BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

**ORDINANCE NO. 1010**

Amending County Land Use Code, Plans and Maps to Adopt Portland's Recent Land Use Code, Plan and Map Revisions In Compliance with Metro's Functional Plan and Declaring an Emergency

**The Multnomah County Board of Commissioners Finds:**

a. The Board of County Commissioners (Board) adopted Resolution A in 1983 which directed the County services towards rural services rather than urban.

b. In 1996, Metro adopted the Functional Plan for the region, mandating that jurisdictions comply with the goals and policies adopted by the Metro Council.

c. In 1998, the County and the City of Portland (City) amended the Urban Planning Area Agreement to include an agreement that the City would provide planning services to achieve compliance with the Functional Plan for those areas outside the City limits, but within the Urban Growth Boundary and Portland's Urban Services Boundary.

d. It is impracticable to have the County Planning Commission conduct hearings and make recommendations on land use legislative actions pursuant to MCC 37.0710, within unincorporated areas inside the Urban Growth Boundary for which the City provides urban planning and permitting services. The Board intends to exempt these areas from the requirements of MCC 37.0710, and will instead consider the recommendations of the Portland Planning Commission and City Council when legislative matters for these areas are brought before the Board for action as required by intergovernmental agreement (County Contract #4600002792) (IGA).

e. On January 23, 2003, the Board amended County land use codes, plans and maps to adopt the City's land use codes, plans and map amendments in compliance with Metro's Functional Plan by Ordinance 1005.

f. Since the adoption of Ordinance 1005, the City's Planning Commission recommended land use code, plan and map amendments to the City Council through duly noticed public hearings.

g. The City notified affected County property owners as required by the IGA.

h. The City Council adopted the land use code, plan and map amendments, set out in Section 1 below and attached as Exhibits 1 through 3. The IGA requires that the County adopt these amendments for the City planning and zoning administration within the affected areas.

**Multnomah County Ordains as follows:**

**Section 1.** The County Comprehensive Framework Plan, community plans, rural area plans, sectional zoning maps and land use code chapters are amended to include the City land use code, plan and map amendments, attached as Exhibits 1 through 3 and effective on the same date as the respective Portland ordinance:

| Exhibit No. | Ordinance | Effective Date |
|---|---|---|
| 1 | Ordinance to Increase Threshold for Upgrades to Nonconforming Development (177368 as amended) | 5/17/2003 |
| 2 | Planning Commission Report and Recommendation on the Regulatory Improvement Project: Thresholds for Upgrading Nonconforming Development, dated March 5, 2003 – Exhibit A (including commentary and amendment to Title 33, Planning and Zoning, as shown in Exhibit A) | 5/17/2003 |
| 3 | Memorandum from Cary Pinard dated March 25, 2003, regarding Thresholds for Nonconforming Development – Possible Amendments – Exhibit B | 5/17/2003 |

**Section 2.** In accordance with ORS 215.427(3), the changes resulting from Sections 1 of this ordinance shall not apply to any decision on an application that is submitted before the applicable effective date of this ordinance and that is made complete prior to the applicable effective date of this ordinance or within 180 days of the initial submission of the application.

**Section 3.** In accordance with ORS 92.040(2), for any subdivisions for which the initial application is submitted before the applicable effective date of this ordinance, the subdivision application and any subsequent application for construction shall be governed by the County's land use regulations in effect as of the date the subdivision application is first submitted.

**Section 4.** Any future amendments to the legislative matters listed in Section 1 above, are exempt from the requirements of MCC 37.0710. The Board acknowledges, authorizes and agrees that the Portland Planning Commission will act instead of the Multnomah Planning Commission in the subject unincorporated areas using the City's own procedures, to include notice to and participation by County citizens. The Board

will consider the recommendations of the Portland Planning Commission when legislative matters for County unincorporated areas are before the Board for action.

**Section 5.** An emergency is declared in that it is necessary for the health, safety and general welfare of the people of Multnomah County for this ordinance to take effect concurrent with the City code, plan and map amendments. Under section 5.50 of the Charter of Multnomah County, this ordinance will take effect in accordance with Section 1.

FIRST READING AND ADOPTION: May 15, 2003

BOARD OF COUNTY COMMISSIONERS,
FOR MULTNOMAH COUNTY, OREGON

Diane M. Linn, Chair

REVIEWED:

Agnes Sowle, Acting County Attorney
For Multnomah County, Oregon

By Sandra N. Duffy
Sandra N. Duffy, Assistant County Attorney

## EXHIBIT LIST FOR ORDINANCE

(1) Ordinance to Increase Threshold for Upgrades to Nonconforming Development (177368 as amended)

(2) Planning Commission Report and Recommendation on the Regulatory Improvement Project: Thresholds for Upgrading Nonconforming Development, dated March 5, 2003 – Exhibit A (including commentary and amendment to Title 33, Planning and Zoning, as shown in Exhibit A)

(3) Memorandum from Cary Pinard dated March 25, 2003, regarding Thresholds for Nonconforming Development – Possible Amendments – Exhibit B

Prior to adoption, this information is available electronically or for viewing at the Multnomah County Board of Commissioners and Agenda website (**www.co.multnomah.or.us/cc/WeeklyAgendaPacket/**). To obtain the adopted ordinance and exhibits electronically, please contact the Board Clerk at 503-988-3277. These documents may also be purchased on CD-Rom from the Land Use and Transportation Program. Contact the Planning Program at 503-988-3043 for further information.

**Ordinance No.** 177368 As Amended

Increase the threshold for upgrades to nonconforming development and increase consistency in the code (Ordinance; amend Title 33)

The City of Portland Ordains:

**Section 1.** The Council finds:

**General Findings**

1. On June 26th, 2002, the City Council adopted Resolution 36080, which authorized the Mayor to develop a process to streamline and update the City's building and land regulations and to improve regulatory-related procedures and customer services.

2. This process, the Regulatory Improvement Work Plan, includes several phases, and a number of projects assigned to several bureaus.

3. On August 14, 2002, Council adopted the FY 2002-2003 Initial Regulatory Improvement Work Plan.

4. Council directed that the first project under the Regulatory Improvement Work Plan address the dollar thresholds for upgrades to nonconforming development. The thresholds in the Zoning Code were last increased in 1997.

5. They also asked the Planning Bureau to consider related changes to several chapters to increase consistency within the Zoning Code.

6. Council further directed the Planning Bureau to develop a mechanism to automatically adjust the thresholds for inflation.

7. On December 27, 2002, notice of the proposed action was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-18-020.

8. On February 11, 2003, the Planning Commission held a hearing on this proposal. Staff from the Bureau of Planning presented the proposal, and public testimony was received. The Commission made several changes to the Proposed Draft, and voted to forward the amendments to City Council.

9. The Planning Commission found that Portland has benefited greatly from the improvements made to properties as a result of required upgrades to nonconforming development. They found that these required improvements make the City more hospitable for people, wildlife, and public life.

10. The Planning Commission also found that the total cost of all permits, fees, and other charges, not just this one nonconforming use threshold, is the true extent of the problem faced by business. As a result, they recommend that the City undertake a comprehensive review of these costs to business.

11. On March 19, 2003, City Council held a hearing on this proposal, and heard testimony from the public. The City Council also found that, because businesses are particularly

burdened in the current stagnant economy, it was appropriate to increase the threshold to $100,000. They concluded that the two-year increase would provide regulatory relief and flexibility to property owners with nonconforming development, including small businesses; emphasize the importance of economic development in the City; and encourage investment in existing non-conforming properties.

12. On April 2, 2003 City Council voted to adopt the Planning Commission report with amendments and to adopt amendments to the Zoning Code.

**Statewide Planning Goals Findings**

13. State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with the state land use goals.

14. **Goal 1, Citizen Involvement,** requires provision of opportunities for citizens to be involved in all phases of the planning process. The preparation of these amendments has provided several opportunities for public involvement. The findings on Portland Comprehensive Plan Goal 9, Citizen Involvement, and its related policies and objectives also support this goal. The amendments are supportive of this goal in the following ways:

    a. On January 3, 2003, the Bureau of Planning sent notice to all neighborhood associations and coalitions in the City of Portland, as well as other interested persons, to inform them of an open house held on January 22, 2003. The purpose of the open house was to allow the public the opportunity to review the proposed recommendations, and ask questions of staff.

    b. Also on January 3, 2003, the Bureau of Planning sent notice to all neighborhood association and coalitions, and business associations in the City of Portland, as well as other interested persons, to inform them of the Planning Commission public hearing on this project. The hearing was also advertised in the Oregonian.

    c. On January 14, 2003, the Bureau of Planning published a document entitled Regulatory Improvement Project: Thresholds for Upgrading Nonconforming Development, Proposed Draft. The document was made available to the public and mailed to all those requesting copies.

    d. On February 11, 2003, the Planning Commission held a public hearing during which citizens discussed and commented on the Proposed Draft.

    e. On March 4, 2003, the Bureau of Planning sent notice to all persons who testified, orally or in writing, at the Planning Commission hearing on February 11, 2003, to inform them of the City Council hearing on this project. This notice was also sent to those persons requesting such notification.

    f. On March 5, 2003, the Bureau of Planning published a document entitled Regulatory Improvement Workplan: Thresholds for Upgrading Nonconforming Development, Recommended Draft. The document was made available to the public and mailed to all those requesting copies.

    g. On March 19, 2003, City Council held a public hearing on the Planning Commission's Recommended Draft, dated March 5, 2003. Citizens were invited to attend this hearing and present testimony.

15. **Goal 2, Land Use Planning**, requires the development of a process and policy framework that acts as a basis for all land use decisions, and assures that decisions and actions are based on an understanding of the facts relevant to the decision. The amendments are supportive of this goal because development of the recommendations followed established city procedures for legislative actions.

16. **Goal 5, Open Space, Scenic and Historic Areas, and Natural Resources**, requires the conservation of open space and the protection of natural and scenic resources. The amendments are consistent with this goal because the amendments do not change policy or intent of any of the existing regulations pertaining to open space, scenic and historic areas, and natural resources.

    While not changing policy, several of the amendments affect the environmental overlay zones in the Columbia South Shore and Cascade Station plan districts, and the amendments also affect the Scenic Overlay Zone and the Greenway Overlay Zone as follows:

    a. Greenway Overlay Zone. Under current regulations, any changes to a site require that the site be brought into full compliance. Because of the onerous nature of this requirement, owners sometimes delay or defer improvements to avoid the expense of full compliance. This proposal adds a threshold of $100,000. The proposal also adds a dollar cap on expenditures of 10 percent of the project cost. While this may result in fewer improvements associated with each building permit, allowing small improvements without activating the upgrade requirements, and allowing the upgrades to be made over time may increase investment on these sites, ultimately resulting in appropriate development and full compliance with development standards. Because of this, the amendments to the Greenway Overlay Zone are supportive of this goal.

       In addition, the amendments to this overlay zone clarify that the upgrades required by the overlay zone must be done before those required by other chapters, thereby facilitating the implementation of these regulations and further protecting and enhancing the Greenway. This change further supports this goal.

    b. Scenic Overlay Zone. Under current regulations, any changes to a site require that the street setback be fully landscaped. Because of the onerous nature of this requirement, owners sometimes delay or defer improvements to avoid the expense of full compliance. This proposal adds a threshold of $100,000. The proposal also adds ~~and~~ a dollar cap on expenditures of 10 percent of the project cost. While this may result in fewer improvements associated with each building permit, allowing small improvements without activating the upgrade requirements, and allowing the upgrades to be made over time may increase investment on these sites, ultimately resulting in appropriate development and full compliance with development standards. Because of this, the amendments to the Scenic Overlay Zone are supportive of this goal.

       In addition, the amendments to this overlay zone clarify that the upgrades required by the overlay zone must be done before those required by other chapters, thereby facilitating the implementation of these regulations and further protecting and enhancing scenic resources. This change further supports this goal.

    c. Columbia South Shore and Cascade Station plan districts. This proposal modifies two regulations that apply within the environmental overlay zones in both plan districts. First, under current regulations, any changes to a site that are outside of buildings requires full compliance with revegetation standards. Because of the onerous nature of this requirement, owners sometimes delay or defer improvements to avoid the expense.

of full compliance. This proposal adds a dollar cap on expenditures of 10 percent of the project cost. Allowing the upgrades to be made over time may increase investment on these sites, ultimately resulting in appropriate development and full compliance with development standards. Second, under current regulations, changes to the site of more than $25,000, where those changes are outside of buildings, require that paved areas be removed from the environmental zones. There is a dollar cap on expenditures of 10 percent of the project cost. This proposal increases the threshold from $25,000 to $100,000, to be consistent with similar thresholds elsewhere in the Zoning Code. The effect on development will be minimal. For these reasons, the amendments to the two plan districts are supportive of this goal.

In addition, the amendments to these plan districts clarify that the upgrades required by the plan districts must be done before those required by other chapters, thereby facilitating the implementation of these regulations and further protecting environmental resources. This change further supports this goal.

d. Ground leases. Under current regulations, some applicants may limit the area where nonconforming upgrades must be made to the ground lease where the improvements are proposed. This proposal allows applicants in these plan districts and overlay zones to use the ground lease option. The effect on resources will likely be minimal, but it will increase the fairness of the regulations. This change does not conflict with the goal.

e. Phasing. Under current regulations, some applicants may choose to phase in required upgrades over several years if they bring the site into full compliance. This proposal allows applicants in these plan districts and overlay zones to use this option. In addition to increasing the fairness of the regulations, this amendment will result in more compliance with the development standards. This change further supports this goal.

17. **Goal 6, Air, Water and Land Resource Quality**, requires the maintenance and improvement of the quality of air, water and land resources, including the handling of solid wastes. The amendments are consistent with this goal because they do not change policy or intent of any of the existing regulations pertaining to air, water and land resource quality.

While not changing policy, increasing thresholds and establishing dollar caps on required expenditures may result in fewer improvements associated with each building permit. Because many of the required improvements are landscaping, particularly for surface parking lots, this could have a minimal impact on stormwater management. However, allowing small improvements without activating the upgrade requirements, and allowing the upgrades to be made over time may increase investment on these sites, ultimately resulting in appropriate development and full compliance with development standards.

18. **Goal 7, Areas Subject to Natural Disasters and Hazards**, requires the protection of life and property from natural disasters and hazards. The amendments are consistent with this goal because they do not change policy, intent, or effect of any of the regulations pertaining to areas subject to natural disasters and hazards.

19. **Goal 9, Economic Development**, requires provision of adequate opportunities for a variety of economic activities vital to public health, welfare, and prosperity. The amendments are consistent with this goal because they do not substantially change policy or intent of any of the regulations pertaining to economic development. Increasing the thresholds that activate requirements for upgrades to nonconforming development from $25,000 to $100,000, and establishing a mechanism to automatically adjust the threshold for inflation

supports this goal because it will enable business to make small improvements to their sites without requiring additional expenditures on upgrades. Adding a threshold and a dollar cap on required expenditures also supports this goal by allowing small improvements without onerous upgrade requirements.

