

Attachment 3: Clarification of Manual Ezone Application Methodology – Conversions, Environmental Zone Map Modifications, and Violations

The Environmental Overlay Zone Map Correction Project has employed uniform and objective methodologies for applying ezones to important natural resources, such as streams, forests, and wetlands. Ezones are applied according to mapping protocols that are specific to each of the 137 resource sites that are included in the project area. The mapping protocols are intended to align the adopted policy that applies to resource sites with the best possible mapping of natural resources. The policy is reflected in the 13 area-specific natural resource protection plans that were adopted between 1989 and 2004 and the existing ezone maps. The Natural Resource Inventory (adopted in 2012) is used as the basis for determining the location of natural resources, and a computer program is used to apply the proposed ezones to the resources in a consistent manner.

Project staff have recommended an approach of strictly adhering to the standardized mapping protocols to avoid subjective mapping decisions. But there are three types of situations in which an alternative approach has been proposed. These are: manual conversions from ‘p’ zone to ‘c’ zone on sites that are highly constrained, past land use decisions that resulted in Environmental Zone Map Modifications, and unmitigated and unresolved code violations that result in impacts to natural resources.

1. P’ Zone to ‘C’ Zone Conversions

The topic of manual conversions of ‘p’ zone to ‘c’ zone was presented to the PSC and is documented in an appendix to the project documents. In brief, staff have systematically searched through the project area to identify vacant or dividable lots in which the application of the mapping protocols would result in 70% or greater coverage by the ‘p’ zone. On these lots, staff have identified potential development sites where new disturbances could be created with the least possible impact to natural resources and with a minimum setback from water features. Within the potential development sites, staff converted portions of the ‘p’ zone to ‘c’ zone to provide a potential pathway for property owners to develop their lots.

2. Ezone Map Modifications by Environmental Review

Environmental Zone Map Modifications are another circumstance in which project staff have applied ezone mapping decisions that deviate from the ezone mapping protocols. Ezone Map Modifications are sometimes made as a result of an approved Environmental Review. Most Environmental Reviews do not result in map modifications, but when they do, the modified map that is created through the quasi-judicial process is consistent with adopted policy. In order to successfully complete an Environmental Review, applicants must do a complete inventory of the natural resources that are located on their site, and any changes to the ezones that are approved on the site are intended to result in adequate protections for the natural resources that are contained therein. On sites that staff have identified that have approved Ezone Map Modifications, project staff have employed a process to manually override the computer program that generates the draft ezones to be consistent with the BDS quasi-judicial decision.

3. Violations of City Code

The final category in which project staff have recommended a deviation from mapping protocols are on sites where violations of City Code have occurred or appear to have occurred, that resulted in

unmitigated impacts to natural resources. Violations could consist of unpermitted tree removal, unpermitted clearing of vegetation or grading, or unpermitted construction.

The proposed ezones are mapped based on the application of standard protocols that are applied to features mapped in the NRI. Staff regularly make edits to the NRI as a result of site visits; vegetation patches are remapped, streams are added, deleted or modified, and edits to slope mapping are made. It is assumed that the features that are mapped in the NRI are in a state that has not been changed since the ezones were originally adopted through 13 different area-specific resource protection plans, and that if they have been altered, alterations have been done through a permitted development process. The code that applies to the ezones requires mitigation for impacts to resources. If trees or vegetation are removed, mitigation plantings will occur elsewhere on the site. Similarly, the Tree Code (Title 11) requires mitigation and replanting when trees are removed that are located outside of the ezones.

Assuming the mitigation requirements are complied with, the NRI can be updated to reflect the areas where natural resources are currently located on the site, and the remapped ezones will appropriately cover the natural resources, including the areas where mitigation has occurred. But if no mitigation occurs and the permitting process is not followed, the features and functions that were intended to be protected when the ezones were originally adopted will have been negatively impacted. If the ezones were remapped to exclude areas where resources have been altered in an unauthorized fashion, the remapped ezones would not actually reflect the legislative intent that was embodied by the adopted ezones. And if site visits could potentially result in the removal of ezones from protected natural resources that are removed or altered without authorization, this would create a perverse incentive for property owners to violate city code by intentionally damaging natural resources and to then request subsequent site visits.

How policy is applied on sites where violations have occurred: On sites where staff have become aware that violations have occurred, staff have reviewed the permitting history for the site to determine if the appropriate permits, reviews, and mitigation has occurred. If the violation has been addressed through standard processes, such as Environmental Reviews, and if there is a documented end to enforcement actions on the site or a conclusion of the permit review process, staff will remap the natural resources on the site, while making sure to include areas where mitigation has been required in the proposed ezone mapping. If no corrective actions have been taken, and if there is no documented resolution or mitigation, staff manually apply ezones in the area where the violation has occurred to ensure that there is no rollback in natural resource protections on the site.

In cases where violations have occurred, property owners have a recourse. They can initiate the permitting process to mitigate for past violations at any time. Project staff can conduct follow up site visits to ensure that the natural resource mapping is correct once the permitting process is complete. The manual applications of proposed ezones in areas where violations have occurred provides a regulatory path to require property owners to document that the disturbance was legally created or to mitigate for the damage as part of future development proposals that they initiate.

Documentation and Tracking

A list of sites on which the proposed ezones differ from the mapping protocols due to 'p' zone to 'c' zone conversions, environmental zone map modifications, or code violations will be included in an appendix

to the Ezone Map Correction Project. For each of the resource sites in which one of these edits has been made, a note will be included in the mapping protocols to draw attention to this fact.