



# Public Infrastructure Environmental Code Project

Facilitating Public Improvement Projects

**PROPOSED DRAFT**

June 2025



THE BUREAU OF  
**PLANNING &  
SUSTAINABILITY**

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2. **Testify at the Planning Commission hearing.** The hearing on July 22 at 5 p.m. will be a hybrid format with options to participate either in person or virtually using a computer, mobile device, or telephone. You must sign up to testify in advance. To testify before the Commission in person or virtually:
  - Use the QR code to the right to sign up on your mobile device; or
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After registering, you will receive a confirmation email containing information about joining the hearing.

**The deadline to sign up for the July 22 hearing is Monday, July 21 at 5 p.m.** Individuals have three minutes to testify, unless stated otherwise at the hearing.

3. **Submit written testimony.** We strongly encourage electronic written testimony via the Map App. Written testimony must be received by the time of the hearing and must include your name. If you wish to receive mailed notice of later hearings on the matter, you must include your mailing address.

Use the Map App:	Use U.S. Mail:
<a href="http://portlandmaps.com/bps/mapapp">portlandmaps.com/bps/mapapp</a> Click on "Public Infrastructure Environmental Code Project" then click the "Testify" button. Testifying in the Map App is as easy as sending an email.	Portland Planning Commission Public Infrastructure Environmental Code Project Testimony 1810 SW 5 <sup>th</sup> Ave, Suite 710 Portland, OR 97201

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# Table of Contents

<b>Section I Introduction .....</b>	<b>7</b>
<b>Section II: Zoning Code Amendments .....</b>	<b>17</b>
33.274, Radio Frequency Transmission Facilities .....	19
33.430, Environmental Zones .....	21
33.430.080, Items Exempt From These Regulations .....	23
33.430.130, Permit Application Requirements .....	27
33.430.140, General Development Standards .....	29
33.430.150, Standards for Utilities .....	35
33.430.160, Standards for Land Divisions and Planned Developments .....	39
33.430.170, Standards for Resource Enhancement Projects .....	41
33.430.175, Standards for Right of Way Improvements .....	43
33.430.185, Standards for Flood Control and Wastewater Control Facilities.....	45
33.430.230, Procedure .....	47
33.430.240, Supplemental Application Requirements .....	49
33.430.250, Approval Criteria .....	49
33.430.410, Notice Procedure .....	51
33.465, Pleasant Valley Natural Resources Overlay Zone .....	55
33.465.130, Permit Application Requirements.....	55
33.465.410, Notice Procedure .....	55
33.475, River Overlay Zones .....	61
33.475.405, Items Exempt From These Regulations.....	61
33.475.440, Development Standards .....	61
33.910, Definitions .....	65



# Section I: Introduction

## Purpose

The primary purpose of the Public Infrastructure Environmental Code Project is to amend the requirements of the Environmental Zones chapter of the zoning code (33.430) to better address needed improvements to existing public infrastructure, as well as address future infrastructure projects expected throughout the city in the coming years. This project also includes a number of minor amendments that apply to tree replacement, site enhancement options, noticing requirements and other activities. Some minor amendments to the River Overlay Zone (33.475), the Pleasant Valley Natural Resources Overlay Zone (33.465), Radio Frequency Transmission Facilities (33.274), and Definitions (33.910) to maintain consistency in regulations across the City's environmental zones.

## Project Summary

The Environmental Overlay Zones (33.430), River Overlay Zone (33.475) and Pleasant Valley Natural Resources Overlay Zone (33.465) are applied in different areas of the city and are intended to ensure development impacts to natural resources identified in the City's Natural Resources Inventory are addressed. Existing criteria, known as standards, within these Zoning Code chapters allow environmentally sensitive development to occur where overlay zones have been applied. Development that cannot meet standards, for example setting development back a minimum distance from rivers, streams and wetlands or limiting tree removal below an established level, is subject to a discretionary environmental land use review.

When development or redevelopment is proposed near sensitive natural resources, it is often subject to environmental review. As a part of environmental land use review, applicants must conduct an alternatives analysis to identify options that minimize impacts to natural resources. When avoidance isn't possible, mitigation is required to address impacts. Environmental reviews involve payment of higher fees and can be more complex and time-consuming but they frequently lead to more beneficial outcomes, such as a more compact site design or less impactful building layouts.

Public infrastructure serves vital functions, including water delivery, waste treatment and flood protection. Parts of these systems are decades old and long overdue for replacement. Modern safety standards, building codes and increased capacity needed to serve population growth mean that these structures frequently have to be expanded during replacement. Additionally, climate change has made our region more susceptible to potential natural disasters, such as wildfires and flooding, which increases the urgency of on-going maintenance and upgrades to public infrastructure.

Many public infrastructure facilities, such as pump stations and flood control structures, are located in low lying areas near protected waterbodies, or in protected forested natural areas. These facilities are also often located on small parcels or within easements surrounded by natural resources with little room to change the building location or orientation. As a result of

this limited flexibility, many of the expected benefits of environmental review are often not achievable because, for example, alternative layouts for development are not possible. As a result, the process can result in additional expense and delay without additional benefit.

The proposed Public Infrastructure Environmental Code Project amendments aim to minimize delays and avoid the additional expense of environmental review by allowing standards to be met, where appropriate. The proposed amendments will still ensure that development impacts are addressed through onsite or offsite tree replacement, resource enhancement and restoration.

Amendments are proposed in the following categories and are summarized below:

1. Pump Stations and Flood Control Structures Amendments
2. Natural Area Management Amendments
3. Tree Removal and Replacement Amendments
4. Miscellaneous technical amendments

### **Pump Stations and Flood Control Structures Amendments**

The first category of amendments addresses pump stations and flood control structures. Pump stations and flood control structures frequently need to be located near waterbodies, where Environmental overlay zones are often applied. In Portland, many of these structures were built decades ago and are in need of upgrades or replacement. When replacement occurs, the size and capacity of these structures often need to be increased to serve population and economic growth and to address the effects of climate change. Currently, there are no standards for replacement of these facilities and Environmental Review is required. In these situations, alternatives to the current building location are often limited and replacement and/or expansion is frequently approved due to the public benefit these structures provide. As a result, the requirement for a discretionary Environmental Review results in additional process and cost without significant benefit. The code that applies to Environmental overlay zones already acknowledges the special importance of public infrastructure through the inclusion of provisions that allow projects that provide a public benefit to be built in areas where private development would not be permitted.

This project includes a set of narrowly tailored amendments that apply to the replacement or alteration of existing pump station and flood control structures. The standards limit the amount of disturbance that is allowed and modifies requirements for site enhancement and tree replacement to offset impacts to natural resources. There are also provisions that allow flexibility in how public entities and public utilities can carry out site enhancement requirements that are intended to offset the impacts of development in environmentally sensitive areas. Site enhancement can either be carried out on the site where the impacts are proposed or through off-site resource enhancement projects. In some cases, these offsite resource enhancement projects may be used to substitute for onsite plantings, when the resource enhancement has been approved through an environmental review.



Additionally, pump stations are added to a list of items that are processed through Type II Environmental Reviews. Existing code requires any pump station replacement or upgrade in the Environmental Protection overlay zone that cannot meet standards to be processed through a Type III process. The Type III process does not allow for an administrative approval by staff, instead requiring a public hearing before the Hearings Officer before approval. Type III processes typically apply to large, complex projects that benefit from a more comprehensive review to resolve adjustments to requirements in multiple Zoning Code chapters and may require the imposition of conditions and requirements for associated public improvements. These types of complicating factors rarely arise for pump station projects because they are relatively discrete in size, have minimal offsite impacts and are generally straightforward and therefore rarely need adjustments or modifications to Zoning Code requirements.

The Type II process is a more appropriate process for these types of public infrastructure projects because review staff are generally limited in the discretionary requirements they apply due to site constraints that are typical of pump station locations and the public benefit they provide.

### **Amendments for Natural Area Management**

The second set of amendments address the management of natural areas. These amendments include allowances for the installation of devices that manage the impact of beavers, thinning of trees to promote specific habitat types and to prevent tree overcrowding, installation of low impact floating structures that provide above-water, vegetated wetland habitat in locations where it is infeasible or impractical to do onshore resource enhancement, and allowances for cultural harvesting of vegetation by groups that have formal arrangements with either the Bureau of Environmental Services or Portland Parks & Recreation.

Existing Environmental overlay zone directives would require land use review for these activities even though their aim is to restore and/or improve habitat or to allow traditional harvesting activities that will not permanently damage the environment. In recognition of the effects of these actions on natural resources, these amendments aim to streamline a small number of natural area management activities.

### **Tree Removal and Replacement**

A third group of amendments proposes changes to (1) tree removal allowances that would limit the number of trees that can be removed by standards in development situations, (2) the requirement to retain large diameter pieces of wood on site, (3) tree removal requirements around City infrastructure that is located in areas of increased wildfire risk, and (4) how the revegetation fee is calculated and administered, as well as clarification and standardization of when the revegetation fee is eligible to be used in lieu of on-site tree replacement.

## Miscellaneous Technical Amendments

### Noticing Procedures

Amendments are proposed that would remove public noticing and review procedures that apply to development that meets all applicable standards (and is therefore not subject to land use review). This type of noticing requirement is unnecessary because public input cannot be taken into account when staff evaluate a project to determine if standards are met. Standards are clear and objective criteria that do not allow for interpretation by City staff.

There is a separate set of noticing and site posting requirements in Chapter 33.705 that apply to all sites. These noticing procedures are triggered by provisions in the base zones that apply to proposed development that exceeds 10,000 square feet in building coverage. These separate noticing procedures are not affected by the proposed amendments and they will continue to apply to all development that exceeds the 10,000 square feet area threshold, whether or not the proposed development is in an Environmental overlay zone.

