved through rigorous review and have special conditions for improvement. The focus of this topic are the unimproved, older ROWs.

Most ROW developments and improvements require review by various City bureaus. For example, Portland Office of Transportation regulates street improvements based on the type of street and expected traffic volume, but does not actually install the improvement. Improvements can result from local improvement districts (LID), or, more frequently, as the result of developing adjacent vacant lots. The installation of the ROW is the responsibility of the adjacent property owners (in the case of the LID) or the developer of the vacant lot. If the ROW improvement occurs within an environmental zone, it must be approved through an environmental review.

Portland Office of Transportation performs maintenance and repair activities, including repair for bridges and culverts. Maintenance and repair activities for improved ROWs in environmental zones are exempt from the City's environmental regulations if the coverage of the ROW is not increased. "Coverage" is not defined but is interpreted as "the paved area." Depending on the extent of the project, the exemptions may or may not be applicable. When exemptions do not apply to a project, the next step is to check the development standards.

Currently, the *Zoning Code* is not clear about the application of environmental development standards to ROW development. For example, one of the development standards limits the amount of disturbance on a "site" based on the base zone. A site is defined in the *Zoning Code* as one or more contiguous lots in single ownership. A ROW is not a lot, so theoretically this standard cannot be met and would usually mean that a proposed project would be subject to environmental review.

If the standards cannot be met, an environmental review is required to ensure that adverse impacts on significant natural resources are avoided where possible. The environmental review must occur prior to the application for a building permit since some site design changes may be required to meet approval criteria. Environmental review is discretionary and an applicant must address approval criteria and provide an alternatives analysis for the project. The staff planner must be able to make findings that no net environmental harm results from the proposed development. The environmental review takes a minimum of eight weeks, usually longer, and is processed prior to the building permit process.

There are currently no environmental development standards that are specific for roads. Past Bureau of Planning environmental legislative projects have found ROW issues difficult to resolve and not amenable to address with development standards. However, there are many projects where the proposed development on private property can meet the development standards, but the ROW improvement cannot. To address these issues the Environmental Code Improvement Project team interviewed several City staff involved in ROW improvements in environmental zones to develop an issue paper and proposed solutions.

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## **Stakeholder Group Process**

There was no stakeholder group for this code improvement topic. Bureau of Planning staff met with representatives from the Bureau of Development Services to review ROW improvement projects that have been subject to environmental review to analyze the various situations.

## **Bureau of Planning Proposed Solutions**

- Create environmental development standards to allow some ROW improvements when proposed adjacent development can also meet environmental development standards.
- Monitor future ROW projects to identify additional situations that might be reviewed through development standards.

See page 71 for the recommended development standards.

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## **E. Stormwater Outfalls**

### **Background**

Existing environmental zoning regulations do not include development standards for new stormwater outfalls when they discharge into a water body, or replacement of existing stormwater outfalls when the coverage or utility size increases. Without standards, these kinds of projects must be reviewed through the environmental review process. Staff has reviewed the range of stormwater outfall designs, characteristics, and placement locations to explore possible options for development standards.

Stormwater systems are designed to improve the quality and manage the quantity of stormwater runoff. Stormwater management facilities include vegetated and sand filters, wet or dry ponds, created wetlands, marshes, infiltration facilities, underground storm sewer devices, conveyance pipelines, and outfalls. An outfall is the open end of a drain, pipe, or drainage channel where discharge is concentrated and energy dissipation can occur. Outfalls can include discharge points from stormwater management facilities, drainage pipe systems, constructed open channels, and vegetated swales. An outfall typically discharges to a natural drainage, such as a stream or river; to a water quality feature such as a constructed wetland; to a City maintained drainage ditch; or onto an adjacent property.

The construction and placement of a new outfall creates new disturbance on a site, and it is the new disturbance that triggers environmental review. Outfall pipes are generally buried beneath the surface of the ground with the end of the pipe exposed in the bank of the water body that receives the discharge. In some situations, most of the vegetation and excavated soil is removed and replaced with new plants with shallow root systems. In other cases, the outfall site may consist of a rocky bed above the pipe and rock armoring at the outfall end of the pipe to dissipate energy.

Projects to maintain, repair, or replace existing stormwater outfalls are exempt from existing environmental zoning regulations in Chapter 33.430 of the *Zoning Code* as long as “coverage or utility size” is not increased. However, the placement or expansion of a new outfall in the environmental overlay zone is subject to the regulations of Chapter 33.430. There are currently no environmental development standards to provide a streamlined review alternative for projects that include the installation of a stormwater outfall.

It should be noted that a Bureau of Planning project in 1998 (“Amendments to Chapter 33.430, Environmental Zones: New Development Standards for Utilities and Outfalls”) proposed new development standards for stormwater outfalls and was rejected by the Planning Commission. The proposal would have allowed direct disposal of stormwater into water bodies and gave responsibility of outfall design approval to the Bureau of Environmental Services. There was no proposed limit on the size of the outfall, just on the area of disturbance within the water body. Citizens at the hearing voiced concern, so the Planning Commission decided to eliminate the proposal from the project.

Since that time, the City’s stormwater requirements have been established in the Stormwater Management Manual. All new development greater than 500 square feet is subject to the regulations. Single-dwelling development typically can meet the stormwater requirements by providing a planter box with an overflow pipe that disposes excess water to a water body or the City’s stormwater system. The Stormwater Management Manual contains standard minimum size recommendations for pipe diameter and outfall riprap dimensions. If the water body is

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protected with an environmental overlay zone, the proposal is evaluated through environmental review.

The number of environmental reviews for single-dwelling projects has increased since the adoption of the stormwater regulations. After evaluating some of the environmental reviews, staff determined that there were enough common elements to develop environmental standards for projects proposing the use of bioswales and small outfall pipes.

## **Working Group Process**

For this code improvement topic, Bureau of Planning staff met with representatives from the Bureau of Development Services, the Bureau of Environmental Services, and the Bureau of Maintenance -- the "working group" -- to get a general idea of the project types and issues related to environmental review. The working group reviewed the various outfall types, development issues, and project characteristics that might be considered for development standards. The Bureau of Planning also presented information on this topic to the City's Stormwater Advisory Committee and to the Neighborhood Association Land Use Chairs. The proposed solutions reflect input and discussion during these meetings.

## **Working Group Proposed Solutions**

- Create new environmental development standards that would allow small single family residential stormwater outfalls to be reviewed through the quicker, less costly plan check process instead of an environmental review. The standards should provide specifications for limited disturbance in the environmental resource area for some outfall projects. Specifications include a maximum disturbance for a bioswale, maximum pipe size and slope, limitations on location of disposal, and planting requirements.
- Recommended early intervention for new single-dwelling development permits so that applicants know whether they can meet standards before they have already applied for an environmental plan check and building permit (see "Proposed Changes to Other Titles, Rules, or Procedures" on page 19.) Currently, developers who build a single dwelling or duplex unit must make an appointment to submit building plans for review. Stormwater requirements are checked at this phase, but by this time the house plan has already been designed for the site. If stormwater standards or geotechnical requirements cannot be met, a site redesign and submittal of environmental review application might be necessary, which is costly and frustrating for applicants.

See page 73 for the recommended development standards.

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## **F. Clarifications and Modifications**

### **Background**

Proposed clarifications and modifications come from several sources:

- Project stakeholder groups;
- Feedback from the public; and
- Input from City bureaus.

During stakeholder group discussions of the Environmental Code Improvement topics, it was found that some sections of the code are unclear and warrant clarification. For example, the existing development standards address “disturbance area” but the code does not currently contain a definition of “disturbance.”

As part of the City’s Regulatory Improvement effort that was started in 2002, the public identified regulations in the *Zoning Code* where clarification or modification was needed, including other portions of the environmental zoning chapter. For example, the land division development standards for tree removal and disturbance area in the environmental chapter were identified.

Lastly, the Bureau of Planning maintains a database of questions and suggestions from other bureaus and the public about the environmental zoning chapter. In many cases, the question or issue is resolved by a careful reading of the *Zoning Code* language. When there is a need to revise the language, Bureau of Planning staff adds the revision to the appropriate legislative project to move the change forward.

### **Bureau of Planning Proposed Solutions**

Bureau of Planning staff propose the following types of clarifications and modifications:

- Clarify when the regulations apply;
- Clarify exemptions;
- Clarify and modify general development standards, land division development standards, and the process for application; and
- Clarify or modify environmental definitions.

The following pages contain proposed code changes:

- Page 37-41: Proposed modification to plant installation and removal exemptions
- Page 39: Proposed operation/maintenance exemptions
- Page 41: Proposed exemptions for site investigative work
- Page 47: Clarification of the development standards process
- Page 57: Clarification of the setback development standard and plant removal and plant installation development standard
- Page 59: Clarification of the maximum setback allowed
- Page 63: Clarification of the land division tree removal
- Page 65: Clarification of the land division disturbance for utility
- Page 103-107: Modification to the plan check notice and review procedure
- Page 109-111: Modify/Clarify definitions

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## **G. Proposed Changes to Other Rules and Procedures**

The project working groups and stakeholder groups discussed a number of potential improvements to other city codes, rules, and procedures. Bureau of Planning staff developed additional recommendations as well. Some of the proposals are relevant to the Environmental Code Improvement project while others recommend further analysis.

### **Environmental Violations**

The environmental violation stakeholder group proposed several changes to City Code or administrative rule that provides authority and direction to the Code Enforcement group, specifically for the environmental violation process. These changes include:

#### Educational Information and Technical Assistance

The Code Enforcement team should provide educational information to individuals or property owners who are subjects of an environmental zoning violation complaint, whether or not the complaint is valid. The intent is to raise awareness about the environmental zone and to supply basic information, including where to go and who to contact at the City for more complex development situations. This would not require a change to the City Title.

#### Repeat Violators

An individual who has been cited for an environmental violation once shall be subject to a Type III environmental violation review for any subsequent environmental violations. In addition, a penalty will be imposed that is multiplied by the number of times the individual has been charged for an environmental violation. This would not require a change to the City Title but would require a change to current procedure where BDS code enforcement cites the property owner whether or not they are the violator.

#### Environmental violations of land use review conditions of approval

Violations of land use review conditions of approval should be processed as an amendment to the land use review so that the analysis reflects the specific circumstances of the case.

#### Environmental Violations Advisory Committee

Neighborhood representatives in the stakeholder group would like to recommend that the Director of the Bureau of Development Services create an enforcement advisory body that would be a multi-interest group for reviewing all City code issues. The group would be advisory, would provide a problem-solving forum, and would help to clarify City code issues.

The Bureau of Planning further recommends:

#### Penalty for Environmental Violations

Individuals or property owners cited for an environmental violation may be subject to a penalty. The minimum penalty is \$500 and can be increased in \$250 increments at the discretion of the Director of BDS.

Except when the environmental violation is determined to be a Type III Environmental violation, the Director of BDS will have the authority to allow a violator 30-days from date the code enforcement letter is mailed to submit an application for remedy before imposing the penalty. The incentive may be in the form of a reduced penalty or waiver of the penalty. Compliance activities may include one or more of the following: removing materials or replacing excavated soils; requesting permission to maintain the illegal development, clearing, or grading by applying for an environmental plan check permit or land use review.

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The Director of BDS will have the authority to impose the environmental violation penalty on a monthly basis after 30 days from initial contact if there is no action to correct the environmental violation by the responsible individual or property owner, or in cases where the correction action is incomplete (the process was started but not completed). The penalty may continue to be applied until the remediation action is complete and meets the requirements of the building permit or land use review.

Where a Type III review is required to remedy the violation, the Director will impose the penalty immediately. The penalty will terminate when the violation is remedied.

Environmental violations of specific conditions of a land use review are subject to the process described in Zoning Code section 33.730.140 except that the same penalty system described above shall apply.

## **Planning Commission Change and Recommendation**

At the April 26<sup>th</sup> Planning Commission (PC) work session, the PC engaged in a discussion with Bureau of Planning and Bureau of Development Services Code Compliance staff regarding repeat violators. The March 2, 2005 proposal would require a Type III environmental violation review for a second and any subsequent violations on a site in the same ownership or by an individual or business. Although the PC agreed with the intent of the proposal, they felt that the Type III process could be overly punitive and disproportional to the violation situation.

On May 3<sup>rd</sup> BOP staff met with a small group of stakeholders including neighborhood representatives, BES staff, and BDS Code Compliance staff to develop a consensus concept. The group discussed assumptions and criteria, and several solution options with associated pros and cons. The group then developed a preferred option. The Planning Commission approved this option at the May 10<sup>th</sup> work session. The option is described below.

### **Assumptions and criteria for an acceptable solution:**

- Solution should honor the work done in the stakeholder group.
- Solution should avoid unintended consequences.
- Solution should provide an optimal balance of certainty and flexibility.
- The solution should be fair and proportional to the situation.
- Solution should be clear and understandable, and not overly complex.
- Solution should foster prompt remedy of the violation.
- Solution should provide adequate opportunity for stakeholder involvement in decisions.
- Bureaus should agree on, or at least be able to live with options presented to PC for consideration.

## **RECOMMENDED OPTION**

Apply a consistent land use review requirement to first-time and repeat violators; assess additional penalty fine through Title 3 in accordance with new administrative rule; establish compliance review committee.

- In this concept, the level of review required for an environmental violation in Title 33 would be consistent for first-time and repeat violations. However, a new code section would be added that refers a second or subsequent environmental violation to Title 3 for assessment

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of additional penalty (fine) through a public hearing process. Under existing authority, BDS could then recommend that the Hearings Officer assess penalty levels based on the specific situation up to \$1000/day.

- In addition, BDS would be directed to develop a new administrative rule to govern review of the environmental violation and criteria for developing recommendations for penalty. The rule or at least the rule concept would be developed for consideration of this project before the City Council. The rule would also call for BDS to establish a standing or case-specific compliance services committee consisting of bureau staff and neighborhood representatives to assist BDS in reviewing the violation and determining appropriate penalty levels.

## **Stormwater Outfalls**

Currently, developers who build a single dwelling or duplex unit must make an appointment to submit building plans for review. The application form for the appointment includes a checklist of all items necessary to show on building and site plans. The form does not include any mention of stormwater submittal requirements, but stormwater requirements are checked at the appointment. Site design problems can occur when developers are not aware of stormwater requirements:

- If stormwater requirements cannot be met, a site redesign may be necessary.
- If the stormwater must be directed to a water body, approval through environmental review may be necessary before the building permit process can continue. An unplanned environmental review can result in extra cost and a project delay.

Bureau of Planning staff recommend early intervention for new single-dwelling development permits so that applicants know whether they can meet standards before they have already applied for an environmental plan check and building permit.

## **Trail Projects**

Various issues related to land use application procedures were raised during the meeting discussions with the stakeholder group. The following two items are recommendations of the group and are suggested as ways to help simplify the review process, provide some flexibility in the field while still meeting the goals and intents of the environmental regulations, and provide adequate notice to adjacent property owners:

- Allow the review of proposed trail corridors (that are wider than the final constructed trail) within which the actual trail will be built. This will give some flexibility to PPR and other trail building groups.
- Review only the portion of the trail that needs environmental review (such as a stream crossing).

Another issue discussed briefly by the stakeholder group concerns the use of materials treated with creosote. Many of these materials are used and available at very little cost and last a long time which makes them attractive to groups that operate on small budgets. There have been numerous scientific studies on the use and impacts of creosoted wood products such as old railroad ties on water and soil. Because other City bureaus are considering the issue, staff recommends that a broader multi-interest group take up the issue to help inform the development of City policy.

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## **Planning Commission Changes to the Environmental Plan Check Public Notification Process**

In the March 2, 2005 proposed draft, staff proposed elimination of the permit notification process. The notification process has been in place since the City Council adopted the streamline provisions of Chapter 33.430 in 1995. The requirements include applicant posting of the site with a site plan and information about the building permit, and a mailed notice to all neighborhood associations within 400 feet of the site. When the building permit has been reviewed and is ready to be approved, another notification must be mailed and is followed by a 14-day comment period.

During the 10 years that the provision has been required, BDS staff have found that very few people call with questions, and those that do usually confuse the procedure with the land use review process which also requires notification per state statute.

On May 10, the Planning Commission considered the staff proposal, and after discussion directed staff to refine the proposal and clarify how the refined proposal meets the following goals:

- Keep neighbors informed about permitting activities and projects in their neighborhoods
- Avoid creating false expectations that the City can consider public opposition to proposed projects if the project meets non-discretionary standards.
- Eliminate unnecessary delays in permit processing

Staff have revised the initial proposal to meet the Planning Commission goals, and propose changes to meet the following additional goals:

- Continue posting notice of the Environmental Plan Check application at the project site. This helps keep neighbors informed of permitting and project activities in their neighborhoods. The applicant would continue to be responsible for this posting. The site plan map would continue to be included in the site posting.
- Replace mailed notices to neighborhood associations with electronic notification to neighborhood associations. The electronic mail notice would not include the notice as an attachment since many people have difficulty opening attachments. Instead, the notice would provide an electronic link to the BDS website posting of information about the proposed project and process. Replacing the mailed notice with an electronic notice will also make it easier and less costly for neighborhood representatives to forward the information to interested parties.
- Post project notice on BDS website. This component of the proposal increases public access to information about proposed projects in the City.
- Clarify existing notification language to make it clear that the purpose of the notice is to provide information and not to invite public comment (given that plan checks, like building permits, are non-discretionary). Proposed changes to the existing notice language will reduce the risk of creating false expectations and frustration with the City process. The revised notice will be posted on the BDS website.

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- Amend 33.430.420 and .430 to eliminate sections that establish a public comment period and govern responses to objections. Clarify code section pertaining to public comments. These code improvements will eliminate an unnecessary two-week delay in permit processing. They will also reduce confusion and false expectations by eliminating sections inviting public objections to the project proposal.

The proposed zoning code changes for the plan check notification process start on page 103.

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## **H. Multiagency Reviews/Streamlining the Environmental Review Process**

### **Background**

The City of Portland regulates development in environmental zones as required by state land use regulations. Other city, state and federal agencies may also regulate development in the environmental zone but for different reasons. For example, the National Oceanic and Atmospheric Administration (NOAA) fisheries division regulates in-water projects that may affect endangered fish species. The City may regulate the same project for wildlife habitat and significant riparian forest cover. When a proposed project needs to be reviewed by multiple agencies, the review process can take more time compared to a single agency's review timeline. In some situations, there may be inconsistent or even conflicting approvals given by the various agencies. A first step to remedy this situation has been taken by the City as part of its Endangered Species Act (ESA) program.

In February 2003 the City entered into an agreement with several federal agencies establishing a cooperative process for streamlining ESA Section 7 consultations between the City, NOAA Fisheries, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service (USFWS). The goal of the streamlined consultation is to increase coordination between federal and state agencies in permitting City projects to ensure that they proceed in a timely manner.

The Streamlining Agreement covers all City projects that are seeking permits that trigger a federal permit and an ESA Section 7 consultation involving NOAA Fisheries and USFWS. These include capital projects, federally funded restoration and enhancement projects and public facility repairs (culverts, bridges, outfalls and storm and sewer pipes). Although the inter-agency agreement allows only City-sponsored projects to be reviewed through the streamlined process, there is opportunity to use the process as a model for other types of projects, such as privately-sponsored projects seeking City partnerships and assistance.

In the context of the interagency agreement described above, streamlining focuses on compressing the project review timelines by getting the permitting agencies together to discuss the project and agree to certain timelines for review. Participation by Portland's Bureau Development Services and Bureau of Environmental Services has provided opportunities to share information about City permitting requirements and find opportunities to improve synchronization of City permitting with other state and federal permits. In addition, permitting agencies can communicate related or overlapping concerns and discuss possible solutions with each other and the applicant before any final engineering drawings are completed. This feedback gives the applicant opportunities to address resource and agency concerns early in the design phases.

### **Bureau of Planning Recommendation**

Implementation of a streamlined review process for a broader set of project types is a goal for the near future. With Planning Commission and City Council support, staff will continue to monitor the effectiveness of the ESA Streamlining Agreement program, and then develop a pilot program to apply to a sample of non-City projects. If the pilot program is successful, there may be a desire on the part of participating agencies to expand the streamlining review process to include all projects at some point in the future.

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## **III. Recommended Changes to the *Zoning Code***

New text is shown underlined while deleted text is show in ~~striketrough~~. Commentary is on the even-numbered pages in comic sans font that describes the rationale for the changes.

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## **Commentary**

The title page of the Environmental Zones chapter shows the addition of several sections. Many additional changes are embedded within existing sections and are not reflected in the chapter table of contents.

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## **CHAPTER 33.430 ENVIRONMENTAL ZONES**

### Sections:

#### General

- 33.430.010 Purpose
- 33.430.015 Purpose of the Environmental Protection Zone
- 33.430.017 Purpose of the Environmental Conservation Zone
- 33.430.020 Environmental Reports
- 33.430.030 Relationship To Other Environmental Regulations
- 33.430.035 Other City Regulations
- 33.430.040 Overlay Zones and Map Symbols
- 33.430.050 Subareas of Environmental Zones
- 33.430.060 Where These Regulations Apply
- 33.430.070 When These Regulations Apply
- 33.430.080 Items Exempt From These Regulations
- 33.430.090 Prohibitions

#### Development Standards

- 33.430.100 Environmental Development Standards and Environmental Review
- 33.430.110 Purpose
- 33.430.120 Procedure
- 33.430.130 Permit Application Requirements
- 33.430.140 General Development Standards
- 33.430.150 Standards For Utility Lines
- 33.430.160 Standards For Land Divisions and Planned Developments
- 33.430.165 Standards For Property Line Adjustments
- 33.430.170 Standards For Resource Enhancement Projects
- 33.430.175 Standards For Right-of-Way Improvements
- 33.430.180 Standards For Stormwater Outfalls
- 33.430.190 Standards For Public Recreational Trails

#### Environmental Review

- 33.430.210 Purpose
- 33.430.220 When Review is Required
- 33.430.230 Procedure
- 33.430.240 Supplemental Application Requirements
- 33.430.250 Approval Criteria
- 33.430.260 Use of Performance Guarantees
- 33.430.270 Special Evaluation by a Trained Professional
- 33.430.280 Modification of Base Zone Development Standards

#### Natural Resource Management Plans

- 33.430.310 Purpose
- 33.430.320 Scope
- 33.430.330 Procedure
- 33.430.340 Components
- 33.430.350 Approval Criteria for Adoption and Amendment

#### Corrections to Violations of This Chapter

- 33.430.400 Purpose
- 33.430.405 Correction Options
- 33.430.407 Recurring Violations of this Chapter

#### Notice and Review Procedure

- 33.430.410 Purpose
- 33.430.420 When These Regulations Apply
- 33.430.430 Procedure

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## **Commentary**

### **33.430.010 Purpose**

The additional language acknowledges that the environmental regulations of the *Zoning Code* further the City's policies and goals while maintaining compliance with other agency regulations.

