



Frequently Asked Questions

The purpose of this handout is to answer questions property owners have raised regarding the City's proposal to update environmental overlay zones in the Airport Futures planning area. The handout is divided into four categories:

1. Why update the environmental overlay zones?
2. What are the proposed changes to the overlay zones?
3. How might the proposed zoning changes affect my property?
4. What is the relationship to Metro's Title 13 Nature in Neighborhood program?

More detail about specific development and uses within environmental overlay zones can be found in the City Zoning Code, Chapter 33.430, www.portlandonline.com/zoningcode.

Why update the environmental overlay zones?

Q: What are the purposes and benefits of applying or revising the environmental overlay zones?

The environmental overlay zone, which is one tool the City uses to protect natural resources, was first applied to much of the Airport Futures planning area in 1989. The purpose of updating the environmental overlay zones is to:

1. Reflect the current, on-the-ground conditions;
2. Apply current scientific information to assess the function and importance of the natural resources;
3. Help comply with federal, state and regional environmental regulations like the Clean Water Act and Metro Title 13 Nature in Neighborhoods; and
4. Balance and optimize city goals for the economy, housing, recreation and watershed health.

The main benefits of updating the environmental overlay zones are:

1. Minimizing further loss of the most critical and sensitive natural resources in the planning area, specifically the Columbia Slough, wetlands, secondary drainageways, riparian resources, and habitats that support at-risk wildlife species;
2. Allowing existing development to continue and providing reasonable opportunities for future development; and
3. Ensuring that development-related impacts on natural resources are mitigated.

Q: What information was used to develop the environmental overlay zoning proposal?

The *Middle Columbia Corridor/Airport Natural Resources Inventory* (2010) updates information regarding the location, extent and relative quality of rivers, streams, drainageways, floodplains, wetlands, vegetation, riparian corridors and wildlife habitat in the Airport Futures planning area. The inventory

utilizes current mapping tools and technologies (GIS), which have improved the quality of the inventory, and the ability to update the data as new information becomes available.

This inventory is one of many information sources used to assess the economic, social, environmental and energy related trade-offs associated with different levels of natural resource protection and development. Other sources of information include the City of Portland Economic Opportunities Analysis (HOVEE) and the Cultural Resources Projection Plan for the Columbia South Shore (City of Portland). These studies help staff, Planning Commission and City Council weigh the options for natural resource projection and development.

What are the proposed changes to the overlay zones?

Q: What are the main changes proposed for the environmental overlay zones?

Converting existing Conservation Overlay Zone on the Columbia Slough to the Protection Overlay Zone –

The City applied Conservation Overlay zoning to the Columbia Slough, Whitaker Slough and Buffalo Slough waterways and surrounding lands approximately 20 years ago. This proposal would change the existing overlay zone from the Conservation Overlay to the Protection Overlay on the main arms of the Columbia Slough, and the land within 50 feet of these water bodies. Such a change would provide stricter protections and stronger limits on future development in these resource areas. This approach better reflects current scientific knowledge about the importance of riparian corridor functions to overall watershed health. The change is also needed to help meet City watershed goals and regional, state and federal regulatory mandates for sediment and temperature pollution control. Finally, this approach would help protect the City's investment of public dollars to improve watershed conditions in this area.

The City recognizes that significant portions of the area along the Columbia Slough are already developed. The existing environmental Conservation Overlay Zone would require future development to meet standards to reduce harm to the natural resources. Like the Conservation Overlay, the proposed Protection Overlay Zone would allow existing development to continue, but the Protection Overlay Zone would more strictly limit additional disturbance or new impervious surfaces adjacent to the Columbia Slough. In most instances the proposed overlay zones would apply only to a small portion of existing properties, therefore allowing future improvements to the remainder of the site.

Applying new Environmental Protection Overlay Zoning on Drainageways and Wetlands –

The wetlands and drainageways in the planning area are part of the hydrologic system of the watershed, and all drain or are pumped to the Columbia Slough. These wetlands and drainageways contribute to water storage, flow conveyance, water quality, microclimate, nutrient cycling and wildlife habitat. Some of the wetlands and drainageways are currently within conservation or protection overlay zones. The proposal is to apply the protection overlay zone to all wetlands and drainageways and land within 50 feet of these features. As with the main arm of the Columbia Slough, this change is needed to help meet regional, state and federal regulatory mandates and would protect public and private investments. These wetlands and secondary drainageways also provide important wildlife habitat connectivity between the Slough and other resources areas, like the Columbia River.