20. **Goal 15, Willamette River Greenway**, requires the protection, conservation, enhancement, and maintenance of the natural, scenic, historic, agricultural, economic, and recreational qualities of land along the Willamette River. The amendments are consistent with this goal because they provide a more reasonable requirement for activation of requirements to upgrade nonconforming development. Under current regulations, any changes to a site in the Greenway Overlay Zone require that the site be brought into full compliance. Because of the onerous nature of this requirement, owners sometimes delay or defer improvements to avoid the expense of full compliance. This proposal adds a threshold of $100,000. The proposal also adds a dollar cap on expenditures of 10 percent of the project cost. While this may result in fewer improvements associated with each building permit, allowing small improvements without activating the upgrade requirements, and allowing the upgrades to be made over time may increase investment on these sites, ultimately resulting in appropriate development and full compliance with development standards. Because of this, these amendments are supportive of this goal.

21. In addition, the amendments clarify that the upgrades required by the Greenway Overlay Zone must be done before those required by other chapters, thereby facilitating the implementation of these regulations and further protecting and enhancing the Greenway. This change further supports this goal.

22. **Goal 3, Agricultural Lands; Goal 4, Forest Lands; Goal 8, Recreational Needs; Goal 10, Housing; Goal 11, Public Facilities and Services; Goal 12, Transportation; Goal 13, Energy Conservation; Goal 14, Urbanization.** The amendments are consistent with these goals because the amendments do not change policy, intent, or effect of any of the regulations relating to these goals.

23. **Goals 16, 17, 18, and 19 deal with Estuarine Resources, Coastal Shorelines, Beaches and Dunes,** and **Ocean Resources**, respectively, and are not applicable to Portland as none of these resources is present within the City limits.

**Metro Urban Growth Management Functional Plan Findings**

24. **Title 1, Requirements for Housing and Employment Accommodation,** requires that each jurisdiction contribute its fair share to increasing the development capacity of land within the Urban Growth Boundary. This requirement is to be generally implemented through city-wide analysis based on calculated capacities from land use designations. These amendments do not change policy, intent, or effect of regulations relating to the regional requirements for housing and employment accommodation, and therefore, do not affect the City's ability to meet Title 1.

    Increasing the thresholds that activate requirements for upgrades to nonconforming development from $25,000 to $100,000, and establishing a mechanism to automatically adjust the threshold for inflation supports economic development and the creation of jobs because it will enable business to make small improvements to their sites without requiring additional expenditures on upgrades. Adding a threshold and a dollar cap on required expenditures also supports this goal by allowing small improvements without onerous upgrade requirements.

25. **Title 3, Water Quality and Flood Management Conservation,** calls for the protection of the beneficial uses and functional values of resources within Metro-defined Water Quality and Flood Management Areas by limiting or mitigating the impact of development in these areas. The amendments are not inconsistent with this title because they do not change policy, intent, or effect of regulations relating to water quality and flood management conservation. While not changing policy, increasing thresholds and establishing dollar caps on required expenditures may result in fewer improvements associated with each building permit. Because many of the required improvements are landscaping, particularly for surface parking lots, this could have a minimal impact on stormwater management. However, allowing small improvements without activating the upgrade requirements, and allowing the upgrades to be made over time may increase investment on these sites, ultimately resulting in appropriate development and full compliance with development standards.

26. **Title 2, Regional Parking Policy; Title 4, Retail in Employment and Industrial Areas; Title 5, Neighbor Cities and Rural Reserves; Title 6, Regional Accessibility; Title 7, Affordable Housing; and Title 8, Compliance Procedures** do not apply to these amendments because the amendments do not change the policy, intent, or effect of regulations relating to these titles.

**Portland Comprehensive Plan Goals Findings**

27. The City's Comprehensive Plan was adopted by the Portland City Council on October 16, 1980, and was acknowledged as being in conformance with the statewide planning goals by the Land Conservation and Development Commission on May 1, 1981. On May 26, 1995, the LCDC completed its review of the City's final local periodic review order and periodic review work program, and reaffirmed the plan's compliance with statewide planning goals.

28. **Goal 2, Urban Development,** calls for maintenance of Portland's role as the major regional employment and population center by expanding opportunities for housing and jobs, while retaining the character of established residential neighborhoods and business centers. The amendments are consistent with this goal because they do not change policy and intent of regulations relating to urban development.

    Increasing the thresholds that activate requirements for upgrades to nonconforming development from $25,000 to $100,000, and establishing a mechanism to automatically adjust the threshold for inflation helps maintain Portland's role as a major regional employment center because it will enable business to make small improvements to their sites without requiring additional expenditures on upgrades. Adding a threshold and a dollar cap on required expenditures also supports this goal by allowing small improvements without onerous upgrade requirements.

29. **Goal 5, Economic Development,** calls for promotion of a strong and diverse economy that provides a full range of employment and economic choices for individuals and families in all parts of the City. The amendments are consistent with this goal because they do not change policy or intent of regulations relating to economic development.

    Increasing the thresholds that activate requirements for upgrades to nonconforming development from $25,000 to $100,000, and establishing a mechanism to automatically adjust the threshold for inflation supports economic development and the creation of jobs because it will enable business to make small improvements to their sites without requiring additional expenditures on upgrades. Adding a threshold and a dollar cap on required expenditures also supports this goal by allowing small improvements without onerous upgrade requirements.

30. **Goal 8, Environment,** calls for maintenance and improvement of the quality of Portland's air, water, and land resources, as well as protection of neighborhoods and business centers from noise pollution. The amendments are consistent with this goal because they do not change policy or intent of regulations relating to environment.

    While not changing policy, several of the amendments affect the environmental overlay zones in the Columbia South Shore and Cascade Station plan districts, and the amendments also affect the Greenway Overlay Zone as follows:

    a. Greenway Overlay Zone. Under current regulations, any changes to a site require that the site be brought into full compliance. Because of the onerous nature of this requirement, owners sometimes delay or defer improvements to avoid the expense of full compliance. This proposal adds a threshold of $100,000, and a dollar cap on expenditures of 10 percent of the project cost. While this may result in fewer improvements associated with each building permit, allowing small improvements without activating the upgrade requirements, and allowing the upgrades to be made over time may increase investment on these sites, ultimately resulting in appropriate development and full compliance with development standards. Because of this, the amendments to the Greenway Overlay Zone are supportive of this goal.

       In addition, the amendments to this overlay zone clarify that the upgrades required by the overlay zone must be done before those required by other chapters, thereby facilitating the implementation of these regulations and further protecting and enhancing the Greenway. This change further supports this goal.

    b. Columbia South Shore and Cascade Station plan districts. This proposal modifies two regulations that apply within the environmental overlay zones in both plan districts. First, under current regulations, any changes to a site that are outside of buildings requires full compliance with revegetation standards. Because of the onerous nature of this requirement, owners sometimes delay or defer improvements to avoid the expense of full compliance. This proposal adds a dollar cap on expenditures of 10 percent of the project cost. Allowing the upgrades to be made over time may increase investment on these sites, ultimately resulting in appropriate development and full compliance with development standards. Second, under current regulations, changes to the site of more than $25,000, where those changes are outside of buildings, require that paved areas be removed from the environmental zones. There is a dollar cap on expenditures of 10 percent of the project cost. This proposal increases the threshold from $25,000 to $100,000, to be consistent with similar thresholds elsewhere in the Zoning Code. The effect on development will be minimal. For these reasons, the amendments to the two plan districts are supportive of this goal.

       In addition, the amendments to these plan districts clarify that the upgrades required by the plan districts must be done before those required by other chapters, thereby facilitating the implementation of these regulations and further protecting environmental resources. This change further supports this goal.

    c. Phasing. Under current regulations, some applicants may choose to phase in required upgrades over several years if they bring the site into full compliance. This proposal allows applicants in these plan districts and overlay zone to use this option. In addition to increasing the fairness of the regulations, this amendment will result in more compliance with the development standards. This change further supports this goal.

31. **Goal 9, Citizen Involvement,** calls for improved methods and ongoing opportunities for citizen involvement in the land use decision-making process. The amendments are consistent with this goal because the process provided opportunities for public input and

followed adopted procedures for notification and involvement of citizens in the planning process.

32. **Goal 12, Urban Design,** calls for the enhancement of Portland as a livable city, attractive in its setting and dynamic in its urban character by preserving its history and building a substantial legacy of quality private developments and public improvements for future generations. The amendments are consistent with this goal because they do not change policy or intent of regulations relating to urban design.

    While not changing policy, increasing thresholds and establishing dollar caps on required expenditures may result in fewer improvements associated with each building permit. Because many of the required improvements are landscaping and screening, this could have a minimal impact on the appearance of the city. However, allowing small improvements without activating the upgrade requirements, and allowing the upgrades to be made over time, may increase investment on these sites, ultimately resulting in appropriate development and full compliance with development standards.

33. The following goals do not apply because of the limited scope of these amendments: Goal 1, Metropolitan Coordination; Goal 3, Neighborhoods; Goal 4, Housing; Goal 6, Transportation; Goal 7, Energy; Goal 10, Plan Review and Administration; and Goal 11, Public Facilities.

NOW, THEREFORE, the Council directs:

a. Adopt Exhibit A, the Planning Commission *Report and Recommendation* on the Regulatory Improvement Project: Thresholds for Upgrading Nonconforming Development, , dated March 5, 2003;

b. Amend Title 33, Planning and Zoning, as shown in Exhibit A, the Planning Commission *Report and Recommendation* on the Regulatory Improvement Project: Thresholds for Upgrading Nonconforming Development, as amended, dated March 5, 2003; and

c. Adopt the commentary in Exhibit A, the Planning Commission *Report and Recommendation* on the Regulatory Improvement Project: Thresholds for Upgrading Nonconforming Development, dated March 5, 2003, as legislative intent and as further findings.

d. Adopt the memorandum from Cary Pinard dated March 25, 2003 regarding Thresholds for Non-conforming Development – Possible Amendments, as shown in Exhibit B, as legislative intent and further findings.

Section 2. To allow time for adoption by the Multnomah County Commission, this ordinance shall be effective 45 days after adoption by City Council.

Passed by the Council, APR 02 2003

**GARY BLACKMER**
Auditor of the City of Portland

By Susan Parsons
Deputy

Mayor Vera Katz

JRichman, Bureau of Planning
March 10, 2003

## *Regulatory Improvement Workplan:*

# Thresholds for Upgrading Nonconforming Development

**Planning Commission**
**Recommended Draft**

**March 5, 2003**

CITY OF PORTLAND, OREGON
BUREAU OF
**Planning**

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

Wednesday, March 19, 2003
6:00 PM
City Hall, Council Chambers
1221 S.W. Fourth Ave.
Portland, OR 97204

For more information on the Regulatory Improvement Project: Thresholds for Upgrading Nonconforming Development, please contact:

Brad Carter, City Planner,
Portland Bureau of Planning
1900 SW 4th Avenue, Suite 4100
Portland, Oregon 97201
**Phone:** 503-823-6039
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The Bureau of Planning is committed to providing equal access to information and hearings. If you need special accommodation, please call Brad Carter at 503-823-6039 ***(TTY 503-823-6868).***

CITY OF PORTLAND, OREGON
PLANNING COMMISSION

c/o Bureau of Planning
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Telephone: 503-823-7700
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February 25, 2003

Mayor Katz and City Commissioners
Portland City Council
City Hall
Portland, Oregon 97204

**Re: Thresholds for Upgrading Nonconforming Development**

Dear Mayor Katz and City Commissioners:

On behalf of the Portland Planning Commission, we are forwarding our recommendations on Thresholds for Upgrading Nonconforming Development, the first element revising Title 33: Planning and Zoning (referred to as the Zoning Code) as part of the City's 2002-2003 Regulatory Improvement Workplan.

Although the Commission heard substantial testimony from the business and development community to raise the threshold above staff's proposal of $35,000, it is with great trepidation that we forward this recommendation on to the City Council for their review and consideration. Portland has benefited greatly from the improvements made to properties as a result of this program. We can say with some confidence that this would be a less hospitable place for people, wildlife, and public life had this program not been in place. The proposal to dramatically increase the trigger raises questions regarding how citywide policy objectives for the public realm will be realized.

We received testimony that led us to conclude that the real question is the total cost of all permits, fees, and other charges, not just this one nonconforming use threshold, that is the true extent of the "problem" faced by business. Due to the limited scope of this project, none of the proposals brought to us dealt with this in a holistic way. We were not presented with real rationale for any of the thresholds proposed to date: there is no real justification for any particular number, making all of them equally arbitrary and therefore problematic.

Consequently, it is our firm belief that more work is needed to adequately address the true issues raised by business and the true consequences for Portland's much loved and internationally recognized public realm. This is not a trivial, simple issue for which there is a quick, easy fix.

Our recommendation to you is to increase the trigger to $100,000 but to sunset it in two years. By then two things should be apparent. First, if the trigger is the problem as claimed by the business community, then we should witness a flowering of new business activity as a result of this action. Second, you can and should direct and fund the Bureau of Planning to undertake the comprehensive review we believe is called for and direct other Bureaus to participate in this review as appropriate. In any event, the trigger will sunset, we can assess the results, and then take truly appropriate action without inflicting great long-term harm on our ability to act on policy objectives key to the comprehensive plan.

***RECOMMENDATION***

The Planning Commission recommendation includes four primary amendments to the Zoning Code, all related to the thresholds that activate requirements to upgrade nonconforming development:

- **The general threshold:** Increase the current threshold for upgrading nonconforming development from $25,000 to $100,000 (plus inflation) on a temporary, two-year basis. If no adjustment is made to the threshold through a more comprehensive project to address nonconforming upgrade issues during that two-year period, Planning Commission recommends that the threshold revert back to a $35,000 threshold, with an adjustment for inflation, at the end of the temporary, two-year period. We chose the $100,000 threshold for the two-year period for the reasons stated above and not as a permanent solution.
- **Thresholds in some plan districts and overlay zones:** In the Greenway and Scenic Overlay Zones and the Cascade Station/PIC and Columbia South Shore Plan Districts, apply consistent code provisions as they relate to either the amount of the threshold or the amount of the expenditure cap. The current code includes several chapters with differing provisions related to the threshold and/or the cap. The Planning Commission's recommendation is to provide both consistency and simplicity within the Zoning Code by standardizing the threshold and expenditure cap provisions across these chapters of the code.
- **Ground lease and phasing option in some plan districts and overlay zones:** In the Greenway and Scenic Overlay Zones and the Cascade Station/PIC and Columbia South Shore Plan Districts, allow applicants to (1) limit the area where nonconforming upgrades must be made to the ground lease where the improvements are proposed and (2) phase in required nonconforming upgrades over several years if they bring the site into full compliance. Again, the recommendation is to provide consistency and simplicity across several chapters of the code.
- **Incorporate a mechanism to account for inflation:** Use the Construction Cost Index (CCI) as determined by the Engineering News-Record (ENR) as a mechanism to adjust the threshold on an annual basis. The current code does not include a mechanism to adjust the threshold to account for inflation. Thus, the effects of inflation over time continually decrease the value of the threshold if the dollar value were to remain constant.

***BACKGROUND – REGULATORY IMPROVEMENT WORKPLAN***

Beginning in June 2002, the City of Portland initiated the development of an annual process to streamline and update the City's building and land use regulations as well as improving regulatory-related procedures and customer services. A focus has been on providing clarity and simplicity to the City's building and land use regulations. As part of City Council's approval of the 2002-2003 Final Regulatory Improvement Workplan in November 2002, the Bureau of Planning was directed to review and update various thresholds in the Zoning Code. In addition, a priority was placed on changes that would provide relief to small businesses.

The code changes included in this recommendation addressed what are considered by many to be especially burdensome to small businesses and property owners with nonconforming development.

