

Appendix B - Comparison of Portland Natural Resource Overlay Zone Regulations and Title 13 Provisions

	Title 13 Requirements (summarized/paraphrased)	Environmental Overlay Zones 33.430 *	Pleasant Valley Natural Resources Overlay Zone 33.465	Greenway Overlay Zones 33.440 *	Comments or Information from Other Code Chapters or Titles
1	<u>3.07.1330.Implementation Alternatives for Cities and Counties</u> A. and B. Establish general compliance requirements and options.				See main body of the report for discussion.
2	3.07.1330.C Local comprehensive plan and implementing ordinances must contain clear and objective standards, e.g., fixed numerical standard, non-discretionary requirement, or specific performance standard with process to complete.	33.430.100-190 Development Standards - purpose to encourage sensitive development while minimizing resources impacts, provide clear limits to disturbance in resource areas, ensure compatibility and preservation of resources and values, provide clear planting and erosion control requirements, buffer resource areas from noise, fumes, light and traffic impacts, and limit utility project impacts.	33.465.110-180 Development Standards purpose to encourage sensitive development while minimizing resources impacts, provide clear limits to disturbance in resource areas, ensure compatibility and preservation of resources and values, and provide clear planting and erosion control requirements, limit utility project impacts.	33.440.200 – 270 Development Standards (mix of clear/objective standards, performance standards, and links to discretionary review). Standards establish greenway setback, landscaping requirements, etc. Note: Currently development in the greenway setback subject to standards and review. <i>The River Plan/North Reach establishes a standards track (see report discussion)</i>	
3	3.07.1330.D Local comprehensive plan and implementing ordinances may include an alternative, discretionary approval process that it not clear and objective as long as property owners have the choice to proceed using standards and the approach provides an equal or higher level of habitat protection and enhancement as the standards	33.430.100; 33.430.210 – 250 Environmental Review - Purpose to prevent harm to identified resources and functional values, compensate for harm, ensure success of mitigation and enhancement activities; provide mechanism to modify standards, provide flexibility for unusual situations, allow location of zone boundary to be modified, provide replacement of resources and values due to violations	33.465.210 Pleasant Valley Resource Review – purpose to prevent harm to identified resources and functional values, compensate for harm, ensure success of mitigation and enhancement activities; provide mechanism to modify standards, provide flexibility for unusual situations, allow location of zone boundary to be modified, provide replacement of resources and values due to violations.	33.440.300 Greenway Review - Review is currently required for development in the greenway w/special provisions for River-dependent development. Intended to ensure consistency with Willamette Greenway Plan and design guidelines, and water quality element of Metro Title 3. Purpose to ensure development will not detrimentally impact use and function of the river and abutting lands, will conserve, enhance and maintain scenic qualities and natural habitat, will conserve the river water surface, will include consideration of practicable alternatives, mitigation and enhancement.	
4	33.07.1330.E Use of Habitat Friendly Development Practices in Regionally Significant Fish and Wildlife Habitat. Cities and counties must identify and adopt amendments to remove barriers to habitat friendly development practices in comprehensive plan and implementing ordinances.	The Environmental Overlay Zone regulations encourage habitat-friendly development. Examples include exemptions for developing within existing building footprints, and standards and criteria that discourage disturbance, development, and fencing in resource areas, and encroachment into streams and riparian corridors. The regulations include flexible setbacks to avoid resource areas and site enhancement standards to encourage improvement of conditions on already developed sites. Site enhancement standards include removal of invasive plant and impervious surfaces, replanting with native plants, and improving parking lot landscaping and stormwater management.	Same as in the Environmental Overlay Zone	Most development, including development that would be characterized as habitat-friendly, requires greenway review.	See main body of the report for discussion.

