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## COVER MEMO

**DATE:** January 29, 2021

**TO:** Planning and Sustainability Commission

**FROM:** Mindy Brooks, City Planner  
Daniel Soebbing, Associate Planner

**CC:** Andrea Durbin, Joe Zehnder, Sallie Edmunds

**SUBJECT:** Ezone Map Correction Project Materials for February 9, 2021 Briefing

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City staff are pleased to be coming back to you for a briefing and continued discussion regarding the Ezone Map Correction Project proposal. As you will recall, you held a hearing on July 28, 2020 and had a briefing on September 8, 2020 with discussion on multiple topics and an update on site visits. At that time, you scheduled a second hearing for December 8, 2020 but later continued the hearing to February 23, 2021 at 5:00 pm.

This memo includes a summary of each following topics that PSC members or staff identified for follow up along with attachments that provide additional details. Staff plan to present **Topics A-D (in bold)** at the February 9 briefing.

- A. Wetland Mapping and Determinations**
- B. Wildfire and Vegetation Management**
- C. Multnomah County Drainage District Request**
- D. Update on Site Visits**
- E. Industrial and Employment Lands
- F. Housing Capacity
- G. Land Division in Ezones
- H. Trees, Title 11 vs Title 33
- I. Septic Systems in Ezones
- J. Audubon's Property Request

Please let staff know by February 5 if there are additional topics you would like to discuss at the briefing.



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## TOPIC SUMMARIES

### A. Wetland Mapping and Determinations

Issue: The Bureau of Environmental Services has been working on the Wetland Inventory Project for the past two years and recently submitted the final “potential wetlands” data and maps for inclusion in the Ezone Map Correction Project. This data adds newly mapped wetlands to roughly 600 properties citywide.

**Staff Recommendation: Ensure that wetlands are adequately protected while also maintaining past policies by applying a protection ‘p’ zone to wetlands and land within 25 feet of the wetland; and a conservation ‘c’ zone to land between 25 and 50 feet of wetlands.**

Summary: January 2020, BES hired a consultant to perform wetland determinations on private property; however, work stopped due to the pandemic and wetland determinations were postponed to the 2021 field season. BES used the delay to refine the map of potential wetlands using remote data like USGS hydric soils and LiDAR. In November 2020, BES provided BPS with an updated map of potential wetlands. Roughly 600 new properties were identified as having potential wetlands (some of these are located outside of the Ezone Map Correction Project area).

Attachment A.1 is the Ezone Project area, showing the June and November wetland mapping. Attachment A.2, SW Hills, and A.3, Outer SE, zoom into two areas of the city where we observed the most change to the wetland mapping. The November 2020 wetland mapping is available on the Ezone Map App, where people can look up their individual property.

About three-fourths of the properties with newly mapped wetlands already had a stream or other natural resource identified, and associated ezones proposed in June 2020. Therefore, while the wetlands are new information, most of the property owners have been receiving project information since 2018/2019, including getting a Measure 56 notice in June 2020. Just to make sure people knew about the mapping, in mid-December, BPS sent all 600 properties a letter about the potential wetlands and a form to request a free wetland determination. Determinations will be performed February through June 2021. Wetland determinations are performed by a wetland scientist and follow the state-approved methodology.

In the west hills of Portland, the previous plans (1992-2002) did not address wetlands explicitly in most cases. However, wetlands are a critical component of the city’s stormwater infrastructure, capturing and storing water, which reduces flood risks and improves water quality. Wetlands also provide habitat for wildlife, including at-risk species like red legged frogs. Therefore, staff are recommending that ezones be applied to wetlands and the riparian area around wetlands. The total width of ezones will be 50 feet extending out from the edge of each wetland. The regulations in 33.430 allow new development within the “transition area” as long as the development is setback a minimum of 30 feet from the wetland and there is mitigation for impacts to trees and native vegetation.



## B. Wildfire and Vegetation Management

Issue: Vegetation management to reduce the risk of wildfire is addressed in Title 11 and Title 33; however, some testimony requested changes to the allowances for tree removal.

