THE BUREAU OF
PLANNING &
SUSTAINABILITY

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TO: City Council and Interested Parties

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SUBJECT: Development and Permitting Review on Sites with Ezones

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This document details the development review and permit review process that applies to sites on which Environmental Overlay Zones are Mapped. It is intended to explain what the ezones are, how the regulations that apply to the ezones work, and it lists the required documentation that must be submitted by applicants to meet requirements that are spelled out in the Ezone Code (Portland City Code Chapter 33.430) for *Environmental Plan Checks* and *Environmental Reviews*.

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Introduction

Environmental Overlay Zones (ezones) are part of Portland's Zoning Code. Portland City Code (PCC) Chapter 33.430 regulates development and disturbance in the ezones. The ezones are applied to protect important natural resources like streams, forests, and wetlands, and the functional values that are provided by these resources (PCC 33.430.010). There are two types of environmental overlay zones: the Environmental Protection Zone (p zone) and the Environmental Conservation Zone (c zone).

Definitions

PCC 33.430.015 provides a definition of the p zone. It states that the p zone is applied to the most important natural resources and that it affords the highest level of protection to these resources. It states that development will only be approved in the p zone in rare and unusual circumstances.

PCC 33.430.017 provides a definition of the c zone. It states that the c zone is applied to allow environmentally sensitive urban development while protecting the functional value of important resources.

PCC 33.430.040 is a code provision that reiterates the description and purpose of the ezones. PCC 33.430.040(A) restates that the p zone is applied to highly significant natural resources and explains that the p zone is represented in Official Zoning Maps with a "p" symbol. The Ezone Project is proposing to amend this provision to indicate that the p zone may be represented by either a "p" symbol or a dark green color. PCC 33.430.040(B) restates that the c zone is applied to significant natural resources and explains that the c zone is represented in the Official Zoning Maps with a "c" symbol. The Ezone Project is proposing to amend this provision to indicate that the c zone may be represented by either a "c" symbol or a light green color.

PCC 33.430.050 defines the subareas of the ezones: the Transition Area and the Resource Area. The Transition Area is a strip of land that starts at the outer edge of ezones and extends 25 feet inward. The Resource Area is the remaining portion of the ezone that is not the Transition Area. The distinction between the Transition Area and the Resource Area is significant because many of the General Development Standards only apply in the Resource Area. A preamble to the General development Standards (33.430.140) explains which standards apply in the Transition Area.

Exemptions

PCC 33.430.080 is a list of actions and activities that are exempt from the ezone regulations. Any activity that is described in this list can be carried out without the requirement to obtain an *Environmental Plan Check* or an *Environmental Review* (described below). If the listed item is subject to permitting requirements in other sections of the Zoning Code or other titles of Portland City Code, such as the Building Code (PCC Title 24) or the Tree Code (PCC Title 11), these permitting requirements still apply.

Approval Processes

For projects that are not exempt, there are two tracks to gain approval for development on a site with ezones. The first track is to meet standards in the ezone code. The standards that are listed in PCC

33.430 are clear and objective, and approval of development that can meet standards is a non-discretionary process. For development that cannot meet standards, environmental review offers an alternative, discretionary track.

Note that if the development activities and proposed disturbance areas are located completely outside of the ezones, neither an *Environmental Plan Check* nor an *Environmental Review* is required. If development can avoid the ezones, the site plans simply need to clearly identify the location of the ezone lines on the site. As noted below, there are multiple methods that can be used to identify the location of ezone lines on a site that do not require the lines to be surveyed.

Meeting Standards

The Development standards are listed in PCC sections 33.430.110 through 33.430.195. In order to obtain approval through the standards process, applicants must submit documentation along with their permit application that demonstrates that their proposal meets standards and exemptions. The specific review process to determine if development can meet ezone code standards (PCC sections 33.430.140 through 33.430.195) is called an *Environmental Plan Check*.

A document is posted on the Bureau of Development Services website that describes the *Environmental Plan Check* process and explains the difference between an *Environmental Plan Check* and an *Environmental Review* (https://www.portland.gov/sites/default/files/2020-07/do-you-need-to-go-through-an-environmental-plan-check-or-environmental-review.pdf). The document explains that the process generally takes 18 days to complete, and that it is a non-discretionary process, in which City Staff simply review the application and submitted documentation to determine if the proposal meets ezone code standards. If the proposal is found to meet ezone code standards and other applicable standards in other Zoning Code chapters and other PCC Titles, permits will be issued. There will be no public hearing or opportunity for appeal.

