

**Decision Table M: Willamette River – Miscellaneous Code Amendments Part 2**

This table contains:

- Proposed amendments to the River Environmental overlay zone including exemptions for replacing existing structures and the schedule for maintenance of required mitigation;
- Updates to the supplemental site plan requirements; and
- Proposed amendments to the River Review approval criteria to require no net loss of functions during environmental enhancement actions and to remove the option to purchase credits from a mitigation bank.

**Contents of Decision Packet M:**

- Decision Table M
- Memo M

**Items Marked for Discussion:**

**M1** (Carryover from Jan 10)

Ref #	Comment	Commenter(s)	Topic	Proposed draft	Request(s)	Staff recommendation	Staff rationale	Discuss?	PSC decision
M1 (Carryover from Jan 10)	20885	Susie Lahsene, Port of Portland	Existing Development in the River Environmental Overlay Zone	<b>Zoning code 33.475.040.B.2.d exempts maintenance, alterations, repair and replacement of existing development and structures</b> located above the ordinary high water mark from the river environmental overlay zone regulations. Development and structures below the ordinary high water mark are not exempted and must meet standards or go through River Review.	Allow as an exemption, the replacement of piles, which are located below ordinary high water.	<b>Proposed amendment to allow maintenance, alterations, repair and replacement of existing development and structure located both above and below the ordinary high water mark.</b>	This recommendation (to exempt replacement of existing structures) is consistent with the environmental overlay zones throughout the rest of the city, but not the Willamette River. While there has been concern expressed about allowing replacement of existing structures, BDS indicates that very few replacements occur every year in the Central Reach. Most times, the structure is changed in some way – expanded or moved. However, replacement could be an issue for the Willamette River North Reach, where there are many more in-water structures, and a standard should be reconsidered when planning for the North Reach.	<input checked="" type="checkbox"/>	<input type="checkbox"/> Support staff rec. <input type="checkbox"/> Other
M21		BPS	Maintaining Mitigation Plantings	<b>Zoning code 33.475.440.K is standards for mitigation and requires the mitigation to be maintained for 10 years.</b>	Be consistent with 33.430, Environmental Zones, which requires that mitigation plantings be maintained in perpetuity.	<b>Proposed amendment to meet standards of 33.248.090 which requires any plants that die to be replaced in kind, with no time limit.</b>	The standards of 33.248.090 are in perpetuity, with no end time limit. Therefore, mitigation plantings must be maintained and any that die must be replaced. Using this standard, rather than limiting maintenance to 10 years, is consistent with how mitigation plantings are addressed in the conservation and protection overlay zones – plants must survive or be replanted.	<input type="checkbox"/>	<input type="checkbox"/> Support staff rec. <input type="checkbox"/> Other
M22		BPS	References to Scenic Resources	<b>Zoning codes throughout 33.475 reference maps 480-1 and 480-2, which shows the location of viewpoints and view corridors.</b>	Update 33.475 to reflect changes to mapping of scenic resources and changes to 33.480.	<b>Proposed amendment to change the references to either the Scenic (s) overlay zone or the Central City Scenic Resources Protection Plan.</b>	Changes to 33480, Scenic Resources, include applying a Scenic (s) overlay to all protected view corridors that overlap with River Environmental overlay zone. For other scenic resources, including view corridors that do not overlap river e-zones, the resources will be mapped in the adopted Central City Scenic Resources Protection Plan.	<input type="checkbox"/>	<input type="checkbox"/> Support staff rec. <input type="checkbox"/> Other

Ref #	Comment	Commenter(s)	Topic	Proposed draft	Request(s)	Staff recommendation	Staff rationale	Discuss?	PSC decision
M23 and Memo M pg 7-15		BPS	Supplemental Site Plan Requirements	<b>Zoning code 33.865.040.A summarizes the submittal requirements for a supplemental site plan.</b>	BDS currently provides applicants with a separate check list of submittal requirements. Staff would like to bring the zoning code more into alignment with the updated check list for environmental overlay zone supplemental site plan requirements.	<b>Proposed amendments throughout 33.865.040.A to be consistent with the BDS check list.</b>	The check lists have been updated over time. The Proposed Draft 33.865.040.A was based on the supplemental site plan requirements of 33.430, Environmental Overlay Zones, not on the BDS check list. However, BDS staff use the check list to ensure that applicants provide sufficient information for staff to conduct the review. These updates to do not change the intent of the requirements.	<input type="checkbox"/>	<input type="checkbox"/> Support staff rec. <input type="checkbox"/> Other
M24 and Memo M pg 9	20324	Staci Monroe, BDS	Supplemental Site Plan Requirements	<b>Zoning code 33.865.040 A.1.a. require trees to be shown within the e-zone.</b>  See Volume 2, Park 2 page 227 and 279.	For land use reviews the planner would want the site plan to show existing trees within the entire site, not only in the River Environmental zone.	<b>Proposed amendment to require trees over 3 inches in diameter to be shown on the entire site.</b> (This subsection has been reorder and this is now 33.865.040.A.1.g.)	Title 11 requires trees 3 inches in diameter or large to be shown. This creates consistency between the two applicable zoning codes.	<input type="checkbox"/>	<input type="checkbox"/> Support staff rec. <input type="checkbox"/> Other
M25 and Memo M pg 9	20324	Staci Monroe, BDS	Supplemental Site Plan Requirements	<b>Zoning code 33.865.040.A.c requires depiction of the location, species and size of each shrub and tree to be planted.</b> See Volume 2, Part 2 page 281.	Insert “, using standard landscape graphics for each plant.”	<b>Retain proposed draft version.</b> (This subsection has been reorder and this is now 33.865.040.A.1.f.)	The zoning code requires that each individual tree, shrub or plan be identified by the location of the plant, the species and size and the tree crown cover.	<input type="checkbox"/>	<input type="checkbox"/> Support staff rec. <input type="checkbox"/> Other
M26 and Memo M pg 19	20324	Staci Monroe, BDS	Supplemental Narrative	<b>Zoning code 33.865.040.B.5.a. states that if mitigation credits will be purchased from a City certified mitigation bank, then the mitigation plan must identify the number and type of credits being purchased.</b> See Volume 2, Part 2 page 284.	Delete the reference to a mitigation bank because there is no mitigation in Portland.	<b>Proposed amendment to strike the sentence regarding a mitigation bank.</b>	There are no city approved mitigation banks available for use in Portland. If a mitigation bank is established, it should be determined at that time what it can be used for and the zoning code should be updated accordingly.	<input type="checkbox"/>	<input type="checkbox"/> Support staff rec. <input type="checkbox"/> Other
M27 and Memo M pg 21	20324	Staci Monroe, BDS	Development in the River Environmental Overlay Zone	<b>Zoning code 33.865.100.A.1 states that resource enhancement projects will have no net loss of total resources area and improvement of at least one functional value.</b> See Volume 2, Part 2 page 289.	Unlike chapter 33.430, “significant detrimental impact on resources and functional values” will be allowed for resource enhancement projects.	<b>Proposed amendment to add “There will be no net loss of functional values;”</b> to the list of approval criteria.	Because these approval criteria pertain to resource enhancement projects, there should be no net loss of area or functions and improvement of at least one function.	<input type="checkbox"/>	<input type="checkbox"/> Support staff rec. <input type="checkbox"/> Other