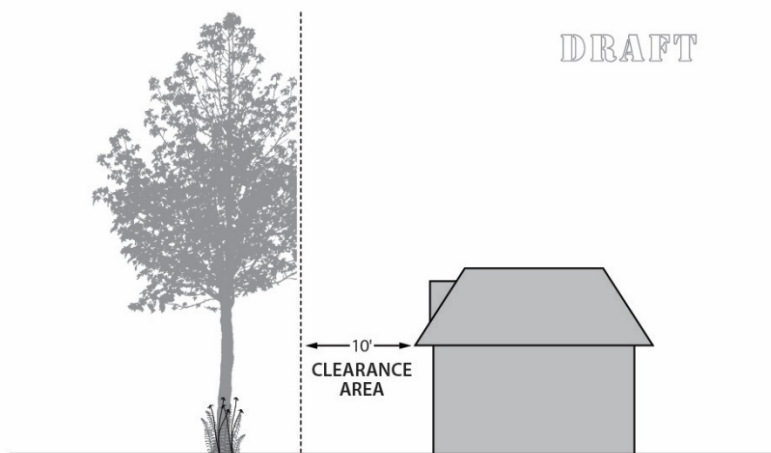
**Staff Recommendation: Amend the commentary in 33.430.080.C.7 to clarify the exemptions for tree removal and pruning. Commentary will be adopted as legislative intent.**

Summary: BPS has collaborated with Portland Fire and Rescue over many years to make sure the city's codes allow for appropriate vegetation management to reduce the risk of wildfire. Overall, the existing exemptions of 33.430.080.C.7 and 8 are consistent with the recommendations of Portland Fire and Rescue:

- Removal of any trees within 10 feet of buildings and structures; or removal of any trees that are certified by an arborist as dead, dying and dangerous (tree replacement is required)
- Pruning any trees and shrubs within 10 feet of buildings and structures
- Pruning in accordance with Title 11
  - Pruning coniferous trees within 30 feet of structures if within a wildfire hazard zone
  - Pruning to abate an immediate danger
- Removal of invasive plants and planting of native plants anywhere in the overlay zone (areas of bare soil must be replanted to prevent erosion)

Please see Attachment B, which is a handout developed by BPS, Bureau of Development Service, Portland Parks and Recreation, Urban Forestry, and Portland Fire and Rescue. The handout provides guidance on vegetation management within ezones. Please note that a Title 11 tree permit is required for tree removal and some tree pruning in the ezones.

Staff are recommending an amendment to the zoning code commentary, not the code, to reflect the current staff implementation of 33.430.080.C.7. This commentary would clarify that tree pruning within 10 feet of structures is measured horizontally (see Image 1 below). Commentary will be adopted as legislative intent that clarifies the zoning code.



**Image 1: Code Commentary Clarification for Tree Pruning**



### C. Multnomah County Drainage District

Issue: Recently the Multnomah County Drainage District (MCDD) has had to go through Environmental Review for very minor safety upgrades, such as adding a handrail to pump houses and other flood control structures. Review for these kinds of minor changes is not a good use of city staff and resources.

**Staff Recommendation:** Adopt a new standard that allows minor upgrades to specific flood control structures, not including levees, when the upgrade is coupled with natural resource enhancement. *If PSC is interested in considering a new zoning code standard, staff will draft the standard language and bring it back for PSC to consider in spring 2021.*

Summary: MCDD requested in testimony that PSC consider an exemption that would allow a small increase to the impact area of their facilities located in the environmental overlay zone (see Attachment C). The increases are needed to accommodate OSHA safety requirements for things such as new ramps or handrails on pump stations. Staff from Bureau of Development Services and Bureau of Environmental Services, along with MCDD staff, have agreed a new standard, rather than an exemption, could be useful to allow these kinds of upgrades.

Staff recommend a new standard that would:

- Be available to everyone who owns and operates flood control structures, including BES;
- List the kinds of facilities that can be improved through the standard, such as pump stations;
- Exclude levees from the standard;
- List the kinds of minor improvements allowed, such as adding a handrail or ADA ramp;
- Limit where the improvements can occur to reduce impacts on natural resources;
- Prohibit tree removal as part of the improvements; and,
- Require enhancement in the form of planting native trees and vegetation.

Note – Repair, maintenance and replacement of existing flood control structures is already exempt from 33.430, as long as the footprint is not increase. And Environmental Review would continue to be available for improvements that cannot meet the new standards.