***WHAT THIS RECOMMENDATION DOES***

This recommendation includes revisions and updates to several chapters of the current Zoning Code, including Chapter 33.258, Nonconforming Situations, Chapter 33.440, Greenway Overlay Zones, Chapter 33.480, Scenic Overlay Zone, Chapter 33.508, Cascade Station/PIC Plan District and Chapter 33.518, Columbia South Shore Plan District.

The Planning Commission's recommendation seeks to accomplish the following goals:

- Provide regulatory relief and flexibility to property owners with nonconforming development, including small businesses,
- Respond to a currently stagnant economic climate,
- Emphasize the importance of economic development in the City,
- Encourage investment in existing nonconforming properties,
- Provide simplicity and consistency between different code chapters, and
- Include an inflationary adjustment mechanism for the nonconforming upgrades threshold.

***WHAT THIS RECOMMENDATION DOES NOT DO***

Planning Commission wants to ensure that City Council is aware of several issues and/or concerns that the recommendation does not address:

- While emphasizing the importance of reaching the City's economic development goals, this recommendation does not provide assurance that other important city policy goals will be furthered through upgrades of nonconforming development during the two-year period being recommended.
- The recommendation does not provide a long-term solution to a very complex problem dealing with the existing costs of development in the City of Portland. In addition to hearing about the specific upgrades required by Title 33, we heard testimony about the broad variety of costs related to permitting, system development charges, stormwater and seismic requirements, street trees, etc. The thresholds for nonconforming upgrades we considered are only one small piece of the overall burden on these developers and business and property owners.
- The recommendation does not address the possible need for adjustment reviews to meet the required nonconforming regulations.
- The recommendation does not propose changing the prioritization of the various nonconforming upgrade requirements, nor does it propose allowing for a "menu" approach, which would allow the applicant to choose which upgrades they would bring into compliance.
- Finally, the Planning Commission wants to be clear that the recommendation is not the best or right fix to this problem but under the circumstances -- it is simply the quickest and easiest fix.

Due to the quick timeline of this project, these broader issues could not be addressed. We recommend that they be addressed through a comprehensive look at the nonconforming upgrades along with other requirements that impact redevelopment of existing properties.

***FOLLOW UP ISSUES***

It is Planning Commission's recommendation to raise the threshold on a temporary, two-year basis. We recommend that the threshold revert back to $35,000 (plus an inflationary adjustment based on the Construction Cost Index) at that the end of the two-year period. During that time, we recommend that the City Council initiate a comprehensive look at the nonconforming upgrade requirements along with other requirements that impact redevelopment of existing properties. This review should include evaluation of the overall costs – including SDCs, permitting costs, mandatory improvements, and required upgrades including for stormwater management.

The review should further look at the following items regarding the Nonconforming Upgrades requirements within the Zoning Code and as they relate to the other charges and requirements:

- banking of "credits" for nonconforming upgrades,
- fees in lieu of upgrades to allow for off-site upgrades as appropriate;
- allowing for a "menu" approach to the nonconforming upgrades list and other requirements;
- additional exemptions from the costs that make up the threshold (e.g. exempting other requirements in the same manner life-safety requirements are exempted);
- looking at a possible tiered approach to the caps and thresholds – perhaps reducing the threshold significantly and reducing the percentage cap;
- adding protections against "piecemeal" approaches to development;
- considering thresholds based on square footage or parking spaces; and
- other options developed through public involvement

This comprehensive consideration of the issues related to nonconforming development is not funded within the Bureau's budget.

***RECOMMENDED ACTIONS***

The Planning Commission recommends that the City Council:

- Adopt this ordinance and report,
- Amend the Zoning Code as shown in this report, and
- Direct staff to continue work on other issues related to nonconforming development, including those mentioned above, through provision of adequate funding of a subsequent phase of this project.

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

Sincerely,

Ethan Seltzer, President
Portland Planning Commission

# *Regulatory Improvement workplan:*

## Thresholds for Upgrading Nonconforming Development

**Planning Commission**
**Recommended Draft**

**March 5, 2003**

CITY OF PORTLAND, OREGON
BUREAU OF
**Planning**

# Acknowledgements


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Dan Saltzman, Commissioner
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# Table of Contents

# Summary and Planning Commission Recommendation

**Summary**

This project is the first element revising the Zoning Code as part of the Regulatory Improvement Workplan (RIW). The RIW is a program to update and improve City building and land use regulations and procedures that hinder desirable development. Our recommendations address four areas of amendments to the Zoning Code, all related to the thresholds that activate requirements to upgrade nonconforming development:

- **The general threshold:** Increase the current threshold for upgrading nonconforming development from $25,000 to $100,000 on a temporary, two-year basis. After two years, change the threshold to $35,000, adjusted for inflation. We strongly recommend a more comprehensive project to address nonconforming upgrade issues during that two-year period; that project may result in further changes to the threshold.

- **Thresholds in some plan districts and overlay zones:** The current code includes several chapters with differing provisions related to the threshold, including some with no expenditure cap. We recommend the changes shown in Table 1 to provide greater consistency and simplicity within the Zoning Code. These changes affect the Greenway and Scenic Overlay Zones and the Cascade Station/PIC and Columbia South Shore Plan Districts.

- **Ground leases and phasing option in some plan districts and overlay zones:** In the Greenway and Scenic Overlay Zones and the Cascade Station/PIC and Columbia South Shore Plan Districts, we recommend allowing applicants to (1) limit the area where nonconforming upgrades must be made to the ground lease where the improvements are proposed and (2) phase in required nonconforming upgrades over several years if they bring the site into full compliance. These provisions currently apply outside of the plan districts and overlay zones. This recommendation increases consistency and simplicity across several chapters of the code.

- **Incorporate a mechanism to account for inflation:** Because the effects of inflation continually decrease the value of the threshold over time, we recommend adding a mechanism to adjust the threshold for inflation on an annual basis.

| Table 1<br>Recommended Changes to Thresholds and Caps<br>in Plan Districts and Overlay Zones | | |
|---|---|---|
| **Plan District or Overlay Zone** | **Current regulation** | **Planning Commission recommendation** |
| Greenway Overlay Zone | Any changes to a site require that the site be brought into full compliance.<br>33.440.230.A | Add a threshold of $100,000 on a two-year, temporary basis. After two years, reduce the threshold to $35,000, adjusted for inflation. Add an expenditure cap of 10%. |
| Scenic Overlay Zone | Any changes to a site require that the street setback be fully landscaped<br>33.480.040.B.2.b | Add a threshold of $100,000 on a two-year, temporary basis. After two years, reduce the threshold to $35,000, adjusted for inflation. Add an expenditure cap of 10%. |
| Cascade Station/PIC plan district, within the Environmental Overlay zone | Any changes to a site that are outside of buildings require full compliance with revegetation standards.<br>33.508.330.A | Add an expenditure cap of 10% of the total project cost (interior and exterior changes). Planning Commission does not recommend adding a threshold because alterations that are inside buildings do not activate the requirement. |
| | Alterations on the site of more than $10,000 that are outside of buildings require that nonconforming paved areas be removed from the environmental zones. There is a 10% cap.<br>33.508.330.B.17.a | Increase the threshold from $10,000 to $100,000 on a two-year, temporary basis. After two years, reduce the threshold to $35,000, adjusted for inflation. |
| | Any changes to a site that are outside of buildings require that unpaved exterior areas be brought into full compliance. There is a 10% cap.<br>33.508.330.B.17.b | No changes. Planning Commission does not recommend adding a threshold because alterations that are inside buildings do not activate the requirement. |
| Columbia South Shore plan district, within the Environmental Overlay zone | Any changes to a site that are outside of buildings require full compliance with revegetation standards<br>33.515.278.A | Add an expenditure cap of 10% of the total project cost (interior and exterior changes). Planning Commission does not recommend adding a threshold because alterations that are inside buildings do not activate the requirement. |
| | Alterations on the site of more than $25,000 that are outside of buildings require that nonconforming paved areas be removed from the environmental zones. There is a 10% cap.<br>33.515.278.B.17.a | Increase the threshold from $25,000 to $100,000 on a two-year, temporary basis. After two years, reduce the threshold to $35,000, adjusted for inflation. |
| | Any changes to a site that are outside of buildings require that unpaved exterior areas be brought into full compliance. There is a 10% cap.<br>33.515.278.B.17.b | No changes. Planning Commission does not recommend adding a threshold because alterations that are inside buildings do not activate the requirement. |

**Planning Commission Recommendation**
Planning Commission recommends the following City Council actions:

- Adopt this ordinance and report,
- Amend the Zoning Code as shown in this report; and
- Direct and fund the Bureau of Planning to undertake a comprehensive review of the nonconforming upgrade requirements along with other requirements that impact redevelopment of existing properties. This review should include evaluation of the overall costs – including system development charges (SDCs), permitting costs, mandatory improvements and required upgrades including stormwater management. Direct other Bureaus to participate in this review as appropriate.

# A. Background

On June 26, 2002, the Portland City Council approved Resolution 36080, which sought to "streamline, update and improve City building and land use regulations that hinder desirable development." This resolution 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.

In August 2002, Council adopted Resolution 36092, which incorporated the initial Regulatory Improvement Workplan. Prior to Council's approval of that resolution, city staff participated in an extensive public outreach program over the course of several 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. The Mayor's Office conducted a series of meetings, focus groups and workshops with these stakeholders to receive comments, concerns and suggestions on the City's regulatory process and procedures for building and development.

One component of City Council's 2002-2003 Final Regulatory Improvement Workplan, approved in November 2002, was to update and raise regulatory thresholds and triggers. Staff in the Mayor's Office conducted comparative research of surrounding Oregon communities and selected Western cities as a starting point for any update to City of Portland regulatory thresholds. This research illustrated the difficulty in making direct comparisons between jurisdictions, such as how "development" is defined. However, the comparative research, coupled with the public outreach process, revealed different methodologies of addressing nonconforming development and the various thresholds that activate code requirements to upgrade such development.

The Bureau of Planning published *Regulatory Improvement Project: Thresholds for Upgrading Nonconforming Development Proposed Draft* on January 14, 2003. Copies were available at the Bureau's office and on the Bureau's website. Notice of the proposal was sent to approximately 500 people on January 3, 2003. In addition, there was extensive review by other City bureaus prior to the Planning Commission's hearing.

On January 22, 2003, Bureau of Planning staff hosted an informational Open House for additional public review and comment on the proposal. On February 11, 2003, Planning Commission held a public hearing on the proposal. After receiving oral and written testimony from approximately 30 people, Planning Commission deliberated on and developed their recommendation to City Council.

This report forwards the Planning Commission's recommendation on amending the thresholds in the Zoning Code for upgrades to nonconforming development.

What is nonconforming development?
Nonconforming development exists where a site met all the regulations at the time it was developed but does not meet the current regulations because of subsequent changes to the Zoning Code. For example, many parking lots were built before

Portland required landscaping. Such development is "grandfathered in," meaning that it can remain so long as there are no changes to the site.

What are upgrades to nonconforming development?
Upgrading nonconforming development means bringing it closer to compliance with the current regulations.

When are such upgrades required?
If an owner is making alterations (e.g., remodeling a tenant space, adding on to an existing building, installing a new air-conditioning system, etc.), upgrading nonconforming development may be required. This upgrade is typically required when the alterations cross a certain dollar threshold. In most cases – under the current code – if the alterations are worth more than $25,000 or more than 35 percent of the value of the existing improvements, certain aspects of the development must be upgraded. These aspects include:

- Perimeter landscaping for parking lots and exterior development areas;
- Pedestrian circulation;
- Bicycle parking;
- Interior parking lot landscaping;
- Landscaping in existing building setbacks;
- Minimum landscaped area;
- Screening; and
- Paving of parking lots and exterior storage and display areas.

In addition, there is often a cap on how much the owner must spend on these upgrades. The existing regulations usually do not require that more than 10 percent of the cost of the alterations be spent on upgrades. For example, if the value of a remodeling project will be $38,000, no more than $3,800 will need to be spent on upgrades.

Why undertake this project and what does it include?
This project is looking at four areas of amendments to Title 33, Planning and Zoning.

First, there is concern about the amount of the threshold itself. Some feel that the current threshold of $25,000 is too low and that it "catches" too many relatively minor projects. In addition, some argue that a low threshold is a disincentive for owners to improve their property and makes it more difficult to do business in Portland. Others are concerned that the threshold is too high or that not enough upgrading is required, meaning that it may take more time for actual implementation of newer regulations throughout the city. Since much of the city is already developed, new regulations are implemented only on new development – a relatively small proportion of the city's overall developed area – and through nonconforming upgrades. In addition, increasing the threshold raises questions of how citywide policy objectives for the public realm will be realized.

Second, there are currently several similar provisions throughout the code that differ either in amount of the threshold or the amount of the cap. These are located

in Chapters 33.440 (Greenway Overlay Zones), 33.480 (Scenic Resource Zone), 33.508 (Cascade Station/PIC Plan District), and 33.515 (Columbia South Shore Plan District). The Planning Commission recommends making the thresholds and expenditure caps consistent among those chapters.

Third, the Planning Commission recommends including revised code language to the previously mentioned chapters of the Zoning Code that would parallel the existing provisions of Chapter 33.258, Nonconforming Situations. In particular, these changes include allowing applicants to limit the area of nonconforming upgrades to their ground lease and to allow applicants the option of phasing in required nonconforming upgrades over several years if the site is brought into full compliance.

Fourth, there is concern that the effects of inflation will continually decrease the value of the threshold if the dollar amount remains constant. The threshold for nonconforming upgrades was last increased in 1997. As part of their proposal, staff considered the appropriateness of a variety of economic indices and other mechanisms that would account for inflation. Planning Commission recommends using the Construction Cost Index as determined by the Engineering News-Record as a mechanism to adjust the threshold for inflation on an annual basis.

What may be considered later, as part of another project?
During the course of the public outreach process and internal city review, other concerns related to nonconforming development and nonconforming uses did arise. Due to the need to evaluate the nonconforming thresholds quickly, the scope of the Planning Commission's recommended Code amendments is limited to the four areas listed above.

However, Planning Commission also strongly recommends that City Council initiate a comprehensive look at the nonconforming upgrade requirements along with other requirements that impact redevelopment of existing properties. This review should include evaluation of the overall costs – including System Development Charges (SDCs), permitting costs, mandatory improvements and required upgrades including stormwater management. In addition, this review should look at the following items regarding nonconforming upgrades requirements with the Zoning Code and as they relate to the other charges and requirements:

- Banking of "credits" for nonconforming upgrades;
- Fees in lieu of upgrades to allow for off-site upgrades as appropriate;
- Allowing for a "menu" approach to the nonconforming upgrades list and other requirements;
- Additional exemptions from the costs that count towards the threshold (e.g., exempting other requirements in the same manner life-safety requirements are exempted);
- Looking at a possible tiered approach to the expenditure caps and thresholds – perhaps reducing the threshold significantly and reducing the expenditure cap;
- Adding protections against "piecemeal" approaches to development;
- Considering thresholds based on square footage, parking spaces, percentage of assessed value or other objective variables; and

- Other options developed through public involvement.

Public Involvement

Interested stakeholders as well as the general public have been involved in the development and review of this recommendation in a variety of ways:

- During development of the "Top Ten" Regulatory Code Improvement list for 2002-2003, the Mayor's Office received **input from a diverse cross-section of more than 120 internal and external stakeholders**. In addition, public input significantly informed the preparation of the 2002-2003 Final Regulatory Improvement Workplan, which included direction from City Council to raise regulatory triggers and thresholds.

