

# Regulatory Improvement Workplan



## Regulatory Improvement Code Amendment Package 8 (RICAP 8)

### Proposed Workplan

April 2015



Bureau of Planning and Sustainability

Innovation. Collaboration. Practical Solutions.

City of Portland, Oregon  
Charlie Hales, Mayor • Susan Anderson, Director



**The Portland Planning and Sustainability Commission  
will hold a public hearing for the workplan on:**

Tuesday, April 28, 2015

3:00 PM\*

1900 SW Fourth Avenue, Second Floor, Room 2500A

\*Please call 503-823-7700 one week before the hearing for the scheduled time of this agenda item

The City of Portland is committed to providing equal access to  
information and hearings.

If you need special accommodation, please call  
**503-823-7700 (TTY 503-823-6868)**

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Complete List of RICAP Eligible Items from Regulatory Improvement Request Database	



## I. Background

Portland’s current Zoning Code was originally adopted in 1990. Changing needs, new laws and court rulings, new technology and innovations, and shifting perceptions necessitate that the City’s regulations be updated and improved on an ongoing basis. This document contains the proposed workplan to address several requests received by the Bureau of Planning and Sustainability in the eighth Regulatory Improvement Code Amendment Package (RICAP 8).

The Regulatory Improvement program was initiated in 2002 as a way to “update and improve City building and land use regulations that hinder desirable development”. One component of the program - RICAP - was designed to provide an ongoing and rapid vehicle for technical and minor policy amendments to the City’s regulations. From 2005 to 2010 City Council adopted five packages of amendments (RICAP 1 through 5), which resulted in many amendments to city regulations. Most of the changes were to Zoning Code regulations. Following a brief suspension of the program from 2010-2013 due to budget limitations, the program was reinitialized, with RICAP 6. RICAP 8 continues this ongoing regulatory improvement and code maintenance work.

## II. Workplan Selection Process

RICAP 8 focuses on technical items and items that improve the clarity and consistency of the code, for better implementation. This technical focus enables BPS staff to work on, and contribute to other regulatory and comprehensive planning projects that the Bureau is pursuing.

In general, requests for both process and regulatory improvements are submitted by members of the public and staff through an online database - called the Regulatory Improvement Request (RIR) database. Staff with the Bureaus of Planning and Sustainability (BPS) and Development Services (BDS) categorize the requests according to complexity and the resources needed to address the issue. Issues that will result in more significant policy changes, or will require significant resources, are directed to other legislative projects. The remainder of issues are considered for inclusion into a RICAP. Figure 1 provides an illustration of this sorting process.

