



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

FROM CONCEPT TO CONSTRUCTION

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## MEMO

**Date:** July 26, 2016  
**To:** Rachael Hoy, Bureau of Planning and Sustainability  
**From:** Staci Monroe, Bureau of Development Services  
**CC:** Paul Scarlett, Susan Anderson, Joe Zehnder, Eric Engstrom, Rebecca Esau, Stephanie Beckman, Douglas Hardy, Kimberly Tallant, Jill Grenda, Kara Fioravanti  
**Re:** BDS Comments on Central City 2035 Public Draft

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Thank you for the opportunity to review and comment on the CC2035 Public Draft. This important project will shape the future of Portland's Central City and our ability to meet the goals of the Comprehensive Plan to manage growth and to maintain a healthy and vibrant urban core and its distinctive sub areas. We appreciate the chance to participate in informing this critical set of amendments to the Zoning Code.

The comments below highlight our significant areas of concern and provide detailed comments on the proposal. We look forward to working with BPS staff to address our concerns and providing additional feedback as the project develops.

### **Significant Areas of Concern**

1. **Scenic Corridor.** The Scenic Corridor tree removal standards and exemptions in 33.430 need to be evaluated in more detail to ensure that the exemptions and standards are clear and do not conflict. To allow larger tree removal though the exemption than allowed by the standard seems contrary, and the commentary in both sections doesn't explain that intent.
2. **Environmental Regulations.** An overall comment about the standards of 33.475 is that they are inconsistent throughout in regards to treatment of temporary disturbance areas, tree removal and mitigation. For example:
  - a. Development in a city park (33.475.440.I) requires mitigation, however, public viewing areas (33.430.440.E) do not.
  - b. A utility line (33.475.440.B) requires disturbance areas to be landscaped, however, an outfall requires mitigation and no replanting of disturbance areas.
  - c. Resource enhancement (33.475.440.G) has no limitation on tree removal.

It is strongly recommended that these standards be aligned to require consistent treatment of temporary disturbance areas, tree removal, and mitigation.

3. **FAR Bonuses and Transfers.** The following concerns are related to the revisions to the FAR bonuses and transfers:

- a. The seismic upgrade FAR transfer option is complicated and presents enforcement concerns, such as; once the transfer is made what mechanism ensures the upgrades over time? Are there any penalties? What if the seismic code changes over time?
  - b. Why limit FAR transfers out of only Skidmore/Old Town and New Chinatown/Japantown when there are three other historic districts within the plan district (Yamhill, Grand Avenue and NW 13<sup>th</sup>) that are experiencing growth and incompatible infill in terms of massing and height?
  - c. FAR should be allowed to be transferred from parking lots within historic districts to alleviate development pressure in historic districts.
4. **Bird Friendly Regulations.** The new bird friendly regulations present a number of concerns:
- a. They conflict with ground floor window standards, which are proposed to increase from 25% to 60% within the plan district. They should therefore not apply to the ground level.
  - b. Calculating the bird-safe protections against the ground floor requirements will be cumbersome and particularly difficult to verify.
  - c. It is not clear how the 90% is calculated (per floor, per façade, cumulative?)
  - d. The regulations would be more appropriate in an Administrative Rule rather than the zoning code. As a newer issue to address, technology and industry solutions continue to evolve as it becomes a more common element in building design. An Administrative Rule would be just as enforceable but could be amended or updated much easier and quicker than the zoning code.
  - e. More options than just patterned glass should be provided. Canopies and coated glazing that is fully transparent were discussed recently as potential options that staff would support.
5. **Ground Floor Windows.** The Ground Floor Window standard needs to be strengthened by including utility and mechanical areas as uses behind glazing that do not qualify. In addition, display windows should be removed in the plan district as an option to meet the standard. There are not many examples in the plan district where they are successful. They could be requested through a Modification if an appropriate response to address a site condition.
6. **Ground Floor Active Use.** The areas subject to the Ground Floor Active Use standard should be required to be built and occupied now, not delayed for potential conversion later. In addition, the language from the Ground floor window regulation that clarifies what uses are not allowed behind qualifying windows is needed in this section as well for consistency.
7. **Low-carbon Buildings.** The low-carbon building requirements are still of concern as they are very limited. LEED only application is too easy and stronger regulations are needed to enforce compliance over time. BDS recommends looking into other certification standards, such as Net Zero Building certificate & Living Building Challenge. Also, subjecting new developments in IG1 to the LEED and ecoroof requirements may result in a building that only pencils out with higher rents. This seems counter to the message of encouraging ground level industrial space in exchange for bonus FAR for industrial office uses.
8. **General Clean-up.** In general, BDS encourages more clean-up of sections that are not needed (required above ground floor windows in certain areas only, rebuilding floor area after demo) instead of just focusing on reworking sections with a lot of interest.