- An **informational Open House** on the proposal was held on January 22, 2003. This Open House provided members of the public an opportunity to review the proposal and ask questions of staff. Copies of the report as well as additional handouts were also available at the Open House.

- **The Planning Commission held a public hearing** on February 11, 2003. Public notice was sent to approximately 500 interested persons including neighborhood groups and business owners, and those who provided written comments on this topic during the development of the FY 2003-2003 Regulatory Improvement Workplan.

- **City Council will hold a public hearing** on the Planning Commission Recommended Draft on March 19, 2003, at 6:00 PM in the Council Chambers at City Hall.

Copies of this report and are available at the Bureau of Planning (1900 SW 4th Ave., 4th Floor) and on the Bureau's webpage: http://www.planning.ci.portland.or.us. Copies will be mailed upon request.

## B. Discussion

***Dollar amount and index***

The analysis of the appropriate dollar threshold for upgrading nonconforming development includes consideration of either lowering or raising the current threshold of $25,000. As discussed in the "Background" section of this report, during the development of the staff proposal and subsequent Planning Commission recommendation, various stakeholders brought forth valid arguments for setting a lower or higher threshold (e.g., a low threshold "catches" too many small projects and may provide a disincentive to property owners whereas a high threshold could result in lost opportunities to implement adopted city policies and regulations) as part of this code update. However, it is Planning Commission's recommendation that the current $25,000 threshold be raised to $100,000 on a temporary, two-year basis to accomplish the following goals:

- Provide regulatory relief and flexibility to property owners with nonconforming development, including small businesses,
- Respond to a currently stagnant economic climate,
- Emphasize the importance of economic development in the City, and
- Encourage investment in existing nonconforming properties.

During research and analysis of an appropriate threshold for upgrading nonconforming development, several potential indices were examined. This research included a review of various indices that are used in the existing City of Portland codes, such as average inflation rate for the Portland Metropolitan Area, an array of Consumer Price Indices (e.g., for All Urban Consumers (CPI-U) or for Urban Wage Earners and Clerical Workers (CPI-W)) and the most current Seattle Area Construction Cost Index, which is currently used in Title 17: Public Improvements. Staff also explored a more construction-specific index for the Portland area. Since Planning Commission's recommendation includes the addition of an inflationary adjustment index for upgrades to nonconforming development, it seems consistent to focus on a construction index rather than a broader economic index such as the average inflation rate or the Consumer Price Index (CPI). Given those parameters, Planning Commission recommends using the annual national average as determined by the Engineering News-Record's Construction Cost Index.

The Engineering News-Record (ENR) publishes both a Construction Cost Index (CCI) and a Building Cost Index (BCI) that are widely used in the construction industry. ENR has calculated an annual "Construction Cost Index" dating back to 1908. ENR builds this index using data from 20 U.S. cities and 2 Canadian cities. The index includes the following data in its calculations: 200 hours of common labor at the 20-city average of common labor rates, plus 25 cwt of standard structural steel shapes at the mill price prior to 1996 and the fabricated 20-city price from 1996, plus 1.128 tons of Portland cement at the 20-city price, plus 1,088 board-ft of 2 x 4 lumber at the 20-city price. ENR has price reporters covering these 22 cities that check prices locally and quote prices from the same suppliers monthly. ENR computes its indices from these figures and local union wage rates.

A monetary threshold of $10,000 for upgrades to nonconforming development was added to the Zoning Code (Title 33) in 1991. In 1997, this threshold was raised to

$25,000. Using the ENR's annual CCI for those two years, the percentage change to these thresholds would be as follows:

- In 1991, the threshold was $10,000. From 1991 to 2002, the percentage change of the CCI was 26.05%. If the City of Portland had adopted this indexing in 1991, the $10,000 threshold in 1991 dollars would be $12,605 today.
- If, in 1991, the threshold was $25,000 and we were using the CCI index, the threshold would be $31,513 today.
- In 1997, the threshold was increased from $10,000 to $25,000. From 1997 to 2002, the CCI has increased 19.5%. If the City of Portland had adopted this index in 1997, the $25,000 in 1997 dollars would be $29,875 today.

Due to the limited scope of this project, Planning Commission was not presented with real rationale that would support any specific threshold level as well as addressing concerns about the total cost of all regulatory permits, fees and other charges. There is no real justification for any particular threshold, making any recommendation equally arbitrary and problematic. Therefore, the Planning Commission recommends increasing the current threshold of $25,000 to $100,000 but to sunset it in two years.

The next section provides a review of 2002 permits for commercial alteration and additions in the City of Portland. This analysis contributes to Planning Commission's recommendation to increase the threshold for upgrading nonconforming development.

**TABLE 2:**

**Commercial Alteration and Addition Permit Valuations**

Submissions Between 1/1/02 and 12/31/02

| Valuation Range | Count | % of Total |
|---|---|---|
| $0 to $4,999 | 357 | 21% |
| $5,000 to $9,999 | 231 | 14% |
| $10,000 to $14,999 | 162 | 10% |
| $15,000 to $19,999 | 128 | 8% |
| $20,000 to $24,999 | 190 | 11% |
| $25,000 to $34,999 | 86 | 5% |
| $35,000 to $49,999 | 94 | 6% |
| $50,000 to $59,999 | 48 | 3% |
| $60,000 to $69,999 | 39 | 2% |
| $70,000 to $79,999 | 27 | 2% |
| $80,000 to $89,999 | 30 | 2% |
| $90,000 to $99,999 | 18 | 1% |
| Greater Than $100,000 | 267 | 16% |
| TOTAL | 1678 | 100% |

Permit numbers provided by Bureau of Development Services (BDS).

***Permit Numbers***

One possible indicator of the need to adjust the threshold for upgrading nonconforming development is a review of permits for commercial alterations and additions. This review would include not only the number of such permits but also a breakdown of the dollar valuations. A comparison of permit numbers and the dollar values may provide additional information about an appropriate dollar threshold for upgrades to nonconforming development.

Table 2 shows the number of permits that were submitted (not issued, finaled, etc.) in 2002 for commercial alterations and additions only. This does not

include other commercial categories such as new construction, fire repair or demolition that do not trigger nonconforming upgrades.

It should be noted that the figures in the table do not show how many projects actually triggered upgrades. There are many reasons why a project would not trigger upgrades including: if a large percentage of the project's value is used for mandatory life safety, accessibility or fire standards or if the site already meets current code.

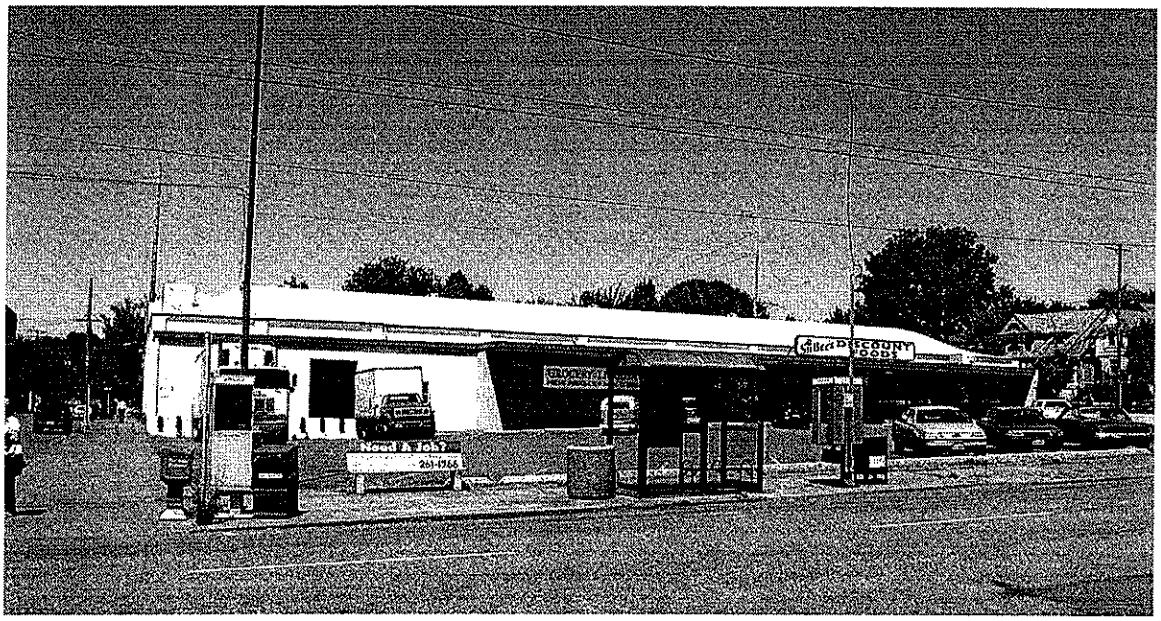
The permit figures for 2002 show that almost two-thirds (63%) of the commercial alteration and addition permits fall below the existing threshold for upgrading nonconforming development ($25,000). Also, by raising the threshold to $100,000 as recommended by Planning Commission, all but 16% of the submitted permits from 2002 would fall below the updated threshold and not all of the 16% will be required to make upgrades.

***Examples of upgrades to nonconforming development***

The two examples on the following pages illustrate how the current code regulations governing upgrades to nonconforming development help accomplish adopted city goals on specific redevelopment sites.

The photos on the next page provide a recent example of how an existing site (former grocery store) can be nonconforming in terms of different development standards (such as parking lot landscaping and stormwater standards as well as building coverage and transit street setback). The large, nonconforming surface parking lot on this site will be brought further into compliance with city code upon application for a building permit. City policy encourages upgrades to large surface parking lots to include better pedestrian access, perimeter landscaping to add aesthetic value and adding additional landscaping to improve stormwater management on the site.

## *Existing development (SuBee's grocery store) at 1401 SE Morrison*

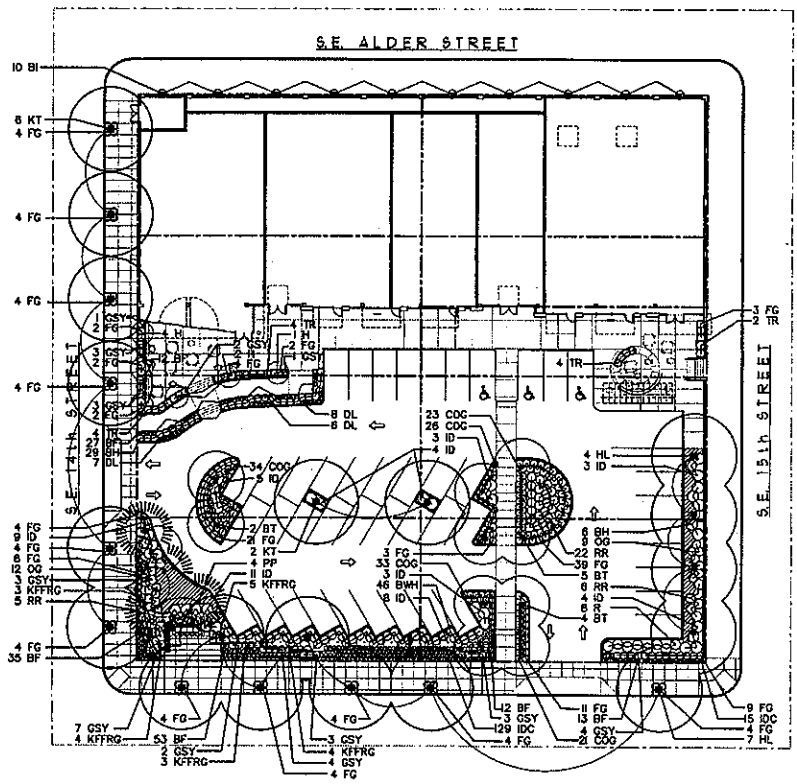



## *Landscape plan for proposed redevelopment at 1401 SE Morrison*

LANDSCAPE LEGEND

| SYMBOL | COMMON NAME / BOTANICAL NAME | SIZE/COND. | SPACING |
|---|---|---|---|
| TREES | | | |
| BT | Black Tupelo<br>Nyssa sylvatica | 2" Cal. | as shown |
| HL | Honeylocust<br>Gleditsia triacanthos 'Skycole' | 3.5" & 2" Cal. | as shown |
| KT | Katsura Tree<br>Cercidophyllum japonicum | 3.5" Cal. | 30' o.c. |
| PP | Ponderosa Pine<br>Pinus ponderosa - Willamette Valley variety | 8'-10' | as shown |
| SHRUBS | | | |
| BF | Blue Fescue<br>Festuca ovina 'Glauca' | 1 Gal. | 1.5' o.c. |
| BH | Blue Holly<br>Ilex meserveae 'Blue Boy Lit Blue Girl' | 24"-30" | 2.5' o.c. |
| BI | Boston Ivy<br>Parthenocissus tricuspidata | 2 Gal. Stk. | as shown |
| BWH | Boxleaf Honeysuckle<br>Lonicera Nitida Baggesens G. | 18"-24" | 3' o.c. |
| COG | Compact Oregon Grape<br>Mahonia aquifolium 'Compacta' | 2 Gal. | 2' o.c. |
| DL | Daylily<br>Hemerocallis 'Stella de Oro' | 1 Gal. | 1.5' o.c. |
| FG | Fountain Grass<br>Pennisetum alopecuroides 'Hamelin' | 1 Gal. | 2.5' o.c. |
| GSY | Gold Sword Yucca<br>Yucca filamentosa 'Golden Sword' | 18"-24" | 2.5' o.c. |
| H | Hibiscus<br>Hibiscus syriacus | 6'-7' | 4' o.c. |
| ID | Ivantil Dogwood<br>Cornus sericea 'Ivantil' | 24"-30" | 4' o.c. |
| IDC | Ice Dance Carex<br>Carex morrowii 'Ice Dance' | 1 Gal. | 1.5' o.c. |
| KFFRG | Karl Foerster Feather Reed Grass<br>Calamagrosthus arundinacea 'Karl Foerster' | 5 GAL. | 3' o.c. |
| OG | Oregon Grape<br>Mahonia aquifolium | 24"-30" | 3' o.c. |
| R | Rockrose<br>Cistus purpureus | 2 Gal. | 3' o.c. |
| RR | Rugosa Rose<br>Rosa rugosa 'Purple Pavement' | 2 Gal. | 3' o.c. |
| TR | Tuscan Rosemary<br>Rosmarinus officinalis 'Tuscan Blue' | 18"-24" | 3' o.c. |
| GROUNDCOVER | | | |
| | Emerald Carpet Rubus<br>Rubus calycinoides 'Emerald Carpet' | 4" POT | 12" o.c. |

NOTES
1. Installation must fully comply with all landscape code requirements and any City of Portland conditions of approval.
2. Irrigation to be provided by a fully automatic underground system.

