

***2002-2003
REGULATORY IMPROVEMENT WORKPLAN:***



Policy Package 1

Recommended Draft

Planning Commission Recommendation to City Council

June 4, 2003



CITY OF PORTLAND, OREGON
BUREAU OF
Planning

Portland City Council will hold a public hearing on this project:

Wednesday, June 18, 2003

6:00 PM

City Hall, Council Chambers

1221 S.W. Fourth Ave.

Portland, OR 97204

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June 4, 2003

Mayor Katz and City Commissioners
Portland City Council
1221 SW Fourth Avenue
Portland, Oregon 97204

Re: 2002-03 Regulatory Improvement Workplan: Policy Package 1

Dear Mayor Katz and City Commissioners:

On behalf of the Portland Planning Commission, we are forwarding our recommendations on Policy Package 1, the second element revising the Zoning Code as part of the City's 2002-2003 Regulatory Improvement Workplan.

The majority of the elements of Policy Package 1 are, without question, improvements to the Zoning Code. They increase clarity, simplify approaches, and better implement the Comprehensive Plan. Planning staff will give you a full presentation on all of our recommendations. There are several items that we received a great deal of testimony on and led to much discussion on our part, that we'd like to focus on in this letter.

- 1. Lot Validations and Lot Segregations.** This is the issue we received the most testimony on, and spent the most time deliberating. After much discussion, our unanimous vote was to recommend significantly reorganizing and simplifying this section of the Code. Our recommendation, if adopted by Council, would replace the "Validation of Lots" section of the existing code with a new section called "Where Primary Structures are Allowed".

We are recommending this change to provide greater consistency in the way we treat lots and sites throughout the City. It will establish the same minimum lot sizes for both existing lots and those being newly created through land divisions. As part of this change, minimum lot sizes will be added for existing lots in the R5 and R2.5 zones. This specific change is needed to bring the Zoning Code into compliance with the City's Comprehensive Plan.

Much of the testimony we heard about this item focused on the part of the proposal which re-establishes a minimum lot size for the R5 (Residential 5000) zone. Much of the testimony was related to the Comprehensive Plan, zoning, and density issues. Other testimony focused on design issues related to narrow lot development. Our recommendation addresses both of these issues.

The Comprehensive Plan's High Density Single Dwelling designation, which the R5 zone is intended to implement, is meant to "continue Portland's most

common pattern of development.” . The maximum density is generally 8.7 units per acre. The existing code, by having no minimum lot size for existing lots in the R5 zone, allows for twice the density (or greater) in areas that the City has determined should be developed at the R5 density, but which have an underlying historic platting pattern that might date from the early 1900s.

Historically, many areas (primarily in North, NE, and SE Portland) were platted with 25 x 100 foot lots. The lots were typically sold in combinations of two, three, or four contiguous lots, and developed with one house per ownership, creating the common pattern of development cited in the Comprehensive Plan. Most of these areas with this underlying platting pattern are currently zoned R5, an appropriate zone given the existing development pattern, the desired character of these neighborhoods, proximity to services, etc. Other areas (both with and without this historic platting), have been zoned R2.5 or higher through legislative planning projects because of their closer proximity to transit and appropriate infrastructure, the existing development pattern, and greater proximity to commercial centers and services. These are areas the City has determined can appropriately accommodate higher density housing.

When the existing regulations were adopted in 1991, no minimum lot size was established for substandard lots in the R5 and R2.5 zones. At the time, allowing such development was expected to have minimal impact on neighborhoods because most sites with underlying 25' x 100' platting were already developed in ways that meet the current code (e.g. one house per 5000 square feet). For the few vacant lots or the occasional side yard that could be segregated, it didn't seem necessary to establish a minimum that could unnecessarily preclude these smaller, existing, stand-alone lots from developing. In 1991, we did not expect that it would be financially viable to demolish an existing house straddling two historic lots in order to build two "skinny houses" in its place. This expectation proved to be correct for most of the 90s. However several areas of the City are now experiencing a "demolition phenomenon" not anticipated in 1991. We have discovered that the Zoning Code, because of changing market forces, no longer is implementing our Comprehensive Plan in the R5 zone.

As you know, the Comprehensive Plan is the City's overarching approach to planning, and the Zoning Code must--by state law--implement the Comprehensive Plan. Our recommendation does just that by re-establishing a minimum lot size of 3000 square feet for existing lots in the R5 zone. We recommend "grandfathering" in existing lots that already have separate tax accounts, or that are "in the pipeline" as of the effective date of this regulation.

We have asked staff to provide you with a full presentation on this issue at your hearing. The Planning Commission found that pictures, maps, and animated, real-life illustrations were very useful in helping us understand this complicated issue and the many options that will still be available for development on affected sites.

We also heard significant concerns about the design of houses being built on these narrow lots. Most of the houses built on these lots are only 15 feet wide, which presents significant limitations to the designers; because of these

constraints, the houses are often disproportionately tall (although within maximums allowed), and the garage is the dominant street-facing element. The Infill Design Project will address many of these issues, but we are concerned that if we wait until that project is completed, too many opportunities may be lost. Although our recommendation would stop future lot segregations, there are several hundred of these lots that could still be developed.

We asked Planning staff to develop some interim design standards for development on these lots, to be used until the more comprehensive Infill Design Project is completed. Given the design concerns, the limited scope of this project, and limited Planning Bureau resources, we asked staff to use some of the standards that are currently in the Zoning Code, although they may not currently apply to development on these lots. We strongly urge you to adopt these interim design standards; they do not address all of the design concerns, and they do not provide the ideal solutions, but they will suffice until better standards are adopted.

We are concerned about a potential rush of applications for lot segregations and the detrimental effect these will have on the neighborhoods in which they are located, especially if the interim design standards are not implemented soon. The Council should consider applying an emergency clause to the Ordinance to allow for an earlier effective date for the new "Where Primary Structures are Allowed" section of the Recommended Code. We heard a great deal of urgency in testimony and hope that the Council chooses to quickly address this issue.

- 2. Eaves.** Eaves are currently included in calculations of how much building coverage is allowed on each lot. We are recommending that you remove eaves from the "building coverage" definition in the Zoning Code.

The inclusion of eaves under the existing code presents several problems. The purpose of the building coverage regulations is, in concert with height limits, to regulate the bulk of development. Eaves, however, do not contribute to bulk, and in fact can sometimes lessen the appearance of bulk. BDS staff has found that when a project comes in over the maximum building coverage due to eaves, the most common response is to eliminate the eaves, rather than redesign the building to have a smaller footprint. Eliminating or reducing the eaves can adversely impact the design and appearance of the structure and can result in structures that are not compatible with nearby development. For these reasons, and those detailed in our report to you, we recommend deleting eaves from the definition of building coverage.

- 3. Building Coverage.** We also are recommending an amendment to how we calculate building coverage in residential zones. As part of the Land Division Code, the City created Table 110-6 which includes seven different ranges of lot size and complex calculations for arriving at maximum building coverage. This was raised as an issue in the development of the "top ten" last fall for several reasons:

- The calculations in Table 110-6 are complicated and should be revised for easier implementation.

- Concerns had been raised that the changes to the maximum building coverage allowance in Single-Dwelling zones resulted in a significant reduction in allowed building coverage on oversized lots when compared to what was previously allowed. BDS has found a number of cases where existing development in established neighborhoods (such as Laurelhurst and Irvington) with oversized lots in R5 zones, would need adjustments for additions that previously would have been allowed outright due to the greater percentage allowance of the R5 zone prior to this change taking place.
- Staff identified a “glitch” in the Table’s calculations which creates a disparity in how the City treats lots between 5000 and 6999 square feet in size.

The Planning Commission recommends:

- Significantly simplifying and streamlining Table 110-6 and the calculations while retaining the policy decision made during the Land Division Code Rewrite.
- Slightly increasing the building coverage allowance for lots between 5000 and 10,000 square feet. The Planning Commission decided it would be appropriate to allow a little more increased flexibility for properties between 5000 and 10,000 square feet which the simplification of the Table allows. The Planning Commission is not recommending significant increases for these properties. The intention at the time of the Land Division Code adoption was not to keep all rights for oversize lots as they were under the previous code, but rather to treat all same sized lots the same, no matter what the base zone.
- Slightly increasing the building coverage allowance for lots under 3000 square feet to provide additional flexibility for these small lots. This was raised as a concern by the Bureau of Development Services in testimony to the Commission and we agreed this was important to do.
- Slightly decreasing the building coverage allowance for lots over 10,000 square feet. With the change to the building coverage definition, we felt this decrease would have marginal impacts.

The Planning Commission also discussed whether we should reduce the maximum building coverage allowances given our decision on excluding eaves from the definition of building coverage. The Commission voted (4-2-1) against reducing the allowance, since eliminating eaves from the definition of building coverage would not increase the currently allowed bulk of houses.

- 4. Tree caliper.** Broadleaf trees required by the Zoning Code in nonresidential zones must be at least 3 caliper inches. There is an exception in parking lots for trees on the Parking Lot Tree List which may be 2 caliper inches. We recommend that you reduce the general requirement to 2 caliper inches, and reduce the requirement for trees on the Parking Lot Tree List to 1.5 caliper inches. We believe this will make it easier for developers to find the trees required by the Code, reduce costs for them, and increase the viability of the trees planted. In addition, in order to provide a comparable reduction in the requirements for conifer trees, we ask that you also reduce the required height

for conifers from 6 feet to 5 feet in general, and from 5 feet to 4 feet for trees on the Parking Lot Tree List.

We are concerned however about this piecemeal approach to the landscaping regulations. In addition to the requirements in the Zoning Code, trees and landscaping are also required by the City Forester (street trees), the Bureau of Environmental Services (as part of stormwater management), and other agencies. The Bureau of Development Services has begun a project to consider the entirety of the City's landscape regulations, with an eye to consolidating and simplifying the requirements. We strongly encourage you to make this project a priority.

RECOMMENDED ACTIONS

The Planning Commission recommends that the City Council adopt this ordinance and report, and amend the Zoning Code as shown in the report.

Thank you for consideration of the recommendations of the Portland Planning Commission.

Sincerely,

Ethan Seltzer, President
Portland Planning Commission

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Recommended Draft
Planning Commission Recommendation to City Council

June 4, 2003



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BUREAU OF
Planning

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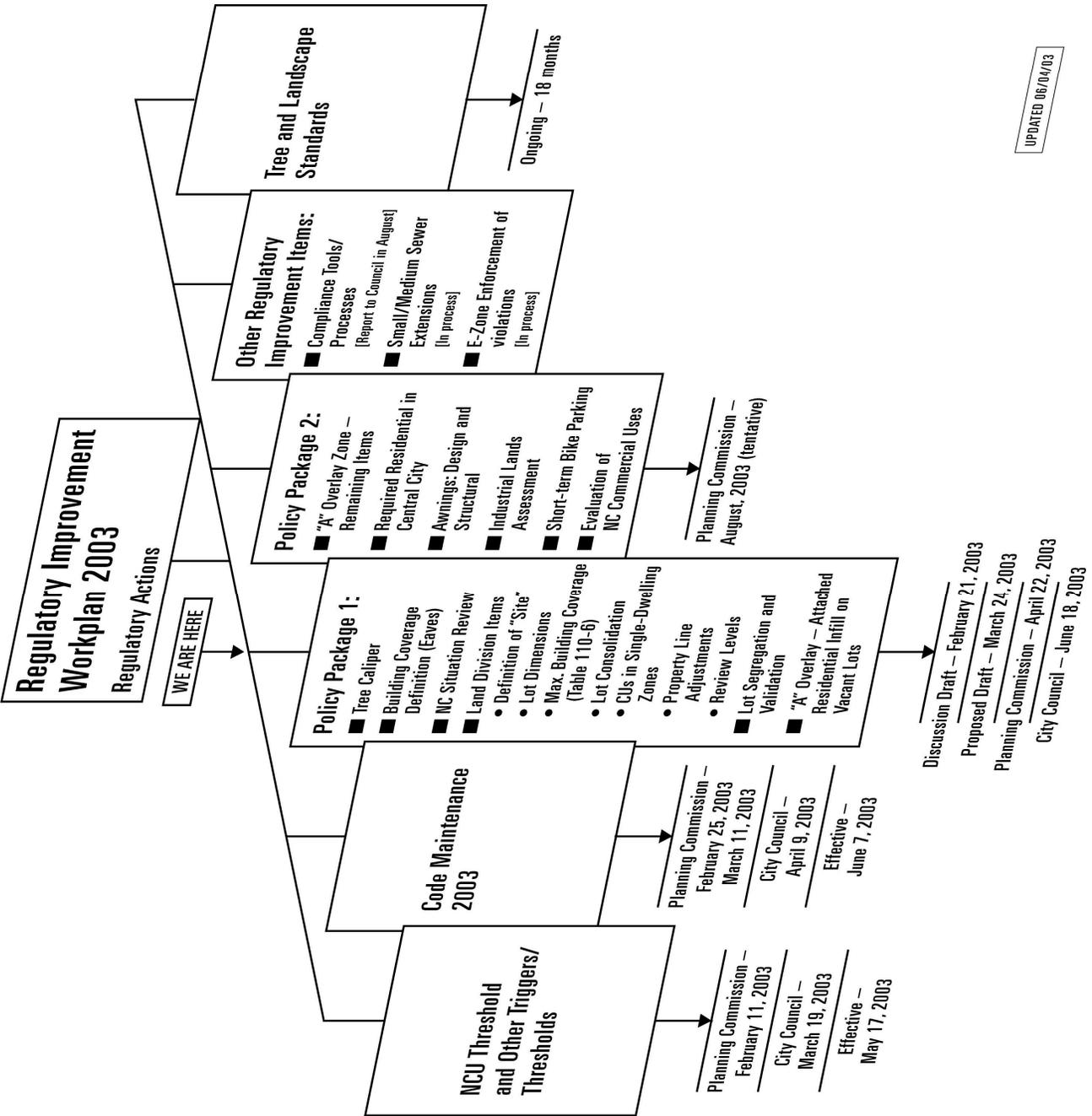
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Summary and Planning Commission Recommendation

Summary

This report is the second element revising the Zoning Code as part of the 2002-2003 Regulatory Improvement Workplan, a program to update and improve City building and land use regulations and procedures that hinder desirable development. The Recommended Draft includes several amendments to the Zoning Code that are grouped into what is referred to as “Policy Package 1.” Items in Policy Package 1 range from the size of trees planted in nonresidential zones to various elements of the land division code.

For other items that are included in the 2002-2003 Regulatory Improvement Workplan but are not a part of this Recommended Draft, please refer to the chart on the previous page.

In this report, Planning Commission recommends the following:

- Tree size: In non-residential zones, reduce the minimum required tree caliper for broadleaf trees from 3 inches to 2 inches and the minimum required height for conifers from 6 feet to 5 feet. Preserve the incentive for using trees off the Parking Lot Tree List in parking lots, by reducing the allowed tree size for those trees from 2 inches to 1.5 inches, and from 5 feet to 4 feet.
- Definition of building coverage: Exclude eaves from the definition of building coverage.
- Maximum building coverage: Revise Table 110-6, Maximum Building Coverage Allowed in RF through R2.5 Zones, to reduce the number of ranges in the table and simplify the calculations significantly.
- Nonconforming Situation Review: Change the existing criterion for nonconforming situation review from requiring applicants to demonstrate a “net decrease” in detrimental impacts to “no net increase” in detrimental impacts. Reduce review procedure for non-conforming situation reviews in R (residential) and OS (open space) zones to Type II (from Type III).
- Attached residential infill on vacant lots (“a” overlay): Eliminate the code provision for attached residential infill on vacant lots in the R20, R10, and R7 zones while retaining it for the R5 zone.
- Lot validations and Lot segregations: Replace “Validation of Lots and Lots of Record” section with “Where Primary Structures are Allowed” to simplify this section, provide consistency in how lots and sites are treated throughout the city and establish minimum lot sizes for existing lots in the R2.5 and R5 zones. Establish design standards for “grandfathered” lots that do not meet the minimum lot size.
- Definition of “site” for land divisions: Allow the applicant to define the site within an ownership along lot lines.
- Lot Dimension Standards in the Multi-Dwelling Zones: Add minimum lot dimension standards for nonconforming uses and duplexes; reduce minimum lot depth in R3, R2, and R1 zones to 70 feet, add front lot line requirements for attached housing in all Multi-Dwelling Zones, and for all development in the RX zone; add minimum lot dimensions for attached housing in the IR zone to

correct some inadvertent omission made during the Land Division Code Rewrite Project. .

- Front lot line in Commercial zones: Change the minimum front lot line standard from 25' for most development and 16' for attached houses to 10'; this will allow live/work situations in attached buildings in commercial zones, and increase opportunities for creative development.
- Nonconforming uses in R2.5 and multi-dwelling zones: Clarify which development standards apply to lots that will be developed with uses other than attached and detached houses; clarify that sites with conditional uses are exempt from minimum density standards.
- Conditional uses in RF though R5 zones: Clarify that the portion of a site with a conditional use is exempt from minimum density standards and also clarify that lots with conditional or institutional uses are exempt from the maximum lot area standards.
- Property line adjustments: Clarify that the dimensional standards that apply to lots created through the land division process also apply to Property Line Adjustments.
- Lot consolidation: Create a process for the removal of lot lines within a site that is simpler, faster, and less expensive than the land division process.
- Review of land divisions in multi-dwelling zones: Replace “dwelling units” with “lots” as one of the factors considered when determining which level of review procedure is assigned to a proposed land division.

Planning Commission Recommendation

Planning Commission recommends the following City Council actions:

- Adopt this ordinance and report, and
- Amend the Zoning Code as shown in this report.
- Consider adding an Emergency Clause to allow for an earlier effective date for Section 33.110.112, Where Primary Structures are Allowed.

A. Background

On June 26, 2002, the Portland City Council approved Resolution 36080, which sought to “update and improve City building and land use regulations that hinder desirable development.” This was the beginning of the Council’s charge to build an effective process of continuous improvement to the City’s code regulations, procedures, costs and customer service.

Between the time of Council’s approval of Resolution 36080 in June and final Council action in the Fall of 2002, City staff participated in an extensive public outreach program over the course of 12 weeks. This effort was spearheaded by the Mayor’s Office and included a diverse group of regulatory stakeholders ranging from City bureau representatives to neighborhood association representatives and business groups.

One component of City Council’s 2002-2003 Final Regulatory Improvement Workplan included the annual development of a “top ten” list of problematic code regulations. Some of the items included in the “top ten” list for 2002-2003 require significant staff time for review and proposal development, thus this year’s “top ten” (which turns out to be approximately fifteen items) has been grouped into several pieces, including the items in this Recommended Draft. These items make up the bulk of what is referred to as Policy Package 1. Other code improvement items in the 2002-2003 Workplan will be moving their way through the public review process in the upcoming months.

The Bureau of Planning published *Regulatory Improvement Workplan: Policy Package 1 Discussion Draft* on February 21, 2003. Copies were available at the Bureau’s office and on the Bureau’s website. Notice of the proposal was to a broad range of community members, including those who had provided email input to the City’s Regulatory Improvement website, and Business and Neighborhood Associations. In addition, there was extensive review by other City bureaus prior to the Planning Commission’s hearing.

The proposed draft of the Regulatory Improvement Workplan: Policy Package 1 was published on March 24, 2003. Nearly 2,000 individuals and organizations were notified of the draft.

On April 9, 2003, Bureau of Planning staff hosted an informational Open House for additional public review and comment on the proposal. On April 22, 2003, Planning Commission held a public hearing on the proposal. After receiving oral and written testimony, Planning Commission deliberated on and developed their recommendation to City Council.

This report forwards the Planning Commission’s recommendation on Policy Package 1.

B. Discussion

Due to the varied nature of the code proposals contained within this package, discussion of the various proposals is contained within the commentary pages accompanying the recommended code amendments. Section D. Recommended Amendments to the Zoning Code, begins on page 1 of this document.

C. Impact Assessment

This Impact Assessment section of the *Planning Commission Recommended Draft* contains many references to other documents because this project (Policy Package 1) is one of many inter-related projects in the Regulatory Improvement Workplan. Many of the steps of an impact analysis were performed as part of the other related projects, discussed below. The flowchart of the model process for impact assessment, included in this document as Attachment 1, provides additional information.

The Model Process for Impact Assessment

The Impact Analysis Workgroup developed a model process for impact assessment. Development of the model was part of the 2002-2003 Regulatory Improvement Workplan. The model recommends a two-stage assessment for all legislative projects; each stage includes a set of questions to be addressed.

The first stage is part of the initial phase of a project, and should be incorporated into the scoping, problem definition, and other early project steps. The second stage is part of the development and analysis of a project, and includes considerations of alternatives. This impact assessment follows this two-stage assessment model.

First Stage Assessment

The model process recommends that the following questions be addressed in the initial phases of any legislative project:

- 1. What is the issue or problem we are trying to address? Is there a mandate (state or federal) that requires a regulation or other non-regulatory response--and is there clear authority for its adoption?*
- 2. What are the intended or desired outcomes? What community goals or aspirations are we trying to achieve? How will the outcomes advance and support the City's Comprehensive Plan?*
- 3. Is the issue of sufficient magnitude to justify developing new regulations or other non-regulatory tools? Is the issue just the "crisis du jour" or something more substantial?*
- 4. What entities will be affected by the potentially proposed policies, requirements and/or regulations? Are there existing regulations and non-regulatory tools that affect the same entities? Are there existing policies, requirements and/or*

regulations that are duplicative, contradict, or overload the existing regulatory framework?

5. *Why should this be a priority for action? How will the City staff and fund the project?*

For Policy Package 1, much of the First Stage Assessment work of Issue Identification and Initial Scoping, Bureau and Council Prioritization, and Project Initiation and Scope Refinement was conducted through a process led by the Mayor's Office in the summer and fall of 2002. This assessment is not repeated here.

The Regulatory Improvement Workplan includes multiple projects and initiatives to update and improve City building and land use regulations that hinder desirable development. The Bureau of Planning is responsible for developing any proposed changes to the City's Zoning Code [Title 33] and bringing them to the Planning Commission for hearings and recommendations to the City Council.