## Detailed Comments

We offer the following additional detailed comments.

Page	Code Section	Comment	Reviewer -
P1/9	33.510.100	<p>Please make sure Map 510-17 lines up with rights-of-way so some sites are not bisected and planners do not have to scale shaded areas on the map to give information about what is allowed.</p> <p>Confirm that vehicle sales, such as a car or boat show, are allowed as temporary activities in the convention center.</p>	cooper
P1/33	33.510.117.D.2.b(2)	Just to confirm, is the cited “non-residential use” intended to include Conditional Uses? Can 100% of a Conditional Use be converted to office or retail?	Hardy
P1/47	33.510.200.A.	The code changed to use the term “gross building area” when regulating the size of uses. The purpose statement for FAR talks about the potential amount of uses, but these standards should be regulating bulk and offering additional bulk when there is a public benefit.	cooper
P/147	33.510.200	Previously suggested a need for diagrams on how to calculate FAR for balconies, decks, more than 50% enclosed. Also include info about if/how to calculate FAR for balconies and catwalks that are inwardly facing in a donut-shaped building.	Hillary Tim
P1/49 & P1/65	33.510.200.D & 33.510.205.D.1.c	Transfer of FAR is prohibited along the South Park Block frontages – why can it not be prohibited within historic districts? The ability to transfer more FAR into historic districts will result in oversized buildings being proposed and staff and the HLC will have to continue to argue with applicants for more compatibly-scaled development. Historic districts should not be eligible to receive FAR.	Hillary
P1/49	33.510.200.D.	Could there be a reference to the maximum height map with the sentence that states, “There is no limit on the amount of FAR that can be transferred to a site.”?	cooper
P1/55	33.510.205.B.2	Why not include Grand Ave, Yamhill, NW 13 <sup>th</sup> Ave?	Hillary, Tim,

Page	Code Section	Comment	Reviewer -
		Should include all historic districts in the CCPD	Kara, Staci
P1/55	33.510.205.B.1.b	Typo: End of sentence (2) should read “C.2.b; or” and end of sentence (3) should read “D.1.”	Hillary
P1/55	33.510.205.C.1.b	Space needed between IG1 and unless	Staci
P1/63	33.510.205.C.2.g	Industrial <u>use</u> bonus FAR may be more appropriate in the <u>use section</u> in the front of the chapter since there is no maximum FAR in the IG1 zone.	Staci
P1/63	33.510.205.D	Allow transfer of FAR from parking lots in historic districts to alleviate development pressure in HDs.	All
P1/63	33.510.205.D	URM seismic upgrades enforcement triggers/penalties. Once transfer is made what mechanism ensures upgrades over time? A covenant?	Tim
P1/63	33.510.205.D.	Does that last sentence mean that the whole site cannot be a sending site if it has surface parking or only sites that are fully developed with surface parking cannot be sending site? Is there a formula when part of the site is surface parking?	cooper
P1/63	33.510.205.D.1.	Label this as a Seismic Upgrade transfer.	Mark Walhood
P1/67	33.510.205.D.3	Uses terms “lot” and “site” in the language. Lot is defined and is only the result of the land division.	Staci
P1/69	33.510.210.C.2.a.	Satellite receiving dishes	cooper
P1/71	33.510.205.C.e.1.2	Clarify how to measure 10% coverage for rooftop mechanical with a screen. Is it the entire area within the screen or the total area of the individual mechanical units? Unclear in base zone language as well.	Staci
P1/71	33.510.205.C.e.1.2	Typo – “The 12 inches is measured . . . .”	Tim
P1/77	33.510.210.D.4.	Do the prohibited “projections” include the items identified in the exceptions? Sounds very definitive and the exceptions are a bunch of projections.	cooper
P1/79	33.510.210.D.4.d	<ul style="list-style-type: none"> <li>Why ask for hourly shadow study in (1) if only need to demonstrate less than 50% and 75% at noon on certain days (2)?</li> </ul>	Staci

