



City of Portland, Oregon
Bureau of Development Services
Office of the Director

FROM CONCEPT TO CONSTRUCTION

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MEMO

Date: October 15, 2014
To: Planning and Sustainability Commission
From: Paul L. Scarlett, Director
Bureau of Development Services *PLS*
CC: Susan Anderson, Director
Bureau of Planning and Sustainability
Re: BDS Comments on the Proposed Draft of the *2035 Comprehensive Plan*,
July 2014

Thank you for the opportunity to review and comment on the Proposed Draft of the City of Portland's Comprehensive Plan update. This document represents a major effort by BPS and many other City bureaus and participants in this collective effort should be commended on producing an ambitious and thorough plan for the City.

Our comments focus on implementation, an area that directly impacts the work of BDS. We have separated our comments into two sections: 1) those that are our primary areas of concern; and 2) additional detailed comments that, if addressed, will improve future implementation efforts.

We look forward to working with the Planning and Sustainability Commission and BPS staff to address our concerns. Please direct questions about these comments to Rebecca Esau on my staff.

Primary Areas of Concern

1. Expectations for changes to community involvement procedures for quasi-judicial land use reviews (Chapter 2)

There needs to be more specific thought about how Chapter 2, Community Involvement will be implemented in the context of land use reviews. Specific issues are described below.

- Chapter 2 identifies ways of involving the community in land use planning, however much of this is more applicable to legislative planning efforts, as opposed to quasi-judicial reviews. As written, the goals and policies can be interpreted to mean that each of the identified ways of increasing community involvement in planning efforts also applies to quasi-judicial reviews (such as comprehensive plan map amendments), and that if BDS staff does not implement these efforts in the review of the proposal, that potentially the goals or policies are not met. Requirements for community involvement for quasi-judicial reviews (public

notice, site posting, hearings, etc.) are spelled out in the zoning code and are consistent with state law.

We request that language be added that clarifies that these proposed community involvement efforts apply to legislative projects and, as you could consider making them relevant to applicants (not BDS staff) for the sub-set of quasi-judicial reviews that must address the comprehensive plan. For policies that are applicable to land use review applicants, it will be important for the Community Involvement Manual referenced in Policy 2.13 to provide specific direction on expectations for these reviews and appropriate methods to achieve desired outcomes.

- It is unclear based on the goals and policies whether any changes are expected to quasi-judicial review notification and public involvement procedures that are outlined in the zoning code. If changes are anticipated, BDS would appreciate knowing about these changes as soon as possible to comment on feasibility and any impacts on staffing and review fees.

2. Criteria for Quasi-Judicial Comprehensive Plan Map Amendments (Policy 10.2.c).

We have a number of concerns about the proposed approval criteria for Comprehensive Plan Map Amendments as described below.

- First, we are unsure why the criteria for quasi-judicial map changes are listed in the Comprehensive Plan. Approval criteria for other quasi-judicial reviews that implement the Comprehensive Plan are not specifically stated in the Plan. We recommend that this be revised to state that quasi-judicial map amendments must comply with the comprehensive plan and indicate that procedures and specific approval criteria are found in the zoning code. Otherwise, it creates confusion to have two sets of approval criteria for a land use review (one set in the Comprehensive Plan and an additional set in the Zoning Code). Case in point, the approval criteria in the Zoning Code for Comprehensive Plan Map Amendments states the request must “on balance” meet the goals and policies of the Comprehensive Plan. As such, a request for a Comprehensive Plan Map Amendments may not meet all goals and policies but may still be approved. In this draft, given the approval criteria in the Comprehensive Plan are identified under a policy (10.2.c), could it be possible to not meet these “approval criteria” but still approve the requested Comprehensive Plan Map Amendment as on balance all other goals and policies are met? It’s just not a good idea to be putting approval criteria for a quasi-judicial review anywhere but in the Zoning Code.
- As proposed there is quite a bit of redundancy in the approval criteria. They first state that the proposed change must comply with the Comprehensive Plan goals and policies, and then goes on to refer to specific aspects of certain chapters. Detailed concerns are noted below:
 - The 3rd bullet requires “reasonable consideration of the Guiding Principles outlined in Chapter 1”. The content of each of the guiding principles is covered several times in other goals and policies throughout the plan, which also must be addressed. To

require use of the guiding principles as an additional approval criterion is redundant. Additionally, the introduction to the guiding principles indicates they apply to “legislative land use decisions”.