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- Map 430-1 Balch Creek Watershed Protection Plan Area
- Map 430-2 Columbia Corridor Industrial and Environmental Mapping Project Area
- Map 430-3 East Buttes, Terraces and Wetlands Conservation Plan Area
- Map 430-4 Fanno Creek and Tributaries Conservation Plan Area
- Map 430-5 Johnson Creek Basin Protection Plan Area
- Map 430-6 Northwest Hills Natural Areas Protection Plan Area
- Map 430-7 Skyline West Resource Protection Plan Area
- Map 430-8 Southwest Hills Resource Protection Plan Area
- Map 430-9 East Columbia Neighborhood Natural Resources Management Plan Area
- Map 430-10 Smith and Bybee Lakes Natural Resources Management Plan Area
- Map 430-11 Forest Park Natural Resources Management Plan Area
- Map 430-12 Peninsula One Natural Resources Management Plan Area

## General

### **33.430.010 Purpose**

Environmental zones protect resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources.. These regulations also help meet other City goals, along with other regional, state, and federal goals and regulations. Environmental regulations also carry out Comprehensive Plan policies and objectives.

### **33.430.015 Purpose of the Environmental Protection Zone**

The Environmental Protection zone provides the highest level of protection to the most important resources and functional values. These resources and functional values are identified and assigned value in the inventory and economic, social, environmental, and energy (ESEE) analysis for each specific study area. Development will be approved in the environmental protection zone only in rare and unusual circumstances.

### **33.430.017 Purpose of the Environmental Conservation Zone**

The Environmental Conservation zone conserves important resources and functional values in areas where the resources and functional values can be protected while allowing environmentally sensitive urban development.

### **33.430.020 Environmental Reports**

The application of the environmental zones is based on detailed studies that have been carried out within eight separate areas of the City. The City's policy objectives for these study areas are described in the reports. Each study report identifies the resources and describes the functional values of the resource sites. Functional values are the benefits provided by resources. The values for each resource site are described in the inventory section of these reports. The City has adopted the following eight environmental study reports:

- *Balch Creek Watershed Protection Plan*
- *Columbia Corridor Industrial and Environmental Mapping Project*
- *East Buttes, Terraces and Wetlands Conservation Plan*
- *Fanno Creek and Tributaries Conservation Plan*
- *Johnson Creek Basin Protection Plan*
- *Northwest Hills Natural Areas Protection Plan*
- *Skyline West Conservation Plan*
- *Southwest Hills Resource Protection Plan*

# Adopted Report, August 24, 2005

## **Commentary**

### **33.430.035 Other City Regulations**

Development standard J in section 33.430.140, which refers to erosion control requirements, is proposed to be eliminated because Citywide erosion control regulations now apply to all development or disturbance as defined in Title 10 of City code. The Bureau of Planning and the Bureau of Environmental Services would like to maintain a reference to erosion control regulations in this chapter, especially because erosion control practices are so important and still apply to activities that may be exempt from this chapter.

# Adopted Report, August 24, 2005

## **33.430.030 Relationship To Other Environmental Regulations**

Some of the eight study areas discussed under Section 33.430.020 impose additional environmental regulations in Plan Districts. These additional regulations either supplement or supersede the regulations of this Chapter. Paragraph 33.700.070.E describes the hierarchy of regulations within the *Zoning Code*.

Additionally, Natural Resource Management Plans may contain regulations that supersede or supplement the regulations of this chapter. Whenever natural resource management plan provisions conflict with other provisions of this chapter, the natural resource management plan provisions supersede. Non-conflicting provisions supplement the provisions of this chapter. Maps 430-9, 10, 11 and 12 show Natural Resource Management Plan areas.

The following Plan Districts and Natural Resource Management Plans have additional regulations that may supersede or supplement the environmental regulations of Chapter 430:

- *The Balch Creek Watershed (see Chapter 33.563, Northwest Hills Plan District)*
- *The Columbia South Shore within the Columbia Corridor (see Chapter 33.515, Columbia South Shore Plan District)*
- *Johnson Creek Basin (see Chapter 33.537, Johnson Creek Basin Plan District)*
- *Northwest Hills Natural Areas (see Chapter 33.563, Northwest Hills Plan District)*
- *Skyline West Conservation Plan area (see Chapter 33.563, Northwest Hills Plan District)*
- *East Columbia Neighborhood Natural Resources Management Plan (separate document)*
- *Smith and Bybee Lakes Natural Resources Management Plan (separate document)*
- *Forest Park Natural Resources Management Plan (separate document)*
- *Natural Resources Management Plan for the Peninsula Drainage District No. 1 (separate document)*

This chapter contains only the City's environmental regulations. Activities which the City regulates through this chapter may also be regulated by other agencies. In cases of overlapping City, Special District, Regional, State, or Federal regulations, the more stringent regulations will control. City approval does not imply approval by other agencies.

## **33.430.035 Other City Regulations**

Other City regulations such as Title 10, Erosion Control, may apply to sites in the environmental overlay zones.

## **33.430.040 Overlay Zones and Map Symbols**

There are two environmental overlay zones.

- A.** The Environmental Protection overlay zone is applied wherever the City determines that highly significant resources and functional values are present. The Environmental Protection overlay zone is shown on the Official Zoning Maps with the "p" symbol.
- B.** The Environmental Conservation overlay zone is applied wherever the City determines that significant resources and functional values are present. The Environmental Conservation overlay zone is shown on the Official Zoning Maps with the "c" symbol.

# Adopted Report, August 24, 2005

## **Commentary**

There are no changes proposed for the next page.

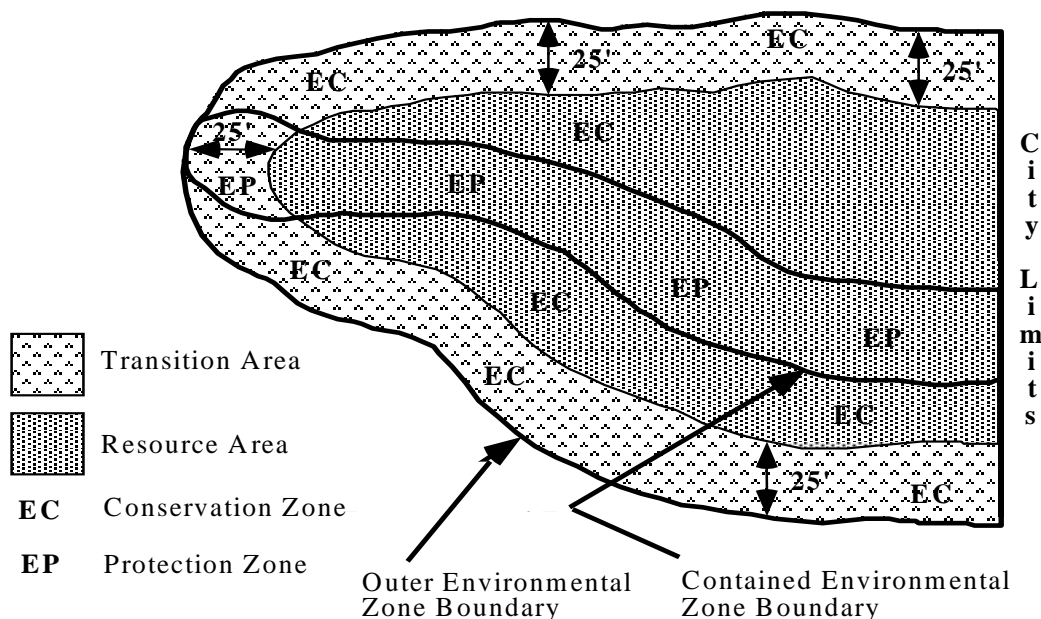
# Adopted Report, August 24, 2005

## 33.430.050 Subareas of Environmental Zones

Environmental overlay zones contain resource areas and transition areas. Resource areas contain significant resources and functional values. Transition areas surround the resource areas. Resources and functional values within transition areas are not significant, but they provide a buffer for the significant resources and functional values within the resource area. The transition area is measured as the first 25 feet inward from an environmental zone boundary. The remaining area is the resource area. See Figure 430-1. The following are three exceptions:

- A. Where part of an environmental zone boundary is also the City Limits, there is no transition area.
- B. Where environmental zone boundaries are contained within other environmental zone boundaries, there is no transition area.
- C. Where environmental zone boundaries abut other environmental zone boundaries, transition areas are only measured from the combined outer-most boundaries of the environmental zones.

**Figure 430-1**  
**Environmental Zone Subareas**



## 33.430.060 Where These Regulations Apply

These regulations apply to all environmental zones, except those in the Columbia South Shore Plan District that are south of NE Marine Drive, those that are within the Smith and Bybee Lakes Natural Resources Management Plan area, City-owned land within the Forest Park Natural Resources Management Plan area, and the Peninsula Drainage District No. 1 Natural Resources Management Plan area. See Chapter 33.515, Columbia South Shore Plan District, the Smith and Bybee Lakes Natural Resources Management Plan, the Forest Park Natural Resources Management Plan, or the Natural Resources Management Plan for the Peninsula Drainage District No. 1.

# Adopted Report, August 24, 2005

## **Commentary**

### **33.430.070 When These Regulations Apply**

D. Several existing provisions in Chapter 33.430 address the planting or removal of plants on Portland's Nuisance and Prohibited Plant Lists. The proposed amendment to this section clarifies that the chapter applies to this activity.

To view the *Portland Plant List*, refer to: <http://www.portlandonline.com/planning/> and follow the links Document/Maps, Environment and River, *Portland Plant List*.

# Adopted Report, August 24, 2005

## **33.430.070 When These Regulations Apply**

Unless exempted by Section 33.430.080, below, the regulations of this chapter apply to the following:

- A.** Development;
- B.** All land divisions and property line adjustments;
- C.** Removing, cutting, mowing, clearing, burning, or poisoning native vegetation-listed in the *Portland Plant List*;
- D.** Planting or removing nuisance or prohibited plants listed in the *Portland Plant List*.
- DE.** Changing topography, grading, excavating, and filling;
- EF.** Resource enhancement; and
- FG.** Dedication and expansions of rights-of-way.

# Adopted Report, August 24, 2005

## Commentary

### 33.430.080 Items Exempt From These Regulations

C.1. Portland Parks and Recreation has requested amendments to clarify exemptions for public recreational trails and ancillary facilities.

C.2. This exemption allows existing disturbed areas to be maintained including gardens and planted areas. The addition of the term "and other planted areas" is intended to clarify that the exemption applies to maintenance of any existing planted area. The term "landscape perimeter" is proposed to be deleted because the term is not defined, causes confusion, and doesn't add additional meaning to the landscaped areas that are already exempted in this section.

A frequent question that comes up is whether a vegetable garden in existing disturbance areas is allowed. The added language "and the installation of plants" makes it clear that maintenance of such areas may involve planting new plants, including ornamentals and vegetables, along with other routine activities such as tilling, mowing, watering, and removing dead plants.

"Pruning trees within 10 feet of a structure" is proposed as a new exemption to allow limited pruning within undisturbed areas for fire safety. The Fire Bureau has suggested that deciduous shrubs within 10 feet of a structure be pruned to maintain a clearance from the building wall of half their height, with a similar clearance from adjacent shrubbery. For coniferous shrubs Fire Bureau recommends clearances equal to the height of the shrub.

C.3. Existing regulations allow only native plants to be planted in environmental zone resource areas. The Bureau of Planning has received extensive input requesting the City to allow non-native plants, such as ornamentals or vegetable gardens, as well. Bureau of Planning staff believe that it is reasonable and fair to allow some non-native planting with out review, while still ensuring that significant resources are conserved. This proposed exemption would allow non-native plants to be planted in existing disturbance areas so long as the plants are not on Portland's Nuisance or Prohibited Plant lists. Only planting of native plants would be allowed in portions of the resource area outside the disturbance area.

C.4. This is a grammatical change.

C.5. The proposed change distinguishes the drainage maintenance functions of Multnomah County Drainage District (MCDD) from maintenance for other water-related systems. The list in the proposed C.5 contains the same items as found in the existing C.5 and the proposed C.6 contains more details to address maintenance requirements for specified MCDD facilities.

# Adopted Report, August 24, 2005

## **33.430.080 Items Exempt From These Regulations**

The following items, unless prohibited by Section 33.430.090, below, are exempt from the regulations of this chapter:

- A. Change of ownership;
- B. Temporary emergency procedures necessary for the protection of life, health, safety, or property;
- C. Existing development, operations, and improvements, including the following activities:
  - 1. Maintenance, repair, and replacement of existing structures, exterior improvements, roads, public recreational trails, public rest points, public view points, public interpretative facilities, and utilities. Replacement is not exempt whenever coverage or utility size is increased;
  - 2. Continued maintenance of existing gardens, pastures, lawns, and other planted areas, and landscape perimeters; including the installation of new irrigation and drainage facilities, and new erosion control features, and the installation of plants except those listed on the Nuisance or Prohibited Plant Lists. Change of crop type or farming technique on land currently in agricultural use. Pruning trees and shrubs within 10 feet of structures;
  - 3. Changes to existing disturbance areas to accommodate outdoor activities such as gardens and play areas so long as plantings do not include plants on Portland's Nuisance or Prohibited Plant List and no trees 6 inches or greater are removed;
  - ~~34.~~ Alterations to buildings which that do not change the building footprint and do not require adjustments to site-related development standards;
  - 4. ~~Operation, maintenance, and repair of the following: irrigation systems; drainage facilities and conveyance channels; stormwater detention areas; pumping stations; erosion control and soil stabilization features; and pollution reduction facilities. Maintenance of drainage facilities includes the dredging and channel cleaning of existing drainage facilities and vegetative maintenance within the minimum floodway cross section of drainageways. This exemption applies only if all spoils are placed outside environmental zones;~~
  - 5. Operation, maintenance, and repair of the following:
    - a. Irrigation systems;
    - b. Stormwater management systems;
    - c. Pumping stations; and
    - d. Erosion control and soil stabilization features.

# Adopted Report, August 24, 2005

## Commentary

### 33.430.080 Items Exempt From These Regulations (continued)

C.6. This clarification is specifically meant to address issues raised by the Multnomah County Drainage District (MCDD) and concerns activities within the slough system of the Columbia Corridor, which is a managed floodplain. The exemption applies only to the activities that pertain to facilities managed by MCDD. MCDD is required by the Army Corp of Engineers to maintain the slough drainage system and levees to prevent flooding. The exemption does not allow other entities or the general public to engage in channel cleaning, alteration of natural stream channels, or to install new retaining structures without review.

C.7 and C.8. This exemption is undergoing several clarifications. First, the term "or plant" is added to clarify that cutting nuisance or prohibited plants and trees is exempt. Second, the exemption is further clarified by noting that removal of nuisance or prohibited vegetation is exempt only if there is no resulting soil exposure or disturbance. Erosion control regulations do not allow soil disturbance or exposure without replanting. Lastly, the original paragraph is broken into two paragraphs (C7 and C8) to emphasize the distinction between exempting the removal of nuisance and prohibited vegetation, and the removal of portions of trees. The term "other" is removed to reduce confusion.

In stakeholder meetings, several project stakeholder groups raised questions or concerns pertaining to plant removal regulations. The discussions are summarized below. Topics addressed include removal of trees or plants not included in the Portland Plant list, pruning, and differences between environmental zone and greenway zone plant regulations. These issues are not being addressed through this project but will be subject to additional discussion as part of future planning projects.

- The number of trees and plants not included in the Portland Plant List is quite extensive and several constituent groups are concerned that allowing the removal of these plants may harm ecological function. It is true that most plants, even nuisance and prohibited plants, provide some level of function such as stormwater retention or filtration, groundwater recharge, habitat structure or wildlife food source, and other functions.
- There is a discrepancy in the applicability of tree and plant regulations between the environmental overlay zones and the Willamette greenway overlay zones. The greenway zones regulate planting of all types of plants, and allows the hand removal of nuisance and prohibited plants -- removal by any other method requires a greenway review. Several constituent groups recommend consistent application between the two zoning overlays. Staff recommends this issue be addressed through a future Environmental Code Improvement project and/or during an update of the Willamette Greenway Program.

C.9. The city recognizes the hazards associated with development in forested areas. To this end, homes built in wildfire hazard areas are allowed to perform vegetation maintenance to reduce the risks of wildfire to life and property.

# Adopted Report, August 24, 2005

6. Operation, maintenance, and repair of drainage facilities, flood control structure, and conveyance channels that are managed by Drainage Districts as defined in ORS 547, and where the activity is conducted or authorized by the Drainage District. This exemption does not apply if dredge spoils are placed onto the top of banks of the drainageway, or onto upland portions of the environmental overlay zone. Operation, maintenance, and repair of drainage facilities includes:
    - a. Dredging and channel cleaning of existing drainage facilities and vegetative maintenance within the minimum floodway cross-section of drainageways;
    - b. Operation, maintenance, and repair of drainage district pump stations, water control structures, or levees;
    - c. Reconfiguring the cross-section of drainage channels below the ordinary high water mark, or changing the location of the low flow channel within a wider drainage channel; and
    - d. Stabilizing banks and restoring levees back to original condition and footprint;
  57. Removing a tree or plant listed on the Nuisance or Prohibited Plant Lists when there is no resulting soil exposure or soil disturbance-;
  8. Removing ~~other~~ trees or portions of trees when they pose an immediate danger, as determined by the City Forester or an arborist. Removing these portions is exempt only if all sections of wood greater than 12 inches in diameter remain, or are placed, in the resource area of the same ownership on which they are cut;
  9. Pruning coniferous trees that are within 30 feet of a structure to remove branches up to 6 feet above the ground, when the structure is within the wildfire hazard zone as shown on the City's Wildfire Hazard Zone Map;
  610. Alterations to existing houseboats or replacing houseboats in existing slips;
  711. Development over existing paved surfaces that are over 50 feet from any identified wetland or water body; and
  812. Land divisions or Property Line Adjustments where all properties are developed, no additional building sites are created and no additional development is proposed.
- D.** The following new development and improvements:
1. Planting of native vegetation listed on the *Portland Plant List* when planted with hand held equipment;
  2. Public street and sidewalk improvements meeting all of the following:
    - a. Improvements must be within an existing public right-of-way used by truck or automobile traffic; and
    - b. Streets and sidewalks must not exceed the minimum width standards of the Bureau of Transportation Engineering.

# Adopted Report, August 24, 2005

## Commentary

### 33.430.080 Items Exempt From These Regulations (continued)

D.3. The Bureau of Environmental Services does not have construction standards for water quality monitoring stations and the Bureau of Water Works does not have standards for groundwater monitoring wells so reference is deleted and, for groundwater monitoring wells, replaced by the correct agency.

D.7. Over the years staff has heard from surveyors, geotechnical specialists, etc., that much of the site information required to be included in applications for land use reviews or building permits is hard to obtain without causing a small amount of temporary disturbance. By exempting certain activities need to conduct land surveys and soil tests, applicants can provide more accurate information.

D.8. Currently, projects to close an illegal or damaged trail by using a fence to block access require an environmental review. Exempting the installation of fences to close such trails supports the purposes of this Title by allowing disturbed areas to be reclaimed by natural processes over time. Note: Such fences are typically designed to allow the passage of wildlife but not humans.

D.9. Many trail or resource enhancement projects include informational or educational signs. Like fences, signs can often trigger environmental review even if the main project is exempt from the regulations. Signs can be important to provide information for the health and safety of trail users and to inform trail users about the landscape around them. The stakeholder groups reviewing these issues recommended that signs be exempt from the regulations.

D.10. The Bureau of Planning has received extensive input requesting the City to provide additional allowances for play areas and non-native plants, such as ornamentals or vegetable gardens. Bureau of Planning staff believe that it is reasonable and fair to allow limited disturbance for such uses without review, while still ensuring that significant resources are conserved. Exemptions under 33.430.080.C on page 37 for existing development allow converting existing disturbance areas into gardens and play areas (which are not considered "new development".) A proposed change to the general development standards (33.430.140.J page 57) would likewise allow tree removal for the creation of a garden or play area, not just for a house or other structure, as long as the proposal meets all of the other development standards. The critical standards are: amount of disturbance area, proximity to a waterbody, and the size and total caliper inches of trees removed.

In keeping with the changes discussed above, and to provide equitable regulation, this proposed new exemption would allow some new disturbance area on sites with existing development for the creation of non-structural items such as gardens, play areas, etc.

# Adopted Report, August 24, 2005

3. ~~Water quality monitoring stations constructed to the standards of the Bureau of Environmental Services and g~~ Groundwater monitoring wells constructed to the standards of the ~~Bureau of Water Works~~ Oregon Water Resources Department and water quality monitoring stations, where access is by foot only;
4. Utilities installed above or below developed portions of public rights-of-way;
5. Utility service using a single utility pole or where no more than 100 square feet of ground surface is disturbed outside of the top-of-bank of water bodies and where the disturbed area is restored to the pre-construction conditions;
6. ~~Boundary and topographic surveys leaving no cut scars greater than three inches in diameter on live parts of native plants listed in the *Portland Plant List*;~~
7. ~~Soil tests performed with hand-held equipment, provided that excavations do not exceed a depth of five feet, combined diameters of all excavations do not exceed five feet, and all excavations are refilled with native soil, except as necessary for environmental review;~~ Temporary site investigative work including soil tests, land surveys, groundwater and water quality monitoring stations when all of the following are met:
  - a. The work is conducted using hand-held equipment only;
  - b. The disturbance is temporary;
  - c. Disturbance areas are restored to preexisting conditions; and
  - d. No native trees are removed.
8. Installation of temporary fencing to protect resource enhancement project planting areas, or to close off or control the use of illegal trails. The fence must be removed within 5 years;
9. Installation of signage as part of public recreational trail and resource enhancement projects;
10. Additional disturbance for outdoor uses such as gardens and play areas where the added disturbance area meets all of the following:
  - a. The added disturbance area does not exceed 500 square feet;
  - b. The total disturbance area on the site does not exceed standards in Table 430-1;
  - c. No trees 6 inches or greater are removed; and
  - d. The disturbance area is located at least 30 feet from the top of bank of a stream or drainage and at least 50 feet from the edge of a wetland.