Page	Code Section	Comment	Reviewer -
		<ul style="list-style-type: none"> <li>• Typo – remove “-“ between space and at in d.(2) paragraph</li> <li>• Add - “Adjacent also includes <u>open space</u> sites across a right-of-way from the site subject to the shadow study requirement.</li> <li>• Can “significant negative impact” on R-zoned lands be quantified like on open space?</li> </ul>	
P1/133	33.510.215.B.1.b.	Can short-term bicycle parking be placed in this area?	cooper
P1/135	33.510.215.B.4	Burnside required building line – is this a required 10’ setback as well?	Hillary
P1/139	33.510.220.B.	The list-making is painful, but mechanical rooms and bicycle parking are often proposed along the street frontage.	cooper
P1/139	33.510.220.B	Remove display cases as acceptable elements to meet Ground Floor Windows (GFW). Can’t think of any that are successful. Could be a solution considered through a Modification but should not be allowed outright.	Tim, Kara, Staci, Hilary
P1/141	33.510.221	Are these standards still needed? Are buildings allowed without design review? Why would we regulate above ground windows in these areas and not others?	cooper
P1/143	33.510.223.C	<p>Not clear how 90% is calculated – per floor, façade, total....?</p> <p>“Glazed portions of balcony railings, sky bridges, atria and glass walls” located anywhere on the building? Not clear when the 90% patterned rule applies to these elements when they occur all over the building.</p> <p>Include non-patterned glazing and canopy options.</p>	Staci
P1/143	33.510.223.B & C	<p>Calculating the bird-safe protections against the GFW requirements is cumbersome and particularly difficult to verify at time of permit. These regulations should only apply to the levels 2-4 above the ground floor. How many bird strikes occur at the ground floor level? Is there data that suggests floors 1-4 are the most often hit?</p> <p>Conflicts with Ground Floor Windows Standard and</p>	Hillary Tim

Page	Code Section	Comment	Reviewer -
		Ground Floor Active Use Standard.	
P1/147	33.510.225	Ground Floor Active requirement <u>must</u> be built now, not designed for later. Strike “or may be designed for later conversation to active uses.”	Tim
P1/147	33.510.225	Ground floor windows language clarifying what uses are NOT allowed is needed in this section as well [ie. storage, utility room, parking, etc.] No display windows.	Staci, Tim, Kara, Hillary
P1/153	33.510.230.C.	Is this the only place net site area is used? It seems odd that the FAR section would not say it is post-dedication, but the code would mention it here. It seems “land dedicated to public rights-of-way” should be deleted to avoid confusion. NOTE: Kathryn Hartinger at BPS is putting some language in RICAP 8 commentary about calculating Title 33 standards based on site area and lot line location <u>after</u> right-of-way (ROW) dedication. There is a push to have FAR calculated based on the site area <u>prior to</u> ROW dedication.)	cooper
P1/155	33.510.242.B.	Is this section really still needed? How would it be implemented anyway?	cooper
P1/157	33.510.244	Low-carbon building certification too easy. Stronger regulations needed to enforce compliance. Enforcement over time not clear to BDS. Recommend looking into other certification standards. See original Discussion Draft comments + DZC comment.	Tim
P1/157	33.510.244	Is this realistic for IG1 zones if they were really developed for traditional industrial uses?	cooper
P1/167	33.510.252.A.2	Clarify trigger for industrial impacts disclosure, since permit for “development” leaves questions. Is it only for “new development”? Does it apply when new floor area is added? Does it apply to existing uses which come in for additional permits in an already legally-occupied tenant space?	Walhood
P1/167	33.510.252.A.2	“record a copy” presumably means at Multnomah County on the deed record, right? Should we say	walhood