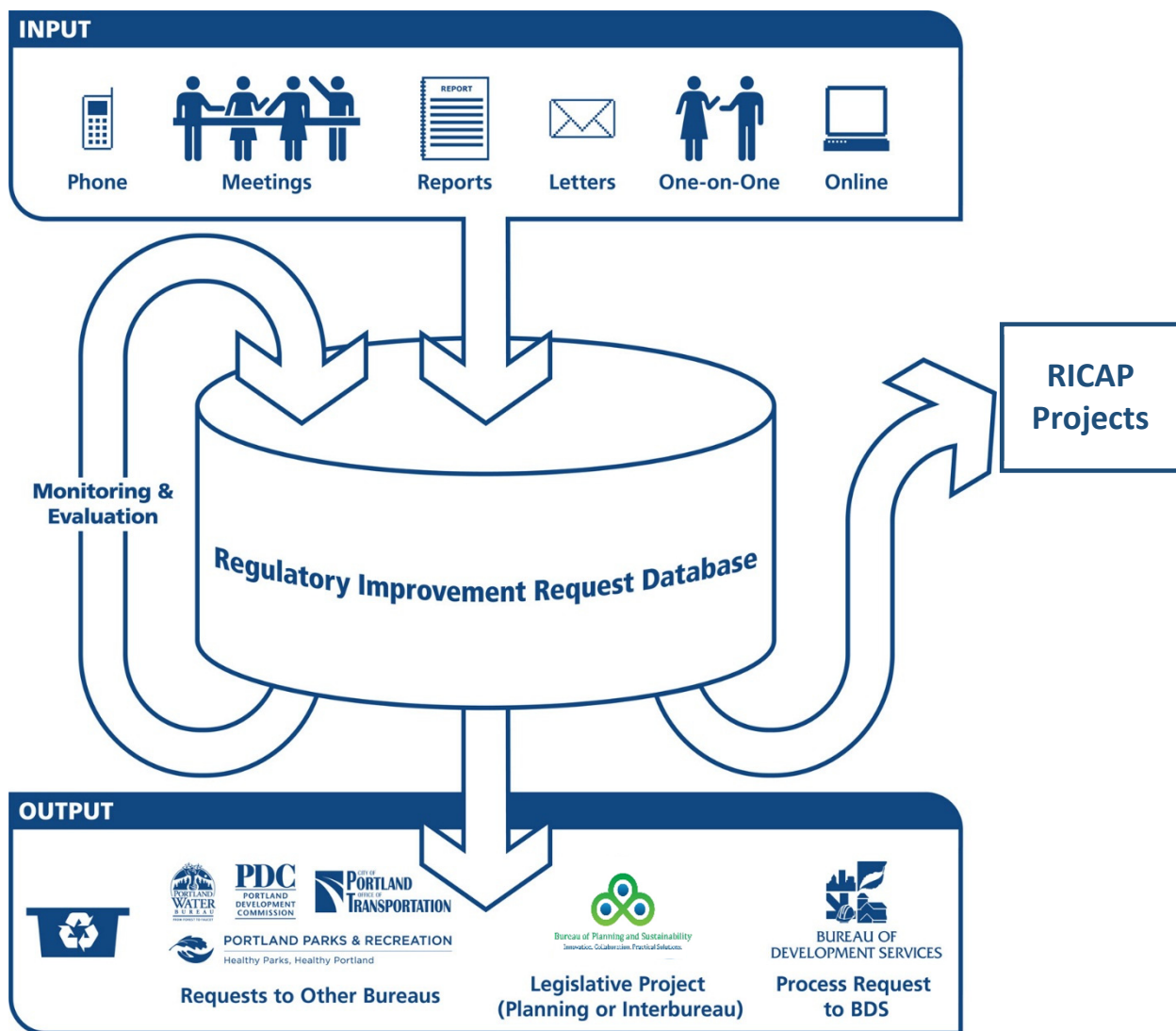
Items that involve a higher level of complexity, are ranked using the following evaluation criteria:

- a. The variety of stakeholders an issue affects (Few people or many? One group of stakeholders or several?);
- b. The geographic applicability of an issue (Is it a citywide regulation or one that affects one particular area?);
- c. The degree of impact (in terms of severity or frequency) that an issue may have; and
- d. A “regulatory improvement” component, which is an estimate of the degree that the regulation can be improved due to its current complexity or rigidity.

Each of the four criteria are ranked between (-3) and (+3), so that the summation of the four items may range between (-12) and (+12). An item that ranks as a zero would fall in the average range for these criteria.

To develop the RICAP workplan, staff considers the complexity, rank, and resources needed to address the issue. Generally, items that are the most important to address and that fit within the scope of a RICAP, rise to the top of the ranking process. Not all top ranking items may get selected, based on staff resource limitations, other constraints such as the relationship of the item to other pending city projects, or the need to consider the item as part of a more holistic planning process.

**Figure 1: Regulatory Improvement Process Diagram**



### III. Staff Recommendation

The Planning and Sustainability Commission will hold a hearing on the proposed workplan for RICAP 8 on April 28, 2015, where the public is invited to comment on the Bureau's proposal. The issues selected by the Planning and Sustainability Commission for the workplan will be addressed by staff in the coming year.

The proposed workplan consists of 27 issues related to Title 33: Zoning Code regulations and 10 technical issues addressing implementation of the new tree code in Title 11: Trees. These are listed in the table in Section IV.

The proposed RICAP 8 workplan consists of 37 items: 27 items related to Title 33: Zoning Code regulations; and ten addressing Title 11: Trees. The items are selected from the requested items catalogued in an online database. Most of the issues relate to regulations that are applied citywide. The items fall into two groups:

- 1) *Minor Policy Items* that may affect existing policy, for example by expanding or restricting allowed uses, changing the review type or procedure for land use applications, or revising development standards. RICAP 8 has 12 minor policy items that will address land divisions, lot conformations, radio frequency regulations, property line adjustments, and small signs in Historic Districts.
- 2) *Technical Corrections, Clarifications, and Consistency Items* where the particular requirement is unclear, or the regulations are in conflict with other sections of the code. There are 25 miscellaneous technical corrections in RICAP 8, including all 10 of the issues related to the new tree code.