# Adopted Report, August 24, 2005

## Commentary

### 33.430.080 Items Exempt From These Regulations (continued)

D.10.a. The existing exemptions for trails limits trail construction to property that contains a residential use. In discussions, the stakeholder group felt that some very simple trail projects could be constructed on properties with other uses within the parameters of the exemption and suggest eliminating the requirement that the trail be on residential property. The stakeholder group has agreed to help monitor the use of this exemption because they represent the majority of the groups that design and install trails.

With the expansion of possible locations for small trails, the stakeholder group felt that the rest of the parameters relating to trail exemptions should be clarified.

10.b. The trail construction timing limit is proposed to be eliminated. Research has shown that trails are not built during the wettest part of the year, and are difficult to build during the driest.

10.b. (Previously 10.c) Slope is measured for the entire site and not incrementally for specific areas of a site. Consequentially, there may be small, steep inclines where a few steps would be more appropriate than an extensive switch-back to scale the incline. Steps are usually constructed with standard length timbers that come in 48-inch lengths, hence the allowance for a width to accommodate steps. NOTE: at the City Council hearing on August 17<sup>th</sup> 2005, Council voted to amend this section and exempt stairs from the 20 percent slope limit.

10.c. Some vegetation trimming/removal is required to keep a trail useable. Trail builders typically trim vegetation a minimum of 1-2 feet on both sides of the trail for vegetation control. With a maximum trail width allowance of 30 inches (2.5 feet), the proposal to allow six feet of vegetation trimming means that 1.75 feet (19 inches) of clearance on either side of the trail will be allowed. The exemption is stated as a 6 foot width because sometimes a little more trimming width is needed on one side or another but the width of 6 feet can be maintained. So if 2 feet is trimmed on one side of the trail, the other side is allowed 1.5 feet of trim width.

10.d. This is a clarification/improvement because a "plant scar" is not defined and the larger concern is the amount of tree and plant removal. Most trails are designed to avoid intersecting with large trees; the stakeholder group recommended this change as a reasonable approach for small, simple trails.

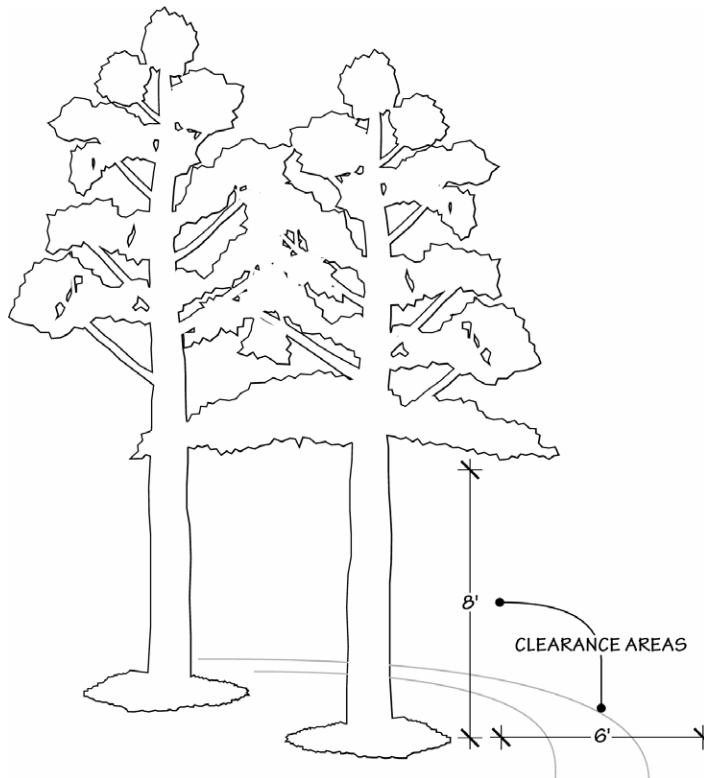
10e. This proposed addition to the list of parameters is meant to keep the exemption simple; paved trails will be subject to a review.

10.f. The proposed change is intended to be clearer and more consistent with other development standard setbacks in this chapter.

# Adopted Report, August 24, 2005

§10. Trails meeting all of the following:

- a. Trails must be confined to a single ~~residential~~ ownership or be within a public trail easement;
- b. ~~Construction must take place between May 1 and October 30 with hand held equipment;~~
- eb. Trail widths must not exceed 30 inches, stair width must not exceed 50 inches, and trail grade must not exceed 20 percent except for the portion of the trail containing stairs;
- c. Plant trimming must not exceed a height of 8 feet and a width of 6 feet as shown in Figure 430-2;
- d. ~~Trail construction must leave no scars greater than three inches in diameter on live parts of native plants. Native trees larger than 6 inches in diameter and native shrubs or conifers larger than 5 feet tall may not be removed; and~~
- e. Trails must not be paved, and
- f. ~~Trails must not be placed between the tops of banks of water bodies~~ must be at least 15 feet from the top of bank of all water bodies.



**Figure 430-2 Trail Vegetation Pruning and Maintenance Area**

# Adopted Report, August 24, 2005

## Commentary

### 33.430.080 Items Exempt From These Regulations

E. One of the violation cases that the project stakeholder group reviewed involved removing old construction debris from the resource area of the conservation zone. The group decided that removing debris should be exempt from these regulations because it will improve soil, water quality, and habitat, and is a type of "resource enhancement." The stakeholder group also discussed whether to exempt debris removal from the bed of a water body and recommended that this activity should also be exempt for the same reasons mentioned above.

### 33.430.090 Prohibitions

D. This addition to the list of prohibitions was proposed by the stakeholder group to ensure that property owners are aware that dumping is not allowed.

There are a number of environmental violation cases that involve the dumping of yard debris into ravines and down hillsides. In addition to creating problems for habitat, waterways, and properties at the bottom of the hillside, piles of yard debris and trash create vector control problems. Yard debris is picked up for recycling at the curbside in all areas of the city, so there is a ready alternative to dumping. Therefore, project staff and the stakeholder group have recommended that dumping yard debris be prohibited in resource areas of the environmental zone. There are other city codes that prohibit dumping as well.

# Adopted Report, August 24, 2005

911. All land divisions with tentative plans, final plans, and recorded plats showing all of the following for every lot created or adjusted; and Property Line Adjustments with plans showing all of the following for each lot adjusted:

- a. Building sites at least five feet from all resource areas. For the purpose of this subsection, "building site" means an area of any shape in which a square 40 feet by 40 feet will fit;
- b. Public and private utilities (including water lines, sewer lines or drain fields, and stormwater disposal facilities) where none of these utilities are in a resource area; and
- c. Streets, driveways, and parking areas where all pavement is at least ten feet from a resource area.

E. Hand removal of trash, provided that native vegetation is not removed or damaged.

## **33.430.090 Prohibitions**

The following items are prohibited in all environmental zones. Prohibitions apply to both transition areas and resource areas:

- A.** The use, packaging, transportation, or storage of hazardous substances, except as follows:
  1. Transportation of hazardous substances through environmental zones by rail or on designated truck routes is allowed; and
  2. Use of consumer quantities of hazardous substances within environmental zones is allowed subject to the regulations of this Title. Consumer quantities of hazardous substances are packaged and distributed in a form intended or suitable for sale through retail sales outlets for consumption by individuals for purposes of personal care and household use.
- B.** The planting or propagation of any plant identified as a nuisance plant or prohibited plant on the *Portland Plant List*; ~~and~~
- C.** Exterior work activities, unless in conjunction with a river-related or river-dependent use. See Chapter 33.910, Definitions; and
- D.** Dumping of yard debris or trash.

# Adopted Report, August 24, 2005

## **Commentary**

### **33.430.100 Environmental Development Standards and Environmental Review**

33.430.100 The new section is a clarification relating to proposals where development standards from more than one section apply. The existing language in this section (33.430.140) says "Modification of any of these standards requires approval through environmental review...", and the language in 33.430.250 Approval Criteria says "When environmental review is required because a proposal does not meet one or more of the development standards of Section 33.430.140 through .170, then the approval criteria will only be applied to the aspect of the proposal that does not meet the development standard or standards."

BDS staff currently review a development proposal for an entire section of standards if one or more standards within the section cannot be met, and do not include other sections as part of the environmental review. The proposed code language reflects current practice.

# Adopted Report, August 24, 2005

## **33.430.100 Environmental Development Standards and Environmental Review**

Compliance with the development standards of this chapter is required for all development in the environmental zones. For proposals that cannot meet all of the standards, Environmental Review is required. Where a proposal can meet all the standards, the applicant may choose to go through the discretionary environmental review process, or to meet the objective standards of this chapter.

The development standards are Sections 33.430.140 through .190; Sections 33.430.150 through .190 address specific types or aspects of development, while 33.430.140 applies to proposals not covered by the more specific sections. A proposal may be subject to several sections. For example, construction of a house may be subject to the General Development Standards of 33.430.140, General Standards, and the standards of 33.430.180, Stormwater Outfalls and 33.430.150, Utilities. If the proposal can meet the general standards and standards for utilities, but not those for a stormwater outfall, environmental review is required only for the stormwater outfall. To be eligible to use the development standards for an aspect of a proposal, all of the standards within the relevant section must be met.

## **Development Standards**

### **33.430.110 Purpose**

These provisions are intended to:

- A.** Encourage sensitive development while minimizing impact on resources;
- B.** Provide clear limitations on disturbance within resource areas;
- C.** Ensure that new development and alterations to existing development are compatible with and preserve the resources and functional values protected by the environmental zones;
- D.** Provide clear planting and erosion control requirements within resource areas;
- E.** Buffer the resource area from the noise, fumes, lights, and motion of vehicular traffic associated with industrial, commercial, and multi-dwelling residential uses; and
- F.** Limit the impacts on resources and functional values resulting from construction of certain types of utilities.

# Adopted Report, August 24, 2005

## **Commentary**

### **33.430.130 Permit Application Requirements**

A. No changes.

# Adopted Report, August 24, 2005

## **33.430.120 Procedure**

Compliance with these standards is determined as part of the building permit or development permit application process. Adjustments to these standards through Chapter 33.805, Adjustments, are prohibited. Modification of any of these standards requires approval through environmental review described in Sections 33.430.210 to 33.430.280.

## **33.430.130 Permit Application Requirements**

A building permit or development permit application that is reviewed for compliance with the standards of this chapter requires more information than a permit not affected by these provisions. The information in Subsections A and B must be submitted with permit application plans. Submission of the information in Subsection C is optional.

- A.** An existing conditions site plan including:
1. Location of all Environmental Zone lines on the site;
  2. Outline of any existing disturbance area, including existing utility locations;
  3. Location of any wetlands or water bodies on the site or within 50 feet of the site. Indicate the location of the top-of-bank, centerline of stream, or wetland boundary as appropriate;
  4. Within the disturbance area, all trees that are more than 6 inches in diameter must be indicated by size and species. Trees outside of the disturbance area must be shown as crown cover with an indication of species composition; and
  5. Topography shown by contour lines at 2 foot vertical contours in areas of slopes less than 10 percent and at 5 foot vertical contours in areas of slopes 10 percent or greater.

# Adopted Report, August 24, 2005

## **Commentary**

### **33.430.130 Permit Application Requirements (continued)**

B.4. The 90-percent vegetative cover requirement has been moved to general development standard 33.430.140.I, since it is a standard and not a permit application requirement.

B.5. This proposed addition to the permit application requirements relates to a proposed modification of development standard 33.430.140.D, which regulates existing disturbance area. The revised standard D will allow project applicants, in certain instances, to choose a site enhancement option and the plan check process in lieu of environmental review. If an applicant proposes a site enhancement, some additional information will need to be shown on the site plan required for submittal of an environmental plan check application.

## **Clarification**

### **33.430.140 General Development Standards**

The proposed changes reflect some of the new environmental chapter additions; the discussion for each new section can be found in the next 25 pages.

The application of standards B, C and I to the removal of nuisance and prohibited plants is proposed in conjunction with the clarification of exemption 33.430.080.C.7 on page 39. Exemption C.7. would allow nuisance and prohibited plant removal if there is no resulting soil exposure or soil disturbance - as when nuisance plants are cleared using hand tools. If the removal of nuisance plants is expected to expose or disturb soil - for example, when heavy equipment such as a back hoe is used - the activity would then be subject to development standards that limit the disturbance area, require development to be set back from waterbodies, and require the disturbed area to be replanted. This is in keeping with the city's environmental and erosion control regulations.

# Adopted Report, August 24, 2005

**B.** Proposed development plan including:

1. Outline of the proposed disturbance area, including all areas of proposed utility work;
2. Location and description of all proposed erosion control devices;
3. A stormwater management plan; ~~and~~
4. A landscape plan indicating the size, and location of all vegetation to be planted in the environmental zone ~~showing that 90 percent vegetative cover will be achieved within one year; and~~
5. Where applicable, the location and specifications of the site enhancement option with dimensions, a list of Nuisance or Prohibited Plants to be removed, and a landscape plan indicating the size, species, and location of all vegetation to be planted.

**C.** Photographs of the site are not required but are encouraged to supplement the existing conditions site plan.

### **33.430.140 General Development Standards**

The standards below apply to all development in the environmental zones except as follows:

- Utilities subject to Section 33.430.150;
- Land divisions subject to Section 33.430.160; ~~and~~
- Resource enhancement projects subject to Section 33.430.170;
- Rights-of-way improvements subject to Section 33.430.175;
- Stormwater outfalls subject to Section 33.430.180; and
- Public recreational trails subject to Section 33.430.190.

Standards A through C and G through ~~P~~ R apply to new development. Standards D through ~~P~~ R apply to alterations to existing development. Standards B, C and I apply to removal of nuisance and prohibited plants. Only standards E, ~~J, K, M, N, O, and P, Q, and R~~ apply in Transition areas. All of the applicable standards must be met. Modification of any of these standards requires approval through environmental review described in Sections 33.430.210 to 33.430.280.

# Adopted Report, August 24, 2005

## Commentary

### 33.430.140 General Development Standards (continued)

D. This proposed modification addresses existing development when there is a proposal for a building addition and no additional disturbance is proposed, but the existing disturbance area exceeds the maximum.

A disturbance area that exceeds the standard allowance is considered "nonconforming" development. Nonconforming development is treated in various ways throughout the *Zoning Code*. However, the intent is to always guide development closer to conformance. The current environmental development standards attempt to bring development that exceeds the disturbance standard closer to conformance by requiring that a "permanent disturbance area" be identified for the site, and that it contain all structures. The problem with this standard is that existing disturbance on most sites already exceeds the disturbance area standard and is unable to delineate a permanent disturbance area.

Staff has developed a proposed alternative to standard D that will allow alterations to existing developments that occur within the existing disturbance area to be reviewed through a plan check instead of environmental review, while still meeting the intent of bringing development closer to conformance. The applicant would be allowed to choose from a list of site enhancement options which are described in Table 430-2. This approach will provide applicants with streamlined review procedures while also encouraging improvement of site conditions.

If proposed alterations would expand beyond the existing disturbance area thereby increasing the disturbance area beyond the allowances in Table 430-1, an environmental review would still be required.

The amount of area to be "enhanced" will be equal to half of the area of the proposed new development. For example if a homeowner wishes to create a 1000 square foot addition, the enhanced area would be 500 square feet. If a commercial property owner expands a parking lot by 500 square feet, the enhanced area will be 250 square feet. A minimum enhancement area of 50 square feet is proposed for small development proposals (i.e., under 100 square feet).

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- A.** The maximum disturbance area allowed within the resource area on the site is determined by subtracting all portions of the site outside the resource area from the number listed in Table 430-1.

<b>Table 430-1</b>						
<b>Maximum Disturbance Area Allowed</b>						
	<b>OS and RF Zone</b>	<b>R20</b>	<b>R10</b>	<b>R7</b>	<b>R5</b>	<b>All Other Zones</b>
Maximum Disturbance Area	5,000 sq. ft. [1]	5,000 sq. ft. [1]	5,000 sq. ft. [1]	3,500 sq. ft. [1]	2,500 sq. ft. [1]	50% of the base zone building coverage or 1 acre, whichever is less [1]

Note:

[1] Subtract the amount of area on the site outside the resource area from the number given in the table.

- B.** The disturbance area is set back at least 5 feet from the resource area of any environmental protection zone;
- C.** The disturbance area must be set back at least:
1. Fifty feet from the edge of any identified wetland, from the top-of-bank of any identified water body within the Columbia Corridor, or any identified water body within a protection zone on lots zoned R10, R20, or RF;
  2. Thirty feet from the top-of-bank of any identified water body within a protection zone on all lots except those zoned R10, R20 or RF; and
  3. Thirty feet from the centerline of any identified water bodies within a conservation zone except those within the Columbia Corridor.
- D.** For alterations to existing development, one of the following must be met:
1. The disturbance area does not exceed the limitations of Table 430-1 and the disturbance area is not expanded into or within five feet of the resource area of an environmental protection zone; or
  2. If the existing disturbance area now exceeds the limitations of Table 430-1, ~~a permanent disturbance area that meets the size limitations of Table 430-1 must be delineated that includes all existing buildings, parking and loading areas, paved or graveled areas, patios, and decks, and contains the proposed development. The same delineated disturbance area must be shown on every subsequent proposal for alterations meeting this standard.~~ alterations are allowed within the existing disturbance area if the following are met:
    - a. The existing disturbance area may not be expanded; and
    - b. Increases in building coverage and exterior improvement area are allowed if a site enhancement option is completed on the site. Applicants must show that an area equivalent in size to at least 50 percent of the area proposed for development will be enhanced following one or more of the options described in Table 430-2. If the proposed development is less than 100 square feet, the minimum enhanced area will be 50 square feet.

# Adopted Report, August 24, 2005

## Commentary

### 33.430.140 General Development Standards (continued)

#### Table 430-2 Minimum Site Enhancement Options

Option 1 is the "Restoration Planting" option, requiring that nuisance and prohibited plants be removed. The area to be enhanced must be planted with native plants. Option 2 is the "impervious surface reduction" option, replacing existing impervious surfaces with plants. Option 3 allows a bioswale retrofit in a parking lot to help with stormwater infiltration, and Option 4 is a fee in-lieu-of meeting any of the other options. The fee will be administered in the same way that the T1, Tree Fund option of 33.248.020.H.2.c. is administered. The fee will be collected by BDS and transferred to BES. BES will channel these funds into restoration projects implemented by the Watershed Revegetation Program. .

Some concern has been expressed that the fee-in-lieu-of option could be abused by developers trying to avoid environmental review. However, staff believes that the risk is negligible. First, Standard D applies only to proposed development within an existing disturbance areas. Further, the fee is likely to be the most expensive option of the four because it is based on a 5-year planting and maintenance model that the Bureau of Environmental Services Watershed Revegetation Team uses for their projects.

# Adopted Report, August 24, 2005

<b>Table 430-2</b> <b>Minimum Site Enhancement Options</b>	
<b>Option</b>	<b>Action</b>
<u>Option 1</u> <u>Restoration</u> <u>Planting</u>	<u>Remove plants listed on the Nuisance and Prohibited Plant Lists. Plant the area with native plants at the following minimum planting density: 10 plants per 50 square feet at a ratio of one tree, two shrubs, and 7 groundcover plants. Trees must be at least one-inch in diameter, shrubs must be at least 2-gallons, and ground cover plants a minimum pot size of 4 inches. The remaining area may be seeded with native grass seed.</u>
<u>Option 2</u> <u>Impervious</u> <u>Surface</u> <u>Reduction</u>	<u>Remove impervious surface to improve stormwater management, and replant the area with native plants at the following minimum planting density: 10 plants per 50 square feet at a ratio of 1 tree, two shrubs, and 7 ground cover plants. Trees must be at least one-inch diameter, shrubs must be at least 2-gallons, and ground cover plants must be a minimum pot size of 4 inches. The remaining area may be seeded with native grass seed.</u>
<u>Option 3</u> <u>Parking Lot</u> <u>Retrofit</u>	<u>Replace existing interior parking lot landscaping with a vegetated infiltration basin using native plants. The minimum planting ratio for this option is 1 tree and 2 shrubs for every 50 square feet of planting area, and ground cover plants to cover the remaining area, planted on 12-inch centers. Trees must be at least one inch diameter, shrubs must be at least 2-gallons, and ground cover plants a minimum pot size of 4 inches. Enhancements must be approved by the Bureau of Environmental Services as meeting the Stormwater Management Manual, and must also comply with parking lot landscape requirements of this Title.</u>
<u>Option 4</u> <u>Revegetation</u> <u>Fee</u>	<p><u>Pay a revegetation fee.</u></p> <p><u>1. Fee use and administration. The revegetation fee is collected by BDS and is administered by the Bureau of Environmental Services. The fees collected are used for revegetation projects on public or private property within the same watershed as the site.</u></p> <p><u>2. Calculation of required fee contributions. Applicants must contribute the cost to purchase and plant trees, shrubs, and ground cover plants as set out in 3. below. The cost to purchase and plant trees and plants will be adjusted annually as determined by the Director of BES based on current market prices for materials, labor, and maintenance.</u></p> <p><u>3. Required fee contribution. The applicant must contribute the following revegetation fee before a building permit will be issued:</u></p> <ul style="list-style-type: none"> <li>• <u>The cost to purchase, plant, and maintain 1 tree, 2 shrubs, and 7 groundcover plants for every 50 square feet of planting area;</u></li> <li>• <u>The fee calculation will be rounded up to the next multiple of \$10; and</u></li> <li>• <u>The minimum area to be used in this calculation is 50 square feet. Calculations that are not a multiple of 50 will be rounded up to the next multiple of 50.</u></li> </ul>

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## **Commentary 33.430.140 General Development Standards (continued)**

G and H. Developers that use development standards are required to place construction fencing along the edge of the area to be disturbed by construction activities, with the area beyond the construction fence off-limits to disturbance, both temporary and permanent. Activities that go beyond the approved disturbance area are violations of the environmental regulations.

Existing regulations allow for a single total disturbance area, such as 2500 square feet in the R5 zone, and those regulations do not specify what may and may not occur within the allowed disturbance area. Applicants often submit proposals for development that physically fits within the allowed disturbance area but which leaves little or no area for activities associated with the development around the perimeter. Those activities include but are not limited to side casting of materials, maneuvering of construction equipment, building of utilities and retaining walls, painting, installation of windows and siding, etc.

The purpose of this standard is to establish a setback between new construction and environmental zone resource areas. The proposal is to establish a five-foot minimum setback between proposed development and the resource area, with an additional five feet of temporary disturbance to be allowed during construction. Combined, this proposed setback standard is intended to optimize the City's goals to protect significant resources while allowing development to take place in the environmental conservation overlay zone. While a construction setback of 15 to 20 feet to allow vehicle maneuvering would make it easier to avoid impacts of construction on the resource area, it could create undue hardship for developers of small lots (R7, R5, R2.5). This proposal is intended to establish an acceptable minimum setback standard that will be feasible in small lot situations.

