



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

FROM CONCEPT TO CONSTRUCTION

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**MEMO**

**Date:** November 13, 2015  
**To:** Barry Manning and Bill Cunningham, BPS  
**From:** Gina Tynan  
Bureau of Development Services  
**CC:** Paul Scarlett, Susan Anderson, Joe Zehnder, Eric Engstrom, Rebecca Esau, Stephanie Beckman, Douglas Hardy, Kimberly Tallant, Jill Grenda, Kara Fioravanti  
**Re:** BDS Comments on Mixed Use Zone (MUZ) Project Discussion Draft

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Thank you for the opportunity to review and comment on the Mixed Use Zones (MUZ) Project Discussion Draft. This important project will shape the future of commercial and mixed-use development and our ability to meet the goals of the Comprehensive Plan to manage growth and to create and maintain healthy, vibrant centers and corridors, as well as neighborhoods, outside of Portland's Central City. We appreciate the chance to participate in informing this critical re-write of the Zoning Code's development standards.

The comments below highlight our primary areas of concern as well as continuing areas of concern and provide detailed comments on the proposal. We look forward to working with BPS staff to address our concerns and providing additional feedback as the project develops.

**Primary Areas of Concern**

**1. Uncertain Impacts of Implementation Requires Testing and Modeling.**

- Insufficient testing and modeling - Due to the aggressive schedule of this project, the revised development standards, bonus incentives, and new and expanded Overlay zones and Plan Districts of the MUZ Project have not been sufficiently evaluated, tested or modeled to understand the implications on administration, economics and design that may result from their implementation. Elevations, perspectives and street-level views have not been developed to adequately evaluate design challenges that may result from the implementation of these standards. We are concerned that changing so many regulations at once will have unintended consequences. Testing and modeling are critical to the project at this stage in its development. For example, the regulations could make development on smaller sites infeasible. Until it's been tested on a variety of sites and projects, we don't know if/how it will all work together.
- New development vs. alterations or additions to existing development - Many of the standards are written for new development and will be particularly challenging to

administer when alterations or additions to existing development are proposed. The proposed code standards appear overly reactionary to the current market and development proposals; we are concerned that it will not stand the test of time to meet the goals of the Comprehensive Plan as market conditions change and development/re-development of commercial space or under-built sites becomes viable.

## 2. Complexity of Development Standards.

- Increase in number and complexity of development standards – simplification is needed  
Although the project reduces the number of zones applied to the centers and corridors outside the Central City, the number and complexity of development standards has substantially increased overall. There are too many instances of unnecessary and/or redundant regulation, especially given the proposed expansion of the “d” Design overlay. Examples of standards that will present challenges to implementation and unknown design consequences include:
  - limiting 75 percent of the building to the reduced building height (rather than 100 percent);
  - allowing an exception to the building height for a parapet;
  - increasing the height at a corner in exchange for cutting off the corner; and
  - requiring a special setback for side-facing windows and building articulation.
  
- Standards reliant on too many factors – The standards are not straightforward, and instead rely on the context of the site and considerations more typical of a discretionary review, are redundant with many existing Community Design Standards, and send many mixed signals in combination so that it is very difficult to determine basic development standards such as height and setbacks. BDS staff need to quickly and easily be able to answer customer questions about the required setbacks and the maximum height allowed in a zone. For example, determining allowable building height includes the evaluation of a wide variety of site conditions and code standards. The maximum building height allowed on a site will depend on the base zone standard as well as:
  - the street width;
  - adjacent transit street classification(s);
  - proximity to an R zone;
  - inclusion in or proximity to a Pedestrian District;
  - inclusion of rooftop decks;
  - whether the site is a corner lot;
  - whether or not a parapet is proposed;
  - whether active use of the ground floor is proposed;
  - the elevation of the sidewalk directly adjacent to the building where any portion of the building is within 25 feet of a street lot line;
  - Plan District standards (e.g., 10 foot height limit bonus applies in CM1 zone within the Lombard Street Plan District when housing is proposed per 33545.110.D);
  - Overlay Zone standards including the Community Design Standards; and

- whether or not the project proposes to utilize the development bonuses by providing on-site amenities for public benefit.

These standards are not clearly outlined or complete within Zoning Code Chapter 33.130, but rather are included within multiple chapters of the zoning code that may apply to a site depending on its specific location. These standards are not immediately apparent to the average property owner. And while deciphering the height standards appears complex, the setback standards are even more difficult to understand and, in some cases, conflict across code sections so that they cannot be met without discretionary land use review. This would possibly violate ORS 197.307(4) requiring for a two-path Design Review process, including “clear and objective” standards for prescriptive Design Review approval.

- 3. Implementation and Viability of Bonus Incentives.** The proposed bonuses to building height and floor area ratio (FAR) leave many unanswered questions regarding administration and economic feasibility to determine if they will be widely and successfully utilized and significant enough to further the city’s goals including the inclusion of affordable housing units and affordable commercial space. The bonuses rely heavily on recorded covenants, reporting requirements, lease agreements and as-yet unidentified development standards to be administered through multiple agencies including “the City”, Portland Housing Bureau, the Portland Development Commission and the Bureau of Environmental Services. It is unclear how these covenants for provision and maintenance of bonus incentives, which can be used together to achieve bonuses, would be administered together on a long-term basis. Administration of bonuses by other public agencies or third party delegates has not been successful in the past. FAR Bonus certification authority is unclear. Better clarification of who is envisioned as a “Qualified Administrator” is needed. What will the cost of administering the bonuses be? Will measurable public benefits outweigh the costs? In addition, some bonuses are allowed based upon a term of years or minimum time limitation for maintenance – what happens at the conclusion of the term of the covenant or agreement at these sites?

BDS Staff concurs with the comments provided by both the Historic Landmarks Commission and the Design Commission at their meetings on October 26, 2015 and November 5, 2015, respectively. While we are enthusiastically supportive of efforts to increase the inclusion of affordable housing in development projects, it is wholly unclear how the city will coordinate with the Portland Housing Bureau to administer the affordable housing bonus. Requiring only 25% of the additional floor area to be affordable does not seem to be nearly enough and the terms and time lengths of affordability must be clearly defined. Affordable units should be a long-term commitment and should be required to include ownership options and a mix of unit types (accessible units, 2- and 3-bedroom units, etc.) in order to be successful. This bonus also has the potential to create inequitable distribution of affordable housing as the lower cost of land in outlying areas will be a critical factor in where this bonus is utilized by developers and where these units are constructed and concentrated within the city. Further, requiring projects including affordable housing bonus incentives to go through

discretionary Design Review to achieve additional height and/or FAR possibly violates Goal 10 and ORS 197.307(4).

- 4. Compatibility with other Code Sections and Titles.** A thorough assessment of compatibility with other zoning code sections and other Titles has not been completed. A work plan and schedule for amendments to Title 11, Title 17, Title 18 and Title 32 to align them with the MUZ Project are crucial. For example, the new mixed use zone designations require assessment of compatibility with Title 11 Tree Code standards. Title 11 currently exempts sites within the EX, CX, CS and CM zones from Tree Preservation and On-Site Tree Density standards in development situations. These zones will receive new mixed use zone designations of CM1, CM2, CM3 or CE. The existing CN1, CN2, CO1, CO2 and GC zones, which are non-exempt from these Title 11 standards, will also be part of the CM1, CM2 and CE zones. As such, it is unclear which commercial and mixed use zones, if any, will be subject to these standards in the future.

In addition, there are several instances where setback standards of the base zone, Plan District, and Community Design Standards are in conflict and will require discretionary review in order to approve a project. Regulatory standards that force projects into discretionary review possibly violate Goal 10 and ORS 197.307(4). It is crucial that Chapter 33.218, Community Design Standards, be amended as needed to avoid this.

It is unclear when and how some of the Plan District development standards are applicable. For example, within the Lombard Street Plan District section 33.545.120.C.1 references standards implemented through Community Design Standards (33.218) as part of the 'd' Design overlay and identifies they may not be modified through design review but may be adjusted. Currently, Adjustments to the Community Design Standards are prohibited per that section and non-compliance triggers discretionary approval through Design or Historic Review. As such, it's unclear if Adjustments to these standards of the Plan District will then allow use of the Community Design Standards per 33.218 rather than triggering Design Review. Do the Plan District standards that reference the CDS also apply to historic resources?

- 5. Historic Preservation.** It is unclear how the development standards and bonus incentives for height and FAR will impact historic resources as well as the context of established older neighborhoods that are historic, but not designated as Historic or Conservation Districts such as town centers on the east side that developed organically which are not protected as historic resources. The base zone and bonus height allowances are greater than what would typically be approved in a Historic District (as part of a Historic Resources Review) based on the historic character and neighborhood context; as such, height bonuses may not be achievable through Historic Resource Review in these areas and may just set false expectations. The transfer of FAR from historic properties is not widely used; limiting the TDR radius to 1 mile may further hamper the use and intent of this bonus. Further, it is unclear if and when it would be appropriate to allow FAR bonuses through TDRs within

Historic Districts. An update of the Historic Resources Inventory is critical to inform future planning efforts and allow design solutions to be context-based.