### ADU Setbacks

This amendment allows a reduction in front and street setbacks for accessory dwelling units to any distance between the minimum that is specified in the accessory dwelling units code chapter (33.205) and zero. This change allows for more compact site development and provides flexibility so that development can avoid trees and be setback from water features. The change also brings the front setback standards for ADUs into alignment with existing standards for primary structures and garages.

### Right-of-Way Improvements

Several minor amendments are proposed to the development standards and exemptions that apply to right-of-way improvements:

- A clause is added to the exemption for development of public streets and sidewalks within existing rights-of-way that clarifies that the exemption does not apply if the disturbance area for the improvement extends outside of the right-of-way.
- Setback requirements near waterbodies and the Protection overlay zone and the limit on total disturbance area for roadway improvements are narrowed to only apply in the resource area of Environmental overlay zones. This change brings the standards for right-of-way improvements into alignment with the general development standards (33.430.140).
- The limit on roadway widths and the total paved area of right-of-way improvements is proposed to be removed. Previously, the standard only allowed roadway widths up to 26 feet, which meant that the majority of roadway improvements had to meet the exemption criteria, which has no limit on paved area, or be approved through Environmental Review.

## Summary of Updates Since the Discussion Draft

The Discussion Draft of the Public Infrastructure Environmental Code Project was released on April 15, 2025, and was available for public review through May 9, 2025. During the public review period, project staff held two open houses focused on the project and posted an online video that contained the same information that was presented at the open houses. Attendance for the open houses included two members of the public and three City of Portland staff.

During the public comment period, project staff engaged with a number of community organizations, including Bird Alliance of Oregon, Willamette Riverkeeper, Columbia Riverkeeper, Columbia Slough Watershed Council, Johnson Creek Watershed Council, the Columbia Corridor Business Association and the Urban Flood Safety & Water Quality District.

Staff reached out to the following Tribal governments: Confederated Tribes of the Grande Ronde, Confederated Tribes of Siletz Indians, Confederated Tribes of Warm Springs, Confederated Tribes of the Umatilla Indian Reservation, Cowlitz Indian Tribe and Confederated Tribes and Bands of the Yakama Nation.

Staff also coordinated with staff from a variety of other City bureaus, including Bureau of Environmental Services, Portland Permitting & Development, the Water Bureau, Portland Parks and Recreation, and the Portland Fire Bureau.

Comments received on the Discussion Draft were generally focused on the following topics:

- Tree removal around Water Bureau infrastructure in Wildfire Hazard Zones and how approval and tree replacements will be approved, processed and tracked.
- Standards for replacement of pump stations and flood control infrastructure and how site enhancement requirements will be implemented.
- Standards, exemptions and challenges related to permitting and approval of road improvements.
- Technical concerns about wording of miscellaneous standards and exemptions.

To respond to these comments and feedback, project staff made edits and additions to the proposed amendments. The Proposed Draft of the Public Infrastructure Environmental Code Project incorporates these changes. The most significant changes that were made are summarized in the list below:

- The standards for tree removal around public infrastructure were updated to clarify that applicants may either replace trees onsite, pay a fee in lieu of tree replacement, or use an advanced mitigation site for tree replacement. An exemption was also added to provide an alternative path for tree removal and replacement for Water Bureau facilities if authorized by a programmatic permit.
- Similarly, standards for pump stations and flood control structures were updated to clarify how requirements for tree replacement and site enhancements can be satisfied using different options.

- Standards for right-of-way improvements were modified to remove limits on paved roadway width and total paved area allowed in the environmental overlay zones. This change will make it more likely that routine right-of-way improvements can meet standards and avoid environmental review.
- A new amendment to allow the addition of radio transmission poles to sewage pump stations was added. Radio communication is integral to the function of modern sewage pump stations and without this change the addition of radio communication equipment to sewage pump stations would require a conditional review process.
- Addition of the Urban Flood Safety & Water Quality District to the definition of Public Safety Facility. Without this amendment, alterations to infrastructure that is maintained by the Urban Flood Safety & Water Quality District that cannot meet standards could be subject to Type III environmental review processes. Environmental reviews for Public Safety Facilities are processed using the less complicated and expensive Type II administrative procedures.
- A number of other text and clerical edits were also made.

**Table 1. Summary of Public Infrastructure Environmental Overlay Code Project Amendments**

The table below summarizes each of the proposed amendments in this package.

#	Name	Proposed Amendment	Code Section	Page #
1	Exempt poles for radio transmission facilities to sewage pump stations	Add a new exemption for the addition of structures that support radio transmission equipment to sewage pump stations. Previously, this would have triggered a conditional use review.	33.274.030.K	19
2	Incorporate Reference to Urban Flood Safety and Water Quality District	Replace existing references to drainage districts, Multnomah County Drainage District, MCDD, Peninsula Drainage District #1, and Peninsula Drainage District #2 to “Urban Flood Safety and Water Quality District.” These previous drainage districts have recently been consolidated into a State of Oregon-designated entity now referred to as the Urban Flood Safety and Water Quality District.	Throughout	23 41 45 47 65
3	Allow for Replacement of Structures in the Flood Safety District	Add replacement of flood control structures to list of exempt activities allowed to be carried out by the Urban Flood Safety and Water Quality District. Replacement is not exempt whenever coverage or utility size is increased.	33.430.080.D.6 33.430.080.D.6.c	23 25
4	Vegetation Maintenance by the Flood Safety District	Establish some vegetation maintenance activities on levees outside the floodway as exempt from code requirements.	33.430.080.D.6.b	25
5	Levee Bank Stabilization and Restoration	The exemption for levee restoration is amended to allow levees to be regraded to 33% slope. The existing exemption says that levees can be regraded to their original condition and footprint. This change keeps the original wording but adds an allowance for regrading up to 33% to avoid any ambiguity as to whether the exemption can be used to meet engineering requirements.	33.430.080.D.6.e	25
6	Exempt the Removal of Dead, Dying, and Dangerous Trees from Environmental Overlay Zone Requirements When Associated with Development	Previously, the exemption for the removal of trees that are dead, dying, or dangerous in environmental overlays only applied in situations where no other development was proposed. This restriction is removed.	33.430.080.D.7.a	27
7	Narrow the Large Wood Retention Requirements	Lots that are less than 10,000 square feet in area are exempted from requirements to retain large pieces of wood.	33.430.080.D.7.a.(1) 33.475.440.K.4.b	21 57

#	Name	Proposed Amendment	Code Section	Page #
8	Allow Tree Thinning on Sites Owned or Managed by the City.	Exempt the removal of trees that are less than six inches in diameter in city-owned or City-managed sites when the work is conducted by Bureau of Environmental Services or Parks & Recreation staff. Selective removal of trees can help to prevent overcrowding or propagate specific habitat types.	33.430.080.D.7.a(6)	25
9	Cultural Harvesting	Exempt the harvesting or removal of vegetation by groups that have received prior authorization from BES or PP&R.	33.430.080.D.12 33.475.405.L.3	27 61
10	Flow Control Devices	Exempt the use of habitat modification methods in waterways, which are non-lethal methods to manage beaver impacts.	33.430.080.E.13 33.475.405.W	27 61
11	Marking Proposed Development on Site	The requirement to mark proposed development on site is moved from section 33.430.430 to 33.430.130. This move is being made because site inspections are being deleted from 33.430.430.	33.430.130.C 33.465.130.D	27 55
12	Site Enhancement Amendment	Site enhancement per Table 430-2 is required when applicants propose to make alterations to existing development within existing disturbance areas. One of the options in the table is to pay a revegetation fee in lieu of onsite enhancement. The term, "on the site" is deleted from this standard to recognize the fee in lieu option, which will support off site resource enhancements.	33.430.140.D.2.b(2)	29
13	Tree Removal Limit	Reduce the total diameter inches of native trees that are allowed to be removed through development standards from a combined total of 225 inches to 175 inches. This change will make the native tree removal limit more consistent with the number of replacement trees that can reasonably be planted on a typical site.	33.430.140.J.1.b; 33.430.160.F.1	29 39
14	Revegetation Fee	The revegetation fee is amended to assign responsibility for oversight and fee administration to Portland Parks & Recreation and to clarify how it is calculated when it is used for tree replacement. Standards that allow tree removal with replacement are amended throughout Chapter 33.430 to specify when applicants are required to do onsite tree replacement (Option A or Option B) and when applicants may choose either onsite replacement or the fee-in-lieu (Option C). Option C is a new compliance option that is being added to	Table 430-2, Option 4; Table 430-3, Option C (fee-in-lieu) 33.430.140.K; 33.430.140.J 33.430.150.A.5.b; 33.430.160.F 33.430.170.D 33.430.185.D 33.430.185.E.3	29 33 35 33 37 39 43 45 47

#	Name	Proposed Amendment	Code Section	Page #
		Table 430-3 to clarify the revegetation fee that must be paid when it is used in lieu of tree replacement. Previously, the code allowed applicants to pay the fee for tree replacement, but the code lacked clarity on the specifics of how the fee should be determined.		
15	ADU Setback	Amend language to allow for setbacks to be modified for ADU construction on sites that contain Environmental overlay zones, similar to existing allowances for other development.	33.430.140.N 33.475.440.O.4.b	35 63
16	Wildfire Hazard Tree Removal	Allow the removal of trees that are located within 30 feet of specified types of infrastructure that perform critical life and property safety functions in Wildfire Hazard Zones. Applicants must replant trees per the ratios in Table 430-3. Trees can be planted onsite or a fee-in-lieu can be paid. Trees meeting the above criteria may also be removed by exemption if removal and replacement is authorized by a programmatic permit.	33.430.080.D.7.a.(7) 33.430.150.B	27 37
17	Tethered Floating Structures	Add standards to allow the installation of tethered floating structures covered in vegetation to provide floating wetlands as habitat for birds and other species.	33.430.170.C	41
18	Right-of-Way Width and Area Limits	This amendment removes the limits on the maximum width and maximum area of paved portions of right-of-way improvements.	33.430.175.A	43
19	Right-of-Way Setbacks and Disturbance Area Limits	This amendment narrows the application of disturbance setbacks from wetlands and waterbodies and limits total disturbance area of roadway improvements to only apply in the resource area. This makes the Standards for Right-of-Way Improvements more consistent with the General Development Standards.	33.430.175.B	43
20	Stormwater Swale Vegetation	Remove the requirement to plant stormwater swales in the right-of-way with native vegetation. Native vegetation does not perform well in this application.	33.430.175.C	43