PCC 33.430.130 lists the permit application requirements. Noted in this code section is the fact that on sites that have ezones, the required documentation includes more information than is required of permit applications on sites that do not have ezones. However, most of the required documentation is freely and publicly available as static maps or as downloadable digital GIS files. The required information that is listed in PCC 33.430.130 are the following elements (italicized text is directly from PCC 33.430.130):

> *A. An existing conditions site plan including:*
>
> *1. Location of all Environmental Zone lines on the site;*

The locations of the ezone lines are clear and objective. They are documented in the Official Zoning Maps and can be viewed on PortlandMaps.com. Property owners do not need to map the ezones themselves. This information is provided by the City of Portland.

The location of the ezone lines can be ascertained by following the methodology described in PCC 33.30.050 (C), which states that the location of the ezone lines can be

determined by applying a scale to the Official Zoning Maps. An alternative method for identifying the location of ezone lines would be to download digital copies of the Official Zoning Map. GIS files can be downloaded free of charge from PortlandMaps – Open Data (https://gis-pdx.opendata.arcgis.com/) or from the Metro Regional Land Information System website (https://rlisdiscovery.oregonmetro.gov/). The zoning map files include base zone boundaries as well as the boundaries of all environmental overlays.

Either the use of a scale or the digital GIS files would be adequate to meet this provision, and neither method would require the applicant to hire a professional land surveyor to survey the location of the ezone lines. Applicants can submit surveys as supplementary documentation, but this would not be necessary for most applications for development that do not involve changes to property lines.

2. Outline of any existing disturbance area, including existing utility locations;

A generalized outline of the existing disturbance area, if any exists, that is indicated on site plans would likely be adequate for most development situations. In some cases, additional documentation, such as historic photos or historic permit documentation, would be necessary to demonstrate that the developed area on a site was permitted and legal or predated the application of ezones.

For utility information, GIS datasets that include the locations of lateral stormwater and sanitary sewer connections and water service connections are available to be downloaded free of charge from PortlandMaps – Open Data (https://gis-pdx.opendata.arcgis.com/).

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;

In most development situations, it would not be necessary to survey stream banks. PCC 33.930.150(D) explains the default methodology that can be used to determine the location of the top of a stream bank without using a survey. The default top-of-bank for intermittent streams can be determined by measuring a 15-foot horizontal distance from the centerline of a stream (PCC 33.939.150(D)(4)). The centerline can be identified either using NRI stream data or topographic contours, and no survey would be necessary. The majority of streams that are mapped in the NRI are intermittent. Thus, a survey would not be needed to map the top-of-bank using the default methodology in the majority of development situations.

For perennial streams, rivers, or wetlands, it would be necessary to physically locate the high-water mark on the site in order to utilize any of the approved methodologies for locating the top-of-bank (PCC 33.930.150(A), 33.930.150(B), 33.930.150(C), 33.930.150(D)).

Data files of wetlands and streams that have been identified in the adopted Natural Resource Inventory are available to be downloaded free of charge from PortlandMaps – Open Data (https://gis-pdx.opendata.arcgis.com/). A Citywide dataset of topographic contour lines at two-foot vertical intervals may be downloaded free of charge from PortlandMaps – Open Data (https://gis-pdx.opendata.arcgis.com/). Metro provides a dataset of topographic contour lines with five-foot vertical intervals that may be downloaded free of charge from the Metro Regional Land Information System website (https://rlisdiscovery.oregonmetro.gov/).

4. Within the disturbance area, all trees that are 6 or more 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

Requirements for the documentation of size, species, and location of trees that are located in ezones are generally consistent with requirements for Tree Plans that are specified in the Tree Code (PCC 11.50.070). Tree Plan requirements apply to all development on residential sites in the City of Portland, regardless of ezone presence on the site.

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.