### D. Update on Site Visits

The PSC memo provided on August 25, 2020 included Attachment K with a list of site visits and the outcomes, as well as before and after maps for every property. That document has been updated and re-lettered as Attachment D to this memo. Attachment D includes all site visits performed since June 2020.

In total, 535 site visits have been conducted since the start of the project in 2018. The vast majority of these resulted in small adjustments to stream alignment or the mapped edge of tree canopy. Table 1 below shows the existing ezone acres in the project area compared to the ezone acres proposed in June

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2020 and proposed now. As a result of site visits, the overall acres of proposed ezones has been reduced by roughly 100 acres.

Table 1: Existing and Proposed Environmental Overlay Zones

	Existing	Proposed June 2020	Proposed January 2021
'p' zone	7,904	9,112	9,045
'c' zone	5,180	4,507	4,461
<b>TOTAL</b>	<b>13,084</b>	<b>13,619</b>	<b>13,506</b>

As discussed under Topic A, new wetland mapping became available in November 2020. Most of the added wetlands were located along existing streams and had a nominal impact on overall acres. However, there are isolated wetlands that resulted in added acres of ezones. More than 200 wetland determinations will be conducted this spring and that information will be used to finalize ezone corrections for wetlands. Wetland determinations follow state-approved methodology, are based on specific evidence and are performed by a wetland scientist from SWCA consultants.

At the September 8 briefing last fall, PSC asked staff to highlight sites where agreement between the property owner and staff regarding the presence or location of natural resource features has not been reached. Excluding wetlands, which are addressed separately, agreement has been reached about the locations of the features in all cases except one. The one outstanding disagreement is about whether a drainageway meets the stream definition. Specifically, the property owner questions if water flows in the channel at a frequency and duration to qualify as a stream instead of a drainage. Staff have offered to perform multiple field visits to the site between January and March to make this determination.

### E. Industrial and Employment Lands

Issue: Correcting the ezones on industrial and employment lands will result in an increase in regulations that could impact land available for development. These impacts need to be accounted for in the Economic Opportunities Analysis (EOA) before the ezones can be changed.

**Staff Recommendation:** Shift resource sites identified in Attachment E from the Ezone Map Correction Project to the upcoming EOA update.

Summary: In December 2019, prior to beginning the PSC hearings process, staff removed the Columbia Corridor from the Ezone Map Correction Project. This was because the 2018 Draft Natural Resources Inventory identified significantly more wetlands and streams than were previously mapped in 2012. Adding ezones to those resources would have added nearly 100 acres of new regulations in the industrial sanctuary. These additions could impact Portland's industrial land capacity, which needs to be accounted for in the Economic Opportunity Analysis (EOA), consistent with the Oregon Statewide Planning Goal 9, Economic Development, requirements.



The Ezone Map Correction Project did keep in industrial lands located along the eastern side of St Helens Highway, which abut Forest Park, as well as the area in Johnson Creek known as “Freeway Lands”. The hope is that the ezone corrections are minor enough in these resource site to not impact Portland’s compliance with Goal 9. We are now recommending removing these areas from the Ezone Map Correction Project.

Changes to the ezones on industrial lands will be considered as part of the scenarios in the EOA update. BPS anticipates evaluating and discussing EOA scenarios in Summer 2021.

## F. Housing Capacity Analysis

Issue: The proposed changes to the ezones may impact the number of new housing units that can be built.

**Staff Recommendation: No change. After adoption of the proposed ezone changes, there will still be a surplus housing capacity of more than 100,000 units citywide.**

Summary: The 2035 Comprehensive Plan, adopted in 2018, estimates Portland has the capacity for 201,000 additional housing units; more than the estimated need to accommodate the City’s forecasted future growth of 123,000 units by 2035. In July 2020, the City of Portland adopted the Residential Infill Project, which increased the housing capacity citywide by an additional 25,000 potential units.

Staff have performed an analysis to determine how much of an impact the proposed ezone changes may have on the housing capacity. Attachment F is the full methodology. The result is that 366 single dwelling units and 185 multi dwelling units may be lost due to the proposed ezone changes.

The loss in potential single dwelling housing capacity is based solely on housing units that could not be built following zoning code standards. The actual reduction could be much less because property owners may choose to go through a land use review to achieve more housing units. Please see Topic G for an example dividable lot that could not be divided and developed per the standards but could be developed through the Environmental Review process. The housing capacity analysis also did not consider that property owners might choose to build a duplex rather than just one housing unit.