- 6. Code Review Comments.** Please see the table, below, for additional detailed comments on the Discussion Draft.

### **Continuing Areas of Concern**

- 7. Expansion of the “d” Design Overlay without Critical Re-write of Community Design Standards.** It is crucial that the Community Design Standards be evaluated and updated prior to any expansion of the “d” Design Overlay Zone. BDS has identified a number of points of conflict between the proposed MUZ development standards/bonuses and the existing Community Design Standards. If these conflicts persist, projects will be forced to go through the discretionary design review process. Even without updates to the Community Design Standards, it is likely that expansion of the “d” Overlay will result in a greater number of discretionary design reviews, which will only exacerbate the current workload capacity issues faced by BDS Staff and the Design Commission. Solutions are needed to address this capacity issue, such as reconsidering thresholds for Type II, type IIx, Type III and Type IV reviews, possibly making more projects Type IIx instead of Type III.
- 8. Expansion of Neighborhood Contact Requirement.** Expansion of requirements for Neighborhood Contact without examining the success of the process in providing valuable feedback versus managing expectations and adding time and cost to the development process is ill advised. Any proposal to expand either the geographic area subject to the Neighborhood Contact requirement or the notification steps must follow a comprehensive re-thinking of the goals of the requirements and should place particular emphasis on equity and accessibility of the land use process to the public. The logistics of the process should also be examined and potentially updated, for instance to allow for email versus certificates of mailing, on-site posting of project information, and opportunities for online submittal of questions or comments from the public directly to developers.
- 9. Large Sites Master Plan Concept.** Concerns regarding the Large Sites Master Plan concept were forwarded to BPS in a memo dated September 11, 2015. We continue to be concerned that the Large Sites Master Plan concept is following a model (Conway, Gateway, etc.) that has proven itself highly problematic from an implementation standpoint. Serious consideration must be given to structuring the process such that applicants can reasonably achieve the stated purpose under 33.860.010; focusing the review to that of a site plan-level approval, and allowing some level of applicant flexibility during subsequent reviews while providing assurance to the community that performance obligations will be met. Does the large site flexibility plan assign density/affordable housing/open space locations/etc. to individual future projects or can the developer make those decisions at the time of individual project review – with the risk that some performance obligations may never be realized?

Keep in mind that these provisions are intended to be utilized. It is crucial that the appropriate review body(s), and their role(s), be identified. The approval criteria to be evaluated by the review bodies must be clearly defined. It would be beneficial to better define the Design Advice Request (DAR) as an initial step to get feedback from the hearings body on a conceptual design prior to application submittal. One concept that was discussed was the potential for a Type III review before the Design Commission with a mandatory DAR before either the Planning and Sustainability Commission or the Design Commission, and with subsequent Type III (or potentially Type II) Design Reviews. A mandatory DAR before the Planning and Sustainability Commission would add an additional procedural layer of review without the benefit of getting feedback from the hearings body making the decision on the later review, so would add time and cost without benefit. The purpose of the DAR is to present a conceptual design to the hearings body that will later hear the Design Review case, so to introduce a different Commission (PSC) at the DAR stage is counter to the intent of getting initial feedback from the Design Commission prior to the Design Review application being made. The Design Commission and BDS Staff are already under great pressure to reduce the time, cost and uncertainty associated with the existing Design Review process. Instituting a large number of procedures (DAR, Type III Review, Type III DZs for each individual project – and Pre-Application Meetings prior to each Type III LUR) is counter to the current direction to streamline the process, reduce time, cost and uncertainty, and may function as a disincentive to applicants.

**10. Inclusion of Requirements for TDMs within the Zoning Code.** The project proposes to revise Zoning Code Chapter 33.266, Parking and Loading, to require Transportation Demand Management (TDM) strategies. As proposed, TDM plans will be required for development on sites with more than 20 dwelling units as part of zoning regulations. These strategies will need to be fully vetted and approved by PBOT. It is critical that out-of-the-box, pre-approved TDM plan options are available no later than the effective date of the MUZ code language. TDM plans must include options that can be used when seeking affordable housing bonuses. How will PBOT ensure that TDM plans are binding and maintained for the life of a project? Which bureau will enforce them and how?

**Detailed Comments**

We offer the following additional detailed comments.

Page	Code Section	Comment
30	B. Development Bonuses	Given that the bonus structure is so critical to the success of the Mixed Use Zones (MUZ) model, it is crucial that bonuses be evaluated for efficacy and amended/refined prior to adoption of the MUZ. If the bonuses are unused by real-world developers, the net result will be a significant reduction in anticipated floor area in Mixed Use Centers and Corridors, given the inclusion of residential FAR across the board.

Page	Code Section	Comment
		<p>The CM2 zone proposes a base FAR of 2.5:1. This will include sites previously zoned CS, where the FAR approved through permitting 2009-14 averaged 3.1:1.</p> <p>Affordable Housing – Consider a more radical incentive for affordable housing such as not including affordable housing in floor area in max. FAR calculations. Also see p. 77.</p>
31	B. Development Bonuses	Historically staff from other bureaus, as well as leadership, has changed such that over time commitments to administer bonuses or verify the requirements of other city titles as met have waned. It is concerning that bonus administration concept moves ahead as drafted with this issue not fully resolved.
35	E. Tools to Enhance Key Places, Sec. 2	No expansion of the “d” overlay should occur without critical re-write of 33.218, Community Design Standards. As drafted, if MUZ is intended to contribute toward meeting needed housing provisions, a regulatory program that forces all such projects into discretionary Design Review possibly violates Goal 10 and ORS 197.307(4). It is crucial that 33.218 be amended as needed to avoid this.
36	E. Tools to Enhance Key Places, Sec. 3	It will be crucial that the “out of the box” versions of TDM plans are available for use by the go-live date. Additionally, the canned plans must allow for use when seeking affordable housing bonuses, etc.
37	E. Tools to Enhance Key Places, Sec. 4	The Historic Resources Inventory should be completed by the MUZ go-live date. Has re-use of existing historic buildings been considered as a bonus to encourage Historic Preservation?
45-47	33.130.030 Characteristics of the Zones	<p>The characteristics/distinguishing elements of the zones are not adequately identified. Distinct, well thought out zone descriptions and purpose statements are essential for Adjustment Review approval criteria. Identify the unique elements that set the zone apart from the others? What is the intent of the standards that needs to be considered when adjusting/waiving the standard? For example 33.130.222 just speaks to bulk yet there are other provisions that better address bulk—FAR, setbacks, height.</p> <p>Are these definitions sufficient to address approval criteria for Comprehensive Plan and Zoning Map Amendments?</p>
48	33.130.050 Neighborhood Contact	An update of 33.700.025 should explore updated and more broad based notification methods (i.e., allow email in place of certified mail receipts) as well as site posting to capture passersby as well as

Page	Code Section	Comment
		residents who do not attend Neighborhood Associations' monthly meetings.
49	33.130.050.B.2.b & c Neighborhood Contact	Is a Group Living facility a residential use? Are micro-units or SRO's? Is the conversion of floor area into "living area" that doesn't meet the definition of a dwelling unit, subject to this requirement?
51	33.130.100.B.3 Primary Uses	If the uses require a CU Review, why set a size limit? Why not apply the floor area as a standard and then allow, through a CU, an increase beyond that?  Is there a limit on the number of individual businesses/tenants? Or is this standard just limiting the size of each industrial tenant/business on a site?
51	33.130.100.B.3.c Primary Uses	RICAP 7 changed all FAR references in use restrictions to be in terms of net building area.
55	33.130.100.B.9.c Primary Uses	This should reference surface parking lots that are "legally" constructed.
55	33.130.100.B.11 Primary Uses	Reorganize this limitation into two sentences for clarity. When can you use 33.237? Always? Only in CM1?
57	Table 130-1 Primary Uses	Where are the footnotes? Why is Retail and Office listed as "L" Limited? The use isn't limited is it? One doesn't have to apply the "L" because the zone restricts the overall scale/intensity of development.
59 and 261	33.130.205 Floor Area Ratio  33.910 Definitions	Definitions and figure drawings of what contributes to floor area (e.g. covered balconies, enclosed parking, lobbies, mechanical rooms, elevators/stairways, rooftop amenities such as partially covered deck and elevator alcoves) should be revisited and clarified/modified as part of this project. This is highlighted by the fact that changes to the definitions section has implications to the Central City Plan District [33.510], and coordination is critical. Diagrams and clarifications of exempt from FAR are critical to frequently "maxed out" FAR projects in Central City.
59	33.130.205.C Floor Area Ratio	The transfer of FAR from historic properties is not widely used; limiting the TDR radius to 1 mile may further hamper the use and intent of this bonus.
61	33.130.205.C.4 Floor Area Ratio	While this has already been clarified by the City Attorney as a qualifying situation, there has been confusion by customers wanting to