Ref #	Comment	Commenter(s)	Topic	Proposed draft	Request(s)	Staff recommendation	Staff rationale	Discuss?	PSC decision
M28 and Memo M	20324	Staci Monroe, BDS BPS	33.865 Clarifications and Cross References		Add clarifying text and/or cross references throughout 33.865	<b>Proposed amendments to add clarifications and cross reference.</b>			
M29 and Memo M	20324	Staci Monroe, BDS BPS	33.865 Typos		Multiple typos and clerical errors throughout 33.865.	<b>Proposed amendments to fix typos and clerical errors.</b>			
M30 and Memo M		BPS	33.865 Commentary		Update the commentary.	<b>Proposed amendments to make the commentary consistent with amended zoning code.</b>			





Bureau of Planning and Sustainability

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## MEMO M

**DATE:** February 3, 2017

**TO:** Planning and Sustainability Commission

**FROM:** Windy Brooks, City Planner

**CC:** Susan Anderson, Director; Joe Zehnder, Chief Planner; Sallie Edmunds, Central City Planning Manager

**SUBJECT:** Attachment for Decision Table M: Zoning Code 33.865, River Review

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This memorandum contains:

1. BPS staff recommended amendments pertaining to Decision Table M items M22 through M30, which are staff proposed amendments to Proposed Draft zoning code 33.865, River Review (pg. 3-29). The substantive changes are described in Table M. There are many other changes that clarify the code, correct cross references and fix typos. All amendments to the Proposed Draft are underlined and strike-through and new changes are highlighted; and
2. The BDS Environmental Check List (pg. 30-31). Many of the changes to 33.865 are to bring the submittal requirements more in line with the Environmental Check List that BDS provides to applicants. This is necessary because the Proposed Draft 33.865 was based on 33.430, Environmental Overlay Zones, submittal requirements but BDS relies more on the Environmental Check List than the code. The check list that BDS currently uses has evolved over time with the goal of ensure that applicants provide sufficient information in the submitted plans for BDS to conduct their review.

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## **Commentary**

Chapter 33.865 is a new chapter and the text is not underlined for ease of reading.

### **33.865 River Review**

This chapter contains the review process, application requirements and approval criteria for River Review. This is a new chapter and it replaces Greenway Review in the Central Reach.

In this document the ~~strike-through~~ and underline indicates amendments between the Proposed Draft and the PSC Amended Proposed Draft (new changes are highlighted in yellow)

### **33.865 River Review**

# 865

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Sections:

33.865.010	Purpose
33.865.020	When River Review is Required
33.865.030	Procedure
33.865.040	Supplemental Application Requirements
33.865.100	Approval Criteria
33.865.110	Modification of Site-Related Development Standards
33.865.120	Corrections to Violations of the River Environmental Overlay Zone Standards
33.865.200	Use of Performance Guarantees
33.865.210	Special Evaluations by a Trained Professional

#### **33.865.010 Purpose**

River Review is intended to:

- Protect, conserve and enhance identified resources and functional values in the River Environmental overlay zone, compensate for unavoidable significant detrimental impact to those resources and functional values, and ensure the success of mitigation and enhancement activities;
- Help the City meet existing and future requirements pursuant to federal and state laws including the Clean Water Act, the Safe Drinking Water Act, the Endangered Species Act, the Migratory Bird Treaty Act, and the National Flood Insurance Act;
- Provide flexibility for unusual situations. River Review allows for evaluation of alternative development scenarios that may have less detrimental impact on protected resources, and allows for the evaluation of off-site mitigation proposals;
- Provide a mechanism for the evaluation of detailed, site-specific information on the location or quality of resources and functional values;
- Provide a mechanism for modifying the location of the River Environmental overlay zone to reflect permitted changes in the location or quality of resources and functional values.
- Provide for the replacement of resources and functional values that are lost through violations of the River Environmental overlay zone standards;
- Provide a mechanism to modify the River Environmental overlay zone standards of Chapter 33.475, River Overlay Zones; and
- Allow for modifications to site-related development standards when modification will result in greater resource protection.