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5	3.07.1330.F Cities and counties shall hold at least one public hearing before adopting comprehensive plan amendments, implementing ordinances and maps implementing Title 13, or demonstrating that existing city or county comprehensive plans, implementing ordinances or maps substantially comply with this title. Proposed comprehensive plan amendments, ordinances and maps shall be available for public review at least 45 days prior to hearing.	NA	NA	NA	The City held public hearings before adopting ordinances to apply existing overlay zones, and before adopting other codes presented in this report. The City will hold an additional public hearing when the draft Request for Metro Determination of Substantial Compliance: Title 13 Nature in Neighborhoods is presented to the Planning and Sustainability Commission.
6	3.07.1330.G City and county comprehensive plans and implementing ordinances relied on for Title 13 compliance must provide property owners with a reasonable, timely, and equitable process to verify the specific location of habitat areas. Should be simple, straightforward, and not require amendment to the comprehensive plan. Provisions should allow confirmation with or without a development permit, provide a simple/default approach, allow owners to submit documentation, and provide opportunities for appeal and resolution.	33.430.230 – 250. Resource information is required with the application for environmental review or a development permit. Resource location verification takes place through the coarse of the review. Minor modifications may be approved through review based on additional site-specific information. (Note: Zone map modifications do not update the NRI.)	33.465.210 - 250 Resource information is required with the application for Pleasant Valley resource review or a development permit. Resource location verification takes place through the coarse of the review. Minor modification of overlay zone boundaries may be approved through review based on additional site-specific information. (Note: Zone map modifications do not update the NRI.)	33.440.300 - 350 Resource information is required with the application for greenway review or a development permit. Resource location verification takes place through the coarse of the review. Amendments to overlay zones require Zone Map Amendment.	33.855.070. Corrections to the Official Zoning Maps <i>Applies in all zones.</i> Where the City has mapped in error, including incorrectly mapped topographical features, e.g., slopes and water bodies), the City initiates a land use review to correct the maps at no cost to property owner. 33.855 Zoning Map Amendment. Major modifications to City natural resource overlay zones can be approved through require Zoning Map Amendment review.
7	3.07.1330.H Reducing Regional Density and Capacity Requirements to Allow Habitat Protection. Specifies when/how cities and counties may approve land divisions or development below minimum density, including whether: 1) the lot was in the Metro UGB on January 1, 2002, 2) the lot contains significant resources on Metro’s inventory map or local inventories acknowledged before December 28, 2005, 3) the decision will protect remaining undeveloped regionally significant fish and wildlife habitat through a public dedication or restrictive covenant. Also provides formula for determining density reduction and requiring subtraction of fish and wildlife habitat protected from the total number of square feet used to calculate minimum density, offset allowances, and reporting requirements.	33.430.160 Standards for Land Divisions and Planned Developments – Prohibit development and limits alterations in p-zone; limits disturbance; remaining undisturbed resource areas placed in tracts 33.430.250.4 Approval Criteria, Land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments a. strictly limits development in the p-zone; other resource areas in p-zone placed in environmental resource tracts b. requires finding of no practicable alternative outside c-zone; c. Specifies that development alternatives, including a reduction in the number of proposed or required units or lots may be required if the alternative will have less impact on the identified resources and functional values.	33.465.165 Standards for Land Divisions and Planned Developments. a. New lots prohibited in v-zone unless they contain sufficient space outside v-zone or on lots with existing dwellings. c. Areas in the v-zone outside new lots and ROW placed in environmental resource tracts.	Not specifically addressed in greenway overlay zones.	33.610 and 33.611 Establish formulae to calculate minimum density in residential zones; area in environmental overlay zone, landslide hazard area, or special flood area is subtracted from site area. 33.630.400.B.1 Modifications That Will Better Meet Tree Preservation Requirements, Minimum Density. A reduction in minimum density may be approved as part of the land division review if found to better meet requirements of Tree Preservation chapter; trees preserved placed in tract.

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8	<u>3.07.1340 Performance Standards and Best Management Practices for Habitat Conservation Areas</u>				
9	3.07.1340.A.1-4 Performance Standards and Best Management Practices for Habitat Conservation Areas – Applies to cities and counties that choose to adopt or rely on their comprehensive plan and implementing ordinances in whole or in part to demonstrate substantial compliance with Title 13. Requires enforcement. Specifies that Title 3 continues to apply. Exempts specified farm structures and practices, areas outside the Metro UGB on the T13 effective date, and residential uses (those not requiring a local building, grading or tree removal permit. Standards and Best Management Practices are summarized below:				The City administers and enforces all standards and criteria described in 7a – 7f below.
10	3.07.1340.A.5 Protect, maintain and enhance fish and wildlife habitat in publicly owned parks and open spaces; use BMPs such as integrated pest management	33.430.140.D Site Enhancement Standards and 33.430.170 Standards for Resource Enhancement provide a streamlined permitting track to encourage resource enhancement in all environmental zones. 33.430.250.B Approval Criteria – establishes approval criteria for Resource Enhancement Projects.	33.465.170 and 33.465.250A Resource Enhancement Project Standards and Approval Criteria - Same as environmental overlay zone, except no site enhancement standards		Approximately 96 percent of the HCAs in City-owned parks and natural areas are within one of the existing natural resource overlay zones. In addition, the City has established Natural Resource Management Plans that govern activities in Forest Park and Smith and Bybee Wetlands. An Integrated Pest Management Program for Portland parks has been in place since the late 1980s. The City has also been certified through the Salmon Safe Program for practices in City parks and natural areas. See main body of the report for additional discussion.
11	3.07.1340.A.6 Prohibit planting of invasive or noxious vegetation, allow removal of such vegetation, encourage planting of native vegetation in HCAs.	33.430.080 Items Exempt from These Regulations – Removing Vegetation on the Nuisance Plants List, and planting native vegetation with hand-held equipment. 33.430.090 Prohibitions – prohibits planting species in the Nuisance Plants List 33.430.140.L, General Development Standards, Nuisance Plants – requires removal of listed Nuisance Plants from portion of site, and replanting with native species from the <i>Portland Plant List</i> M. All vegetation planted in a resource area must be a native species from the <i>Portland Plant List</i> .	33.465.080 Items Exempt from These Regulations – Removing Trees listed on the Nuisance Plants List. 33.465.090 Prohibitions – prohibits planting species in the Nuisance Plants List 33.465.150.H, General Development Standards, Nuisance Plants – requires removal of listed Nuisance Plants from portion of site, and replanting with native species from the <i>Portland Plant List</i> H. Vegetation planted in resource areas must be a native species from the <i>Portland Plant List</i> .	33.440.230.C Landscaping, Native Plants – All required trees and shrub planting must comply with the native plant requirement of the Willamette Greenway Plan. Removing vegetation on the City’s Nuisance Plants List is exempt from Greenway Review. 33.440.320.L.	33.248.030.D.4 Landscaping and Screening, Plant Materials, Nuisance Plants – Plants on the Nuisance Plants List are prohibited in City-required landscaped area (<i>note: applies in HCAs outside overlay zones</i>)