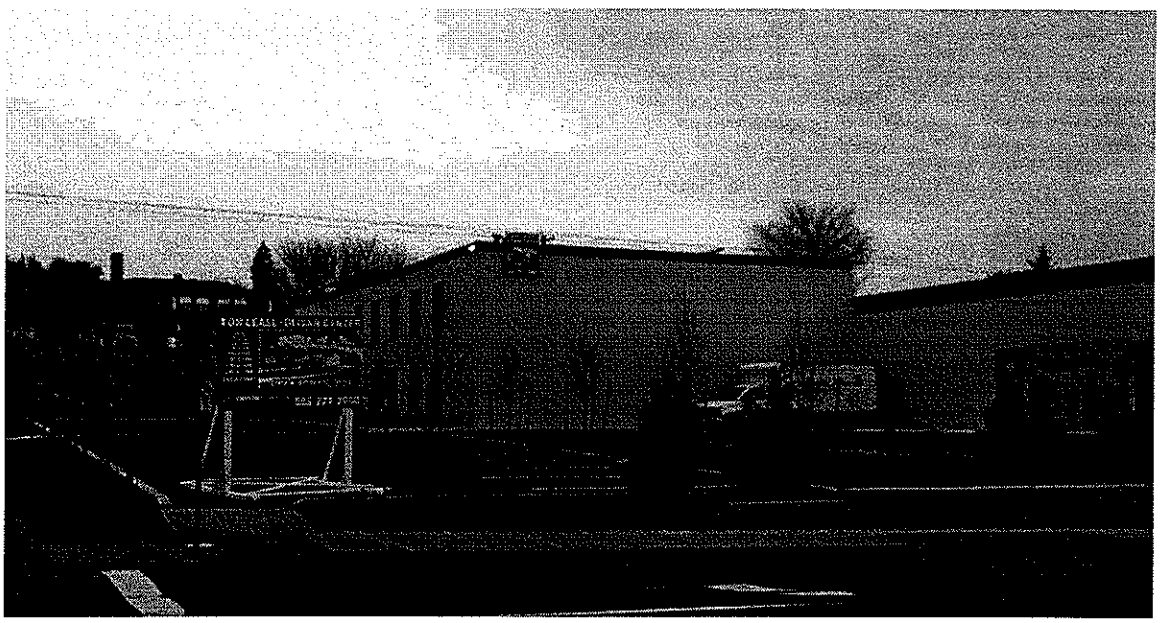



Morrison Plaza
THE ROMMEL ARCHITECTURAL PARTNERSHIP LLP

Another example of a recent upgrade to a nonconforming development is the landscaping of the parking lot located at NW 16th and NW Glisan. The site of the future "Glisan Center," the photos below show the parking lot both before the upgrades and after.

***BEFORE***
***Parking lot at NW 16th and NW Glisan (July 2002)***

***AFTER***
***Parking lot at NW 16th and NW Glisan (January 2003)***



These examples show why the City of Portland includes upgrades to nonconforming development as part of its regulatory framework – since much of the city is already developed, the policies and regulations governing nonconforming development are the primary method of achieving other important policy goals such as improved pedestrian access, increased landscaping and better stormwater management for these sites.

## C. Impact Analysis Report

| Summary of Recommended Changes to Thresholds and Expenditure Caps | | | |
|---|---|---|---|
| **Chapter** | **Current Regulation** | **Recommended Change** | **Impacts** |
| Chapter 33.258, Nonconforming Situations | • Alterations to a site that cost more than the $25,000 threshold require that the site be brought into compliance with the existing code.<br>• Mandatory improvements for fire, life safety and accessibility do not count towards the $25,000 threshold.<br>• There is a cap on required expenditures of 10% of the project cost.<br>Chapter 33.258.070.D | Increase the threshold to $100,000 on a temporary, two-year basis. If no project updates the threshold by the end of the two-year period, revert the threshold to $35,000 (plus inflation).<br>*The provision to revert back to a $35,000 threshold after the two-year period is applicable to all of the code provisions in this recommendation. | • Projects with alterations between $25,000 and $100,000 will no longer be required to spend up to 10% of alteration costs to bring the site into compliance. This will decrease the overall cost for these projects, but also result in fewer projects being required to do upgrades to help achieve various City policy goals.<br>• This would not provide relief to sites with alterations greater than $100,000.<br>NOTE: New development must completely meet current code, regardless of project cost. |

| Summary of Recommended Changes to Thresholds and Expenditure Caps | | | |
|---|---|---|---|
| **Chapter** | **Current Regulation** | **Recommended Change** | **Impacts** |
| Chapter 33.440, Greenway Overlay Zone | Any changes to a site require that the site be brought into full compliance (i.e., no threshold and no cap).<br>Chapter 33.440.230.A | • Add a threshold of $100,000 (on a temporary, two-year basis) and an expenditure cap of 10 percent.<br>• Allow applicants to limit the area of nonconforming upgrades to their ground lease.<br>• Allow applicants the option of phasing in nonconforming upgrades over several years. | This recommendation provides a significant change for these sites.<br>• Projects under $100,000 would no longer need to comply with the nonconforming upgrade requirements, nor would projects over the recommended $100,000 threshold need to contribute more than 10% of the project's cost towards nonconforming upgrades. This change in code provisions could potentially save large property owners with relatively small site improvement projects significant sums of money and encourages development to occur.<br>• Ground lease and phasing options (in ALL of the Plan District and Overlay Zone changes) add additional text to the code but provide financial breaks and/or flexibility to developers with little to no additional internal implementation costs to city bureaus.<br>• The impacts of the recommended code changes on City goals are harder to evaluate. The recommendation to dramatically increase the threshold raises questions regarding how citywide policy objectives for the Greenway and Scenic Overlay Zones will be realized. The recommendation allows for further analysis to be done to evaluate the impacts of this change during the two-year period. |
| Chapter 33.480, Scenic Overlay Zone | Any changes to a site require that the street setback be fully landscaped, (no threshold, no cap).<br>Chapter 33.480.040.B.2.b | • Add a threshold of $100,000 (on a temporary, two-year basis) and an expenditure cap of 10 percent.<br>• Allow applicants to limit the area of nonconforming upgrades to their ground lease.<br>• Allow applicants the option of phasing in nonconforming upgrades over several years. | |

| Summary of Recommended Changes to Thresholds and Expenditure Caps | | | |
|---|---|---|---|
| **Chapter** | **Current Regulation** | **Recommended Change** | **Impacts** |
| Chapter 33.508 Cascade Station/PIC plan district, within Environmental Overlay zone | Any changes to a site that are outside of buildings require full compliance with revegetation standards.<br><br>Chapter 33.508.330.A | Add an expenditure cap of 10% of the total project cost (interior and exterior changes). Planning Commission did not recommend adding a threshold because alterations that are inside buildings do not activate the requirement. | This expenditure cap will reduce the total project cost, potentially saving significant sums of money, especially for smaller alterations that until now have been required to achieve full compliance, no matter the cost.<br><br>The impacts of the recommended code changes on City goals are harder to evaluate. The expenditure cap would reduce the ability to meet environmental objectives in the district, especially on larger sites. |
| | Alterations on the site of more than $10,000 that are outside of buildings require that nonconforming paved areas be removed from the environmental zones. There is a 10% cap.<br><br>Chapter 33.508.330.B.17.a | • Increase the threshold from $10,000 to $100,000 on a temporary, two-year basis.<br>• Allow applicants to limit the area of nonconforming upgrades to their ground lease.<br>• Allow applicants the option of phasing in nonconforming upgrades over several years. | For impacts of phasing option, see Greenway and Scenic Overlay Zones comments.<br><br>For impacts of the change in the threshold, see Nonconforming Situations (Ch. 33.258) comments. |

| Summary of Recommended Changes to Thresholds and Expenditure Caps | | | |
|---|---|---|---|
| **Chapter** | **Current Regulation** | **Recommended Change** | **Impacts** |
| Chapter 33.515, Columbia South Shore plan district, within Environmental Overlay zone | Any changes to a site that are outside of buildings require full compliance with revegetation standards Chapter 33.515.278.A | Add a cap of 10% of the total project cost (interior and exterior changes). Planning Commission does not recommend adding a threshold because alterations that are inside buildings do not activate the requirement. | See comments under Cascade Station/PIC Plan District. |
| | Alterations on the site of more than $25,000 that are outside of buildings require that nonconforming paved areas be removed from the environmental zones. There is a 10% cap.<br>Chapter 33.515.278.B.17.a | • Increase the threshold from $25,000 to $100,000 on a temporary, two-year basis.<br>• Allow applicants to limit the area of nonconforming upgrades to their ground lease.<br>• Allow applicants the option of phasing in nonconforming upgrades over several years. | |

**Proposing Agency:** Bureau of Planning, with assistance from:

- Bureau of Development Services (BDS)
- Bureau of Environmental Services (BES)
- Portland Office of Transportation (PDOT)
- Portland Development Commission (PDC)
- Parks Bureau

**Implementing Agency:** Bureau of Development Services– application of City building and land use regulations (Title 33)

**OMF Contact:** Larry Nelson

**Scope/elements of proposal:** The recommendation includes four areas of amendments to the Zoning Code, all related to the thresholds that activate requirements to upgrade nonconforming development:

1. **The general threshold:** For most situations (citywide), Chapter 33.258, Nonconforming Situations contains the rules for upgrading nonconforming development. The threshold is currently $25,000; the proposal recommends increasing that to $100,000 on a temporary, two-year basis. There is also a cap on required expenditures of 10 percent of the project's cost. No change is recommended in this expenditure cap.
2. **Thresholds in some plan districts and overlay zones:** There are several similar provisions throughout the code that differ either in amount of the threshold or the amount of the expenditure cap. These thresholds and caps apply to specific areas or zones. The recommendation provides greater consistency between the various chapters of Title 33.
3. **Ground leases and phasing option in some plan districts and overlay zones:** The regulations in Chapter 33.258, Nonconforming Situations, allow an applicant to limit the area where nonconforming upgrades must be made to the ground lease where the improvements are proposed. In addition, applicants have the option of phasing in required nonconforming upgrades over several years (two to five years, depending on the square footage of the site – see Table 258-1 of the Zoning Code) if they bring the site into full compliance. The recommendation includes allowing these two options in the Greenway and Scenic Overlay Zones, and in the Columbia South Shore and Cascade Station/PIC plan districts.
4. **A mechanism to account for inflation:** The effects of inflation continually decrease the value of the threshold if the dollar amount remains constant; this recommendation includes a mechanism that will automatically adjust the thresholds for inflation once a year.

| | |
|---|---|
| **Recommended regulation:** | Amend the following chapters of the Zoning Code:<br>• Chapter 33.258, Nonconforming Situations<br>• Chapter 33.440, Greenway Overlay Zone<br>• Chapter 33.480, Scenic Overlay Zone<br>• Chapter 33.508, Cascade Station/PIC Plan District<br>• Chapter 33.515, Columbia South Shore Plan District<br>• Chapter 33.700, Administration and Enforcement |
| **Decision-making/ Review bodies** | Planning Commission – Recommendations on Zoning Code text amendments and ordinance; direct staff to continue to refine recommended code language, as necessary; and direct staff, in a subsequent phase of this project, to continue work on any other issues related to nonconforming development that is not included in the current action<br>City Council – Adoption of Zoning Code text amendments and direct staff, as outlined above, as necessary |
| **Related projects:** | Regulatory Improvement Project: Policy Package 1, which includes a number of issues, including:<br>- Minimum required caliper of trees,<br>- Excluding eaves from definition of building coverage,<br>- Various provisions of the Land Division Code, and<br>- Non-conforming situation review. |
| **Project follow up:** | A "phase two" of this project that would include any other issues related to nonconforming development that is not included in the current action. Testimony and discussion at the Planning Commission and City Council should help define what further actions, if any, should be considered to revise the code regarding upgrades for non-conforming development. See Section A. Background of this report for the Planning Commission's recommendation for additional project follow up regarding Nonconforming Upgrades requirements. |
| **Purpose/Intent:** | Increase the thresholds that trigger nonconforming upgrades in several chapters of the Zoning Code and add phasing and ground lease options to the upgrade requirements<br>Set the threshold at a level that smaller improvements and projects do not trigger the nonconforming upgrades requirement when the opportunity to advance city policy goals and desires seems minimal<br>Include an adjustment index to the dollar value of the threshold to account for inflationary changes and better reflect real time dollar values<br>Provide consistency in the way nonconforming upgrades are treated throughout the Zoning Code, including some plan districts and overlay zones |

## 1. Purpose/Intent

*Regulatory Improvement Project: Thresholds for Upgrading Nonconforming Development* and its accompanying updates to existing regulations has been developed as the first component of a larger, citywide project to "streamline, update and improve City building and land use regulations that hinder desirable development." The current recommendation seeks to address concerns in the business and development communities that existing regulations too often result in a disincentive to property owners when they consider making improvements to existing development. This includes an existing threshold that many consider too low and which "catches" too many relatively minor projects, thus increasing the costs to the applicant, and providing a disincentive to invest in improvements. Many people in the development of the Regulatory Improvement Workplan expressed an interest in raising the threshold to $50,000 or $100,000.

The report includes the Planning Commission's recommendation to raise the existing threshold of $25,000 to $100,000 (on a temporary, two-year basis) and link annual adjustments of the threshold to a construction cost index. This recommendation suggests these and other code changes to account for inflation and allow smaller projects to not have the increased burden of paying for nonconforming upgrades. However, while emphasizing the importance of reaching the City's economic development goals, this recommendation does not provide assurance that other important city policy goals and objectives will be furthered through upgrades of nonconforming development during the temporary, two-year period being recommended.

The recommendations included in this report do not provide a long-term solution to a very complex problem dealing with the existing costs of development in the City of Portland. In addition to hearing about the specific upgrades required by the Zoning Code, Planning Commission also heard testimony about the broad variety of costs related to permitting, system development charges, stormwater and seismic requirements, street trees, etc. The thresholds for nonconforming upgrades that Planning Commission considered are only one small piece of the overall burden on these developers and business and property owners.

The recommendation also responds to the changing development landscape in the City of Portland where, due in large part to local and regional growth management policies, fewer vacant development sites exist and a larger percentage of site improvements are occurring to existing development. Some of this existing development is nonconforming due to changes, over time, to the Zoning Code. For example, the City's parking lot standards changed on March 26, 2001 and now, most existing surface parking lots are no longer in conformance with current city code. The $25,000 threshold currently in the Zoning Code triggers the requirement to spend up to 10% of the project cost in bringing this and other non-conforming development into compliance with our current code.

What are our intended outcomes?

The recommended code language seeks to update regulatory thresholds that have been in place for over five years and to put in place a mechanism to annually update the threshold based on inflation.

This recommendation also provides some regulatory relief and simplification to applicants who, under the current regulations, may have deferred site improvements that not only increase the value of their property but also the City's tax base.

What elements of the City's vision, mission, goals, and objectives do the regulations support?

This recommendation (and subsequent items under the Regulatory Improvement Workplan umbrella) supports the following elements of the City's vision, mission, goals and objectives:

- Responsive and accessible City government,
- Continuous improvement,
- Innovative approaches to problem-solving,
- Strong partnerships between government, businesses and community groups to help set community priorities,
- Thriving and sustainable economy that supports large and small business and industry,
- Natural systems to feed clean and healthy watersheds, including the Willamette River, and
- Environmental enhancements that lead to improved air and water quality.

*BDS noted, and the Bureau of Planning agrees, that existing Code requirements promote various city policies and goals. The code requirements are not suggested for change, but increasing the dollar value of the nonconforming upgrade threshold will likely result in fewer properties brought into conformance with environmental, livability, bike and pedestrian improvements, and other requirements that promote city goals, including promoting an array of transportation choices.*

How do the regulations support the City's Comprehensive Plan?

Fundamentally, the recommendation does not change which portions of the City's Comprehensive Plan are supported by the regulations regarding upgrades for non-conforming development, just the degree to which they are supported.