#	Name	Proposed Amendment	Code Section	Page #
21	Standards for Flood Control, Water Control, Wastewater, and Stormwater Facilities	Sewage pump stations are added to the types of facilities that can use this set of standards. In addition, the standards are broadened significantly to reduce restrictions on the types of alterations that are allowed, to expand the types of structures that may be altered, to increase the amount of area that may be disturbed, to allow for limited tree removal, and to allow for offsite resource enhancement completed in advance to meet site enhancement requirements.	33.430.185	45 47
22	Review Procedure for Pump Stations and Flood Control Structures	Specify that approval of pump stations is processed through a Type II Environmental Review and establish appropriate Environmental Review criteria for pump stations and flood control structures.	33.430.230.B.1 33.430.250.A 33.430.250.A.1	47 49
23	Notice and Review Procedure	Remove notice and public review requirements for development that meets standards. Standards do not allow for PP&D staff to incorporate input received from the public into approval decisions. These requirements are generally duplicative of procedures that are already required for all large-scale development.	33.430.430 33.465.430	51 53 55 57 59
24	Replacement of Structures in Flood Areas	Narrow the exemption for replacement of structures in the River 'e' overlay zone to exclude replacement within the combined flood hazard area. This amendment remedies an oversight from the Floodplain Resilience Plan, which was adopted in October of 2023.	33.475.405.D	61
25	Public Safety Facility Definition	Facilities that are owned and operated by the Urban Flood Safety & Water Quality District are added to the definition of Public Safety Facility. This will allow environmental reviews for these facilities to be processed using Type II procedures	33.910	65



## Section II: Zoning Code Amendments

This section presents amendments to the Zoning Code. The section is formatted to facilitate readability by showing code amendments on the right-hand (odd) pages and related commentary on the facing left-hand (even) pages.

How to read these amendments:

- Language to be added is show in underline.
- Language to be deleted is show in ~~striketrough~~.

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## Commentary

### **33.274.030**

Radio transmission facilities that are associated with water or sewer pump stations are added to the list of items that are exempt from the regulations of this chapter. Radio communications equipment is routinely installed to facilitate the operation and monitoring of wastewater facilities. Previously, approval of this equipment would have been subject to conditional use review. The impact of adding these radio transmitters to these facilities is relatively minor and the conditional use review process would not likely result in any meaningful alteration of development proposals.

## 33.274 Radio Frequency Transmission Facilities

274

### 33.274.030 Facilities Exempt from this Chapter

All of the following are allowed without a conditional use and are exempt from the regulations of this chapter:

- A. Emergency or routine repairs, reconstruction, or routine maintenance of previously approved facilities;
- B. Industrial, scientific, and medical equipment operating at frequencies designated for that purpose by the Federal Communications Commission;
- C. Military and civilian radars, operating within the regulated frequency ranges, for the purpose of defense or aircraft safety;
- D. Point-to-point and multipoint microwave facilities, provided that:
  - 1. Any new tower meets the height requirements of the base zone or is less than 50 feet in height, whichever is less; and
  - 2. Any new tower is more than 2,000 feet from any other Radio Frequency Transmission Facility that is supported by a tower;
- E. Amateur and citizen band transmitters and antennas;
- F. Two-way communication transmitters used on a temporary basis by "911" emergency services, including fire, police, and emergency aid or ambulance service;
- G. Radio transceivers normally hand-held or installed in moving vehicles, such as automobiles, watercraft, or aircraft. This includes cellular phones, smart tablets, navigation systems, laptop computers and consumer signal boosters;
- H. Towers, masts, poles, or other supporting structures accessory to a residential use, with a transmitter output power of 1,500 watts or less;
- I. Transmitters, when not used in conjunction with personal wireless service facilities, operating at a frequency less than 1 GHz and a transmitter output power of less than 7 watts, provided that any new tower, pole, or mast meets the height requirements of the base zone or is less than 50 feet in height, whichever is less; and
- J. Radio frequency machines that:
  - 1. Are designated and marketed as consumer products, such as microwave ovens and remote control toys; or
  - 2. Are in storage, shipment, or on display for sale, provided such machines are not operated-;
- K. Poles that are accessory to a water or sewer pump station.

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## **Commentary**

### **Table of Contents**

The titles of sections 33.430.150 and 33.430.185 are amended. The change to the title of 33.430.150 reflects the addition of standards for tree removal around specified types of basic utility infrastructure in wildfire hazard zones. See commentary on page 26.

The change to the title of 33.430.185 is made because the section is being expanded to address both flood control structures and sewer pump stations. See commentary on page 36.

## 33.430 Environmental Zones

430

### 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
- 33.430.033 Relationship to Scenic Resources Zone
- 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

- 33.430.110 Purpose
- 33.430.120 Procedure
- 33.430.130 Permit Application Requirements
- 33.430.140 General Development Standards
- 33.430.150 Standards for ~~Utility Lines~~ Utilities
- 33.430.155 Standards Septic Systems
- 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
- 33.430.185 Standards for ~~Certain Flood~~ and Waste Water Control Facilities
- 33.430.190 Standards for Public Trails
- 33.430.195 Standards for Tree Removal in the Scenic Resources Zone

#### 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

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## Commentary

### 33.430.080.D.6

This amendment does two things:

- First, the amendment adds reference to Oregon Revised Statutes (ORS) 550 and Urban Flood Safety and Water Quality Districts. ORS 550 was recently adopted by the state legislature to replace existing drainage districts in the Portland region with the newly established Urban Flood Safety and Water Quality District. The amendment is necessary because multiple drainage districts, including the Multnomah County Drainage District, Peninsula Drainage District 1, and Peninsula Drainage District 2 have been consolidated into a single entity that is now referred to as the Urban Flood Safety and Water Quality District.
- Second, the amendment allows for the replacement of flood control structures in addition to operation, repair, and maintenance. This exemption only applies when coverage or utility size does not increase. Many flood control structures are aging or substandard and in need of replacement. This exemption will allow for replacement only when impacts to natural resources are avoided through replacement in the existing building footprint. A related amendment to allow the approval through standards of some expansion of building coverage is proposed in 33.430.185.

- 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

Map 430-1 Environmental Overlay Zone Map Correction Project 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 Johnson Creek Basin Protection Plan Area

Map 430-5 Northwest Hills Natural Areas Protection Plan Area

Map 430-6 East Columbia Neighborhood Natural Resources Management Plan Area

Map 430-7 Peninsula One Natural Resources Management Plan Area

Map 430-8 Forest Park Natural Resources Management Plan Area

Map 430-9 Middle Columbia Corridor/Airport Natural Resources Inventory  
Environmental Mapping Project Area

Map 430-10 Bank Reconfiguration and Basking Features Area

**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. Other City regulations such as Title 10, Erosion Control, and Title 11, Trees, must still be met.

**A.-C.** [No Change]

**D.** Existing development, operations, and improvements, including the following activities:

1.-5. [No Change]

- 6. Operation, maintenance, ~~and repair, and replacement~~ of drainage facilities, flood control structures, and conveyance channels that are managed by Urban Flood Safety and Water Quality District as defined by ORS 550~~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 portions of the environmental overlay zone above the ordinary high water mark. Replacement is not exempt whenever coverage or utility size is increased. Operation, maintenance, ~~and repair, and replacement~~ of drainage facilities include:

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## Commentary

### **33.430.080.D.6.a**

The floodway has a specific definition in the zoning code that is tied to FEMA's flood hazard definitions. FEMA Flood Insurance Rate Maps (FIRM) maps do not define a floodway within the area that is managed by the Urban Flood Safety & Water Quality District (UFS&WQD). The intent of this exemption is to allow the UFS&WQD to manage aquatic vegetation within the stream and slough channels where they have jurisdiction. The current limitation on the use of this exemption to the floodway means that it couldn't be used. Deletion of the reference to the floodway will allow dredging and vegetation maintenance to occur as originally intended.

### **33.430.080.D.6.b**

This amendment allows for the clearance of vegetation on levees. Existing language in 33.430.080.D.7 allows for limited vegetation maintenance activities but does not allow for the removal of native vegetation.

### **33.430.080.D.6.e**

This amendment establishes that stabilization and restoration efforts must either return the levees to the original condition or, at minimum, to a 33 percent slope, which equates to a 1:3 rise over run. Restoration of levees to their original condition generally entails regrading the levees to achieve a 33 percent slope so this is in line with current practice.

### **33.430.080.D.7.a**

This amendment removes the limitation that dead, dying or dangerous trees can only be removed when no other development is proposed. Currently, there is no allowance for dead, dying and dangerous trees to be removed when development is proposed and the proposal meets the general development standards.

#### **33.430.080.D.7.a.(1)**

This amendment modifies the requirement to retain pieces of wood that are more than 12 inches in diameter when dead, dying, or dangerous trees are cut down. Previously, lots that were less than 7,000 square feet in size were excluded from this requirement. Now lots that are less than 10,000 square feet in size are excluded. This change is being made to address the fact that retaining pieces of downed wood can be challenging on smaller lots. Recent ice storms damaged a large number of trees throughout the city and many property owners found it difficult to comply with the wood retention requirement. Roughly 2/3 of privately-owned lots where Environmental overlay zones are applied are 10,000 square feet or larger.