The amount of discussion generated by the formulation of this standard raises several larger policy questions that should be addressed in a future environmental code improvement project. The larger questions are: 1) what is the role and intent of the disturbance area standards; 2) are they working well; and, 3) is the City's intent being met? When the development standards were created in 1995, they were not intended to reduce the level of protection for significant resources. Rather, the standards were intended to provide the same level of resource protection that environmental review provides, while reducing the time and cost involved in permitting if the proposed development meets clear and objective standards that are designed to limit impacts on resources. In conducting this evaluation, legislation must consider the proper balance between building density and environmental protection and in so doing, must consider commonly accepted construction practices when considering the total impact on resources and values.

I. The "90 percent vegetative cover" has been moved from the Application section (33.430.130) because it is frequently missed by applicants and it is applicable as a standard, not an application requirement.

J. This change is related to the clarification in 33.430.080 for maintaining existing planted areas. To make the development standard for new development equitable with existing development, staff proposes to modify standard J so that trees may also be removed for planting areas as long as all other development standards are being met.

K. The term "anywhere" has been added to the paragraph to clearly allow property owners within the Wildfire Zone to replant some distance away from the structure.

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- E.** The proposed development is set back at least 5 feet from the resource area of any environmental protection zone;
- F.** The proposed development must be set back at least:
  1. Fifty feet from the edge of any identified wetland, from the top-of-bank of any identified water body within the Columbia Corridor, or any identified water body within a protection zone on lots zoned R10, R20, or RF;
  2. Thirty feet from the top-of-bank of any identified water body within a protection zone on lots zoned R7 through IH; and
  3. Thirty feet from the centerline of any identified water bodies within a conservation zone except those within the Columbia Corridor.
- G.** The proposed buildings must be set back at least 5 feet from the edge of the disturbance area.
- H.** Where the distance between a building and the edge of the disturbance area is less than 10 feet, additional temporary disturbance area is allowed. The edge of the additional temporary disturbance area may extend no more than 10 feet from the building. The temporary disturbance area must be replanted with three different native shrub species at a minimum 1 gallon size or bare root, planted at a density of 3 plants per 10 square feet with the remaining area planted with native groundcover using a minimum of four inch pots at a density of 8 plants per 10 square feet;
- I.** Temporary disturbance areas must be replanted so that the area achieves a 90 percent vegetation cover within one year;
- GJ.** Native trees may be removed within 10 feet of any proposed structures, ~~or~~ within 5 feet of driveways, or to create up to 500 square feet of permanent disturbance area for uses such as gardens and play area. In no case will the combined total diameter of all the 6-inch or greater trees cut exceed 225 inches. Trees listed on the Portland Nuisance Plant List or Prohibited Plant List are exempt from this standard and may be removed;
- HK.** Trees cut are replaced as shown in Table 430-23. Replacement trees must be at least one-inch in diameter; shrubs must be in at least a 2-gallon container or the equivalent in ball and burlap. All trees and shrubs must be selected from the *Portland Plant List* and planted anywhere on the applicant's site. Conifers must be replaced with conifers and shrubs must consist of at least two different species;

<b>Table 430-23 Tree Replacement</b>		
<b>Size of tree to be removed (inches in diameter)</b>	<b>Option A (no. of trees to be planted)</b>	<b>Option B (combination of trees and shrubs)</b>
6 to 12	2	not applicable
13 to 18	3	1 tree and 3 shrubs
19 to 24	5	3 trees and 6 shrubs
25 to 30	7	5 trees and 9 shrubs
over 30	10	7 trees and 12 shrubs

# Adopted Report, August 24, 2005

## **Commentary**

### **33.430.140 General Development Standards (continued)**

(former J) This standard is proposed to be eliminated because Citywide erosion control regulations now apply to all development or disturbance.

N. The proposed changes to this standard clarify that the setback applies to the primary structure. The intent is to move primary structures closer to the front or street line and away from the resource, typically found at the back of the lot. On corner lots, the maximum setback applies to whichever street frontage keeps the development furthest away from the resource area.

# Adopted Report, August 24, 2005

- IL.** All vegetation planted in a resource area is native and listed on the *Portland Plant List*. Plants listed on the Portland Nuisance Plant List or Prohibited Plant List are prohibited;
- J.** ~~Erosion control must conform to the Erosion Control Technical Guidance Handbook, City of Portland, Bureau of Environmental Services, and to Chapter 24.70, Clearing, Grading, and Erosion Control of Title 24, Building Regulations. All development between November 1 and April 30 of any year, which disturbs more than 500 square feet of ground, requires wet weather measures described in the Erosion Control Technical Guidance Handbook;~~
- KM.** The minimum front and street building setback and garage entrance setback of the base zone may be reduced to any distance between the base zone minimum and zero. Where a side lot line is also a street lot line the side building and garage entrance setback may be reduced to any distance between the base zone minimum and zero;
- L.** ~~The maximum front building setback is the minimum front building setback of the base zone. On a lot with more than one front lot line this standard applies to the front lot line that is farthest from the resource area. In zones with no minimum setback the maximum setback is 10 feet;~~
- N.** Maximum front or street setbacks are as follows:
1. The front building or street setback of the base zone is the maximum building setback for primary structures.
  2. On a lot with more than one street lot line the maximum setback standard applies to the street lot line that is farthest from the resource area.
  3. In zones with no minimum front or street setback, the maximum setback is 10 feet.
- MO.** Fences are allowed only within the disturbance area;
- NP.** Parking and truck area buffers:
1. Auto and light truck areas. For commercial, industrial, and multi-dwelling residential uses, parking areas for autos and light trucks include a ten foot perimeter buffer from the resource area. The buffer is landscaped with plants listed on the *Portland Plant List* to at least the L2 standard, as stated in Chapter 33.248, Landscaping and Screening;
  2. Medium and heavy truck areas. Where allowed by the base zone, the parking, loading, and maneuvering areas for medium and heavy trucks include a ten foot perimeter buffer from the resource area. The buffer is landscaped with plants listed on the *Portland Plant List* to at least the L3 standard, as stated in Chapter 33.248, Landscaping and Screening;
- OQ.** Exterior lights must be spaced at least 25 feet apart. Incandescent lights exceeding 200 watts (or other light types exceeding the brightness of a 200 watt incandescent light) must be placed so they do not shine directly into resource areas; and
- PR.** Exterior storage and display areas include a ten foot perimeter buffer from the resource area. The buffer is landscaped to at least the L3 standard, as stated in Chapter 33.248, Landscaping and Screening.

# Adopted Report, August 24, 2005

## **Commentary**

### **33.430.150 Standards for Utility Lines**

D.3. The clarification updates the erosion control related reference which is no longer relevant because the information is provided in the *City's Erosion Control Handbook*.

# Adopted Report, August 24, 2005

## **33.430.150 Standards for Utility Lines**

The following standards apply to private connections to existing utility lines and the upgrade of existing public utility lines in resource areas. All of the standards must be met. Modification of any of these standards requires approval through environmental review described in Sections 33.430.210 to 33.430.280.

- A.** The disturbance area for private connections to existing utility lines is no greater than 10 feet wide;
- B.** The disturbance area for the upgrade of existing public utility lines is no greater than 15 feet wide;
- C.** The utility construction does not occur within a stream channel, identified wetland, or water body;
- D.** Disturbance areas must be planted with native species listed in the *Portland Plant List* according to the following densities:
  - 1. Three different native shrub species are required at a minimum 1 gallon size or bare root, planted at a density of 3 plants per 10 square feet;
  - 2. The remaining area must be planted with native groundcover using a minimum of four inch pots at a density of 8 plants per ten square feet; and
  - 3. Below the top-of-bank on slopes greater than 30 percent or in riprap areas, live stakes, 2 to 12 inches in diameter, may be substituted for the requirements of D.1 and D.2 above. Stakes must be installed at a density of 2 to 4 stakes per square yard. Detailed specifications for installing live stakes are found in ~~Chapter 18 of the United States Department of Agriculture Engineering Field Handbook (entitled *Soil Bioengineering for Upland Slope Protection and Erosion Reduction*, October 1992).~~ the *Erosion Control Handbook*.
- E.** Native trees more than 10 inches in diameter may not be removed; and
- F.** Each 6 to 10-inch diameter native tree cut must be replaced at a ratio of three trees for each one removed. The replacement trees must be a minimum one-half inch diameter and selected from the *Portland Plant List*. All trees must be planted on the applicant's site but not within 10 feet of a paved surface. Where a utility line is approximately parallel with the stream channel at least half of the replacement trees must be planted between the utility line and the stream channel.

# Adopted Report, August 24, 2005

## **Commentary**

### **33.430.160 Standards for Land Divisions and Planned Developments**

E. A clarification for this standard is needed because it doesn't adequately address tree removal allowances on lots proposed to be developed with nonresidential structures.

The original standards for development, utility lines, land divisions, planned unit developments (PUDs), and resource enhancement projects were adopted in 1995. At that time, development standard 33.430.160.D.2 limited native tree removal to 225 inches per dwelling unit for PUD proposals. Tree removal for lots approved as part of a land division were subject to the general development standards of 33.430.140, which limited tree removal to 225 inches per lot, not per dwelling unit.

When the land division regulations were revised in 2002, the distinction between PUDs and land divisions was eliminated and the standard was changed to allow tree removal per dwelling unit. Now, when there is a land division for industrial land, the tree removal standard is deemed not to apply because dwelling units are not proposed.

Rather than refer to the general development standard when lots are created, staff is proposing to allow tree removal within the allowed disturbance area consistent with how the tree removal standard is currently applied.

Note - There is a discrepancy between the environmental zone tree protection requirements and the land division tree protection requirements. This becomes an issue for sites partially within an environmental zone. The issue will be addressed in a future environmental code improvement project.

# Adopted Report, August 24, 2005

## 33.430.160 Standards for Land Divisions and Planned Developments

The following standards apply to land divisions and Planned Developments in the environmental overlay zones. All of the standards must be met. Modification of any of these standards requires approval through environmental review described in Sections 33.430.210 to 33.430.280.

- A. All development is outside the resource area of the environmental protection zone;
- B. Resource areas of the environmental protection zone are located entirely within environmental resource tracts. The tracts must be owned in common by all of the owners of the land division site, by a Homeowners' Association, by a public agency, or by a non-profit organization; and
- C. The total amount of disturbance area allowed within the resource area of the environmental conservation zone is either the amount listed in Table 430-34 or 1 acre, whichever is less, minus the amount of area outside the resource area;

	<b>OS and RF Zone</b>	<b>R20 Zone</b>	<b>R10 Zone</b>	<b>R7 Zone</b>	<b>R5 Zone</b>	<b>All Other Zones</b>
Maximum Disturbance Area <sup>(+)</sup>	5% of site area	12% of site area	15% of site area	17% of site area	22% of site area	50% of the base zone building coverage

[1] Disturbance area includes utility construction.

- D. Resource areas outside designated disturbance areas must be placed entirely within environmental resource tracts. The tracts must be owned in common by all of the owners of the land division site, by a Homeowners' Association, by a public agency, or by a non-profit organization;
- E. The combined total diameter of trees cut may not exceed 225 inches per dwelling unit in residential zones. In all other zones tree removal is limited to the boundaries of the approved disturbance area. Trees that are less than 6 inches in diameter and trees listed on the Portland Nuisance Plant List or the Prohibited Plant List are exempt from this standard and may be removed.

# Adopted Report, August 24, 2005

## **Commentary**

### **33.430.160 Standards for Land Divisions and Planned Developments (continued)**

Table 430-4. The proposed clarification consists of a new footnote that specifies the inclusion of utility installation as disturbance area and that directs applicants with utility installation proposals to follow the applicable development standards of 33.430.150 (C through F). Also, "PD" is added to the table title to reflect that the table does apply to Planned Developments.

F. This change updates the references to the general development standards that have been moved.

I. The existing standards are not clear about how much disturbance is allowed for new public utility connections. The City Attorney has determined that only the applicable elements of 33.430.150, or standards C through F, apply to new public utility connections. The disturbance area limits of Table 430-3 include the disturbance created for utility construction.

# Adopted Report, August 24, 2005

<b>Table 430-34</b>						
<b>Maximum Disturbance Area for a Land Division and PD Allowed Within the Resource Area [1]</b>						
	<b>OS and RF Zone</b>	<b>R20 Zone</b>	<b>R10 Zone</b>	<b>R7 Zone</b>	<b>R5 Zone</b>	<b>All Other Zones</b>
Maximum Disturbance Area [1]	5% of site area	12% of site area	15% of site area	17% of site area	22% of site area	50% of the base zone building coverage

[1] Disturbance area includes utility construction.

- F.** The standards of Subsections 33.430.140.B, C, and ~~H~~K through ~~P~~R must be met.
- G.** Streets, alleys, walkways, and stormwater facilities are not created within 50 feet of an identified wetland or water body. The standard does not apply to recreational trails identified by the Comprehensive Plan;
- H.** Right-of-way and roadway widths do not exceed the maximums listed in Table 430-45; and
- I.** Utility construction must meet the applicable standards of Section 33.430.150.

<b>Table 430-45</b>			
<b>Maximum Right-of-way and Roadway Widths</b>			
<b>Base Zone</b>	<b>Type of Street</b>	<b>Right-of Way Width</b>	<b>Roadway Width</b>
OS and RF – R7	Through	35 feet	20 feet
R5	Through	40 feet	20 feet
R2.5 – IR and C, E and I	Through	40 feet	28 feet
OS and RF – R5	Dead-end	35 feet	20 feet
R2.5 - IR and C, E and I	Dead-end	40 feet	28 feet

# Adopted Report, August 24, 2005

## **Commentary**

There are no changes proposed for the next section.

# Adopted Report, August 24, 2005

## **33.430.165 Standards for Property Line Adjustments**

The following standards apply to Property Line Adjustments (PLAs) in the environmental overlay zones that do not meet one of the exemptions in 33.430.080.C.812 or 33.430.080.D.911. All of the standards must be met. Modification of any of these standards requires approval through environmental review described in Sections 33.430.210 to 33.430.280. For purposes of this section, the site of a Property Line Adjustment is the two properties affected by the relocation of the common property line.

- A.** A Property Line Adjustment may not result in any property being entirely in the environmental protection zone, unless that property is entirely in the environmental protection zone before the PLA, or the property will be dedicated or limited by deed restriction to the uses allowed in the OS zone.
- B.** The amount of area on each property that is outside of the resource area of the environmental overlay zone may not be reduced below the square footage in Table 430-~~56~~. A property that contains less than the area listed in Table 430-~~56~~ outside of the resource area of the environmental overlay zone may not move further out of conformance with Table 430-~~56~~.

<b>Table 430-<del>56</del></b>				
<b>Minimum Area Required Outside of Resource Area</b>				
	<b>OS through R10 Zones</b>	<b>R7 Zone</b>	<b>R5 Zone</b>	<b>All Other Zones</b>
Minimum Area Required	5,000 sq. ft.	3,500 sq. ft.	2,500 sq. ft.	50% of the base zone building coverage or 1 acre, whichever is less

# Adopted Report, August 24, 2005

## Commentary

### 33.430.170 Standards for Resource Enhancement Projects

The current development standards for resource enhancement projects are rarely used because they are so limiting. When these standards were originally developed with the Environmental Code Streamline Project in 1995, the City acknowledged that resource enhancement projects should be encouraged by reducing the application cost and process time for these kinds of projects. The development standards have not served to encourage resource enhancement projects.

A. Staff is proposing the elimination of this standard because many resource enhancement projects occur partially or fully in the environmental protection zone and the City wants to encourage these kinds of projects. Protection of sensitive resources is intended to be achieved through the rest of the standards.

A (revised B). Staff is proposing to replace "disturbance" with "excavation and fill" to provide more specificity and to allow certain types of beneficial disturbance to occur. For example, some resource enhancement projects propose placing large wood in streams or wetlands to improve habitat structure. Construction activity would continue to be restricted, and this is clarified with the added language.

B (revised C). Some resource enhancement activities occur in floodplains. To avoid increasing flood hazards and possible conflicts with existing balanced cut and fill regulations, the resource enhancement stakeholder group suggested allowing soil removal by standard, but continuing to require review for proposed fill. The types of projects that may utilize this standard include the creation or enhancement of wetlands, expansion of floodplain area, and stream channel benching. Note: Resource enhancement projects sometimes involve amending the soil with compost; based on descriptions provided by Parks and BES staff, it was determined that applying compost would not be construed as fill.

C (revised D). The addition of "native" is a clarification because the Portland Plant List contains lists for native plants as well as nuisance and prohibited lists.

D. (new) This proposed new standard is a requirement for replanting on sites where structures are removed (for example, where floodplain restoration work is occurring) when there is no overall replanting schedule.

E. This standard allows the construction of structures such as a viewing platform or duck blind. Some resource enhancement projects may have an educational component, so the stakeholder group recommended allowing such small structures through the standards review. Also see the new definition for "viewing area" in the Definitions section on page 107.

F. Sterile non-native seed is frequently used to quickly reseed exposed soil until permanent plantings can be installed. Since the sterile seed species commonly used is not a native plant, the use of the seed would require environmental review. City ecologists and botanists and other revegetation experts in the region assert that allowing such plantings poses far less risk of contamination from weed seeds than that posed by the well-established seed bank within the soil on the site. They also recommend specifying that the seed be certified 100 percent weed-free.

# Adopted Report, August 24, 2005

## **33.430.170 Standards for Resource Enhancement Projects**

The following standards apply to resource enhancement projects in the environmental zones. All of the standards must be met. Modification of any of these standards requires approval through environmental review described in Sections 33.430.210 to 33.430.280.

- ~~A.~~ All work takes place outside the resource area of the environmental protection zone;
- ~~BA.~~ There is no ~~disturbance~~ excavation or fill of, or construction activity within any identified wetland or water body;
- ~~CB.~~ There is no ~~excavation, net fill, or change in the topography of~~ or increase in the amount of soil on the site;
- ~~DC.~~ No native vegetation listed on the *Portland Plant List* is removed except as allowed by D, below; and
- D. Disturbance areas related to structure removal and not scheduled for replanting must be replanted with native plants to achieve a 90 percent vegetative cover within one year, except for in-water structure removal;
- E. No structures are proposed except for public viewing areas developed as part of the project. The public viewing areas must meet the following:
  - 1. The viewing area may create up to 500 square feet of permanent disturbance area;
  - 2. The viewing area is at least 30 feet from the top of bank;
  - 3. The viewing area is not in the floodway;
  - 4. Native trees more than 10 inches in diameter may not be removed;
  - 5. Each 6 to 10-inch diameter native tree removed must be replaced at a rate of three trees for each one removed. The replacement trees must be a minimum one-half inch diameter or 3 to 5-gallon conifers and be native trees listed on the *Portland Plant List*. All trees must be planted on the site; and
- F. Temporary disturbance areas may be seeded with sterile seed that is certified as 100 percent weed-free for erosion control purposes until replanting occurs.

# Adopted Report, August 24, 2005

## Commentary

### 33.430.175 Standards for Right-of-Way Improvements

This is a new section to allow small portions of existing rights-of-way to be improved in certain situations. It is meant to address cases in which a proposed development can meet the general development standards, but the improvement of the right-of-way does not meet standards and triggers environmental review. The standards were developed with BDS and Transportation staff involvement, and are intended to apply to unimproved streets or partially improved streets where the need is to do additional small improvements.

A. The standard allows the developed portion of the road to be a maximum width of 26 feet wide and a maximum area of 2600 feet. The width limit is intended to encourage narrower streets in environmental zones.

B and C. Many streets were created a long time ago and do not reflect topography, including streams, wetlands, and deep ravines. Standard B ensures that these significant resources will be protected when a right-of-way is improved by requiring a standard setback from the resource, or by requiring environmental review if the setback can not be provided. The allowed disturbance area is larger than the paved portion allowed in Standard A to allow for an associated stormwater bioswale or sidewalk included in the improvement.

Standard C ensures that native plants are used in bioswales or to revegetate the area.

D. Some existing rights-of-way may be heavily forested; in these cases staff feel that it is appropriate to review the proposed right-of-way improvement through environmental review to ensure that there is minimal disturbance and tree removal.

E. When public or private rights-of-way are improved, the City Engineer or the Bureau of Development Services provide requirements that must be followed. In some cases these other requirements may exceed the allowances of the development standards, in which case the proposed improvement would need to be reviewed through environmental review.

# Adopted Report, August 24, 2005

## **33.430.175 Standards for Right-of-Way Improvements**

The following standards apply to unimproved and partially improved rights-of-way. All of the standards must be met. Modification of any of these standards requires approval through environmental review described in Sections 33.430.210 to 33.430.280. New rights-of-way that are part of a proposed land division or planned development must be reviewed under the Standards for Land Divisions and Planned Developments in Section 33.430.160.

- A. The proposed paved roadway portion of the right-of-way must not be more than 26 feet wide and 2600 square feet in area;
- B. The proposed disturbance area for the right-of-way improvement must:
  - 1. Be at least 50 feet from the edge of any wetland or waterbody;
  - 2. Be at least 5 feet from the resource area of any environmental protection zone; and
  - 3. Be no larger than 3300 square feet in area;
- C. Planted areas, including stormwater swales, must be planted with native plants from the *Portland Plant List*;
- D. Native trees may be removed within 10 feet of the edge of the right-of-way improvement. In no case may the combined total diameter of all the 6-inch or greater trees cut exceed 225 inches. Trees listed on the Nuisance or Prohibited Plant Lists are exempt from this standard; and
- E. The right-of-way improvements meet the development requirements of the City Engineer or the Permanent Rule for Private Rights-of-Way.

# Adopted Report, August 24, 2005

## Commentary

### 33.430.180 Standards for Stormwater Outfalls

This is a new section intended to address small outfall projects. The size of the outfall reflects the size of the area that will generate runoff to the outfall. Currently, many projects are subject to environmental review only because proposed stormwater disposal does not meet standards. The proposed standards are meant to provide a simpler review process for small outfall projects in these situations.

A. This standard, along with B, C, and D are modeled on the utility corridor development standards (33.430.150). Collectively, they limit the width of the temporary disturbance area, the size of the trees that can be removed, and state replanting standards.

E. The Stormwater Management Manual allows several methods of stormwater disposal, including open channels and swales. Although these methods would not be feasible on steep slopes, staff feels that it is necessary for the code to include slope limits to discourage developers filing for a plan check only to be told later that they need to file for environmental review.

F. The limit on the size of the outfall pipe is intended to limit the applicability of the standards to small projects such as new single family structures and small parking lots.

