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Portland City Council
Ezone Map Correction Project Testimony
1810 SW 5th Avenue, Suite 710
Portland, OR 97201

Sent via US Mail and Online Portal (Map App)

Re: William and Margret Bitar; 15580 NE Siskiyou Court, Portland, OR 97230

Dear Council,

This office represents William and Margaret Bitar regarding their residential property located at 15580 NE Siskiyou Court, Portland, OR 97230. On their behalf, we submit the following regarding the proposed Ezone Map Correction Project; R318673.

The Ezone Map Correction Project stated purpose includes reducing the risk of flooding, reducing the risk of landslides, protecting at-risk species, and protecting habitat for endangered species. There is nothing on, under, or within the Bitar property that requires increased protection.

The Bitar property is included in a newly identified 30-foot zone that starts from the “top of bank” location and encompasses a dry hillside that is much closer to the Bitar residence than the tiny ditch that is less than 12-15 inches across and has been consistent in size during the Bitar’s occupancy. This ditch has never flooded, does not contain seasonal or year-round wetlands, and is not forested. There is nothing about the ditch that needs the City’s proposed level of protection. Instead, the City undercuts its stated goals of increasing density and housing options by almost conclusively preventing future development of the property.

The Bitar property is zoned R7, with overlay zones of Environmental Conservation (c), Aircraft Landing (h), PDX Airport Noise Impact (x), and Constrained Sites (z). The property is approximately 1 acre in size and has one single family residence constructed in approximately 1989 – approximately one half of the property is undeveloped beyond a yard and landscaping. The property could ostensibly be host to three additional single-family residences, or even a fourplex. As the Bitars age, they have become increasingly interested in reducing their property size and making the remainder half-acre available for infill projects.

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After this project, the property will be subject to Environmental Conservation and Environmental Protection overlays¹. The Environmental Protection overlay will extend from the western edge to almost the center of the lot. As the City’s zoning overview states:

“The Environmental Protection (p) overlay zone provides the high level of protection to the most important resources and functional values. These resources and functional values are identified and assigned value in the inventory and economic, social, environmental, and energy (ESEE) analysis for each specific study area. **Development will be approved in the environmental protection zone only in rare and unusual circumstances.** This overlay zone is applied wherever the City determines that highly significant resources and functional values are present.” (emphasis added).

The following map, taken from the City’s Map App, shows the approximate location of the significantly expanded Environmental Protection overlay.



15580 NE Siskiyou Court

¹ While not specifically indicated on Map App, we presume the Aircraft Landing and PDX Airport Noise Impact overlays will also remain in place.

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If the overlay zones are approved, at best the Bitar property will be able to sustain one additional single-family residence. This taking, which at no point has come with the prospect of just compensation, is significant not only on the value of the property, but on infill and development opportunities. The City is seemingly making the perplexing choice of prioritizing a ditch over housing density.

Recently, the US Supreme Court dramatically limited a governmental body's regulatory power by ruling that a zone that regulates by limiting use is a "taking" that requires compensation. Cedar Point Nursery v. Hassid, 141 S. Ct. 891 (Mem), 208 L.Ed.2d 450 (Mem) (2020). Additionally, the proportionality in a restriction established under Dolan v. City of Tigard, 512 US 374 (1994) appears thoroughly in favor of reevaluating the width and scope of the overlay zones. For all the potential benefits of the proposed project elsewhere in the City, the consequences on the Bitar property with respect to development are outweighed.

We therefore urge the City to reconsider the scope and breadth of the project regarding the Bitar property, or to offer compensation for the regulatory overreach and taking.

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s/ Donald B. Bowerman

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DBB/SSN/hme
Cc: Bill and Margaret Bitar