Page	Code Section	Comment
		Adjust the distance requirement. Please note “Adjustments are prohibited”.
61	33.130.205.C.5 Floor Area Ratio	<p>This provision is much too limiting and “territorial”. Historic resources are City jewels that contribute to the collective sense of place, not just for a specific neighborhood’s enjoyment. If a limit must be imposed, why not base it on the District Coalition boundaries?</p> <p>Is this written to allow an Adjustment to the distance restriction? Clarification should be noted with City Attorney and “prohibited” language for Adjustment requests.</p>
61	33.130.210.A Height	Would the Central City switch over to the new Mixed Use Zones?
63	33.130.210 Height	<p>Other than CX – which is only found in the Central City and Gateway Plan Districts, and therefore ineligible to use CDS, today’s commercial zones top out at 30ft and 45ft, which is probably why C zone height limits are not specifically mentioned in the CDS (33.218.110.D and 140.E) as they never attain a height of 55ft. However the MUZ code proposes a by-right bonus option of exceed a 55 ft height in some C zones. E zones are currently limited to 55 feet per these CDS sections.</p> <p>Additional building height may need design scrutiny. However, as worded today the maximum bonus height of the base zones would be achievable through CDS. Now that MUZ heights can exceed 55 ft, should the CDS be amended to specify a 55 ft height limit for MUZs as well, or is it BPS’ intention that proposals that bonus up to the maximum achievable height can do so using CDS?</p>
63	33.130.210.B.5 Height	What happens on sites where there is no sidewalk developed? Use regular base points? How does this work on corner lots or through lots?
65	33.130.210.C Height	<p>Is the cut-off intentionally “less than 70 feet” instead of “70 feet or less”? Rights-of-way are usually round numbers, so 70 feet or less might make more sense. Clarify in 33.130.210.C.1.a. that the remainder of the building is subject to the regular base zone height limit.</p> <p>In 33.130.210.C.b. why would it make sense to have a lower height limit along the more intense street and (if this is what is feared) create a canyon along the less intense street?</p>

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		Is this standard unintentionally or intentionally encouraging buildings to be located back from the public right of way? Will the 10-foot setback contribute to the pedestrian experience?
67	33.130.210.C.2 Height	Specify a base point for this measurement. This would be more effective if the height measurement was taken from the average grade of the R5 adjacent lot line. Abutting the side or rear lot line of an R-zoned lot works better than within 25 feet of a site zoned R. This language creates a strange arc at the corner of the commercial zone. If this is intended, it should be reflected on the graphic.
67	33.130.210.D Height	Are these also allowed as exceptions to the reduced maximum heights?
67	33.130.210.D.2 Height	Is this parapet exception counted toward the 25 percent of the building that can exceed the reduced maximum height or is it in addition?  A parapet, that is less than 4 feet in height should not be limited to 40 percent. The rooftop screening/separation functions are a good thing. How about 40 percent, if 4-5 feet in height along each street facing facade?
69	33.130.210.D.4 Height	A 4-foot setback for the railing may not be enough to discourage views into neighboring yards. Clarification of 4-feet for street facing façade and 10-feet or more for shared property line walls of a building?
69	33.130.210.D.5 Height	Does the privacy screen also need to be 14 feet from the property line abutting an R-zone?
69	33.130.210.D.9 Height	Does the 100 square foot increased setback at the corner only apply to the ground floor or to the entire building?  This standard directly conflicts with 33.218.140.C
71	33.130.210.D.10 Height	A 3 foot height increase may not be a substantial enough benefit to encourage ground floor uses listed under 10.b. Consider increasing to 5 feet or more.
71	33.130.210.D.10.b Height	This needs to be rewritten to state that at least 50 percent of the ground floor must be constructed and utilized for the following (1) Retail, Sales and Service, (2) Office or (3) Community Service or other Institutional use. As written it could be read to restrict all the ground floor to those uses. There are other service-related spaces needs—

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		<p>utility vaults, loading spaces, shared lobbies, etc. that usually need to be located on the ground floor.</p> <p>Note: Mass shelters and short-term housing are classified as Community Service Uses. Would they be “active” with ground-level windows, etc?</p>
73	Table 130-2	65 foot and 75 foot maximum heights in CM3 and CX zones, respectively, conflicts with Community Design Standards sections 33.218.110.D and 33.218.140.E.
75	33.130.212 Floor Area and Height Bonus Options	<p>Are these bonuses required in perpetuity? It is challenging to implement and enforce on these provisions in an ongoing basis since the building will already be there. What is the remedy if they are not meeting the requirements of the covenant? How would the City step in and kick out tenants and limit occupancy of a structure?</p> <p>It is one thing when the bonuses are not frequently used (amenity bonuses or elderly and disabled housing), but these are meant to be used broadly to achieve a level of development that implements the policies of our Comp Plan and get to the current code allowances.</p> <p>Many of the bonus/incentive options are similar to or draw from the Central City Plan District. We encourage the use of existing tools, if effective, and re-thinking of tools that are not, before adding new options and complexity.</p>
75	33.130.212.B.5.a Floor Area and Height Bonus Options	This appears to be reducing the height along the highest (more intense) street classification while allowing the taller portion of the building near local streets. <i>Is this correct?</i>
75	33.130.212.B.5.b Floor Area and Height Bonus Options	When wouldn't the CM2 zone not have either a Mixed Use-Urban Center or Mixed Use- Civic Corridor Comp. Plan designation?
77	33.130.212 Floor Area and Height Bonus Options	Existing code provisions have been difficult to administer over time when zoning requirements are certified by other agencies. Even when agreements are made at the time of code adoption, there is staff turnover and new people do not know what the expectations are for certification. Are the covenants administered by the certifying bureau

Page	Code Section	Comment
		or BDS? Please provide sample covenants for each bonus prior to the effective date of the code.
77	33.130.212.C Affordable housing bonus	<p>Given the city's affordable housing crisis, consider more substantial benefits such as exempting affordable housing FAR from FAR calculations, or exempting all residential FAR from FAR calculations for sites providing a high percentage of affordable units.</p> <p>Land costs may create more affordable bonus options in outlying areas of the city as they may not be economically feasible in interior areas. This has the potential to result in the inequitable distribution of affordable units.</p> <p>Affordable housing should be required to provide a range of unit types including accessible, 2- and 3-bedroom units, etc. This bonus should not be achievable by simply providing a handful of affordable studio and 1-bedroom units.</p>
77	33.130.212.C.3 Affordable housing bonus	How long must the units remain affordable? In perpetuity? Clarify if standard 60 years is being implemented, and how enforcement [deed restrictions?] will occur.
77	Table 130-3 Summary of Bonus FAR and Height	<p>The CM3 zone Affordable Housing bonus – why is there only a 10 foot height bonus for an additional 2:1 FAR? Shouldn't these be in alignment if it is meant to be an incentive?</p> <p>The height bonus for CM2 allows for greater height in areas currently zoned EX than would be allowed per 33.218.110.D and 33.218.140.E, where the height is limited to 55 feet.</p>
79	33.130.212.D Affordable commercial space bonus	How long does affordable commercial have to be maintained? Will PDC be responsible for enforcing affordable commercial rental rates at sites that use this bonus? Who will track and enforce the leasing and reporting terms of recorded covenants?
79	33.130.212.E Public accessible plaza bonus	This section seems very prescriptive and has rarely, if ever, been used in the past. Specific standards for the design and amenities of public plazas are not addressed to evaluate or measure how these features will be a community benefit. It should be clearly stated that these may not be double counted to meet the required outdoor area for residential and mixed use development.

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		<p>33.130.212.E.1.a may need to provide greater clarity. Could a plaza be located adjacent to a private street tract or common green? Or only adjacent to a public street, as stated?</p> <p>Who will administer and track compliance with public plaza covenants? What recourse would the city have to address hours of accessibility and maintenance of public plazas on private property?</p>
81	33.130.212.F High performance green features	The standards for high performance green features should be clear and measurable for their direct public benefits. The language in this section is not consistent with other similar sections. As echoed by the Design Commission, even “LEED-equivalent” is not sufficient and does not result in a measurable public benefit. Please consider requiring these to be LEED certified.
81	33.130.212.F.1.a High performance green features	<p>Are the “low carbon requirements of BPS” spelled out somewhere? Will these be certified by BPS?</p> <p>Why is there a 15-year limit? Shouldn’t they be maintained in place for the life of the project? What if renovation or reconfiguration of these areas is proposed?</p>
81	33.130.212.F.1.b High performance green features	Are large canopy trees ever a good idea for a more intensely developed commercial area? They have a spread of 50+ feet – how is that ever going to work well in the long-term on these sites with minimum dimensions of 20 feet by 20 feet? These requirements and the 60 percent eco-roof requirement are so specific they seem like they would likely need modification through an Adjustment or some more flexibility on a case-by-case basis if they are to be used.
81	33.130.212.F.1.b.1 & 33.130.212.F.1.b.2 High performance green features	Is this based on Title 11? How is the canopy measured?
81	33.130.212.F.1.b.3 High performance green features	This standard is unclear. Does it refer to 33.130.215, 33.130.225, 33.130.228, or all of the above? Can this be counted toward meeting Title 11 On-Site Tree Density?
83	33.130.215.A Setbacks	The purpose statement could use some work. It would be very difficult to make findings that a project on an unusual lot could equally or better meet this purpose.