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## **Commentary**



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### **33.865.020 When River Review is Required**

River Review is required in the following situations:

- A.** When an applicant proposes non river-dependent or river-related primary uses within or riverward of the River Setback;
- B.** When a development or regulated activity in the River Environmental overlay zone is not exempt from the River Environmental overlay zone regulations and either does not meet the standards of subsection 33.475.440 or there are no development standards applicable to the proposal;
- C.** When River Review is required to correct a violation of the River Environmental overlay zone regulations, as described in subsection 33.475.450;
- D.** When an applicant wishes to fine tune the boundary of the River Environmental overlay zone based on a detailed environmental study that more accurately identifies the location and quality of resources and functional values. Minor boundary changes are allowed through River Review. Map error corrections are reviewed under 33.855.070, Corrections to the Official Zoning Maps, and removal of the River Environmental overlay zone is processed as a change of overlay zone as stated in 33.855.060, Approval Criteria for Other Changes; or
- E.** To modify the boundary of River Environmental overlay zone to reflect permitted changes in the location or quality of resources or functional values. The modification of River Environmental overlay zone procedure does not apply to changes caused by violations of subsection 33.475.440.

### **33.865.030 Procedure**

A River Review is processed through a Type IIx procedure, except as described in 33.475.450.B when River Review is required to correct a violation of the River Environmental overlay zone regulations.

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## **Commentary**

### **33. 865. 040 Supplemental Application Requirements**

The supplemental application requirements are substantively the same as those required for the Environmental Overlay Zones.

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### 33.865.040 Supplemental Application Requirements

In addition to the application requirements of Section 33.730.060, the following information is required when the River Review application is for development in the River Environmental overlay zone, or for modification of the River Environmental overlay zone boundary:

#### A. Supplemental site plan requirements. The following supplemental site plans are required.

Each supplemental site plan must include all of the information listed. Five copies of each supplemental site plan are required and at least one copy of each supplemental plan must be at a scale of at least one inch to 2049 feet. All copies of supplemental site plans must be suitable for reproduction on paper no smaller than 8.5 x 11 inches and no larger than 36 x 48 inches. All copies of supplemental site plans must be drawn accurately to scale, show all property lines with dimensions, include a north arrow, and include a date. Additional site plans that show only a portion of the site may also be submitted. Site plans must show existing conditions, conditions prior to a violation (if applicable), proposed development, and construction management. A mitigation site plan is required when the proposed development will result in unavoidable significant detrimental impact on the resources and functional values ranked high or medium in the *Williamette River Natural Resource Inventory* or when mitigation is proposed in order to meet River Review approval criteria. A remediation action site plan is required when 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. Existing conditions site plan. The existing conditions site plan must show the following:

###### a. For the entire site:

a.(1) 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, ordinary high water, or wetland boundary as appropriate. In the case of a violation, also identify the location of the wetland or water body prior to alteration;

b.(2) 100-year floodplain and floodway boundaries. In the case of a violation, also identify the location of the 100-year floodplain and floodway prior to alteration;

c. Drainage patterns, using arrows to indicate the direction of major drainage flow;

d.(3) The top of bank of the Williamette River, and the structures and topographic contours referenced to determine the top of bank. The site plan depicting the top of bank must be drawn accurately to scale, and be suitable for reproduction on paper no smaller than 8.5 x 11 inches and no larger than 36 x 48 inches. The scale of the drawing must be between 1 inch = 50 feet, and 1 inch = 10 feet. Ground elevations must be shown by contour lines at 2-foot vertical intervals. See Section 33.910.030, Environmental-Related Definitions, Top of Bank. In the case of a violation, also identify the location of the top of bank prior to alteration;

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~~e.(4)~~ Boundaries of the River Environmental overlay zone. These boundaries may be scaled in relation to property lines from the Official City Zoning Maps;

~~f.~~ Within the River Environmental overlay zone:

(1) Distribution outline of shrubs and ground covers, with a list of most abundant species; and

(2) Trees over 1.5 inches in diameter identified by species and size, including the location of the trunk and the root protection zone or canopy drip line. In the case of a violation, also identify the trees that were cut or damaged by showing a stump diameter and species;

~~g.~~ Outside of the River Environmental overlay zone, trees over 3 inches in diameter, including the location of the trunk and crown cover, identified by species and size;

~~h.(5)~~ Location and boundaries of designated scenic resources. The location of viewpoints, view corridors and scenic corridors must be show in relation to the property lines, existing and proposed public trails and boundaries of the River Environmental overlay zone;

~~i.(6)~~ 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. In the case of a violation, also identify the topography prior to alteration;

~~(7)~~ Drainage patterns, using arrows to indicate the direction of major drainage flow; and

~~i.(8)~~ Existing improvements such as structures, buildings, utility lines, stormwater systems, septic or sewer facilities, fences, etc.