This package of amendments to the Zoning Code, *2002-2003 Regulatory Improvement Workplan: Policy Package 1*, includes a number of proposals on the "Top Ten" list; the Top Ten list was a list of items approved for further action by Council in November 2002. Other items on the Top Ten list will be addressed by other City bureaus, who will bring changes directly to Council. In addition, the Bureau of Planning will bring forward additional amendments to the Zoning Code as part of the *2002-2003 Regulatory Improvement Workplan: Policy Package 2* later this year.

Five white papers for the items in this package are included in this report as Attachments 2 through 6. These white papers were considered by City Council when they approved the Top Ten list and forwarded these issues to the Bureau of Planning for further work and consideration through the legislative process. The white papers provide descriptions of the problems identified with the code provisions, possible solutions or concepts, and the desired outcomes of changes.

The items included as part of Policy Package 1 are listed below. The item numbers are those used on the Regulatory Improvement Workplan Top Ten list and the white papers.

- Item #10--Reduce minimum caliper of tree
- Item #37--Exclude eaves from building coverage
- Item #A37--Criteria for nonconforming situation review
- Item #16--Attached residential infill on vacant lots ('a' overlay)
- Item #A6.1--Land division definition of "site"
- Item #A6.2a--Duplexes in multidwelling zones and
- Item #A6.2f--Depth of R2 lots
- Item #A6.2b--Nonconforming uses in R2.5 and Multidwelling zones
- Item #A6.2c--Property line adjustments
- Item #A6.2d--Lot validation and Lot segregations (New item)
- Item #A6.2e--Front lot line in Commercial zones
- Item #6.3--Maximum building coverage (Table 110-6)

- Item #6.4--Lot consolidation
- Item #6.5--Conditional uses in RF through R5 zones
- Item #6.7--Review of land divisions in multidwelling zones

The items related to Land Division regulations (those beginning with A6), while considered as one item for the Top Ten, actually include numerous changes. Since adoption of the Top Ten list, BDS staff has identified many additional implementation and code clarification issues. The Bureau of Planning agrees with BDS on the need to address some of these newly-identified issues, but feels that many of these suggested changes go beyond the scope of this project. Planning will continue to work with BDS to scope out the next set of amendments to the Land Division regulations.

First Stage Assessment and Description of Additional Items

Prior to publication of the Bureau of Planning's *Proposed Draft*, two issues were identified after adoption of the Top Ten list that related directly to items already included in Policy Package 1. Additional related items were requested by the public, the Bureau of Development Services, or the Planning Commission when the project was under consideration. These issues have been included as part of this package and are described below.

1. Review Procedure for Nonconforming Situation Review.

At the request of BDS, the Planning Bureau recommended a change to the review procedures for Nonconforming Situation Reviews in the OS and R zones, proposing they be reviewed through a Type II procedure rather than a Type III. The Planning Commission recommends adoption of this item.

This code amendment is in the same section of the Zoning Code as the recommended amendment for item #A37--Criteria for Nonconforming Situation Review.

As described in the commentary for this change (page 22), these reviews are relatively rare, especially in the OS and R zones, and of those reviewed in the past three years, none have been appealed to the City Council. These are relatively straightforward reviews and, as less discretionary reviews, should appropriately be processed through a Type II rather than a Type III procedure. This will reduce the time and expense of these reviews for both the City and the applicant without compromising the City's policy goals.

2. Lot Size Minimums for Existing Lots vs. New Lots in R2.5 and R5.

The second additional item, dealing with lot segregations and minimum dimensional requirements for Valid Lots in the R2.5 and R5 zones, was added at the direction of the Planning Commission with the concurrence of Planning staff; Planning Commission responded to a community request brought before them in early February. This issue would have needed to be addressed in any case, given the approach proposed by BDS and Planning and recommended by the Planning Commission to address Item #A6.2.d Lot Dimensions--Lot Validation Dimensions vs. Regular Lot Dimensions.

Shortly after implementation of the new Land Division regulations, BDS identified a concern that the standards for existing lots in the R20, R10, and R7 zones (33.110.212) were larger than the minimum lot standards for new lots (33.610.200 and 33.611.200). BDS recommended clarifying which standards apply to existing lots. The Bureau of Planning and BDS agreed to apply the minimums for new lots (contained in Table 610-1) to existing lots, allowing for the development of existing lots in these zones, and increasing consistency with the Code. This issue was identified as Item #A6.2d on the Top Ten list.

While the Top Ten list was being finalized in the fall of 2002, community members began raising concerns about the lack of a minimum lot size for existing lots in the R5 and R2.5 zones. They were seeing development of many houses on sites that, while zoned R5, had platted lots measuring 25' x 100'. The new development is occurring on these old platted lots through a process called lot segregation, which recognizes the old lots, and allows development in the absence of a minimum lot size.

Members of the community were concerned about the increased density of these houses, the demolition of existing housing stock, the lack of supporting infrastructure, the design of these houses, and the lack of compatibility with the surrounding R5 neighborhood. They were also concerned about perceived inequities between neighborhoods that had underlying 25' x 100' plats that could see extensive increases in density without upzoning and those without the underlying lotting pattern that would not see this same change.

Representatives of the Roseway Neighborhood Association attended the hearing on the *Regulatory Improvement Workplan: Thresholds for Upgrading Nonconforming Development*, and requested the Planning Commission include this issue as part of *Code Maintenance 2003*. They asked for the adoption of a minimum lot area standard equal to the base zone density requirements (1 unit per 5000 square feet) or equal to the new minimum lot area allowed through the land division process (3000 square feet minimum area). Planning Staff advised the Planning Commission that this issue was related to Item #A6.2.d in *Policy Package 1* and indicated that it went beyond the code clarification and maintenance issues *Code Maintenance* could address. Planning Commission directed staff to include this item, if possible, in *Policy Package 1*.

Staff's initial investigation indicated that the increase in density in R5 neighborhoods with this underlying platting pattern of 25' x 100' lots was not in keeping with the Comprehensive Plan designation of R5. Further analysis is presented below, in the Planning Commission's Transmittal Letter, and in the Discussion and Commentary of the *Recommended Draft*. In addition, Planning Commission has asked staff to cover this issue thoroughly in their presentation to the City Council.

3. Parking Lot Trees.

“Top Ten” Item #10--Reduce minimum caliper of trees specifically directed staff to consider changes to the broadleaf tree caliper requirements in the Tree and Landscaping Chapter of the Zoning Code. Two related issues were raised as the proposal moved forward. By reducing the tree size requirement for all trees, there would no longer be an incentive in the Parking and Loading Chapter of the Zoning Code to use trees from the Parking Lot Tree List. Currently, this Chapter requires 3” caliper broadleaf trees for parking lot landscaping unless trees from the Parking Lot Tree List are used, in which case they may be 2”. The Planning Commission considered four different options proposed through testimony to address this issue, and recommends amending this Chapter to allow 1.5” trees off the Parking Lot Tree List.

In addition, the Code also regulates the size of conifer trees--by height, rather than caliper. At the request of one of the Planning Commissioners, the Commission considered amending the height requirements of conifers in both the Tree and Landscaping and Parking and Loading Chapters of the Zoning Code to provide a comparable reduction in size. The Planning Commission recommends reducing the general height requirement for conifers from 6’ to 5’ and the requirement for conifers on the Parking Lot Tree List from 5’ to 4’.

4. Front lot lines

In their April 22 memorandum to the Planning Commission on the Proposed Draft, the Bureau of Development Services requested consideration of an amendment to add front lot line requirements for attached housing in all Multi-Dwelling Zones, and for all development in the RX Zone. Currently, there are no minimum front lot line requirements in the Zoning Code for these types of development in these zones. Other bureaus’ codes require street frontage, yet are difficult to easily summarize for applicants, creating confusion for applicants when BDS staff try to require street frontage during a land division. For example, water service must be from a street, not over an easement. Adding a front lot line requirement of 10 feet ensures adequate access for services and alerts applicants to the need for street frontage. Planning and BDS staff concluded and the Planning Commission agreed that making this change, while it would add additional regulations to the Zoning Code, was appropriate given the clarity it would provide to applicants. The requirement is recommended at just 10 feet to allow the greatest flexibility, while still allowing for the necessary frontage for utility connections.

Second Stage Assessment

The Second Stage Assessment consists of the following steps: Project Development and Analysis; Release of the Proposal including Impact Assessment; Consideration of the Proposal; and finally Adoption and Implementation. Again, some of the steps in the second stage assessment were carried out as part of other related projects. During the Second Stage Assessment, in addition to updating information prepared in the First Stage Assessment, several key questions are addressed. These questions are addressed below for the project as a whole, followed by analysis related to some specific items.

Question 1: What regulatory and non-regulatory alternatives were considered? Why is the proposal the preferred solution/response? How does the proposal best respond to the objectives and goals identified in the first stage of the project?

Throughout the development of *Policy Package 1*, Planning staff met with staff from the Bureau of Development Services to develop and consider various approaches and alternatives to address the items identified by the City Council as priorities for action.

In general, regulatory (as opposed to nonregulatory) alternatives were considered as part of this proposal. This is because the stated purpose of the Regulatory Improvement Workplan is to continuously improve the City's existing code regulations. Within that context, the proposals included in the Policy Package 1 document attempt to clarify and improve existing code, rather than assess whether there is a non-regulatory alternative that would better achieve the same end. However, in some cases (such as the definition of site and the "a" overlay), staff is recommending deleting or replacing code provisions because the code language does not achieve the purpose of the regulation.

The proposals included in the Policy Package 1 document are the preferred solutions because they clarify existing code language that has been identified as problematic. The solutions proposed update and improve land use regulations that hinder desirable development. Specifics are described in the Commentary section and in the recommended Code language of the *Recommended Draft*

Question 2: How were stakeholders and the community consulted throughout the process? What were their responses to the proposed changes and the alternatives considered?

Between June and October 2002, Bureau of Planning staff participated in the extensive public outreach program focusing on the Regulatory Improvement Workplan spearheaded by the Mayor's office, and including a diverse group of regulatory stakeholders ranging from City bureau representatives to neighborhood association representatives and business groups. Through this process, staff heard from a wide range of stakeholders, including the City Council and various City stakeholders, about the specific items that were eventually included as part of the Top Ten, and subsequently Policy Package 1.

Staff from the Bureau of Planning met with BDS staff to discuss various approaches to the Policy Package 1 items and exchanged several versions of draft code language prior to publication of a *Discussion Draft* on February 21, 2003 for public review. It was during these discussions that the approach to Lot Validations and Lot Segregations was developed.

Notice of the availability of the *Discussion Draft* was sent to a broad range of community members, including those who had provided e-mail input to the City's Regulatory Improvement website, and Business and Neighborhood Associations. Staff discussed the *Draft* with various stakeholders and further with City staff and received input and information that was incorporated into the *Proposed Draft*. BDS

had further recommendations, some of which (e.g. the review level for Nonconforming Situation Reviews in OS and R zones) were included in the next draft. Planning worked with BDS staff to revise the proposals where appropriate.

The *Proposed Draft* was released on March 24, 2003. Nearly 2,000 individuals and organizations were notified, including a broad range of citizens and stakeholders, and all those who had received notice about the *Discussion Draft*.

Additional notice was sent about the proposed changes to Section 33.110.212, Lot Validation, that would also affect lot segregations and development on segregated lots. This additional notice was sent to 191 property owners and developers who had used the lot segregation process and/or developed on 25' x 100' lots. The additional notice was also sent to nearly 200 Neighborhood Offices and Land Use Chairs, many of which have raised concerns about this type of development.

Staff held an Open House on April 9, 2003 to answer any questions and receive comments about the *Proposed Draft*. Twelve people attended. The majority of the discussion concerned the lot segregation/validation of lots item. The definition of building coverage (excluding eaves) and the "a" overlay also were discussed.

The Planning Commission held a public hearing on April 22, 2003. Much of the testimony and discussion focussed on the issue of lot segregations. Some of the concerns raised related to the zoning issues of lot size and density, while others related to the design of houses on narrow lots. Several members of the Commission asked staff to prepare some design standards that could be applied to development on the narrow lots. At the May 13, 2003 work session the Commission considered several design proposals. Because there had been no opportunity for prior public review of the proposed design standards, the Commission set their final decision over until May 27, 2003 and directed staff to notify all previous testifiers of the decision and solicit their opinions. They also encouraged interested persons to let City Council know their views on the design proposals.

Question 3: What resources are required to implement the proposal and how will any proposed regulation be enforced?

In general, staff from Planning and BDS believe that no new resources are required to implement these proposals. The proposals improve existing regulations and in some instances should reduce both staff and applicant costs. The Code will continue to be enforced by BDS, and in some instances, enforcement should be easier. Most of the proposals do not implement new policy, but rather try to make existing policies easier to achieve and implement.

Question 4: What are the general benefits of the policy, regulation, or administrative requirement and how do these benefits compare to and balance against the public, private, and community costs?

For Policy Package 1 as a whole, the intent is to make the regulations easier to understand and apply, and to continue to implement the policy and provide

benefits that balance with the requirements. We recommend deleting some existing code provisions where the Code is not meeting our policy intent and simple and direct alternative ways to meet that intent are not available. For other items, we propose changes that remove disincentives to good development. More detailed descriptions of both benefits and costs of the regulations and impacts of the changes being proposed are discussed in the Discussion and Commentary accompanying the Code language.

Question 5: How will the regulation's impact be monitored to determine effectiveness? What should success look like? What resources are needed to gather and evaluate performance data?

The success of these code changes will be monitored through the ongoing Regulatory Improvement Workplan. In addition, the Land Use Review Survey that BDS sends to all applicants will help identify problems. BDS is also working with Planning on the development of a Land Division Customer Survey.

D. Recommended Amendments to the Zoning Code

Organization of this section:

The recommended amendment are organized by topic. Each topic heading is followed by a list of the “Top Ten” items that are addressed under that topic.

Within each topic is discussion, commentary, and recommended code language.

How Zoning Code changes are shown in this section:

Language to be added to the Zoning Code is underlined; language to be deleted is shown in ~~striketrough~~.

Size of Trees

“Top Ten” Item #10--Reduce minimum caliper of trees

DISCUSSION AND COMMENTARY

Currently, required trees in the non-residential zones (i.e., Commercial, Employment and Industrial zones) must have a minimum caliper of 3 inches. After consideration of the following information, the Planning Commission recommends reducing the requirement to a 2" minimum caliper.

This item is discussed at length in the Top Ten white paper and in the commentary section of the *Proposed Draft*.

This item was very narrowly focused—looking solely at the size of tree required by the Zoning Code in non-residential zones. Through the Top Ten, Planning was not asked to address the broader range of issues related to tree and landscaping requirements which BDS is addressing through a different project. Alternatives such as allowing substitution of different plant materials for trees, allowing for cumulative tree caliper measurements (e.g. if 10 3" trees are required, allowing 30" of tree caliper amongst a different number of trees), or establishing a preferred tree list that would need to meet a lesser caliper requirement, were beyond the scope of this project and would best be considered in the context of the comprehensive approach BDS is taking.

We believe our proposal provides a more appropriate balance between the costs and benefits of this requirement. By allowing for smaller caliper trees, we are not reducing the number of trees required. Rather than requiring property owners to pay for the growth of a tree (from 2 inches to 3 inches) off-site, this change will allow them to buy and plant more trees and allow the trees to increase their caliper on site. This proposal has merit because there is some evidence that indicates that smaller caliper trees have a better survival rate when transplanted. Also, in the case of trees required to meet the nonconforming upgrade regulations, more trees can be bought and planted for the same expenditure of limited funds.

Tree Availability and Costs

Although 3" diameter trees are available at some local nurseries, this is not a standard caliper size found in area nurseries. The current code requirement is disconnected from standard nursery practices in this region because nurseries do not have significant quantities available. This makes conformance with the code requirements difficult and impractical, particularly for sites requiring large numbers of trees. Since most other municipalities have lesser standards, tree stock is often sold before it reaches the 3" size and not enough financial incentive exists to hold stock back in order to provide the 3" caliper trees. Public agencies, such as the Port of Portland, as well as private developers have reported significant difficulty in the procurement of 3" caliper broadleaf trees. To purchase this size tree, a grower often needs to be contracted with at least three years in advance. Due to typical procurement processes that include project scheduling, budget approval, bidding and contract authorization, the need for a three-year lead-time to procure 3" caliper trees is not practical or feasible for either public or private development.

In addition, while Development Services staff seldom sees requests for adjustment to the 3" caliper requirement, they often receive complaints from applicants "after the fact" when the

Size of Trees, Cont.

DISCUSSION AND COMMENTARY, CONT.

applicants run into difficulty locating this tree size and/or realize the additional costs. These costs include both material and labor. The costs associated with furnishing and installing a 3" caliper tree can be substantially more than the costs associated with a 2" caliper tree. Installing a larger stock typically requires using equipment such as a backhoe or bobcat with special attachments. Recent estimates of the difference in installation costs range from \$225 to \$240 for a 2" caliper tree and \$305 to \$350 for a 3" caliper tree.

In support of retaining the requirement for at least a 3" caliper tree in the nonresidential zones, the City Forester previously conducted comparative research with other cities. In addition, the staff at Urban Forestry has researched the availability of 3" caliper trees at nurseries in region. Others, including those in the environmental community, have previously provided input about the difficulty of obtaining native species in that size.

Transplant Shock, Stress, and Mortality

Advancements in modern equipment and technology have made it possible to transplant almost any size and species of tree. However, one thing remains the same--newly planted trees must quickly establish a normal spreading root system on the new site to minimize stress and ensure survival. In most urban settings, soils are routinely compacted with poor aeration, low water storage capacity and little organic matter and may have undesirable high soil pH values resulting from frequent irrigation with alkaline and chemically treated municipal water.

According to Gary Watson, Ph.D., past president of the International Society of Arboriculture and currently a researcher at the Morton Arboretum in Lisle, Illinois who specializes in root development of trees in urban landscapes, a transplanted tree loses as much as 98% of its root system which is left behind. Also, more than 75% of a tree's survival potential is stored in its root system. This is true for both large and small trees but a larger tree loses a much greater mass and lateral spread of roots than a smaller tree. Thus, even though the roots of both larger and smaller trees grow at the same rate (roughly 18 inches year), it takes the larger tree several years longer to regain the size of its original root system. This extended period of reduced vigor due to limited supply of nutrients and water to the upper portion of the tree adds to the transplant stress associated with larger trees and often results in concern about "transplant shock" and the ultimate survival of the larger tree. A smaller tree requires fewer annual root growth increments after transplanting than a larger tree, in order to replace the original root system. Since the smaller tree recovers vigor faster, a smaller tree may actually overtake a larger tree in growth by the time the larger tree has restored its root-shoot balance.

In a study published in 2002 by the International Society of Arboriculture, researchers compared the growth and establishment of transplanted Red oak in two caliper sizes (3.3" and 1.4") over a four-year period. Controlling for possible confounding factors such as tree genetics and pre-transplant health, these researchers found that the larger caliper trees had a higher mortality rate (58%) while no smaller caliper trees died.

Size of Trees, Cont.

DISCUSSION AND COMMENTARY, CONT.

Conifers vs. Broadleaf Trees

The discussion above about tree caliper applies only to broadleaf trees. In the Zoning Code, the size of conifers is regulated by tree height rather than caliper. The reasons for reducing the minimum caliper of broadleaf trees also apply to reducing the minimum height of conifers. Therefore, the Planning Commission is recommending a reduction to 5 feet (from 6 feet).

Parking Lot Tree List

To provide an incentive for planting certain trees in parking lots, the current code reduces the minimum size of broadleaf trees to 2 caliper inches and the height of conifers to 5 feet if they are a variety that is on the Parking Lot Tree List. With the minimum tree size reductions discussed above, the incentive for using trees from the Parking Lot Tree List will go away unless there is a corresponding reduction in the minimum size of trees on this list. We think the incentive should remain. Accordingly, we recommend that the minimum size for trees on the Parking Lot Tree list be reduced to 1.5 caliper inches for broadleaf trees, and to 4 feet for conifers.

Size of Trees, Cont.

RECOMMENDED CODE LANGUAGE

AMEND CHAPTER 33.248, LANDSCAPING AND SCREENING

33.248.030 Plant Materials

A. and B. [No change.]

C. **Trees.** Trees may be broadleaf or conifers. Broadleaf trees at the time of planting must be fully branched. Broadleaf trees planted in residential zones must be a minimum of 1.5 inches in diameter. Broadleaf trees planted in all other zones must be a minimum of **3 2** (*emphasis added for reading clarity*) inches in diameter. Conifer trees at the time of planting must be fully branched and a minimum of **6 5** (*emphasis added for reading clarity*) feet in height. These minimum requirements do not apply to trees used for mitigation, remediation, or restoration.

D. through F. [No change.]

AMEND CHAPTER 33.266, PARKING AND LOADING

33.266.130 Development Standards for All Other Uses

A. through G. [No change.]

H. **Required landscape materials for parking lot landscaping.** Landscape materials for parking lot interior and perimeter landscaping must be provided as follows:

1. All landscaping. [No change.]

2. Trees.

a. Trees required. [No change.]

b. Size of trees. Trees in residential zones must meet the tree size standards of Chapter 33.248, Landscaping and Screening. In non-residential zones, trees must meet the standards of Chapter 33.248, except for trees on the Parking Lot Tree List. The Parking Lot Tree List is maintained by the City Forester in consultation with the Bureau of Environmental Services and the Urban Forestry Commission. Trees on the Parking Lot Tree List must be fully branched and meet one of the following tree size standards:

(1) Broadleaf trees must be at least **2 1.5** (*emphasis added for reading clarity*) caliper inches at the time of planting; or

(2) Conifer trees must be at least **5 4** (*emphasis added for reading clarity*) feet tall at the time of planting.

c. and d. [No change.]