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83	33.130.215.B.1.a Setbacks	What do we want in the 10 foot setback? Is this to be hardscaped or landscaped?
83	33.130.215.B.1.c(1) Setbacks	The code currently states that no setback is required for buildings under 15 feet tall, but where you provide a setback you need the five feet of L3. Is that still true?
85	33.130.215.B.1.c(2) Setbacks	This provision as written is far too complicated to implement. This allowance is really difficult to follow and would only seem to make sense if there were more intense residential development on the adjacent lot along the front lot line. What if there is a house next door? Can the side setback be reduced to zero? Is the five feet of L3 still required?
85	Figure 130-X	It may add clarity to include numbers, measurements, dimensions, etc. to this figure.
85	33.130.215.B.1.d Setbacks	Is this really necessary? Don't the building code requirements take care of this?  The language is confusing relative to the minimum setback distance from lot lines and the width of the window feature area setbacks. Please provide additional clarification on how to apply this standard. It seems this may create windows within shafts, which may not be the most desirable design solution to address light and air.
87	33.130.215.B.2.a(3) Setbacks	How do these bay window extensions work with the residential window setback?
89	33.130.215.C.1 Maximum building setbacks	Maximum 20-foot setback standard on Civic Corridors conflicts with 33.218.140.A and B, where all building walls are subject to a maximum 10 foot setback in C and E zones. This would trigger requirement for discretionary land use review (DZ or HR).
95	33.130.215.E Alternative maximum building setback for large retailers	Should these provisions remain in the code or do we want applicants to follow a different path?
101	33.130.216 Additional Standards for Sites located Across from a Local Service Street from a Residential Zone	These provisions should not be located in a separate section. Rather, they should be placed under the respective Height and Setback sections.

<b>Page</b>	<b>Code Section</b>	<b>Comment</b>
101	33.130.216.C Additional Standards for Sites located Across from a Local Service Street from a Residential Zone	Where is the height limit provision for c-zoned lots that abut an R-zone site?
101	33.130.216.D.1 Additional Standards for Sites located Across from a Local Service Street from a Residential Zone	Allow pedestrian connections through the buffer. Note that these streets will have street tree requirements, so there will be duplicative trees like sometimes happens at the perimeter of parking lots.
103	33.130.220 Building Coverage	Please keep in mind that zones with 85 percent or less building coverage will have Title 11 tree density requirements. Please look at those and make sure they can be met with the other development standards proposed.
104	33.130.222.C Building Length and Façade Articulation	No, vegetated green walls should not be an option for meeting the standard. How do we ensure it is maintained or even grows?
105	33.130.222 Building Length and Façade Articulation	Do covered decks count as articulation – do we consider the wall at the back of the deck to be the articulation?
105	33.130.222.A Building Length and Façade Articulation	The purpose statement for max. building length and facade articulation standards needs elaboration/explanation beyond the concern about “bulk”.
105	33.130.222.B Building Length and Façade Articulation	The maximum building length of 110 feet may present particular design challenges on 200-foot long blocks. Other elements like balconies should be considered to articulate facades.
105	33.130.222.C Building Length and Façade Articulation	Why apply the articulation requirement only for tall (35+ feet) buildings? Variations in the wall plane are needed even for 2 story buildings that have a large street-facing façade.
105	33.130.222.C.1.a & b Building Length and Façade Articulation	Could a different measurement than street-facing façade area of 3,500 square feet be identified? That sounds very cumbersome to measure.

<b>Page</b>	<b>Code Section</b>	<b>Comment</b>
105	33.130.222.C.2 Building Length and Façade Articulation	Clarify how this will be applied to projects that are residential only and elect to use 33.218.110. Will this control or be supported by 33.218.110.E?  Why only off-set by 2 feet? That isn't very much.
109	33.130.228 Residential Outdoor Areas	If the required outdoor area is to be the same size as is required in multi-dwelling zones, it is not clear why the minimum dimension would be 4 feet by 6 feet. Consider reducing the minimum square footage or make the same. It would be helpful to include a graphic with an example of an outdoor area including the amenities provided.
109	33.130.228.B.2.b(2) Residential Outdoor Areas	The list of Indoor Common Areas is not very comprehensive and could lead to requests that P&Z isn't sure qualify. Also, I don't think we're seeing many indoor swimming pools being built.
109	33.130.228.B.3 Residential Outdoor Areas	Does the entire roof count toward common outdoor area requirements or just the area with the eco-roof?
111	33.130.230.B Ground Floor Windows	Does this apply in all commercial/mixed use zones?
111	33.130.230.B.2.c Ground Floor Windows	It is unclear how the ground floor window standards and parking work together. Specify what is supposed to happen with the walls of a parking structure if there is only one street frontage or if they cannot be setback five feet and landscaped to the L2 standard (for example the garage entrance). Spell out that these walls need display windows or public art.
113	33.130.230.C Ground Floor Windows	Regarding the last sentence, this reflects current language that may be read to exclude transoms above entrances. Is there a way to clarify whether such features are intentionally excluded from ground floor window calculations?
113	33.130.230.D.1 Ground Floor Windows	Can the flexible ground floor have partition walls within the 25 foot depth?
115	33.130.230.E Exception for public art	Currently, the exception for public art is seldom used. However, with the expanded area requirements of GFW, it is likely that they may be utilized more frequently. Have the potential impacts of the revisions of this code section been discussed with the Regional Arts and Culture



Page	Code Section	Comment
		Council, who currently approves these exceptions and manages these covenants?
115	33.130.230.F Exception for vegetated Green Walls	<p>What is the definition of a vegetated green wall and will standards including plant recommendations be provided? What purpose do the vegetated green walls serve? Maintenance and enforcement are of particular concern. How do we ensure they will be maintained on a long-term basis? Are these appropriate on all street frontage types, or only on side streets or streets with a lower transit classification?</p> <p>Per a meeting with Tim Heron, Jason Richling and BPS, this should not be counted as a ground floor window exception given issues of landscaping encroachment into the right-of-way, maintenance, etc.</p> <p>These can be allowed, but not as an exemption to Ground Floor Windows. PBOT and BES coordination is critical, and enforcement will be challenging over time. Before the Design Commission, vegetated wall elements are considered as a compliment to already successful architecture. In this case, views of active spaces behind clear Ground Floor Windows is the goal, vegetated green walls should be accents to this condition.</p>
117	33.130.235.C Screening	Is there a limitation or requirement for screening for wall-mounted mechanical equipment? What about street-facing facades?
119	33.130.240.B.2.a Pedestrian Standards	Consider allowing narrower circulation systems for fewer units as is allowed in multi-dwelling zones.
119	33.130.250.B.4 Pedestrian Standards	Why is this here instead of in the setback section?
121	33.130.240.B.1.a.(2)b Pedestrian Standards	The language “other areas of the site, such as” is too opened, providing discretion. Please clearly define what is intended.
127	33.130.245.D Exterior work activities	Perhaps apply this within 50 feet of an R zone here, too. Zone lines typically follow centerline and this may offer a loophole to applicants as worded.
129	33.130.250 General Requirements for Residential and Mixed-Use Developments	This section should just be for houses, attached houses, manufactured homes and duplexes. Move the one window standard that is required for projects with residential uses to the Ground Floor Window section and change the name of that section – why would we

Page	Code Section	Comment
		not require windows above the ground floor on a multi-story commercial development?
143	33.130.260.A Drive-Through Facilities	<p>Last sentence does not make sense. Is this a reference to a specific provision in 33.258? Otherwise, that chapter would not allow replacement.</p> <p>If drive-throughs are subject to Chapter 33.258, then why are the additional standards identified. Aren't the proposed new standards intended to supersede 33.258?</p> <p>The second sentence should clarify that it applies to a "legally" nonconforming drive-through facility.</p>
143	33.130.260.A.1 Drive-Through Facilities	Please rephrase – hard to read double negative.
143	33.130.260.A.5 Drive-Through Facilities	When/how could a facility be "rebuilt" if not on the same site as the existing facility? How about rewriting to state that the site of the original nonconforming facility cannot be expanded.
145	33.130.260.C.2 Drive-Through Facilities	33.510 is proposing to prohibit new Drive Thru facilities in Central City Plan District. This standard should reference 33.510 Drive-through facilities. Chapter for clarification if any Central City subdistrict will still allow drive through facilities . . . or simply restate that new drive through facilities are prohibited in Central City.
145	33.130.265.C Detached Accessory Structures	With new setbacks (none for buildings 15 feet or less in height), a covered deck is allowed a zero setback from an RF-RH-zoned lot, but an uncovered deck is not?
153	Map 130-3 Pattern Areas	Do the little pieces of Inner pattern area outside of the Inner area have the "d" overlay? What is gained by having them subject to different requirements than the surrounding area? Do they really warrant plan district-like treatment? It seems like this will cause confusion and may not be as appropriate with broader application of the pattern areas in other zones. If the Zoning Code is to use pattern areas, they need to be consistent across zones.
163	33.266.110.B.1 & 2 Minimum Required Parking Spaces	Consider changing "sites located 1500 feet or more" to "sites located more than 1500 feet from a transit station" and "or more than 500 feet from a transit street".