~~b.~~ Within the River Environmental overlay zone:

(1) Distribution outline of shrubs and ground covers, with a list of most abundant species; and

(2) Trees over 3 inches in diameter identified by species and size, including the location of the trunk and the root protection zone or canopy drip line. In the case of a violation, also identify the trees that were cut or damaged by showing stump diameter and species;

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## **Commentary**

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2. **Proposed development site plan.** A proposed development site plan must show the following:
  - a. Location of the River Environmental overlay zone **the top of bank and river setback areas, and the landscaping area subareas;**
  - b. Location of all proposed development **including buildings, structures, decks, retaining walls, bridges, trails/pathways, etc.;**
  - c. Location of proposed utility lines and connections, stormwater systems and septic or sewer facilities;
  - d. Location of protected **scenic resources viewpoints and view corridors;**
  - e. **Delineated areas, and total square footage of, temporary and permanent disturbance, including equipment maneuvering areas;**
  - f. **Delineated areas of vegetation removal and identification of trees to be removed using a bold X;**
  - ~~g.e-~~ Proposed final contour lines at 2-foot vertical intervals in areas of slopes less than ten percent and at 5-foot vertical contours in areas of slopes ten percent or greater;
  - ~~f.~~ **Delineated areas of ground disturbance and vegetation removal;**
  - ~~h.g-~~ **Location of excavation and fill and total quantities of each, including balanced cut and fill calculation for any grading in the 100-year floodplain; and**
  - ~~i.h-~~ **Areas to be left undisturbed. Location and species of existing trees, including the required root protection zone per Title 11, shrubs and ground covers to remain;**
3. **Construction management site plan.** A construction management site plan must show the following:
  - a. Location of the River Environmental overlay zone;
  - b. Delineated areas of **temporary and permanent ground disturbance and vegetation removal**, including equipment maneuvering areas;
  - c. Proposed grading plan with existing and proposed contours. The grading plan must show proposed alteration of the ground at 2-foot vertical contours in areas of slopes less than ten percent and at 5-foot vertical contours in areas of slopes ten percent or greater;

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## **Commentary**



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- d. Location of excavation and fill and total quantities of each, including balanced cut and fill calculation for any grading in the 100-year floodplain;
  - e. Location of all proposed development;
  - f. Delineated areas of vegetation removal and identification of trees to be removed using a bold X;
  - g.e- Areas where existing topography and vegetation will not be affected by the development proposal;
  - h.f. Identification of trees to be removed using a bold X and the Location of trees to remain including the required root protection zone per Title 11;
  - i.g- Location of site access and egress;
  - j.h- Equipment and material staging and stockpile areas; and
  - k.i- Erosion control measures; and
  - f. Measures to protect trees and vegetation in accordance with Title 11.
4. Mitigation or remediation site plan. A mitigation site plan is required when the proposed development will result in unavoidable significant detrimental impact on the resources and functional values ranked high or medium in the *Williamette River Natural Resources Protection Plan* or when mitigation is proposed in order to meet River Review approval criteria. A remediation site plan is required when significant detrimental impacts occur in violation of the Zoning Code and no permit was applied for. ~~At~~ The on-site or off-site mitigation or remediation site plan must show the following:
- a. Location of the River Environmental overlay zone in relation to the mitigation site;
  - b. Distribution outline, species composition, and percent cover of ground covers to be seeded or planted using standard landscape graphics;
  - c. Location, species, and size of each individual tree to be planted;
  - d. A planting table listing the size, number, and species (common and scientific) of all trees, shrubs, groundcover or seeds to be installed including the ratio of seeds to area to be planted, species name (common and scientific), number, size and spacing;
  - e. The area of the mitigation site in square feet in relation to the project impact area;
  - f. The location of the mitigation site in relation to existing, proposed or anticipated future development on the site;
  - g. Stormwater management features, including retention, infiltration, detention, discharges, and outfalls;
  - h. Location of protected viewpoints and view corridors;

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## Commentary

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- i. Water bodies to be created, including centerline, top of bank, wetland boundary and depth;
- j. Water sources to be used, including volumes;
- k. Location of excavation and fill and total quantities of each, including balanced cut and fill calculation for any grading in the 100-year floodplain; and
- ~~l.k.~~ 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 practicable development alternatives for a particular site. The alternatives must be evaluated on the basis of their impact on identified resources and functional values. Significant resources and functional values are identified in the Willamette River North Reach Natural Resources Inventory: Riparian Corridors and Wildlife Habitat (2008) Willamette River Central Reach Natural Resources Protection Plan (2016), and a supplemental environmental assessment can be provided to more accurately identify resources and functional values on the site. In the case of a violation, the impact evaluation is used to determine the nature and scope of the significant detrimental impacts.

- a. An impact evaluation includes:

- (1) Identification, by characteristic and quantity, of the natural resources and their functional values found on the site. The Willamette River North Reach Natural Resources Inventory: Riparian Corridors and Wildlife Habitat (2008) Willamette River Central Reach Natural Resources Protection Plan (2016) provides site-specific information on natural resource features including:
  - open water;
  - shallow water (river depth 0-20 feet);
  - beach;
  - riparian vegetation;
  - upland and bottomland forest;
  - grassland;
  - flood area and floodplain;
  - wetlands, streams and ponds; and
  - special habitat area.