The recommended change from a $25,000 to $100,000 threshold for the citywide upgrades required in Chapter 33.258, Nonconforming Situations, and the addition of thresholds and/or caps in other sections of Title 33, will result in an increase in the number of developments that do not have to meet these requirements, and therefore an increase in the number of projects that will not, through these requirements, be helping to further city policy goals supported by the regulations, including:

- Strengthening major established commercial centers that are well served by transit,
- Supporting pedestrian movement and the use of transit through building and entrance location and providing on-site pedestrian circulation to adjacent streets and development,
- Supporting the stability of existing city neighborhoods while attracting and retaining long-term residents and businesses that ensure the City's livability and economic vitality,

- Promoting safe and pleasant bicycle and pedestrian access to and circulation within commercial areas, which includes providing convenient, secure bicycle parking and other amenities for employees and shoppers,
- Supporting and promoting voluntary improvements and maintenance actions to the physical environment within commercial areas that are attractive to customers and visitors,
- Encouraging the development of the Columbia South Shore as an industrial employment district while protecting significant environmental resources,
- Improving bicycle and pedestrian connections between the Columbia South Shore district and residential areas to the south,
- Supporting an urban form that is served by a multi-modal transportation system which provides safe and convenient pedestrian, bicycle and vehicle access as well as street and pedestrian connections within and between new and existing development,
- Improving the quality of the pedestrian environment by implementing pedestrian improvements to new public and private development,
- Making the bicycle an integral part of the daily life in Portland by providing end-of-trip facilities and encouraging bicycle use, including the provision of short- and/or long-term bicycle parking,
- Promoting energy efficient transportation including walking and bicycle commuting by implementing commuter services such as developing walkways and bicycle parking,
- Improving air and water quality by promoting alternative modes of transportation such as bicycling, walking and transit throughout the metropolitan area,
- Conserving and enhancing drainageways for the purpose of containing and regulating stormwater runoff, which can include enhancing and extending vegetation along these drainageways,
- Providing a buffer between sidewalks and auto traffic and parking areas to create a pleasant and aesthetically pleasing pedestrian experience,
- Enhancing and extending Portland's attractive identity by building on design elements, features and themes that are identified with the City such as the intimate, human scale that typifies Portland, and
- Ensuring that those traveling on foot have comfortable, safe, convenient and attractive pathways that connect Portland's neighborhoods, commercial districts and employment centers.

However, by encouraging more development and providing greater consistency between various chapters and procedures of Title 33, site improvement projects may meet the above goals through other means, and other city goals can also be advanced, including:

- Encouraging infill and redevelopment as a way to accommodate expected increases in population and employment,
- Supporting the stability of existing city neighborhoods while attracting and retaining long-term residents and businesses that ensure the City's livability and economic vitality,
- Preventing the deterioration of existing structures and public facilities,
- Encouraging investment in the redevelopment, rehabilitation and adaptive reuse of urban land and buildings for employment opportunities,

- Incorporating economic considerations in long-range planning activities undertaken by the Bureau of Planning,
- Evaluating the impact of zoning land use regulations and procedures on neighborhood businesses using the planning process that involves affected business and neighborhood organizations
- Supporting and promoting voluntary improvements and maintenance actions to the physical environment within commercial areas that are attractive to customers and visitors
- Encouraging the development of the Columbia South Shore as an industrial employment district while protecting significant environmental resources
- Balancing the benefits of regulations against the cost of implementation and compliance,
- Assuring that Portland remains competitive with other jurisdictions as a location in which to live, invest and do business, and
- Maintaining consistent procedures and limiting their number.

The recommendation to dramatically increase the threshold for upgrading nonconforming development raises questions regarding how citywide policy objectives for the public realm will be realized. While emphasizing the importance of reaching the City's economic development goals, this recommendation does not provide assurance that other important city policy goals will be furthered through upgrades to nonconforming development during the temporary, two-year period of $100,000 threshold that is being recommended.

The changes to the Greenway and Scenic Overlays, as well as to the Columbia South Shore and Cascade Station/PIC Plan Districts, provide the greatest increase in flexibility and relief to property owners, developers, and small businesses, while the increase in Chapter 33.258, Nonconforming Situations provides significant additional opportunities to develop without triggering additional costs to bring existing nonconforming development closer into compliance.

For a more in-depth analysis of how the recommended regulations support the City's Comprehensive Plan, please refer to the legal findings.

**2. Impacts, trade-offs and consequences:**

Who/what do regulations impact?

Although nonconforming development occurs across the spectrum of land use and building types, the regulations included in this recommendation typically apply most often to currently nonconforming multi-dwelling residential, commercial and/or industrial development types and, within those categories, most often to those with existing surface parking lots. The recommendation includes changes to both citywide code provisions (Ch. 33.258, Nonconforming Situations) and location-specific code provisions (e.g., Ch. 33.440, Greenway Overlay Zones, Ch. 33.480, Scenic Overlay Zone, Ch. 33.508, Cascade Station/PIC Plan District and Ch. 33.515, Columbia South Shore Plan District).

Generally, the code changes included in this recommendation would have little to no impact on:

- Single-dwelling residential development,

- Existing businesses with no parking lots, which already have a pedestrian orientation (e.g., in many areas in the Central City Plan District, and along some of the City's commercial main streets such as SE Hawthorne or NW 23rd Avenue), and
- Any new construction.

What other City and non-City regulations affect the same subject or geographic area?

Nonconforming development within the City of Portland can also trigger required upgrades as defined in other sections of the City Code. For example, under Title 20, Public Improvements, Chapter 20.40.070, Planting of Trees includes a provision where improvements to existing development which exceeds $25,000 in value requires the planting of street trees. Stormwater management upgrades are required for projects adding over 500 square feet of impervious surfaces as part of their redevelopment. Also, Chapter 24.85, Interim Seismic Design Requirements for Existing Buildings includes a provision where additions, alterations or changes of occupancy of existing buildings require seismic improvements. The current recommendation to increase the nonconforming upgrades threshold to $100,000 only applies to Title 33, thus the street trees threshold would remain at $25,000 at this time and no changes will be made to the Stormwater Manual. However, the City Council has asked for the evaluation of these additional regulatory thresholds and that any recommended changes to them should be forwarded to the Council for consideration at the same time this project reaches them.

Do the regulations create new nonconforming situations or address existing nonconforming uses?

The recommendation specifically addresses regulations that apply to existing nonconforming situations.

**3. Alternatives analysis and regulatory coordination:**

Is there a simpler regulation, or a non-regulatory method, which would accomplish the same goals?

One of the basic principles of the current recommendation is to simplify the existing regulations governing nonconforming upgrades by providing greater consistency between the various chapters of Title 33. The current code includes provisions that differ either in the amount of the threshold or the amount of the expenditure cap. However, in an effort to provide additional flexibility to development (e.g., ground leases and phasing in upgrades), the actual size of the code increases by approximately 10-12 pages.

The recommended regulations seek to strike a balance between ease of administration, code simplicity and addressing the unique concerns and challenges of upgrading nonconforming development. Different stakeholders have different opinions about whether the appropriate balance has been struck. During the development of the Regulatory Improvement Workplan, a number of stakeholders encouraged raising the threshold to $50,000 or $100,000. Others recommended leaving the threshold at $25,000.

How have interested stakeholder groups and the wider community been involved in this process?

The following groups and individuals have been involved in the outreach process:

- Developers,
- Business owners,
- Neighborhood and business associations,
- Neighborhood residents,
- Stormwater advisory committee, and
- Bicycle and pedestrian advocates.

Stakeholders have provided input at a public open house, through written comments and in meetings with project staff as well as through oral and written testimony to Planning Commission. Because of the short timeline for development of this proposal and subsequent recommendation, a number of the issues raised for more complicated changes to the code have not been addressed as part of this proposal.

Planning Commission received testimony that led them to conclude that the real question is the total cost of all development-related permits, fees and other charges, not just this one nonconforming use threshold. Due to the limited scope of this project, none of the proposals brought forward to Planning Commission dealt with this problem in a holistic way. The Commission was not presented with real rationale for any of the thresholds. There is no real justification for any particular dollar figure, which makes all of them equally arbitrary and therefore problematic. Thus the recommendation to raise the threshold to $100,000 on a temporary, two-year basis also includes the request that City Council initiate a comprehensive look at the nonconforming upgrade requirements along with other requirements that impact the cost of redevelopment of existing properties. This review should include evaluation of the overall costs – including SDCs, permitting costs, mandatory improvements and required upgrades such as stormwater management.

The legal findings contained within the adopting ordinance for this project include a full description of public involvement activities for this project.

Were alternatives to regulatory action fully considered and weighed?

This recommendation is one item within the larger, 2002-03 Regulatory Improvement Workplan. As such, City Council approved specific directives to city staff in terms of raising the existing thresholds for upgrading nonconforming development. By definition, this action is regulatory in nature, although it does not recommend any additional regulatory requirements, and does provide regulatory relief by providing greater flexibility in meeting existing Code requirements. Other possible regulatory and non-regulatory options were discussed but were not fully developed due to project timeline constraints. However, staff did consider an array of mechanisms to account for the inflationary adjustment, including two versions of the Consumer Price Index (CPI) and construction-related indices, choosing the Construction Cost Index (CCI) as the most appropriate alternative.

What reviews will be required? Would a lesser level of review be appropriate?

The recommendation does not suggest any changes to existing review procedures and does not require any specific reviews. Some of the nonconforming upgrades

required do trigger reviews when the applicant is unable to meet the development standards.

Is the proposed regulation appropriately tailored to the specific problem it seeks to address?

The recommendation revises an existing regulatory framework for nonconforming situations and, in the process, simplifies how these situations are reviewed across several subsections of the code. In addition, the recommendation specifically raises the existing threshold, adds a threshold where one did not exist before and includes an inflationary adjustment index.

Does the proposed regulation provide maximum flexibility to the regulated parties?

The recommendation provides additional flexibility by adding a threshold and/or an expenditure cap where one does not currently exist (e.g., the Greenway Overlay Zone) and by allowing applicants in the Greenway and Scenic Overlay Zones, the Columbia South Shore Plan District and the Cascade Station/PIC Plan District to limit the area of nonconforming upgrades to their ground lease as well as the option of phasing in required nonconforming upgrades over several years if they bring the site into full compliance.

How easy or difficult will the regulations be to implement?

Since the recommendation is a revision (and simplification, in most instances) to existing Zoning Code language and uses existing procedures already included in the Code, the ease of implementation should improve.

**4. Costs:**

What are the permit and review costs of the regulation to developers and/or property owners?

The changes recommended by Planning Commission would result in a decrease in permit and review costs for those under the recommended thresholds and no increase in costs for those above the recommended thresholds.

What are the internal administration costs for the City, in terms of materials, staffing, etc. for review, monitoring and evaluation, inspection and enforcement?

Given that the recommendation does not change the existing Zoning Code procedures for administering nonconforming upgrades (e.g., the threshold, ground lease option and phasing option), implementation staff will need little to no additional administration time. In addition, no additional training or enforcement costs will occur. The recommended code language should not adversely impact code enforcement as no regulations that are not already being enforced are being proposed. Also, it is possible that the recommended code changes could lead to the fewer plan reviews and thus a reallocation of Planning and Zoning staff to other Development Services Center duties.

Will there be any impact on fees charged? Will the proposal have an impact on the City's revenue collections?

The recommendation does not include any changes to the existing fee structure. It is possible that by raising the threshold, more small improvement projects that may have been deferred previously will now proceed forward and this may have a

positive influence on property values and subsequent property taxes. However, it is possible that by increasing the threshold Planning and Zoning staff will actually be reviewing fewer tenant improvement plans, thus meaning a potential loss in revenue from Plan Check and Zoning Inspection fees.

**5. Benefits:**

What are the benefits of the regulation to current and/or future users/developers?

By increasing the threshold, adding an expenditure cap and including specifics pertaining to ground leases and a phasing option, the recommendation benefits small improvement projects by providing some regulatory relief as well as additional flexibility.

Additionally, applicants with improvement projects that are valued less than the recommended $100,000 threshold may benefit from the new code language in that an Adjustment Review will not be necessary if a particular nonconforming upgrade cannot be met. The Adjustment Review can be particularly onerous for small businesses and the Adjustment Review process adds additional time to the overall development review process.

Will the regulation enhance the value of property?

While there may not be a direct connection between the regulation and increased property values, it is anticipated that by providing additional flexibility and adjusting the threshold, more property owners, including small business owners, will pursue improvements to their existing nonconforming development. This would likely lead to increased property values over time.

What benefit does the regulation provide to the general public?

The recommendation, while emphasizing the importance of reaching the City's economic development goals and seeking to provide some regulatory relief and flexibility to property owners, does not provide assurance that other important city policy goals will be furthered through upgrades of nonconforming development during the two-year period being recommended.

**6. Implementation:**

Note: The Bureau of Development Services (BDS) is the primary implementer of the proposed regulations.

Does the proposal involve a new review procedure, approval criteria or standards?

The recommendation does not suggest any new review procedures or approval criteria to the existing Zoning Code. However, the recommendation does include adding provisions pertaining to a threshold, expenditure cap, ground leases and a phasing option to several chapters of the existing code. These chapters include the Greenway Overlay Zone, the Scenic Overlay Zone, the Cascade Station/PIC Plan District and the Columbia South Shore Plan District. Although new language is recommended for addition to these chapters, the recommended code will actually increase code simplicity by providing more consistency between various code chapters rather than have differing provisions across these chapters.

What changes in staffing or funding are required to implement the regulation?
The recommendation will have little or no impact on staffing or funding resources for implementation staff.

What new administrative rules, procedures and training are required for implementation of the regulation?
Since the recommendation is using existing procedures and regulations already in place, the recommended code language will have little or no impact on new administrative rules, procedures or training.

Financial impacts and benefits, as well as the review processes required are summarized in previous sections of this document. Specific dollar values and percentages are difficult to determine based on the variety of situations. Section 4 of this impact analysis covers the internal financial impacts.

## D. Recommended Amendments to the Zoning Code

**How changes are shown in this section**
Language to be added to the Zoning Code is underlined; language to be deleted is shown in ~~strikethrough~~.
The left-hand page is staff commentary on the recommended code language on the right-hand page.

# Commentary

## AMENDMENTS TO CHAPTER 33.258, NONCONFORMING SITUATIONS

**How it works now:** If the owner of an existing nonconforming use, allowed use, limited use, or conditional use makes improvements to their site—such as an interior remodel, HVAC upgrade, or tenant improvement—and they spend more than $25,000 or more than 35% of the value of the existing improvements, certain aspects of the development must be upgraded.

**33.258.070.D.2** This amendment changes the dollar threshold for upgrading nonconforming development from $25,000 to $100,000 for two years after the effective date of these regulations. After two years, the threshold will be changed to $35,000, adjusted for inflation. The reasons for the change, why these dollar amounts were selected, and why we recommend a two-year automatic sunset provision are included in the report.

**33.258.070.D.2.a** Note: The sentence "Mandatory improvements for fire, life safety and accessibility do not count toward the thresholds" is in the current Zoning Code. However, Code Maintenance 2003 (scheduled for a City Council hearing on April 9, 2003) includes a clarification by specifying what those mandatory improvements are. (For more information on Code Maintenance 2003, contact Douglas Hardy, Bureau of Development Services at 503-823-7816).