G. If an outfall pipe is proposed, an outfall pad will be required. The standards would require a riprap outfall pad to be revegetated. The requirement for 2 to 3 stakes per square yard is in keeping with the requirements of the Erosion Control Handbook.

H. The sunset clause was added by City Council during the August 17<sup>th</sup> hearing. The intent of the sunset clause is to ensure that staff will report back to Council with findings from a 2-year monitoring project. The purpose of the monitoring project is to determine if there is an increase in the number of outfalls that are directed into water bodies.

# Adopted Report, August 24, 2005

## **33.430.180. Standards for Stormwater Outfalls**

The following standards apply to the installation of stormwater outfalls. All of the standards must be met. Modification of any of these standards requires approval through environmental review described in Sections 33.430.210 to 33.430.280.

- A. The temporary disturbance area for the stormwater outfall is no greater than 10 feet wide;
- B Native trees more than 10 inches in diameter may not be removed;
- C Each 6- to 10-inch diameter native tree cut must be replaced on the site at a ratio of 3 native trees for each 1 removed. The replacement trees must be at least one-half inch in diameter and selected from the *Portland Plant List*;
- D Temporary disturbance areas must be planted with native species listed in the *Portland Plant List* according to the following densities:
  - a. Three different native shrub species are required at a minimum 1 gallon size or bare root, planted at a density of 3 plants per 10 square feet; and
  - b. The remaining area must be planted with native groundcover using a minimum of four inch pots at a density of 8 plants per 10 square feet;
- E. When constructed open channels or vegetated swales are proposed, the slope between the stormwater source and the waterbody does not exceed 15 percent at any point;
- F If an outfall pipe is used, the pipe size may not exceed 4 inches in diameter; and
- G If an outfall riprap pad is used it must be planted with live stakes of native plant stock, one-half inches in diameter. Stakes must be installed at a density of 2 to 3 stakes per square yard. Detailed specifications for installing live stakes are found in the *Erosion Control Handbook*.
- H. This subsection will expire on October 1, 2007.

# Adopted Report, August 24, 2005

## Commentary

### 33.430.190 Standards for Public Recreational Trails

This is a new section intended to address relatively simple public recreation trail projects that currently require environmental review. The proposed standards are meant to address cases where a proposed public trail is designed to avoid removal of large trees and does not cross a wetland or water body. These standards are a step up from the exemptions of 33.430.080 and allow a little more disturbance than the trail exemptions do. The main differences between the standards and the exemptions are:

- There are no requirements to use hand-held tools in the standards;
- There are no slope restrictions in the standards;
- There are no paving restrictions in the standards; and
- The standards allow trail widths up to 4 feet wide rather than 2 1/2 feet wide.

A. There are still situations where private property owners wish to develop a personal trail system on their property. The trails stakeholder group felt that limiting the allowance of the standards to public property or within a public trail easement, where a clear public benefit is the goal, would be a good first step. The trail projects that successfully use the standards will be monitored, and if successful there is the possibility of broadening the applicability of the standards to private property.

B. Portland Parks and Recreation create many small connector trails for the pocket parks that dot the City. Some of the trails act as transportation corridors between improved streets and may even be in an unimproved public right of way. The distance many of these connector trails span is less than an mile, however the stakeholder group advocated for a length close to a mile to accommodate the actual length of some trails as they snake through the park to avoid intersecting with steep slopes or large trees.

C. All of the environmental development standards, except those for resource enhancement projects, do not allow work within a stream corridor. For projects that propose stream crossings, an environmental review will be required.

D. Tree removal limitations are also in keeping with other environmental development standards as a way of limiting overall disturbance. This standard, coupled with standard A, limits overall disturbance within the trail corridor.

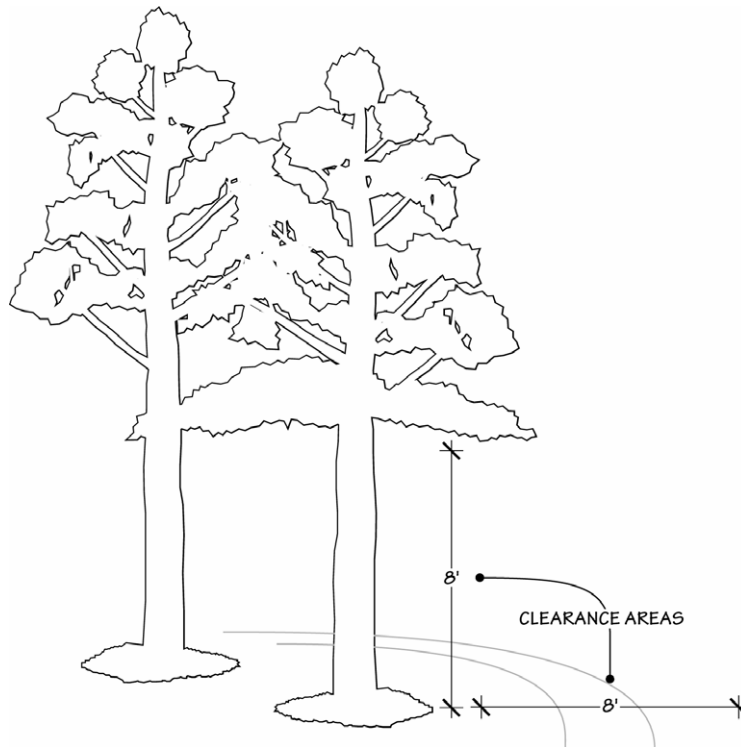
One of the issues raised by the trails stakeholder group concerns the use of materials treated with creosote. Various City bureaus have been considering the issue. There have been numerous scientific studies on the use and impacts of creosoted wood products such as old railroad ties on water and soil. The topic was not resolved by the group, but because of the level of concern about this issue staff recommends that a broader multi-interest group take up the issue to help inform the development of City policy.

# Adopted Report, August 24, 2005

## **33.430.190. Standards for Public Recreational Trails Facilities**

The following standards apply to public recreational trails and public viewing areas developed in conjunction with the recreational trail. All of the standards must be met. Modification of any of these standards requires approval through environmental review described in Sections 33.430.210 to 33.430.280.

- A. The trail is located on public property or within a public trail easement;
- B. The trail is no longer than 5,000 feet and no wider than 4 feet with a maximum vegetation clearance of 8 feet high and 2 feet on either side of the trail (see Figure 430-3);
- C. If the trail crosses a waterbody it is constructed above the top-of-bank;
- D. Native trees more than 10 inches in diameter may not be removed; and
- E. If a public viewing area is proposed, the following must be met:
  - 1. The viewing area may create up to 500 square feet of permanent disturbance area;
  - 2. The viewing area is at least 30 feet from the top of bank;
  - 3. The viewing area is not in the floodway; and
  - 4. Each 6 to 10-inch diameter native tree removed must be replaced at a rate of three trees for each one removed. The replacement trees must be a minimum one-half inch diameter or 3 to 5-gallon conifers and be native trees listed on the *Portland Plant List*. All trees must be planted on the site.



**Figure 430-3 Trail Vegetation Pruning and Maintenance Area**

# Adopted Report, August 24, 2005

## **Commentary**

There are no changes proposed for the next section.

# Adopted Report, August 24, 2005

## **Environmental Review**

### **33.430.210 Purpose**

Environmental review is intended to:

- A.** Prevent harm to identified resources and functional values, compensate for unavoidable harm, and ensure the success of mitigation and enhancement activities;
- B.** Provide a mechanism to modify the development standards of this Chapter if the proposed development can meet the purpose of these regulations;
- C.** Provide flexibility for unusual situations. The review provides for consideration of alternative designs for development that have the least impact on protected resources in the environmental conservation zone and more exacting control over development in the environmental protection zone;
- D.** Allow for more accurate maps and more certainty for property owners by allowing for the location of the environmental zone boundary to be modified when permitted changes to a resource occur or when the boundary location is determined more precisely on a specific site through a more detailed environmental study; and
- E.** Provide for the replacement of resources and functional values that are lost through violations of this Chapter.

# Adopted Report, August 24, 2005

## **Commentary**

### **33.430.220 When Environmental Review is Required**

The change on the second line of the paragraph reflects the new sections proposed to be added to the development standards. The change at the bottom of the paragraph notes that the environmental violation process is in a new section.

### **33.430.230 Procedures**

A. and B. Public recreational trails are currently reviewed through a Type II process. The proposed amendment would require proposed public recreational trails to be reviewed through a Type I process instead. The trails stakeholder group has recommended that the City require a less expensive process because public trails are a public amenity. In addition to the lower cost of the Type I process, a Type II appeal is heard by the land use hearings officer, while a Type I appeal is heard by the Land Use Board of Appeals.

C. Environmental violations are now addressed in a separate section -- see page 102.

# Adopted Report, August 24, 2005

## **33.430.220 When Environmental Review is Required**

Environmental review is required for all development in an environmental zone that does not meet the development standards of Sections 33.430.140 through ~~.170~~ 190. Environmental review is also required when an applicant wishes to fine-tune the zone boundary location based on a detailed environmental study. The City Council, Planning Commission, or Director of BDS may initiate an environmental review for environmental zone boundary amendments to reflect permitted changes in the location or quality of resources or functional values. Removal of environmental zone boundaries are processed as a change of an overlay zone, as stated in Chapter 33.855, Zoning Map Amendments. The zone boundary change procedure does not apply to changes caused by violations of this Chapter. The procedure for violations of this Chapter is described in Section 33.430.400.

## **33.430.230 Procedures**

Environmental reviews are processed through the following procedures:

- A.** Property Line Adjustments, ~~and~~ resource enhancement activities, public recreational trails, rest points, view points, and interpretative facilities are processed through the Type I procedure.
- B.** The following are processed through the Type II procedure:
  - 1. Roads, driveways, walkways, stormwater disposal, and buried connections to existing utility lines;
  - ~~2. Public recreational trails, rest points, view points, and interpretative facilities;~~
  - ~~3. Public safety facilities;~~
  - ~~4. Environmental zone boundary modifications;~~
  - ~~5. All other uses and development in resource areas of Environmental Conservation zones; and~~
  - ~~6. Development within the Transition Area only.~~
- C.** ~~The following~~ All other uses or development in resource areas of Environmental Protection zones are processed through the Type III procedure:
  - ~~1. All other uses and development in resource areas of Environmental Protection zones; and~~
  - ~~2. Corrections of violations of this Chapter.~~

# Adopted Report, August 24, 2005

## **Commentary**

### **33.430.240 Supplemental Application Requirements**

The proposed changes reorder and clarify the site plan requirements without adding new requirements. The reordering is intended to help applicants organize the information in a more cohesive and functional manner that will facilitate processing of the review.

# Adopted Report, August 24, 2005

## **33.430.240 Supplemental Application Requirements**

In addition to the application requirements of Section 33.730.060, the following information is required for an environmental review application:

**A. Supplemental site plans required ments.** One copy of each plan must be at a scale of at least one inch to 100 feet. ~~Site plans must show existing conditions, conditions existing prior to a violation, proposed development, and construction management.~~ The following supplemental site plans are required:

- Existing conditions,
- Conditions existing prior to a violation (if applicable),
- Proposed development,
- Construction management, and
- Mitigation or remediation.

A mitigation site plan is required whenever the proposed development will result in unavoidable significant detrimental impact on the identified resources and functional values. A remediation site plan is required whenever significant detrimental impacts occur in violation of the Code and no permit was applied for. The Director of BDS may waive items listed in this Subsection if they are not applicable to the specific review; otherwise they must be included. Additional information such as wetland characteristics or soil type may be requested through the review process.

1. The existing conditions ~~Site plans~~ must show the following for the entire site:
  - a. ~~For the entire site:~~
    - a. 100-year floodplain and floodway boundaries;
    - b. Boundaries of the resource area and the transition area. These boundaries may be scaled in relation to property lines from the Official City Zoning Maps;
    - c. Topography shown by contour lines at two foot vertical contours in areas of slopes less than ten percent and at five foot vertical contours in areas of slopes ten percent or greater;
    - d. Drainage patterns, using arrows to indicate the direction of major drainage flow; and
    - e. Existing improvements such as structures, or buildings, utility lines, fences, gardens, landscaping or planted areas, etc.
  - b. ~~In areas of the site that have been or will be disturbed:~~
2. The proposed development site plan must show the following:
  - a. In areas of the site that have been or will be part of the permanent disturbance area, distribution outline of shrubs and ground covers, with a list of most abundant species;
  - eb. In areas of the site that are and will remain undisturbed: Tree crown cover outline, and generalized species composition;

# Adopted Report, August 24, 2005

## **Commentary**

### **33.430.240 Supplemental Application Requirements**

The proposed changes reorder and clarify the site plan requirements without adding new requirements. The reordering is intended to help applicants organize the information in a more cohesive and functional manner that will facilitate processing of the review.

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- c. A grading plan showing proposed alteration of the ground at two foot vertical contours in areas of slopes less than ten percent and at five foot vertical contours in areas of slopes ten percent or greater; ~~and~~
  - d. Trees greater than six inches in diameter, identified by species. In the case of violations also indicate those that were cut or damaged by stump diameter and species;
  - e. Proposed development, including proposed buildings, walkways, decks, retaining walls, bridges, garages, utility lines, stormwater management systems; and
  - f. Proposed planting areas.
3. A construction management site plan ~~including~~ must show the following:
- a. Areas that will be disturbed, including equipment maneuvering areas;
  - b. Areas where existing topography and vegetation will be left undisturbed;
  - c. Location of site access and egress;
  - d. Equipment and material staging and stockpile areas;
  - e. Erosion control measures; and
  - f. Measures to protect trees and vegetation.
4. A mitigation or remediation site plan ~~including~~ must show the following:
- a. Dams, weirs, or other in-water structures;
  - b. Distribution outline, species composition, number, and percent cover of ground covers to be seeded or planted;
  - c. Distribution outline, species composition, size, number, and spacing of shrubs to be planted;
  - d. Location, species, number, and size of each tree to be planted;
  - e. Stormwater management features, including retention, infiltration, detention, discharges, and outfalls;
  - f. Water bodies to be created, including depth;
  - g. Water sources to be used, including volumes; and
  - h. Information showing compliance with Section 33.248.090, Mitigation and Restoration Plantings.

**B. Supplemental narrative.** The following is required:

- 1. Impact evaluation. An impact evaluation is required to determine compliance with the approval criteria and to evaluate development alternatives for a particular site. The alternatives must be evaluated on the basis of their impact on the resources and functional values of the site. In the case of a violation, the impact evaluation

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## **Commentary**

### **33.430.240 Supplemental Application Requirements**

The proposed changes reorder and clarify the site plan requirements without adding new requirements. The reordering is intended to help applicants organize the information in a more cohesive and functional manner that will facilitate processing of the review.

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is used to determine the nature and scope of the significant detrimental impacts. To the extent that the site resources and functional values are part of a larger natural system such as a watershed, the evaluation must also consider the cumulative impacts on that system. The impact evaluation is based on the resources and functional values identified as significant in the reports listed in section 33.430.020;

- a. An impact evaluation includes:
  - (1) Identification, by characteristics and quantity, of the resources and their functional values found on the site;
  - (2) Evaluation of alternative locations, design modifications, or alternative methods of development to determine which options reduce the significant detrimental impacts on the identified resources and functional values of the site; and
  - (3) Determination of the alternative that best meets the applicable approval criteria and identify significant detrimental impacts that are unavoidable.
- b. An impact evaluation for a violation includes:
  - (1) Description, by characteristics and quantity, of the resources and functional values on the site prior to the violation; and
  - (2) Determination of the impact of the violation on the resources and functional values.
2. Construction management plan. Identify measures that will be taken during construction or remediation to protect the remaining resources and functional values at and near the construction site and a description of how undisturbed areas will be protected. For example, describe how trees will be protected, erosion controlled, construction equipment controlled, and the timing of construction; and
3. Mitigation or remediation plan. The purpose of a mitigation or remediation plan is to compensate for unavoidable significant detrimental impacts that result from the chosen development alternative or violation as identified in the impact evaluation. A mitigation or remediation plan includes:
  - a. Resources and functional values to be restored, created, or enhanced on the mitigation or remediation site;
  - b. Documentation of coordination with appropriate local, regional, special district, state, and federal regulatory agencies;
  - c. Construction timetables;
  - d. Operations and maintenance practices;
  - e. Monitoring and evaluation procedures;
  - f. Remedial actions for unsuccessful mitigation; and
  - g. Information showing compliance with Section 33.248.090, Mitigation and Restoration Plantings.

# Adopted Report, August 24, 2005

## **Commentary**

### **33.430.250 Approval Criteria**

A. The only change to this section is removal of "roads" and replacement with "rights-of-way." A road is a right-of-way, and since the *Zoning Code* does not have a definition for "road" and since there are other examples of a right-of-way that are subject to this approval criteria (such as light rail lines), right-of-way is an appropriate and more accurate term.

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## **33.430.250 Approval Criteria**

An environmental review application will be approved if the review body finds that the applicant has shown that all of the applicable approval criteria are met. When environmental review is required because a proposal does not meet one or more of the development standards of Section 33.430.140 through ~~170~~ .190, then the approval criteria will only be applied to the aspect of the proposal that does not meet the development standard or standards.

**A. Public safety facilities, ~~roads~~, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments.** Within the resource areas of environmental zones, the applicant's impact evaluation must demonstrate that all of the general criteria in Paragraph A.1 and the applicable specific criteria of Paragraphs A.2, 3, or 4, below, have been met:

1. General criteria for public safety facilities, ~~roads~~ rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments;
  - a. Proposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values of other practicable and significantly different alternatives including alternatives outside the resource area of the environmental zone;
  - b. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;
  - c. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;
  - d. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and
  - e. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.
2. Public safety facilities. The public benefits of the proposal outweigh all significant detrimental impacts;
3. ~~Roads~~ Rights-of-way, driveways, walkways, outfalls, and utilities;
  - a. The location, design, and construction method of any outfall or utility proposed within the resource area of an environmental protection zone has the least significant detrimental impact to the identified resources and functional values of other practicable alternatives including alternatives outside the resource area of the environmental protection zone;

# Adopted Report, August 24, 2005

## Commentary

There are no changes proposed for the next 5 pages.

**Note:** Portland Parks and Recreation has asked if there is a way to review and approve a trail "corridor" within which the actual trail will be constructed, instead of an exact location for the trail. In many cases topographical maps are very inaccurate. But because vegetation clearance is not allowed until the project is approved, the actual location of the trail through heavily vegetated areas cannot be determined until the project has received approval and vegetation clearing begins. The corridor proposal can show potential vegetation removal and a finished maximum trail width through the corridor. The approval can specify a width and maximum amount of clearance within the corridor, ensuring that the final trail will still be limited to a certain size as is currently approved through land use reviews.

For example, Portland Parks and Recreation received approval for a trail through a small park, beginning and ending on public right-of-ways. One end of the trail was approved to go straight across a small hill to intersect with the street, but when the vegetation was cleared next to the street a wide and deep drainage ditch was discovered. To avoid the drainage ditch and follow the curve of the hill out to the street would require a modification to the approved land use review, a Type II process that would take a minimum of 8 weeks.

This approach will provide a limited amount of flexibility to trail construction staff, so that when vegetation is cleared and accurate topography is revealed, the trail can be placed in the location that makes the most sense without needing to be re-reviewed to comply with the land use approval. No changes are proposed to Chapter 33.430 to implement this suggestion; rather, Portland Parks and Recreation staff will request trail corridor approval in future land use review applications.

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- b. There will be no significant detrimental impact on water bodies for the migration, rearing, feeding, or spawning of fish; and
  - c. Water bodies are crossed only when there are no practicable alternatives with fewer significant detrimental impacts.
4. Land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments:
- a. Proposed uses and development must be outside the resource area of the Environmental Protection zone except as provided under Paragraph A.3 above. Other resource areas of Environmental Protection zones must be in environmental resource tracts;
  - b. There are no practicable arrangements for the proposed lots, tracts, roads, or parcels within the same site, that would allow for the provision of significantly more of the building sites, vehicular access, utility service areas, and other development on lands outside resource areas of a conservation zone; and
  - c. Development, including building sites, vehicular access and utilities, within the resource area of a conservation zone must have the least amount of detrimental impact on identified resources and functional values as is practicable. Significantly different but practicable development alternatives, including alternative housing types or a reduction in the number of proposed or required units or lots, may be required if the alternative will have less impact on the identified resources and functional values than the proposed development.
- B. Resource enhancement projects.** In resource areas of environmental zones, resource enhancement projects will be approved if the applicant's impact evaluation demonstrates that all of the following are met:
1. There will be no loss of total resource area;
  2. There will be no significant detrimental impact on any resources and functional values; and
  3. There will be a significant improvement of at least one functional value.
- C. Public recreational facilities.** In resource areas of environmental zones, public recreational trails, rest points, view points, and interpretative facilities will be approved if the applicant's impact evaluation demonstrates that all of the following are met:
1. Proposed development locations, designs, and construction methods are less detrimental to identified resources and functional values than other practicable and significantly different alternatives;
  2. The public benefits of the proposal outweigh all significant detrimental impacts;
  3. Areas disturbed during construction, that do not contain permanent development, will be restored with native vegetation that is similar to the vegetation existing on the site and found on the *Portland Plant List*; and
  4. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed.

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**D. Modification of zone boundaries.** Modifications of environmental zone boundaries that reflect permitted changes in the location or quality of resource areas will be approved upon finding that the applicant's statement demonstrates that either Paragraph D.1 or D.2 below are met. For the minor modification of environmental zone boundaries based on a more detailed site specific environmental study, the applicant's impact evaluation must demonstrate that Paragraph D.3 below is met:

1. Successful mitigation. An approved mitigation plan has been successful and a new, restored, or enhanced resource exists which, depending on its degree of significance, should be included in either the resource area of an Environmental Conservation zone or the resource area of an Environmental Protection zone; or
2. Approved loss of resource area. All of the following must be met:
  - a. All approved development in a resource area has been completed;
  - b. All mitigation required of this development has been successful; and
  - c. The identified resources and functional values at the developed site no longer exist, or have been subject to a significant detrimental impact.
3. The proposed environmental zone line location accurately reflects the location of the significant or highly significant resources and functional values on the site, plus 25 feet of transition area. The significant or highly significant resources are identified in the Resource Site Inventory of the relevant Environmental Study Report, see 33.430.020.