Page	Code Section	Comment	Reviewer -
		“record on the property deed with the County (Mult/Clack/Wash, depending)? Would a covenant be helpful?”	
P1/207	33.510.255.B.1	Change “reviewed” to “required”	cooper
P1/209	33.510.255.C	Should clarify in the Code text that the 80,000 square foot threshold for voluntary CCMP is for site area.	Hillary
P1/209	33.510.255.C.	Is the 80,000 square feet site area or floor area?	cooper
P1/213	33.510.255.H.9	Again, suggesting that “historic resources” should be preserved in addition to “scenic resources”. No explanation why this is not included. Historic preservation is one of the policies of the Central City Plan, and is considered at the same level as scenic resources in Statewide Planning Goals #5 so why would it not be included?	Hillary
P1/225	33.510.261.C. Third paragraph	Can this be rephrased to not say “we” in the Zoning Code?	cooper
P1/233	33.510.261.I	This “all parking” subsection is below the “new parking” section header, implying this entire section applies only to new parking being created only, and not existing parking. Please verify (ie. there is no “all parking” section for existing parking?)	walhood
P1/239	33.510.261.I.7	The term “Undedicated General Parking” is used in this sub-subsection, but this should be deleted if the entire I subsection above only refers to new parking, in which case Undedicated General Parking is not a category or option (Undedicated General Parking is only for existing grandfathered lots in that category, and should be only listed in the “existing” parking section, if I follow correctly).	walhood
P1/241	33.510.262.C.	Can this be rephrased to not say “you” in the Zoning Code?	cooper
P1/327	Map 510-3	Hatch is not always clear if it extends to 1/8, 1/4, or 1/2 block, especially between SE Ankeny and Pine. Suggest the hatch be made tighter.	Hillary
P1/327	Map 510-3 (1 of 3)	Hatchmark lines need to be perfectly clear. I see three quarter block locations that appear to be excluded from	walhood

Page	Code Section	Comment	Reviewer -
		the “area eligible for height increase”, for example, but I can’t tell for sure: NE corner of 13 <sup>th</sup> & Hoyt, SE corner MLK & Ankeny, NE corner MLK Pine.	
P1/335	Map 510-4 (2 of 3)	Get rid of the Marquam Hill PD boundary – it looks like a maximum bonus height area map feature, but is outside Central City (confusing).	walhood
P1/397	Map 510-22	<p>Areas shaded for the Bird Friendly requirement outside of the greenway zones appears random throughout the Central City. Please clarify.</p> <p>As noted above in Standard [pg 143, 33.510.223], the standard applied to the ground floor appears to conflict with ground floor windows and ground floor active use requirements.</p>	Tim
P1/460	33.920.240.A.1-2	Changing definitions put a lot of weight on customers or clients visiting the site, to the point of being a primary distinction between industrial and traditional office (versus the current definitions). If an architecture or software firm has frequent customers and clients visiting, and we get complaints or comments during a zoning process that this is the case, should we re-classify the architect or tech office as traditional office? If it’s ok for design/software firms to have as many customer or client visitors as a regular office, it might be helpful to say that (to prevent problems with contesting office use sub-categories in the Central Eastside during permitting).	walhood
P2/42	33.475.440.G	The commentary says removal of native vegetation is limited but there are no standards related to that. There are no limitations on tree removal or removal of native plants.	kt
P2/91	33.430.190.E.1	Remove the requirement for removal only with equipment with wheel/surface to ground pressure of no more than 7.5 psi. This requirement is not in 33.475. These are public trails and could be paved and/or require other heavier construction equipment to be used, so restricting the tree removal equipment doesn’t make sense when there aren’t equipment restrictions	kt