#### **33.430.080.D.7.a.(6)**

This amendment adds an exemption to allow City staff to remove small trees from environmental overlay zones on sites that are City owned or managed. Tree thinning is used to reduce crowding and promote specific habitat types within natural areas.



- a. Dredging and channel cleaning below the ordinary high water mark and vegetative maintenance within the minimum ~~floodway~~ cross-section of drainageways;
  - b. The following vegetative maintenance when conducted on levees outside the minimum floodway cross section:
    - (1) Mowing of grass and forbs; and
    - (2) Removing or pruning trees that are less than 6 inches in diameter, and removing or pruning other plants.
  - ~~c.b.~~ Operation, maintenance, ~~and repair, and replacement of drainage~~ District pump stations, water control structures, ~~or~~ and levees;;
  - ~~d.e.~~ 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
  - ~~e.d.~~ Stabilizing banks and restoring levees back to original condition and footprint or stabilizing banks and restoring levees to an average slope of 33 percent or less (33 percent slope represents a rise over run ratio of 1:3);
7. Removing or pruning the following trees and plants:
- a. Trees. The following trees may be removed or pruned. Subsubparagraphs D.7.a(2) through (5) only apply if no development or other activities subject to the regulations of this chapter are proposed, and a ~~All~~ removal or pruning activities ~~are~~ must be surrounded or protected to prevent erosion and sediment from leaving the site or negatively impacting resources on the site. Permanent erosion control, such as replanting areas of bare soil must be installed after removal or pruning:
    - (1) Dead, dying, diseased, or dangerous trees, or portions of trees, when they pose an immediate danger as determined by the City Forester or an arborist. On sites ~~7,000~~ 10,000 square feet or larger in area, all sections of wood more than 12 inches in diameter must remain or be placed in the resource area of the site on which they were cut or within a commonly-owned environmental resource tract. These sections of wood are not required to remain when:
      - The site contains only transition area; ~~or~~
      - The City Forester authorizes removal of diseased wood because it will threaten the health of other trees;
    - (2)-(5) [No change]
    - (6) Native trees that are less than 6 inches in diameter and located on sites that are owned or managed by the City of Portland may be removed if the work is carried out by the Bureau of Environmental Services or Portland Parks & Recreation using handheld equipment.

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## Commentary

### **33.430.080.D.7.a.(7)**

This amendment exempts the removal of trees around water storage and distribution facilities that are owned and operated by the Portland Water Bureau. This exemption is only applicable if the facility is located in a Wildfire Hazard Zone and if the tree removal is authorized by a Title 11 programmatic permit. In the event of a wildfire, water storage and distribution facilities are a critical component of firefighting efforts. The allowance for clearing of trees around these structures will reduce the likelihood that they will be damaged by wildfires so that water is available to meet firefighting needs. Tree replacement ratios and procedures consistent with those in this chapter will be required and specified in the programmatic permit. Implementation of these requirements through a programmatic permit will allow for a more streamlined process for the Water Bureau, while providing necessary oversight by Portland Parks and Recreation Urban Forestry staff. The Wildfire Hazard Zones Map was adopted by City Council in 2003 (Ordinance No. 177433) and may be amended in the future.

### **33.430.080.D.12**

The Bureau of Environmental Services and Portland Parks & Recreation both have a process to allow groups and individuals to conduct traditional cultural practices involving the harvesting of native vegetation on City owned land. This amendment acknowledges those activities and ensures that, when allowed, they are exempt from the regulations of the Environmental overlay zones.

### **33.430.080.E.13**

This amendment adds an exemption that will allow for the installation of devices that limit the negative impacts of beavers on infrastructure and property. Flow control devices, pond levelers, and other habitat modification techniques are humane options for coexistence with beavers, allowing the environmental benefits that beavers provide while avoiding damage. Because these devices are typically installed within the banks of waterbodies, they cannot meet standards. Without this exemption, habitat modifications would be subject to Environmental Review. The requirement to complete Environmental Review might discourage property owners from using these methods, which could negatively impact infrastructure and property and result in more beaver removal. The BES Beaver Management Plan can be accessed at the following URL: <https://www.portland.gov/bes/documents/city-portland-beaver-management-plan-best-management-practices/download>

### **33.430.130.C**

This section, which requires applicants to mark disturbance areas, tree removals, and remediation areas, is moved from 33.430.430. That code section is being amended to delete site inspection, notification, and public comment requirements. Because these inspection and review requirements will no longer apply, the requirement to mark the proposed disturbance area on the site is more appropriately located in this section.

(7) Trees located within 30 feet of reservoirs, water towers, water storage facilities, or water distribution facilities that are owned and operated by the City of Portland Water Bureau may be removed if the reservoir, water tower, water storage facility, or water distribution facility is located in the Wildfire Hazard Zone shown on the City's adopted Wildfire Hazard Zones map, or the reservoir, water tower, water storage facility, or water distribution facility is located within 100 feet of the Wildfire Hazard Zone shown on the City's adopted Wildfire Hazard Zones map. This exemption is only applicable if tree removal and replacement is authorized by a Title 11 programmatic permit.

b. [No change]

8.-11. [No change]

12. Removing or pruning trees and plants on City owned land as approved by a vegetation harvesting agreement with the Bureau of Environmental Services or Portland Parks and Recreation;

E. The following new development and improvements:

1. [No change]

2. Public street and sidewalk improvements meeting all of the following.:

- a. Improvements must be within a 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~~.

3-12. [No change]

13. Vegetation protection and habitat modification methods as described in the Bureau of Environmental Services *Beaver Management Plan*. All installation and maintenance must be carried out using handheld equipment;

F. [No change]

### **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. [No changes]

B. Proposed development plan including:

1.-8. [No change]

C. 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.

~~D.G.~~ Photographs of the site are not required but are encouraged to supplement the existing conditions site plan.

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## Commentary

### **33.430.140.D.2.b(2)**

Site enhancements in Table 430-2 includes options to replant an area on site or to pay a revegetation fee. The revegetation fee will be coordinated by Parks' Urban Forestry who will plant trees and vegetation within the same watershed. This amendment deletes language that can be read to imply the site-enhancement must be completed on site.

### **33.430.140.J.1.a and b**

This amendment removes redundant language. Standard J applies within resource and transition areas as specified in the introductory language to 33.430.140.

### **33.430.140.J.1.b**

This amendment reduces the allowance for native tree removal from 225 diameter inches to 175 diameter inches. The amendment right-sizes the allowance for removal with the replanting ratios specified in Table 430-3. Portland Permitting & Development staff have observed that the number of trees required to be replanted for removal of between 175 and 225 inches of native trees is generally more than can be accommodated on most development sites. If there isn't room on the site for the required number of replacement trees, then options for applicants are limited to either Environmental Review or paying the revegetation fee per Table 430-3 Option C. Reducing the allowance to 175 inches establishes a more realistic threshold for applicants expecting to be able to meet standards through onsite tree planting.

### **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;
- Septic systems subject to Section 33.430.155;
- Land divisions subject to Section 33.430.160;
- Property line adjustment subject to Section 33.430.165;
- 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;
- Flood and water control facilities subject to Section 33.430.185;
- Public recreational trails subject to Section 33.430.190; and
- Tree removal in scenic resources zone subject to Section 33.430.195.

Standards A through C and G through S apply to new development in the resource area. Standards D through S except L apply to alterations to existing development in the resource area. Only standards E, J, K, N, Q, R, and S apply to new development and alterations to existing development in the transition areas. All of the applicable standards must be met.

#### **A.-C.** [No change]

#### **D.** For alterations to existing development, one of the following must be met:

1. [No change]
2. If the existing disturbance area now exceeds the limitations of Table 430-1, 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:
    - (1) The increase is located outside of the combined flood hazard area. This standard does not apply within the IH, IG2 and EG2 zones; and
    - (2) 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.

#### **E.-I.** [No change]

#### **J.** Tree removal and replacement standards.

1. Removal of native trees is allowed as follows:
  - a. Trees that are removed ~~from resource and transition areas~~ must be replaced as shown in Table 430-3. Trees less than 6 inches in diameter do not have to be replaced.
  - b. ~~In resource and transition areas, the combined total diameter of all trees removed may not exceed 175 inches, counting only native trees that are at least 6 inches in diameter;~~

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## Commentary

### **33.430.140.J.4**

This standard is deleted because the addition of Option C to Table 430-3 makes this standard redundant. Column C of Table 430-3 specifies how the revegetation fee is to be assessed when applicants opt to pay the fee in lieu of onsite tree replacement.

- c. In resource areas, the removal of native trees is allowed only as follows~~may be removed only if one of the following is met:~~
  - (1) Within 10 feet of existing or proposed buildings and structures attached to buildings, such as decks, stairs, and carports;
  - (2) Within 10 feet of proposed driveways or right-of-way improvements; or
  - (3) To create up to 500 square feet of permanent disturbance area for uses such as gardens and play area.
- 2. Non-native non-nuisance trees may be removed if each tree at least 6 inches in diameter is replaced as shown in Table 430-3;
- 3. Trees listed on the Nuisance Plants List may be removed, if each tree at least 6 inches in diameter is replaced with one native tree; and
- 4. ~~For replacement of non-native trees, applicants may pay a revegetation fee as described in Table 430-2 in lieu of planting on the site. The fee is based on the number of trees required under Table 430-3, Option A.~~

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## Commentary

### Table 430-2

This table is a menu of options that applicants may choose from when site enhancement is required. Options 1, 2 and 3 are onsite options. Option 4 is a fee that may be paid in lieu of site enhancement. Option 4 is being amended to transfer responsibility for administration of the fee in lieu, which is known as the Revegetation Fee, from the Bureau of Environmental Services to Portland Parks & Recreation.