**E. Other development in the Environmental Conservation zone or within the Transition Area only.** In Environmental Conservation zones or for development within the Transition Area only, the applicant's impact evaluation must demonstrate that all of the following are met:

1. Proposed development minimizes the loss of resources and functional values, consistent with allowing those uses generally permitted or allowed in the base zone without a land use review;
2. Proposed development locations, designs, and construction methods are less detrimental to identified resources and functional values than other practicable and significantly different alternatives;
3. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;
4. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;
5. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and
6. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

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**F. Other development in the Environmental Protection zone.** In Environmental Protection zones the applicant's impact evaluation must demonstrate that all of the following are met:

1. All sites within the Portland city limits, in which the proposed use or development is possible, are also in the resource areas of Environmental Protection zones;
2. Of these sites, development on the proposed site would have the least significant detrimental environmental impact;
3. There is a public need for the proposed use or development;
4. The public benefits of the proposed use or development outweigh all significant detrimental impacts;
5. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;
6. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;
7. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and
8. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

**G. Corrections to violations.** For corrections to violations of this Chapter the application must meet all applicable approval criteria stated in subsections A through F above, and paragraphs 1, 2.b and 2.c, below. If these criteria cannot be met, then the applicant's remediation plan must demonstrate that all of the following are met:

1. The remediation is done in the same area as the violation; and
2. The remediation plan demonstrates that after its implementation there will be:
  - a. No permanent loss of any type of resource or functional value;
  - b. A significant improvement of a least one functional value; and
  - c. There will be minimal loss of resources and functional values during remediation until the full remediation program is established.

### **33.430.260 Performance Guarantees**

The Director of BDS may require performance guarantees as a condition of approval to ensure mitigation or remediation. See Section 33.700.050, Performance Guarantees.

### **33.430.270 Special Evaluation by a Professional**

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A professional consultant may be hired to evaluate proposals and make recommendations if the Director of BDS finds that outside expertise is needed due to exceptional circumstances. The professional will have expertise in the specific resource or functional value or in the potential adverse impacts on the resource or functional value. A fee for these services will be charged to the applicant in addition to the application fee.

### **33.430.280 Modifications Which Will Better Meet Environmental Review Requirements**

The review body may consider modifications for lot dimension standards or site-related development standards as part of the environmental review process. These modifications are done as part of the environmental review process and are not required to go through the adjustment process. Adjustments to use-related development standards (such as floor-area ratios, intensity of use, size of the use, number of units, or concentration of uses) are subject to the adjustment process of Chapter 33.805. In order to approve these modifications, the review body must find that the development will result in greater protection of the resources and functional values identified on the site and will, on balance, be consistent with the purpose of the applicable regulations. For modifications to lot dimension standards, the review body must also find that the development will not significantly detract from the livability or appearance of the area.

## **Natural Resource Management Plans**

### **33.430.310 Purpose**

Natural resource management plans provide an alternative to case-by-case environmental reviews. These plans provide the means to evaluate the cumulative effects of development and mitigation proposed at different times and in different places within the same large ecosystem. These plans are of particular value in areas of multiple ownership. These plans also provide opportunities for coordination with, or joint adoption by, other local governments; special districts; and regional state, and federal agencies.

### **33.430.320 Scope**

Natural resource management plans must cover large ecosystems such as a forests, creeks, sloughs, or watersheds. These plans must address all resources and functional values conserved and protected by environmental zones within the plan boundaries. The plan must also address all significant detrimental impacts of uses allowed by the plan.

### **33.430.330 Procedure**

Adoption and amendment of natural resource management plans is a legislative procedure. Whenever natural resource management plan provisions conflict with other provisions of this chapter, the natural resource management plan provisions supersede. Non-conflicting provisions supplement the provisions of this chapter.

### **33.430.340 Components**

The applicant must submit a natural resource management plan with the following components:

- A.** Management objectives to maintain or enhance resources and functional values;
- B.** Lists of allowed and prohibited uses;

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- C. Maps of areas where these uses are allowed and prohibited;
- D. Types of mitigation or enhancement required;
- E. Maps of areas reserved for these mitigation or enhancement actions;
- F. Timetables for development, mitigation, and enhancement; and
- G. Procedures and criteria for approving uses.

### **33.430.350 Approval Criteria for Adoption and Amendment.**

A natural resource management plan, or an amendment to a natural resource management plan, will be approved if it meets the following approval criteria:

- A. Compliance with Sections 33.430.310 through 350;
- B. Compliance with Statewide Planning Goals and the Portland Comprehensive Plan; and
- C. If the natural resource management plan is approved as part of a plan district, the criteria for adoption of plan districts that are in Section 33.500.050 are met.

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## **Commentary**

### **Corrections to Violations of This Chapter**

The proposed changes to the environmental violation enforcement regulations are intended to establish a simpler, timely, and more proportional process for review and remedy of an environmental violation. The revised process is also intended to provide deterrence to those who would willingly choose to violate the regulations rather than apply for a permit.

The revised process establishes different review, remedy and penalty procedures depending on the nature of the activity undertaken without a permit. The stakeholder group addressing violations has recommended that the land use review process should not be used as the punishment, but that the process for remedy of a violation should not be any simpler or easier than the process that would have been required to review the activity if the violator had applied for a permit.

The stakeholder group concluded that no penalty should be assessed for first-time violators who submit an application to respond to the violation within 30 days, but that delayed responses and repeat violators should be charged a penalty. The Bureau of Planning agrees with this recommendation but also recommends that a penalty be assessed in such instances where a Type III review is required to remedy the violation. Staff feels that a penalty may be warranted in such cases to adequately deter the most serious violations.

### **33.430.405 Correction Options**

This proposed section would provide several options for correction of environmental violations. The options are:

1. Remove the illegal development;
2. Meet the standards of this chapter; or
3. Go through environmental review.

For violations that include tree removal the correction options are limited, based on the size and species of trees removed. This subsection describes the options available.

#### **A. When these options may be used.**

The stakeholder group spent many hours discussing violations involving tree damage and removal. Trees are very important to the citizens of Portland and the functions provided by trees, especially large trees, are not easily replaced once damaged or destroyed. In addition, remediation for damage or loss of trees does not replace tree function for many years, so it is important to discourage such activities unless approved through appropriate permitting processes. The group reviewed existing exemptions and standards and recommended that if more than one tree is illegally removed or if certain significant species are removed, a higher level of review should be required to determine appropriate remediation.

At the Planning Commission hearing, the BDS Code Compliance group proposed that the maximum limit on tree removal should be based on diameter inches rather than number of trees to maintain consistency with existing tree regulations in this chapter, and to be consistent with the proposed remediation. The proposed language reflects this change.

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## **Corrections to Violations of This Chapter**

### **33.430.400 Purpose**

The purpose of Sections 33.430.400 and .405 is to ensure the timely restoration and remediation of natural resources and functional values that have been degraded due to a violation of this chapter.

These sections establish a process to determine which review requirements will be applied to remedy a violation that takes place in the environmental overlay zone. The type of review required depends on the circumstances of the violation. Section 33.430.405 details methods for correcting such violations and Title 3 of the City code details the enforcement penalties.

### **33.430.405 Correction Options**

Applicants must choose one of the following options to correct environmental code violations.

#### **A. When these options may be used.**

1. If all of the following are met, the applicant may choose Option One, Option Two, or Option Three:
  - a. Tree removal:
    - (1) No more than 12 diameter inches of trees have been removed; or
    - (2) No more than one of the following has been removed:
      - A Madrone 4 inches or less;
      - A Garry Oak 4 inches or less; or
      - A Pacific Yew 2 inches or less;
  - b. The proposal will remove all illegal development; and
  - c. The proposal will replant illegal clearing
2. If any of the following apply, the applicant may not use Option One, but may choose either Option Two or Option Three:
  - a. Tree removal. More than 12 diameter inches of trees have been removed;
  - b. More than one of the following has been removed:
    - (1) A Madrone 4 inches or less;
    - (2) A Garry Oak 4 inches or less;
    - (3) A Pacific Yew 2 inches or less;
  - c. Any of the following has been removed:
    - (1) A Madrone larger than 4 inches;
    - (2) A Garry Oak larger than 4 inches; or
    - (3) A Pacific Yew larger than 2 inches.
3. If the applicant cannot meet Options One or Two, Option Three must be used.

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## Commentary

### 33.430.405. Correction Options

A.4. and 5. This language directs violations of land use review conditions of approval to option one for small violations that can be removed or undone. More significant violations should be reviewed through the proper process as described in 33.730.140 because the conditions are related to other approval criteria of the land use review and need to be re-reviewed as part of the whole package that set the condition. It would be inappropriate and inequitable to review the violation out of context of the land use review that set the condition in the first place.

#### **B Option One (Remove the illegal development)**

Both Options One and Two would require more plantings than required under the development standards. Expanded remediation planting would also be required through an environmental review to remedy a violation. The project stakeholder group recommended that a more stringent planting requirement is appropriate remediation for a violation, especially if no penalty fine is imposed.

#### **B. Option One. (Remove and repair)**

The first option allows a plan check review for an environmental violation if the property owner chooses to remove the illegal development and can meet the requirements of this section. If the requirements cannot be met, an environmental review is required.

B.1. The purpose of requiring removal of materials by hand rather than other methods is to limit further damage to the resource.

B.2. When soil has been compacted by the illegal activity it must be tilled -- planting will be much easier and more successfully established.

B.3. This remediation requirement is intended to improve the environmental functions on the violation site by requiring a 2:1 ratio of planting area to disturbed area. If the applicant had applied for the development through the proper process, this standard would not be required. However, the stakeholder group felt that in violation situations, the requirement should be to require not only mitigation for resources lost but also improvement in site conditions. If the illegal development can meet the development standards of 33.430.140 the property owner may apply to retain the work that was done, however this standard would still apply.

B.4. In addition to the replanting requirement for the disturbed area, 3 more trees will need to be planted for illegal tree removal.

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4. If the violation also violates a condition of approval of a land use review and no trees have been removed, the applicant may choose Option One or the process described in Section 33.730.140. The applicant may not choose Options Two or Three.
5. If the violation also violates a condition of approval of a land use review, and trees have been removed, the applicant must use the process described in Section 33.730.140. The applicant may not choose one of the Options in this section.

**B. Option One, Remove and Repair.** This option results in removal of illegal development and replanting and repair of any damage. All of the requirements of this subsection must be met, and the notice and review procedure described in Sections 33.430.410 through 33.430.430 must be followed. Adjustments and modifications to these requirements are prohibited.

1. All items and materials placed in the area of violation are removed using hand-held equipment and no new disturbance area is created;
2. Any soil compaction resulting from the violation is tilled or otherwise broken up to a depth of 6 inches prior to planting; and
3. Violation remediation planting. The area to be planted is the area disturbed by the violation. All of the following must be met:
  - a. The area disturbed by the violation activity must be replanted;
  - b. One tree, 1 shrub, and 5 ground cover plants are required to be planted for every 50 square feet of planting area. Plants must be native and selected from the *Portland Plant List*;
  - c. A second area, equal in size to the area disturbed by the violation activity, must also be replanted as remediation, or 7 additional plants as described in B.3.b. must be planted on the site for every 50 square feet disturbed;
  - d. Any Nuisance or Prohibited Plants listed on the Portland Plant List must be removed from the planting area and within 10 feet of the planting area;
  - e. Trees must be a minimum 1-inch diameter unless they are oak, madrone, or conifer, which may be 3 to 5 gallon size. No more than 10 percent of the trees may be oak or madrone. Shrubs must be a minimum of 2 gallon size. All other species must be a minimum of 4 inch pots; and
  - f. The requirements of Section 33.248.090, Mitigation and Restoration Planting must be met.
4. For violations involving the removal of trees, three native trees must be planted on the site for each tree removed, in addition to other remediation vegetation planted. If any tree removed was a Garry Oak, Madrone, or, Pacific Yew, the replacement trees must be of the same species. Planted trees must be a minimum 1-inch diameter unless they are oak, madrone, or conifer, which may be 3 to 5 gallon size.

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## **Commentary**

### **33.430.405.C Option Two (Retain and mitigate)**

This option is used if the illegal development meets the standards and the property owner wants to keep the work that was done. Under normal circumstances, a property owner would check to see if the proposed development can meet the development standards. If yes, the development can be approved through a plan check process. If not, the property owner would either alter the proposal so that it meets the standards or would apply for environmental review. The only difference here is that the property owner does not have the opportunity to alter the proposal, since the work is already done. If the development standards can not be met, environmental review would be required to remedy the violation.

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**C. Option Two, Retain and Mitigate.** This option results in legalizing the illegal development and mitigating for any damage. All of the requirements of this subsection must be met and the notice and review procedure described in Sections 33.430.410 through 33.430.430 must be followed. Adjustments and modifications to these standards are prohibited.

1. The applicable standards of Section 33.430.140 through .190 must be met; and
2. Violation remediation planting. The area to be planted is the area disturbed by the violation. Where development is approved for the area disturbed by the violation, an area of the same size elsewhere on the site must be planted. All of the following must be met:
  - a. The area disturbed by the violation activity must be replanted;
  - b. One tree, 2 shrubs, and 7 ground cover plants are required to be planted for every 50 square feet of planting area. Plants must be native and selected from the *Portland Plant List*;
  - c. A second area, equal in size to the area disturbed by the violation activity, must also be replanted as remediation, or 7 additional plants as described in C.2.b. must be planted on the site for every 50 square feet disturbed;
  - d. Any Nuisance or Prohibited Plants listed on the Portland Plant List must be removed from the planting area and within 10 feet of the planting area;
  - e. Trees must be a minimum 1-inch diameter unless they are oak, madrone, or conifer, which may be 3 to 5 gallon size. No more than 10 percent of the trees may be oak or madrone. Shrubs must be a minimum of 2 gallon size. All other species must be a minimum of 4 inch pots; and
  - f. The requirements of Section 33.248.090, Mitigation and Restoration Planting must be met.
3. For violations involving the removal of trees, three native trees must be planted on the site for each tree removed, in addition to other remediation vegetation planted. If any tree removed was a Garry Oak, Madrone, or, Pacific Yew, the replacement trees must be of the same species. Planted trees must be a minimum 1-inch diameter unless they are oak, madrone, or conifer, which may be 3 to 5 gallon size.

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## Commentary

### 33.430.405.D Option Three (Environmental review)

Initially, the items in this section were numerous and slowly eliminated as the stakeholder group debated the merits of each. One notable item was "a violation that involves multiple City titles." Some group members feel that such violations should be subject to a higher level of review because more than one City title is affected, environmental damage is likely to be greater in these cases, and multiple bureaus need to coordinate a response to the situation. But the majority of stakeholder group members feel that this is an example of using the process as the punishment and in many situations a Type III process is not warranted. Also, there is a commitment from the BDS code enforcement staff to improve coordination with other bureaus. It should be noted that when multiple titles are violated, the property owner may have multiple code requirements to respond to - the land use review is simply a requirement of the *Zoning Code* and there may be other processes that are required by other City titles.

D.2.a. The stakeholder group had proposed three types of violation activities as appropriate for a Type III environmental violation review - tree removal, in-stream work, and repeat violators. The proposal emerged as a result of many stakeholder group discussions, including a review of more than 30 violation case examples. The stakeholder group felt strongly that each of these three items warranted the most stringent review. However, the Planning Commission has suggested some changes regarding repeat violators and they are discussed in the next section.

The changes do not reflect continuing concerns about the process of citing the property owner rather than the actual violator. The Planning Commission validated the continuing practice of citing the property owner because sometimes it is not possible to locate and verify the actual violator. The Planning Commission recommends that the City Council direct code compliance staff to monitor violation situations and develop alternative citation practices. They are concerned that the City may be sending the wrong message to contractors and developers by holding the property owner liable for all activities that occur on land in the owner's possession. As discussed at the Planning Commission hearing, there may be situations where it is possible to cite the contractor, such as when a violation occurs after a permit has been obtained because the contractor is named in the permit. The Planning Commission has asked code compliance staff to monitor situations when the identity of the violator is known. They also.

### 33.430.407 Repeat Violations of this Chapter

At the April 26<sup>th</sup> Planning Commission (PC) work session, the PC engaged in a discussion with Bureau of Planning and BDS Code Compliance staff regarding repeat violators. The PC felt that a Type III process for second time violations was too punitive and asked staff to develop an alternative solution. Select members of the original stakeholder group met to discuss the issue, developed several options, and presented a preferred option to the PC. The option proposes to treat repeat violators the same as first time violators but with the possibility of an escalating penalty as allowed through Title 3. The proposal also includes the formation of a violation committee that will review repeat violation situations to determine the appropriate penalty.

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**D. Option Three, Environmental Review.** This option requires Environmental Review, using the approval criteria and procedures below:

1. Approval criteria. The approval criteria of Subsection 33.430.250.G must be met.
2. Review procedures. Reviews are processed as follows:
  - a. Type III. The following situations require a Type III review:
    - (1) The removal of trees that exceeds the quantity of environmental standard 33.430.140.J.
    - (2) Any development, exterior alteration, or exterior improvement within a wetland, stream channel, drainageway, or waterbody.
  - b. Type II. All other environmental reviews to correct environmental code violations are processed through a Type II procedure.
  - c. All environmental reviews must provide the information required in Section 33.430.240, Supplemental Application Requirements.

## **33.430.407 Recurring Violations of This Chapter**

- A. Recurring violations on a site.** Sites where there have been more than one environmental violation while in the same ownership may be subject to fines under Title 3.
- B. Recurring violations by an individual or business.** Individuals or businesses who have committed more than one environmental violation may be subject to fines under Title 3.

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## Commentary

### Notice and Review Procedure for Violations of This Chapter

#### 33.430.410 Purpose

There have been suggestions and requests to eliminate the notice and review procedures currently required in conjunction with the environmental development standards review process (a.k.a. plan check). A plan check does not legally require notice and review as does a land use review. Sometimes public notification for a plan check is misinterpreted as an invitation for public comment on the plan check and building permit process. Part of the confusion may be associated with posting of notice on the site for which the plan check has been submitted. The only other situation that requires such a posting is a Type III land use review which involves a public hearing process.

The notice and review procedure was added to the Zoning Code in April 1995 through the Environmental Code Streamline Project. Although there was some support from citizens for the procedure, it was not included in the recommendation to the Planning Commission. At the City Council hearing on the Streamline Project citizens asked Council to add the procedure. The Council agreed to add it, with the understanding that it would be evaluated for effectiveness after some period of time.

BDS environmental plan check staff report the following information:

- **False expectations.** While the notification informs neighborhood associations of development that is under review, it sets up false expectations as to the ability to comment or influence a project. Because the plan check process involves application of nondiscretionary standards, there is little ability to affect the project design, size, location, etc. if all standards are being met. And there is no public hearing for the project.
- **Comments/feedback is rarely received for projects undergoing environmental plan check.** The majority of environmental plan checks receive no comments from neighbors or the neighborhood association. People occasionally call with questions about the project, and some send in written comments (one planner can recall receiving three letters in a six year time period). Of all the comments received, none have resulted in changes to a proposed development (again, because the review is based on nondiscretionary standards). In most cases the comments are not related to the development standards, but rather express concern that the site is being developed at all.
- **Inconsistent application of two-track system.** The City has another two-track review system in the *Zoning Code* as part of the design overlay zone. Design review can be avoided in many cases if the nondiscretionary community design standards are met. There is no notification requirement for projects utilizing the nondiscretionary standards (except where 33.218.015.C requires neighborhood contact for larger projects.) There should be consistent application of the two-track system in the *Zoning Code*.

This issue was discussed at the May 10<sup>th</sup> Planning Commission work session. The Planning Commission supported changes to this process but requested the retention of several notification elements: the (continued on page 104)

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## Notice and Review Procedure

### 33.430.410 Purpose

The purpose of this notice and review procedure is to ~~provide for participation by the applicant and the public in the process of permitting~~ notify the public of the permit review process for development proposed in areas having identified significant resources and functional values. ~~Public participation will reduce the chance of avoidable detrimental impacts on resources and functional values.~~

### 33.430.420 When These Regulations Apply

These regulations apply when a building permit or development permit application is requested within the resource area of the environmental conservation zone and is subject to the Development Standards of Section 33.430.110 through ~~.170~~ 190, 33.430.405.B, or 33.430.405.C. These regulations do not apply to building permit or development permit applications for development that has been approved through environmental review.

### 33.430.430 Procedure

Applications for building permits or development permits ~~that qualify under~~ as specified in section 33.430.420 will be processed according to the following procedures:

- A. Application.** The applicant must submit a site plan with an application for a permit. The site plan must contain all information required by 33.430.130, Permit Application Requirements, and any additional information required for a building permit or development permit review.
  
- B. Notice of an request application.**
  1. ~~Mailed a~~ Notice on website. ~~Within one business day of~~ Upon receipt of a complete ~~site plan application~~ application for a building or development permit ~~application~~, the Director of BDS will post a notice of the application on the BDS website and mail a notice of the request to all recognized organizations within 400 feet of the site. The posted notice of request the application will contain at least the following information:
    - A statement that a building or development permit has been applied for that is subject to the Development Standards of Section 33.430.110 through ~~.170~~ 190, 33.430.405.B, or 33.430.405.C.
    - The legal description and address of the site;
    - A copy of the site plan;
    - The place where information on the matter may be examined and a telephone number to call; and
    - A statement that copies of information on the matter may be obtained for a fee equal to the City's cost for providing the copies. ~~and~~
    - ~~A statement describing the comment period.~~

The notice will remain on the website until the permit is issued and administrative decision is made, or until the application is withdrawn.

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## Commentary

### Notice and Review Procedure

#### 33.430.430 Procedure

(continued from page 102)

notice to the neighborhood association via e-mail, and the site posting. The revisions are intended to:

- Keep neighbors informed about permitting activities and projects in their neighborhoods
- Avoid creating false expectations that the City can consider public opposition to proposed projects if the project meets non-discretionary standards.
- Eliminate unnecessary delays in permit processing

The proposed zoning code changes reflect the direction of the Planning Commission. The changes would eliminate the mailed notice and revise the information provided to neighborhood associations to clarify their role in the process and how to participate. The elements of the proposed changes include:

- Post project notice on BDS website. This component of the proposal increases public access to information about proposed projects in the City.
- Replace mailed notices to neighborhood associations with e-mail notification of the internet posting to neighborhood associations. The e-mailed notification would not include the notice as an attachment since many people have difficulty opening attachments and BDS has requested that only information about the posting be e-mailed. Instead, the notification would provide an electronic link to the BDS website posting of information about the proposed project and process. Replacing the mailed notice with an e-mail notification will also make it easier and less costly for neighborhood representatives to forward the information to interested parties.
- Continue posting notice of the Environmental Plan Check application at the project site. This helps keep neighbors informed of permitting and project activities in their neighborhoods. The applicant would continue to be responsible for this posting. The site plan map would continue to be included in the site posting.