## AMEND CHAPTER 33.258, NONCONFORMING SITUATIONS

### 33.258.070 Nonconforming Development

**A.** through **C.** [No change.]

**D. Development that must be brought into conformance.** [No change.]

1. Nonconforming development with a new nonconforming use or new nonconforming residential density. [No change.]

2. Nonconforming development with an existing nonconforming use, allowed use, limited use, or conditional use. Nonconforming development associated with an existing nonconforming use, an allowed use, a limited use, or a conditional use, must meet the requirements stated below. When alterations are made that are over the threshold of Subparagraph D.2.a., below, the site must be brought into conformance with the development standards listed in Subparagraph D.2.b. The value of the alterations is based on the entire project, not individual building permits.

   a. Thresholds triggering compliance. The standards of Subparagraph D.2.b., below, must be met when the value of the proposed alterations on the site is that set out in either 1 or 2, below. Mandatory improvements for fire, life safety and accessibility do not count toward the thresholds. These thresholds are not cumulative.

      (1) Percentage threshold. 35 percent or greater than the assessed value of all improvements on the site. On sites with multiple tenants in one or more buildings, the threshold applies to any alteration that is 35 percent or greater of the assessed value of all improvements on the site; or

      (2) Dollar threshold.

      - For building permit applications filed before or on [two years after the effective date of this regulation], the value of the proposed alterations, as determined by BDS, is more than ~~$25,000~~ $100,000;

      - For building permit applications filed after [two years after the effective date of this regulation], the value of the proposed alterations, as determined by BDS, is more than $35,000.

   b. Standards which must be met. Development not complying with the development standards listed below must be brought into conformance or receive an adjustment. [No change.]

## Commentary

33.258.070.D.2.c While no changes are proposed to this portion of the code, it is included here for information; amendments proposed to other chapters refer to this regulation.

33.258.070.D.2.d While only two changes are proposed to this portion of the code (to d(1) and to 2.d.(2)-second bullet on next page), it is included here in its entirety for information; amendments proposed to other chapters refer to this regulation.

33.258.070.D.2.d(1) This change clarifies that the upgrades required by plan districts and overlay zones take precedence over those required by this chapter.

c. Area of required improvements.

(1) Generally. Except as provided in D.2.c(2), below, required improvements must be made for the entire site.

(2) Exception for sites with ground leases. Required improvements may be limited to a smaller area if there is a ground lease for the portion of the site where the alterations are proposed. If all of the following are met, the area of the ground lease will be considered as a separate site for purposes of required improvements. The applicant must meet the following:

- The signed ground lease – or excerpts from the lease document – must be submitted to BDS. The portions of the lease must include the following:
  - The term of the lease. There must be at least one year remaining on the ground lease; and
  - A legal description of the boundaries of the lease.
- The boundaries of the ground lease must be shown on the site plan submitted with the building permit application;
- The area of the lease must include all existing and any proposed development that is required for, or is used exclusively by, uses within the area of the lease; and

Screening is not required along the boundaries of ground leases that are interior to the site.

d. Timing and cost of required improvements. The applicant may choose one of the following options for making the required improvements:

(1) Option 1. Under Option 1, required improvements must be made as part of the alteration that triggers the required improvements. However, the cost of required improvements is limited to 10 percent of the value of the proposed alterations. It is the responsibility of the applicant to document the value of the required improvements. When all required improvements are not being made, the priority for which improvements to make is the same as the order of improvements listed in Subparagraph D.2.b, above. <u>If improvements to nonconforming development are also required by regulations in a plan district or overlay zone, those improvements must be made before those listed in Subparagraph D.2.b.</u>

(2) Option 2. Under Option 2, the required improvements may be made over several years, based on the compliance period identified in Table 258-1. However, by the end of the compliance period, the site must be brought fully into compliance with the standards listed in Subparagraph D.2.b. Where this option is chosen, the following must be met:

33.258.070.D.2.d(2)-second bullet This amendment changes the dollar threshold that begins the compliance period from $25,000 to $100,000 for two years, after which it will be reduced to $35,000, adjusted for inflation.

- Before a building permit is issued, the applicant must submit the following to BDS:

  - A Nonconforming Development Assessment, which identifies in writing and on a site plan, all development that does not meet the standards listed in subparagraph D.2.b.

  - A covenant executed by the property owner that meets the requirements of Section 33.700.060. The covenant must identify development on the site that does not meet the standards listed in subparagraph D.2.b, and require the owner to bring that development fully into compliance with this Title. The covenant will also specify the date by which the owner will bring the nonconforming development into full compliance. The date must be within the compliance periods set out in Table 258-1.

- The nonconforming development identified in the Nonconforming Development Assessment must be brought into full conformance with the requirements of this Title within the following compliance periods. ~~The compliance period begins when a building permit is issued for alterations to the site of more than $25,000.~~ The compliance periods are based on the size of the site. The compliance periods are identified in Table 258-1. The compliance period begins when a building permit is issued for alterations to the site as follows:

  — For building permit applications filed before or on [two years after the effective date of this regulation], the value of the proposed alterations is $100,000;

  — For building permit applications filed after [two years after the effective date of this regulation], the value of the proposed alterations, as determined by BDS, is $35,000.

- By the end of the compliance period, the applicant or owner must request that the site be certified by BDS as in compliance as specified in Section 33.258.037, Documenting Conforming Development. If the request is not received within that time, or if the site is not fully in conformance, no additional building permits will be issued.

- If the regulations referred to by Subparagraph D.2.b, or in D.2.b itself, are amended after the Nonconforming Development Assessment is received by BDS, and those amendments result in development on the site that was not addressed by the Assessment becoming nonconforming, the applicant must address the new nonconforming development using Option 1 or Option 2. If the applicant chooses Option 2, a separate

Nonconforming Development Assessment, covenant, and compliance period will be required for the new nonconforming development.

**Table 258-1**
**Compliance Periods for Option 2**

| Square footage of site | Compliance period |
|---|---|
| | |
| Less than 200,000 sq. ft. | 2 years |
| 200,000 sq. ft. or more, up to 500,000 sq. ft. | 3 years |
| More than 500,000 sq. ft., up to 850,000 sq. ft. | 4 years |
| More than 850,000 sq. ft. | 5 years |

# Commentary

## AMENDMENTS TO CHAPTER 33.440, GREENWAY OVERLAY ZONE

33.440.200 Currently, any changes to a site in the Greenway Overlay Zone requires that all nonconforming development be brought fully into compliance with the landscaping requirements. The threshold is zero, and there is no cap. The entire site must be brought into compliance, and it must be done at the time the alterations are made.

For example, a small addition, valued at $10,000 would trigger the requirement that the entire site meet the greenway landscaping standards. This includes planting trees (1 per 20 feet of river frontage), shrubs (1 per 2 feet of river frontage, with some exceptions), and ground cover. The site may have an extensive river frontage, but the full upgrade is required, even if it costs far more than the $10,000 cost of the building expansion.

33.440.230.D These amendments make the following changes to parallel the provisions of Subsection 33.258.070.D, which apply to nonconforming development outside the Greenway Overlay Zone.:

- Add a threshold and a cap. The cap is based on the total project cost.
- Allow applicants to limit the area of nonconforming upgrades to their ground lease.
- Allow applicants to have the option of phasing in required nonconforming upgrades over several years if they bring the site into full compliance.

In addition, it clarifies that the upgrades required by this chapter take precedence over those required by Chapter 33.258.

33.440.230.D.1 Note: The sentence "Mandatory improvements for fire, life safety and accessibility do not count toward the thresholds" is used in the current Zoning Code. However, Code Maintenance 2003 includes a clarification by specifying what those mandatory improvements are.

## AMEND CHAPTER 33.440, GREENWAY OVERLAY ZONE

**33.440.200 Application of the Development Standards**
Any changes to land or development within the greenway zones, including rights-of-way, are subject to the development standards of this chapter.

**33.440.230 Landscaping**

**A. Required landscaping.** Landscaping must be provided to conserve or re-establish vegetative cover within or riverward of the greenway setback. The landscaping must comply with the standards specified below. This is in addition to any landscape requirements of other chapters of this Title. The greenway landscape requirements may be included in any overall percentage-of-site landscape requirements of the base zone. Landscaping is not required where it would significantly interfere with a river-dependent or river-related use or development, or where the Fire Marshal finds that it would pose a safety hazard.

**B. Landscaping standards.** [No change.]

**C. Native plants.** [No change.]

**D. Exception for sites with an existing nonconforming use, allowed use, limited use, or conditional use.** The regulations of this subsection apply to sites with an existing nonconforming use, an allowed use, a limited use, or a conditional use. When alterations are made to a site that does not meet the standards of this section, and the alterations are over the threshold of Paragraph D.1, below, the site must be brought into conformance with the development standards listed in Subsections A, B, and C, above. The value of the alterations is based on the entire project, not individual building permits. The cost of the upgrades required by this chapter may be counted toward the cost of upgrades required by Subsection 33.258.070.D. However, the upgrades required by this chapter must be completed first.

1. Thresholds triggering compliance. The standards of Subsections A, B, and C must be met when the value of the proposed alterations on the site is that set out in either D.1.a. or b., below. Mandatory improvements for fire, life safety, and accessibility do not count toward the thresholds. These thresholds are not cumulative.

   a. Percentage threshold. 35 percent or greater than the assessed value of all improvements on the site. On sites with multiple tenants in one or more buildings, the threshold applies to any alteration that is 35 percent or greater of the assessed value of all improvements on the site; or

   b. Dollar threshold.

      (1) For building permit applications filed before or on [two years after the effective date of this regulation], the value of the proposed alterations, as determined by BDS, is more than $100,000;

      (2) For building permit applications filed after [two years after the effective date of this regulation], the value of the proposed alterations, as determined by BDS, is more than $35,000.

33.440.230.D.3. This amendment refers to 33.258.070.D.2.d. Under 33.258.070.D.2.d, applicants have two options for making nonconforming upgrades. Under Option 1, the cost of required improvements is limited to 10 percent of the value of the proposed alterations (the cap), but the required improvements must be made at the same time as the alterations. Under Option 2, the applicant may phase in required improvements over several years, but the site must be brought into full compliance; there is no cap.

2. Area of required improvements. Except as provided in 33.258.070.D.2.c(2), Exception for Sites With Ground Leases, required improvements must be made to the entire site.

3. Timing and cost of required improvements. The timing and cost of the required improvements is specified in 33.258.070.D.2.d. However, where 33.258.070.D.2.d refers to the standards listed in subparagraph 33.258.070.D.2.b, the standards of Subsections A, B, and C, above, are also included.

# Commentary

## AMENDMENTS TO CHAPTER 33.480, SCENIC OVERLAY ZONE

**33.480.030** Currently, any changes to a site in the Scenic Overlay Zone requires that the street setback be fully landscaped. The threshold is zero, and there is no cap. The entire site must be brought into compliance, and it must be done at the time the alterations are made.

The situation is similar to that of sites in the Greenway Overlay Zone; see the commentary for 33.440.200.

**33.480.040.B.2.b(1)-(3)** These amendments make the following changes to parallel the provisions of Subsection 33.258.070.D, which apply to nonconforming development outside the Scenic Overlay Zone:

- Add a threshold and a cap.
- Allow applicants to limit the area of nonconforming upgrades to their ground lease.
- Allow applicants to have the option of phasing in required nonconforming upgrades over several years if they bring the site into full compliance.

In addition, it clarifies that the upgrades required by this chapter take precedence over those required by Chapter 33.258.

## AMEND CHAPTER 33.480, SCENIC OVERLAY ZONE

**33.480.030 Application**
The Scenic Resource zone is to be applied to all significant scenic resources identified in the Scenic Resources Protection Plan. Any changes to land or development, including rights-of-way, within the Scenic Resource zone are subject to the regulations of this chapter.

**33.480.040 Development Standards**
[No change.]

**A. View Corridors.** [No change.]

**B. Scenic Corridors.** All development and vegetation with a scenic corridor designation in the *Scenic Resources Protection Plan* are subject to the regulations of this Subsection.

1. Purpose. [No change.]

2. Standards.

   a. Limiting blank facades. [No change.]

   b. Street setbacks. Except as allowed in B.2.b(1), below, t~~T~~he entire required street setback must be landscaped to at least the L1 level unless the more stringent standards below or in other chapters of this title apply. No more than 25 percent of the entire area of the street setback can be used for vehicle areas except that each lot is allowed at least a 9-foot wide driveway or parking area. For shared driveways serving more than one unit, the base zone standards apply, and landscaping at the L1 standard must be provided adjacent to the identified resource. Where the base zone does not require a street setback, a setback of 20 feet is established by the Scenic Resource zone.

      (1) Exception for sites with an existing nonconforming use, allowed use, limited use, or conditional use. The following regulations apply to sites with an existing nonconforming use, an allowed use, a limited use, or a conditional use. When alterations are made to a site that does not meet the standards of B.2.b, above, and the alterations are over the threshold of B.2.b(2) below, the site must be brought into conformance with the development standards of this B.2.b. The value of the alterations is based on the entire project, not individual building permits. The cost of the upgrades required by this chapter may be counted toward the cost of upgrades required by Subsection 33.258.070.D. However, the upgrades required by this chapter must be completed first.

33.480.040.B.2.b(2) Note: The sentence "Mandatory improvements for fire, life safety and accessibility do not count toward the thresholds" is used in the current Zoning Code. However, Code Maintenance 2003 includes a clarification by specifying what those mandatory improvements are.

33.480.040.B.2.b(4) This amendment refers to 33.258.070.D.2.d. Under 33.258.070.D.2.d, applicants have two options for making nonconforming upgrades. Under Option 1, the cost of required improvements is limited to 10 percent of the value of the proposed alterations (the cap), but the required improvements must be made at the same time as the alterations. Under Option 2, the applicant may phase in required improvements over several years, but the site must be brought into full compliance; there is no cap.

(2) Thresholds triggering compliance. The standards of B.2.b, above, must be met when the value of the proposed alterations on the site is that set out as follows. Mandatory improvements for fire, life safety, and accessibility do not count toward the thresholds. These thresholds are not cumulative.

- Percentage threshold. 35 percent or greater than the assessed value of all improvements on the site. On sites with multiple tenants in one or more buildings, the threshold applies to any alteration that is 35 percent or greater of the assessed value of all improvements on the site; or

- Dollar threshold.

  — For building permit applications filed before or on [two years after the effective date of this regulation], the value of the proposed alterations, as determined by BDS, is more than ~~$25,000~~ $100,000;

  — For building permit applications filed after [two years after the effective date of this regulation], the value of the proposed alterations, as determined by BDS, is more than $35,000.

(3) Area of required improvements. Except as provided in 33.258.070.D.2.c(2), Exception for Sites With Ground Leases, required improvements must be made to the entire site.

(4) Timing and cost of required improvements. The timing and cost of the required improvements is specified in 33.258.070.D.2.d. However, where 33.258.070.D.2.d refers to the standards listed in subparagraph 33.258.070.D.2.b, the standards of B.2.b, above, are also included.

c. through h. [No change.]

## AMENDMENTS TO CHAPTER 33.508, CASCADE STATION/PIC PLAN DISTRICT

33.508.305 Currently, any changes to a site in the Environmental Overlay Zone within the plan district require that the revegetation standards of 33.508.330.A be met. The threshold is zero, and there is no cap. However, all changes to the interior of a building are exempt from this requirement [33.508.314.B]. The entire site must be brought into compliance, and it must be done at the time the alterations are made.