### Table 430-2, Option 4, Revegetation Fee

These amendments shift the revegetation fee administration duties to Portland Parks & Recreation instead of the Bureau of Environmental Services. Given each bureau's priorities and programs, the shift to Parks & Recreation will provide greater opportunity to ensure the success of off-site tree planting and revegetation efforts. Portland Parks & Recreation's Urban Forestry program already has significant expertise and experience in managing tree planting and administering and collecting tree planting funds. Portland Parks & Recreation is well-suited for the task of calculating, collecting, and utilizing the Revegetation Fee to ensure effective off-site site enhancement.

### 33.430.140.K

The amendment acknowledges that tree replacement requirements may be met by paying a fee in lieu. When applicants opt to pay the fee, the requirements in this subsection do not apply.



<b>Table 430-2</b> <b>Minimum Site Enhancement Options</b>	
<b>Option</b>	<b>Action</b>
Option 1 Restoration Planting	Remove plants listed on the Nuisance Plants List. 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-half inch in diameter, shrubs must be at least 1 gallon, and groundcover plants a minimum pot size of 4 inches. The remaining area may be seeded with native grass seed.
Option 2 Impervious Surface Reduction	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 one tree, two shrubs, and 7 groundcover plants. Trees must be at least one-half inch in diameter, shrubs must be at least 1 gallon, and groundcover plants must be a minimum pot size of 4 inches. The remaining area may be seeded with native grass seed.
Option 3 Parking Lot Retrofit	Replace existing interior parking lot landscaping with a vegetated infiltration basin using native plants. The minimum planting ratio for this option is one tree and two shrubs for every 50 square feet of planting area, and groundcover plants to cover the remaining area, planted on 12-inch centers. Trees must be at least one-half inch in diameter, shrubs must be at least 1 gallon, and groundcover 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.
Option 4 Revegetation Fee	<p>Pay a revegetation fee.</p> <p>1. Fee use and administration. The revegetation fee is collected by PP&amp;D and is administered by <del>the Bureau of Environmental Services</del><u>Portland Parks &amp; Recreation</u>. The fees collected are used for revegetation projects on public or private property <u>within an environmental overlay zone</u> within the same watershed as the site.</p> <p>2. Calculation of required fee contributions. Applicants must contribute the cost to purchase and plant trees, shrubs, and groundcover 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 <del>BES</del><u>Portland Parks &amp; Recreation</u> based on current market prices for materials, labor, and maintenance.</p> <p>3. Required fee contribution. The applicant must contribute the following revegetation fee before a building permit will be issued:</p> <ul style="list-style-type: none"> <li>- The cost to purchase, plant, and maintain one tree, two shrubs, and 7 groundcover plants for every 50 square feet of planting area;</li> <li>- The fee calculation will be rounded up to the next multiple of \$10; and</li> <li>- 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.</li> </ul>

- K. Except when the fee-in-lieu of tree replacement is paid, ~~R~~replacement trees must be at least one-half inch in diameter; shrubs must be in at least a 1-gallon container or the equivalent in ball and burlap. All trees and shrubs must be selected from the *Portland Plant List* and planted on the site within the environmental zone. Conifers must be replaced with conifers and shrubs must consist of at least two different species;

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## Commentary

### Table 430-3

Column C is added to specify the revegetation fee increment that applicants must pay when they choose the fee in lieu option for tree replacement. This option may be used when applicants propose to remove trees according to the provisions of 33.430.140.J.1.a, 33.430.140.J.2, 33.430.150.A.5.b, 33.430.150.B.2, 33.430.180.C, or 33.430.185.E.3. The fee in lieu option cannot be used when standards specify that tree replacement must be conducted per the requirements of Option A or B in Table 430-3. The revegetation fee is administered and calculated by Portland Parks & Recreation, as described in Table 430-2 Option 4.

### 33.430.140.N

This amendment allows the front and street setbacks required for accessory dwelling units to be reduced. Reducing setbacks allows development to minimize impacts to natural resources without the need for an adjustment review. Existing code already allows building setbacks to be reduced on front and street setbacks. This change will now allow accessory dwelling units to take advantage of the same setback reductions.

### 33.430.150

This section is renamed "Standards for Utilities." Previously, the section only applied to private connections to existing utility lines and upgrades of existing public utility lines. The title is being changed to reflect the fact that new standards are being added that allow for the removal of trees around specified types of structures that are basic utility use.

All of the provisions of the existing standard are being consolidated into subsection A. A new subsection B is being added to address the tree removal allowances around specified public infrastructure.

**L.-M.** [No change]

<b>Table 430-3</b> <b>Tree Replacement in Environmental Overlay Zone</b>			
Size of tree to be removed (inches in diameter)	Option A (no. of native trees to be planted)	Option B (combination of native trees and shrubs)	Option C ( <u>fee-in-lieu</u> )
At least 6 and up to 12	2 [1]	not applicable	<u>An amount equal to 1 increment of the revegetation fee [3]</u>
More than 12 and up to 20	3	1 tree and 3 shrubs [2]	<u>An amount equal to 1 increment of the revegetation fee [3]</u>
More than 20 and up to 25	5	3 trees and 6 shrubs	<u>An amount equal to 3 increments of the revegetation fee [3]</u>
More than 25 and up to 30	7	5 trees and 9 shrubs	<u>An amount equal to 5 increments of the revegetation fee [3]</u>
More than 30	10	7 trees and 12 shrubs	<u>An amount equal to 7 increments of the revegetation fee [3]</u>

Note:

[1] Within the combined flood hazard area located outside of the IH, IG2 and EG2 zones, Option A requires at least 3 native trees to be planted.

[2] Option B ~~is~~ and Option C are not applicable within the combined flood hazard area except on lots zoned IH, IG2 or EG2.

[3] The fee-in-lieu of on-site tree replacement uses the Revegetation Fee described in Option 4 of Table 430-2. One increment is equal to the cost to purchase, plant, and maintain one tree, two shrubs, and 7 groundcover plants for a 50 square foot area.

**N.** Minimum setbacks may be reduced as follows:

1. 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;
2. The minimum detached and connected accessory dwelling unit setback of 33.205.040.C.2 may be reduced to any distance between the minimum and zero; and
3. Parking spaces may be allowed within the first 10 feet from a front lot line, and within a minimum side street setback;

**O.-S.** [No Changes]

**33.430.150 Standards for Utilities ~~Utility Lines~~**

~~The following standards apply to private connections to existing utility lines and the upgrade of existing public utility lines. All of the standards apply in the resource area. Only standard E applies in the transition area.~~

**A.** The following standards apply to private connections to existing utility lines and to the upgrade of existing public utility lines. All of the standards apply in the resource area. Only standard A.5 applies in the transition area.

1. The disturbance area for private connections to existing utility lines is no greater than 10 feet wide;

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## Commentary

### **33.430.150.B**

This standard will allow City bureaus to remove trees located within 30 feet of water tanks, water pumps, sewage pump stations, electrical substations, and emergency communications infrastructure when they are within or adjacent to Wildfire Hazard Zones. These facilities and structures contain sensitive components that could be damaged by heat or fire. In the event of a wildfire, these facilities are a critical component of firefighting efforts. The allowance for clearing of trees around these structures will reduce the likelihood that they will be damaged by wildfires and will help to ensure that water is available to meet firefighting needs. Tree replacement per Table 430-3 is required. A map of Wildfire Hazard Zones was adopted by City Council in 2003 (Ordinance No. 177433). The map may be amended according to the criteria described in Chapter 24.51 of Portland City Code.

- ~~2B.~~ The disturbance area for the upgrade of existing public utility lines is no greater than 15 feet wide;
- ~~3C.~~ The utility construction does not occur within a stream channel, identified wetland, or water body;
- ~~4D.~~ Disturbance areas must be planted with native species listed in the *Portland Plant List* according to the following densities:
  - ~~a1.~~ 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;
  - ~~b2.~~ 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
  - ~~c3.~~ 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 the Erosion Control Manual.
- ~~5E.~~ Tree removal and replacement standards are as follows:
  - ~~a1.~~ Native trees more than 12 inches in diameter may not be removed. Each native tree more than 6 but less than 12 inches in diameter that is cut must be replaced as shown in Option A of Table 430-3;
  - ~~b2.~~ Non-native non-nuisance trees may be removed, if each tree 6 or more inches in diameter is replaced as shown in Table 430-3;
  - ~~c3.~~ Trees listed on the Nuisance Plants List may be removed if each tree 6 or more inches in diameter is replaced with one tree;
  - ~~d4.~~ Replacement trees and shrubs must meet the planting standards in 33.430.140.K; and
  - ~~e5.~~ 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, except where a utility easement precludes tree planting.
- ~~6F.~~ Exemption. If a proposed utility line or upgrade to a utility line runs through an area that has already been approved as a disturbance area, or allowed by the standards of this chapter, it is exempt from Subsections A.1, ~~B.A.2~~, and ~~D.A.4~~.
- B.** The following standards apply to tree removal and replacement near publicly owned and operated water towers and reservoirs, water and sewer pump stations, electrical substations, and emergency communications broadcast facilities.
  - 1.** Trees located within 30 feet of publicly owned and operated water towers and reservoirs, water and sewer pump stations, electrical substations, and emergency communications broadcast facilities may be removed when the water tower, reservoir, water or sewer pump station, electrical substation, or emergency communications broadcast facility is located:
    - a.** In the Wildfire Hazard Zone shown on the City of Portland's adopted Wildfire Hazard Zones map; or

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## Commentary

### **33.430.160.F.1**

The limit on native tree removal is reduced from 225 cumulative diameter inches per lot to 175 cumulative diameter inches per lot. This change is made because many sites lack sufficient space to meet tree replanting requirements. The reduction in the tree removal limit will reduce the amount of trees that can be removed to a number that may more feasibly be replanted on a site.