A Citywide dataset of topographic contour lines at two-foot vertical intervals may be downloaded free of charge from PortlandMaps – Open Data (https://gis-pdx.opendata.arcgis.com/). Metro provides a dataset of topographic contour lines with five-foot vertical intervals that may be downloaded free of charge from the Metro Regional Land Information System website (https://rlisdiscovery.oregonmetro.gov/).

If applicants prefer, they may choose to submit a topographic survey or to generate their own topographic contours using a LiDAR-derived digital elevation model. But the contour data is provided for the use of applicants by the City of Portland or Metro. Applicants are not required to generate this information on their own.

B. Proposed development plan including:

1. Outline of the proposed disturbance area, including all areas of proposed utility work;

General outlines of the proposed disturbance area indicated on the site plans would be adequate to meet this requirement in most situations.

2. Location and description of all proposed erosion control devices;

General locations of erosion control devices. It would not be necessary to provide a surveyed location.

3. A stormwater management plan;

This would be required of any development plan that triggers stormwater management, regardless of ezone presence on the site.

4. A landscape plan indicating the size, species, and location of all vegetation to be planted in the environmental zone;

This is necessary to demonstrate that mitigation for impacts to natural resources is adequate and commensurate with the scale and impact of the development. Neither a survey nor the services of a landscape architect would be needed to fulfill this requirement.

5. Trees proposed to be preserved and trees proposed to be removed. For trees to be preserved, tree protection, meeting the requirements of Chapter 11.60, Technical Specifications, must be shown. A tree plan may also be required to comply with Chapter 11.50, Trees in Development Situations; and 6. Where applicable, the location and specifications of the site enhancement option with dimensions, a list of plants on the Nuisance Plants List to be removed, and a landscape plan indicating the size, species, and location of all vegetation to be planted.

These requirements are consistent with PCC Title 11 requirements for Tree Preservation Plans.

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

Once submitted, the permit application and supporting documentation are reviewed by staff of the Bureau of Development Services (BDS). BDS staff and staff of other City Bureaus review applications to verify compliance with all relevant Titles of Portland City Code.

Environmental Review

If a proposed development cannot meet the standards and exemptions as described above, the proposal will be reviewed through an environmental review and will be reviewed against the discretionary approval criteria listed in PCC 33.430.250. It is the applicant's responsibility to demonstrate that the proposal meets the relevant approval criteria.

Due to state-mandated timelines, the minimum amount of time to process an environmental review is 40 to 50 days, though it is often longer depending on the completeness of the submitted application as well as other complicating factors. Depending on the scope of the project, a public hearing may be necessary, and the decision can be appealed.

For environmental reviews, a greater level of environmental impact analysis is required, including detailed environmental studies and supplemental site plans. As described in PCC 33.430.240, supplemental application requirements for environmental reviews include the following (italicized text is directly from PCC 33.430.130):

A. Supplemental site plans required. One copy of each plan must be at a scale of at least one inch to 100 feet. 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.*

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 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;*

   The first step of an impact evaluation is for the applicant to identify the specific resources and functional values present on the development – in some cases this requires consultation with an environmental expert. The alternatives analysis component of the impact evaluation involves identification of several possible alternatives for development and an explanation of why the preferred alternative has the least impact on the identified resources.

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;*

   Depending on the size and complexity of the project, a construction management plan can be a single site plan or a more extensive document that sets out procedures and responsibilities for the entire construction process. In either case, it should include a written description of proposed management activities as well as a graphic illustration. It must also include temporary and permanent disturbance areas, excavation procedures, erosion control, tree protection, and site management.

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.*

   Mitigation is required when development removes or has significant impacts on any of the identified resources within the resource area of the environmental zone. All impacted resources and their functional values must be compensated for – the mitigation plan shows how this will be accomplished. Common mitigation options include planting of

native trees, shrubs and groundcovers or removing non-native invasive plants (such as ivy and blackberries).

For environmental reviews, the burden of proof is on the applicant to show that the proposal meets the approval criteria listed in PCC 33.430.250. When environmental review is required because a proposal does not meet one or more of the development standards described above, then the approval criteria will only be applied to the aspect of the proposal that does not meet the development standard or standards. The specific applicable approval criteria depend on the proposed development/project, but common criteria include (refer to PCC 33.430.250 for a complete list):

- *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;*
- *There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;*
- *The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;*