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## Commentary

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(2) Scenic resources are mapped with a scenic (s) overlay zone. The adopted Central City Scenic Resources Protection Plan describes the specific resources to be protected. Chapter 33.480, Scenic Resources, says that adjustments and modifications to the standards can be made through Environmental or River Review. Scenic resources should be considered in context of the natural resources features and functions. In the case where resource values will be diminished in order to protect the scenic resources, mitigation is required to compensate for the loss of function. Map 490-1 includes the location of Scenic ~~(s) overlay zones and view corridors with special height limitations:~~

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~~The Willamette River/Central Reach Natural Resources Inventory (2015) Willamette River Central Reach Natural Resources Protection Plan (2016) provides site-specific information on the functional values provided by the various natural resource features including:~~

- Microclimate and shade;
- Stream flow moderation and water storage;
- Bank function, and sediment, pollution and nutrient control;
- Large wood and channel dynamics;
- Organic inputs, food web and nutrient cycling;
- Fish and wildlife habitat;
- Habitat connectivity/movement corridor;

~~The Willamette River/Central Reach Natural Resources Inventory (2015) Willamette River Central Reach Natural Resources Protection Plan (2016) also provides information on wildlife and plant special status species that are known or reasonably expected to occur within or use a site. The application must contain current information regarding any special status species known or expected to occur on the site;~~

(2) Identification and description of the scenic resources on the site to be protected. ~~Scenic resources are mapped on the official zoning maps with a scenic (s) overlay zone and are described in The Central City Scenic Resources Protection Plan (2015) provides site-specific information on the scenic resources. ~~The application must contain current information regarding the scenic resources.~~~~

(3) Identification of significant unavoidable detrimental impacts on identified natural and scenic resources and functional values. Actions that could cause detrimental impacts and should be identified include:

- excavation and fill both in the water and above the ordinary high water mark. The quality and source of fill material is an important factor to be considered;
- clearing and grading;
- construction;
- vegetation removal;
- tree planting;
- altering bathymetry;
- altering a vegetated riparian corridor or upland vegetated area;
- altering the floodplain;
- altering the temperature of the river especially the altering of existing cold water sources;

(3) Evaluation of practicable alternative locations, design modifications, or alternative methods of development that both achieve the project purpose, taking into account cost and technology, and minimize significant detrimental impacts on identified natural and scenic resources and functional values; and

(4) Determination of the practicable alternative that best meets the applicable approval criteria.

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## Commentary

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- b. An impact evaluation for a violation includes:
  - (1) Description, by characteristics and quantity, of the natural and scenic resources and functional values on the site prior to the violation; and
  - (2) Determination of the impact of the violation on the natural and scenic resources and functional values.
2. Biological assessment. A biological assessment developed for the purposes of a federal or state permit may be submitted in place of some or all of the impact evaluation if the biological assessment includes the information described in subparagraph B.1, above. In the event that the applicant submits a biological assessment in place of some or all of the impact evaluation, the applicant must identify which aspects of the impact evaluation are covered by the biological assessment and, if necessary, identify which pieces of information will be included in the impact evaluation.
3. Supplemental environmental site assessment. A site-specific environmental assessment, prepared by a qualified consultant, to more precisely determine the existence, location, type, extent, and quality of the natural resources and functions on the site can be provided as part of the supplemental narrative. The assessment may verify, supplement, or challenge the information in the City's inventory for the purpose of informing the impact evaluation and identifying mitigation obligations;
4. Construction management plan. Identify measures that will be taken during construction or remediation to protect the remaining natural and scenic resources and functional values at and near the construction site and provide a description of how areas that are not affected by the construction will be protected. For example, describe how trees will be protected, erosion controlled, construction equipment controlled, and the timing of construction; and
5. Mitigation or remediation plan. The purpose of a mitigation or remediation plan is to compensate for unavoidable significant detrimental impacts on identified natural and scenic resources and functional values that result from the chosen development alternative or violation. A mitigation or remediation plan includes:
  - a. Natural or scenic resources and functional values to be restored, created, or enhanced within mitigation or remediation area ~~If credits will be purchased from a City-certified mitigation bank, the mitigation plan must identify the total number and the type of credits being purchased;~~
  - b. Documentation of coordination with appropriate local, regional, special district, state, and federal regulatory agencies;

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## Commentary

### **33.865.100.A Development within the River Environmental Overlay Zone**

The approval criteria for development within the River Environmental overlay zone are intended to protect and conserve the natural resources and functional values that exist in the overlay zone. The approval criteria are modeled on the environmental conservation overlay zone approval criteria and will allow development to occur as long as the applicant can show that all other practicable alternatives to locating development in the resource area have been explored and are not practicable within the context of project purpose. In cases where development will occur and resource values will be diminished, mitigation is required to compensate for the loss of function due to the development.

#### **33.865.100.A.1 Resource Enhancement Projects**

Resource enhancement project should result in an overall increase in natural resource functions. That could result from an increase in natural resource area; for example, removing impervious surface and landscaping with native plants. Or it could result from keeping the area the same but removing invasive plants and landscaping with native plants. No net loss of functional value does not mean that no trees or native vegetation can be removed. For example, if older mature trees are dying out and becoming hazardous; removing those trees and replacing with new native trees should be considered no net loss of functional value.



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- c. Construction timetables;
- d. Operation and a long-term maintenance plan;
- e. Monitoring and evaluation procedures that include periodic reporting;
- f. Remedial actions for unsuccessful mitigation;
- g. Information showing compliance with Section 33.248.090, Mitigation and Restoration Plantings; and
- h. If off-site mitigation is proposed, demonstration that on-site mitigation is not practicable or ecologically beneficial.

### **33.865.100 Approval Criteria.**

Requests for a River Review will be approved if the review body finds that the applicant has shown that all applicable approval criteria have been met.