Page	Code Section	Comment
		In practice, BDS planners apply these provisions to allow the exception for sites “within” 1500 feet of a transit station or within 500 feet of a transit street with 20-minute bus service. This is cleaner than verifying that a site is no more than 499 feet or 1499 feet from these facilities.
165	33.266.110.B.3.c Minimum Required Parking Spaces	This seems like it involves discretion to determine if peak uses occur at different times and that the parking area is large enough for both uses. What kind of documentation is necessary? Could the applicant do the analysis?
167	33.266.110.D.4 Exceptions to the minimum number of parking spaces	In practice this is not a meaningful exception unless there is an adjacent TriMet transit stop.
171	Table 266-1 Minimum Required and Maximum Allowed Parking Spaces by Zone	The reference to “site” is problematic given the code definition of site. It is not clear why the trigger for parking and parking requirement would be tied to the size of the site and not the number of units or floor area of the use.
175	Table 266-2 Parking Spaces by Use	Footnote [2] is identified in the header (which is sort of strange) and then identified by some uses, but missing on some of the obvious such as School uses. Parks and Open Areas need at least a maximum standard for other uses (not captured as “active”). What about Parks and Open Areas that are not CU but allowed outright in the zone. Should there not be a minimum and maximum parking requirement?
179	33.266.115.B.1.b Maximum Allowed Parking Spaces	Publication of an annual map update of TriMet’s service schedules to identify 20-minute peak hour service would be very helpful. Schedules and routes are subject to change. However, it’s unclear if PBOT is the appropriate bureau to take responsibility for maintaining this mapping.
183	Table 266-3 Location of Vehicle Areas	Currently we do not get requests for vehicle areas between the building and the street in CS zones. The proposed regulations allow adjustment requests, so the purpose statement should be clear about the intent of the regulations.
187	33.266.430 Transportation Demand Management in the	The pre-approved TDM plans must be ready to go when the MUZ code goes into effect.

Page	Code Section	Comment
	Commercial/Mixed-Use Zones	<p>Consider a trigger of 30 dwelling units since this is consistent with when off-street parking is required. These numbers should intuitively be the same.</p> <p>The TDM requirements could apply to land use reviews that are not identified in this section. Should there be a section that identifies Conditional Use, Adjustment (transportation related), Central City Parking Review, etc.</p> <p>Also, is the trigger for the TDMP when 20 or more dwelling units are <i>proposed</i> on a site? What if someone comes in with a tenant improvement or some other site upgrade with no increase in units for an existing 30 unit building? Is a TDMP plan required?</p>
193	33.415.200 Required Ground Floor Active Use	Clarify whether the intent is that 50 percent of the ground level of any building within 100 feet of a transit street must be in uses A through J; or whether the 50 percent of the ground level of all buildings on a site must be in uses A through J if any of the buildings on the site are within 100 feet of a transit street.
193	33.415.200.I & J Required Ground Floor Active Use	If office space is considered active, then why not allow associated office space in the ground floors for College and Medical Centers?
193	33.415.300 Prohibited Development	Houses, attached houses, and duplexes <u>on sites</u> within 100 feet of a transit street.
193	33.415.310 Minimum Floor Area Ratio	A minimum FAR of .05 to 1 seems extremely low and inconsistent with the purpose of the main street and its desired function.
195	33.415.330 Location of Vehicle and Exterior Display Areas	The purpose statement needs to be expanded and explain the desired function of corners. This provision will likely generate Adjustment Review requests.
195	33.415.330.B Location of Vehicle and Exterior Display Areas	It is not clear why so much frontage would be allowed in vehicle area adjacent to transit street and alternatively why we would limit exterior display. Is this standard necessary given the frontage limitation in 33.266 and required setbacks?
195	33.415.330.C Location of Vehicle	What about loading space requirements?

<b>Page</b>	<b>Code Section</b>	<b>Comment</b>
	and Exterior Display Areas	
205	33.520.100 Reinforce the Corner	What are we getting with these two requirements that we are not requiring with the base zone? Are these areas within the “d” overlay? Do the design standards or review already take care of this?
207	33.520.110 Exterior Finish Materials	Because this section makes reference to 33.420, is this standard intended to only apply to sites mapped with a “d” overlay? The language needs to be clarified as to where these standards apply. If it is not intended to apply to sites with a “d” overlay, reference to 33.420 should be deleted, and those cited exemptions pulled into this chapter.
211 and 221	33.545 and 33.575 Lombard Street and Sandy Boulevard Plan Districts	Do the Lombard and Sandy Plan Districts need to be stand-alone? Can they be incorporated into the St. Johns and Hollywood plan districts?
215	33.545.110.C Retail Sales and Service and Office uses	Use floor area rather than net building area.
217	33.545.120.C Additional Standards in the R1 Zone	Similar to the above comment for page 207, it is not clear whether this section is intended to apply only to sites mapped with a “d” overlay. If not, reference to the 33.218 sections should be deleted and replaced here with a list of what standards apply. These should be represented just as development standards and not community design standards. On the other hand, if these are intended to apply to sites with the “d” overlay, Adjustments should not be allowed to the community design standards in lieu of a discretionary Design Review.
223	33.575.100 Sandy Boulevard Plan District	These regulations are duplicative (or close enough) of the new base zone requirements.
229	33.575.110.C Building Facades Facing Sandy Boulevard	If found to be appropriate to achieve desired design, Foster Road could use these standards, too.
229	33.575.110.C.2 Building Facades	Stepped facades at an angle to the diagonal street are not especially desirable except, perhaps, at corners. This standard has been carried over from the existing Plan District but is challenging to implement and should be re-evaluated.

Page	Code Section	Comment
	Facing Sandy Boulevard	
235	33.730.130.B.3 When approved decisions expire	Please remove the reference "or in the plans themselves". It will only be the LU decision that specifies when an approved CU MS, IMP, TIR will expired.
239	Chapter 33.852 Transportation Impact Review	Need section that states the TIR can apply concurrently with other reviews and will require that identified review procedure (likely a Type III).
239	33.852.100 Transportation Impact Review	Are these reviews appealed to the Hearings Officer?
243	33.852.110.A Approval Criteria for Transportation Impact Review	Will Level of Service be limited to intersection function for motor vehicles, or expanded to include multi-modal LOS?
243	33.852.115 Duration of a Transportation Impact Review	The Transportation Impact Review isn't "allowing" the development, it "examined" the proposed development.
245 - 258	33.860 Large Sites Master Plan Review	<p>This entire Chapter remains a significant concern, particularly as defined as only a two acre site limitation. The degree of subjectivity, required process, and length of review time makes this process appear arduous to Staff and likely any customer/applicant/property owner. As such, three points:</p> <ol style="list-style-type: none"> <li>1) Generally the same comments as forwarded by Jason Richling in September 11, 2015 dated Memo, RE: MUZ Large Site Flexibility Concept, still apply, with the one exception that ....</li> <li>2) the H.O. should NOT be involved, rather the Design Commission and/or the Planning and Sustainability Commission be a required Design Advice Review Body at the start of the application, and</li> <li>3) if a Large Site Master Plan should be incorporated, MUZ should adopt or even cross reference the currently being crafted Central City Urban Design Master Plan.</li> </ol>

<b>Page</b>	<b>Code Section</b>	<b>Comment</b>
247	33.860 Large Sites Master Plan Review	Where is the section that describes which sites/projects are eligible to use these provisions? What is the definition of a “large site”?  Bonuses that are not physical (e.g. affordable commercial) are very hard to track and ensure over time. We should expect markets to change, and use changes over time and provide non use-specific incentives to accommodate this dynamism while encouraging desired development characteristics.
249	33.860.030 Review Procedure	It is crucial that the appropriate review body(s) and their role(s) be identified.
251	33.860.040.A Affordable housing	See page 77 for affordable housing comments.
251	33.860.040.C Energy efficient buildings	How do the Building Code energy efficiency requirements and the BPS requirements get reviewed? Are the code requirements the same? If not, does BDS Plan Review staff have the expertise?
253	33.860.045.C Design Commission recommendation	Can this be done through a Design Advice Request? Is a Design Review also required?
255	33.860.050.B.1 Urban design and development framework	What does “attractive and pleasant for users” mean?
255	33.860.050.D Stormwater Management	Why is this needed when all development has to meet the Stormwater Management Manual?
257	33.860.055 Duration of the Master Plan	It seems extremely generous to allow an LU to be good a full 10 years without any development. Code requirements and transportation capacity can change dramatically. A 10-year CU Master Plan decision makes sense because it is applied to developed sites with established institutions. The 10-year window doesn’t make sense for a large undeveloped site.
257	33.860.060.A.1 & 4 Amendment required	A very small change to the boundary may not warrant a Type III amendment process. Is there a way to allow a minor change as a Type II?