- There is also a specific requirement to demonstrate that impacted communities have been effectively included in the decision-making process (4th bullet). This issue has already been identified in Chapter 2. Why repeat this requirement here? None of the other goals and policies that are stated in Chapters 1-9 are repeated here as a requirement of a quasi-judicial comprehensive plan map amendment. The same issue applies to the requirement to address transportation facilities (6th bullet), which are already addressed in Chapter 6.
- In these cases where specific aspects of Chapters 2 and 6 are referenced in the approval criteria, should we interpret this to mean that these are more important than potential other aspects that may be applicable? Please clarify.
- There is a requirement to find that the requested change “Promotes environmental justice by effectively including impacted communities in the decision-making process as outlined in the Community Involvement Chapter...” (4th bullet). Based on the definition of “environmental justice” in the glossary, it is not clear how environmental justice considerations would apply if there are no environmental laws, regulations or policies that apply to the site. If the goal is to involve impacted communities, perhaps the reference to environmental justice is unnecessary and can be removed, and clearer, or defined terms can be used.
- Comprehensive Plan Map Amendments are required to be consistent with any adopted applicable area plans (8th bullet). Policy 1.15 indicates that these plans still remain in effect, however the current Comprehensive Plan goals and policies supersede them in cases where there is a conflict. This requires the applicant and planner to review every plan and policy of the area plan and evaluate whether it has been superseded by goals and policies in the Comprehensive Plan. This is a huge task to do as part of each and every quasi-judicial Comprehensive Plan Map Amendment, and opens the door to significant debate amongst the applicant, neighborhood and assigned case planner at the time of land use review. It would be more clear and efficient for all involved, if BPS did this analysis as part of this project. Many neighborhood plans are very old and outdated, and it would be helpful to have them sunset after a specified number of years, if not updated.

3. Criteria for Zone Map Amendments (Policy 10.3.b).

Reference is made to the need to address school district capacity (where a school facility plan exists) as part of the adequacy of services criterion for zoning map amendments. Please define what a school facility plan is, and the key components it would include. Without that clarification, people (applicants and the public) will have different perceptions of what such a plan is.

In addition, it will be important for the school district where the site is located to respond to the question of adequate school capacity. Are school districts aware of this change and prepared to respond to individual land use review cases in a timely way and provide an explanation of how they determined adequacy of school facilities?

4. Land use designations and corresponding zones (Policy 10.5)

This policy lists the Comprehensive Plan land use designations and the corresponding zones that implement the designation. There are a number of discrepancies that need to be addressed between the descriptions and Figure 10-1 (see our detailed comments below). It is important for these discrepancies to be addressed to provide clarity for selecting the most appropriate zone for quasi-judicial zoning map amendments, as well as legislative projects.

Some of the new mixed use designations have many corresponding zones – up to nine zones for one Comprehensive Plan designation. The descriptions of the different zones and where they should be applied will need to be very clear and have sufficient detail to provide adequate direction on the most appropriate zone for a particular location.

Detailed Comments

We offer the following additional detailed comments for improved clarity in the goals and policies and subsequent implementation.

| Page | Goal/Policy | Comment |
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| Multiple | Multiple | The terms “under-served” and “under-represented” are used throughout the Plan. While these terms are defined in the Glossary, the definitions are relatively vague. In defining these terms, it would be helpful to provide more specificity and potentially some examples to help guide both the public and City staff when evaluating these terms. Will resources be provided to help identify these populations and how best to achieve desired outcomes, particularly in the land use/development review arena? |
| GP4-7 | Policy 4.14 | Clarify what “respect existing entitlements” means in the context of this policy that encourages new development to complement the scale and character of existing neighborhoods. There seems to be a conflict between these two statements. Clarity is requested. This is an ongoing battle....for example, do applicants have a right to the height and massing allowed by the base zone, or does compatibility trump that? We need some direction and clarity on this issue. |
| GP4-8 | Policy 4.24 (and elsewhere) | Clarify the term “adopted inventories”. Does this mean adopted by the City? Does this then exclude Historic Districts and Historic Landmarks since they are not part of an adopted City inventory? Would it include inventories that could potentially be adopted but |