- A. Development within the River Environmental overlay zone.** The applicant's supplemental narrative must demonstrate that all of the following are met:
  - 1. Resource enhancement projects:
    - a. There will be no net loss of total resource area;
    - b. **There will be no net loss of functional values;** and
    - ~~bc.~~ There will be a significant improvement of at least one functional value.
  - 2. All other proposals in the River Environmental overlay zone:
    - a. Proposed development minimizes the loss of identified natural or scenic resources and functional values consistent with the uses that are generally permitted or allowed in the base zone without a land use review, or permitted or allowed by an approved conditional use review;
    - b. Proposed development locations, designs, and construction methods are less detrimental to identified natural and scenic resources and functional values than practicable and significantly different alternatives, including alternatives on the same site but outside of the River Environmental overlay zone;

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## Commentary

### 33.865.100.A.2.d Mitigation

Mitigation for unavoidable impacts from development will be required for every River Review.

(3) The applicant will be required to show that the proposed mitigation compensates for all significant detrimental impacts to identified natural resources and functional values including the interim loss of resource area and functionality. Lost resource features and functions on the site will have to be fully replaced with in-kind resources, and any interim loss of functionality that will happen between the time the impacts occur and the time the mitigation site is mature will have to be addressed.

Through previous mitigation project, staff determined a mitigation ratio of 1.2:1 is the absolute minimum to account for time lag between impacts and mitigation establishment and that ratio is associated with mitigation for grassland habitat. Shrublands, woodlands and forests will have a longer time lag between impacts and establishment of mitigation. Therefore, a 1.5:1 ratio of project impact area to mitigation area is the least amount mitigation that may be proposed. This is also the mitigation ratio required by the standard 33.475.430.K, Mitigation.

During review it is possible that a higher mitigation ratio will be required due to the factors listed in 3. The applicant's response **to the first bullet**, uniqueness of the features and functions, should include consideration of how rare the habitat or fish/wildlife are in the local area or region and if any species listed in the Natural Resources Inventory as *at-risk* are impacted, including Endangered Species Act listed species. The applicant's response to distance between the impact area and mitigation area should address the species being impacted and how well the mitigation area will serve those species that will have to relocate.

**Responses to the last bullet should** address the time for plants to grow and fully replace the lost functions. The City or applicant may propose a different mitigation ratio that better accounts for the time lag between impacts and a fully functioning mitigation site. Time lag is dependent on the plant and fish/wildlife species impacted and the time it takes for those functions to be replaced. An old growth bottomland hardwood forest can take more than 50 years to be replaced, where a grassland may take only a few years.

**(45)** On-site mitigation opportunities must be explored before off-site mitigation can be approved. On-site mitigation is a priority in cases where there is adequate space to mitigate based on the mitigation ratio, and appropriate conditions exist to support successful mitigation. An adequate on-site mitigation area should be able to sustain on-going resource functionality and habitat connectivity without being negatively impacted by surrounding development. On-site opportunities will be evaluated within the context of existing, proposed and future development on the site.

In this document the ~~strike-through~~ and underline indicates amendments between the Proposed Draft and the PSC Amended Proposed Draft (new changes are highlighted in yellow)

- c. There will be no significant detrimental impact on areas of the site reserved for mitigation, areas within the River Environmental overlay zone not proposed for development at this time, downstream river habitat within the Central Reach, or other sites in the Central Reach where environmental restoration is in progress or complete;
- d. Mitigation:
  - (1) The mitigation plan ~~must~~ demonstrates that all significant detrimental impacts on identified scenic and natural resources and functional values, and the interim loss of functional value will be compensated for;
  - (2) To the extent practicable, the natural and scenic resources and functional values restored or enhanced as mitigation must be the same kind of resource, performing the same function ~~at value~~ as the lost resource;
  - (3) The amount of natural resource mitigation due as compensation ~~will~~ be based on the amount and relative condition of the resources and functional values impacted by the proposal. The amount of natural resource mitigation required will be at a ratio no less than 1.5:1 of mitigation area to project impact area, but may be more to address the following:
    - the uniqueness of the resources and functional values impacted;
    - the relative condition of the mitigation area;
    - the distance between the impact area and mitigation area; and
    - the time lag between when the resources and functional values are lost due to the impacts and the point when the mitigation site will achieve full functions;
  - (4) Mitigation must occur within the River Environmental overlay zone or in an area that is contiguous to the River Environmental overlay zone. The applicant must own the mitigation site, possess a legal instrument that is approved by the City as sufficient to ensure the right to carry out, monitor, and maintain the mitigation (such as an easement or deed restriction):
    - (45) Mitigation must occur on-site when practicable, and ecologically beneficial. Factors to be considered when evaluating this criterion include:
      - The potential for the long-term success of the restored resources and functional values in the mitigation area;
      - The amount, size, shape, and connectivity potential of on-site mitigation areas;
      - The location of the mitigation area in relation to existing, proposed or future development on the site, and the impact development may have on the mitigation area;
      - Contamination; and
      - Any other site specific issue or constraint;