Page	Code Section	Comment
		Changing the amount of parking by 20% is pretty significant. The Conditional Use chapter uses a trigger of 10% or greater for requiring a Type III Review.
257	33.860.060.A – C Amendments to a Large Site Master Plan	Clarify whether approval of each phase, which in practicality will involve at least some deviations from the original plan, will constitute and “amendment.” Only if the thresholds of 33.860.060.A are crossed?  Will each project within the master plan be subject to a separate discretionary Design Review? If so, does this violate Goal 10, ORS 197.307(4) given the affordable housing requirement under 33.860.040.A?
301	Performance Bonuses	Is the economic testing and bonus calibration being completed? Please share results with us.
307	Other City Titles Requiring Amendment	These Title amendments are critical. Changes to Title 11 should be addressed early as currently CS, CX, EX and CM are Title 11 exempt while CM1, CM2, CO1, CO2 and CG are not. Given that the new zones aren’t an exact one-to-one translation, choices as to applicability will be required. Perhaps pattern areas can figure into decisions regarding applicability.

End of Comments





# CITY OF PORTLAND ENVIRONMENTAL SERVICES



1120 SW Fifth Avenue, Room 1000, Portland, Oregon 97204 ■ Nick Fish, Commissioner ■ Michael Jordan, Director

## Memo

Date: 16 November 2015

To: Barry Manning, Bureau of Planning and Sustainability

From: Elisabeth Reese Cadigan, BES Systems Development  
Amber Clayton, BES Stormwater Management Manual  
Marie Walkiewicz, BES Watershed Services

Re: Mixed Use Zones Project Discussion Draft

Thank you for the opportunity to participate in the Mixed Use Zones Project to revise Portland's commercial and central employment zones. BES is pleased to provide the following comments on the September 2015 Discussion Draft.

1. BES recommends the following policies be included in the list of Key Comprehensive Plan Goal and Policies supported by the MUZ project (beginning on p. 10):
  - **Policy 3.48 Green infrastructure in corridors.** Enhance corridors with distinctive green infrastructure, including landscaped stormwater facilities, extensive tree plantings, and other landscaping that both provide environmental function and contribute to a quality pedestrian environment.
  - **Policy 3.49 Integrated land use and mobility.** Enhance Civic Corridors as distinctive places that are models of ecological urban design, with transit-supportive densities of housing and employment, prominent street trees and other green features, and high-quality transit service and pedestrian and bicycle facilities.
  - **Policy 4.69 Low-impact development and best practices.** Encourage use of low-impact development, habitat-friendly development, bird-friendly design, and green infrastructure.
  - **Policy 4.70 Impervious surfaces.** Limit use of and strive to reduce impervious surfaces and associated impacts on hydrologic function, air and water quality, habitat connectivity, tree canopy, and urban heat island effects.
  - **Policy 4.71 Hazards to wildlife.** Encourage building, lighting, site, and infrastructure design and practices that provide safe fish and wildlife passage, and reduce or mitigate hazards to birds, bats, and other wildlife.
  - **Policy 7.5 Air quality.** Improve, or support efforts to improve, air quality through plans and investments, including reducing exposure to air toxics, criteria pollutants, and urban heat island effects. Consider the impacts of air quality on the health of all Portlanders.
  - **Policy 7.6 Hydrology.** Through plans and investments, improve or support efforts to improve watershed hydrology to achieve more natural flow and enhance conveyance and storage capacity in rivers, streams, floodplains, wetlands, and aquifers. Minimize impacts from development and associated impervious surfaces, especially in areas with poorly-infiltrating soils and limited public stormwater discharge points, and encourage restoration of degraded hydrologic functions. – SW Portland

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- **Policy 7.11 Urban forest.** Improve, or support efforts to improve the quantity, quality, and equitable distribution of Portland’s urban forest through plans and investments.
  - **7.11.c. Tree canopy.** Support progress toward meeting City tree canopy targets.
  - **7.11.f. Resilient urban forest.** Encourage planting of Pacific Northwest hardy and climate change resilient native trees and vegetation generally, and especially in urban habitat corridors.
2. FAR Bonuses (p. 81): BES supports the High Performance Green Features FAR Bonus and will continue to work with BPS staff to further develop the details and review process. As noted in our previous review, BES is willing to administer the ecoroof bonus, as we currently administer the bonus in the Central City and we also review them for compliance with the Stormwater Management Manual (SWMM). However, BES does not administer the landscaping requirements of Title 33 nor the tree requirements in Title 11 and we feel that BDS would be the appropriate bureau to administer the tree and landscaping bonus.
  3. Setbacks:
    - BES supports the concept of simplifying maximum setback regulations to offer more flexibility for providing outdoor spaces and landscaping. (p. 88)
    - While we understand the intent of 33.130.215.D Improvements within maximum building setbacks (p. 91), we wonder if it’s possible to meet this requirement and also take advantage of the high performance green features landscaping bonus. Can BPS take a closer look at this to determine if the size of the site or building makes a difference? If so, is the ideal lot size for meeting the bonus a typical or unusual lot size?
  4. Residential Outdoor Areas (p. 109): BES recommends that additional language be added to 33.130.228.B.3 to clarify that the area of an ecoroof “improved with decking, pavers, or other surfaces” is not actually ecoroof and cannot be counted toward the ecoroof bonus or meeting SWMM requirements. We suggest rewording the section to say something to the effect of “pedestrian areas such as rooftop decks and patios can be integrated with ecoroofs but are not considered ecoroofs for the purposes of stormwater management or the ecoroof bonus”.
  5. Ground Floor Window Requirements (p. 115): BES supports the exception to the ground floor window requirement for vegetated green walls as they support Comprehensive Plan policies that call for integrating vegetation into the urban fabric to provide habitat and reduce urban heat island effect. While BES is currently researching the use of green walls in stormwater management, they are not an approved facility in our SWMM and we have no mechanism to review or approve them, as our bureau does not oversee any vegetation requirements on private property outside of the SWMM. So while we do support the concept, we cannot administer this element of the proposed code.
  6. Large Site Master Plan (pp. 245-257):
    - BES recommends adding a requirement for either high performance landscaping or ecoroofs to this bonus. Given the size of the size of the sites associated with this bonus, integrating vegetation will be important to achieve many of the policies in the Comp Plan.
    - Similar to the current Title 33 Conditional Use Master Plan, BES recommends using an adequacy of services approval criterion to address both stormwater and sanitary availability, such as “Proposed sanitary and stormwater management systems for the master plan area are acceptable to the Bureau of Environmental Services”.
  7. Main Street Overlay Maps:
    - BES recommends the zoning and Main Street Overlay on Foster take advantage of the large development parcels between 72<sup>nd</sup> and 82<sup>nd</sup>; expand the Heart of Foster not to 74<sup>th</sup> and the 82<sup>nd</sup> node to include one additional block to the west. (pp. 275 & 283)
    - A broader design overlay may be desirable in Multnomah because of concerns about building heights, especially given the slopes in the area. Multi-story buildings can overwhelm single family homes, especially when they’re downslope of large-scale development. (p. 288)

We look forward to continued participation in development of the FAR bonus structure, including details of the high performance green feature bonus and the economic testing proposed to better understand the relative value and costs of bonuses in order to determine how they may be used or will interact with each other.

## Manning, Barry

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**From:** Julie Livingston <Julie.Livingston@homeforward.org>  
**Sent:** Friday, November 06, 2015 10:35 AM  
**To:** Manning, Barry; Cunningham, Bill  
**Cc:** Shaw, Barbara  
**Subject:** MUZ Discussion Draft Comments

Barry, Bill:

Here are my comments on the MUZ discussion draft. Let me know if you prefer a more formal response, I'd be glad to send you a memo on letterhead for the record when I return from vacation. (I'll be out of the office 11/9 through 11/27.) Generally my comments are philosophical, but if a comment is tied to a specific section of the draft, I've noted the section. I'm copying Barbara as a courtesy because several of my comments have to do with the affordable housing bonus.