Definition of “Building Coverage”

“Top Ten” Item #37—Exclude eaves from building coverage

DISCUSSION

Overview of Recommendation and Assessment

Eaves are currently included in calculations of how much building coverage is allowed on each lot. The Planning Commission recommends removing eaves from the “building coverage” definition in the Zoning Code.

The inclusion of eaves under the existing code presents several problems. The purpose of the building coverage regulations is, in concert with height limits, to regulate the bulk of development. Eaves, however, do not contribute to bulk, and in fact can sometimes lessen the appearance of bulk and should not be included in building coverage. Generally, other jurisdictions in the area do not include eaves in their definitions of building coverage.

This recommendation simplifies the measurement of building coverage and will save both applicants and city staff time and money.

During development of this recommendation, some raised concerns about overall bulk of buildings being increased because of this change. We do not believe this will be the case. Based on the experience of BDS staff, under current regulations applicants reduce eave overhangs to meet building coverage limitations, rather than reducing the overall bulk of their buildings by redrawing plans and reducing the square footage of a building. Eliminating or reducing the eaves can adversely impact the design and appearance of the structure and can result in structures that are not compatible with nearby development.

There were also concerns about eaves extending into setbacks and whether that would pose a fire hazard or appear to be too close to adjacent buildings. As described below, the Building and Fire codes regulate how close buildings and eaves can be for fire safety. In addition, eaves may already extend into building setbacks under Zoning Code provisions. The proposal does not change how much eaves may extend into setbacks.

During development of the *Proposed Draft*, several people suggested that if the goal is to have houses that are better-designed, and that have eaves, the City should just require them. In the early stages of what became the Base Zone Design Standards, such a requirement was considered and discarded for further consideration as being too prescriptive. This recommendation will remove a disincentive for eaves; creation of an incentive or requirement for eaves could be considered at a later time.

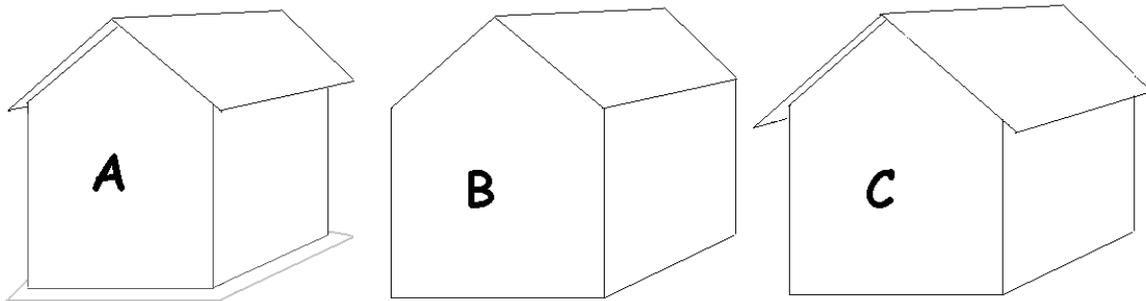
Further discussion

The maximum building coverage and height regulations limit the overall bulk of structures on a site. In the existing Zoning Code, “building coverage” is defined as the area that is covered by buildings or other roofed structures, including eaves. However, the bulk of a structure depends on the space that structure takes up--its height x width x depth (width x depth = the structure’s footprint). Eaves do not add to the overall bulk of a structure.

Definition of “Building Coverage,” Cont.

DISCUSSION, CONT.

The following illustration shows three different houses. Under the existing definition of “Building Coverage”, which include eaves, houses A and B would have identical building coverage. A builder who chooses not to include eaves can have a larger and bulkier structure than one who chooses to include eaves. The lighter line in the illustration of House A indicates the area that would need to be measured for the building area calculation--the “drip-line” of the eave overhangs. For the eave-less structure, the building footprint is the same as the building coverage.



Using the recommended definition of “Building Coverage”, excluding eaves, Houses B and C have identical building coverage. The two structures have identical heights, widths and depths--the only difference is that one has eaves. The overall bulk of the structures is the same, and under the recommended definition, their building coverage would be calculated the same as their building footprints.

Implementation

Including eaves in building coverage has created a number of implementation issues, for staff and applicants.

Measuring building coverage based on a calculation that includes eaves (the “drip-line”--lighter line in Illustration #1) is more difficult than basing the building coverage calculation on the footprint of a building. This recommended change would make it easier for applicants, staff in the Bureau of Development Services (BDS) and inspectors in the field to calculate building coverage. This will simplify review and enforcement of the Code.

In order to maximize the footprint of a building, builders/architects often eliminate or substantially reduce eave overhangs in order to conform with the maximum building coverage requirements. This can adversely impact the design and appearance of the structure and can result in structures that are not compatible with nearby development.

Eliminating eaves also reduces the protection from moisture that eaves provide to the structure and siding, and reduces solar shading benefits. BDS staff has found that when a project comes in over the maximum building coverage due to eaves, the most common response is to eliminate the eaves, rather than redesign the building to have a smaller footprint. Their experience indicates that this amendment will not result in increased visual building bulk.

Definition of “Building Coverage,” Cont.

DISCUSSION, CONT.

Under the Stormwater Manual requirements, stormwater must be treated on-site. BES has confirmed that this recommended change will not affect stormwater management objectives.

Staff who process many of the Adjustment Review requests, provided the following information:

1. Most requests to exceed maximum building coverage would meet the regulation if eaves were not counted. In essence, the bulk of the structure meets the maximum coverage limit. Applicants request an adjustment so that the house will have a traditional roof with overhang.
2. Many of these adjustments are for an addition to an existing house. By matching the depth of the existing eaves, the addition triggers an adjustment. The adjustment is approved because the additional eave depth makes the overall project more aesthetically pleasing, compatible with the existing development, etc.
3. Staff estimates that 75 to 85% of residential building coverage adjustments are approved.

Adjustment Reviews are expensive. BDS's fee schedule offers a lower fee for lots with existing single dwelling units in a single dwelling zones, however the fee is still relatively high — \$979. Other residential adjustments are \$1,024, while adjustments for non-residential and mixed-use projects cost \$1,435. In summary, the Planning Commission believes that Adjustment Reviews for building coverage due to eaves add both time and costs to the permitting process for both the applicant and staff, with minimal improvement to the public interest.

Sound building design

In addition to the implementation issues related to the inclusion of eaves in the calculation of building coverage, a considerable amount of sound building and construction science has developed in the past few years to document the strong relationship between roof overhangs such as eaves, moisture intrusion and mold. Mold is the direct result of excess moisture. Staff has compiled an array of articles from both government and industry sources that describe the role of roof overhangs such as eaves in the prevention of moisture and mold problems. These include articles from the U.S. Environmental Protection Agency, the USDA Forest Products Laboratory, the National Association of Homebuilders and the Building Science Corporation, which has recently consulted with Walsh Construction here in Portland in an effort to develop moisture detailing for high-rise buildings such as Pacific Tower.

Eaves and other roof overhangs prevent the entry of bulk rainwater into claddings and window and door openings. Overhangs are one component in sound building design that utilizes redundant protection throughout the building envelope. In the case of exterior walls, a complete system would include roof overhangs (e.g., eaves), window and door flashing, seals around rough openings, claddings like siding or stucco, building paper and sometimes vented rain screens.

The Green Building Specialists in the City's Office of Sustainable Development often advocate for roof overhangs as an effective component in controlling bulk moisture in building walls during presentations about moisture and mold control.

Definition of “Building Coverage,” Cont.

DISCUSSION, CONT.

Other items related to definition of building coverage

There was some discussion prior to publication of the *Proposed Draft* about whether uncovered decks, stairways, entry bridges, and parking decks should be included in building coverage or not. This is a broader issue, and has been proposed as a possible item for inclusion in a future Regulatory Improvement Workplan Policy Package.

Definition of “Building Coverage,” Cont.

COMMENTARY

Definition of “building coverage”

The Planning Commission recommends specifically stating that “Eaves are not included in building coverage” in addition to the deletion of “including eaves” in order to remove the eaves from the calculation of building coverage as well as providing increased clarity to the definition for future readers.

Definition and Illustration of “eave”

The Planning Commission recommends adding a definition and illustration of “eave” to the Code in order to make it clear which part of the roof is an eave and therefore excluded from the calculation of building coverage.

Definition of “Building Coverage,” Cont.

RECOMMENDED CODE LANGUAGE

AMEND CHAPTER 33.910, DEFINITIONS

33.910.030 Definitions

The definition of words with specific meaning in the zoning code are as follows:

Building Coverage. The area that is covered by buildings or other roofed structures, ~~including eaves~~. A roofed structure includes any structure more than 6 feet above grade at any point, and that provides an impervious cover over what is below. Building coverage also includes uncovered horizontal structures such as decks, stairways and entry bridges that are more than 6 feet above grade. Eaves are not included in building coverage.

Development-Related Definitions

- **Eave.** Projecting overhang at the lower border of a roof and extending from a primary wall or support.

Figure 910-XX
Eave



Eave. See Development-Related Definitions.

Maximum Building Coverage in R Zones

"Top Ten" Item #A6.3--Maximum building coverage (Table 110-6)

DISCUSSION

The Planning Commission also recommends an amendment to how we calculate building coverage in residential zones.

As part of the Land Division Code Rewrite project, the City created Table 110-6 to regulate building coverage allowed in the RF through R2.5 zones. This implemented a change in policy from regulating maximum building coverage based on the underlying Base Zone, to a policy of regulating maximum building coverage based on the size of the lot. For example, a 5000 square foot lot, whether in an R5 zone, R7 zone or R10 zone would be able to have 2250 square feet of building lot coverage. Previously, a 5000 square foot lot in an R5 zone would have been allowed 2250 square feet, in the R7, 1750 square feet, and in the R10, only 1500 square feet of building coverage.

The following shows the existing Table 110-6 as adopted by City Council and effective July 1, 2002.

Lot Size	Maximum Building Coverage
Less than 2,500 sq. ft.	50% of lot area
2,500 sq. ft. or more but less than 5,000 sq. ft.	1,250 sq. ft. + 40.04% of lot area over 2,500 sq. ft.
5,000 sq. ft. or more but less than 7,000 sq. ft.	2,250 sq. ft. + 6.67% of lot area over 5,000 sq. ft.
7,000 sq. ft. or more but less than 10,000 sq. ft.	2,450 sq. ft. + 18.33% of lot area over 7,000 sq. ft.
10,000 sq. ft. or more but less than 20,000 sq. ft.	3,000 sq. ft. + 20% of lot area over 10,000 sq. ft.
20,000 sq. ft. or more but less than 87,120 sq. ft.	5,000 sq. ft. + 5.53% of lot area over 20,000 sq. ft.
87,120 sq. ft. or more	8,712 sq. ft. + 10% of lot area over 87,120 sq. ft.

Through the application of the code, a number of issues became apparent with the implementation of Table 110-6. These issues were raised during the development of the "Top Ten" list last fall and prompted this items inclusion in Policy Package 1.

- The table itself and the calculations are not easily understood--it includes seven separate ranges of lot sizes with percentages to the second decimal space for calculating the lot coverage. The calculations are complicated and should be revised for easier implementation.
- Concerns had been raised that the changes to the maximum building coverage allowance in Single-Dwelling zones resulted in a significant reduction in allowed building coverage on oversized lots when compared to what was previously allowed. BDS has found a number of cases where existing development in established neighborhoods (such as Laurelhurst and Irvington) with oversized lots in R5 zones, would need adjustments for additions that previously would have been allowed outright due to the greater percentage allowance of the R5 zone prior to this change taking place.
- Staff identified a "glitch" in the Table's calculations which creates a disparity in how the City treats lots between 5000 and 6999 square feet in size. The table intended to have a seamless transition from one range to the next--however, a 6,999 square foot lot under the existing table would be allowed only 2383.4 square feet of building coverage, while a lot of 7,000 square feet would be allowed 2450 square feet of building coverage--almost 70

Maximum Building Coverage in Residential Zones, Cont.

DISCUSSION, CONT.

square feet more building coverage for just one square foot of additional lot area. This could be corrected by making the following change:

"Fix the Glitch" Change	
Table 110-6	
Maximum Building Coverage Allowed in the RF through R2.5 Zones	
Lot Size	Maximum Building Coverage
Less than 2,500 sq. ft.	50% of lot area
2,500 sq. ft. or more but less than 5,000 sq. ft.	1,250 sq. ft. + 40.04% of lot area over 2,500 sq. ft.
5,000 sq. ft. or more but less than 7,000 sq. ft.	2,250 sq. ft. + 6.67 10% of lot area over 5,000 sq. ft.
7,000 sq. ft. or more but less than 10,000 sq. ft.	2,450 sq. ft. + 18.33% of lot area over 7,000 sq. ft.
10,000 sq. ft. or more but less than 20,000 sq. ft.	3,000 sq. ft. + 20% of lot area over 10,000 sq. ft.
20,000 sq. ft. or more but less than 87,120 sq. ft.	5,000 sq. ft. + 5.53% of lot area over 20,000 sq. ft.
87,120 sq. ft. or more	8,712 sq. ft. + 10% of lot area over 87,120 sq. ft.

The Planning Commission recommends:

- Significantly simplifying and streamlining Table 110-6 and the calculations while retaining the policy decision made during the Land Division Code Rewrite.
- Slightly increasing the building coverage allowance for lots between 5000 and 10,000 square feet. The Planning Commission decided it would be appropriate to allow a little more increased flexibility for properties between 5000 and 10,000 square feet which the simplification of the Table allows. The Planning Commission is not recommending significant increases for these properties. The intention at the time of the Land Division Code adoption was not to keep all rights for oversize lots as they were under the previous code, but rather to treat all same sized lots the same, no matter what the base zone.
- Slightly increasing the building coverage allowance for lots under 3000 square feet to provide additional flexibility for these small lots. This was raised as a concern by the Bureau of Development Services in testimony to the Commission and we agreed on this amendment.
- Slightly decreasing the building coverage allowance for lots over 10,000 square feet. With the change to the building coverage definition, we felt this decrease would have marginal impacts.

The Planning Commission also discussed whether we should reduce the maximum building coverage allowances given their decision on excluding eaves from the definition of building coverage. The Commission voted against reducing the allowance, since eliminating eaves from the definition of building coverage would not increase the currently allowed bulk of houses.

Development of the Proposal and Recommendation

Planning staff considered a number of options and reviewed those options with the Bureau of Development Services prior to the publication of the *Discussion Draft*. These included just "fixing the glitch" as well as consideration of different lot size ranges and percentage increases. The staff proposed a significantly simplified table which maintained the policy decision made by Council, increased the ease of use of the Table, and provided slightly more flexibility for properties between 5000 and 10000 square feet. It also reduced the building coverage allowance for lots under 2500 square feet from 50% to 45%, reflecting the previous limitation for detached houses in the R2.5 zone. The Planning Commission recommends keeping

Maximum Building Coverage in Residential Zones, Cont.

DISCUSSION, CONT.

two separate lot size ranges for lots under 5,000 square feet in order to provide 50% building coverage to lots under 3,000 square feet. The recommendation, as shown in a cleaned up version below, reduces the number of ranges from seven to four and simplifies the calculations significantly.

Lot Size	Maximum Building Coverage
Less than 3,000 sq. ft.	50% of lot area
3,000 sq. ft. or more but less than 5,000 sq. ft.	1,500 sq. ft. + 37.5% of lot area over 3,000 sq. ft.
5,000 sq. ft. or more but less than 20,000 sq. ft.	2,250 sq. ft. + 15% of lot area over 5,000 sq. ft.
20,000 sq. ft. or more	4500 sq. ft. + 7.5% of lot area over 20,000 sq. ft.

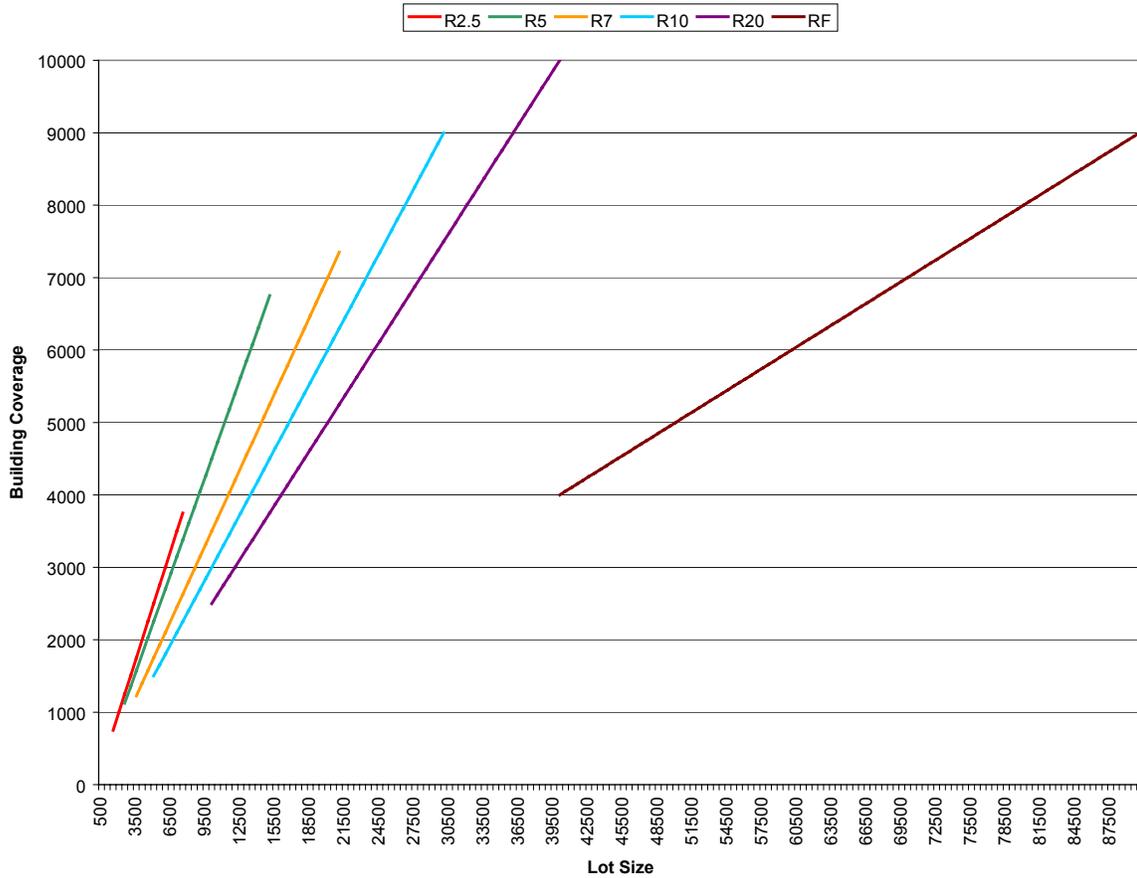
BDS staff reviewed 100 new single-dwelling building permits against the Table proposed by staff using the recommended definition of Building Coverage and found that all but two projects would be able to be approved. Although this approach allows slightly less building coverage for properties larger than 10,000 square feet than other approaches that were considered, it is preferred because it greatly simplifies the original table.

The following charts show how different sized lots in different base zones were considered prior to July 1, 2002, are considered under the current code (Table 110-6 with the "fixed glitch") and under the Planning Commission's recommendation. In addition, there is a brief explanation of how the current Table was developed.

Maximum Building Coverage in Residential Zones, Cont.

DISCUSSION, CONT.

Prior to implementation of the Land Division Code on July 1, 2002, the Zoning Code regulated building coverage by Base Zone. This chart shows the allowed building coverage under the old Code for each zone based on lots from one half to three times the size of the average lot for the zone (for example, for R5, the line shows lots from 2500 to 15000 square feet in size and the 45% building coverage they were allowed; for R7, 3500 to 21000 square foot lots and 35% building coverage).

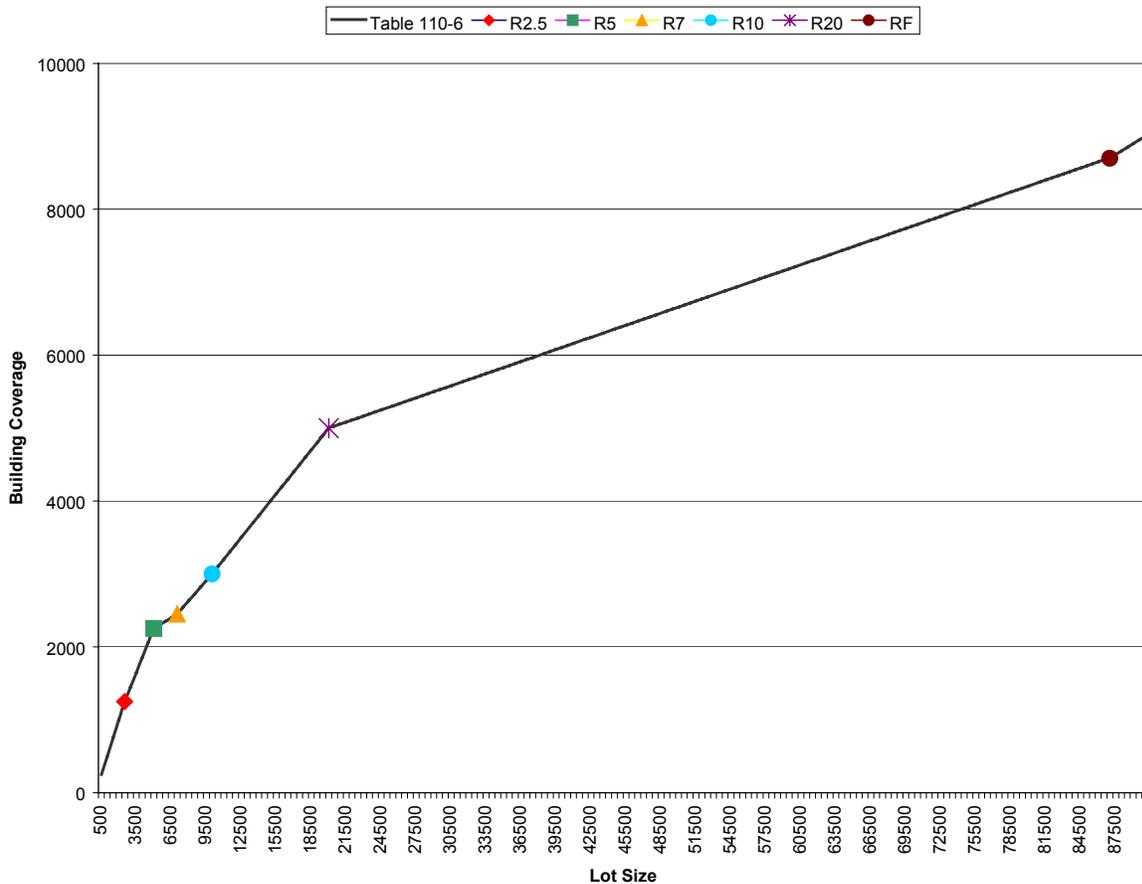


Maximum Building Coverage in Residential Zones, Cont.

