

EXHIBIT F
A SUMMARY of HOW PORTLAND’S EXISTING
ENVIRONMENTAL OVERLAY ZONES COMPARE to TITLE 13
REQUIREMENTS

PURPOSE

This document describes how the City of Portland’s Environmental, Greenway Water Quality and Natural, and Pleasant Valley Overlay Zones embody the intent and key requirements of Title 13: Nature in Neighborhoods, and are therefore an appropriate tools to meet the Title 13 “direct applicability” requirements of Metro Code Section 3.07.810 Compliance with Functional Plan. For purposes of this analysis, the different overlay zones can be evaluated collectively and therefore referred to for the remainder of this document as “environmental overlay zones.”

INTRODUCTION

In September 2005 Metro established Title 13 of the Urban Growth Management Functional Plan (also referred to as “Nature in Neighborhoods”) to protect, conserve and restore significant riparian corridors and wildlife habitat throughout the region. The stated purpose of Title 13 is to: 1) “conserve protect and restore a continuous, ecologically viable streamside corridor system, from the streams’ headwaters to their confluence with other streams and rivers, and with their floodplains in a manner that is integrated with upland wildlife habitat and with the surrounding urban landscape; and 2) to control and prevent water pollution for the protection of public health and safety, and to maintain and improve water quality throughout the region.”

Title 13 contains an extensive set of code provisions to guide the development of local programs. It includes compliance alternatives, performance standards and best management practices, and targets to protect, conserve, and restore specified regionally significant riparian corridors and wildlife habitat areas. In January 2007 The Oregon Department of Land Conservation and Development (DLCD) acknowledged Title 13 as meeting the requirements of State Land Use Planning Goal 5 (for riparian corridors and wildlife habitat) and as a supplement to the region’s Goal 6 program for protection of water quality. Metro area cities and counties must demonstrate that their local programs substantially comply with Title 13 requirements within two years of DLCD acknowledgement (i.e., January 2009).

Title 13 allows local programs to include both regulatory and non-regulatory tools. Title 13 also allows local jurisdictions to establish customized “district plans” that achieve compliance on an area-specific basis.

The director of the Bureau of Planning and Sustainability, on January 21, 2009, submitted a request that Metro grant a two-year extension of the Title 13 compliance deadline based on partial compliance, and has proposed a phased strategy to achieve full compliance. The City's proposed Title 13 compliance strategy relies on:

- Strong existing regulatory programs (overlay zoning) that apply protections to approximately 80 percent of the Title 13 Habitat Conservation Areas;
- Additional city programs that contribute to Title 13 compliance including willing-seller land acquisition, restoration, and education;
- Adoption in fall 2009 of an updated natural resource inventory and baseline setback standards to protect streams and wetlands currently without protections;
- Updating the City's existing environmental zoning program through projects that are currently underway for the Willamette River corridor, Portland International Airport, and Hayden Island; and,
- A series of future projects to update the program in tributary watersheds.

Metro code section 3.07.810 (Compliance with Functional Plan) states: "cities and counties whose comprehensive plan and land use regulations do not yet comply with the requirements of Title 13...shall make land use decisions consistent with those requirements after two years following their acknowledgement." The land use reviews identified in Metro code section 3.07.080 are only those review processes that apply to proposed uses not allowed by right in the underlying zone (e.g., conditional uses; zone map modifications, etc).

Metro notified the City of its obligation to either fully comply with Title 13 within 120 days or apply Title 13 to individual land use reviews under Metro code section 3.07.080 in a letter from Michael Jordan to Mayor Sam Adams (dated January 22, 2009). In this letter, Metro interprets this requirement as "jurisdictions apply Title 13 directly on their land use decisions, whether or not they have adopted comprehensive plan provisions and land use regulations to implement Title 13, after notice from Metro...applying provisions comparable to those contained in the Title 13 Model Code (Ordinance No. 05-1077C, Exhibit E) to land use decisions affecting properties with an identified Habitat Conservation Area"

The following analysis describes how the City's existing environmental overlay zones are comparable with key provisions contained with Title 13, and are therefore appropriate to meet this requirement.

Review Standards

As noted above, Title 13 requires city and county comprehensive plans and implementing ordinances to contain review standards that apply to development affecting HCAs.

Review standards are to include:

1. Clear and objective development standards to protect HCAs while allowing limited and increasing levels of development in High, Moderate and Low HCAs, respectively. Standards are to allow property owners to use different options to limit impacts on HCAs and to use habitat friendly development practices.
2. Discretionary development standards to:
 - Avoid HCAs unless there are no practicable alternatives. .
 - Minimize impacts on HCAs and water quality
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The existing environmental overlay zones substantially comply with these requirements as follows:

- **Exemptions** – for operation, repair, maintenance, and replacement (consistent with Title 13), temporary emergency procedures, planting native plants and removing nuisance plants, and a number of other routine operations or minor development activities such as groundwater monitoring wells and utility poles.
- **Clear and objective standards** – Existing environmental overlay zone regulations include a streamlined review option for development that meets general development standards for disturbance area, alterations to existing development, setbacks from natural streams, wetlands, and the protection zone, site enhancement, tree removal and replacement, utility lines, land divisions and planned developments, property line adjustments, resource enhancement projects, stormwater outfalls, and public recreational facilities. (Note: Greenway water quality and Greenway natural overlay zones rely solely on the discretionary review process.)
- **Discretionary review process** – The existing environmental overlay zone regulations require a discretionary review for proposed development that would not meet development standards or for violations of the code chapter. Environmental review requires evaluation of alternatives and/or application of approval criteria to ensure that the project will have the least (or in the Greenway natural overlay, no) significant adverse impact on significant resources of any practicable alternative. Unavoidable impacts on natural resources must be mitigated.

Variance procedures

Title 13 requires city and county comprehensive plans and ordinances to establish procedures to consider hardship, and to grant variances for properties converted to unbuildable lots in conjunction with implementing Title 13.

Existing city environmental zoning regulations include processes for adjustment of development standards. No lots will become unbuildable as a result of this proposal.

Procedures for Site-Level Verification of Habitat Location

Title 13 requires cities and counties to establish a site-level process to verify the location of an HCA. (It is assumed that this process could be triggered in conjunction with review of a development proposal or other procedures if established by the local jurisdiction.). In the existing environmental overlay zones the zone boundary may be changed through a map correction process or a map modification process that considers new or improved site-specific natural resource information.

Habitat Friendly Development Practices

Title 13 requires cities and counties to identify and eliminate from their codes any barriers to habitat friendly development. The existing environmental overlay zones promote habitat friendly development through the application of standards and approval criteria in the proposed resource overlay zones. In addition the City is fostering habitat friendly development citywide through implementation of the Stormwater Management Manual, green streets, and the Grey to Green Initiative.