- b. Within 100 feet of the Wildfire Hazard Zone shown on the City of Portland's adopted Wildfire Hazard Zones map;
  - 2. Native and non-native non-nuisance trees listed on the Portland Plant List that are removed must be replaced using one of the following options:
    - a. Each tree removed is replaced as shown in Table 430-3, Option A or Option B, and all of the replacement trees are planted on the same site in the resource area of an environmental overlay zone;
    - b. The applicant pays a fee in lieu of tree replacement as described in Table 430-3, Option C; or
    - c. The applicant utilizes advanced mitigation in lieu of tree replacement. To use this option:
      - (1) The applicant must have an approved land use review for a resource enhancement project that was approved for the purpose of being used for advanced mitigation; and
      - (2) Conditions of approval of the land use review have been met.
  - 3. Trees listed on the Nuisance Plant List may be removed if they are replaced one to one onsite in the resource area of an environmental overlay zone or the applicant pays a fee in lieu as described in Table 430-3, Option C .

### **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.

**A.-E.** [No change]

**F.** Tree removal is allowed as follows:

- 1. Native trees. In residential zones, the combined total diameter of native trees cut may not exceed ~~225~~175 inches per lot, counting only native trees that are at least 6 inches in diameter. In all other zones, native tree removal is limited to the boundaries of the approved disturbance area. Native trees must be replaced as shown in Table 430-3, Option A or B;
- 2. Non-native non-nuisance trees. Non-native non-nuisance trees may be removed, but must be replaced as shown in Table 430-3, Option A or B; and
- 3. Nuisance trees. Trees listed on the Nuisance Plants List may be removed, but must be replaced. Each tree 6 or more inches in diameter must be replaced with one native tree.

**G-K.** [No change]

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## Commentary

### **33.430.170.A.1**

This paragraph is being amended to reflect the consolidation of the drainage districts into the Urban Flood Safety & Water Quality District.

### **33.430.170.B.1**

This paragraph is being amended to reflect the consolidation of the drainage districts into the Urban Flood Safety & Water Quality District.

### **33.430.170.C**

This subsection is being added to allow for the installation of tethered, floating, vegetated structures, also known as “constructed floating ecosystems,” that are intended to create habitat for important wildlife species such as salmon and steelhead. These features are tethered to the shore and are intended to float in areas outside of the navigational channel. The installations are designed to move up and down with fluctuating water levels. The current standards for resource enhancement projects preclude installations such as this because the standards do not allow development within the banks of identified waterbodies.



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

Environmental Zones The following standards apply to resource enhancement projects in the environmental zones. The applicant for projects that will take place within the area shown on Map 430-10 may choose to meet all of the standards of subsection A, all of the standards of subsection B, ~~or all of the standards of subsection C, or all of the standards of subsection D.~~ Applicants for projects that will take place outside the area shown on Map 430-10 must meet all of the standards in subsection C or subsection D.

- A. Bank reconfiguration.** The following standards apply to bank reconfiguration projects that take place in the Bank Reconfiguration and Basking Features Area shown on Map 430-10. Slough and drainageway banks, which are the area between the ordinary high water mark and the top of bank, may be regraded when all of the following are met:
1. The activity is conducted or authorized by the Urban Flood Safety and Water Quality District ~~Multnomah County Drainage District #1 or Peninsula Drainage District #2~~;
  - 2.-4. [No change]
  5. Trees or snags, 6 inches or greater in diameter, that are removed landward of the new top-of-bank must be replaced and meet the following:
    - a. Each tree or snag, 6 inches or greater in diameter, removed must be replaced as specified in Table 430-3, Option A or Option B Tree Replacement;
    - b.-e. [No change]
- B. Basking features.** The following standards apply to the placement of large wood or large rocks as basking features for wildlife in the Bank Reconfiguration and Basking Features Area shown on Map 430-10. The placement of large wood or large rocks as basking features for wildlife within the Columbia Slough, Whitaker Slough, Buffalo Slough, Peninsula Canal, or other drainageways or identified wetlands is allowed when all of the following are met:
1. The activity is conducted or authorized by the Urban Flood Safety and Water Quality District ~~Multnomah County Drainage District #1, Peninsula Drainage District #2~~ or the City of Portland Bureau of Environmental Services;
  - 2.-6. [No change]
- C. Tethered floating features.** The following standards apply to the installation of tethered floating wetland features. Installation of these features is allowed when all of the following are met:
1. The activity is conducted by the Urban Flood Safety and Water Quality District, as defined by ORS 550, or the City of Portland Bureau of Environmental Services;
  2. No native trees are removed and no non-native non-nuisance trees are removed within the combined flood hazard area;
  3. Temporary disturbance areas must be replanted so that the area achieves a 90 percent vegetation cover within one year;
  4. Installation of anchors or mounting hardware for tethers is conducted using hand-held equipment only; and
  5. Other than the installation of anchors or mounting hardware for tethers, there is no excavation or fill;

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## Commentary

### **33.430.175.A**

This amendment removes the limits on the maximum width of the paved elements in the right-of-way and the total paved area of the right-of-way improvement. With this change, this set of standards will apply to the improvement of any right-of-way, regardless of the width of the paved area. This will make it more likely that routine right-of-way improvements can meet standards and avoid Environmental Review. This change does not open up the possibility of unlimited roadway construction in the Environmental overlay zones because 33.430.175.B.3 still limits the maximum disturbance area that is allowed for the right-of-way improvement in the Environmental overlay zones.

### **33.430.175.B**

This amendment narrows the application of setbacks and limits on disturbance area. They now only apply in the resource area. This standard currently applies in both the resource area and the transition area. This makes the application of these standards more consistent with similar sections of the *General Development Standards* (33.340.140). Consistency is important because right-of-way improvements often are proposed in conjunction with site development. This change will eliminate situations in which a proposed development could meet standards, but proposed roadway improvements included in the development could not meet standards because roadway improvements are located in the transition area.

### **33.430.175.C**

This standard is amended to eliminate the requirement that stormwater swales be planted with native vegetation. This change is necessary because native vegetation typically does not survive well in this application.

~~C-D.~~ **All other resource enhancement projects.** The following standards apply to all other resource enhancement projects not addressed by subsections 170.A, ~~or B, or C.~~ All of the following standards must be met:

1.-5. [No change]

6. No structures are proposed except for public viewing areas developed as part of the project. The public viewing areas must meet the following:

a.-e. [No change]

d. Outside the combined flood hazard area:

- (1) Native trees more than 12 inches in diameter are not removed; and
- (2) Each 6 to 12-inch diameter native tree removed is replaced as shown in Table 430-3, Option A. Replacement trees and shrubs must comply with the planting standards of Subsection 33.430.140.K;

e. Within the combined flood hazard area:

- (1) Native and non-native non-nuisance trees more than 12 inches in diameter are not removed; and
- (2) Each 6 to 12-inch diameter native and non-native non-nuisance tree removed is replaced as shown in Table 430-3, Option A. Replacement trees and shrubs must comply with the planting standards of Subsection 33.430.140.K; and

7. [No change]

### **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. 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;

AB. Within the resource area, 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 3,300 square feet in area;

BC. Planted areas, ~~including~~ except for stormwater swales facilities, must be planted with native plants from the *Portland Plant List*;

CD. Trees within the right-of-way may be removed within the improvement area and within 10 feet of the edge of the improvement except that native and non-native non-nuisance trees greater than 6 inches in diameter located in the combined flood hazard area may not be removed. In no case may the combined total diameter of all trees removed exceed 225 inches, counting only native trees that are at least 6 inches. Trees that are not native trees do not count toward the 225 inches; and

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## Commentary

### **33.430.175.D**

This standard is amended to clarify that public right-of-way standards must meet the requirements established by the City Engineer and that improvements of private rights-of-way are subject to the Permanent Rule for Private Rights-of-way. The previous wording left some ambiguity regarding which rules applied to the different categories of rights-of-way.

### **33.430.185 Standards for Flood and Wastewater Control Facilities**

This set of standards is amended to expand the scope, scale, and types of activities that are addressed. In addition to flood control structures, this section will also apply to sewage facilities. Expansions of disturbance areas and buildings that are allowed by the standards is being increased from 500 square feet to 3,000 square feet; the types of alterations that are allowed are being expanded; restrictions on work below the high-water mark are being removed,; and tree removal will now be allowed within specified limits.

These changes are intended to facilitate a series of public infrastructure projects that are planned in the coming years. Because the projects will be upgrading existing facilities, a typical alternatives analysis, which requires review of alternative locations, is not likely to result in less impactful or more space-efficient development, and any potential impact mitigation will likely be similar to the site enhancement options that are required by this section. Limits on the amount of tree removal allowed with the proposed project will ensure that the most impactful projects will still be subject to Environmental Review.

- DE.** The right-of-way improvements meet the development requirements of the City Engineer, for public rights-of-way, or the Permanent Rule for Private Rights-of-Way, for private rights-of-way.

### **33.430.185 Standards for ~~Certain Flood and Wastewater~~ Control Facilities**

The following standards apply to ~~minor improvements to certain~~ alterations to existing flood and ~~wastewater conveyance~~ control facilities. For the purposes of this Section, an existing flood or ~~wastewater conveyance~~ control facility is defined as existing pump stations, wet wells, electrical panels or pads, intake and outfall structures, flood gates, tide gates, weirs, gravity flow stations, relief wells, culverts, and trash racks. These standards only apply to facilities that are owned or managed by either the Urban Flood Safety and Water Quality District as defined in ORS 550, or by the City of Portland. ~~The minor improvements that these standards apply to are defined as the addition or modification of handrails, access paths, ADA ramps, safety vaults, fall protection posts or pads, or Sewer Level Remote Telemetry (SLRT).~~ All of the standards must be met.