DISCUSSION, CONT.

The building coverage allowed for the average size lot for each base zone was used to create Table 110-6. The table kept the allowed building coverage for each of the average size lots for each base zone: 1250 for a 2500 square foot lot in R2.5; 2250 for a 5000 square foot lot in R5; 2450 for a 7,000 square foot lot in R7; 3000 for a 10,000 square foot lot in R10; 5000 for a 20,000 square foot lot in R20; and 8,712 square foot for a 2 acre lot in RF.

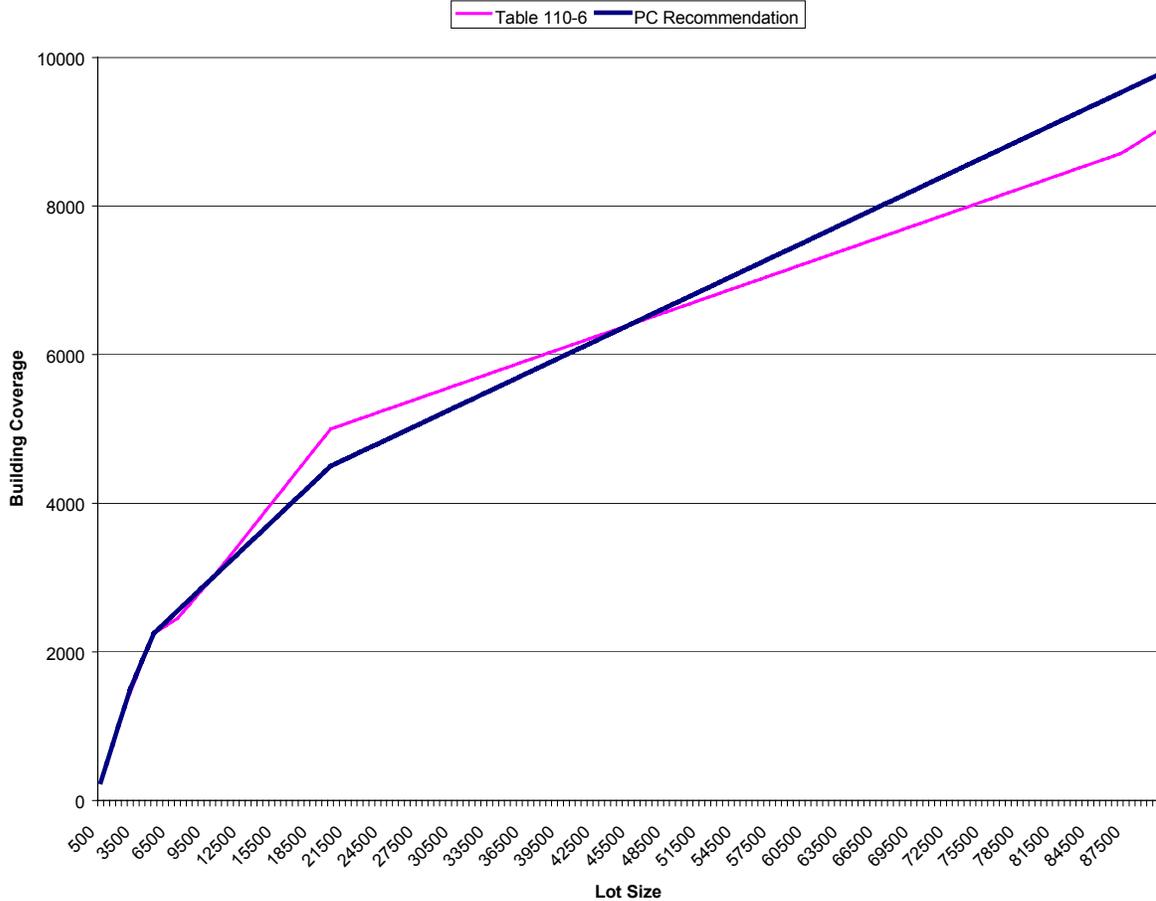
The following chart, shows these points, and shows how the "dots" were connected by Table 110-6 (assuming the "glitch" has been fixed), creating the seven different ranges and the complicated percentage increases. For example, to get from the 2450 square foot building coverage allowed for a 7,000 square foot lot in R7 to the 3000 square foot building coverage allowance of a 10,000 square foot lot in the R10, you must take 18.33% of the lot area over 7000 square feet and add it to 2450. (See the existing Table 110-6 above for all the calculations.)



Maximum Building Coverage in Residential Zones, Cont.

DISCUSSION, CONT.

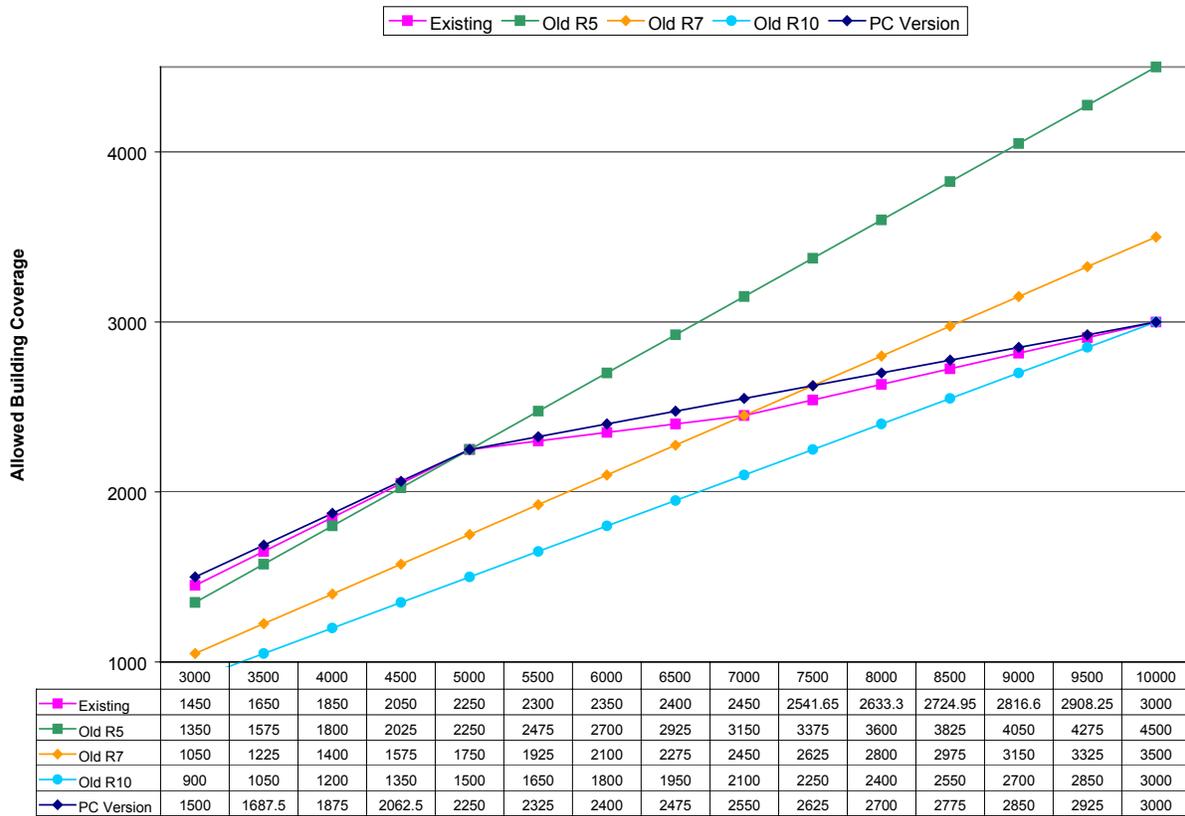
The Planning Commission recommendation does not significantly alter the allowed building coverages, but does significantly simplify Table 110-6 and its implementation. The following chart, shows the comparison between the current Code Table 110-6 and the Recommended Table 110-6 with the Recommendation shown with the bolder line.



Maximum Building Coverage in Residential Zones, Cont.

DISCUSSION, CONT.

The following chart shows how the lots under 10,000 square feet were treated under the Old Code (Old R5, R7, and R10), under the Existing Code, and under the Planning Commission's Recommendation. This shows the discrepancy between how the Old Code and the Existing Code would treat oversized lots, one of the issues raised shortly after implementation of the Land Division Code changes. The arrow points to the allowed building coverage as calculated under the various codes for a 7000 square foot lot. Previously, a 7000 square foot lot in the R5 zone got significantly more building coverage than currently. By simplifying the Table, the Planning Commission's recommendation adds incrementally to the building coverage allowance for lots between 5000 and 10,000 square feet (100 extra square feet of building coverage for a 7000 square foot lot). It should be noted, that under the previous code, a 7000 square foot lot in the R10 was allowed significantly less building coverage--the new Code removed this inequity for undersized lots.



Maximum Building Coverage in Residential Zones, Cont.

Maximum Building Coverage in Residential Zones, Cont.

COMMENTARY

The recommended changes to Table 110-6 shown on the opposite page are shown below in a "clean" version.

Table 110-6	
Maximum Building Coverage Allowed in the RF through R2.5 Zones	
Lot Size	Maximum Building Coverage
Less than 3,000 sq. ft.	50% of lot area
3,000 sq. ft. or more but less than 5,000 sq. ft.	1,500 sq. ft. + 37.5% of lot area over 3,000 sq. ft.
5,000 sq. ft. or more but less than 20,000 sq. ft.	2,250 sq. ft. + 15% of lot area over 5,000 sq. ft.
20,000 sq. ft. or more	4500 sq. ft. + 7.5% of lot area over 20,000 sq. ft.

Maximum Building Coverage in Residential Zones, Cont.

RECOMMENDED CODE LANGUAGE

AMEND CHAPTER 33.110, SINGLE DWELLING ZONES

Table 110-6	
Maximum Building Coverage Allowed in the RF through R2.5 Zones	
Lot Size	Maximum Building Coverage
Less than 2,500 sq. ft.	50% of lot area
2,500 sq. ft. or more but less than 5,000 sq. ft.	1,250 sq. ft. + 40.04% of lot area over 2,500 sq. ft.
Less than 3,000 sq. ft.	50% of lot area
3,000 sq. ft. or more but less than 5,000 sq. ft.	1,500 sq. ft. + 37.5% of lot area over 3,000 sq. ft.
5,000 sq. ft. or more but less than 7,000 sq. ft.	2,250 sq. ft. + 6.67% of lot area over 5,000 sq. ft.
7,000 sq. ft. or more but less than 10,000 sq. ft.	2,450 sq. ft. + 18.33% of lot area over 7,000 sq. ft.
10,000 sq. ft. or more but less than 20,000 sq. ft.	3,000 sq. ft. + 20% of lot area over 10,000 sq. ft.
5,000 sq. ft. or more but less than 20,000 sq. ft.	2,250 sq. ft. + 15% of lot area over 5,000 sq. ft.
20,000 sq. ft. or more but less than 87,120 sq. ft.	5,000 sq. ft. + 5.53% of lot area over 20,000 sq. ft.
87,120 sq. ft. or more	8,712 sq. ft. + 10% of lot area over 87,120 sq. ft.
20,000 sq. ft. or more	4500 sq. ft. + 7.5% of lot area over 20,000 sq. ft.

Nonconforming Situations

“Top Ten” Item #A37—Criteria for Nonconforming Situation Review

DISCUSSION

Nonconforming situations occur when an element of a development (or the use itself) was legal at the time it was created, but does not meet the current zoning regulations. Some changes to nonconforming situations are allowed, some are prohibited and some are allowed only if approved through a Nonconforming Situation Review.

Nonconforming Situation Reviews are relatively rare, particularly in the OS and R zones. There were no applications for Nonconforming Situation Reviews in OS and R zone during 1999, in 2000 there were four, and in 2001 there were three. Of the seven Type III reviews in three years, none were appealed to Council. The Planning Commission recommends changing the review procedure from a Type III to a Type II in order to reduce the time and expense—to applicants and the city—of this review, as well as to recognize the less discretionary nature of this review than the typical Type III review.

One of the approval criteria associated with this land use review requires the applicant to demonstrate that with mitigation measures the proposed change will result in a net **decrease** in any detrimental impacts the existing development has on the surrounding area. The applicant must address such factors as hours of operation, vehicle trips, noise, dust and odors, increased litter, and any outside displays. Even if the proposal results in the nonconforming development continuing to operate in the same manner as it has in the past, with no increased impacts on the surrounding neighborhood, the proposal cannot be approved as there is not a demonstrated decrease in impacts.

This approval criterion is inconsistent with the purpose of the nonconforming regulations, which in part are intended to allow nonconforming situations to continue and to ensure that zoning regulations will not cause unnecessary burdens. The burden of meeting this approval criterion is great, particularly given that the change in regulations that made the situation nonconforming is beyond the control of the applicant.

The Planning Commission recommends amending the existing criterion so that applicants must demonstrate that with mitigation measures the proposed change will not result in a net increase in any detrimental impacts on the surrounding area.

The amendment will reduce the disincentive of maintaining and/or improving existing nonconforming situations while still mitigating for any detrimental impacts on the surrounding area. The recommended amendment should encourage necessary investment in existing nonconforming situations. The change to the review criterion will possibly result in fewer reductions in detrimental impacts, but will not result in increases in detrimental impacts on surrounding areas when changes are proposed for nonconforming uses.

Nonconforming Situations, Cont.

DISCUSSION, CONT.

The recommended change is unrelated to requirements for upgrading non-conforming development for landscaping, pedestrian connections, bike parking, etc. When the use of a property changes from one non-conforming use category to another non-conforming use category (e.g. from Office to Retail Sales and Service in a Residential zone), the nonconforming development must be brought into compliance with the development standards that apply to the site (base, overlay, plan district, special use).

Nonconforming Situations, Cont.

COMMENTARY

33.258.080 Nonconforming Situation Review

- A. The Code will no longer require a higher level of review for cases in OS and R zones. Nonconforming situation reviews in all zones will be processed through Type II procedures.
- B. **Approval Criteria**
 - 1. The criteria changes from "a net decrease" to "no net increase" reflecting a desire to allow nonconforming situations to continue as long as the detrimental impacts associated with the nonconforming situation do not increase and other approval criteria are met.

Nonconforming Situations, Cont.

RECOMMENDED CODE LANGUAGE

AMEND CHAPTER 33.258, NONCONFORMING SITUATIONS

33.258.080 Nonconforming Situation Review

- C. Procedure.** A nonconforming situation review is processed through a Type II procedure ~~in the C, E, and I zones, and through a Type III procedure in an OS or R zone.~~
- B. Approval Criteria.** The request will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met:
1. With mitigation measures, there will be ~~a net decrease~~ no net increase in overall detrimental impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:
 - a. The hours of operation;
 - b. Vehicle trips to the site and impact on surrounding on-street parking;
 - c. Noise, vibration, dust, odor, fumes, glare, and smoke;
 - d. Potential for increased litter; and
 - e. The amount, location, and nature of any outside displays, storage, or activities; and
 2. If the nonconforming use is in an OS or R zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the OS or R zoned area. This is based on taking into account factors such as:
 - a. Building scale, placement, and façade;
 - b. Parking area placement;
 - c. Buffering and the potential loss of privacy to abutting residential uses; and
 - d. Lighting and signs; and
 3. If the nonconforming use is in a C, E, or I zone, and if any changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone.

“a” Overlay--Attached Residential Infill

“Top Ten” Item #16—Attached Residential Infill on Vacant Lots (“a” Overlay)

DISCUSSION AND COMMENTARY

In areas with the “a” overlay, attached residential infill development at R2.5 densities is allowed in most single-dwelling residential zones (R20 through R5) on lots that have existed and been vacant for at least five years. In addition, design review is required.

The intent of this code provision is to encourage infill development on lots that have been vacant for some time, and where adequate public services already exist. This provision tried to strike a middle ground between upzoning an area to higher residential densities outright, which could increase market pressure to demolish existing sound housing, and providing enough economic return to encourage development of long-vacant sites. However, concerns have been raised that this code provision has resulted in infill development that is incompatible with the surrounding development, particularly in the R20, R10, and R7 zones.

The Planning Commission considered deleting the provision entirely, particularly because it is rarely used. A quick search by the Bureau of Development Services found only two applications that have used this provision. The Planning Commission's recommendation is to eliminate this provision from R20, R10 and R7 zones while retaining it for the R5 zone. The Planning Commission recommends retaining it in the R5 zone because the increased density is proportionately less than in other zones, and the design review requirement can result in compatible development with minimal impacts. In addition, the provision supports urban infill and the “a” overlay zone in combination with the R5 zone was mapped in areas close to good transit service that otherwise would have been rezoned to R2.

Other items related to Ch. 33.405, Alternative Design Density Overlay Zone

Item #16 from the Regulatory Code Improvement List for 2002-2003 includes a much broader review of Ch. 33.405, Alternative Design Density Overlay Zone (also referred to as the “a” overlay zone). Since Council approval of the 2002-2003 Regulatory Improvement Workplan in November 2002, Bureau of Planning staff have developed a conceptual approach for this chapter. This approach, starting with the current amendment to 33.405.060, Attached Residential Infill on Vacant Lots includes evaluating each provision of this chapter independently of the others, rather than as a package. Each provision will be considered for deletion, citywide application, or repair. Where each provision should apply will also be evaluated on a provision-by-provision basis, rather than a package approach. The result will be that some provisions could be deleted, some could be in plan districts, some could be in base zones, and some could be separate overlays.

This broader review of the “a” overlay will be part of Policy Package 2, to be considered later this year.

“a” Overlay--Attached Residential Infill, Cont.

RECOMMENDED CODE LANGUAGE

AMEND CHAPTER 33.405, ALTERNATIVE DESIGN DENSITY OVERLAY ZONE

33.405.060 Attached Residential Infill on Vacant Lots in the R5 zone.

A. Purpose. [No change.]

B. Attached residential infill. Attached residential development is allowed in the R5 zone if all of the following are met. Adjustments to Paragraphs B.1 through B.4, below, are prohibited:

1. The proposed attached residential development will be on a lot or lot of record that was created at least five years ago;
2. There has not been a dwelling unit on the lot or lot of record for at least five years;
3. Attached residential development ~~in the R20, R10, R7 and R5 zones~~ must meet the following development standards:
 - a. Height and front setback standards. Attached residential development must meet the height and front setback standards of the ~~base~~ R5 zone; and
 - b. All other development standards. The proposed development must meet all other development standards for attached housing projects in the R2.5 zone; and
4. Design review required: [no change]

Lot Validations and Lot Segregations

"Top Ten" Item #A6.2d, Lot Validation Dimensions vs. Regular Lot Dimension
New Item—Lot Size Minimums for Existing Lots vs. New Lots in R2.5 and R5 Zones

DISCUSSION

This recommendation, if adopted by Council, would replace the "Validation of Lots" section of the existing code with a new section called "Where Primary Structures are Allowed". This change reorganizes and simplifies the section and provides greater consistency in the way lots and sites are treated throughout the City. This recommendation addresses issues raised as part of the Top Ten Land Division items (#A6.2) and in recent communications to the Planning Commission about concerns related to lot segregations in existing R5 neighborhoods.

This is the issue that received the most testimony of the entire package. After much discussion, the Planning Commission unanimously voted to recommend significantly reorganizing and simplifying this section of the Code.

The Planning Commission recommends this change to provide greater consistency in the code by establishing the same minimum lot sizes for both existing lots and those being newly created through land divisions. As part of this change, minimum lot sizes will be added for existing lots in the R5 and R2.5 zones. This specific change is needed to bring the Zoning Code into compliance with the City's Comprehensive Plan.

"Top Ten" Item #A6.2d

As part of the 2002-2003 Regulatory Improvement Workplan "Top Ten" process, staff were directed to "clarify which standards of Title 33 apply to Validated Lots". Staff from the Bureau of Development Services identified the concern that the valid lot standards in the R20, R10, and R7 zones under the current code are smaller than regular lot standards (those that could be created using the new Land Division Code), making existing lots undevelopable even when meeting minimum lot dimension standards that would be applied to new lots. Staff from BDS and Planning agreed that rewriting Section 33.110.112 "Validation of Lots" would be the best approach to address this specific issue and to simplify and clarify the entire section.

Additional concerns raised

Neighborhood representatives raised concerns in late 2002 about the same code section, and inconsistencies with the newly adopted Land Division Code. There are no minimum lot size standards in R5 and R2.5, making allowed lots through the lot validation process smaller than the regular minimum lot standards that would be allowed in a new land division. Planning Commission heard from Roseway Neighborhood Association representatives about the impact of lot segregations in their community and directed staff to address this issue as well.

Lot Validations and Lot Segregations, Cont.

DISCUSSION, CONT.

The two tables in the current code

Under Table 110-4 in Section 33.110.112, development is allowed on lots, or combinations of lots, created before July 26, 1979 that meet the minimum size requirements of this table.

Table 110-4 Minimum Dimensions for Valid Lots and Lots of Record					
Standard	RF	R20	R10	R7	R5 & R2.5
Lot Area	1 acre	14,000 sq. ft.	7,000 sq. ft.	5,000 sq. ft.	No Minimum
Lot Width	80 ft.	70 ft.	60 ft.	50 ft.	No Minimum
Lot Depth	120 ft.	100 ft.	80 ft.	70 ft.	No Minimum

New lots created through the Land Division process must meet the Lot Dimension Standards contained in Table 610-1, contained in Section 33.610.200. (They must also meet minimum and maximum density requirements for the whole site.)