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		for construction of the trail in the same area.  Also, it's unenforceable and overly detailed.	
P2/93	33.430.195	How does this work in relation to exemption 33.430.080.C.7.b(5) which allows removal of trees that exceed the height restriction of a view corridor? These would potentially be larger trees being removed than those that are up to 12 inches. Is the development standard more restrictive than the exemption?	kt
P2/105	33.440.270.D	New language is coming? Or is this the final language?	kt
P2/10	33.475.040.B.2.f	Clarify whether any structure removal is exempt or just structure removal as required by the landscaping standards.	kt
P2/10	33.475.040.B.2.j	What is being done with the structure? Need to identify if this exemption applies to altering existing structures or allowing new structures on an existing dock, wharf, etc.	kt
P2/12	33.475.040.B.2.k(3)	Remove from exemption the requirement to meet standards of 33.475.220. There is no way to check or know that those standards are met without a plan check. If you want those standards to be met, this item needs to be removed as an exemption.	kt
P2/12	33.475.040.B.2.o	<ul style="list-style-type: none"> <li>• Typo – remove “not” from “no native trees are <b>not</b> removed”</li> <li>• Why is this exemption allowing restoration of disturbed areas to pre-construction conditions, whereas “p” requires restoration to 220? These two exemptions are so similar in terms of impact area.</li> </ul>	kt
P2/14	33.475.040.B.2.p	Remove requirement of exemption to meet landscaping standards of 33.475.220. restore this to the previous language of restore to pre- conditions or just seed with native species.	Kt
P2/14	33.475.040.B.2.r(2)	Same comment as above	kt
P2/14	33.475.040.C	List that 33.475.220 applies to the site, but not the remedial action project area to provide better clarification related to the exemption in 220.	kt

Page	Code Section	Comment	Reviewer -
P2/16	33.475.050	<ul style="list-style-type: none"> <li>Clarify if this is a standard or regulation.</li> <li>Clarify if an adjustment is allowed.</li> <li>Move this to a different location in the code. It's odd placement between exemption and permit requirements. Why not place it in the development standards section, like how 33.430 has standards for PLAs?</li> </ul>	kt
P2/16	33.475.060.B.1.b	Add TOB	kt
P2/16	33.475.060.B.1.d	Change 3" tree to 6" tree. There are no standards or exemptions to apply to 3" trees. If keeping 3" trees in this section, please add commentary to explain.	kt
P2/26	33.475.220.C. And C.3	<ul style="list-style-type: none"> <li>This section refers to these as "standards". Should change to "regulations" to match other language in the section.</li> <li>If the site already has riprap it is not often possible to install planting wells after the fact. There are no adjustments allowed to this section. What do we do if it is not possible? For example, we had a site recently where the riprap was 12 feet thick.</li> </ul>	kt
P2/26	33.475.220.B.2.d	<p>The exemptions need to be clarified.</p> <ul style="list-style-type: none"> <li>Is the intention that these requirements would apply to the rest of the site that is not the "resource enhancement area" or "mitigation area"?</li> <li>Other standards refer to 33.475.220 for replanting of temporary disturbance areas, but if that area is more than 50 ft landward of the TOB there is no planting requirement?</li> </ul>	kt
P2/36	33.475.440.B	<p>This section is unclear. A semi-colon or other punctuation needed in the sentence to break up what new utility line includes. If it is all inclusive then the standards below should be simplified to just refer to new utility line.</p> <ul style="list-style-type: none"> <li>New utility line is listed in both standard 1 and 2 so it is unclear where the disturbance area is allowed.</li> <li>Why would a new public utility line be limited to 10 ft disturbance but an upgrade would be allowed to disturb 15 feet. The pipe width could be the same.</li> </ul>	

Page	Code Section	Comment	Reviewer -
		<ul style="list-style-type: none"> <li>Does standard 3 only apply to a new line but not an upgrade? Shouldn't all lines be limited?</li> <li>Standard 5 disturbance areas – if they extend beyond 50 feet from TOB how does 220 get applied? If the landscaping regulations of 220 apply anyway, why is this standard needed.</li> <li>Should standard 6 also include exempting B.5?</li> </ul>	
P2/40	33.475.440.E	Setback distance to a wetland is listed in both standard E.1 and E.2. Please clarify which setback disturbance should be used.	
P2/42	33.475.440.E	Typo. This is the second E. this should be F and the remaining standards re-lettered.	
P2/42	33.475.440.E, F, and G	All have a standard to plant temp disturbance areas to meet 33.475.220. Not clear what to apply if the temp disturbance area extends beyond 50 ft from TOB. If these sites are already subject to the landscaping standards, area these standards necessary?	
P2/44	33.475.440.H	What does "site investigative work mean? Test pits and access? Please clarify.	
P2/44	33.475.440.I	Typo in numbering	
P2/46	33.475.440.J.2.e	Typo – remove "a" or remove plural	
P2/48	33.475.440.J.4	There are two number 4s that are repeated.	
P2/48	33.475.440.k	Change "paragraphs" to "subsection"	
P2/60	33. 475. 500 D.	Change "any part of development" to "any part of the actions"	smc
P2/60	33. 475. 500. E.	Remove the reference to "determining substantial conformance with standards", as these are not standards, they are regulations.	smc
P2/89	33.430.080 C.8.(5)	(5) says trees [in the View Corridor/Scenic overlay] over the height limit may be removed [by this exemption]; (6) says tree removal in the scenic overlay is not exempt. Which is it?	smc