Applying Conservation Zones to Riparian Trees –

Trees within 50 feet of sloughs, drainageways and wetlands, and trees that abut these areas, provide shade, nutrients through leaf litter, pollutant uptake and wildlife habitat. To help maintain these riparian functions, the proposal is to apply Conservation Overlay zones to the areas containing these trees.

Wider Conservation Zones on Golf Courses

A review was conducted by local wildlife and natural resource experts as part of Airport Futures. These experts identified golf courses, particular the areas around open water ways, as important for migratory birds and bats. To help maintain those areas for wildlife and for the other riparian functions provided, the proposal is to apply a conservation overlay zone to vegetated lands within 300 feet of sloughs, drainageways and wetlands.

How will the updated overlay zones affect my property?

Q: How would the proposed environmental overlay zoning affect existing land uses?

In all cases, legally established land uses and development can continue and may be maintained, repaired, and replaced without requiring any special permits or reviews as long as the development does not get bigger. In addition, the following uses and activities are exempt from the environmental zoning rules and can occur within the overlay zones without permits or review:

- Change of ownership
- Temporary emergency procedures for the protection of life, health, safety or property
- Removing or pruning dangerous trees
- Development over existing paved surfaces that are over 50 feet from any identified wetland or water body
- Usual and customary drainage district activities
- Continued maintenance of existing planted and landscaped areas
- Limited disturbance of resource areas for outdoor uses such as gardens and play areas

You can find all of the environmental overlay zone exemptions in section 33.430.080 of the Zoning Code, www.portlandonline.com/zoningcode.

Q: Would the proposed environmental overlay zoning affect my ability to replace my home or business if it were damaged or destroyed (e.g. fire, earthquake)?

Maintenance, repair, and replacement of existing structures are exempt from the environmental zone regulations. Therefore, the replacement of your home can occur in the environmental overlay zones and would not be subject to the environmental zone regulations, provided the footprint does not change. However, please note that other City zoning and building code requirements do apply.

Q: How would the proposed environmental overlay zoning affect improvements and new development on my property?

The proposed environmental overlay zone could affect new development on your property in the following ways:

- There could be additional requirements for new development on the property
- There could be additional restrictions on new development on the property
- There is a short list of activities that are prohibited, within the overlay zone including:

If new development is not exempt from the environmental regulations (see previous question), the proposed development would need to either meet environmental development standards or go through environmental review.

Development standards—allow certain new development and activities within environmental zones if the proposal meets clear and objective standards like stream and wetland setbacks and replacing trees. An environmental plan check is required to make sure the standards are met. This costs an additional \$117 (July 1, 2010-June 30, 2011 fee) and takes additional time, usually a few weeks.

Environmental review—applies to proposed development that cannot meet the environmental development standards because of site constraints or other reasons. There are approval criteria that must be met in order for the proposed development to be allowed. For example, the applicant must show how they are avoiding impacts on natural resources and how they will mitigate for any unavoidable impacts on the natural resources. The approval criteria for environmental review can be found in section 33.430.250 of the Zoning Code. If the development can meet all the approval criteria, then the application will be approved.

Prohibited Activities

The following activities are prohibited in the environmental zones:

- use, packaging, transportation or storage of hazardous materials, except in consumer quantities
- planting or propagation of plants listed as nuisance or prohibited on the Portland Plant List
- exterior work activities
- dumping of yard debris or trash

Q: What can I plant in the environmental overlay zones? Can I have a vegetable or flower garden?

Continued maintenance of existing planted areas, such as vegetable and flower gardens and landscaped areas, is exempt from the environmental overlay zone regulations. In addition, you can change your planted area from lawn to garden or lawn to play area without any review, as long as you do not plant species on the City's Nuisance Plant List and no trees 6 inches or greater are removed. Examples of nuisance plants include Himalayan Blackberry and English Ivy.