The table summarizes the items proposed for selection in the RICAP 8 workplan. The appendix to this report (under separate cover) includes the full list of regulatory improvement requests made by City staff, community members, and others that was considered for RICAP 8 (i.e. these are the items that are not considered major policy or high levels of staff resources required). Items not selected will remain on the eligible list for consideration in future regulatory improvement projects.

#### RECOMMENDATION:

The Bureau of Planning and Sustainability recommends that the Planning and Sustainability Commission (PSC) approve the items for the RICAP 8 Workplan identified in Section IV of this report. Approval of the workplan by the PSC will allow staff to evaluate these issues in greater detail. Where applicable, BPS staff will draft a set of specific code amendments for further public review through the legislative process in early 2016.

## IV. RICAP 8 Workplan Items

This section includes the items from the Regulatory Improvement Requests (RIR) database that are proposed for inclusion in the RICAP 8 workplan. The list contains two sections; “Minor Policy Items” and “Technical Corrections, Clarifications, and Consistency Items”. The items contained in each section are sorted by Zoning Code section.

Minor Policy items include issues that may affect existing policy, for example by expanding or restricting allowed uses, changing the review type or procedure for land use applications, or revising development standards.

Technical Corrections, Clarifications, and Consistency Items include issues where for instance the desired outcome of a particular requirement is unclear, or the regulations are in conflict with other sections of the code.

The table on the following pages contains several columns:

- **Item #** - This number is provided for reference.
- **RIR #** - This is the identification number for the item from the Regulatory Improvement Requests (RIR) database.
- **Issue** - Provides a general description of the regulatory problem.
- **Potential Action** - Represents an initial concept for addressing the issue. As further research is done on these issues, the proposed resolution of each issue may differ from the potential action in this list.
- **Code Section** - Cites the reference to the section of city code that contains the regulation to be addressed.



<b>Minor Policy Items</b>				
<b>Item #</b>	<b>RIR #</b>	<b>Issue</b>	<b>Potential Action</b>	<b>Code Sections</b>
1	861607	<p><b><u>Lot Confirmation – Procedure</u></b>                      There is no formal process or direction for BDS to follow when processing Lot Confirmations. These confirmations allow for portions of a site to be sold off, and can affect the development standards for a site, such as building coverage, vehicle area, setbacks, outdoor area, etc. The one portion of the code that discusses when a lot can be developed contains no standards for whether a site can go out of conformance through the lot confirmation process.</p>	Provide a process and a set of standards for reviewing a lot confirmation and how that confirmation may affect development on the site.	33.110.212
2	861487	<p><b><u>Multi dwelling zones – Minimum Density</u></b>                      In multi dwelling zones, exceptions to minimum density are only allowed for environmental zoned sites. When other land constraints are present (flood or landslide hazard) an adjustment is required.</p>	Evaluate options to allow reductions to minimum density similar to single dwelling zone density reductions for constrained sites.	33.120.205
3	678156	<p><b><u>Loading Standards – Forward Ingress/Egress</u></b>                      Outside the Central City, when loading spaces are required, they must provide forward ingress and egress from a site, even when there is no parking area.</p>	Consider an exception for sites taking access from local service streets to allow a loading space to back into or out of a loading space.	33.266.310
4	108182	<p><b><u>Radio Frequency Regulations</u></b>                      The Federal Communications Commission adopted rules to clarify local government’s authority to review certain colocation requests, and establishes new “shot clock” provisions to require reviews to occur in an expedited manner.</p>	Evaluate the City’s RF chapter regulations to determine/ ensure consistency with the federal mandate.	33.274
5	33057	<p><b><u>Historic Overlay – Small Sign Exemption</u></b>                      The sign code requires Historic Resource Review for all signs in Historic Districts regardless of size. Signs smaller than 32 sq. ft. are exempt in design overlays.</p>	Provide an exemption from Historic Design Review for signs not larger than 8 sq ft in Historic Districts. The exemption should only apply to non-illuminated wall & projecting signs and should not apply to any historic landmarks.	33.445.320 32.34.020