- A. The disturbance area for the ~~minor improvement~~ alteration is not greater than ~~10 feet wide, not greater than 5003,000~~ square feet total, and is contiguous to the existing disturbance area for the flood or ~~wastewater conveyance~~ control facility that is being altered;
- B. Temporary disturbance areas must be planted with native species listed in the *Portland Plant List* according to the following densities:
  - 1. Ten native shrubs for every 100 square feet of temporary disturbance area and a native grass and forb seed mix at a rate of 20 pounds per acre; or
  - 2. If on a levee, a native grass and forb seed mix at a rate of 50 pounds per acre or a grass seed mix approved by the US Army Corps of Engineers for use on levees at a rate of 50 pounds per acre.
- C. ~~The proposed disturbance area for the alteration must be located above the ordinary high water mark and~~ outside of wetlands;
- D. ~~No trees more than 6 inches in diameter are removed with the exception of nuisance species trees. Nuisance species trees 6 inches in diameter or larger that are removed must be replaced with one tree meeting the standard of 33.430.140.K; and Tree removal and replacement standards:~~
  - 1. Removal of native and non-native non-nuisance trees is allowed as follows:
    - a. Trees located within the disturbance area of the proposed alteration or within 10 feet of an existing or proposed structure may be removed;
    - b. The combined total diameter of native trees removed may not exceed 175 inches, counting only native trees that are at least 6 inches in diameter;
    - c. Native and non-native non-nuisance trees 6 inches or greater in diameter that are removed must be replaced using one of the following options:
      - (1) Tree removed are replaced as shown in Table 430-3, Option A or Option B, and all of the replacement trees are planted on the site in the resource area of the environmental overlay zones;
      - (2) The applicant pays a fee in lieu of tree replacement as described in Table 430-3, Option C; or

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## Commentary

### **33.430.185.F.2**

A new option is added to the site enhancement requirement to allow for the utilization of resource enhancement projects that have been completed in advance with the expectation that they would be used to offset impacts of projects that meet the standards of section 33.430.185. To be eligible to use this standard, the applicant must have completed a site enhancement project that creates a new natural resource, enhances an existing natural resource, or restores a degraded natural resource. The resource enhancement project must have been approved through an environmental review, and the narrative of the environmental review must state that the sole purpose of the resource enhancement project was to either serve as advanced mitigation or to satisfy site enhancement requirements of this section.

### **33.430.230.B.1**

This amendment adds pump stations to the list of activities that are processed through a Type II procedure.

- (3) The applicant utilizes advanced mitigation in lieu of tree replacement. To use this option:
- The applicant must have an approved land use review for a resource enhancement project that was approved for the purpose of being used for advanced mitigation; and
  - Conditions of approval of the land use review have been met.
2. Removal of trees listed on the Nuisance Plants List is allowed. Trees greater than 6 inches in diameter must be replaced using one of the following options:
- a. Each tree removed is replaced with one tree meeting the standard of 33.430.140.K., and all of the replacement trees are planted on the site in the resource area of the environmental overlay zones;
  - b. The applicant pays a fee in lieu of tree replacement as described in Table 430-3, Option C; or
  - c. The applicant utilizes advanced mitigation in lieu of tree replacement. To use this option:
    - (1) The applicant must have an approved land use review for a resource enhancement project that was approved for the purpose of being used for advanced mitigation; and
    - (2) Conditions of approval of the land use review have been met.
- E. ~~At least one site enhancement option must be completed on the site. Applicants must show that one of the following is met:~~
- 1. ~~a~~An area equivalent in size to at least 100 percent of the proposed ~~permanent~~ disturbance area of the alteration will be enhanced following one or more of the options described in Table 430-2. If the proposed ~~permanent~~ disturbance area of the alteration is less than 100 square feet, the minimum required enhanced area must be 100 square feet. The site enhancement area must be located outside of the proposed permanent and temporary disturbance area.; or
  - 2. An area that is at least equivalent in size to 100 percent of the proposed disturbance area has been restored, enhanced, or created within an environmental overlay zone on a site owned or managed by the City of Portland or the Urban Flood Safety & Water Quality District, and the restored, enhanced, or created area was approved as advanced mitigation through an environmental review.

### **33.430.230 Procedure**

Environmental reviews are processed through the following procedures:

- A. [No change]
- B. The following are processed through the Type II procedure:
  - 1. ~~Roads~~Right-of-way improvements, driveways, walkways, stormwater disposal, pump stations, and buried connections or alterations to existing utility lines;
  - 2.-6. [No change]
- C. [No change]

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## Commentary

### **33.430.240.B.3.h.**

The intention of this amendment is to allow the City of Portland or Urban Flood Safety & Water Quality District to conduct site enhancement projects with the intention of using those resource enhancements for mitigation, site enhancement, or tree replacement required as a part of future development projects. To take advantage of advanced mitigation provisions, the application materials must state that this “advanced mitigation” is the purpose of the resource enhancement.

### **33.430.250.A.1**

This amendment adds pump stations and flood control structures to the list of development activities subject to the approval criteria in 33.430.250.



### 33.430.240 Supplemental Application Requirements

- A. [No change]
- B. **Supplemental narrative.** The following is required:
- 1.-2. [No change]
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; and
  - h. Advanced mitigation projects may be used as mitigation to offset detrimental impacts of future proposed development, to fulfill the site enhancement requirements of 33.430.185.F.2, the tree replacement requirements of 33.430.150.B.2.c, or tree replacement requirements of 33.430.185.E.3. If the mitigation shown on the mitigation plan is intended to be used for any of these purposes, the narrative must include a statement to that effect.

### 33.430.250 Approval Criteria

- A. **Public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, pump stations, flood control structures, septic systems, land divisions, Property Line Adjustments, Replats, 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, rights-of-way, driveways, walkways, outfalls, utilities, pump stations, flood control structures, septic systems, land divisions, Property Line Adjustments, replats, Planned Developments, and Planned Unit Developments:
- a.-e. [No change]
- 2.-4. [No change]
- B.-G. [No change]

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## Commentary

### **33.430.430.B, D, E and F**

This amendment deletes requirements to post site plans on the PP&D website, contact neighborhood associations, and for PP&D staff to conduct site inspections. These existing contact requirements are largely duplicative of the neighborhood contact requirements in 33.705 that are generally required for all types of development. The 33.705 neighborhood contact requirements are triggered by provisions in the base zones when proposed development exceeds 10,000 square feet of building area. These contact requirements apply whether the development meets all standards and is approved through a zoning permit or if the development does not meet standards and is approved through an Environmental Review. The neighborhood contact requirements proposed for deletion are largely redundant for development that exceeds 10,000 square feet.

The neighborhood contact requirements that are being deleted were unusual because they only applied to development in Environmental overlays proposed to be approved through standards and they applied to all development, regardless of scale. This created a circumstance in which applicants for small scale (<10,000 square feet) development in Environmental overlay zones that met standards were required to provide notice to neighbors. But if a development proposal of the same scale was instead processed through an Environmental Review, no similar notice would be required.

## **Notice ~~and Review~~ Procedure**

### **33.430.410 Purpose**

The purpose of this notice ~~and review~~ procedure is to notify the public of the permit review process for development proposed in areas having identified significant 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 .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 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 application.~~**

- ~~1. Notice on website. Upon receipt of a complete application for a building or development permit, 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 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 .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.~~

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

- ~~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.~~

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## Commentary

### **33.430.430.C.1**

Subsubsection 33.430.430.C.1 is redesignated as subsection 33.430.430.B.

### **33.430.430.C.2**

Subsubsection 33.430.430.C.2, which requires applicants to mark development area, trees, and restoration areas on the site, is being moved to section 33.430.130 Permit Application Requirements. The move is being made because subsection 33.430.430.D Site Inspection is being deleted. Moving subsection 33.430.430.C.2 to permit application requirements and adding the requirement that applicants submit photos of the fencing and taping allows PP&D staff to verify that applicants are complying with the requirement without needing to do a site inspection.

### **33.430.430.D**

The requirement that PP&D staff conduct a site inspection is being deleted. This change is being made because staff already conduct numerous inspections for various reasons to verify compliance with permits. This specific site inspection requirement is largely superfluous because it typically does not result in changes to development plans or identification of deficiencies that would need to be addressed through environmental review.

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

**~~B.1. Posting notice on the site.~~** The applicant must place a public notice about the request on the site when the application is deemed complete by the Bureau of Development Services~~Portland Permitting & Development~~. 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 notice posted on the internet.~~

~~2. Marking proposed development on site. Prior to inspection of the site, 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.~~

**~~D. Site Inspection.~~** A BDS inspector will inspect the site prior to issuance of the permit and will provide the 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.~~

**~~E. Comments.~~** Any interested person may comment on the permit application by writing and specifically identifying errors or non-compliance with development standards.

**~~F. Response to comments.~~** If a comment is received, the Director of BDS will respond in writing or in a manner suitable to the comment. The response will specifically address each comment that concerns compliance with the development standards of Section 33.430.140 through .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

### **33.465.130.D**

This section, which requires applicants to mark disturbance areas, tree removals, and remediation areas is moved from 33.430.430. That code section is being amended to delete site inspection, notification, and public comment requirements. Because these inspection and review requirements will no longer apply to site development, the requirement to mark the proposed disturbance area on the site is more appropriately located in this section.

## 33.465 Pleasant Valley Natural Resources Overlay Zone

# 465

### 33.465.130 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. through C. must be submitted with permit application plans. Submission of the information in Subsection D. is optional.

- A. [No change]
- B. Proposed development plan including:
  - 1.-5. [No change]
- C. [No change]
- D. 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.
- ~~E~~D. Photographs of the site are not required but are encouraged to supplement the existing conditions site plan.

### **Notice ~~and Review~~ Procedure**

#### 33.465.410 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 development in areas having identified significant resources and functional values.

#### 33.465.420 When These Regulations Apply

These regulations apply when a building permit or development permit application is requested within the resource area of the Pleasant Valley Natural Resources overlay zone and is subject to the development standards of Section 33.465.110 through .180. These regulations do not apply to building permit or development permit applications for development that has been approved through Pleasant Valley resource review.