Table 610-1 Lot Dimension Standards					
	RF	R20	R10	R7	R5
Minimum Lot Area	52,000 sq. ft.	12,000 sq. ft.	6,000 sq. ft.	4,200 sq. ft.	3,000 sq. ft.
Maximum Lot Area	151,000 sq. ft.	34,500 sq. ft.	17,000 sq. ft.	12,000 sq. ft.	8,500 sq. ft.
Minimum Lot Width	60 ft.[1]	60 ft.[1]	50 ft.[1]	40 ft.[1]	36 ft.[1]
Minimum Front Lot Line	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.
Minimum Lot Depth	60 ft.	60 ft.	60 ft.	55 ft.	50 ft.

As can quickly be noted in comparing the two tables, the dimensional standards for minimum lot area are all different. For example, in the R10 zone, an existing lot would need to be at least 7,000 square feet in area to be buildable, while a new 6,000 square foot lot could be created in a land division in the R10 zone. Conversely, a new lot in the R5 zone would have to be at least 3000 square feet in area (averaging ~5000 square feet per lot per site), while an existing lot would have no minimum dimensional standards to be buildable.

Much of the testimony received about this item focused on the part of the proposal which re-establishes a minimum lot size for the R5 (Residential 5000) zone. Much of the testimony was related to the Comprehensive Plan, zoning, and density issues. Other testimony focused on design issues related to narrow lot development. The recommendation addresses both of these issues.

Zoning and Density Issues

The Comprehensive Plan's High Density Single Dwelling designation, which the R5 zone is intended to implement, is meant to "continue Portland's most common pattern of development." . The maximum density is generally 8.7 units per acre. The existing code, by having no minimum lot size for existing lots in the R5 zone, allows for twice the density (or greater) in areas that the City has determined should be developed at the R5 density, but which have an underlying historic platting pattern that might date from the early 1900s.

Historically, many areas (primarily in North, NE, and SE Portland) were platted with 25' x 100' lots. The lots were typically sold in combinations of two, three, or four contiguous lots, and developed with one house per ownership, creating the common pattern of development cited in the Comprehensive Plan. Most of these areas with this underlying platting pattern are currently zoned R5, an appropriate zone given the

Lot Validations and Lot Segregations, Cont.

DISCUSSION, CONT.

existing development pattern, the desired character of these neighborhoods, proximity to services, etc. Other areas (both with and without this historic platting), have been zoned R2.5 or higher through legislative planning projects because of their closer proximity to transit and appropriate infrastructure, the existing development pattern, and greater proximity to commercial centers and services. These are areas the City has determined can appropriately accommodate higher density housing.

When the existing regulations were adopted in 1991, no minimum lot size was established for substandard lots in the R5 and R2.5 zones. At the time, allowing such development was expected to have minimal impact on neighborhoods because most sites with underlying 25' x 100' platting were already developed in ways that meet the current code (e.g. one house per 5000 square feet). For the few vacant lots or the occasional side yard that could be segregated, it didn't seem necessary to establish a minimum that could unnecessarily preclude these smaller, existing, stand-alone lots from developing. In 1991, we did not expect that it would be financially viable to demolish an existing house straddling two historic lots in order to build two "skinny houses" in its place. This expectation proved to be correct for most of the 90s. However, several areas of the City are now experiencing a "demolition phenomenon" not anticipated in 1991. We have discovered that the Zoning Code, because of changing market forces, no longer is implementing our Comprehensive Plan in the R5 zone.

The Comprehensive Plan is the City's overarching approach to planning, and the Zoning Code must--by state law--implement the Comprehensive Plan. This recommendation does just that by re-establishing a minimum lot size of 3000 square feet for existing lots in the R5 zone. The recommendation also includes "grandfathering" in existing lots that already have separate tax accounts, or that are "in the pipeline" as of the effective date of this regulation.

Staff in developing their *Proposed Draft* considered whether a design solution alone could address this issue and concluded that the underlying problem of the Zoning Code not implementing the Comprehensive Plan designation for these areas had to be addressed. They considered alternatives included requiring the development to adhere to design standards, go through Design Review, or requiring at least two units to be attached to better match the bulk and scale of surrounding homes. They put those alternatives aside for their *Proposed Draft* to address the underlying policy question of the appropriate density for development in the R5 zone. After hearing testimony, the Planning Commission determined that both the zoning/density issue and the design issue needed to be addressed.

It should be noted that in some of the areas experiencing this kind of development, the zoning is R5a (with the "a" alternative design density overlay). In these areas, the policy has been established that the density (one unit per 2,500 square feet) is appropriate if the strict design requirements of the overlay zone are met. However, this policy intent is not being realized because the current code does not require that the design requirements be met.

Design Standards for Narrow Lots

The Planning Commission heard significant concerns about the design of houses being built on these narrow lots. Most of the houses built on these lots are only 15 feet wide, which presents significant limitations to the designers; because of these constraints, the houses are often disproportionately tall (although within maximums allowed), and the garage is the dominant street-facing element. The Infill Design Project will address many of these issues, but we are concerned that if we wait until that project is completed, too many opportunities may be lost. There are many existing narrow lots and many that will enter "the pipeline" before the effective date of this regulation that will be "buildable" in the future, even if the

Lot Validations and Lot Segregations, Cont.

DISCUSSION, CONT.

recommended minimum lot sizes recommended in this report are adopted. The design of development on these lots is incompatible with existing development. The Infill Design Project will address many of these issues, but too many opportunities may be lost if we wait until that project is completed.

Developing design standards to address all of the design concerns with this kind of development is beyond the scope of this project. In addition, the Infill Design Project will address many of these issues.

Given the design concerns and limited resources to address those concerns at this time, we recommend adding some design standards, choosing from those that are currently in the Zoning Code, although they may not currently apply to development on these lots. The design standards selected were considered by Bureau of Planning staff in concert with BDS staff.

The design concerns raised in testimony--apart from the issues of density--focussed on garages, height, the effect of a series of tall houses on narrow lots, building materials, and how the houses "meet the street." Our recommended design standards address all of these concerns to a limited extent. Planning and BDS staff considered all of the "packages" of tools currently in the code, such as the "a" overlay, the Community Design Standards, and the regulations adopted with the Land Division regulations for small lots. We agree with staff that none of these "packages" would be a good choice, so we examined individual elements of the different design approaches in the code. We found that many of the individual elements were not workable for existing lots, some were ineffective, and some were too onerous a burden for these lots--that they might make a site virtually impossible to develop in a reasonable manner.

The standards we recommend are not ideal, nor do they address all of the concerns. However, they will serve as an interim tool until the Infill Design Project can be completed.

Lot Validations and Lot Segregations, Cont.

DISCUSSION, CONT.

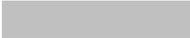
Illustrations

The Planning Commission found that pictures, maps, and real-life examples were very useful to understand this complicated issue and the many options that will still be available for development on affected sites. Several examples are included in this document and additional illustrations will be presented at the City Council Hearing.

How the regulation will apply under different scenarios:

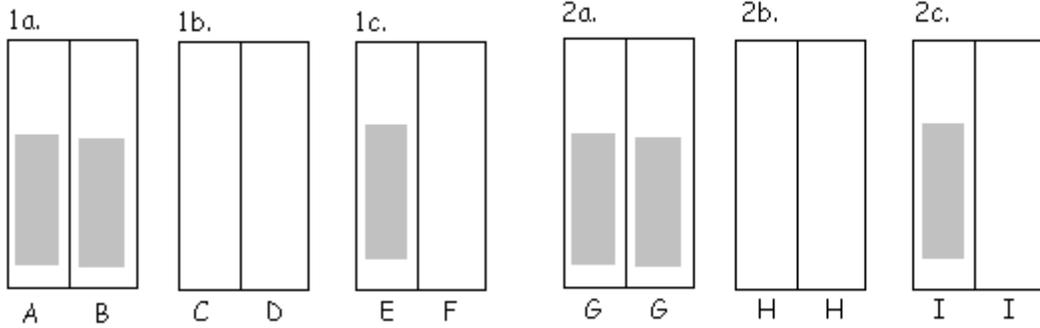
The figures and text on the following commentary page describe several different scenarios involving 5000 square foot lots (or combinations of lots) and how they would be affected by this proposal. Each of the illustrations shows a parcel of property consisting of one or two lots, totaling 5000 square feet. The lines on the illustrations in 1, 2, and 4 split the 5000 square foot parcels into two 25' by 100' areas--a common plat pattern in many parts of the City. The solid lines represent that as of the effective date of the regulation, the lot line was platted and divided into two separate tax accounts or that the process to do so had been initiated prior to the effective date and the lots were in separate tax accounts within a year of the effective date. The dotted lines represent underlying plats, where the larger lot is in common ownership and in one tax account. The underlying base zone assumed in these examples is R5--Residential 5000. The current code already includes minimum buildable lot sizes for the RF through R7 zones.

The legend below is provided to assist in understanding the diagrams on the following pages.

-  **Solid lines = Current tax lot boundaries**
-  **Dotted lines = Old platted boundaries**
-  **Shaded boxes = Existing primary structure or house**

Lot Validations and Lot Segregations, Cont.

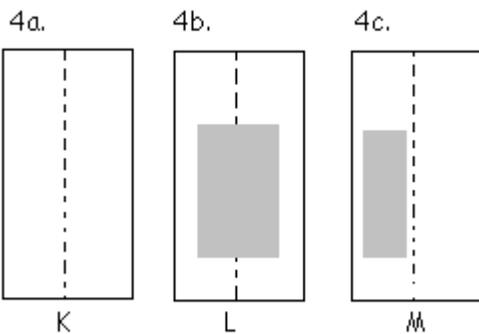
DISCUSSION, CONT.



1 and 2. In each of these six situations, two 25' x 100' lots were established prior to the effective date of this proposed regulation and the lots were under separate tax accounts (1a, 1b, and 1c are under separate ownership; 2a, 2b, and 2c are under common ownership). Both lots in each example are buildable under existing code and will remain buildable under this recommendation if adopted. If owners A, B, E, G, or I choose to tear down their houses and rebuild, they may. Owners C, D, F, H, and I may all build one house per lot. Owners G, H, and I may sell vacant or developed lots to others who may then build upon them.



3. Owner J has one 5000 square foot parcel. He would not be able to get a land division for his property since he does not have enough site area. In the R5 zone he would need 9500 square feet to divide into two lots. (If Owner J did have 9500 square feet of property, the minimum lot size allowed would be 3000 square feet, leaving a second lot of 6500 square feet.) Under the existing and proposed codes, he may build one house on this 5000 square foot lot.

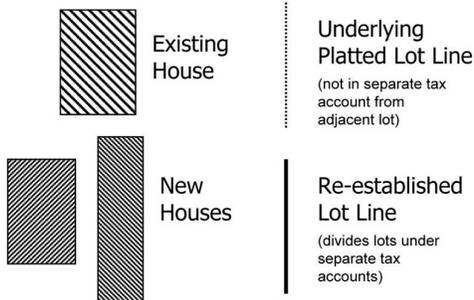


4. These three examples are all under common ownership and each under one tax account. The owners did not come in for a lot segregation prior to the effective date of the recommended regulation or did not complete the process and get separate tax accounts for the lots within a year of the effective date of the regulation. The lots for each example remain in the same tax account. In all three cases, one house could be built, or rebuilt, by right. These are the only properties that would be affected by the recommendation to establish a minimum lot size for the R5 zone. Under existing Code, they could be segregated and developed.

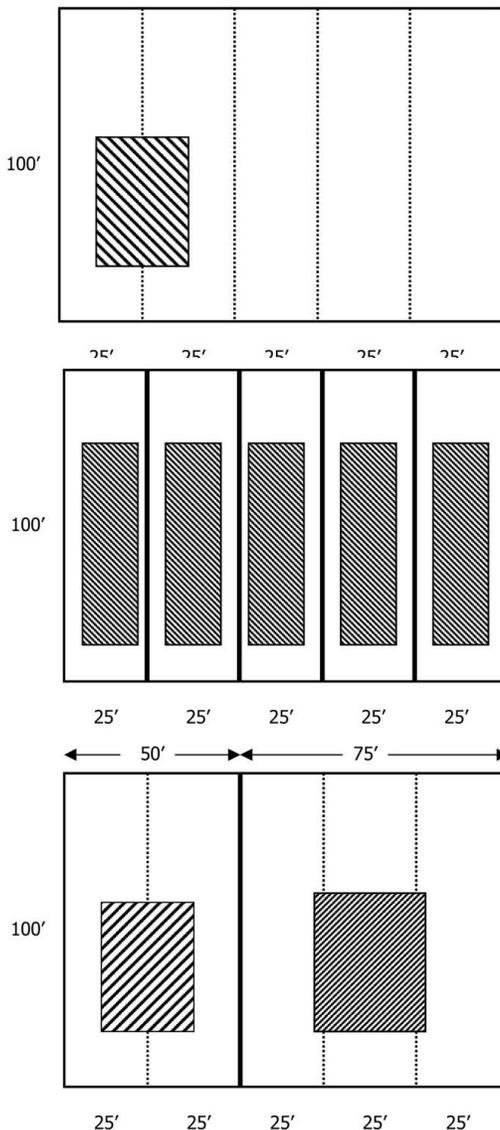
Lot Validations and Lot Segregations, Cont.

DISCUSSION, CONT.

Several options will still be available for development of properties which have the underlying historic 25' x 100' platting.



Following are some examples of the variety of ways in which a site could be developed under the existing code and the recommended code. The legend to the left is provided to assist in understanding the examples that follow.



Example A

This illustration shows a site with five underlying 25' x 100' historic lots with an existing house straddling two of the five lots. This is the "base case" for all the examples to follow. It is modeled after a specific property that is being redeveloped in the Kenton neighborhood using the current Code. The Base Zone for these examples is R5.

Example B

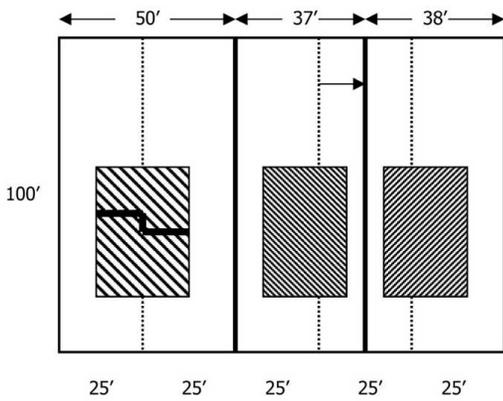
Under the current Code, the existing house can be demolished and the five underlying 2500 square foot lots can be re-established. Five 15' wide houses can then be built on these lots without any land use review or design requirements because there is no minimum lot area in the R5 zone for Valid Lots and Lots of Record.

Example C

Under both the current and proposed Codes, a second lot can be established and developed with another single-dwelling house.

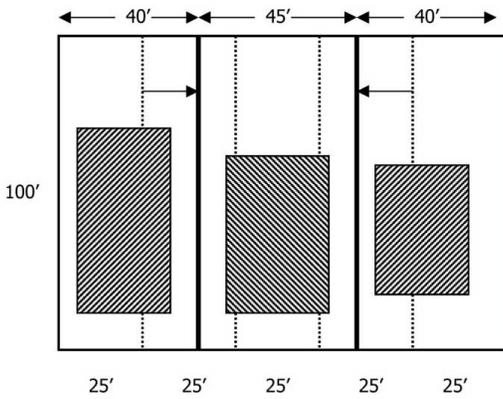
Lot Validations and Lot Segregations, Cont.

DISCUSSION, CONT.



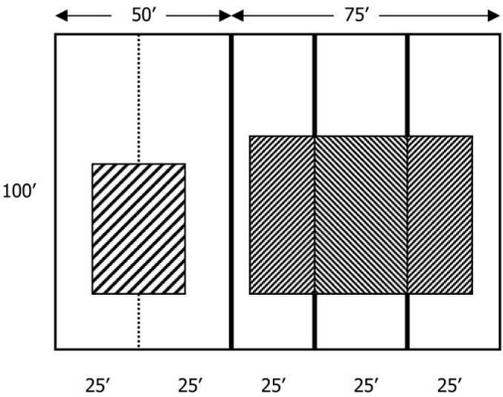
Example D

Under both current and recommended Code, through a concurrent property line adjustment/lot segregation, three buildable lots can be established (one 5000 square foot large, one 3700 square foot, one 3800 square foot) and two additional houses built. In addition, because the existing house is on a corner, it can be converted to a duplex or could be demolished and replaced by a new duplex or attached houses.



Example E

Another possibility under both the current and recommended Code: the existing house can be demolished and through concurrent property line adjustments/lot segregations, three buildable lots can be established from the five underlying lots of record (e.g. two 4000 square foot lots, and one 4500 square foot lot).



Example F

If the property had the "a" overlay, as several areas with this historic platting do based on previous legislative planning efforts, the three underlying lots on the right side could be segregated and developed with Attached Housing at R2.5 density. The development must meet the Community Design Standards or go through Design Review. (This provision requires that the land have been vacant for five years.)

Lot Validations and Lot Segregations, Cont.

COMMENTARY

This proposal would replace Section 33.110.112, Validation of Lots and Lots of Record with a new Section 33.110.212, Where Primary Structures are Allowed. This change reorganizes and simplifies the section and provides greater consistency in the way lots and sites are treated throughout the City. This recommendation addresses issues raised as part of the Top Ten Land Division items (#A6.2) and in recent communications to the Planning Commission about concerns related to lot segregations in existing R5 neighborhoods, and .

Portland has many lots that were platted at sizes smaller than the current zoning allows. This code section addresses how these will be treated.

Some definitions currently in the code may help in reading this section:

Lot. A lot is a legally defined piece of land other than a tract that is the result of a land division. This definition includes the State definition of both lot, (result of subdividing), **and** parcel, (result of partitioning). See also, Ownership and Site.

Lot of Record. A lot of record is a plot of land:

- Which was not created through an approved subdivision or partition;
- Which was created and recorded before July 26, 1979; and
- For which the deed, or other instrument dividing the land, is recorded with the appropriate county recorder.

Primary Structure. A structure or combination of structures of chief importance or function on a site. In general, the primary use of the site is carried out in a primary structure. The difference between a primary and accessory structure is determined by comparing the size, placement, similarity of design, use of common building materials, and the orientation of the structures on a site.

Lot Validations and Lot Segregations, Cont.

RECOMMENDED CODE LANGUAGE

AMEND CHAPTER 33.110, SINGLE-DWELLING ZONES

Sections:

General

- 33.110.010 Purpose
- 33.110.020 List of the Single-Dwelling Zones
- 33.110.030 Other Zoning Regulations

Use Regulations

- 33.110.100 Primary Uses
- 33.110.110 Accessory Uses
- 33.110.120 Nuisance-Related Impacts

Development Standards

- 33.110.200 Housing Types Allowed
- 33.110.205 Density
- 33.110.212 ~~Validation of Lots and Lots of Record~~ When Primary Structures are Allowed
- 33.110.215 Height
- 33.110.220 Setbacks
- 33.110.225 Building Coverage
- 33.110.230 Main Entrances in R10 through R2.5 Zones
- 33.110.232 Street-Facing Facades in R10 through R2.5 Zones
- 33.110.235 Required Outdoor Areas in R5 and R2.5 Zones
- 33.110.240 Alternative Development Options
- 33.110.245 Institutional Development Standards
- 33.110.250 Accessory Structures
- 33.110.255 Fences
- 33.110.260 Demolitions
- 33.110.265 Excavations and Fills
- 33.110.270 Nonconforming Development
- 33.110.275 Parking and Loading
- 33.110.280 Signs
- 33.110.282 Trees
- 33.110.285 Street Trees

~~33.110.212 Validation of Lots and Lots of Record~~

~~**A. Purpose.** The regulations of this section allow for development on lots and lots of record, but do not legitimize plots which were divided after subdivision and partitioning regulations were established. The regulations also allow development on lots which were large enough in the past, but were reduced by condemnation or required dedications for right of way.~~

~~**B. Lots.** The regulations of this subsection apply to lots.~~

- ~~1. Lots created on or after July 26, 1979. Development that meets the regulations of this Title is allowed on lots, or combinations of lots, created on or after July 26, 1979.~~
- ~~2. Lots created before July 26, 1979. The following regulations apply to lots created before July 26, 1979:~~

Lot Validations and Lot Segregations, Cont.

COMMENTARY, CONT.

Lot Validations and Lot Segregations, Cont.

RECOMMENDED CODE LANGUAGE, CONT.

- a. ~~Development that meets the regulations of this Title is allowed on lots, or combinations of lots, that meet the minimum size requirements of Table 110-4, except in the West Portland Park subdivision. Development may be allowed on lots that do not meet the minimum size requirements of Table 110-4 through Validation Review; see Chapter 33.854.~~
- b. ~~In the West Portland Park subdivision, development that meets the regulations of this Title is allowed on lots, or combinations of lots, that meet the minimum size requirements of Table 110-5. Development may be allowed on lots that do not meet the minimum size requirements of Table 110-5 through Validation Review; see Chapter 33.854.~~

Table 110-4					
Minimum Dimensions for Valid Lots and Lots of Record					
Standard	RF	R20	R10	R7	R5 & R2.5
Lot Area	1 acre	14,000 sq. ft.	7,000 sq. ft.	5,000 sq. ft.	No Minimum
Lot Width	80 ft.	70 ft.	60 ft.	50 ft.	No Minimum
Lot Depth	120 ft.	100 ft.	80 ft.	70 ft.	No Minimum

Table 110-5			
Minimum Dimensions for Valid Lots and Lots of Record in West Portland Park			
Standard	RF through R10	R7	R5
Lot Area	Same requirements as Table 110-4	7,000 sq. ft.	5,000 sq. ft.
Lot Width		No Minimum	No Minimum
Lot Depth		No Minimum	No Minimum

- 3. ~~Lots reduced by condemnation or required dedication for right of way.~~
 - a. ~~Development that meets the regulations of this Title is allowed on lots, or combinations of lots, that did meet the minimum size requirements of Table 110-4 in the past, but were reduced below one or more of those requirements solely because of condemnation or required dedication by a public agency for right of way, except in the West Portland Park subdivision.~~
 - b. ~~In the West Portland Park subdivision, development that meets the regulations of this Title is allowed on lots, or combinations of lots, that did meet the minimum size requirements of Table 110-5 in the past, but were reduced below one or more of those requirements solely because of condemnation or required dedication by a public agency for right of way.~~

C. Lots of record. ~~The regulations of this Subsection apply to lots of record.~~

- 1. ~~Development that meets the regulations of this Title is allowed on lots of record, or combinations of lots of record, that meet the minimum size requirements of Table 110-4, except in the West Portland Park subdivision. Development may be allowed on lots of record that do not meet the minimum size requirements of Table 110-4 through Validation Review; see Chapter 33.854.~~

Lot Validations and Lot Segregations, Cont.