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| | | have no regulatory authority? |
| GP4-9 | Policy 4.26 | The reference to “strive to protect light and privacy for adjacent residents” may be overly ambitious, especially in Town Centers/Civic Corridors where the goal is to create denser neighborhoods with larger buildings. It is reasonable to have a policy that softens the transitions, but “protecting” light and privacy may be too strongly stated. Perhaps “strive to minimize (or reduce) impacts on light and privacy”. |
| GP4-8, GP4-9 | Policy 4.27- Policy 4.28. a-g | Use of terms “zoned land”, “uses”, and “areas”. Be sure to pay attention to whether the policy is referring to “zoned land” or “uses”. Are we protecting the use, or the zone? There are many allowed uses that don’t correspond with zones (i.e. residential uses in commercial zones), as well as nonconforming uses (i.e. residential uses in industrial zones). It might be different for each policy, but make sure to be deliberate about word choices. Perhaps avoid using the term “areas” in preference for “zoned land” or “uses”. |
| GP4-11 | Policy 4.36 | Remove "where feasible" from this policy. This policy is encouraging historic/cultural resource protection (not requiring), therefore this clarifier is not needed and weakens its intent. |
| GP4-11 | Policy 4.38 | Clarify the term "significant" in the context of historic structures. |
| GP4-11 | | Consider adding policy direction on nonconforming uses in historic structures. Does the preservation of the structure override the desire to transition to a conforming use? One example is a house in an industrial district. |
| GP5-6 | Policy 5.3 (and elsewhere) | It is unclear whether “Evaluate plans and investments for their impact on housing capacity...” includes specific map amendments and/or development proposals on private property. The phrase “plans and investments” is also used in other sections of the Plan. |
| GP5-6 5-10 | Policy 5.4 Policy 5.36 | Clarify that the housing and ownership types listed in these policies could include others as well. Currently, they read as exclusive lists that may not accommodate for future innovation or new terms. |
| GP5-11 | Policy 5.40 | Why are we prioritizing multi-dwelling for healthy housing? This appears to de-prioritize addressing health and safety issues with single-dwelling housing. |
| GP6-9 | Policy 6.20 | Can further guidance be provided on what a ‘suitable’ location for corporate headquarters campuses would look like? Guidance would be helpful in the context of quasi-judicial requests to change |

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| | | the comprehensive plan map and zoning to accommodate such a use. |
| GP6-16 | Neighborhood Business Districts | Please provide a policy on non-conforming uses. Are they intended to go away? Are they intended to remain permanently but have impacts managed? |
| GP6-17 | Policy 6.66 | This policy should also address the impacts of these temporary or transitional uses on the surrounding area given they operate without regulation (location of port-a-potties and garbage areas for vending cart pods). |
| GP8-18 | Water Systems | Is there an appropriate policy here on the reservoirs? Are they only functional? Do they have historic, scenic or recreational value? |
| GP10-7 | Policy 10.4 | Under "Ensure good administration of land use regulations" include a bullet for striving for consistency in the regulations. |
| GP10-8 | Policy 10.5 | Comprehensive Plan land use designations are not shown on the official zoning map (unless different from the current zoning). |
| GP10-8 thru GP10-14 | Policy 10.5 | <p>There are a number of discrepancies between the different land use designation descriptions and between the descriptions and Figure 10-1, including:</p> <ul style="list-style-type: none"> - The CX zone is described under the Central Commercial designation as being intended to apply within the Central City and Gateway, yet the CX is also a corresponding zone for Urban Centers, which is described as intended for areas outside Central City. - The EX zone, is identified under the Central Employment designation (intended for Central City and Gateway), but also identified under the Institutional Campus designation. EX is also currently applied outside of the Central City. - A number of the designations list corresponding zones, which aren't reflected in Figure 10-1. |