<b>Minor Policy Items</b>				
6	861481	<p><b><u>Right of Way Dedications</u></b> Multi dwelling and Single dwelling zones land division sites are treated differently for right of way deductions along existing streets. Also, density and floor area requirements for building permits are calculated based on site area after ROW dedication.</p>	Evaluate potential exclusion for incremental right of way dedication requirements along an existing street frontage (typical for meeting newer sidewalk and stormwater requirements). This would not apply to street extensions or new streets.	33.612.100
7	31138 835446 52156	<p><b><u>Land Divisions – Streams, Springs, Seeps, Wetlands</u></b> The Land Division regulations regarding seeps and springs are more restrictive than environmental zone regulations, i.e. require placement in a tract  Conversely, land division regulations do not specifically require wetlands to be protected.  Also, delineating the boundary for of tract for a stream, via a land division Review, is difficult when there is not a well-defined top-of-bank.</p>	<p>Make rules consistent between environmental zone and land divisions, including protections for wetlands.</p> <p>Consider allowing applicants to either define the edge of the stream using the top-of-bank definition or through a professional wetland delineation</p>	33.640
8	861500 26128 214982	<p><b><u>Land Divisions – Ped Connections/Common Greens</u></b> Pedestrian connections are narrow, yet in single dwelling zones, an automatic 15% is deducted for right of way. This sometimes precludes the land division.  Common greens and ped connections are considered types of “streets”. This can be misconstrued to allow duplexes/attached homes on the “corner” lot.</p>	<p>Consider alternative site area reduction for these narrow types of streets (i.e. actual area).</p> <p>Clarify the allowances for duplexes and attached houses on lots fronting ped connections and common greens.</p>	33.654.120 33.110.240
9	845362	<p><b><u>Property Line Adjustments – Services Standards</u></b> The approval standards for PLAs are poorly worded regarding utility services and are difficult to apply.</p>	Update the standards to prevent infrastructure service conflicts	33.667.300
10	813876	<p><b><u>Property Line Adjustments – Regular Lot Lines</u></b> There have been several instances where property line adjustments continue to create irregular lot shapes, especially with some lower density zones where the 36 foot width is less of an issue but the minimum lot size requirements dictate that appendages be created. This issue also comes up in some land divisions.</p>	Consider developing standards that require lot lines to run perpendicular from the street for a certain distance to avoid 'dog legs' and other property oddities that are not intuitive on the ground. Also consider drafting more discretionary criteria to land division criteria to prevent this type of lot configuration	33.667.300

<b>Minor Policy Items</b>				
11	33007	<b><u>Plat Vacations – Procedure</u></b> If a subdivision or partition plat has been approved but not yet built, there is no simple process to vacate the approval rather than replat through the original process	Establish a standardized procedure, such as a Type Ix review, for vacating unbuilt plats. This would enable evaluation (and retention) of conditions of approval if still relevant.	33.675
12	740193	<b><u>Lot consolidations – Procedure</u></b> Consolidating lots are a type Ix procedure, but there are no criteria. The process adds time and expense to a non-discretionary review.	Review state law requirements to determine whether lot consolidations can be processed administratively, like a property line adjustment.	33.675

<b>Technical Corrections, Clarifications, and Consistency Items</b>				
<b>Item #</b>	<b>RIR #</b>	<b>Issue</b>	<b>Potential Action</b>	<b>Code Sections</b>
13-22	861427	<b><u>Tree Code –RPZ Requirements</u></b> It is not reasonable to require chain link fence protection around trees on opposite side of site that is well away from any construction activity	Consider reasonable separation distance between construction and required tree protection	11.50, 11.70, 11.80
		<b><u>Tree Code– RPZ Encroachments</u></b> The requirements for root protection zone encroachments are not clear	Evaluate ways to clarify 25% area/50% allowed distance encroachments	
		<b><u>Tree Code –Non Conforming Upgrades</u></b> Tree density is only required for non-conforming upgrades when both the dollar threshold is exceeded AND when exterior alterations are proposed. This is different than all other items in the NCU list.	Align tree density with non-conforming upgrades (make applicability consistent with other types of upgrades)	
		<b><u>Tree Code –Tree Plan Requirements</u></b> There is no requirement for tree plans to identify tree species or health condition, allowing applicants to preserve dead or nuisance species trees to meet preservation standards.	Evaluate options for requiring identification of tree species and condition on tree preservation plans	
		<b><u>Tree Code –Tree Plan Carryover</u></b> It is unclear how tree plans apply between one phase of development and subsequent phases.	Clarify effect of tree plan submitted for one phase of development (e.g. demo) on subsequent phases (grading, construction, etc)	