1. **Affordable housing bonus:** Applies to both rental and for sale housing. Oversight and regulatory process will be different for the two tenancies.
2. **Affordable housing bonus:** "80% AMI" needs to be refined. This may be a fair qualifier in the inner ring neighborhoods, but 80% AMI in outer ring neighborhoods is generally above market.
3. **Affordable housing bonus:** Some forethought about the types of units produced seems necessary. Does PHB have authority to approve the number of units, bedroom mix, accessibility mix, location in the building, etc?
4. **Publicly accessible plaza:** A good architect can design a public plaza that does double-duty as a public benefit and required outdoor space. Many architects will find this challenging, but closing the door to the potential synergy seems short-sighted.
5. **Building height & street width:** This is a great strategy.
6. **Increased ground floor height:** Great strategy #2.
7. **Roofline variety:** Great strategy #3.
8. **Commercial space required at ground floor:** Doesn't work well for affordable housing. A requirement for non-residential space is reasonable, but the construction of commercial lease space in affordable housing developments introduces the requirement for commercial wage rates for the entire structure. Commercial wages have a dramatic negative impact on the financial viability of a development project. Add to that the fact that the tax credit investor may place constraints on the commercial lease space that make it hard to let: no smokes, no lottery, no liquor, etc. The end result is often an empty ground floor.
9. **33.130.230.E:** A check in with RACC staff to verify the proposed revisions work well for them seems like a good idea.
10. **33.130.230.F:** The green wall exception is an issue for the Design Commission. I share concerns about longevity and maintenance voiced by Wark and Savinar.
11. **33.860.040.A:** Do the calculations work as intended? Assume 80,000sf site in CM3. Base FAR = 240,000sf. **If bonus FAR = max of 160,000sf, affordable housing = 25% of bonus FAR, or 40,000sf. If bonus FAR = 80,000sf, affordable housing = 10% of total FAR, or 10% of 320,000sf, 32,000sf.** The sf seems reasonable, but the net result is more than 25% of the bonus FAR is required to be affordable housing and the rationale isn't immediately clear.

This has been an immense amount of work and you've done such a great job! It's been a real treat to get to work with you both.

Julie

Julie Livingston AIA, LEED AP BD+C

Senior Project Manager



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## Manning, Barry

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**From:** Horner, Brett  
**Sent:** Thursday, October 22, 2015 3:22 PM  
**To:** Manning, Barry  
**Cc:** Roth, Emily  
**Subject:** RE: MUZ Project

Thanks Barry. I see this effort as a net plus to the urban forest, so it has our full support. Emily Roth was reviewing to see if there were any Urban Forestry things to comment on. I've copied her here. Thanks again for involving us.

### **Brett Horner**

Planning Manager | Parks & Trails Planning  
Portland Parks & Recreation  
503-823-1674

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**From:** Manning, Barry  
**Sent:** Thursday, October 22, 2015 10:15 AM  
**To:** Horner, Brett  
**Subject:** MUZ Project

Hi Brett:

Following up on my phone call. I'd like to discuss how we can incorporate Parks' feedback on the mixed use zones Discussion Draft. You/Parks provided feedback on the In-House Draft (much appreciated) and we have also looped-in Urban Forestry. We also want to make sure we consider any comment Parks has on the Discussion Draft, which is online here: <https://www.portlandoregon.gov/bps/article/546850>. I will also inter-office a copy to you. Comments on this are due by 11/16. I also forwarded you an invite to any remaining technical advisors group (TAG) meetings.

I know this is late in the game, but want to make sure we reach out to PPR. Let me know if I should be speaking to someone else in Parks for comments if you are not the most appropriate person.

Thanks.

Barry

**Barry Manning | Senior Planner**  
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In the Proposed Draft, TDM Commentary page, please add under “Standards for the Commercial/Mixed Use Zones:” The City intends to evaluate the need for a commercial threshold for TDM plans in mixed use zones outside the Central City at some point after implementation of the residential threshold.

#### **Requested changes to 33.266.100.G**

Please revise two instances of ~~Office~~ of Transportation to Bureau of Transportation.

#### **Requested changes to Section 33.266.110.B.1**

Publishing a map annually should not be a PBOT responsibility. PBOT neither operates the transit system nor implements Title 33.

#### **Requested changes to 33.266.110.E.7**

7. Substitution of a new City of Portland bike sharing facility station for required parking. Substitution of a bike sharing facility station for required parking is allowed if all of the following are met:

- a. A City of Portland bike sharing station providing 15 docks and ~~eight ten~~ shared bicycles reduces the motor vehicle parking requirement by three spaces. The provision of each addition of four docks and two shared bicycles reduces the motor vehicle parking requirement by an additional space, up to a maximum of 25 percent of the required parking spaces;
- b. The bike sharing facility station must be adjacent to, and visible from the street, and must be publicly accessible;
- c. The bike sharing facility station must be shown on the building plans; and
- d. Bike sharing agreement.
  - (1) The property owner must have a bike sharing agreement with the City of Portland’s designated operator of the City a bike sharing company system;
  - (2) The bike sharing agreement must be approved by the Portland Bureau of Transportation; and
  - (3) A copy of the signed agreement between the property owner and the bike sharing company, accompanied by a letter of approval from the Bureau of Transportation, must be submitted before the building permit is approved.



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CITY OF  
**PORTLAND, OREGON**  
PORTLAND HOUSING BUREAU

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Dan Saltzman, Commissioner  
Kurt Creager, Director  
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**Date:** November 16, 2015

**To:** Susan Anderson and staff, Bureau of Planning and Sustainability  
**From:** Kurt Creager, Javier Mena, Karl Dinkelspiel, Matt Tschabold, Barbara Shaw  
Portland Housing Bureau

**Re:** **Mixed Use Zones Project – Discussion Draft**

Congratulations to BPS on your comprehensive, collaborative work getting to the “Discussion Draft” stage for the Mixed Use Zones Project. This effort encompasses many issues and many neighborhoods, and we appreciate the patience and leadership shown by Barry Manning, Bill Cunningham and other BPS staff. We acknowledge that providing some of this feedback earlier might have been useful –but we are still trying to understand implications to affordable housing that might result from the many complex new zoning provisions addressed in the MUZ.

We look forward to further discussion on route to the “Proposed Draft” in early 2016 and we offer the following comments.

**Page 25**                      **Affordable Housing Developments / BOLI wages**

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The MUZ proposes to add a required commercial component, **Section 33.415**, to any project developed on a site located in the “Centers Main Street Overlay.” This brings up an issue unique to publicly-funded affordable housing development. Although the last bullet on page 25 mentions BOLI wages, it fails to convey the extent of that issue. If an affordable housing development receives more than \$750,000 in public funds and either (i) includes any commercial space, or (ii) exceeds four stories in height; then the entire project must be constructed using BOLI wage rates. Based on the size of projects in the MUZs, adding a ground floor commercial requirement to a publicly funded affordable housing development will increase the cost from \$50,000 - \$200,000 depending on the size of the project. PHB, as the “gap funder” for local affordable housing projects, anticipates filling this additional financial gap with public dollars. This is one reason that PHB recommends that affordable housing projects receiving direct city funding be exempted from the “commercial” requirement in the overlay districts. For these projects the ground floor requirement would be active uses as described in Section 33.130.201.D rather than commercial uses. PHB can provide a definition of city-funded project if this concept is pursued.

**Page 30, 31**                      **Development Bonuses**

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The draft states that, in the MUZ bonus hierarchy: “Affordable housing is given the highest priority”. While accurate, the priority may not be significant and is quite different than the priority given the affordable housing bonus in the Central City plan. There are many ways to obtain floor area in the MUZ that can be used alone or in tandem to gain floor area instead of using the affordable housing bonus. The cost to the developer of delivering these different public benefits, or the cost to the city to administer the benefit, are not yet known because the details around these various bonuses are not fully conceptualized. **PHB encourages the additional economic modeling proposed by BPS and PDC to compare the relative cost to a developer to use these bonus/transfer provisions and we look forward to a role in that work.**

Clearly the affordable housing bonus will be very useful for affordable housing developers. The extent to which the bonus system will incent new affordable housing by private developers is less clear.

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**Page 35      Expansion of Design Overlay Requirements**

The MUZ project expands the City’s design review requirements to new areas.

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**Page 73      Large Site Master Plan**

**Section 33.860** of the code will address the Large Site Master Plan. Through a Title III master plan process, certain sites can gain floor area and height by providing affordable housing, a plaza and energy efficient buildings. The affordable housing requirement is met by providing 10% of all bonus floor area affordable at 80% MFI when the overall floor area is not increased by more than 40% over that allowed. If the floor area increase is greater than 40% of the base zoning requirement, than 25% of any bonus floor area must be affordable at 80% MFI.