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## Commentary

### **33.465.430.B, E and F**

This amendment deletes requirements to post site plans on the PP&D website, contact neighborhood associations, and for PP&D staff to conduct site inspections. These existing contact requirements are largely duplicative of the neighborhood contact requirements in 33.705 that are generally required for all types of development. The 33.705 neighborhood contact requirements are triggered by provisions in the base zones when proposed development exceeds 10,000 square feet of building area. These contact requirements apply whether the development meets all standards and is approved through a zoning permit or if the development does not meet standards and is approved through an Environmental Review. The neighborhood contact requirements proposed for deletion are largely redundant for development that exceeds 10,000 square feet. Further, these contact requirements served little purpose because they only applied to development that meets standards, and there is no discretion in the development standards. The deleted sections were written in a way that implied that an appeal from an outside party could alter the approval process, when in fact such a change was not possible.

### **33.465.430.B**

This subsection is being deleted because notifications posted on the PP&D website of development that meets 33.465 standards typically does not result in meaningful engagement or feedback from neighborhood associations or members of the public. Because development standards are not discretionary, public feedback on development that meets standards cannot influence or change the approval process.



### **33.465.430 Procedure**

Applications for building permits or development permits that qualify under 33.465.420 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 33.465.130, Permit Application Requirements, and any additional information required for a building permit or development permit review.

**~~B. Notice of an application.~~**

- ~~1. Notice on website. Upon receipt of a complete application for a building or development permit, the Director of PP&D will post a notice of the application on the PP&D website and mail a notice of the request to all recognized organizations within 400 feet of the site. The posted notice of the application will contain at least the following information:~~
  - ~~a. A statement that a building or development permit has been applied for that is subject to the development standards of Section 33.465.110 through .180.~~
  - ~~b. The legal description and address of the site;~~
  - ~~c. A copy of the site plan;~~
  - ~~d. The place where information on the matter may be examined and a telephone number to call;~~
  - ~~e. 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~~
  - ~~f. The notice will remain on the website until the permit is issued and administrative decision is made, or until the application is withdrawn.~~
- ~~2. E-mailed notice to recognized neighborhood associations. At the time a notice is posted on the PP&D website, the Director of PP&D 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.~~

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## Commentary

Subsubsection 33.465.430.C.1 is redesignated as subsection 33.465.430.B.

### **33.465.430.C.2**

Subsubsection 33.465.430.C.2, which requires applicants to mark development area, trees, and restoration areas on the site, is being moved to section 33.465.130 Permit Application Requirements. The move is being made because subsection 33.465.430.D Site Inspection is being deleted. Moving subsection 33.430.465.C.2 to permit application requirements allows PP&D staff to verify that applicants are complying with the requirement without needing to do a site inspection.

### **33.465.430.D**

The requirement that PP&D staff conduct a site inspection is being deleted. This change is being made because staff already conduct numerous inspections for various reasons to verify compliance with permits. This specific site inspection requirement is largely superfluous because it typically does not result in changes to development plans or identification of deficiencies that would need to be addressed through environmental review.

### **33.465.430.E**

This subsection is being deleted because standards are non-discretionary and public comment regarding development that meets standards cannot impact or alter the approval process.

### **33.465.430.F**

This subsection is being deleted because the section on public comments is being deleted, and no meaningful response to comments can be made other than reaffirmation that development meets standards.

**B.1. Posting notice on the site.** The applicant must place a public notice about the request on the site when the application is deemed complete by Portland Permitting & Development. 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. Notices are not required along street frontages that are not improved and allow no motor vehicle access. ~~The posted notice will contain the same information as the notice posted on the internet.~~

~~2. Marking proposed development on site. Prior to inspection of the site, 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 area to be planted must be identified with high visibility tape or similar high visibility material.~~

**D. Site inspection.** A PP&D inspector will inspect the site prior to issuance of the permit and ~~will provide the Director of PP&D 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.~~

**E. Comments.** Any interested person may comment on the permit application by writing and specifically identifying errors or non-compliance with development standards.

**F. Response to comments.** ~~If a comment is received, the Director of PP&D will respond in writing or in a manner suitable to the comment. The response will specifically address each comment that concerns compliance with the development standards of Section 33.430.140 through .190. The Director of PP&D 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

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### **33.475.405.D**

This exemption is being amended to exclude the replacement of structures in the combined flood hazard area. This change is being made to comply with directives of the 2016 NOAA Fisheries Biological Opinion on the FEMA National Flood Insurance Program.

### **33.475.405.L.3**

The Bureau of Environmental Services and Portland Parks & Recreation both have a process to allow groups and individuals to conduct traditional cultural practices involving the harvesting of native vegetation on City owned land. Parties that are eligible to use this exemption will receive written authorization that has been issued by either the Bureau of Environmental Services or Portland Parks & Recreation. This amendment acknowledges those approved activities and ensures that, when allowed, they are exempt from the regulations of the environmental overlay zones.

### **33.475.405.W**

This amendment adds an exemption that will allow for the installation of devices that limit the negative impacts of beavers on infrastructure and property without the need to remove beavers from the environment. Flow control devices, pond levelers, and other habitat modification techniques are humane options for coexistence with beavers, allowing the environmental benefits that beavers provide while avoiding damage. Because these devices are typically installed within the banks of waterbodies, they cannot meet standards. Without an exemption, habitat modifications would be subject to environmental review. The requirement for environmental review might discourage property owners from using these methods, which could contribute to negative impacts to infrastructure and property. The BES Beaver Management Plan can be accessed at the following URL: <https://www.portland.gov/bes/documents/city-portland-beaver-management-plan-best-management-practices/download>

## 33.475 River Overlay Zones

475

### 33.475.405 Items Exempt From These Regulations

The following items are exempt from the River Environmental overlay zone regulations:

A.-C. [No change]

D. Operation, maintenance, alterations, repair, and replacement of existing structures, exterior improvements, irrigation systems, stormwater facilities, non-potable water systems, roads, utilities, public trails and paths, public viewpoints, public interpretive facilities, and erosion control measures. Alterations, repair and replacement is not exempt as follows:

1. Alterations, repair, and replacement whenever total square footage, building coverage or utility size is increased;
2. Replacement is not exempt within the combined flood hazard area;
3. Replacement of an existing floating boat dock structure located in a residential zone; and
4. Alteration or repair of more than 50 percent of the combined constituent systems of an existing floating boat dock structure located in a residential zone is not exempt.

E.-K. [No change]

L. Removal or pruning of vegetation as follows:

- 1.-2. [No change]
3. Removal of non-tree vegetation when conducted by members of groups or organizations that have a written vegetation harvesting agreement that has been issued by the City of Portland.

M.-V. [No change]

W. Vegetation protection and habitat modification methods as described in the Bureau of Environmental Services Beaver Management Plan. All installation and maintenance must be carried out using handheld equipment.

### 33.475.440 Development Standards

Unless exempted by 33.475.405., the standards in this Section apply to development, exterior alterations, and land divisions in the River Environmental overlay zone. All of the applicable standards must be met. Proposals that do not meet all the standards within each relevant section require approval through River Review.

A.-J. [No change]

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## Commentary

### **33.475.440.K.4.b**

This amendment narrows the requirement to retain large diameter wood within the River Environmental Overlay when dead, dying, and dangerous trees are removed. Sites that contain less than 10,000 square feet of River Environmental Overlay will not be subject to the wood retention requirement. This change is made because smaller sites may not have adequate space to meet the requirements.

### **33.475.440.O.4.b**

This amendment allows required front and street setbacks for accessory dwelling units to be reduced. Reducing setbacks allows development to minimize impacts to natural resources without the need for an adjustment review. Existing code already allows building setbacks to be reduced on front and street setbacks. This change will now allow accessory dwelling units to utilize the same setback allowance.

**K. Standards for removal or pruning of vegetation.** The following standards apply to the removal or pruning of vegetation:

1-3. [No change]

4. Vegetation that is removed or pruned is limited to the following:

a. [No change];

b. Dead, dying or dangerous trees or portions of trees when they pose an immediate danger, as determined by the City Forester or certified arborist. On sites in which the area of the River Environmental overlay zone is greater than or equal to 10,000 square feet, ~~All~~ sections of wood more than 12 inches in diameter must be placed in the River Environmental overlay zone of the ownership within which the wood was cut unless the City Forester authorizes the removal because the wood is diseased and will threaten the health of other trees;

c-e. [No change]

5-6. [No change]

**L-N.** [No change]

**O. Standards for all residential structure types.** The following standards apply to all residential structure types.

1-3. [No change]

4. Minimum setbacks may be reduced as follows:

a. 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;

b. The minimum detached and connected accessory dwelling unit setback of 33.205.040.C.2 may be reduced to any distance between the minimum and zero; and

c. Parking spaces may be allowed within the first 10 feet from a front lot line, and within a minimum side street setback.

**P.-R.** [No change]

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## Commentary

### 33.910.030

#### **Public Safety Facility**

The definition of Public Safety Facility is amended to allow it to apply to facilities that are owned and operated by the Urban Flood Safety & Water Quality District. This amendment is being made because provisions in Chapter 33.430 Environmental Overlay Zones specify that environmental reviews for Public Safety Facilities are processed through Type II procedures. Future updates to environmental zone mapping may apply protection overlay zone to many sites that are operated by the Urban Flood Safety & Water Quality District. This change ensures that if portions of their facilities that are located in the protection zone need to go through environmental review, they will be processed as Type II procedures.



## 33.910 Definitions

910

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**Public Safety Facility.** A facility necessary to respond to an immediate hazard to the public health and safety, and that is owned, leased, or operated by the City of Portland or the Urban Flood Safety & Water Quality District. Public safety facilities include fire and police stations, flood control facilities, water towers and pump stations needed for emergency service, and emergency communication broadcast facilities.

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## About City of Portland Bureau of Planning and Sustainability

The Bureau of Planning and Sustainability (BPS) develops creative and practical solutions to enhance Portland's livability, preserve distinctive places, and plan for a resilient future.



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