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## Commentary

### 33.865.100.A.2.d.56 Mitigation

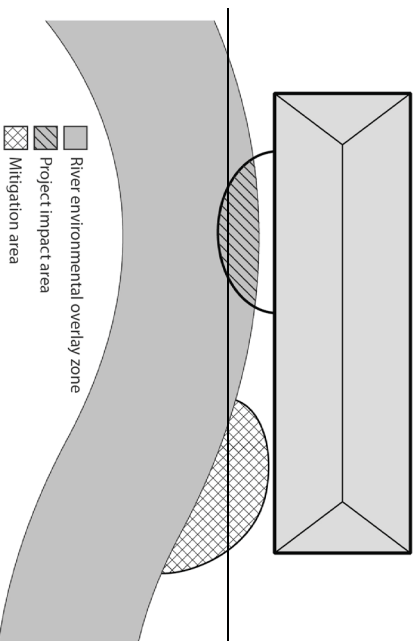
A higher ratio of mitigation to impacts is applied to off-site mitigation because there are natural resource functions lost permanently when resources are removed at one location and mitigated for at a different location. The approval criteria of 33.865.100.A.2.d.3 allows the mitigation ratio to be higher than 1.5:1 depending on the distance between the impact area and the mitigation area. ~~A higher ratio~~ The minimum ratio of 3:1 for off-site mitigation ensures that compensation for moving the resources to a different site is accounted for. Staff may propose an even higher ratio if the mitigation area is located far from the impact area and the species that use the resources impacted are not benefitting from the mitigation. Best available science includes ratios of 7:1 or higher if there is a large distance between the impact area and mitigation area and the species in the impact area cannot easily transplanted to the mitigation area. ~~The mitigation can be completed outside of the River Environmental overlay zone provided that it is contiguous to the River Environmental overlay zone.~~

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- (5) If on-site mitigation is not practicable or ecologically beneficial, the applicant may perform mitigation off-site. The off-site mitigation must meet 33.865.100.A.2.d.1-4 all other approval criteria in this subparagraph and the following:
- Mitigation must occur at a minimum 3:1 ratio of mitigation area to project impact area; and
  - The mitigation area must be located within the Willamette River Central Reach, shown on Map 475-1, and
  - Mitigation must occur in the River Environmental overlay zone or in an area that is contiguous to the River Environmental overlay zone; and
- (7) The requirements of Section 33.248.090, Mitigation and Restoration Planting, must be met.

**Figure 865-1**

**Mitigation Area Contiguous to River Environmental Overlay Zone**



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## Commentary

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### **33.865.100.B Modifications to zone boundaries**

These approval criteria are the same criteria used for modifications of Environmental Overlay zone boundaries and the boundary of the Pleasant Valley Natural Resource Overlay zone.

3. Additional, more detailed data may be provided that results in a remapping of the River Environmental overlay zone on a site. For example, a survey of the top of bank of a river, stream or drainageway may be provided. The City may need to perform a site visit to verify the data.

Modifications to the location of the River Environmental overlay zone based on more site specific data should be reviewed to determine if any natural resource features or functions have been altered in a way that constitutes a violation to 33.475. Natural resource features and functions change naturally over time due to weather changes, growth of new plants, flooding, etc. Natural changes can result in the features and functions moving on the site and thus the River Environmental overlay zone may need to change accordingly. However, if natural resource features or functions are altered by humans in a way that does not meet the exemptions or standards of 33.475, and have not been reviewed through 33.865, then the location of the River Environmental Overlay zone should not be changed.

3.a. The applicant may use the more detailed feature data (e.g., location of top of bank, flood area, tree canopy, etc.) and apply the adopted methodology of the Natural Resources Inventory to determine the revised location of high and medium ranked resources. This should be verified by the City using the Natural Resources Inventory GIS models.

### **33.865.110 Modification of Site-Related Development Standards**

This approval criterion allows adjustments to site-related development standards to be considered and approved as part of a River Review. The applicant must show that granting the adjustment will result in greater protection of the resources and functional values on the site and that the proposal is consistent with the purpose of the standard that is being adjusted. This approval criterion is the same as a criterion used in Environmental overlay zones and the Pleasant Valley Natural Resource Overlay zone.

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**B. Modification of River Environmental overlay zone boundaries.** Modifications of River

Environmental overlay 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 B.1 or B.2 are met. **For MM** modification of environmental zone boundaries based on a more detailed site specific environmental study, that confirms the location of natural resource features identified in the adopted Natural Resources Inventory, the applicant's impact evaluation must demonstrate that Paragraph B.3, below, is met:

1. Successful mitigation. An approved mitigation plan has been successful and a new, restored, or enhanced resource exists which should be included in the River Environmental overlay 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. Modification of River Environmental overlay zone boundaries based on a more detailed site-specific environmental study. The River Environmental overlay zone line location may be modified to more accurately reflect the location of natural resources and functional values on the site. All of the following must be met:
  - a. The modified River Environmental overlay zone boundary must include all natural resource features that receive a high or medium rank using the methodology **adopted within** the adopted Natural Resources Inventory; and
  - b. The modified River Environmental overlay zone boundary must be located no closer than 50 feet from the top of bank of a river, stream, drainageway, wetland or other water body.

**33.865.110 Modifications of Site-Related Development Standards**

The review body may consider modifications to site-related development standards that are not otherwise prohibited from being adjusted as part of the River Review process. These modifications are done as part of the River 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 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.

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## **Commentary**

### **33.865.120 Corrections to Violations of the River Environmental Overlay Zone Standards**

These approval criteria are the same criteria that are used for violations of the Environmental overlay zones and for violations of the Pleasant Valley Natural Resource Overlay zone.



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### **33.865.120 Corrections to violations of the River Environmental Overlay Zone Standards**

For corrections to violations of the River Environmental development standards the application must meet all applicable approval criteria stated in Subsection 33.865.100. ~~B.A.~~ <sup>B.A.</sup> above, and Subsection A, and Paragraphs B.2 and B.3, below. If these criteria cannot be met, then the applicant's remediation plan must demonstrate that all of the following are met:

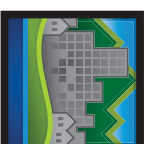
- A. The remediation is done in the same area as the violation; and
- B. The remediation plan demonstrates that after its implementation there will be:
  - 1. No permanent loss of any type of resource or functional value;
  - 2. A significant improvement of a least one functional value; and
  - 3. There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

### **33.865.200 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.

### **33.865.210 Special Evaluation by a Professional**

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.