NOTE: at the City Council hearing on August 17<sup>th</sup> 2005, Council voted to accept several additional amendments, some generated in testimony. A summary of the amendments for this section:

- retain paper mailing of plan check notice and response to comments
- send the notice to both neighborhood associations and coalition offices

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2. E-mailed notice to recognized neighborhood associations. At the time a notice is posted on the BDS website, the Director of BDS will e-mail information about the internet posting to all recognized neighborhood associations and neighborhood coalition offices within 400 feet of the site. When an e-mail address is not available, the notice will be mailed to the neighborhood association and coalition office.

**C. Posting the site and marking development.** The applicant must post notice information on the site and identify disturbance areas as specified below.

21. Posting notice on the site. The applicant must place a public notice about the request on the site ~~within 24 hours after~~ when the application is deemed complete by the Bureau of Development Services. A posted notice must be placed on each frontage of the site. If a frontage is over 600 feet long, a notice is required for each 600 feet, or fraction thereof. Notices must be posted within 10 feet of a street lot line and must be visible to pedestrians and motorists. Notices may not be posted in a public right-of-way. The posted notice will contain the same information as the ~~mailed notice~~ posted on the internet.

32. Marking proposed development on site. ~~Prior to inspection of the site~~ Within 24 hours of submitting an application for permit the applicant will mark all trees over six inches diameter to be removed on the site and the building and pavement outlines with high visibility tape. The extent of the disturbance area must be marked with orange construction fencing or similar highly visible material. For corrections to violations, the disturbance area and remediation area to be planted must be identified with high visibility tape or similar high visibility material.

**CD. Site inspection.** ~~The Bureau of Buildings~~ A BDS inspector will inspect the site prior to issuance of the permit and will provide the ~~Planning Bureau~~ Director of BDS with one of the following:

1. An inspection report that confirms the accuracy of the site plan and conformance with the applicable development standards; or
2. A check sheet identifying the deficiencies in the plan. Deficiencies must be corrected before a building permit is approved, or they may be addressed through environmental review as described in Sections 33.430.210 through 33.430.280.

~~**D. Notice of intent to approve a permit.** Upon receipt of the Inspector's report indicating that the standards are met, the Director of BDS will mail a notice of intent to approve the permit to all recognized organizations within 400 feet of the site and anyone who has commented on the matter. The notice of request will contain at least the following information:~~

- ~~1. A statement of the intent to approve a permit.~~
- ~~2. The legal description and address of the site;~~
- ~~3. A copy of the site plan; and~~
- ~~4. A statement indicating where and how to respond with objections.~~

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## **Commentary**

### **33.430.430 Procedure (continued)**

The changes to E through G further clarify that interested persons may not object to a plan check application, but they may identify errors or compliance issues with development standards.

See the note at the bottom of page 104 for City Council amendments.

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**ED. Objections Comments.** Any interested person may ~~object~~ comment ~~to~~ on the approval of a permit application by writing and specifically identifying errors or concerns non-compliance with development standards. ~~Objections must be received within 14 days of the mailing date of the notice of intent to approve the permit.~~

**F. ~~When no objection is received.~~** If ~~no one~~ objects within the 14 day comment period, the Director of BDS will approve the permit if it meets all applicable standards and regulations of the *Zoning Code*.

**GE. Response to objections comments.** If an ~~objection~~ comment is received the Director of BDS will respond in writing or in a manner suitable to the comment. ~~within 14 days of the end of the initial 14 day comment period.~~ The ~~written~~ response will specifically address each comment ~~or objection~~ that concerns compliance with the development standards of Section 33.430.140 through ~~.170.190~~. The Director of BDS will recheck permits for compliance with development standards and approve the permit if compliance is reaffirmed or when identified deficiencies are corrected, and when all applicable standards and regulations of the *Zoning Code* are met.

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## Commentary

### 33.910 Environment-Related Definitions

**Disturbance, Disturbance Area.** The definition of disturbance area is clarified by adding definitions for temporary and permanent disturbance. This was felt to be important by several of the project stakeholder groups. Staff agrees.

In addition, staff proposes two more terms to the environmental definitions section -- "disturbance" and "pruning."

Currently the regulations include a definition for disturbance area but no definition for disturbance. In addition, there were many stakeholder discussions (primarily in the context of environmental violations) about how to define and measure vegetation damage and removal. In the end, it was felt to be clearest simply to include vegetation clearing and related activities within the definition of "disturbance".

**Pruning.** Various stakeholders that contributed to this project (i.e., City Urban Forestry staff, Fire Bureau staff, members of the stakeholder group addressing environmental violations) suggested that a definition of the term "pruning" is necessary to help property owners understand the purpose of pruning, and to specifically note that tree topping is not pruning and is considered destruction of a tree.

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## 33.910 Environment-Related Definitions

**Disturbance.** An action that causes an alteration to soil or vegetation. The action may create temporary or permanent disturbance. Examples include development, exterior alterations, exterior improvements, demolition and removal of structures and paved areas, cutting, clearing, damaging, or removing native vegetation.

### **Disturbance Area**

~~An~~ The area which contains where all temporary and permanent disturbance occurs. development, exterior improvements, and staging and storage areas on the site, both existing and proposed. For new development the disturbance area must be contiguous. Native vegetation planted for resource enhancement, mitigation, remediation, and agricultural and pasture lands is not included. ~~For Section 33.430.150, Standards for Utility Lines, only the proposed development is included.~~ The disturbance area may contain two subareas: the permanent disturbance area and the temporary disturbance area:

- **Permanent Disturbance Area.** The permanent disturbance area includes all areas occupied by existing or proposed structures or exterior improvements. The permanent disturbance area also includes areas where vegetation must be managed to accommodate overhead utilities, existing or proposed non-native planting areas, and roadside areas subject to regular vegetation management to maintain safe visual or vehicle clearance.
- **Temporary Disturbance Area.** The temporary disturbance area is the portion of the site to be disturbed for the proposed development but that will not be permanently occupied by structures or exterior improvements. It includes staging and storage areas used during construction and all areas graded to facilitate proposed development on the site, but that will not be covered by permanent development. It also includes areas disturbed during construction to place underground utilities, where the land above the utility will not otherwise be occupied by structures or exterior improvements.

**Pruning.** The cutting away or limbing of tree or shrub branches. Pruning does not including the removal of any portion of the top of the tree, sometimes referred to as “topping.” Topping a tree is considered destruction of the tree.

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## Commentary

### 33.910 Environment-Related Definitions (continued)

**Resource Enhancement.** The proposed change to the definition of resource enhancement is to facilitate site enhancement work involving replacement of one ecosystem type with another in an attempt to create a more sustainable ecology. Portland's Bureaus of Environmental Services and Parks and Recreation have emphasized the importance of this approach as an appropriate restoration tool for some City natural areas. The term that applies to the goals of this work is "desired future conditions," and the intent is to replace functions and values so that the site better reflects the surrounding ecological and microclimate conditions.

**Vegetation** is specifically intended to include all plants, including trees, shrubs and ground cover plants.

**Vegetation Maintenance** is introduced as an alternative to "clearing" and refers to cutting back plants that may have overgrown an area that receives periodic maintenance.

**Developed portion of ROW.** This is a clarification intended to help with exemption 33.430.080.D.4.

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**Resource Enhancement.** The modification of resources or functional values. This may include the short-term loss of resources or functional values, to achieve improved the quality or quantity of the resource or functional values in the long-term or for future desired conditions. It can include actions that result in increased animal and plant species, increased numbers of types of natural habitat, and/or increased amount of area devoted to natural habitat. It may also include improvements in scenic views and sites, increased capacity for stormwater detention or infiltration, increased or improved floodplain function, changes in water quantity or quality, changes in ecosystem type, or other improvements to resources or functional values. A resource enhancement project must result in no loss of any resource or functional values, and the gain of at least one a net gain in total functional value and improvement in the quality or quantity of resources on the site.

**Vegetation.** All types of vegetation, including trees, shrubs, forbs, grasses, and other plants.

**Vegetative Maintenance.** Control of vegetation that encroaches or grows into public pathways or public drainageways and where maintenance is required for public safety. The control methods may include vegetation trimming or removal.

**Viewing Area.** Part of a site developed for educational or public viewing purposes. The viewing area may be hard surfaced or decking, or within a structure such as a duck blind.

**Developed portion of right-of-way.** Those portions of a right-of-way that contain development, including retaining walls or other structures, vehicle travel lanes, parking and loading areas, curbs, landscape strips, sidewalks, shoulders, other paved or graveled areas, and other areas used for bicycle or pedestrian traffic. It does not include natural geologic forms or unimproved land.

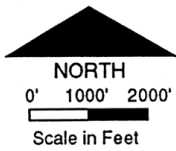
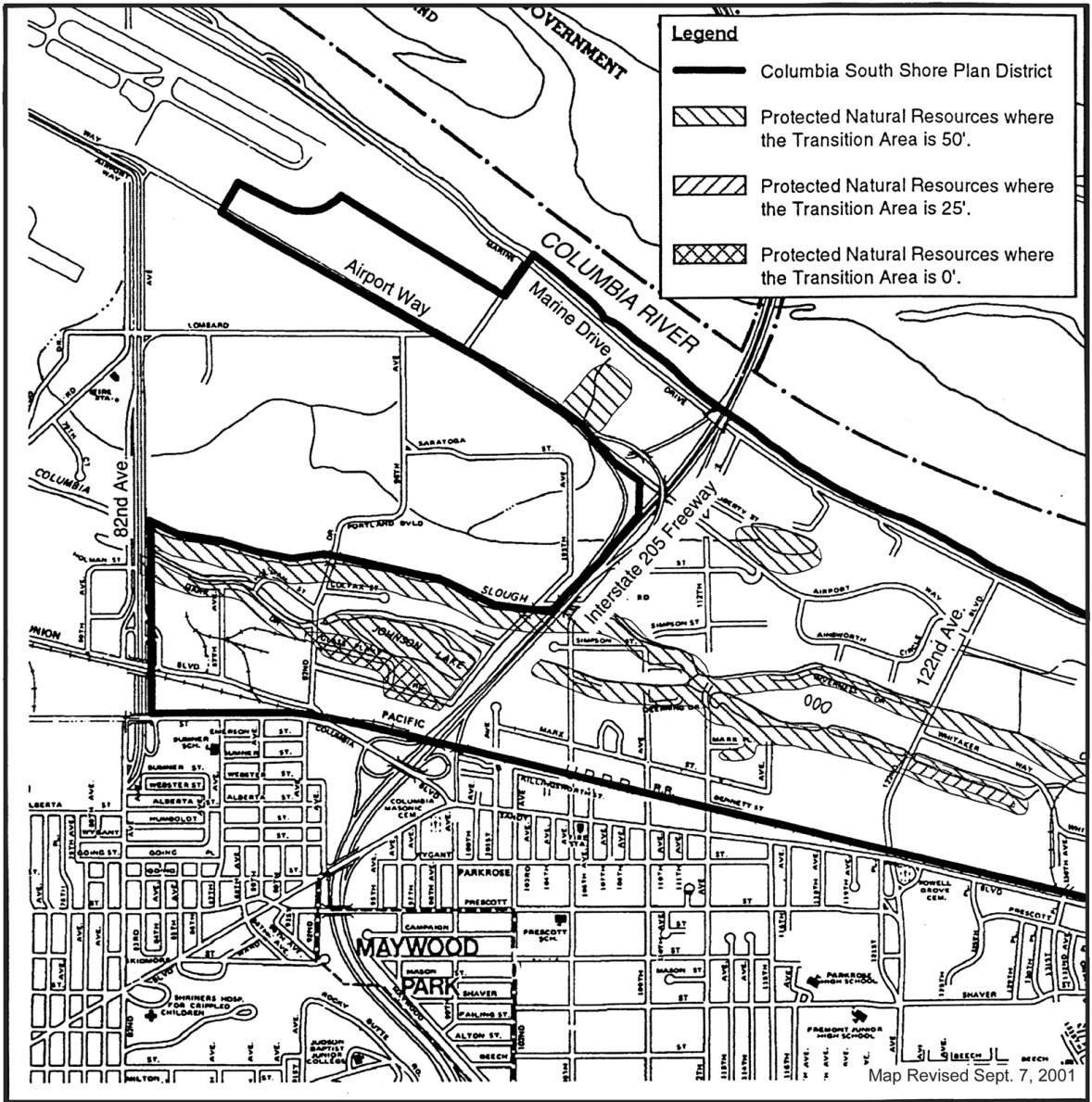
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## **Commentary**

### **Map 515-5 Map 1 of 2**

These maps show the special transition areas for the environmental zones in the Columbia South Shore Plan District. All of the maps of this plan district were converted from hand-drawn maps to Geographic Information System maps, except for these two. The information the maps provide is not changing, the maps are simply being converted to GIS maps so that the appearance of the maps matches all of the other maps in the chapter and also matches the maps available by computer. Only map 1 of 2 is shown here to reduce the number of pages in the document.

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— Columbia South Shore Plan District Boundary

**Map 515-5**  
**Environmental**  
**Transition Areas**  
Map 1 of 2

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## **Regulatory Impact Assessment for the Environmental Code Improvement Project**

The Impact Assessment process is a subset of the Model Process for Consideration and assessment of Land Use and Development Actions. As part of the steps required for determining the worth of any Land Use process, the questions listed on the First and Second Stage Assessment should be adequately addressed.

### The Model Process for Impact Assessment

The Impact Analysis Workgroup developed a model process for impact assessment. Development of the model was part of the 2002-2003 Regulatory Improvement Workplan. The model recommends a two-stage assessment for all legislative projects; each stage includes a set of questions to be addressed.

The first stage is part of the initial phase of a project, and should be incorporated into the scoping, problem definition, and other early project steps. The second stage is part of the development and analysis of a project, and includes considerations of alternatives.

### First Stage Assessment

The model process recommends that the following questions be addressed in the initial phases of any legislative project:

#### *1. What is the issue or problem we are trying to address?*

Over the past few years the Bureau of Planning has heard from City staff, decision-makers, and community stakeholders that parts of the Environmental Zone chapter of the Zoning Code are unclear, overly complex, and costly to implement. The Bureau also heard that zoning code regulations and review application processes are a barrier to resource enhancement projects. As part of the City's regulatory improvement program, the Environmental Code Improvement Project is intended to clarify, simplify, and streamline existing regulations and processes so that they are more efficient, equitable, and cost-effective. One key element of the project involves revising the environmental violation review process. This project task was mandated by City Council as a high regulatory improvement priority.

*Is there a mandate (state or federal) that requires a regulation or other non-regulatory response--and is there clear authority for its adoption?*

This project is intended to clarify, simplify, and streamline existing regulations and processes as part of the City's regulatory improvement initiative. There is no additional mandate for the project.

#### *2. What are the intended or desired outcomes?*

The project is intended to:

- Clarify the existing environmental zoning regulations including applicability, which activities are exempt, and which activities are allowed subject to standards or approval criteria.

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- Provide more streamlined review options for some projects, while ensuring that the regulations continue to conserve and protect important natural resources.
- Reduce the public and private costs for certain project reviews, and to increase certainty and equity for project applicants and property owners.
- Encourage improvement of site conditions over time.

*What community goals or aspirations are we trying to achieve?*

The project will strive to maintain community and city commitments to protect significant resources while providing more efficient, timely, and cost-effective processes for some development projects, and remediation of environmental violations. The project will also reduce the cost and time for review of resource enhancement projects, public recreational trail projects, and small stormwater outfalls and right-of-way projects. The project is also intended to foster a public perception that the program improvements make the program more fair and equitable.

*How will the outcomes advance and support the City's Comprehensive Plan?*

The project is in compliance with and supports all applicable elements of the comprehensive plan (see attached ordinance and findings).

*3. Is the issue of sufficient magnitude to justify developing new regulations or other non-regulatory tools?*

This project is intended to address a number of issues and problems with the current program that are of sufficient magnitude to warrant the proposed amendments. Examples of such issues and problems include ambiguity in code language, undue complexity, cost and time for certain types of project reviews, and an unfair and ineffective process for addressing environmental violations. The environmental zoning program is important to the City and it is also important that the program is efficient, equitable and cost-effective.

*Is the issue just the "crisis du jour" or something more substantial?*

This project is not crisis-driven. Rather, it is the result of a systematic, collaborative, problem-solving process. The proposal reflects the participation of numerous City and community stakeholders and will provide a significant improvement to existing regulations.

*4. What entities will be affected by the potentially proposed policies, requirements and/or regulations?*

The project will affect multiple city bureaus and community stakeholders in the following ways:  
Bureau of Development Services

- Land Use Services and Planning and Zoning sections. Staff expects there to be a reduction in the number of environmental reviews for development proposals because more projects will be able to meet the new development standards and be processed through the more streamlined plan check process. There will also be fewer Type III reviews for environmental violations because the tiered process will allow most environmental violations to be reviewed through a plan check or Type II process. With the reduction in environmental review cases, there will be an increase in the number of environmental plan checks reviewed. This results in a

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case load shift from the land use review section to the planning and zoning section of BDS. There will likely be an overall reduction in the number of projects that need review because some exemptions have been expanded which will completely remove the need for a permit for some limited projects.

- Compliance Services section: The project will establish a new tiered review process for review of environmental violations, new administrative rules relating to repeat violations, and a new policy to promote outreach and education to prevent and remedy violations. Most violations will now be reviewed through a plan check or Type II process rather than a Type III process. These changes will:
  - increase staff time spent with violators to provide educational information, determining which review process is required for specific violations, and working in TRACS to monitor and/or determine if a repeat violation situation exists.
  - decrease staff time spent trying to bring a site into compliance, attending pre-application conferences and Type III hearings, and monitoring cases for completion of reviews and required remediation.

NOTE: In the long term, the project should facilitate a reduction in the total number of violation cases as staff continues to work with property owners and violators and as additional penalties are imposed to deter repeat situations.

## Other City Bureaus

The project will clarify and broaden exemptions for repair and maintenance activities pertaining to trails and drainage district facilities, and will reduce the time and cost of reviews for certain public projects including some types of recreational trails, some right-of-way improvements, and resource enhancement projects. The project will also reduce the amount of time these bureaus spend participating in environmental land use reviews.

## Private property owners, businesses, trail organizations, watershed councils and friends groups, and other community stakeholders

- Reduced cost and time for permitting of specific projects including resource enhancement projects, recreational trails, stormwater outfalls and small right-of-way projects, and alterations to existing development.
- Enhanced access to information about pending Environmental Plan checks as a result of new web postings and electronic mail notifications to neighborhood representatives.
- Additional allowances for outdoor uses such as vegetable gardens and play areas
- More limited ability to appeal certain decisions as some project reviews will shift to the non-discretionary plan check process because the process type is reduced;
- Inclusion in an advisory committee to help determine appropriate penalty fine for repeat situations.

*Are there existing regulations and non-regulatory tools that affect the same entities?*

*Are there existing policies, requirements and/or regulations that are duplicative, contradict, or overload the existing regulatory framework?*

Staff made an effort to review related policies, requirements and regulations to ensure that there would not be additional duplications or contradictions between existing city rules. The project will also reduce existing duplication between existing City Codes. For example, the adoption of

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development standards for small stormwater outfalls increases the reliance on the Stormwater Management Manual and decreases reliance on the Zoning Code for alternatives analysis.

## *5. Why should this be a priority for action?*

Upon adoption the project will make the environmental zoning program work better for property owners, community stakeholders, and City bureaus. The changes will make the program more efficient, equitable and cost-effective, and while continuing to protect important resources and encouraging enhancement of site conditions over time.

## *How will the City staff and fund the project?*

It is not anticipated that there will be a need to increase staff or funding to support the project. There may be a need to shift some resources between sections of the Bureau of Development Services depending on the magnitude of the shift from environmental reviews to plan checks for development projects and violation reviews.

## **Second Stage Assessment**

The Second Stage Assessment consists of the following steps: Project Development and Analysis; Release of the Proposal including Impact Assessment; Consideration of the Proposal; and finally Adoption and Implementation. During the Second Stage Assessment, in addition to updating information prepared in the First Stage Assessment, several key questions are addressed. These questions are addressed under the specific proposals within the Background and Commentary sections for those specific items.

## *Question 1: What regulatory and non-regulatory alternatives were considered?*

Since the main purpose of this project is “regulatory improvement” the majority of the research and analysis has focused on clarifying and streamlining existing environmental zoning regulations in Title 33. No changes to titles other than Title 33 are proposed. Additional administrative rules are being proposed to guide the process for potential assessment of penalties for recurring violations. Examples of non-regulatory components of the proposal include providing additional outreach and education to property owners, tracking and monitoring effects of new standards on project proposals.

## *Why is the proposal the preferred solution/response?*

The proposal reflects many hours of stakeholder discussion, staff research, and Planning Commission deliberations. This discussion problems, goals, criteria and evaluation of different solutions that are reflected in the recommended draft.

## *How does the proposal best respond to the objectives and goals identified in the first stage of the project?*

The proposal responds to the multiple goals and criteria identified early in the project for each topic. Key goals and criteria included continued protection of significant resources, efficiency, equity, timeliness, cost-effectiveness and other topic specific items. The proposal responds to these by proposing clearer exemptions, development standards that allow for quicker, less costly review procedures, provisions to facilitate resource enhancement projects, reduce risk of erosion

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and to encourage improvement of site conditions. The project project also includes an environmental violation review process that is tiered to better reflect the severity of the damage, ensure quicker remediation, and no longer uses the land use review process as the punishment.

*Question 2: How were stakeholders and the community consulted throughout the process?*

In January 2004 Planning Bureau project staff convened the first stakeholder group for the Environmental Code Improvement project. Stakeholders included representatives from neighborhood associations, small business and home builder organizations, special districts, friends groups and watershed councils, planning consultants, and other city bureaus. Stakeholder groups were formed for three of the topics addressed by the project: environmental violations review, resource enhancement project review, and public recreational trail project review processes. Working groups consisting of bureau stakeholders were convened for the stormwater outfall and right-of-way topics. The stakeholder and working groups met an average of once every three weeks, and continued through October 2004. For the remainder of the topics project staff coordinated with City bureau staff and stakeholders on an as needed basis. All members of the stakeholder and working groups participated in review of the project report and proposed zoning code changes. In addition, project staff provided briefings and discussion opportunities for the Development Review Advisory Committee (DRAC), the Citywide Land Use Group, and the Stormwater Advisory Committee.