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		<p><b><u>Tree Code –Amenity Bonus</u></b> The amenity bonus provisions in the zoning code limit each bonus to 5-10%, however there is no similar cap on tree preservation.</p>	Cap percent of amenity bonus allowed for additional tree preservation.	
		<p><b><u>Tree Code –Ground Disturbance</u></b> 1. Small amounts of ground disturbance (e.g. window wells, deck piers, etc) trigger need for tree preservation plan submittal.</p> <p>2. Some projects with no ground disturbance (e.g. 2<sup>nd</sup> story addition) may still have significant staging or construction activity on a site, impacting trees and roots.</p>	<p>Consider a “de minimus” exemption for ground disturbance</p> <p>Evaluate need for root protection for sites with significant staging</p>	
		<p><b><u>Tree Code –Table Reference</u></b> The reference in 11.50.030 to tree density requirements for sites using the development impact area option, refers to the wrong column in Table 50-1</p>	Correct reference to tree density requirements for development impact area.	
		<p><b><u>Tree Code – Definitions</u></b> Certain terms are not clearly defined such as tree, building, and attached structure</p>	Add definitions for tree, building, and attached structure	
		<p><b><u>Tree Code –Enforcement</u></b> Enforcement tools should include the ability to impose liens for non-payment of penalties</p>	Add lien authority similar to Title 29	
23	835465	<p><b><u>Flag Lot – Width requirements</u></b> Flag lots created prior to July 26, 1979 do not meet the lot width requirements of any of Table 110-6. New flag lots have their own set of standards that are not related to traditional lots</p>	Include an exception, or alternative standards, to the table for lots or lots of record that were created as flag lots.	33.110.212

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<b>Item #</b>	<b>RIR #</b>	<b>Issue</b>	<b>Potential Action</b>	<b>Code Sections</b>
24	802897	<p><b><u>Established Building Line Setbacks</u></b>                      Clarify that the reduced setback allowed by established building lines applies only to additions to the primary structure. The section states that the nonconforming wall serves as the reduced setback line. It does not seem that the regulation was intended to allow a reduced setback for the entire site and other structures.</p>	State that the nonconforming development is the primary structure and that the reduced setback applies only for additions to the primary structure.	33.110.215
25	252005	<p><b><u>Non-conforming Change of Use</u></b>                      Changes to another non-conforming use in the same use category are allowed by right, provided the off-site impact standards are met. However, it is not clear what is meant by changes within the same use category.</p>	Clarify what is intended by the statement “changes within the same use category”	33.258.050
26	822807	<p><b><u>Non-conforming Residential Density</u></b>                      The code for nonconforming residential densities does not distinguish between situations where the nonconformity was destroyed accidentally or intentionally. It has been the practice to not allow nonconforming densities to be re-established if they are intentionally destroyed.</p>	Clarify or establish the standard for re-establishing nonconforming residential densities that have been intentionally destroyed.	33.258.060
27	835457	<p><b><u>Rooftop ductwork</u></b>                      Clarify if rooftop ductwork is subject to design review or eligible for design review exemptions.</p>	Require rooftop ductwork to meet the height, setback and exterior finish provisions of 33.420.045.M. (mechanical equipment)	33.420.045

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<b>Item #</b>	<b>RIR #</b>	<b>Issue</b>	<b>Potential Action</b>	<b>Code Sections</b>
28	781641	<p><b><u>Institution Zone and Design Review</u></b>            33.420.045.K identifies when development in the IR zone is exempt from Design Review. The intent of these exceptions was that Design Review is only required for development that is part of a proposed or approved Impact Mitigation Plan. Development not requiring a Conditional Use is specifically exempted. However, only "expansions or alterations" that don't require a Conditional Use are exempt from Design Review. New development that doesn't require a Conditional Use even when proposed on lots that have been removed from an IMP boundary are still subject to Design Review.</p>	To be consistent with the intent that development in the IR zone that does not require a Conditional Use is exempt from Design Review, modify 33.420.045.K.2 to include "development" rather than only alterations or expansions to development.	33.420.045
29	861071	<p><b><u>Pleasant Valley Overlay Zone - Exemptions</u></b>            The Pleasant Valley Natural Resource Overlay zone created a new "v" overlay intended to have regulations including elements of both the environmental 'c' and 'p' zones. However, several exemptions of the 'v' overlay were intended to be consistent with the base environmental zones. When the 'c' and 'p' zones were amended the next year, the exemption allowing gardens and other activities with non-native plants was expanded in the environmental zones but not in Pleasant Valley. It is not clear if this was intended.</p>	If found consistent with the Pleasant Valley Plan, update PV code to match e-zone exemption for gardens in existing disturbance areas.	33.465.
30	836114	<p><b><u>Pleasant Valley Overlay Zone - Procedures</u></b>            The EN plan check notice and review procedures (33.465.420) within the Pleasant Valley Overlay Zone were modeled after the notice and review procedures in 33.430.430. However, they have not been updated along with 33.430.430, resulting in a cumbersome and outdated notification process described in the code.</p>	Review the notice and procedures for Pleasant Valley and e-zones, and update for consistency.	33.465.