Q: Would the proposed environmental overlay zoning affect my property value? If there were a negative impact, would my taxes change? Would the City compensate me?

The answer to this question depends on many factors that property appraisers are trained to evaluate. If you have questions about how environmental zoning may affect your property values, we encourage you to contact the Multnomah County Tax Assessor's office, at 503-988-3326. In general, the City would not compensate property owners unless it is purchasing or condemning property. The City may need to compensate a property owner pursuant to the requirements of Ballot Measure 49.

Q: How would the environmental overlay zone affect land divisions?

There are two ways in which land divisions can occur on sites with environmental overlay zoning.

Development standards—If a proposed land division meets these clear and objective regulations it can be approved without additional environmental review (see below). The development standards for land divisions in environmental overlay zones can be found in section 33.430.160 of the Zoning Code.

Environmental review—Environmental review is available to property owners whose proposed land division cannot meet the land division development standards. Environmental review may be appropriate where a site is so constrained that meeting the land division development standards is not possible. The approval criteria for environmental review of land divisions can be found in section 33.430.250.

In all cases, the following situations would be addressed as part of the land division:

Resource tracts—If part of the site is inside the environmental zone resource area—in addition to the area allowed to be disturbed—this part of the site would go into a “resource tract” that is owned in common by the owners of the lots created by the land division. The resource tract is set aside in perpetuity as an undisturbed resource area and is not available for future development.

Site configuration flexibility—Land divisions with environmental overlay zones typically cluster lots away from the natural resources on the site. Lot sizes and shapes can vary to avoid impacting the natural resources on the site.

Minimum and maximum density—The City provides extra flexibility for land divisions within environmental overlay zones. For example, minimum density is not required for land divisions on sites with environmental overlay zones. Maximum density is not affected by environmental overlay zones. This means that if a site with no environmental overlay zoning has a minimum density of 3 lots and a maximum density of 4 lots, then if environmental overlay zoning is applied to the site, there would be no minimum number of required lots, but up to 4 lots could potentially be approved. This allows the property owner to create between 2 and 4 lots from one site, whereas normally, they would be required to create at least 3 lots.

Q: What if the information that the environmental overlay zones are based on is wrong?

The environmental overlay zone lines correspond with physical features on the ground, such as wetlands, top-of-bank and tree canopy. If the physical features on the ground are not accurately mapped in the inventory, and therefore the zoning lines are incorrect, the zoning maps can be corrected to accurately align with the features. In the same way, if the feature doesn't exist, then the map can be corrected to reflect that as well.

There is a process for correcting the official zoning maps. The Zoning Map Error Correction process is a Type II review, and it is initiated and paid for by the Bureau of Development Services. The property owner does not have to pay for this type of correction. There are two types of map error corrections:

1. A map line that was intended to follow a topographical feature does not do so. Topographical features include the tops and bottoms of hillsides, the banks of water bodies, and center lines of creeks or drainage ditches;
2. When there is a discrepancy between maps and there is clear legislative intent for where the line should be located.

If a property owner believes that the physical features that represent natural resource function are incorrectly mapped on their site, they can request in writing or over the phone that the City investigate the error and make a correction if one is found. The Bureau of Development Services asks the property owner to provide a reason why they believe the map is incorrect. It is typically not acceptable to simply say there is an error; the property owner would need to provide a survey, photo or other documentation to support the claim.

A map error correction cannot be used to re-evaluate the scientific justifications that are the basis for the inventory mapping methodology. For example, while a property owner can question where exactly the natural resource features are located on their site, they can not argue that an error exists because they do not believe the features provide functions described in the inventory.

Please note, if a natural resource feature located within an environmental overlay zone is removed without the necessary review, it would be treated as a violation of the zoning code.

Q: What is a nonconforming situation?

In the context of Airport Futures, a nonconforming situation is a use or development that was allowed by the Zoning Code when it was established and continued over time, but would not be allowed under the proposed new zoning (in this case, environmental zoning). The term “nonconforming situation” refers to both nonconforming uses (e.g. residential or industrial uses) and the development associated with a use (e.g. a house or warehouse).