It is not clear to PHB staff why the 25% requirement was dropped to 10% in some instances. **PHB recommends keeping the 25% of bonus floor area regardless of the amount of floor area sought.**

The large site master plan process also presents some implementation issues that only affect the affordable housing public benefit. Because the affordable housing public benefit can, apparently, be met for the entire site in a single building, consideration should be given to how the sequencing of the affordable housing benefit should be required. For example, is it ok to provide the affordable housing in the last building developed on a master-planned site? What if the final building is never constructed? **PHB encourages further consideration of this issue by BDS and BPS.**

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**Page 76      Affordable Housing Bonus**

**Section 33.130.212.C** describes the affordable housing bonus. Except for some instances within a Master Site process, bonus floor area can be earned by providing 25% of the bonus floor area as housing affordable at 80% MFI.

Unlike the Central City in which housing at 80% MFI is not being produced, there are some areas covered by MUZ zoning in which housing affordable at 80% MFI is already being produced by the market. The bonus structure has taken too much energy to implement, there is too dire a need for affordable housing, and the on-going process will be too much of an administrative burden for the city staff allow the affordable housing bonus to create housing that is not below market. **In response, PHB recommends eliminating the income level from the zoning code and allowing it to be set through administrative rules.**

Alternatively, set the income level at 60% MFI, unless market studies demonstrate to the satisfaction of PHB that housing at 80% MFI achieves an unmet need.

Because most of the applicant's administrative requirements will be in the future related to occupancy and reporting, language in **Section 33,130.212.C.2** might be improved as follows: "The applicant must provide a letter from PHB certifying that the covenant has been recorded and the development will meet the standards of this subsection and any related administrative requirements. ~~have been met.~~

This edit is suggested because most of the administrative requirements will be on-going.

PHB continues to support any effort of BPS to give affordable housing an even greater priority in the bonus system by eliminating or making other bonus options more expensive for the developer to provide. For example, we support the combination of the "high performance green" and the "landscape plaza" bonuses into a single bonus.

#### **Page 187, 239 Transportation Demand Management (TDM) /Transportation Impact Review (TIR)**

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Under **Section 33.266.410**, all projects with more than 20 unit in the MUZs will be required to provide TDM plans. Wisely, PBOT proposes to supply "off the shelf" plans developers can select rather than require costly, individual plans under the TIR.

The off-the-shelf plans will rely on landlord/owner measures to discourage automobile use such as supporting car share or bike share programs. Unfortunately, these programs require resident households to have access to credit. Many low income households (0 – 60% MFI) do not have access to credit and many do not have bank accounts. As a matter of equity, any TDM plans that are required of affordable housing developers should reflect the fact that standard measures cannot successfully be used in affordable housing projects. Or, preferably, affordable housing developments should be exempted from this requirement for residential units. PHB can supply a definition of project types that should be exempted if this concept is pursued.

#### **Page 171 Minimum Parking Requirements**

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**Section 33.266** changes parking requirements making some parking required for residential units in MUZs with lower requirements for projects close to transit. The code then reduces the parking requirement by allowing exemptions for taking certain measures like car share spaces and bike share programs. Again, this puts affordable housing developments at a disadvantage because providing both car share spaces and bike sharing programs allows for significant reductions in the required parking. If car share/bike share were to be provided by affordable housing developers, these resources would benefit the general public but not most residents. While having a low household income does not guarantee that a household will be carless -- it does increase that probability. PHB suggests that the provision of low income housing should provide an exemption, from a portion, or all, of the parking requirement. PHB will provide a more detailed concept for this exemption if this is pursued.

#### **Page n/a Zoning Code Requirements for Affordable Housing Covenant**

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**Section 33.700.060** describes what is required by code for zoning related covenants including that the owner complies with all requirements and conditions of approval and if owner fails to perform, City may terminate occupancy of the site and seek all necessary injunctive relief to prevent occupancy while a violation exists. This section also requires approval of covenant by city attorney and proof of the recording by county prior to issuance of building permit.

This Table Provided for Easy Review of Proposed System by PHB Staff

**How the bonus/transfer system works in the MUZs**

**Section 33.130.212**

		<b>CM1</b>	<b>CM2</b>	<b>CM3</b>	<b>CE</b>	<b>CX</b>
1	Base Height Limit(stories)	35" (3)	45' (4)	65'(6)	45'(4)	75'(7)
2	Maximum Height Limit with Bonus (stories). May be exceeded only with Large Site Master Plan.	35" (3)	55' (5)*	75'(6)	45'(4)	n/a
3	Base FAR	1.5:1	2.5:1	3.0:1	2.5:1	4.0:1
4	Maximum additional FAR available through bonus and/or transfer. May be exceeded only through a Large Site Master Plan in the CE zone.	1.0:1	1.5:1	2.0:1	0.5:1	n/a
5	Maximum FAR	2.5:1	4.0:1	5.0:1	3.0:1	n/a
<b>Ways to Gain Additional FAR (up to amount shown in Line 4 above)</b>						
6	Maximum FAR that can be earned through a <b>Historic Resource Transfer</b> .	0.5:1	0.75:1	1.0:1	0.5:1	
7	Maximum FAR that can be earned by providing <b>Affordable Commercial Space</b> .	0.5:1	0.75:1	1.0:1	0.5:1	
8	Maximum FAR that can be earned by providing a <b>Publicly Accessible Plaza</b> .	0.5:1	0.75:1	1.0:1	0.5:1	
9	Maximum FAR that can be earned by providing <b>High Performance Green Features</b> .	0.5:1	0.75:1	1.0:1	0.5:1	
10	Maximum FAR that can be added to a building if the building is part of a <b>Large Site Master Plan</b>	n/a	1.5:1	2.0:1	1.5:1	
11	Maximum FAR that can be earned by providing the <b>Affordable Housing</b> benefit.	1.0:1	1.5:1	2.0:1	none	

**Historic Resource Transfer (33.130.205):** Floor area may be transferred through a private transaction from a “sending” site to another site in a MUZ. The sending site must be within the same neighborhood

or within one mile of the “receiving” site, and the sending site must have a building which is a historic or conservation landmark, or a contributing resource in a Historic District or Conservation District. Requires covenant with city.

**Affordable Commercial Space Bonus:** Floor area increased by 2 sq ft for each square foot of affordable commercial space up to maximum. Requires “long term” leasing agreement with PDC ensuring that space will be rented for 25% less than market rates. Requires covenant with PDC.

**Publicly Accessible Plaza Bonus:** Floor area may be increased by 5 sq ft for every square foot of plaza up to maximum. Plaza must be adjacent to street and open to public during the day and evening. Plaza must have minimum dimensions and minimum size is the lessor of 1000 sq ft or 15% of site area. Plaza cannot be used to meet minimum residential outdoor space requirements of the zone. Requires recorded easement with city.

**High Performance Green Bonus:** Entire bonus is earned if two conditions are met. Primary buildings on site must meet BPS low carbon requirements and either additional landscaping or an eco-roof is provided. Ecoroof must cover 60% of roof and meet BES standards. Landscape must include large trees and dense plant cover over 15% of site if no landscape is required, or 25% of site if 15% is the base requirement. Area must have minimum dimension of 20' x 20' and be at least 1000 sq ft.

**Large Site Master Plan Bonus:** Site must be at least two acres in size and must go through Type III review with public hearing(s). All buildings may be approved at one time, or individual buildings may be reviewed and approved over time. Substantial additional height and additional floor area can be approved for individual buildings. Except in the CE zone, the overall cap in increased floor area is limited to that shown on line 4 above but limits are calculated by site not by individual building. To be approved, three public benefits must be provided on the site: affordable housing, energy efficient buildings and a plaza/park. The affordable housing requirement is met by providing 10% of all bonus floor area affordable at 80% MFI when the overall floor area is not increased by more than 40% of that allowed. If the floor area increase is greater than 40% of the base zone, than 25% of any bonus floor area developed above the base allowance must be affordable housing at 80% MFI.

## Manning, Barry

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**From:** Higgins, Jay <HigginJa@TriMet.org>  
**Sent:** Monday, November 16, 2015 4:22 PM  
**To:** BPS - Mixed Use Zones  
**Subject:** Mixed Use Zones Project Comments- TriMet

Hi Barry and Bill,

This is an important project to provide zoning that will concentrate housing, shops and services along major corridors and commercial centers. TriMet supports this effort, as it will improve residents accessibility to transit as the City's population and congestion continues to grow.

As was discussed at the TAG one area of concern is feasibility of the bonus structure to achieve City goals. I know further testing is being coordinated to understand the potential impacts of the different incentives. One thing to highlight for that effort is in the CM3 zone, where the bonus height allows a 7<sup>th</sup> floor. It's my understanding that under building code this would push the construction type from a wood over concrete podium (6 stories) to a full steel frame building. Since the full steel frame building is more expensive across the whole building, the slight gain in FAR may not actually be an incentive to developers. I look forward to more discussion and results from the bonus analysis.

Best,

Jay Higgins  
TriMet  
Transit-Oriented Development Program  
503-962-2189  
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