COMMENTARY, CONT.

33.110.212 Where Primary Structures Are Allowed

- A. **Purpose.** This maintains the former purpose statement of the Validation of Lots and Lots of Record section, recognizing that the purpose of the regulations remains the same.
- B. **Primary structures allowed.**
1. July 26, 1979 is the date after which the City is confident that the County has kept accurate records of subdivision and partition plats.
 2. This section establishes the dimensional standards and requirements for lots, replacing Table 110-4 (Minimum Dimensions for Valid Lots and Lots of Record) with a minimum width for all lots in the RF through R5 zones, and references to the requirements of Table 610-1 which applies to the creation of lots in the RF through R5 zones. It also creates a minimum lot size for the R2.5 zone, which is the same as that for new lots. This allows for consistent lot sizes for both existing and newly created lots.

For ease of reviewing these code changes, Table 610-1 from the current Zoning Code is provided below.

Table 610-1 Lot Dimension Standards					
	RF	R20	R10	R7	R5
Minimum Lot Area	52,000 sq. ft.	12,000 sq. ft.	6,000 sq. ft.	4,200 sq. ft.	3,000 sq. ft.
Maximum Lot Area	151,000 sq. ft.	34,500 sq. ft.	17,000 sq. ft.	12,000 sq. ft.	8,500 sq. ft.
Minimum Lot Width	60 ft.[1]	60 ft.[1]	50 ft.[1]	40 ft.[1]	36 ft.[1]
Minimum Front Lot Line	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.
Minimum Lot Depth	60 ft.	60 ft.	60 ft.	55 ft.	50 ft.

Notes:

1] See 33.610.200.D.

Lot Validations and Lot Segregations, Cont.

RECOMMENDED CODE LANGUAGE, CONT.

- ~~2. In the West Portland Park subdivision, development that meets the regulations of this Title is allowed on lots of record, or combinations of lots of record, that meet the minimum size requirements of Table 110-5. Development may be allowed on lots of record that do not meet the minimum size requirements of Table 110-5 through Validation Review, see 33.854.~~
 - ~~3. Lots of record reduced by condemnation or required dedication for right-of-way.
 - ~~a. Development that meets the regulations of this Title is allowed on lots of record, or combinations of lots of record, that did meet the minimum size requirements of Table 110-4 in the past, but were reduced below one or more of those requirements solely because of condemnation or required dedication by a public agency for right-of-way, except in the West Portland Park subdivision.~~
 - ~~b. In the West Portland Park subdivision, development that meets the regulations of this Title is allowed on lots of record, or combinations of lots of record, that did meet the minimum size requirements of Table 110-5 in the past, but were reduced below one or more of those requirements solely because of condemnation or required dedication by a public agency for right-of-way.~~~~
- D. Plots.** Development is prohibited on plots that are not lots, lots of record, or tracts.

33.110.212 When Primary Structures are Allowed

A. Purpose. The regulations of this section allow for development of primary structures on lots and lots of record, but do not legitimize plots that were divided after subdivision and partitioning regulations were established. The regulations also allow development of primary structures on lots which were large enough in the past, but were reduced by condemnation or required dedications for right-of-way.

B. Primary structures allowed. Primary structures are allowed as follows:

1. On lots created on or after July 26, 1979;
2. On lots or combinations of lots created before July 26, 1979 that meet the requirements of this paragraph, and on lots of record or combinations of lots of record that meet the requirements of this paragraph. The requirements are:
 - a. In the RF through R5 zones the lot or lot of record or combination of lots or lots of record must:
 - (1) Be at least 36 feet wide; and
 - (2) Meet the minimum area requirements of Table 610-1;
 - b. In the R2.5 zone, the lot or lot of record or combination of lots or lots of record must be at least 1,600 square feet in area.

Lot Validations and Lot Segregations, Cont.

COMMENTARY, CONT.

C. Exceptions.

1. This paragraph establishes the minimum standards for lots in West Portland Park, replacing Table 110-5, Minimum Dimensions for valid Lots and Lots of Record in West Portland Park.
2. This paragraph allows structures on lots and lots of record that do not meet dimensional requirements if the lot or lot of record was "segregated"—if it had its own tax account on the effective date of the regulations. It also grandfathers in those lots that have begun the lot segregation process by the effective date if the process is completed within a year. In both cases, the design standards must be met. This allows development on stand-alone lots and on those that have been segregated (or begun the process), but does not allow the development of lots that are part of a larger tax account and can already be developed under existing requirements and standards.

Lot Validations and Lot Segregations, Cont.

RECOMMENDED CODE LANGUAGE, CONT.

C. Exceptions.

1. West Portland Park. In the West Portland Park subdivision, primary structures are allowed as follows:
 - a. On lots created on or after July 26, 1979;
 - b. In the R7 zone:
 - (1) On lots or combination of lots created before July 26, 1979 that are at least 7,000 square feet in area; and
 - (2) On lots of record or combination of lots of record that are at least 7,000 square feet in area;
 - c. In the R5 zone:
 - (1) On lots or combination of lots created before July 26, 1979 that are at least 5,000 square feet in area; and
 - (2) On lots of record or combination of lots of record that are at least 5,000 square feet in area;
2. Lots and lots of record that do not meet dimensional requirements. Primary structures are allowed on lots and combinations of lots created before July 26, 1979 that do not meet the dimensional requirements of B.2 or C.1, and on lots of record and combinations of lots of record that do not meet the dimensional requirements of B.2 or C.1 if the requirements of this paragraph are met. If the requirements of this paragraph are not met, primary structures are prohibited. Modifications to the standards of this paragraph are allowed through Design Review. Adjustments are prohibited. The requirements are:
 - a. The lot, lot of record, or combination of lots or lots of record must meet one of the following:
 - (1) The lot, lot of record, or combination of lots or lots of record was under a separate tax account record from abutting lots or lots of record on [effective date of these regulations]; or
 - (2) An application to authorize a separate tax account number was filed with the City before [effective date of these regulations] and the lot or combination of lots was under a separate tax account record from abutting lots or lots of record on [1 year after effective date of these regulations]; and

Lot Validations and Lot Segregations, Cont.

COMMENTARY, CONT.

C.2.b.

- (1) Maximum height. New regulation.
- (2) Main entrance. This regulation currently in 33.110.230.
- (3) Garage door. New regulation, works with limitation on garage wall to 12' in length, currently in 33.110.232.
- (4) Vehicle access. This regulation currently in 33.110.275.
- (5) No parking required. This regulation currently in 33.266.110.B.3.
- (6) Exterior finish materials. This regulation currently in Chapter 33.218, Community Design Standards.
- (7) Trim. This regulation currently in Chapter 33.218, Community Design Standards.
- (8) Eaves. This regulation currently in Chapter 33.218, Community Design Standards.
- (9) Attached housing. This regulation currently in 33.110.240. There may be four attached houses built on four lots, but they must be attached in pairs, not a row of four.

Lot Validations and Lot Segregations, Cont.

RECOMMENDED CODE LANGUAGE, CONT.

- b. Development on the lot or lot of record must meet the following standards:
- (1) Maximum height. The maximum height allowed for all structures is 1.5 times the width of the structure;
 - (2) Main entrance. The main entrance that meets Subsection 33.110.230.C, Main Entrances in R10 through R2.5 Zones, must be within 4 feet of grade. For the purposes of this requirement, grade is the average grade measured along the foundation of the longest street-facing wall of the dwelling unit. See Figure 110-7;
 - (3) Garage door. In addition to meeting the requirements of 33.110.250.E.4, the garage door may not be more than 8 feet wide. If there is more than one door, the combined width may not be more than 8 feet;
 - (4) Vehicle access. Where the lot or lot of record abuts an alley, vehicle access to the lot must be from the alley;
 - (5) No parking required. No off-street parking is required.
 - (6) Exterior finish materials. The following standards must be met on all building facades:
 - Plain concrete block, plain concrete, corrugated metal, plywood and sheet pressboard are not allowed as exterior finish material, except as secondary finishes if they cover no more than 10 percent of the surface area of each facade. Composite boards manufactured from wood or other products, such as hardboard or hardplank, may be used when the board product is less than 6 inches wide;
 - Where wood products are used for siding, the siding must be shingles, or horizontal siding, not shakes;
 - Where horizontal siding is used, it must be shiplap or clapboard siding composed of boards with a reveal of 3 to 6 inches, or vinyl or aluminum siding which is in a clapboard or shiplap pattern where the boards in the pattern are 6 inches or less in width;
 - (7) Trim. Trim must mark all building roof lines, porches, windows, and doors on all facades. The trim must be at least 3-1/2 inches wide. Buildings with an exterior material of stucco or masonry are exempt from this standard;
 - (8) Eaves. Roof eaves must project from the building wall at least 12 inches on all elevations; and
 - (9) Attached housing. Attached housing is allowed, but no more than two units may be attached;

Lot Validations and Lot Segregations, Cont.

COMMENTARY, CONT.

C. Exceptions.

3. Planned unit developments. Lots in planned unit developments where there is a development plan are exempt from the requirements of this section, and are subject to the requirements of the development plan.
4. This paragraph allows for structures when requirements cannot be met solely because of condemnation or required dedication for right-of-way.

D. Plots. Primary structures are prohibited on plots that are not lots, lots of record, or tracts.

E. Nonconforming situations. Existing development and residential densities that do not conform to the requirements of this chapter may be subject to the regulations of Chapter 33.258, Nonconforming Situations. Chapter 33.258 provides what is commonly referred to as "grandfather" rules.

Lot Validations and Lot Segregations, Cont.

RECOMMENDED CODE LANGUAGE, CONT.

3. Planned unit developments. Lots in planned unit developments are exempt from the requirements of this section.
 4. Lots reduced by condemnation or required dedication for right-of-way.
 - a. Generally. Primary structures are allowed on lots and lots of record and combinations of lots or lots of record that did meet the requirements of B.2 in the past, but were reduced below one or both of those requirements solely because of condemnation or required dedication by a public agency for right-of-way.
 - b. In West Portland Park. In the West Portland Park subdivision, primary structures are allowed on lots and lots of record and combinations of lots or lots of record that did meet the requirements of C.1.b and c in the past, but were reduced below one or both of those requirements solely because of condemnation or required dedication by a public agency for right-of-way.
- D. Plots.** Primary structures are prohibited on plots that are not lots, lots of record, or tracts.
- E. Nonconforming situations.** Existing development and residential densities that do not conform to the requirements of this chapter may be subject to the regulations of Chapter 33.258, Nonconforming Situations. Chapter 33.258 also includes regulations regarding damage to or destruction of nonconforming situations .

Lot Validations and Lot Segregations, Cont.

COMMENTARY, CONT.

33.854 Validation Review

Because of the restructuring of Section 33.110.212, Where Primary Structures are Allowed, this chapter (33.854 Validation Review) is no longer necessary.

Lot Validations and Lot Segregations, Cont.

RECOMMENDED CODE LANGUAGE, CONT.

CHAPTER 33.854 VALIDATION REVIEW

(Added by: Ord. Nos. 175965 and 176333, effective 7/1/02.)

Sections:

- ~~33.854.010 Purpose~~
- ~~33.854.020 Procedure~~
- ~~33.854.030 Approval Criteria~~

33.854.010 Purpose

~~Validation Review allows development on lots and lots of record that do not meet the requirements of Section 33.110.212, Validation of Lots and Lots of Record, where such development is appropriate.~~

33.854.020 Procedure

~~Validation Review is processed through a Type II procedure.~~

33.854.030 Approval Criteria

~~Validation Review will be approved if the review body finds that the applicant has shown that all of the following criteria have been met:~~

- ~~**A.** On July 26, 1979, or any time since that date, the lot or lot of record did not abut any lot or lot of record owned by the same family or business. The intent of this criterion is to not allow ownerships to be split into building sites that do not meet the requirements of Table 110-4, or in West Portland Park, the requirements of Table 110-5;~~
- ~~**B.** If it is a lot of record, it met the dimensional requirements for new lots at the time it was created;~~
- ~~**C.** The proposed development is as compatible with the surrounding housing as is practicable. Compatibility is based on considerations such as placement on the site, size, height, number of stories, angle of roof pitch, architectural style, size and placement of accessory structures such as garages, building materials, and landscaping materials; and~~
- ~~**D.** Any requested adjustments are consistent with the purpose of this chapter, the purpose of Section 33.110.212, and the intent of the regulation being adjusted.~~

Lot Validations and Lot Segregations, Cont.

Land Division Items

DISCUSSION

A number of items related to the implementation of the new Land Division Code since July 1, 2002 were raised for consideration as part of the "Top Ten" and are included in this package of Code Amendments. Two of the issues identified are addressed earlier in this document due to the greater amount of discussion these raised: #A6.2d--Lot Validations and Lot segregations, and #A6.3--Maximum Building Coverage (Table 110-6).

The remaining issues are listed below:

Item #A6.1--Land division definition of "site"

Lot Dimensional Standards

Item #A6.2a--Duplexes in multidwelling zones, and

Item #A6.2f--Depth of R2 lots,

Item #A6.2e--Front lot line in C zones, and

New Item--Front Lot Lines for Attached Housing in Multi-Dwelling, C, and E Zones; and for all development in the RX Zone

Density and Size Requirements for Nonconforming and Conditional Uses in Residential Zones

Item #A6.2b--Nonconforming uses in R2.5 and Multidwelling zones and

Item #6.5--Conditional uses in RF through R5 zones

Item #A6.2c--Property line adjustments

Item #6.4--Lot consolidation

Item #6.7--Review of land divisions in multidwelling zones

Land Division Items: Definition of “Site” for Land Divisions

“Top Ten” Item #A6.1, Land Division definition of “site”

DISCUSSION AND COMMENTARY

This is a situation where the answers to the questions asked in the Impact Assessment process have led the staff to propose and Planning Commission to recommend a change in the Code even though the change will not implement policy objectives. The policy objective and problems with meeting it are explained below. Of the alternatives considered in the *Discussion Draft* to meet policy objectives, most were rejected as being too complex to write clearly and too complex to administer.

Prior to the Land Division Code Rewrite Project, the definition of site allowed applicants to divide only a portion of an ownership. Often applicants would take advantage of this provision to avoid creating a street, choosing instead to divide several abutting, oversized lots into a series of flag lots. This lotting pattern results in reduced connectivity. At the time of the Land Division Code Rewrite Project, increasing connectivity was a major policy emphasis in addition to increasing neighborhood livability by reducing the number of flag lots created and ensuring that houses more often face a street.

To achieve these policy objectives the definition of site was amended to require that all abutting lots within an ownership be included and reviewed during a land division. In this way the entire ownership could be looked at holistically, and the most logical lotting and street/connectivity pattern could be established. This requirement is also intended to ensure that environmental zoning regulations would not be circumvented by choosing to divide only the portion of an ownership that does not include the environmental overlay zone.

Unfortunately, amending the definition of site has not resulted in achieving the policy objective. The approach taken has been proved to be unenforceable and ineffective because applicants regularly avoid the requirement by placing commonly owned, abutting lots under different names. For example, an owner will change the name of the property owner in the tax records to a spouse's name or a partner's name in order to make it appear that the lots are not owned in common. Changing the ownership is thus chosen as an additional step in the land division process in order to avoid the requirement that the full ownership be subject to the land division. For these reasons, the Planning Commission recommends amending the definition of site.

It should be noted that in trying to develop a new approach to the definition of "site" for land division purposes, staff considered at least four different approaches in its *Discussion Draft*. Each of these approaches had its benefits and problems. The Planning Commission recommendation is the result of input received from reviewers on the *Discussion Draft* and *Proposed Draft* of Policy Package 1.

RECOMMENDED CODE LANGUAGE

AMEND CHAPTER 33.910, DEFINITIONS

33.910.030 Definitions

The definition of words with specific meaning in the zoning code are as follows:

Site. For land divisions, the site is the lots, lots of record, or tracts proposed to be divided or reconfigured, an ownership. ~~If a proposed land division includes more than one ownership, then all the ownerships are included as the site.~~ For all other purposes, the site is an ownership except as follows:

- If a proposed development includes more than one ownership, then all the ownerships are included as the site.
- If a proposed development includes only a portion of an ownership, and the balance of the ownership is vacant, then the applicant may choose to define the site as the portion of the ownership that is proposed for development.
- If a proposed development includes only a portion of an ownership, and there is other development on the ownership, then the applicant may choose to define the site as the portion of the ownership that is currently developed plus the portion proposed for development.

Land Division Items: Lot Dimension Standards

“Top Ten” Item #A6.2a--Duplexes in multidwelling zones

“Top Ten” Item #A6.2f--Depth of R2 lots

“Top Ten” Item #A6.2e--Front Lot Line in C Zones

New item--Front Lot Lines for Attached Housing in Multi-Dwelling, C, and E Zones; and for all development in the RX Zone

DISCUSSION AND COMMENTARY

33.612.100.A Duplexes were inadvertently left out of this section of the code during the Land Division Code Rewrite Project. This amendment clarifies how density is calculated when duplex lots are proposed.

33.612.200.B; Table 612-1

NOTE: While all the new language in Table 612-1 is underlined, most of it is in the current regulations.

The substantive changes are highlighted in gray. The recommended amendments are:

- Add lot dimension standards for lots to be developed with duplexes. Duplexes were inadvertently left out of this section of the code during the Land Division Code Rewrite Project and therefore don't have any standards. This amendment adds standards for duplexes, either attached or detached, in multi-dwelling zones. The recommended dimensions will ensure that lots are large enough to accommodate a duplex, but not so large that minimum density requirements would prohibit development of a duplex.
- Reduce minimum lot depth requirement in the R3, R2, and R1 Zones. This amendment makes it easier for alleys to be created for vehicular access from the rear of lots in these zones. Typically, blocks are 200 feet, and any alley/shared access, coupled with any landscaping to buffer neighbors adjacent to the alley, would need 20-30 feet. The existing code (80-100 ft. minimum lot depth) makes development of alleys unlikely without adjustments to lot depth requirements. It should be noted that, prior to the Land Division Code Rewrite Project, the minimum lot depth in the R2 zone was 80 feet.
- Add front lot line requirements for attached housing in all Multi-Dwelling Zones, and for all development in the RX Zone. Currently, there are no minimum front lot line requirements in the Zoning Code for these types of development in these zones. The effect of other bureaus' codes is to require street frontage; for example, water service must be from a street, not over an easement. However, because there is no requirement in the Zoning Code, applicants are misled. Adding a front lot line requirement of 10 feet ensures adequate access for services, and alerts applicants to the need for street frontage.
- Add lot dimensions for lots to be developed with attached housing in the IR zone. These standards were inadvertently left out of this section of the code during the Land Division Code Rewrite Project and therefore there are no standards. This amendment adds the same standards as in the RX Zone.
- Expand Table 612-1 to include lot dimension standards for all residential structure types. This is more clear than the current organization.

Land Division Items: Lot Dimension Standards, Cont.

RECOMMENDED CODE LANGUAGE

AMEND CHAPTER 33.612, LOTS IN MULTI-DWELLING ZONES

33.612.100 Density

- A. Single-dwelling or duplex development.** When single-dwelling or duplex development is proposed for some or all of the site, the applicant must show how the proposed lots can meet minimum density and not exceed the maximum density stated in Table 120-3. Site area devoted to streets is subtracted from the total site area in order to calculate minimum and maximum density.
- B. All other development.** When development other than single-dwelling is proposed, minimum and maximum density must be met at the time of development.

33.612.200 Lot Dimension Standards

- A. Purpose.** [No change.]
- B. Lot dimensions.** Minimum lot dimensions are stated in Table 612-1.
1. ~~Multi dwelling development.~~ Minimum lot dimensions for lots that will be developed with multi-dwelling residential structures, or ~~multi-dwelling development~~, are stated in Table 612-1.

Table 612-1 Minimum Lot Dimensions						
	R3	R2	R1	RH	RX	IR¹
<u>Lots to be developed with:</u>						
<u>Multi-Dwelling Structures or Development:</u>						
Minimum Lot Area	6,000 sq. ft.	4,000 sq. ft.	10,000 sq. ft.	10,000 sq. ft.	none	10,000 sq. ft. +
Minimum Lot Width	50 ft.	33 ft.	70 ft.	70 ft.	none	70 ft. +
Minimum Lot Depth	80 70 ft.	100 70 ft.	100 70 ft.	100 ft.	none	100 ft. +
Minimum Front Lot Line	50 ft.	30 ft.	70 ft.	70 ft.	none 10 ft.	70 ft. +
<u>Detached Houses</u>						
Minimum Lot Area	3000 sq. ft.	3000 sq. ft.				
Minimum Lot Width	36 ft.	36 ft.				
Minimum Lot Depth	none	none	none	none	none	none
Minimum Front Lot Line	36 ft.	36 ft.	36 ft.	36 ft.	36 10 ft.	36 ft.
<u>Attached Houses</u>						
Minimum Lot Area	1600 sq. ft.	1600 sq. ft.	800 sq. ft.	800 sq. ft.	none	none
Minimum Lot Width	none	none	none	none	none	none
Minimum Lot Depth	none	none	none	none	none	none
Minimum Front Lot Line	none 10 ft.	none 10 ft.	none 10 ft.	none 10 ft.	10 ft.	10 ft.
<u>Duplexes</u>						
Minimum Lot Area	6000 sq. ft.	4000 sq. ft.	4000 sq. ft.	2000 sq. ft.	none	2000 sq. ft.
Minimum Lot Width	50 ft.	33 ft.	33	none	none	none
Minimum Lot Depth	70	70	70	none	none	none
Minimum Front Lot Line	50	30	30	30	10	30

Notes:

[1] This regulation may be superseded by an Impact Mitigation Plan.