One example is a house that was built legally (with permits) in a residential zone before the application of environmental zoning. With the application of environmental zoning, the house is now in the resource area of the p (Environmental Protection Overlay) zone. After the p zone is applied to the lot, the existing house becomes nonconforming development (see questions on page 3, regarding exemptions.) The use (residential) is still in conformance with the Zoning Code, because the environmental zones regulate development and activities, not uses.

In all circumstances, normal maintenance and repair of nonconforming situations is allowed, per chapter 33.258 of the Zoning Code.

Q: What does it mean to be nonconforming due to the application of environmental zoning?

If development on your property becomes nonconforming, you can continue to use it, repair it and maintain it as you have in the past. In addition, in many cases, existing development and plantings are exempt from the environmental zone regulations (see questions on page 3). Examples include:

- Maintenance, repair and replacement of an existing structure in its current footprint (expansion of footprint is **not** exempt)

- Continued maintenance of existing planted and landscaped areas, as long as plants listed on the City's Nuisance Plant List are not planted
- Development over existing paved surfaces that are more than 50 feet from an identified wetland or water body

The City's nonconforming regulations are intended to guide future development toward compliance with current zoning standards; they are not intended to make existing development cease or immediately come into compliance with current zoning standards.

Relationship to Metro's Title 13 Nature in Neighborhoods program

Q: Is the proposal consistent with Metro Title 13, Nature in Neighborhoods requirements? Why are there differences between Metro's resource inventory and Habitat Conservation Area maps and the City's inventory and proposed overlay zones?

The City must meet Metro Title 13 requirements to protect, conserve and restore streams, drainageways, wetlands, and the land surrounding these water bodies. These areas are called Title 13 Habitat Conservation Areas, or "HCAs." The Title 13 compliance deadline has passed, and Metro has extended the City's deadline to November 2010.

Title 13 sets a minimum level of protection for these resources across the region. Cities and counties can develop area-specific compliance programs or "district plans" for areas with unique economic and environmental circumstances. The Airport Futures project generated a Title 13 district plan for the planning area. The district plan will be generally consistent with Metro's minimum requirements, but will also deviate from the minimum requirements in certain situations. Some examples:

1. Like the City, Metro attempted to balance environmental, economic, and other goals for the region. As a result, Metro established higher resource protection requirements for residential zones than for industrial areas along the Columbia Slough, wetlands and drainageways. The City is proposing to apply a consistent level of protection to waterways, wetlands and adjacent land within 50 feet, rather than varying the level of protection for residential and industrial areas. Applying the environmental protection overlay zone is appropriate because these waterways and wetlands comprise the hydrologic system for this area. For example, riparian corridors provide critical water quality, microclimate and shade, nutrient cycling and water storage functions, as well as wildlife habitat movement corridors. In addition, the Columbia Slough does not meet Clean Water Act temperature requirements and the primary way to cool the slough is by shading the water with trees and shrubs. For the most part, the proposed protection overlay zone would apply only to a fraction of individual properties. Existing uses would not be affected by changes in zoning and future development could take place outside the overlay zone.
2. Metro's Title 13 natural resource inventory assigns floodplain-related functions in the Airport Futures project area even though Multnomah County Drainage District prevents flooding from occurring. The City's inventory recognizes this and does not assign floodplain-related functions to lands within MCDD jurisdiction, and does not propose additional protection of floodplain functions. (Note: Some of these areas are still recognized for their habitat value even if they do not provide ecological benefits related to periodic flooding.)

The City used the district plan approach to comply with Title 13 in the Willamette River Plan/North Reach project. There too, the City refined to Metro's inventory and program approach to better reflect local natural resource conditions, local land use, economic and social circumstances, and local regulatory obligations.

Definitions

Land use: The general use or uses of a property. Land uses include broad categories such as residential, commercial, industrial and employment. How land is used is distinct from the kind(s) of development on a given piece of land. For example, there may be a retail business in a house that was formerly used as a home. In this case, the land use is commercial, even though the development is typically associated with a residential land use.

Development: All improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas and areas devoted to exterior display, storage or activities.