*What were their responses to the proposed changes and the alternatives considered?*

The stakeholder and working groups spent many hours discussing and debating issues and forming compromises to solution concepts. There was majority support for all of the work done within the group (although not everyone agreed with everything all of the time). There was less support for a few proposed changes developed outside the group process including the modified notification requirement for the environmental plan check process and the proposed stormwater outfall standards. The Planning Commission and City staff spent considerable time on these issues and the proposal was modified in efforts to address concern raised.

Overall, the most frequently heard comment relates to the public involvement process. Stakeholder groups expressed appreciation for the early involvement of interested parties, and liked having a broad array of interests represented at the table.

*Question 3: How does the proposed policy, regulation or requirement provide sufficient flexibility to address a variety of circumstances?*

The environmental review process provides flexibility in terms of site design, while the development standards do not - the development standards, which have been in place since 1995, are "clear and objective" because they are part of the building permit process and as such can not include discretion. Development on severely compromised sites may not have as much flexibility in terms of site design, and as such may not be able to meet the development standards. But in most situations, developers can choose to meet the development standards or to submit a proposal for review through the environmental review process, and the choice between the two processes provides "flexibility" in terms of choosing between a more streamlined, faster process or a process that costs a little more but provides more give and take for the development proposal. Since this project includes additional new development standards, the "flexibility" of choices between a streamlined review and a land use review has increased.

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*Question 4: What resources are required to implement the proposal and how will any proposed regulation be enforced?*

The proposed changes to the Zoning Code will become part of the various sections of the environmental chapter including those establishing applicability, exemptions, development standards, notice and review procedures for environmental plan checks, and provisions relating to environmental review. There will likely be a shift in work load from the Case Review section to the Planning and Zoning section; the Land Use Services manager is aware of the potential shift in case loads and will work with staff to shift resources if necessary. There will also be some initial start-up workload for the Compliance Services section in order to establish protocols for implementing the environmental violation review and enforcement procedures.

*Question 5: What are the general benefits of the policy, regulation, or administrative requirement and how do these benefits compare to and balance against the public, private, and community costs?*

The project is an overall “win-win” the project applicants and the community, the City and the environment. The proposal provides for continued protection of protecting the City’s most significant environmental resources in a more efficient, equitable and cost effective manner. The benefits of the environmental regulations will continue to provide protection to the City’s most significant resources while allowing reasonable development that minimizes impacts in resource areas. The proposed streamlining of the regulations will not reduce the level of protection for significant resources. Applicants will have access to streamlined review option for certain projects that can meet new or modified development standards. This will translate to a quicker and less expensive permitting experience. In addition, the project includes revisions that will reduced review time for environmental plan checks and provides clearer regulations that reduce confusion for staff and applicants.

*Question 6: How will the regulation’s impact be monitored to determine effectiveness?*

*What resources are needed to gather and evaluate performance data?*

A TRACS report has already been designed to capture data for stormwater outfall monitoring. Staff will also be exploring ways to evaluate shifts in project applications for other types of projects addressed by the proposal, including periodic check-ins with key bureau staff and stakeholders.

*What should success look like?*

Success would include a relative increase in projects that can meet development standards and be reviewed through a plan check instead of environmental review. Success may also involve an increase in the rate of approvals for various projects including public trails, resource enhancement, small rights-of-way. Success would also include reduced levels of frustration on the parts of project applicants and staff alike.

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## **Ordinance No. 179540**

Amend Portland Zoning Code to clarify, simplify, and streamline Chapter 33.430 *Environmental Zones* and authorize the transfer of in-lieu fees for site enhancement to a watershed revegetation fund (Ordinance, Amend Title 33).

The City of Portland Ordains:

Section 1. The Council finds:

### **General Findings**

1. In April of 1995, the City amended Chapter 33.430 as part of the Environmental Zone Streamline Project to improve the operating efficiency of the environmental zone regulations and to meet periodic review requirements of the LCDC. The improvements included creation of clear and objective environmental development standards and a simplified, non-discretionary review track for project proposals that meet those standards.
2. In July of 1997, the City amended Chapter 33.430 as part of a continuing effort to streamline the environmental zone regulations. The proposed amendments included clear and objective standards for utility connections and stormwater outfalls. The Planning Commission approved only the standards for utility connections to existing utility lines at that time. Stormwater outfall proposals remained subject to the environmental review process, including an analysis to determine which project alternative would have the least significant detrimental impacts on significant resources.
3. In July of 1999, the City adopted the Stormwater Management Manual (SWMM) which includes a "Destination/Disposal Hierarchy" for use in determining what type of stormwater disposal facilities are most appropriate for a specific site and project. Application of the hierarchy requires consideration of different stormwater facility alternatives depending on soil type, slope, and other factors relating to the safety, water quantity, and water quality of individual sites and proposals. As such, the SWMM hierarchy generally duplicates and supercedes the alternatives analysis of the environmental review.
4. In June of 2002, the City Council initiated the Regulatory Improvement Initiative which was the beginning of the Council's charge to establish a process for continuous improvements to the City's regulations, procedures, costs, and customer service. The Mayor's office launched an extensive public outreach program to identify problematic regulations and developed a prioritized list from which to work. Some of the regulations identified as top priority are found in the environmental zoning chapter of the Portland Zoning Code and are included in this project.
5. The Environmental Code Improvement (ECI) project began in November of 2002 and supports and forwards the purposes of the environmental zones to conserve and protect natural resource values and functions, while making the program more efficient, equitable, and cost-effective. The project addresses some of the issues raised during the former Healthy Portland Streams project, as well as a number of additional items.
6. On March 29, 2005 the Planning Commission held a public hearing and received testimony about the project. On April 26<sup>th</sup>, May 10<sup>th</sup>, and June 14<sup>th</sup> the Planning Commission held work sessions to discuss and resolve issues concerning amendments to the environmental violation procedure changes, the stormwater outfall development standards, changes to the environmental plan check notification process, and several proposed clarifications/additions to the exemption section and development standards section. At the end of the June 14<sup>th</sup> work session the Planning Commission voted to recommend the Environmental Code Improvement Project, with revisions, to the City Council for adoption. The Portland City Council held a hearing on August 17, 2005 and received testimony from 9 individuals, including 7 property owners. On August 24<sup>th</sup>, 2005

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- the Portland City Council held the 2<sup>nd</sup> reading and voted to adopt the report with minor amendments.
7. The project amendments to code and procedures will clarify, simplify and streamline Portland's environmental zone regulations primarily by modifying and/or creating new exemptions and development standards. The amendments also include a fee-in-lieu of option in the development standards that apply to development projects for additions to existing development. When additions are proposed the usual process includes environmental review; the proposed modification would allow a streamlined review instead of environmental review in exchange for some site improvements such as nuisance plant removal, or payment of a fee-in-lieu-of site improvements. The fees collected would be directed to the Bureau of Environmental Services Watershed Revegetation group to be used for planting projects within the same watershed. The goals of the revision are to encourage site enhancements such as native plantings, removal of impervious surfaces, or planting stormwater bioswales in exchange for a faster and cheaper review process for building additions that stay within existing disturbance areas.
  8. The establishment of a Watershed Revegetation fund must be authorized by the Council in order to collect and administer the fee-in-lieu-of option. The fee will be spent on revegetation projects on public property in the same watershed as the development that pays the fee.
  9. The amendments also clarify allowances for various maintenance activities and broaden allowances for outdoor uses such as vegetable gardens and pruning of vegetation near structures to reduce risks associated with wildfire. New standards also would provide a streamlined review process for certain public recreational trail projects, small right-of-way projects, and small stormwater outfalls. The proposal also revises the City's process to review and remedy environmental violations. The revised process is more proportional to the violation situation, will remedy the violation more quickly, and will be more cost-effective than the current process. New administrative rules are being developed to guide the assessment of additional fines to discourage repeat violation situations. New public notification procedures for environmental plan checks will be clearer and will eliminate unnecessary permitting delays.

## Statewide Planning Goals Findings

10. State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with the state land use goals.
11. **Goal 1, Citizen Involvement**, requires provision of opportunities for citizens to be involved in all phases of the planning process. Portland Comprehensive Plan findings on Goal 9, Citizen Involvement, and its related policies and objectives also support this goal. The Environmental Code Improvement process has provided numerous opportunities for public involvement:
  - a) In January 2004 Planning Bureau project staff convened the first stakeholder group for the Environmental Code Improvement project. Stakeholders included representatives from neighborhood associations, small business and home builder organizations, , special districts, friends groups and watershed councils, planning consultants, and other city bureaus. Stakeholder groups were formed for three of the topics addressed by the project: environmental violations review, resource enhancement project review, and public recreational trail project review processes. The stakeholder groups met an average of once every three weeks, and continued through October 2004. Staff also consulted with city and community stakeholders on an ad hoc basis for the other project topics
  - b) On September 9<sup>th</sup>, 2004 the Development Review Advisory Committee (DRAC) received a briefing and discussed the project.

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- c) On September 27<sup>th</sup>, 2004 the Citywide Land Use Subcommittee received a briefing and discussed the project.
  - d) On November 30, 2004 the “in-house” draft was mailed to all stakeholder committee representatives and other participants for review and comment.
  - e) On January 24<sup>th</sup>, 2005, the Citywide Land Use Group was briefed for a second time and provided up-to-date information and additional detail about the project.
  - f) On March 1<sup>st</sup>, 2005, Bureau of Planning staff presented an “Environmental Planning 101” overview and participated in a work session with Citywide Land Use Group members. Portland City Council members and their staff were invited and the session was open to the public.
  - g) On March 2<sup>nd</sup>, 2005, a public review draft of the Environmental Code Improvement Project was made available and was distributed to stakeholders, participating or interested City Bureau representatives, and interested individuals.
  - h) On March 29<sup>th</sup>, 2005, the Portland Planning Commission held a public hearing and accepted testimony on the proposed draft report for the Environmental Code Improvement Project. The Planning Commission held three subsequent work sessions to discuss specific topics and resolve issues, and included members of the stakeholder groups in the discussions. At the last work session on June 14<sup>th</sup>, 2005, the Planning Commission unanimously approved the revised report and recommended adoption by the City Council.
  - i) On August 17<sup>th</sup>, 2005, the City Council held a hearing on the Environmental Code Improvement ordinance and received testimony from 9 individuals, including 7 property owners. On August 24<sup>th</sup>, 2005 the Portland City Council held the 2<sup>nd</sup> reading and voted to adopt the report with minor amendments.
12. **Goal 2, Land Use Planning**, requires the development of a process and policy framework which acts as a basis for all land use decisions and assures that decisions and actions are based on an understanding of the facts relevant to the decision. The proposed amendments to the Zoning Code support this goal. Development of the amendments followed established city procedures for legislative actions. Portland Comprehensive Plan findings on Goal 1, Metropolitan Coordination, and its related policies and objectives also support this goal.
13. **Goal 5, Open Space, Scenic and Historic Areas, and Natural Resources**, requires the conservation of open space and the protection of natural and scenic resources. The amendments are consistent with this goal because they continue existing City policy to conserve and protect significant natural resources as identified in City-adopted natural resource inventories, protection plans, and the environmental zone regulations. The amendments will further foster this goal by simplifying review requirements for resource enhancement projects and providing incentives to enhance disturbed sites through a streamlined permit process instead of a costly review process. The amendments also establish a new process that will allow environmental violations to be remediated more quickly than the current process. The amendments do not modify adopted ESEE analyses, zoning maps, or the comprehensive plan. Portland Comprehensive Plan findings on Goal 8, Environment, and related policies and objectives also support this goal.
14. **Goal 6, Air, Water and Land Resource Quality**, requires the maintenance and improvement of the quality of air, water and land resources. The amendments are consistent with this goal because they will make the regulations clearer and easier to implement. The amendments also simplify review requirements for resource enhancement projects and provide incentives to

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- enhance disturbed sites through a streamlined permit process. The amendments further support this goal by clarifying the exemption for removal of nuisance plants to reduce risk of erosion. Portland Comprehensive Plan findings on Goal 8, Environment, and related policies and objectives also support this goal.
15. **Goal 7, Areas Subject to Natural Disasters and Hazards**, requires the protection of life and property from natural disasters and hazards. The amendments are consistent with this goal because they continue to guide development away from steep slopes and floodplains, reduce risk of erosion, and broaden allowances for pruning of vegetation to protect structures that are located in wildfire hazard areas.
  16. **Goal 8, Recreational Needs**, requires satisfaction of the recreational needs of both citizens and visitors to the state. The amendments are consistent with this goal. Public trails have been specifically recognized by the project participants for the recreational, transportation, and public health amenities they provide. The amendments include clearer and broader exemptions for certain trail projects and maintenance activities. Revised development standards will allow additional trail projects to be reviewed through the streamlined environmental plan check process which reduces the time and cost of the review.
  17. **Goal 9, Economic Development**, requires provision of adequate opportunities for a variety of economic activities vital to public health, welfare, and prosperity. The amendments are consistent with this goal because they will reduce the time and cost for review of certain types of project proposals. protecting natural resources. Portland Comprehensive Plan findings on Goal 5, Economic Development, and related policies and objectives also support this goal.
  18. **Goal 10, Housing**, requires provision for the housing needs of citizens of the state. The amendments are consistent with this goal as they include new provisions that will reduce the time and cost of permitting for alterations to existing development such as adding on to an existing home.
  19. **Goal 12, Transportation**, requires provision of a safe, convenient and economic transportation system. The amendments are consistent with this goal as they include new standards that will allow a streamlined review process for certain right-of-way projects. These amendments are expected to enhance the economic viability of some projects. Portland Comprehensive Plan findings on Goal 6, Transportation, and related policies and objectives also support this goal.

## **Metro Urban Growth Management Functional Plan Findings**

20. State land use planning statutes require cities and counties within the Metropolitan Service District boundary to amend comprehensive plans and land use regulations in compliance with the provisions of the Urban Growth Management Functional Plan (UGMFP). Because of the limited scope of the amendments in this ordinance, only the UGMFP Titles addressed below apply.
21. **Title 3, Water Quality and Flood Management Conservation**, calls for the protection of the beneficial uses and functional values of resources within Metro-defined Water Quality Resource Areas and Flood Management Areas by avoiding, limiting or mitigating the impact of development in these areas. Metro has deemed Portland's environmental zoning to be in substantial compliance with Title 3 of the UGMFP. The amendments are consistent with this title in that they maintain the ability of the City's existing environmental zoning program to conserve and protect significant natural resources and to ensure that impacts on significant resources continue to be avoided, minimized and mitigated.
22. **Title 8, Compliance Procedures**, outlines compliance procedures for amendments to comprehensive plans and implementing ordinances. On November 23, 2004 the 45-day notice and 2 copies of the draft report were mailed to DLCD for consideration of the amendments. A copy of the DLCD 45-day notice and one copy of the draft report was mailed to Metro and the Multnomah County Commission on the same date. On February 3, 2005, an update of the first evidentiary hearing date was mailed to DLCD, Metro, and the Multnomah County Commission.

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A copy of the final report with the ordinance and findings that are consistent with state goals and Metro's Functional Plan will be mailed to DLCD, Metro, and the Multnomah County Commission 5 days after the final hearing.

## Portland Comprehensive Plan Goals Findings

23. The City's Comprehensive Plan was adopted by the Portland City Council on October 16, 1980, and was acknowledged as being in conformance with the statewide planning goals by the Land Conservation and Development Commission (LCDC) on May 1, 1981. On May 26, 1995, and again on January 25, 2000, the LCDC completed its review of the City's final local periodic review order and periodic review work program, and reaffirmed the plan's compliance with the statewide planning goals.
24. This ordinance amends the certain portions of the Portland Zoning Code pertaining to environmental zones. The amendments do not change the Comprehensive Plan, official zoning maps, or any property regulated under the Columbia South Shore Plan District environmental regulations or natural resource management plan.
25. During the course of public hearings, the Bureau of Planning, the Planning Commission, and the City Council provided all interested parties opportunities to identify, either orally or in writing, any other Comprehensive Plan goal, policy or objective that might apply to the amendments. No additional provisions were identified. Therefore, the amendments satisfy the applicable existing Comprehensive Plan goals, policies and objectives for the reasons stated below.
26. **Goal 2, Urban Development**, calls for maintenance of Portland's role as the major regional employment and population center by expanding opportunities for housing and jobs, while retaining the character of established residential neighborhoods and business centers. The amendments are consistent with this goal because they add new environmental development standards that expand the use of the streamline process, simplify the review process, and reduce the cost of development review.
27. **Goal 3, Neighborhoods**, calls for preservation and reinforcement of the stability and diversity of the city's neighborhoods while allowing for increased density. The amendments are consistent with this goal because they continue to support the adopted City Economic, Social, Environmental, and Energy (ESEE) analyses. These ESEE analyses evaluated the consequences of allowing, limiting or prohibiting uses that would conflict with identified natural resources, many of which are located within existing neighborhoods. Based on these analyses the City determined the appropriate level of resource protection to apply. Significant natural resources were given limited protection where impacts on development opportunities outweighed the impacts on resources.
28. **Policy 4.3, Sustainable Housing**, calls for encouraging housing that supports sustainable development patterns by promoting the efficient use of land, conservation of natural resources, easy access to public transit and other efficient modes of transportation, easy access to services and parks, resource efficient design and construction, and the use of renewable energy resources. The amendments continue the city's policy to foster efficient use of land and conservation of the natural resources that have been identified in the city's resource inventory..
29. **Objective D**, calls for fostering flexibility in the division of land and the siting of buildings, and other improvements to reduce new development's impacts on environmentally sensitive areas. The amendments support this objective by maintaining

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flexible standards for setbacks and lot sizes to allow placement or clustering of development away from the natural resources on a site. The amendments further support this objective by establishing a new standard to set construction back from resource areas at the rear of a site.

30. **Goal 5, Economic Development**, calls for promotion of a strong and diverse economy which provides a full range of employment and economic choices for individuals and families in all parts of the city. The amendments are consistent with this goal because they continue to implement the ESEE decisions that reflect consideration of the economic impacts of protecting natural resources, and that provide a balance between protection of significant resources and allowing development in key employment areas.
31. **Goal 6, Transportation**, calls for protection of the public interest and investment in the public right-of-way and transportation system by encouraging development of a balanced, affordable and efficient transportation system consistent with the Arterial Streets Classifications and Policies by:
- Providing adequate accessibility to all planned land uses;
  - Providing safe and efficient movement of people and goods while preserving, enhancing, or reclaiming neighborhood livability;
  - Minimizing the impact of inter-regional trips on City neighborhoods, commercial areas, and the City street system by maximizing the use of regional trafficways and transitways for such trips;
  - Reducing reliance on the automobile and per capita vehicle miles traveled;
  - Guiding the use of the city street system to control air pollution, traffic, and livability problems; and
  - Maintaining the infrastructure in good condition.
- The amendments are consistent with this goal in that they establish new standards and an associated streamlined review option for minor street improvements that limit disturbance in areas with significant environmental value.
32. **Goal 7, Energy**, calls for promotion of a sustainable energy future by increasing energy efficiency in all sectors of the city by ten percent by the year 2000. The amendments are consistent with this goal because they support continued implementation of the City's ESEE decisions which reflect an analysis of the energy savings provided by conserving and protecting significant natural resources such as tree canopy and vegetation.
33. **Goal 8, Environment**, calls for maintenance and improvement of the quality of Portland's air, water, and land resources, as well as protection of neighborhoods and business centers from noise pollution. The amendments are consistent with this goal because they clarify portions of the environmental regulations that directly affect land and water quality. They also provide additional streamlined review options for a broader array of projects as long as they are consistent with environmental standards. For example, the amendments will simplify the permitting process for resource enhancement projects and will encourage enhancement of site conditions by offering a streamlined review process for alterations to existing development. The amendments will establish a faster process for remediation of environmental violations.
34. **Policy 8.5, Interagency Cooperation - Water Quality**, calls for continuing cooperation with federal, state and regional agencies involved with the management and quality of Portland's water resources. The amendments support this policy because they are consistent with Title 3

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of the Metro's Urban Growth Management Functional Plan, and because federal and state agencies were appraised of the project goals and outcomes and expressed no concerns.

35. **Goal 9, Citizen Involvement**, calls for improved methods and ongoing opportunities for citizen involvement in the land use decision-making process. The project and the amendments are consistent with this goal because there was early public involvement for all aspects of the project, including collaborative problem definition, goal setting and desired outcomes, development of solution concepts, and early review of documents.
36. **Goal 11 C, Sanitary and Stormwater Facilities**, calls for an efficient, adequate, and self-supporting wastewater collection treatment and disposal system which will meet the needs of the public and comply with federal, state and local clean water requirements. The amendments support this goal because they provide a streamlined review process for certain stormwater outfall proposals that meet clear and objective standards and are consistent with the stormwater management regulations of Title 17 of City Code.
37. **Goal 11 F, Parks and Recreation**, calls for maximizing the quality, safety and usability of parklands and facilities through the efficient maintenance and operation of park improvements, preservation of parks and open space, and equitable allocation of active and passive recreation opportunities for the citizens of Portland. The amendments support this goal because they clarify regulatory exemptions for public trail projects and trail maintenance. The amendments further provide clear and objective standards and a streamlined review option for a broader set of public recreational trail projects. This will reduce the cost and time involved with reviewing certain trail projects while encourage environmentally sensitive trail design.
38. **Goal 11 G, Fire**, calls for the development and maintenance of facilities that adequately respond to the fire protection needs of Portland. The amendments support this goal because they provide additional allowances for the pruning of vegetation that grows close to a structure for those areas of the city that are on the wildfire hazard map.
39. **Goal 12, Urban Design**, calls for the enhancement of Portland as a livable city, attractive in its setting and dynamic in its urban character by preserving its history and building a substantial legacy of quality private developments and public improvements for future generations. The amendments are consistent with this goal because they ensure the continued protection and conservation of Portland's significant natural resources while allowing development that minimizes disturbance and destruction of the resources.

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NOW, THEREFORE, the Council directs:

- a. Adopt the Planning Commission Report and Recommendation on the Environmental Code Improvement Project dated August 17, 2005;
- b. Amend Title 33, Planning and Zoning as shown in Exhibit A, the Planning Commission Report and Recommendation on the Environmental Code Improvement Project, dated August 17, 2005,
- c. Adopt the commentary in the Planning Commission Report and Recommendation on the Environmental Code Improvement Project, dated August 17, 2005, as legislative intent and as further findings;
- d. Authorize the transfer of in-lieu fees for site enhancement to a watershed revegetation fund; and
- e. This ordinance shall be in force and effect September 26, 2005.

Passed by the Council,

Mayor Tom Potter  
Christina Scarzello  
August 17, 2005

**GARY BLACKMER**  
Auditor of the City of Portland  
By \_\_\_\_\_ Deputy