33.508.330.A.6 These amendments make the following changes to parallel the provisions of Subsection 33.258.070.D, which apply to nonconforming development outside the Cascade Station/PIC plan district:

- Add a cap. The threshold remains zero, because of the exemption for interior changes.
- Allow applicants to limit the area of nonconforming upgrades to their ground lease.
- Allow applicants to have the option of phasing in required nonconforming upgrades over several years if they bring the site into full compliance.

In addition, it clarifies that the upgrades required by this chapter take precedence over those required by Chapter 33.258.

33.508.330.A.6.c This amendment refers to 33.258.070.D.2.d. Under 33.258.070.D.2.d, applicants have two options for making nonconforming upgrades. Under Option 1, the cost of required improvements is limited to 10 percent of the value of the proposed alterations (the cap), but the required improvements must be made at the same time as the alterations. Under Option 2, the applicant may phase in required improvements over several years, but the site must be brought into full compliance; there is no cap.

## AMEND CHAPTER 33.508, CASCADE STATION/PIC PLAN DISTRICT

### 33.508.305 Where These Regulations Apply

The regulations of Sections 33.508.305 through 33.508.340 apply to all lots or sites which contain an Environmental Zone on any portion of them, and any portion of a right-of-way which contains an Environmental Zone which are within the CS/PIC plan district.

### 33.508.330 Development Standards

**A.** Except for temporary uses, and as specified in Paragraph A.6, land uses and activities on lots or lease areas which contain an environmental zone on any portion of them require revegetation of the vegetated transition area as follows:

1. Species must be classified as native on the Portland Plant List, not be classified as prohibited or nuisance plants, and be listed in Section 33.508.500, CS/PIC Plant List.

2. Three different native shrub species are required at a minimum 1-gallon size or bare root, planted at a density of 3 plants per 10 square feet.

3. The remaining area must be planted with native groundcover using a minimum of four-inch pots at a density of 8 plants per ten square feet.

4. Below the top-of-bank on slopes greater than 30 percent or in riprap areas, live stakes, ½ to 1½ inches in diameter, may be substituted for the requirements of D.1 and D.2 above. Stakes must be installed at a density of 2 to 4 stakes per square yard. Detailed specifications for installing live stakes are found in Chapter 18 of the United States Department of Agriculture Engineering Field Handbook (entitled Soil Bioengineering for Upland Slope Protection and Erosion Reduction, October 1992.

5. Plants used for revegetation may also count towards other landscaping requirements.

6. Exception for sites with an existing nonconforming use, allowed use, limited use, or conditional use. Sites with an existing nonconforming use, an allowed use, a limited use, or a conditional use are subject to the following regulations:

   a. Required improvements. When alterations are made to a site that does not meet the standards of A.1-5, above, the site must be brought into conformance with the standards of A.1-5. The cost of meeting the standards of A.1-5 may be counted toward the cost of upgrades required by Subsection 33.258.070.D. However, the standards of A.1-5 must be met first.

   b. Area of required improvements. Except as provided in 33.258.070.D.2.c(2), Exception for Sites With Ground Leases, required improvements must be made to the entire site.

   c. Timing and cost of required improvements. The timing and cost of the required improvements is specified in 33.258.070.D.2.d. However, where 33.258.070.D.2.d refers to the standards listed in subparagraph 33.258.070.D.2.b, the standards of A.1-5 are also included.

33.508.330.B.17.a and b These amendments reorganize the regulations for clarity. The following substantive changes are made to parallel the provisions of Subsection 33.258.070.D, which apply to nonconforming development outside the Cascade Station/PIC plan district:

- Increase the threshold that was in 17.a and is now in 17.1(1) to for two years, after which it will be reduced to $35,000, adjusted for inflation.
- Allow applicants to limit the area of nonconforming upgrades to their ground lease.
- Allow applicants to have the option of phasing in required nonconforming upgrades over several years if they bring the site into full compliance.

In addition, it clarifies that the upgrades required by this chapter take precedence over those required by Chapter 33.258.

33.508.330.B.17.c This amendment refers to 33.258.070.D.2.d. Under 33.258.070.D.2.d, applicants have two options for making nonconforming upgrades. Under Option 1, the cost of required improvements is limited to 10 percent of the value of the proposed alterations (the cap), but the required improvements must be made at the same time as the alterations. Under Option 2, the applicant may phase in required improvements over several years, but the site must be brought into full compliance; there is no cap.

**B.** Land uses and activities within an environmental zone must meet the following standards:

1. through 16. [No change.]

17. Nonconforming situations

a. Required improvements.

(1) Paved ~~exterior~~ areas in ~~an e~~Environmental ~~conservation or environmental protection z~~Overlay Zones. ~~Paved areas that do not meet plan district regulations must be removed from environmental-zoned areas w~~When the value of ~~the~~ proposed alterations on a ~~the~~ site is more than ~~$10,000~~ the thresholds listed below, paved areas that do not meet plan district regulations must be removed from environmental-zoned areas.. ~~However, the cost of required changes is limited to 10 percent of the value of the proposed alterations.~~ The value of the alterations is based on the entire project, not individual building permits. The thresholds are:

- For building permit applications filed before or on [two years after the effective date of this regulation], the value of the proposed alterations is more than $100,000;

- For building permit applications filed after [two years after the effective date of this regulation], the value of the proposed alterations is more than $35,000.

~~b.~~ (2) Unpaved exterior areas. ~~U~~When development is proposed or alterations are made to a site, unpaved exterior improvements must comply fully with development standards ~~at the time of development on the site. However, the cost of required changes is limited to 10 percent of the value of the proposed alterations.~~

(3) The cost of meeting the standards of B.17.a(1) and (2), above may be counted toward the cost of upgrades required by Subsection 33.258.070.D. However, the requirements of B.17.a(1) and (2) must be met first.

b. Area of required improvements. Except as provided in 33.258.070.D.2.c(2), Exception for Sites With Ground Leases, required improvements must be made to the entire site.

c. Timing and cost of required improvements. The timing and cost of the required improvements is specified in 33.258.070.D.2.d. However, where 33.258.070.D.2.d refers to the standards listed in subparagraph 33.258.070.D.2.b, the standards of B.17.a(1) and (2), above, are also included.

e d. Removal of existing bridges, utilities, or public improvements is not required.

# Commentary

## AMENDMENTS TO CHAPTER 33.515, COLUMBIA SOUTH SHORE PLAN DISTRICT

33.515.268 Currently, any changes to a site in the Environmental Overlay Zone within the plan district require that the revegetation standards of 33.515.278.A be met. The threshold is zero, and there is no cap. However, all changes to the interior of a building are exempt from this requirement [33.515.274.B]. The entire site must be brought into compliance, and it must be done at the time the alterations are made.

33.515.278.A.6 These changes are the same as those proposed for Chapter 33.508, Cascade Station/PIC Plan District. These amendments make the following changes to parallel the provisions of Subsection 33.258.070.D, which apply to nonconforming development outside the Columbia South Shore plan district:

- Add a cap. The threshold remains zero, because of the exemption for interior changes.
- Allow applicants to limit the area of nonconforming upgrades to their ground lease.
- Allow applicants to have the option of phasing in required nonconforming upgrades over several years if they bring the site into full compliance.

In addition, it clarifies that the upgrades required by this chapter take precedence over those required by Chapter 33.258.

33.515.278.A.6.c This amendment refers to 33.258.070.D.2.d. Under 33.258.070.D.2.d, applicants have two options for making nonconforming upgrades. Under Option 1, the cost of required improvements is limited to 10 percent of the value of the proposed alterations (the cap), but the required improvements must be made at the same time as the alterations. Under Option 2, the applicant may phase in required improvements over several years, but the site must be brought into full compliance; there is no cap.

**33.515.268 Where These Regulations Apply**
The regulations of Sections 33.515.265 through 33.515.280 apply to all lots or sites which contain an Environmental Zone on any portion of them, and any portion of a right-of-way which contains an Environmental Zone which are south of NE Marine Drive.

**33.515.278 Development Standards**

**A.** Except for temporary uses and as specified in Paragraph A.6, land uses and activities on lots or sites which contain an environmental zone on any portion of them require revegetation of the vegetated transition area as follows:

1. Species must be classified as native on the *Portland Plant List,* and not be classified as prohibited or nuisance plants;

2. Planting must cover 90 percent of the ground within one year or two growing seasons after planting;

3. At least 8 species of plants must be used. Fifty percent of any seed mix used must be grass and 50 percent flowers when measured by area covered; and

4. If cover requirements are not met within one year from issuance of an occupancy permit, final inspection, or certificate of completion, replanting is required and the requirements of this section must be met within one year or two growing seasons of replanting.

5. Plants used for revegetation may also count towards other landscaping requirements.

6. Exception for sites with an existing nonconforming use, allowed use, limited use, or conditional use. Sites with an existing nonconforming use, an allowed use, a limited use, or a conditional use are subject to the following regulations:

   a. Required improvements. When alterations are made to a site that does not meet the standards of A.1-5, above, the site must be brought into conformance with the standards of A.1-5. The cost of meeting the standards of A.1-5 may be counted toward the cost of upgrades required by Subsection 33.258.070.D. However, the standards of A.1-5 must be met first.

   b. Area of required improvements. Except as provided in 33.258.070.D.2.c(2), Exception for Sites With Ground Leases, required improvements must be made to the entire site.

   c. Timing and cost of required improvements. The timing and cost of the required improvements is specified in 33.258.070.D.2.d. However, where 33.258.070.D.2.d refers to the standards listed in subparagraph 33.258.070.D.2.b, the standards of A.1-5 are also included.

33.515.278.B.17.a and b These amendments reorganize the regulations for clarity. The following substantive changes are made to parallel the provisions of Subsection 33.258.070.D, which apply to nonconforming development outside the Columbia South Shore plan district:

- Increase the threshold that was in 17.a and is now in 17.1(1) to for two years, after which it will be reduced to $35,000, adjusted for inflation.
- Allow applicants to limit the area of nonconforming upgrades to their ground lease.
- Allow applicants to have the option of phasing in required nonconforming upgrades over several years if they bring the site into full compliance.

In addition, it clarifies that the upgrades required by this chapter take precedence over those required by Chapter 33.258.

33.515.278.B.17.c This amendment refers to 33.258.070.D.2.d. Under 33.258.070.D.2.d, applicants have two options for making nonconforming upgrades. Under Option 1, the cost of required improvements is limited to 10 percent of the value of the proposed alterations (the cap), but the required improvements must be made at the same time as the alterations. Under Option 2, the applicant may phase in required improvements over several years, but the site must be brought into full compliance; there is no cap.

**B.** Land uses, land divisions, and activities within an environmental zone must meet the following standards:

1. through 16. [No change.]

17. Nonconforming situations

a. Required improvements.

(1) Paved ~~exterior~~ areas in ~~an e~~Environmental ~~conservation or environmental protection z~~Overlay Zones. ~~Paved areas that do not meet plan district regulations must be removed from environmental-zoned areas w~~When the value of ~~the~~ proposed alterations on a ~~the~~ site is more than ~~$25,000~~ the thresholds listed below, paved areas that do not meet plan district regulations must be removed from environmental-zoned areas.. ~~However, the cost of required changes is limited to 10 percent of the value of the proposed alterations.~~ The value of the alterations is based on the entire project, not individual building permits. The thresholds are:

- For building permit applications filed before or on [two years after the effective date of this regulation], the value of the proposed alterations is more than $100,000;

- For building permit applications filed after [two years after the effective date of this regulation], the value of the proposed alterations is more than $35,000.

~~b.~~ (2) Unpaved exterior areas. ~~U~~When development is proposed or alterations are made to a site, unpaved exterior improvements must comply fully with development standards ~~at the time of development on the site. However, the cost of required changes is limited to 10 percent of the value of the proposed alterations.~~

(3) The cost of meeting the standards of B.17.a(1) and (2), above may be counted toward the cost of upgrades required by Subsection 33.258.070.D. However, the requirements of B.17.a(1) and (2) must be met first.

b. Area of required improvements. Except as provided in 33.258.070.D.2.c(2), Exception for Sites With Ground Leases, required improvements must be made to the entire site.

c. Timing and cost of required improvements. The timing and cost of the required improvements is specified in 33.258.070.D.2.d. However, where 33.258.070.D.2.d refers to the standards listed in subparagraph 33.258.070.D.2.b, the standards of B.17.a(1) and (2), above, are also included.

~~e~~ d. Removal of existing bridges, utilities, or public improvements is not required.

AMENDMENTS TO CHAPTER 33.700, ADMINISTRATION AND ENFORCEMENT

33.700.080 This provision creates a mechanism to automatically account for inflation. It would tie the dollar thresholds for upgrades of nonconforming development to the annual national average of the Construction Cost Index, as determined by the Engineering News-Record (ENR). The reasons this index was chosen are detailed in Section B of this report. Without tying the dollar thresholds to such an index, the effects of inflation continually decrease the actual value of the thresholds.

**33.700.080 Automatic Changes to Specified Dollar Thresholds**

The sections listed below include dollar thresholds. These thresholds will be increased or decreased each year on January 1. The change will occur automatically, and the new dollar amount will be placed in the Zoning Code without being subject to the procedures for amending the Zoning Code. The change will be based on the annual national average of the Construction Cost Index (CCI), as determined by the Engineering News-Record. Any increase or decrease which is not a multiple of $50 will be rounded to the nearest multiple of $50.

The sections subject to this regulation are:

**A.** 33.258.070.D.2.a(2);

**A.** 33.258.070.D.2.d(2);

**C.** 33.440.230.D.1.b;

**D.** 33.480.040.B.2.b(2);

**E.** 33.508.330.B.17.a(1); and

**F.** 33.515.278.B.17.a(1).

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**Memorandum**

**Date:** March 25, 2003

**To:** Mayor Vera Katz and City Council

**From:** Cary Pinard

**C:** Commissioners' Assistants, Council Clerk

**Re:** Thresholds for Non-conforming Development – Possible Amendments

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Following Council's discussions and tentative decision on the *Thresholds for Upgrading Non-Conforming Development* code package on March 19, Bureau of Development Services management requested that an additional issue be raised to the Council. Planning staff has put together the attached "amendment" package for Council to consider.

This potential amendment would address concerns raised by Bureau of Development Services (BDS) staff about possible confusion and potential surprises for both applicants and staff if the "dual" nonconforming upgrades thresholds (i.e., a percentage of assessed value threshold **and** a dollar threshold) are included in the updated Zoning Code.

In particular, BDS staff is concerned, and Planning agrees, that those applicants who have been tracking the current Regulatory Improvement Workplan project on thresholds for upgrading nonconforming development may be under the impression that increasing the dollar threshold to $100,000 will establish $100,000 as the threshold for all projects. In fact, because current code language includes the alternative threshold of "35% or greater of the assessed value of all improvements on the site", some projects valued at under $100,000 would still trigger upgrade requirements. For example, if the assessed value of improvements on a site equals $150,000 (not including the land value), a project valued at $52,500 would trigger non-conforming upgrades. Neither Planning Commission, nor City Council, heard testimony on this issue at their hearings on this package.

This potential code amendment would call for complete deletion of the percentage threshold from Ch. 33.258, Nonconforming Situations, as well as any additional Zoning Code chapters where this provision currently exists or was recommended by Planning Commission for addition as part of this project. Planning would recommend this approach if the City Council is interested in addressing this issue.

If you or your staff have any questions, please don't hesitate to contact me at 823-7846. If I'm not available, either Betsy Ames or Brad Carter can assist you.