

33.272 Major Public Recreational Trails

272

Sections:

- 33.272.010 Purpose
- 33.272.020 Where These Regulations Apply
- ~~33.272.030~~~~020~~ Dedication of Public Right-Of-Way or Easement
- ~~33.272.040~~~~030~~ Construction of the Trail
- 33.272.050 Trail Standards
- ~~33.272.060~~~~040~~ Use of Trail
- ~~33.272.070~~~~050~~ Hours of Use
- ~~33.272.080~~~~060~~ Trespass
- ~~33.272.090~~~~070~~ Trail Maintenance and Liability
- ~~33.272.100~~~~080~~ Standards for City Acceptance of Deeded Land

33.272.010 Purpose

The major public recreational trail requirements are intended to:

- Increase recreational opportunities within the City of Portland and connect these recreational opportunities with a regional recreational trail system;
- Increase public access to and along the Willamette River and to other significant natural resource areas;
- Provide emergency vehicle access;
- Provide access to increase public safety;
- Assist in flood protection and control;
- Assist in shoreline anchoring;
- Support alternative modes of transportation;
- Provide connections to other transportation systems;
- Implement the City's Comprehensive Plan policies regarding public ~~recreational~~ trails;
- Help create a pleasant, aesthetically pleasing urban environment; and
- Provide consistent standards for trail development.

Commentary

33.272 Major Public Trails

Staff proposes updating the title of this chapter from recreational trail to major public trail. This acknowledges that the Greenway trail and other trails shown with the star symbol on the city's Official Zoning Maps are major public trails in the city. These trails serve bicyclists and pedestrians for recreation and transportation purposes. It is also consistent with the terminology used in the recently updated *2035 Comprehensive Plan Recommended Draft*.

This chapter has also been reorganized to be more consistent with the formatting of other zoning code chapters.

33.272.020.A Where These Regulations Apply - General

This subsection is being added to address the requirements of the Dolan vs. City of Tigard Supreme Court decision. The results of that case require local governments to find that an exaction is roughly proportional to the impacts of the proposed development before the exaction can be required. The standards of chapter 33.272, Major Public Trails constitutes an exaction for the purpose of construction of the trail. Staff proposes updating the language in this subsection to refer specifically to rough proportionality.

33.272.020.B

The regulations of this chapter will not apply when removal and remediation of hazardous substances is being conducted. The development of the greenway trail should occur when the site is being developed rather than when it is being cleaned up. In addition, the City does not want to add cost and complexity to the removal and remediation of hazardous substances.

33.272.020.C & D

These subsections moved from 33.272.030040 to this new section on where the regulations of 33.272 apply. These subsections identify the additional plan district regulations that apply for major public trails in Columbia South Shore and South Waterfront.

33.272.030 Dedication of a Public Right-of-Way or Easement

As in previous code sections, staff also proposes to revise the term recreational trail to major public trail. The language also clarifies that all applicants in a land use review or seeking a building permit on lands designated with the major public trail symbol on the zoning map are required to grant an easement that is recorded with the County Recorder/Auditor's Office, prior to obtaining a final certificate of occupancy. Portland Parks and Recreation often receives easements as part of a land use decision, rather than at the time of development.

33.272.020 Where These Regulations Apply

- A. General.** The regulations of this chapter apply to all sites that have the major public trail symbol designation shown on the Official Zoning Maps. The regulations of this chapter apply when a development will increase the use of the trail system or will contribute to the need for additional trail facilities and application of the regulations is determined to be logically related and roughly proportional to the impacts of the proposed development. A determination that the regulations of this chapter do not apply does not preclude acquisition and construction of a public trail through other legal means.
- B. Exception.** The regulations of this chapter do not apply when the proposal is for the removal or remediation of hazardous substances and the actions are conducted under ORS.465.200 through .545 and 465.900.
- C. Columbia South Shore Plan District.** Sites in the Columbia South Shore Slough Trail area and Cross-Levee Trail area must also comply with the regulations of 33.515.260. These areas are shown on Map 515-4.
- D. South Waterfront subdistrict of the Central City Plan District.** Sites in the South Waterfront subdistrict of the Central City Plan District must also comply with the regulations of 33.510.253. The regulations of that section specify when major public trails must be constructed within the South Waterfront subdistrict.

33. 272.030020 Dedication of a Public Right-Of-Way or Easement

All applicants for a land use review or for building permits on lands designated with a major recreational public trail symbol on the zoning map are required to grant an easement for the recreational major public trail. The easement must be recorded with the County Recorder/Auditor's Office ~~done as part of recording a land use review~~ and finalized prior to obtaining a final certificate of occupancy. The land may be donated to the City instead of granting an easement when the standards of Section 33.272.080100 are met. Trails shown adjacent to public rights-of-way may be constructed in the public right-of-way, subject to approval from the Office of Transportation.