# CITY OF PORTLAND, OREGON

## BUREAU OF DEVELOPMENT SERVICES

### Environmental Review Submittal Checklist

See Portland Zoning Code Sections 33.430.210 through 280 and 33.730.060 for specific application requirements

This checklist is for use by applicants to prepare Environmental Review applications.

#### All Site Plans

The following items are required for site plans submitted in your application:

- A minimum of five (5) full sized complete sets including the following labeled plans are required: Existing Conditions Site Plan; Proposed Development Site Plan; Construction Management Site Plan; and Mitigation/Remediation Site Plan.
- All plans must be black and white line drawings, drawn to an accurate scale (preferably 1 inch = 20 feet), and include a north arrow and date. Reductions may be to a graphic scale.
- At least one (1) copy of each complete plan set must be legibly reduced to no greater than 8.5 x 11 inches, and be suitable for black and white photocopy reproduction. Aerial photos are not acceptable.
- Illustrate the site in its entirety (additional plans may be submitted that show a portion of the site)
- Include the official City of Portland Environmental overlay boundaries of the Environmental Protection and/or Conservation zones, and show the 25 foot transition area.

#### Site Plans

##### Existing Conditions Site Plan

- Information from **All Site Plans** section above
- Location of existing buildings and fences
- All existing utility lines and connections, stormwater systems, septic or sewer facilities and easements
- Location, size, and species of existing trees > 6 inches in diameter at breast height (dbh)
- Distribution outline and species of existing shrubs and ground covers;
- 100-year floodplain and floodway boundaries
- Ordinary High Water Line (OHWL) of all water bodies
- Surveyed top-of-bank of all water bodies
- Existing contour lines at two-foot vertical intervals in areas of slope < 10% (five-foot intervals for slopes ≥10%)
- Drainage patterns shown by arrows indicating direction of flow
- If this is a violation case, indicate areas impacted by unpermitted activities (ground disturbance) and indicate the trees (location, size, type) that were cut or damaged

##### Proposed Development Site Plan (not required for Resource Enhancement projects)

- Information from **All Site Plans** section above
- Location of proposed development (including but not limited to buildings, pathways, decks, retaining walls, bridges, garages, etc.)
- Location of proposed utility lines and connections, stormwater systems (water quality, detention and discharge), and septic or sewer facilities
- Proposed final contour lines at two-foot vertical intervals in areas of slope < 10% (five-foot intervals for slopes ≥ 10%)
- Delineation of limits of temporary and permanent disturbance areas
- Total area, in square feet, of the disturbance areas
- Location and species of existing shrubs & ground covers to remain
- Location and species of existing trees over six inches in diameter that will remain

##### Construction Management Site Plan

- Information from **All Site Plans** section above

- Proposed grading plan with existing and proposed contour lines at two foot vertical intervals in areas of slope <10% (five foot vertical intervals in areas of slope  $\geq$  10%)
- Location of excavation and fill areas (include amount of cubic yards for each)
- Illustration of the limits of the temporary and permanent areas of disturbance, including permanent development and equipment maneuvering areas
- Identification of areas to be left undisturbed
- Location of trees to be removed using a bold “X” and location of trees to remain, including the City-defined Root Protection Zone for all trees to be saved, according to chapter 11.60.
- Identification of device(s) used to protect trees to be preserved (including, but not limited to construction fencing, etc.). Tree protection fencing must be placed at the edge of Root Protection Zones, depicted as required in 11.60.030
- Balanced cut-and-fill calculations for any grading within the 100-year floodplain
- Location of construction ingress and egress
- Location of equipment staging and stockpile areas
- Location and type of erosion control measures to be installed

### **Mitigation / Remediation Site Plan**

- Information from **All Site Plans** section above
- Location of trees, shrubs and ground covers to be planted, using standard landscaping symbols, as required in chapter 33.248
- Species name (scientific and common), size, and number of trees, shrubs, and ground covers listed in a table
- Ordinary High Water Line (OHWL) of all waterbodies
- Remediation grading or removal of structures
- Location of additions and new buildings, utility lines, stormwater control measures, septic or sewer facilities, and in-stream structures

### **Narrative**

Two copies of a written statement addressing each of the following is required for the narrative portion of your application\*:

- Description of the project and site
- Written findings for each applicable approval criterion (Zoning Code Section 33.430.250 and/or Plan district designation), including:
  - Evaluation of alternatives to the proposal, considered to reduce impacts.
  - Resource site identified from City of Portland resource inventories, and description of resources and functional values present on the property
  - Potential development impacts identified
  - Mitigation proposed for unavoidable impacts
  - Monitoring plan for mitigation plantings
  - Findings for additional Development Standards or Approval Criteria required by applicable Natural Resource Management Plans (NRMP) or Plan Districts

### **Other**

- Note that three copies of supplemental reports (geotechnical studies, or drainage analyses, for example) may be required, depending on specific site conditions related to this review.
- An electronic copy of your narrative
- Pre-application summary notes, if applicable
- Application form for Land Use Reviews
- Application fee (see current fee schedule)

\*Portland Zoning Code Section 33.430.240.B provides additional detail regarding submittal requirements for an Environmental Review Narrative.

For more information visit or call the Planning and Zoning at the Development Services Center at 1900 SW 4th Avenue, Suite 1500, 503-823-7526

For Portland Zoning Code visit [www.portlandoregon.gov/zoningcode](http://www.portlandoregon.gov/zoningcode)

Information is subject to change.