The analysis considered lots that are identified as vacant or underutilized in the Buildable Land Inventory. The Buildable Lands Inventory is adopted as part of the 2035 Comprehensive Plan and contains the methodology for determining housing capacity citywide. Also, the analysis removed publicly owned lands and tracts of land under common ownership, such as a homeowners association. The analysis compared how many units could be achieved through standards under the existing ezones and with how many could be achieved through standards under the proposed ezones. The analysis did not consider other potential site constraints, such as landslide hazard zones, street frontage improvements, access to sewer or water, etc.; the analysis only considered the impacts of the proposed ezone overlay zone coverage changes.



In circumstances where the proposed ezone change would apply a protection 'p' zone to more than 66% of a single site, staff reviewed the site to determine if development could potentially be achieved through a land use review. If the site appeared to be undevelopable even through review, staff converted a portion of the 'p' zone to 'c' zone to allow some development while still protecting streams, wetlands and steep slopes.

## **G. Land Divisions in Ezones**

**Issue:** The Ezone Map Correction Project may reduce the number or size of new lots that can be created through a subdivision.

**Staff Recommendation:** No change.

**Summary:** Please see Topic F, Housing Capacity Analysis, for the impacts of the proposed ezones on housing capacity. Overall, the proposed ezones reduces the housing capacity; however, there remains a surplus of more than 100,000 units citywide. The analysis, described in Attachment F, shows that the biggest impact of the proposed ezones is on large single dwelling residential lots that are dividable.

The number of buildable lots that can be produced through a land division or planned development in the single dwelling zones is determined by lot area and base zone, as well as regulatory landslide hazard areas. Single dwelling zone land divisions and planned developments are generally regulated by chapters 33.610 (RF, R20, R10, R7 and R5) and 33.611 (R2.5). Ezones can impose constraints on which parts of lots can be divided into new sites and can limit the total amount of development on sites to levels that are less than what would be otherwise be allowed if there were no ezones.

It is very difficult to make general statements about how ezones impact dividable lots because each lot is unique in terms of size and shape. In addition, most dividable residential sites in Portland have significant constraints that would limit development capacity even if ezones were not present, such as limited utility service, undeveloped rights of way, difficult site access, or steep, erodible slopes.

Project staff reviewed multiple example dividable lots that currently have ezones and which are slated to have expanded ezone coverage, to better understand the impacts of the proposed ezones on the number of new lots that may be created through a land division or planned development. Attachment G provides an explanation of the zoning code rules and one example lot to illustrate potential impacts of the ezones.

The overall outcome is that the proposed ezones appear to have a significant impact on dividability if every property owner were to meet all of the ezone standards in 33.430.160. However, there are modifications available through the Environmental Review process that would likely allow the property owners to achieve a density equivalent or close to the maximum that would be allowed by the base



zone. In other words, through Environmental Review there could be little to no impact on the number of potential lots achieved through a land division or planned development. The choice of meeting standards and achieving less density or going through Environmental Review and achieving more density is up to the property owner.

## H. Trees, Title 11 vs Title 33

Issue: Protection of trees is addressed in both Title 11 and Title 33, which can create confusion.

Staff Recommendation: No change.

Summary: During the July 28 hearing before the PSC, commissioners asked why the conservation 'c' zone should be applied to upland forests if tree removal is already regulated by Title 11.

The short answer is that the Environmental Zones are intended to protect a comprehensive suite of features and functions association with streams, wetlands, riparian areas, forests and wildlife habitats; while the Tree Code is intended to only protect and maintain tree canopy.

There are a number of key differences between the Tree Code (Title 11) and the Environmental Zones (Title 33.430) regarding tree protection and replacement:

- The Environmental Zone regulations apply to all trees that are  $\geq 6$  inches in diameter, while the Tree Code only applies to trees that are  $\geq 12$  inches in diameter. A Douglas Fir, one of Portland's most common tree species, is approximately 50 feet tall when its diameter reaches 6 inches (measured at 4 feet, 6 inches above ground). (Sources: Oregon State University, College of Forestry; WA Department of Natural Resources).
- The Environmental Zone regulations apply to all areas that fall within 'c' or 'p' zones that are within the Portland Urban Service Boundary. This includes areas that are exempt from the Tree Code, such as unincorporated pockets of Multnomah and Washington Counties, as well as lots that are zoned industrial.
- The Environmental Zones require mitigation for the removal or clearing of any native vegetation, including shrubs, forbs and grasses, as well as trees. The Tree Code only applies to trees. A healthy native forest includes all structural components. Native shrubs and ground cover help to hold soil in place, reducing erosion and landslide risks, and provide habitat, such as cover and food for native wildlife including migratory birds.
- The Environmental Zone standards set specified limits on the amount of a lot that may be disturbed to create new development (the allotment varies by base zone). Any development proposal that exceeds the allowed disturbance area within the resource area of an ezone would be subject to Environmental Review. Conversely, the Tree Code and the Tree Preservation Chapter of the Land Division Code (33.630) requires a proportion of the trees on the lot to be retained, but they set no limits on the amount of area that may be disturbed on a lot.
- The Environmental Zone standards have limits on the cumulative diameter inches of trees that may be removed within the allowed disturbance area. Every tree that is removed that is  $\geq 6$





inches in diameter counts against that limit. If the limit is exceeded, Environmental Review is required. The Tree Code sets no such limit on cumulative trees removed.

- The Environmental Zone development standards have required setbacks from streams and wetlands. These setbacks apply in both the protection 'p' and conservation 'c' zone. The Tree Code has no provisions to protect water bodies.

Please see Attachment H for a side by side comparison of tree protections that are contained in the [Tree Code](#) and the [Environmental Zones Code](#).

## I. Septic Systems in Ezones

Issue: Replacing old or failing septic systems typically requires either meeting regulatory standards in 33.430 or going through Environmental Review.

**Staff Recommendation: No change.**

Summary: Two pieces of testimony asked if it would be possible to simplify the permitting process for replacement septic systems, especially if the replacement is required by the county. Staff worked with the Bureau of Development Services to better understand the issue.

Attachment I includes two recent septic system cases. Both were approved through an Environmental Plan Check, which means the work met standards and no land use review is needed. The first case is an emergency repair for a failed sand filter. Because this type of facility cannot be repaired in its current location, a new sand filter was approved. No trees were removed, and it was not within 50 feet of a stream or wetland. In the second case, which was not an emergency, the proposed new septic system will be in a grassy area with no trees removed and not within 50 feet of a stream or wetland. Due to the limited impacts on natural resources, both cases met standards and did not require review.

It is appropriate to review new/replacement septic systems when they will be within 50 feet of a stream or wetland to ensure the water body is protected and negative impacts to natural resources are mitigated. It is also appropriate to require tree replacement if trees must be removed to install the system. In addition, if there are steep slopes, erodible soils or other hazards, impacts to those resources should be addressed through review.

## J. Audubon Property Request

Issue: The Audubon Society of Portland requested in testimony that PSC consider a different recommendation for their property located at 5151 NW Cornell Rd.

**Staff Recommendation: Staff support Audubon's request. If approved, the area within 50 feet of the stream will remain in 'p' zone, with 'c' zone applied to an area of forest near the wildlife care center**

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**and where mitigation for any new impacts to the natural resource features and functions will be required.**

Summary: The Audubon Society of Portland property, located at 5151 NW Cornell Rd, is zoned Open Space (OS) but is privately owned. It is rare for the city to zone private property OS; typically, only publicly owned property or private recreation areas such as golf courses are zoned OS.

Because of the OS base zone, in resource site FP29 the proposal is to apply a protection 'p' zone to streams, wetlands and forests. If the property were not zoned OS, and treated like other private property in Portland, then the proposal would likely be to apply a 'p' zone to land within 50 feet of water bodies and a 'c' zone to forests contiguous to water bodies. Audubon has asked to be treated like a private property owner for areas near their wildlife care center.

Attachment J includes the before and after zoning maps. This recommendation will mean that Audubon can apply for an Environmental Review for improvements to their wildlife care facilities that would be located in the new 'c' zone. Mitigation for impacts to the natural resources will be required. Without the change, only maintenance, repair and replacement would be allowed; however, improvements that expand the footprint of those facilities would be prohibited within the 'p' zone. The change maintains 50 feet of 'p' zone around the streams and maintains 'c' zone on the forest canopy, thus triggering review and mitigation.