Commentary

33.272.040 Construction of Trails

This zoning code section states the requirements for trail construction.

Note: staff acknowledges that other federal and state legislation might determine trail location on particular lands. An example is where a development is subject to the Maritime Transportation Security Act and must develop and adhere to a Maritime Security Plan that limits public access across the site to protect homeland security. In this case, there is/will be flexibility in where the trail is located, and it may be located somewhere else on the site. Each site has unique conditions and characteristics that will affect how this section is implemented.

33. 272.040030 Construction of Trails

A. Single-dwelling zones. The construction of the ~~recreational~~ major public trail in single-dwelling residential zones is only required for Land Divisions subdivisions and Planned Developments PUDs that involve the creation of a street. Construction of the trail is not required as part of development on an eExisting single-dwelling lot; s are not required to construct the trail.

~~**B. Columbia South Shore Plan District.** Sites in the Columbia South Shore Slough Trail area and Cross-Levee Trail area must also comply with the regulations of Section 33.515.260. These areas are shown on Map 515-4. Other trails in the Columbia South Shore Plan District must comply only with the regulations of this chapter.~~

~~**C. South Waterfront subdistrict of the Central City plan district.** Sites in the South Waterfront subdistrict must comply with the regulations of Section 33.510.253. The regulations of that section specify when recreational trails must be constructed within the South Waterfront subdistrict.~~

~~**B.D. All other zones.** Construction of the ~~recreational~~ major public trail is required on lands designated with a ~~recreational~~ major-public trail symbol on the zoning maps in any of the following situations listed below.~~

1. When there is new development;
2. When exterior alterations to existing development are 35 percent or greater of the assessed improvement value of the total improvements on the site; or
3. When there is a Land Division or Planned Development. When streets are constructed in a subdivision, industrial park, or PUD.

~~**C.E. Prior to certificate of occupancy.** The trail must be constructed prior to the issuance of a certificate of occupancy, unless the site is eligible for the trust fund provisions of 33.515.260.B, or the special timing provisions of Paragraph 33.510.253.D.4.~~

33. 272.050 Trail Standards

~~**F. Trail standards.** A major public ~~recreational~~ trail must comply with the standards of Portland Parks and Recreation for ~~recreational~~ trails or, where the trail is located in a public right-of-way, it must comply with the standards of the Portland Office of Transportation.~~

~~**G. Environmental review.** If the trail is located within the Environmental zones, the trail must comply with the requirements of Chapter 33.430.~~

Commentary

33. 272.060040 Use of Trail

Public use and conduct on the ~~recreational~~ major public trail are subject to the regulations in Chapter 12, Prohibited Conduct, of Title 20, Parks and Recreation; and Chapter 50, Columbia South Shore Slough Trail of Title 20 except as otherwise limited by the terms of an easement between the applicant and the City.

33. 272.070050 Hours of Use

The ~~recreational~~ major public trail and access paths must be open to the public between the hours of 5 a.m. and 10 p.m., except as otherwise limited by the terms of an easement between the applicant and the City.

33. 272.080060 Trespass

Nothing in this chapter is intended to authorize public use of private property. Public use of private property is a trespass unless appropriate easements and access have been acquired.

33. 272.090070 Trail Maintenance and Liability

A. City maintenance. The City will accept maintenance and liability, similar to its responsibilities for City-owned park property, for a ~~recreational~~ major public trail segment if the City Engineer or the Director of Portland Parks and Recreation finds all of the following:

1. The applicant requests that the City assume the responsibilities;
2. The trail lies within an easement or right-of-way granted to the City for trail purposes;
3. The trail has been constructed to City standards;
4. The trail is physically continuous for at least 1/4-mile along the designated route. This requirement will be waived if the trail has not been made part of a physically continuous segment of at least 1/4-mile within 2 years after completion of the segment under consideration; and
5. If the applicant desires to use a private security force to patrol the trail area, the owner has signed an agreement holding the City harmless from all claims, suits, or actions of any nature, caused or arising out of the actions of the private security force, its subcontractors, agents, or employees.

B. [No change]

33. 272.100080 Standards for City Acceptance of Deeded Land.

The land may be donated to the City instead of granting an easement if the following standards are met:

- A.** The trail is constructed and meets the City's trail construction standards or the trust fund option described under Subsection 33.515.260.B. has been applied.
- B.** The property owner meets the hazardous substances standards in the City's standard trail easement agreement.

Commentary