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<b>Item #</b>	<b>RIR #</b>	<b>Issue</b>	<b>Potential Action</b>	<b>Code Sections</b>
31	754086	<p><b><u>Plan District Maps - References to Code Section</u></b>                      It is not always clear what sections of the zoning code a map is intended to illustrate. This is especially true in plan districts such as Central City that have multiple maps.</p>	Plan district maps should include a reference to the code section that applies. Confer with Central City team and determine best approach to reference code standard on maps.	33.510.
32	754059	<p><b><u>Plan District Maps – Consistent Legends</u></b>                      There are many instances where a map indicating a feature or standard of a plan district is split into three areas. The legends for each area (i.e. map 1 of 2 and 2 of 2) do not always contain the same information, which can lead to confusion.</p>	If a plan district has multiple maps for a single standard because of the size of the plan district, include all of the symbols in each legend. This would help clarify whether a particular site is affected by the code section.	33.510.
33	789784	<p><b><u>Northwest Plan District – Certification Letter</u></b>                      The height and floor area bonus provision for affordable housing in the Northwest plan district contains a requirement that an applicant provide a letter from PDC certifying the affordable housing component. PDC does not have this capability anymore, and this may need to be changed to the Portland Housing Bureau</p>	Amend paragraph E.3 so that the certification is done by the Portland Housing Bureau who has the resources to certify and monitor.	33.562.230
34	794211	<p><b><u>Posting Notices – City Council Hearings</u></b>                      For Type III land use reviews, it is unclear whether the site needs to be posted with City Council hearing information.                      1. For appeals to City Council, per 33.730.030.H it appears that only a mailed notice is required, and not a posting. For appeal hearings, it may be difficult to accommodate the 30-day posting requirement within the required 120-day review period.                      2. There is no language about what notice is required for CP ZC applications that go to Council.                      33.730.080, identifies the required contents of the posting notice, but refers more generally to hearings and the need to identify the date of the hearing and that the posting notice cannot be removed "before the hearing," but doesn't specify which hearing (HO or CC).</p>	<p>1. For appeals of Type III cases to City Council, anyone who testified at the hearing (in writing or in person) before the Hearings Officer, Design Commission or Landmarks Commission will already receive a mailed notice of the Council hearing, so an additional posting notice at the site doesn't seem necessary.</p> <p>2. Likewise for CP ZC hearings before Council, anyone who received a notice of the Hearings Officer hearing, as well as anyone who testified at the Hearings Officer hearing, will receive a notice of the Council hearing                      Furthermore,</p>	33.730.030

<b>Technical Corrections, Clarifications, and Consistency Items</b>				
<b>Item #</b>	<b>RIR #</b>	<b>Issue</b>	<b>Potential Action</b>	<b>Code Sections</b>
35	788146	<p><b><u>Definitions – Springs, Seeps, Wetlands</u></b>            The definitions of seep and spring state that the water must discharge into a channel. A recent decision found that even through the water flowed to a channel it then flowed to a catch basin which was deemed not a waterbody and therefore did not require protection.</p>	Amend the definitions to reflect the original intent of protect seeps and springs that flow from a site.	33.910
36	845363	<p><b><u>Definitions – Drainageway</u></b>            BES is amending the definition of drainageway in Title 17.</p>	Review T17 revised definition and determine appropriateness for consistent definition in T33	33.910
37	799788	<p><b><u>Definitions – Hazardous Substances</u></b>            The definition of Hazardous Substances has essentially been the same since the zoning code rewrite of 1991, and it refers to documents and sources that are over 20 years old. These sources may have been updated</p>	Research the Hazardous Substance definition and update or revise any of the references that may now be out of date.	33.910