Land Division Items: Lot Dimension Standards, Cont.

DISCUSSION AND COMMENTARY, CONT.

33.612.200.B.2 This amendment adds standards for nonconforming uses in multi-dwelling zones.

33.613.100

The current regulations require a front lot line at least 25 feet long for all development except attached housing. Lots to be developed with attached housing must have a front lot line at least 16 feet long. However, this limits the opportunities for live/work situations; attached residential that includes commercial space must meet the 25-foot standard, which isn't as workable for attached houses. The initial staff proposal was to reduce the front lot line requirement for all uses to 16 feet. However, further discussion about possible development configurations resulted in an amended staff recommendation, adopted by Planning Commission, to reduce the front lot line for all development in the C zones to 10 feet. This will ensure that all lots have some street frontage, but will increase flexibility in the code, and allow more creative development, including live/work situations. .

Land Division Items: Lot Dimension Standards, Cont.

RECOMMENDED CODE LANGUAGE, CONT.

2. Nonconforming uses. Minimum lot dimensions for lots with nonconforming uses are the same as those for detached houses.
2. ~~Detached houses. The minimum lot area required for lots to be developed with detached houses is 3,000 square feet. The minimum lot width and minimum front lot line required is 36 feet. There is no minimum lot depth requirement.~~
3. ~~Attached houses in the R3 and R2 zones. The minimum lot area for lots to be developed with attached houses in the R3 and R2 zones is 1,600 square feet. There are no minimum lot width, minimum front lot line, or minimum lot depth requirements.~~
4. ~~Attached houses in the R1 and RH zones. The minimum lot area for lots to be developed with attached houses in the R1 and RH zones is 800 square feet. There are no minimum lot width, minimum front lot line, or minimum lot depth requirements.~~

AMEND CHAPTER 33.613, LOTS IN COMMERCIAL ZONES

33.613.100 Minimum Front Lot Line Standard

Each lot must have a front lot line that is at least ~~25~~ 10 feet long ~~except for lots that will be developed with attached houses. Lots that will be developed with attached houses must have a front lot line that is at least 16 feet long.~~

Land Division Items: Density and Dimensional Requirements for Nonconforming and Conditional Uses in R Zones

“Top Ten” Item #A6.2b--Nonconforming uses in R2.5 and multidwelling zones

“Top Ten” Item #6.5 Conditional Uses in RF through R5 zones

COMMENTARY

These two amendments clarify issues that have emerged since the Land Division Code Rewrite Project was adopted.

33.611.020

This amendment clarifies which standards apply to lots that will be developed with uses other than attached and detached houses.

33.611.100.E.3

This amendment clarifies that sites with conditional uses do not have to meet minimum density. For example, this situation arises when a large lot with a church on it is proposed to be subdivided. Because the new lot with the church on it would have to remain fairly large, the site as a whole would have a hard time meeting the minimum density requirements. See the illustration on page 60.

**Land Division Items: Density and Dimensional Requirements for Nonconforming
and Conditional Uses in R Zones, Cont.**

RECOMMENDED CODE LANGUAGE

AMEND CHAPTER 33.611, LOTS IN THE R2.5 ZONE

33.611.020 Where These Standards Apply

The standards of this chapter apply to lots in a land division in the R2.5 zone that will be developed with attached houses. Lots in a land division in the R2.5 zone that will not be developed with attached ~~detached~~ houses must meet the regulations for land divisions in the R5 zone in Chapter 33.610, Lots in RF through R5 zones.

33.611.100 Density Standards

A. through D. [No change.]

E. Exceptions to minimum density. Exceptions to minimum density standards are allowed in the following situations:

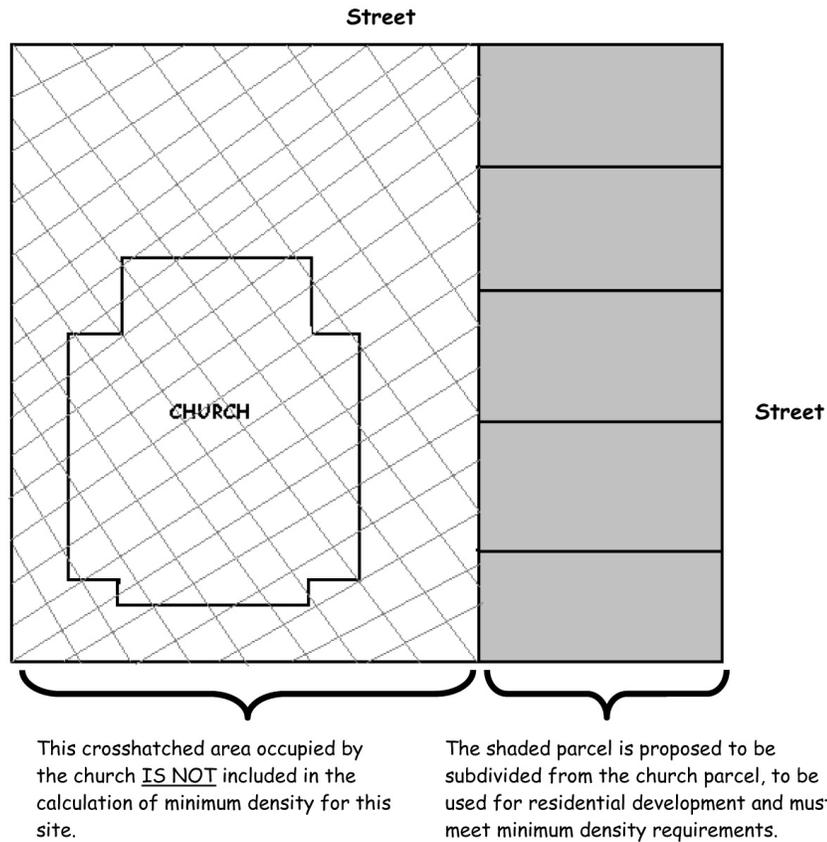
1. If minimum density is equal to maximum density, then the minimum is automatically reduced by one; ~~or~~
2. If minimum density is larger than maximum density then the minimum is reduced to one less than the maximum; ;
3. The portion of the site that has a conditional use or Conditional Use Master Plan is not included in the site for calculations of minimum density.

Land Division Items: Density and Dimensional Requirements for Nonconforming and Conditional Uses in R Zones, Cont.

COMMENTARY, CONT.

33.610.100.E

This amendment clarifies that sites with conditional uses do not have to meet minimum density.



33.610.200.C

This amendment clarifies that lots with conditional or institutional uses are exempt from the maximum lot area standard.

Land Division Items: Density and Dimensional Requirements for Nonconforming and Conditional Uses in R Zones, Cont.

RECOMMENDED CODE LANGUAGE, CONT.

AMEND CHAPTER 33.610, LOTS IN RF THROUGH R5 ZONES

33.610.100 Density Standards

A. through D. [No change.]

E. Exceptions to minimum density. Exceptions to minimum density standards are allowed in the following situations. Adjustments to this subsection are prohibited:

1. If the minimum required density is equal to the maximum allowed density, then the minimum is automatically reduced by one; ~~or~~
2. If the minimum required density is larger than the maximum allowed density, then the minimum density is automatically reduced to one less than the maximum; ~~;~~
3. The portion of the site that has a conditional use or Conditional Use Master Plan is not included in the site for calculations of minimum density.

33.610.200 Lot Dimension Standards

Lots in the RF through R5 zones must meet the lot dimension standards of this section.

A. and B. [No change.]

C. Maximum lot area. Lots larger than the maximum lot area standards stated in Table 610-1 are not allowed. Lots with a conditional use or Conditional Use Master Plan are exempt from this standard.

D. through F. [No change.]

Land Division Items: Property Line Adjustments

“Top Ten” Item #A6.2c, Property Line Adjustments

COMMENTARY

33.667.300.A.1

This amendment clarifies that the dimensional standards that apply to lots created through the land division process also apply to Property Line Adjustments.

Land Division Items: Property Line Adjustments

RECOMMENDED CODE LANGUAGE

AMEND CHAPTER 33.667, PROPERTY LINE ADJUSTMENT

33.667.300 Regulations

A request for a Property Line Adjustment will be approved if all of the following are met:

A. Properties. For purposes of this subsection, the site of a Property Line Adjustment is the two properties affected by the relocation of the common property line.

1. The Property Line Adjustment will not cause either property, or development on either property, to move out of conformance with any of the regulations of this Title, including those in Chapters 33.605 through 33.615 except as follows:
 - a. If a property or development is already out of conformance with a regulation in this Title, the Property Line Adjustment will not cause the property or development to move further out of conformance with the regulation;
 - b. If both properties are already out of conformance with maximum lot area standards, they are exempt from the maximum lot area standard; and
 - c. If one property is already out of conformance with maximum lot area standards, it is exempt from the maximum lot area standard.
2. The Property Line Adjustment will not result in the creation of a flag lot;
3. The Property Line Adjustment will not result in the creation of street frontage for a land-locked property;
4. If any portion of the site is within an environmental overlay zone, the Property Line Adjustment may not create a situation where either property cannot meet the development standards of Section 33.430.140, General Development Standards. If this requirement cannot be met, an Environmental Review as described in Sections 33.430.210 through 33.430.280 must be completed before the Property Line Adjustment is requested; and
5. The Property Line Adjustment will not result in the creation of a lot that is in more than one base zone.

B. and C. [No change.]

Land Division Items: Lot Consolidation

“Top Ten” Item #A6.4 - Lot consolidation

DISCUSSION AND COMMENTARY

The land division process is used to create lot lines—to divide land into new lots. Once those lot lines are created, they may be moved through a Property Line Adjustment (PLA). A PLA is an administrative, nondiscretionary process. Lot lines may be moved through a PLA only if all of the requirements of the Zoning Code continue to be met.

Currently, there is no process for removing lot lines, other than a land division. Requiring these lot consolidations to go through a land division process is onerous and expensive, for both staff and applicants. If all requirements of the Zoning Code continue to be met, a much simpler, faster, and less expensive process is appropriate. The Planning Commission recommends a new chapter to do this.

It should be noted that the process recommended here is different from the process used by Multnomah County to consolidate lots under one tax account. Such consolidations are handled by the County and not reviewed by the City. A tax consolidation does not affect the underlying, platted lot lines. The lot consolidation process recommended here does not replace the tax consolidation process, but provides a mechanism to change underlying, platted lot lines.

Land Division Items: Lot Consolidation, Cont.

RECOMMENDED CODE LANGUAGE

CHAPTER 33.675 **LOT CONSOLIDATION**

Sections:

- 33.675.010 Purpose
- 33.675.050 When These Regulations Apply
- 33.675.100 Review Procedure
- 33.670.200 Application Requirements
- 33.675.300 Standards
- 33.675.400 Recording an Approval

33.675.010 Purpose

This chapter states the procedures and regulations for removing lot lines within a site to create one lot. The regulations ensure that lot consolidation does not circumvent other requirements of this Title, and that lots and sites continue to meet conditions of land use approvals.

33.675.050 When These Regulations Apply

A lot consolidation may be used to remove lot lines within a site. The applicant may also choose to remove such lot lines through a land division. A lot consolidation may be required by other provisions of this Title.

33.675.010 Purpose

This chapter states the procedures and regulations for removing lot lines within a site to create one lot. The regulations ensure that lot consolidation does not circumvent other requirements of this Title, and that lots and sites continue to meet conditions of land use approvals. The lot consolidation process described in this chapter is different from (and does not replace) the process used by the county to consolidate lots under one tax account. A tax consolidation does not affect the underlying platted lots. A lot consolidation results in a new plat for the consolidation site.

33.675.050 When These Regulations Apply

A lot consolidation may be used to remove lot lines within a site. The applicant may also choose to remove lot lines through a land division.

33.675.100 Review Procedure

- A. Generally.** Lot consolidations are reviewed through Type I procedure.
- B. Sites in PUDs or PDs.** If any portion of the site is within a Planned Unit Development (PUD) or Planned Development (PD), an amendment to the PUD or PD is also required. The amendment to the PUD or PD must be reviewed concurrently with the lot consolidation.

33.670.200 Application Requirements

An application for a lot consolidation must contain the following:

- A. Application form.** Two copies of the completed application form bearing an accurate legal description, tax account numbers and location of the property. The application must include the name, address, telephone number, and original signatures of the applicant and all property owners and the nature of the applicant's interest in the property.

Land Division Items: Lot Consolidation, Cont.

COMMENTARY, CONT.

Land Division Items: Lot Consolidation, Cont.

RECOMMENDED CODE LANGUAGE, CONT.

B. Surveys.

1. A survey of the site prepared, stamped and signed by a registered land surveyor showing all existing property lines and structures. The survey may not be larger than 18 inches by 24 inches in size. The survey must be drawn to a scale no less than 1 inch = 200 feet, and no greater than 1 inch = 20 feet;
2. If the site is part of an existing plat, a copy of the recorded plat; and
3. A Final Plat Survey showing the single consolidated lot. Copies of the final plat survey must be drawn to scale and of a format, material, and number acceptable to the Director of BDS. The following statement must be on the Final Plat Survey: "This plat is subject to the conditions of the City of Portland Case File No. LUR..."

C. Other.

1. Legal descriptions. Two copies of the legal descriptions for each of the lots or tracts within the lot Consolidation site. The legal descriptions must be prepared and signed by a registered land surveyor; and
2. Title reports. A current title report issued by a title insurance company verifying ownership and detailing any deed restrictions; and
3. Narrative. A written narrative explaining how the regulations and approval criteria of this Chapter have been met;
4. Fees. The applicable filing fees.

33.675.300 Standards

A lot consolidation must meet the following standards:

A. Lots. Consolidated lots must meet the standards of Chapters 33.605 through 33.615, with the following exceptions:

1. Lot dimension standards.
 - a. Minimum lot area. If the area of the entire lot consolidation site is less than that required of new lots, the lot consolidation site is exempt from minimum lot area requirements;
 - b. Maximum lot area. If any of the lots within the lot consolidation site are larger than the maximum lot area allowed, the lot consolidation site is exempt from maximum lot area requirements;
 - c. Minimum lot width. If the width of the entire lot consolidation site is less than that required of new lots, the lot consolidation site is exempt from minimum lot width requirements;

Land Division Items: Lot Consolidation, Cont.

COMMENTARY, CONT.

33.730.060 Application Requirements

The code currently requires that final plats include a statement that additional City review is required for any changes made to the plat after BDS signs off. The County Surveyor is subject to limitations about what can be placed on a final plat, and will not accept a final plat with this statement on it. BDS is currently not enforcing this code requirement in order to allow final plats to be approved when they reach the County Surveyor.

Land Division Items: Lot Consolidation, Cont.

RECOMMENDED CODE LANGUAGE, CONT.

- d. Minimum front lot line. If the front lot line of the entire lot consolidation site is less than that required of new lots, the lot consolidation site is exempt from minimum front lot line requirements;
- e. Minimum lot depth. If the depth of the entire lot consolidation site is less than that required of new lots, the lot consolidation site is exempt from minimum lot depth requirements.
2. Maximum density. If the consolidation brings the lot consolidation site closer to conformance with maximum density requirements, the consolidation does not have to meet maximum density requirements;
3. Lots without street frontage. If the lot consolidation consolidates lots that do not have street frontage with a lot that has street frontage, the consolidation does not have to meet minimum density and maximum lot area requirements;
4. Through lots. If any of the existing lots within the lot consolidation site are through lots with at least one front lot line abutting an arterial street, then the consolidated lot may be a through lot;
5. Split zoning. If any of the existing lots within the lot consolidation site are in more than one base zone, then the consolidated lot may be in more than one base zone.

B. Conditions of land use approvals. Conditions of land use approvals continue to apply, and must be met.

33.675.400 Recording an Approval

The Final Plat survey, legal descriptions, and the deed for the consolidated lot must be recorded with the County Recorder and Surveyor within 90 days of approval by the Director of BDS.

AMEND CHAPTER 33.730, QUASI-JUDICIAL PROCEDURES

33.730.060 Application Requirements

D. Required information for land divisions. [No change.]

1. and 2. No change.]
3. Final Plat. An application for a Final Plat must include all of the following:
 - a. Final Plat survey. Copies of a Final Plat survey drawn to scale and of a format, material, and number acceptable to the Director of OPDR. The following information must be on the Final Plat survey:
 - The statements:
 - “This plat is subject to the conditions of City of Portland Case File No. LUR...”; and
 - “~~Additional City review is required for any changes made to this plat after the signature date of the Office of Planning and Development Review representative. Such changes may require an additional review procedure;~~ and
 - Easements and tracts, including their purpose;
 - b. through h. [No change.]

Land Division Items: Review Thresholds for Land Divisions in Multi-Dwelling Zones

“Top Ten” Item #A6.7, Review of Land Divisions in Multi-Dwelling Zones

DISCUSSION AND COMMENTARY

33.660.110 Review Procedures

This amendment would replace “dwelling units” with “lots” as one of the factors looked at in determining which procedure is assigned to a proposed land division. This issue had much discussion during the Land Division Code Rewrite Project. With experience in applying the regulation (it has been in effect since July, 2002) the Bureau of Development Services finds that in the Multi-dwelling zones, the use of “dwelling units” leads to more Type III reviews than is warranted by the relative simplicity of the regulatory issues. Type III reviews are time-consuming and expensive and are intended to be used for situations with the most complexity or potential for unanticipated impacts.

The differentiation between lots and units has little consequence in the single dwelling zones because the number of lots is most often the same as the number of units (and in fact, the code currently equates the two: “In the RF-R2.5 zones, the number of dwelling units is the number of lots being proposed”). However, in the Multi-dwelling zones, the number of units is usually more than the number of lots. The use of “lots” as the distinguishing characteristic is being recommended because consideration of the number of lots is more closely correlated to the complexity of the land division issues on a given application, than is consideration of the number of dwelling units.

In the “new” code the thresholds for review are based on the minimum number of units required. A Type III review is required if there is a minimum of eleven or more dwelling units required. In a single-dwelling zone, if there are eleven or more dwelling units required, there is typically a street, because each of those units has to have frontage on a street. A Type III process can make sense in this case, because a new street serving that many dwellings/lots is fairly complex and has the potential for unanticipated impacts. However, in a multi-dwelling zone, the number of units is not reflective of the number of lots or if there is a street, since there can be multiple dwelling units on a single lot. Consider for example, a two lot partition, with a minimum density of six dwellings on each lot, with each lot fronting on an existing street. In this case, the “new” code also requires a Type III review even though the land division considerations are relatively simple.

A land division review is only considering issues related to the creation of lots and streets, such as infrastructure services for the proposed lots, proposed lot dimensions, the location of any proposed streets, etc. The design of future development is not part of the land division review.