Page	Code Section	Comment	Reviewer -
P2/89	33.430.080 C.8.(5)	(5) says trees within the View Corridor on Map 480-1 and over the height limit may be removed [by this exemption]; But Map 480-1 is the map “without special Height Restrictions”, making exemption C.8.(5) of no use.	smc
P2/89 & 93	33.430.080 C.8.(5) & 33.430.195	.080 C.8(5) says trees [in the Scenic View Corridor] over the height limit may be removed [by exemption]; Standards in .195 only allow removal of trees in the View Corridor if they are <12”, if special equip used, and if replaced. If it were me I’d just use the exemption and not bother with the standard.	smc
P2/105	33. 440. 270 D	Remove the references to the River Water Quality zone: delete “In the River Water Quality zone. In the River Water Quality zone,”— this exemption should apply consistently throughout the Greenway overlay zones.	smc
P2/277	33.865.040 A	(The fourth sentence of this paragraph) change “a remediation action site plan” to “a remediation site plan”.	smc
P2/277	33.865.040 A.1.a.(1)	Insert “Depiction of the site in its entirety (including any off-site mitigation area), showing accurate property boundaries. Additional plans may be submitted that show a portion of the site.	smc
P2/277	33.865.040 A.1.a.(3)	(Last sentence of this subparagraph) insert “see map 477-2” just before “see section 33.910.030”.	smc
P2/281	33.865.040 A. 4. c	Insert “, using standard landscape graphics for each plant.”	smc
P2/279	33.865.040 A.1. b(2)	For land use reviews the planner would want the site plan to show existing trees within the entire site, not only in the River Environmental zone.	smc
P2/287	33.865.040 B. a	Delete the second sentence: it is too confusing to refer to a city certified mitigation bank when no such program exists.	smc
P2/289	33.865.100 A. 1.	Just an observation that, unlike chapter 33.430, “significant detrimental impact on resources and functional values” will now be allowed for resource	smc

Page	Code Section	Comment	Reviewer -
		enhancement projects.	
P2/291	33.865.100 A. 2. d.	The grammar in these approval criteria needs work: replace “the mitigation plan must demonstrate” with “the mitigation plan demonstrates” (this issue appears throughout these mitigation approval criteria)	smc
P2/291	33.865.100 A. 2. d. (2)	Replace “performing the same functional value as the lost resource” with “performing the same function as a lost resource”.	smc
P2/293	33.865.100 A. 2. d. (5)	Replace “the applicant may perform mitigation off-site” with “off-site mitigation is proposed” (again, delete all the “musts”-- approval criteria don’t use this sentence structure).	smc
P2/297	33.865.120	Typo – applicable approval criteria are those of 33.865.100.A. the code is referring to B which is the approval criteria for modifications to environmental zone boundaries.	kt
P2/310	33.910.030	Still waiting to see new code language to clarify that bathrooms and cafes/retail are not allowed in the passenger waiting and queuing areas and still be considered river related.	kt
P2/310	33.910.030 Definition of Top of Bank	No change was made to the February 2016 def: the “largest decrease in slope” will vary considerably along a long river frontage: change the definition to “the first 10% or greater decrease in slope.” Also please include a graphic (cross-section) of this definition.	smc
	Title 11	Didn’t see any proposed amendments that need to be made to Title 11 to include e and g* in the tables that outlined when permits can be issued from UF for removal or when they need to go to BDS for Title 33 review.	kt