Land Division Items: Review Thresholds for Land Divisions in Multi-Dwelling Zones

RECOMMENDED CODE LANGUAGE

AMEND CHAPTER 33.660, REVIEW OF LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

Review of Preliminary Plan

33.660.110 Review Procedures

Procedures for review of Preliminary Plans vary with the type of land division proposal being reviewed. ~~For the purposes of this section, the number of dwelling units will be calculated as follows: In the RF R2.5 and IR zones, the number of dwelling units is the number of lots being proposed. In the R3-RX zones, the number of dwelling units is the minimum required density of the site.~~

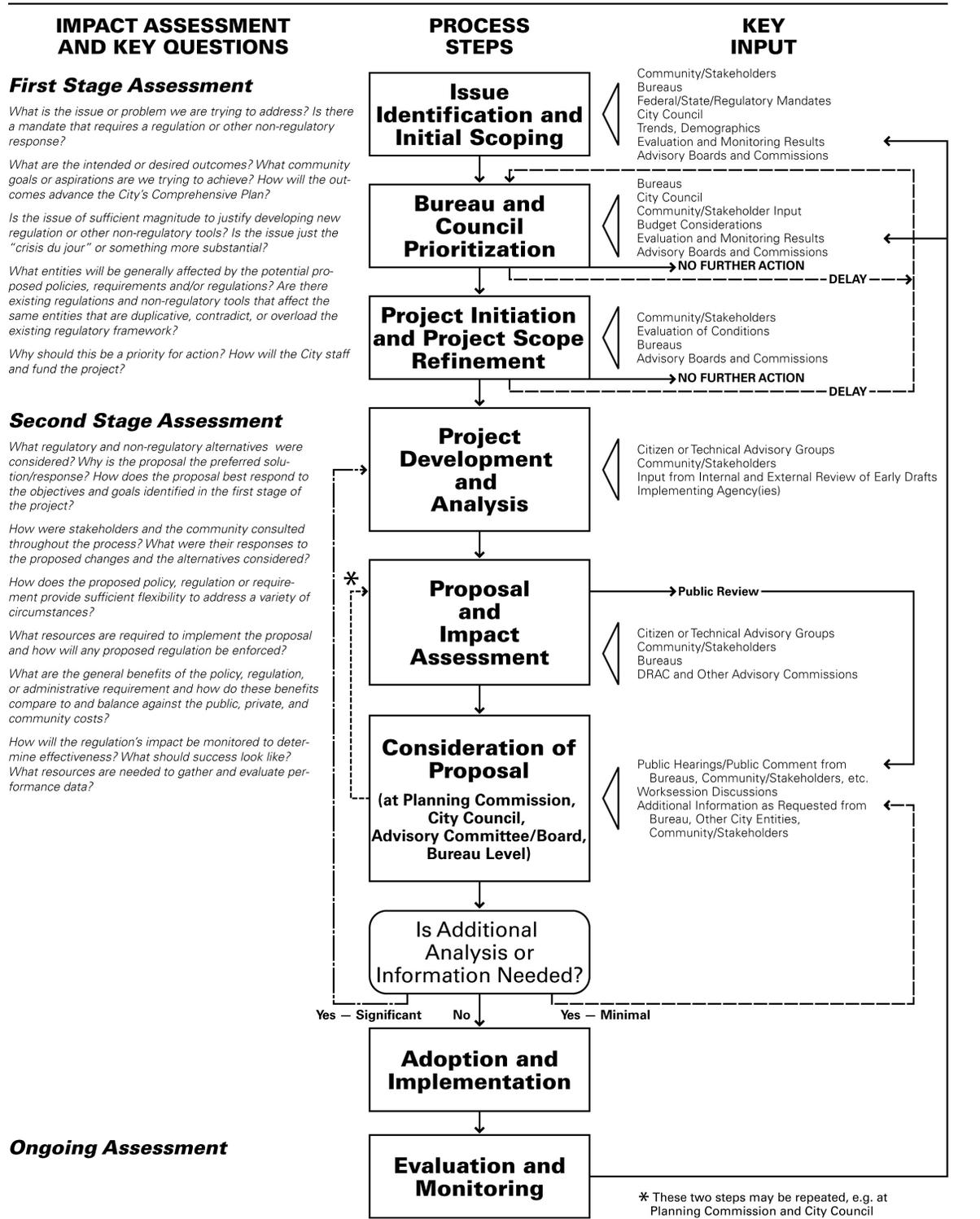
- A. Type III.** Land divisions that include any of the following elements are processed through a Type III procedure:
1. Eleven or more ~~dwelling lots~~ units, ~~not including accessory dwelling units~~;
 2. Four or more lots ~~dwelling units~~, ~~not including accessory dwelling units~~, where any portion of the lots, utilities, or services are proposed within a Potential Landslide Hazard Area;
 3. Environmental review;
 4. A phased land division, as described in Chapter 33.633, Phased and Staged Plans;
 5. Any portion of the site is in an Open Space zone.
- B. Type IIx.** Except as provided in Subsection A, above, land division proposals that include any of the following elements are processed through a Type IIx procedure:
1. Four to ten lots ~~dwelling units~~, ~~not including accessory dwelling units~~;
 2. Two or three lots ~~dwelling units~~, ~~not including accessory dwelling units~~, where any portion of the lots, utilities, or services are proposed within a Potential Landslide Hazard Area;
 3. Lots, utilities, or services are proposed within a Flood Hazard Area; or
 4. The proposal includes a concurrent land use review assigned to a Type I, Type II, or Type IIx procedure except environmental review. If environmental review is required, then the application is processed through a Type III procedure.
- C. Type I.** All land divisions not assigned to a Type IIx or Type III, are processed through a Type I procedure.

ATTACHMENTS

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Attachment 1: Flowchart of Model Process for Impact Assessment

Model Process for Consideration and Assessment of Land Use and Development Actions



Attachment 2: Item #16—"a" overlay

Bureau/Staff Lead: BOP/Betsy Ames	Code Item/Title: Alternative Design Density (a) Overlay Zone--33.405	Top Ten 2002: #16
Description of the Problem With the Code:		
<p>Much of what is in this overlay either conflicts with or duplicates what is elsewhere in the Code, such as the accessory dwelling unit provisions, and the regulations are generally confusing and some provisions are little used. In addition, the home occupancy requirements of the "a" overlay are difficult to enforce and can create problems for future property sales. As part of consideration of this item, staff would evaluate the various provisions and the mapping of the "a" overlay to determine whether all or part of the overlay should be deleted, modified, or incorporated into other sections of the Code, and whether the mapping of the "a" overlay should be revised or removed in areas it was applied through the Albina Community Plan, the Outer Southeast Plan, and the Sellwood Neighborhood Plan.</p>		
Possible Solution or Concept:		
<ul style="list-style-type: none"> • Some provisions could be considered for elimination (e.g. Bonus Density for Design Review). • Provisions which are often used could be considered for modification for inclusion in the Base zones (e.g. 33.405.060 Alternative Development Options in the R2 and R2.5 zones) • Some provisions should be evaluated for duplication with the other provisions in the Zoning Code and modified and/or eliminated from the "a" overlay (e.g. Regulations for Accessory Dwelling Units) • Mapping of the "a" overlay could be modified as appropriate. • If we change any of the "a" overlay, we will also need to create a method to establish the legal non-conforming status of properties that have taken advantage of the "a" overlay. 		
Desired Outcome of Change:		
<p>Increased ease of implementation of the Zoning Code by elimination of redundancies and conflicts. Removal of provisions that result in density of infill development that is incompatible with the surrounding residential development.</p>		
Process and Timeline for Changing the Code:		
<p>This would require a revision of Title 33. A full legislative review process is required, including allowing public review of a draft proposal; hearing, review and recommendation by the Planning Commission, with final action by the City Council. Approximate timeline: 9-12 months.</p>		
Resources needed to process the code change: BOP estimates that this code change will require .6 FTE to process, due to higher than usual public notification requirements.		
Who are the Stakeholders interested in this issue and how will they be involved in the code change process?		
<p><u>Interested Stakeholders:</u> Neighborhood Associations/Residents--would likely support removal of some of the provisions (such as bonus density) and advocate for keeping others (such as owner occupancy provisions and design requirements)</p> <p>Property owners/developers--would likely support incorporating 33.405.070 (alternative Dev. Options in R2 and R2.5) into base zones since they provide increased flexibility, would likely support eliminating conflicts between ADU provisions, would likely be concerned with elimination of additional density provisions</p> <p>OPDR staff--would advocate for eliminating the "a" overlay to reduce complexity and conflicts in the code</p> <p><u>Public Involvement:</u> Amendments to the Zoning Code are processed through a legislative procedure, as specified in Chapter 33.740 of the Portland Zoning Code. At a minimum, this procedure involves public hearings before the Planning Commission and City Council, with public notice requirements.</p>		

Attachment 3: Item #37—Exclude eaves from building coverage

Bureau/Staff Lead: BOP/Betsy Ames	Code Item Title: Definition of Building Coverage (Eaves) -- 33.910.030	Top Ten 2002: #37
Description of the Problem With the Code:		
<p>The maximum building coverage limits in the Zoning Code are intended to regulate the overall bulk of structures on a site. The term “building coverage” is defined in Chapter 33.910 (Definitions) generally as the area that is covered by buildings or other roofed structures, including eaves. In order to maximize the footprint of a building, it is often necessary for the builder/architect to eliminate or substantially reduce eave overhangs in order to conform with the maximum building. This adversely impacts the design and appearance of the structure. The alternative is to apply for an adjustment review to allow the eave overhang.</p>		
Possible Solution or Concept:		
<p>Modify the definition of building coverage in Chapter 33.910 to eliminate reference to eaves, or at least to eaves that extend less than a specified distance from the building wall. Eaves do not typically substantially add to the bulk of development on a site, and with current stormwater management requirements, do not increase the amount of stormwater flowing off a site.</p>		
Desired Outcome of Change:		
<ol style="list-style-type: none"> 1. Allows greater flexibility in the design and size of roofed structures on a site without adversely impacting the legislative intent of the building coverage regulation. 2. Enhances the appearance and design of roofed structures. 3. Reduces the large number of adjustment applications that applicants currently seek when eave overhangs result in development exceeding the maximum building coverage standard. 		
Process and Timeline for Changing the Code:		
<p>This would require a revision of Title 33. A full legislative review process is required, including allowing public review of a draft proposal; hearing, review and recommendation by the Planning Commission, with final action by the City Council. Approximate timeline: 0-6 months</p>		
Resources needed to process the code change:		
<p>BOP estimates that this code change will require .15 - .2 FTE to process.</p>		
<p>Who are the Stakeholders most likely to be interested in this issue and how will they be involved in the code change process?</p> <p><u>Interested Stakeholders</u></p> <p>Principal stakeholders who will benefit from this amendment include homeowners; homebuilders; residential, commercial and industrial property-owners; as well as architects, land use consultants and engineers who submit building plans. The amendment will facilitate and streamline the development review process, while still ensuring the intent of the development standard is met. The amendment is also a timesaver for OPDR staff by reducing the large number of adjustment applications that must be processed when the eave overhang increases building coverage above the allowed maximum.</p> <p><u>Public Involvement</u></p> <p><i>Amendments to the Zoning Code are processed through a legislative procedure, as specified in Chapter 33.740 of the Portland Zoning Code. This procedure at minimum involves public hearings before the Planning Commission and City Council, with public notice requirements.</i></p>		

Attachment 4:

Bureau/Staff Lead: BOP/Betsy Ames	Code Item/Title: Various Items in the Land Division Code--Title 33	Top Ten 2002: #A6.1--A6.6
Description of the Problem With the Code:		
<p>#A6.1. Definition of "Site": The definition of site, as it applies to land divisions needs clarification. A land division of one lot requires inclusion of all contiguous lots under the same ownership. All the ownership is subject to the land division regulations. The definition needs further refinement to more directly address the initial concerns that resulted in changes to the definition through the Land Division Rewrite. The idea behind this new site definition is to prevent a piecemeal approach to land divisions that often happens in residential zones. In the past, applicants owning a group of abutting lots sometimes chose to do several <u>separate</u> land division applications in an attempt to circumvent the City's requirements (such as having to create a street, or having to go through a Type III process if two flag lots are proposed, or Environmental Overlay requirements, etc.). The requirement that the whole ownership be included in the land division is problematic for large landowners, because the requirements (such as tree preservation, seeps and springs, surveying the entire boundary, etc.) apply to the whole ownership, not just the portion of their ownership that they intend to divide. The challenge is to identify the situations in which it is important to be able to consider the whole ownership when evaluating the lot layout.</p> <p>#A6.2. Lot Dimensions:</p> <ul style="list-style-type: none"> a. Duplexes in Multi-Dwelling Zones: There are no lot dimension standards for duplexes in Multi-Dwelling zones. b. Nonconforming Uses: There are no lot dimension standards for nonconforming uses in R2.5 and Multi-Dwelling zones. c. Property Line Adjustments: Dimension standards apply to land divisions, however, a Property Line Adjustment is not a land division, so it's not clear which standards apply. d. Lot Validation Dimensions vs. Regular Lot Dimensions: Valid lot standards in R20, R10, and R7 smaller than regular lot standards, making lots undevelopable even when meeting minimum lot dimension standards. e. Front Lot line in Commercial Zones: 16' minimum front lot line required for attached house lots; 25' minimum front lot line required for all other lots. Development on lots created with 16' front lot line therefore limited to attached houses, even though they are in a Commercial Zone. Prevents live/work situations. f. Depth of R2 Lots: The minimum lot depth for R2 lots increased from 80' to 100', making many sites nonconforming and requiring Adjustments for division of these lots. Most blocks are 200 feet wide, so a 100-foot lot depth often precludes having an alley tract. Alley tracts could be created, but they would have to get an Adjustment to the minimum lot depth, another review and expense, (= disincentive). <p>#A6.3. Maximum Building Coverage (Table 110-6): Changes to the maximum building coverage allowance in Single-Dwelling zones resulted in a reduction in allowed building coverage on large lots when compared to what was previously allowed. Re-examine the allowed building coverages on larger lots for consistency with Council intent. Also, the calculations in Table 110-6 are complicated and could be revised for easier implementation.</p> <p>#A6.4. Lot Consolidation: A replat process is needed for consolidating lots. Requiring an applicant to go through the land division process is excessive for a situation where lots simply need to be consolidated and old lot lines eliminated. Subjecting such situations to the land division process is also problematic given the new definition of site, and the new standards for maximum lot size and minimum density.</p> <p>#A6.5. Conditional Uses in Single-Dwelling Zones: An existing or proposed conditional use (such as a religious institution or cemetery) wanting to split off a portion of its site runs into problems with: a) the maximum lot size standard; b) the minimum density requirement (this is especially problematic because Adjustments to minimum density are prohibited).</p>		

#A6.6. Landslide Hazard Areas:

Land divisions in mapped Potential Landslide Hazard Area must go through a Type IIx or Type III review. This mapped area is very general and broad, and includes some flat sites. A Type IIx or Type III review procedure is excessive for sites in this mapped area that are flat. A Pre-application and the Neighborhood Contact requirement are triggered by Type IIx and Type III reviews.

#A6.7. Land Divisions in Multi-Dwelling Zones.

Currently, land divisions in multi-dwelling zones require a complex and expensive Type III review, even in situations where only very few lots are involved and no development is currently proposed.

Possible Solutions or Concepts:

#A6.1:

It might make sense to only apply this requirement to Residential Zones. Other considerations, even in residential zones could include:

- a) if the abutting lots are already developed to their maximum density,
- b) whether the site is in a Flood Hazard area, Landslide Hazard Area or the Environmental Zone, in which case it would be important to be able to consider all alternative arrangements of lots.

#A6.2:

- a. Add lot dimension standards for duplexes in Multi-Dwelling zones.
- b. Add lot dimension standards for nonconforming uses in R2.5 and Multi-Dwelling zones (a lot size that would be large enough to not preclude development of the types intended in the zone, once the nonconforming use goes away and the site is redeveloped).
- c. Clarify which lot size standards apply to Property Line Adjustments
- d. Clarify which standards of Title 33 apply to Validated Lots
- e. One solution would be to have a 16’ front lot line for all attached buildings in Commercial Zones, not just “attached houses”. Need to allow narrow attached commercial development as well as live/work situations in attached buildings in Commercial Zones.
- f. Reduce minimum lot depth for R2 lots.

#A6.3:

Look at examples, comparing what resulting from old requirement to new requirement, and identify problem areas. Revise table as needed to accomplish Council’s intent.

#A6.4:

Establish a simple, fast process for replatting lots. It could be a hybrid of the Property Line Adjustment process and the land division process. Per state law, it would need to be at least a Type I review. There are several typical scenarios that would need to be addressed with some variation in the process and standards. For example, a street vacation that results in landlocking a lot would require a replat to eliminate the landlocked lot and consolidate with other lots that have street frontage. There are several other typical scenarios that would benefit from a replat process. These would need to be considered individually, so that appropriate issues are considered and other extraneous requirements are eliminated.

#A6.5:

Allow exception to minimum density and maximum lot size for the portion of the site that would continue to contain the existing or proposed Conditional Uses/Institutional Uses. This would eliminate the need for more adjustment reviews.

#A6.6:

The challenge is how to separate those sites that need a higher level of review and those that don’t. Options include looking at percent slope of the site and within a certain distance of the site, and if there are no slopes exceeding a (yet to be defined) percentage, allow a Type I review. Alternatively, if the process is not changed to a Type I, and remains a Type IIx, eliminate the pre-application requirement.

#A6.7:

Review whether a Type IIx review might be more appropriate than the current Type III review required for multi-dwelling zone land divisions with 11 or more units.

Desired Outcome of Change:

Ensure objectives of the Land Division Code Rewrite project are met without unintended consequences, such as making certain lots undevelopable, even though they meet minimum lot standards; preventing desirable live/work situations; creating non-conforming sites that require additional adjustment reviews; allowing less building coverage on larger lots than before; unnecessarily encumbering re-platting for the purpose of lot consolidation; and requiring review for landslide hazards on flat site. Ease implementation of the Code.

Process and Timeline for Changing the Code:

This would require a revision of Title 33. A full legislative review process is required, including allowing public review of a draft proposal; hearing, review and recommendation by the Planning Commission, with final action by the City Council. Approximate timeline for entire #A6 Land Division package: 6-9 months.

Resources needed to process the code change:

Estimate requiring .6 FTE for Planning and .2 FTE for OPDR to process the entire A6 package of code changes.

Who are the Stakeholders most likely to be interested in this issue and how will they be involved in the code change process?

Interested Stakeholders:

Large Industrial and Commercial land owners--Likely supportive of clarification of definitions of site (#A6.1), of proposed re-platting/lot consolidation process (#A6.4); and proposed Type Ix for multi-dwelling land divisions (#A6.7)

Developers -- Likely supportive of clarification of site (#A6.1), of lot dimensions (#A6.2), of simplifying and potentially increasing maximum building coverage (#A6.3), of proposed re-platting/lot consolidation process (#A6.4), and proposed Type I review for selected sites in Landslide Hazard Areas (#A6.6), and proposed Type Ix for multi-dwelling land divisions (#A6.7)

Neighborhood representatives -- Likely supportive of clarification of lot dimensions (#A6.2); would likely advocate for required Neighborhood Contact regarding sites within landslide hazard areas (#A6.6); would be interested in outcomes of maximum building coverage which was subject of testimony during LDCR (#A6.3); may object to proposed Type Ix review for land divisions in multi-dwelling zones.

Homebuilders and homeowners - Likely supportive of clarification of maximum building coverage (#A6.3); and Type Ix for multi-dwelling land divisions (#A6.7)

Owners of affected institutions (religious institutions or cemeteries) — Likely supportive of proposed change to Conditional uses in Single Dwelling Zone (#A6.5)

Public Involvement: Amendments to the Zoning Code are processed through a legislative procedure, as specified in Chapter 33.740 of the Portland Zoning Code. At a minimum, this procedure involves public hearings before the Planning Commission and City Council, with public notice requirements.

Attachment 5: Item #A37—Nonconforming Situation Review

Bureau/Staff Lead: BOP/Betsy Ames	Code Item/Title: Nonconforming Situation Review Criteria -- 33.258.080	Top Ten 2002: #A37
Description of the Problem With the Code:		
<p>1. Nonconforming uses are created when the zoning designation on a site is changed, or when zoning regulations change. When a use becomes nonconforming, changes to the use are allowed only if approved through a Nonconforming Situation Review. One of the approval criteria associated with this land use review requires the applicant to demonstrate that with mitigation measures the proposed change will result in a net decrease in any detrimental impacts the existing use has on the surrounding area. In addressing this criterion, the applicant must address such factors as hours of operation, vehicle trips, noise, dust and odors. Even if the proposal results in the nonconforming use continuing to operate in the same manner as it has in the past, with no increased impacts on the surrounding neighborhood, the proposal cannot be approved as there is not a demonstrated decrease in impacts. This approval criterion is inconsistent with the purpose of the nonconforming regulations, which in part is intended to allow nonconforming uses to continue and to ensure that zoning regulations will not cause unnecessary burdens. The burden of meeting these approval criteria is great, particularly given that the zone change that made the use nonconforming was often beyond the control of the applicant.</p>		
Possible Solution or Concept:		
<p>1. Nonconforming Situation Review. Amend the existing criterion so that applicant must demonstrate that with mitigation measures the proposed change will not result in a net increase in any detrimental impacts on the surrounding area.</p>		
Desired Outcome of Change:		
<p>1. Nonconforming Situation Review.</p> <ol style="list-style-type: none"> a. Reduces the burden of maintaining and operating a nonconforming use. b. Encourages property-owners and tenants to make the necessary investment in maintaining an existing nonconforming use, while still mitigating for any detrimental impacts on the surrounding area. 		
Process and Timeline for Changing the Code:		
<p>This would require a revision of Title 33. A full legislative review process is required, including allowing public review of a draft proposal; hearing, review and recommendation by the Planning Commission, with final action by the City Council. Approximate timeline: 6--9 months</p>		
Resources needed to process the code change:		
BOP estimates .1 FTE will be required to process this code change.		
Who are the Stakeholders interested in this issue and how will they be involved in the code change process?		
<u>Interested Stakeholders</u>		
<p>1. Nonconforming Situation Review. Principal stakeholders who will benefit from this amendment include owners and tenants of nonconforming uses (both commercial and residential). Surrounding properties owners and tenants may also benefit from increased investment in and resulting physical improvements to nonconforming uses.</p>		
<u>Public Involvement</u>		
<p><i>Amendments to the Zoning Code are processed through a legislative procedure, as specified in Chapter 33.740 of the Portland Zoning Code. This procedure at minimum involves public hearings before the Planning Commission and City Council, with public notice requirements.</i></p>		

Attachment 6: Item #10—Reduce minimum caliper of trees

Bureau/Staff Lead: BOP/Betsy Ames	Code Item/Title: Plant Materials: Reduce the minimum required caliper of trees -- 33.248.030.C	Top Ten 2002: #10
Description of the Problem With the Code:		
Zoning Code specifies quantity and size of trees and other planting materials. Providing alternative plant materials often requires a discretionary land use review. Most problematic is the minimum size required for trees. Many stakeholders have reported that larger trees are not available on the Portland market.		
Possible Solution or Concept:		
Immediate reduction of the size requirement for trees to a size readily available in the Portland area. Provide flexibility to the Director of OPDR to allow alternate plant materials		
Desired Outcome of Change:		
Allow easier compliance with tree planting standards for small business and other developers. Allow flexibility in compliance in order to be responsive changes in plant materials available in the market.		
Process and Timeline for Changing the Code:		
This would be a revision to Title 33. Therefore a full legislative review process is required including allowing public review of a draft proposal; hearing, review and recommendation by the Planning Commission with final action by City Council. Processing time would be approximately 6 months.		
Resources needed to process the code change:		
BOP recommends taking this item forward as part of a package of proposed amendments to Title 33, to make the most efficient use of limited staff and other resources. Estimate this code change will require .1 FTE to process.		
Who are the Stakeholders likely to be most interested in this issue and how will they be involved in the code change process?		
<p><u>Interested Stakeholders:</u></p> <ol style="list-style-type: none"> 1. City Forester/BES/ODPR/PDC--involved in proposal development, review 2. Urban Forest Commission--review/comment on proposal 3. Environmental advocates--review/comment on proposal 4. Neighborhood land use advocates--review/comments 5. Developers, small businesses, small business advocates--review /comment <p><u>Public Involvement:</u> Amendments to the Zoning Code are processed through a legislative procedure, as specified in Chapter 33.740 of the Portland Zoning Code. At a minimum, this procedure involves public hearings before the Planning Commission and City Council, with public notice requirements.</p>		



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