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12	3.07.1340.A.7 Allow routine repair, maintenance, alteration, rehabilitation, or replacement of existing structures, roadways, driveways, utilities, accessory uses, other development within HCAs if consistent with other laws and regulations, it will not result in more developed area in the HCA, native vegetation is maintained, enhanced, restored, or replaced.	33.430.080 Items Exempt from These Regulations C. Maintenance, repair, and replacement of existing structures, exterior improvements, roads public recreational trails, rest points, view points and interpretive facilities, and utilities, as long as coverage or utility size is not increased.	33.465.080.C Items Exempt from These Regulations Maintenance, repair, and replacement of existing structures, roads, and utilities, as long as coverage or utility size is not increased.	33.440.320.G Exemptions from Greenway Review Normal maintenance and repair necessary for an existing development.	
13	3.07.1340.A.8 Apply performance standards and BMPs in the section when zoning is changed to allow developed properties to change from industrial or heavy commercial zoning to residential or mixed use designation, or the type, density or intensity of development is increased.				Typically these types of use conversions would occur through an area-specific planning project involving a legislative process. Through this process the City has the opportunity to updates its natural resource inventories and ESEE analyses and would take into conservation proposed new uses in updating the environmental program. The City must also make findings regarding consistency with Comprehensive Plan policies, state land use goals and Metro Urban Growth Management Functional Plan, including Title 13. That said, staff would not anticipate any significant conversion of industrial or employment lands to other uses given the need to maintain and enhance land supply to meet City and state economic development goals.
14	3.07.1340.A.9 Allow in HCAs activities that are required to comply with a Federal Aviation Administration (FAA) Wildlife Hazard Management Plan on property owned by the Portland of Portland within 10,000 feet of an Aircraft Operating Area. Require mitigation as specified.	Chapter 33.565 Portland International Airport Plan District, Environmental Overlay Zones (regulations supplement / supersede 33.430, including but not limited to: 33.565.500 Purpose - includes: Address activities required to manage Port facilities, drainageways and wildlife on an around the airfield for public and avian safety. 33.565.540.A. Exemptions – for activities when performed to comply with the FAA Part 77 Regulated Surface requirements or a FAA authorized Wildlife Hazard Management Plan: includes tree crown maintenance, removal of vegetation, discing to reduce habitat that attracts FAA identified species of concern, grading or filling ponded water other than those identified in the natural resources inventory. 33.565.570 Standards for Resource Enhancement – contain provisions for wetland, forest and woodland habitat conversions to reduce wildlife related hazard risks.	NA	NA	

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15	3.07.1340.A.10 Within HCAs located in specified drainage district allow routine operations, repair, maintenance, reconfiguration, rehabilitation, or replacement of existing facilities as specified. Requires consistency with other laws and regulations, limits further encroachment toward river, stream, wetland or water body, requires replanting of disturbed soil, establishes reporting requirements.	33.430.080.C. Items Exempt from These Regulations , Existing development, operations, and improvements, including the following activities: 6. Operation maintenance, and repair of drainage facilities, flood control structures, and conveyance channels managed by Drainage Districts, as defined in ORS 547, and where the activity is conducted or authorized by the Drainage District. Includes additional limitations and specifications. Allows channel reconfiguration to encourage restoration.	NA	NA	
16	3.07.1340.B City and County Review Standards City and county comprehensive plans and implementing ordinances shall contain review standards applicable to development in HCA.	33.430.100-190 Development Standards - See rows 1, 15, and 16. 33.430.100; 33.430.210 – 250 Environmental Review - See lines 2, 16 and 17.	33.465.110-180		
17	3.07.1340.B.1 Clear and objective standards “allow limited development in High HCAs, slightly more development in Moderate HCAs, and even more development in Low HCAs.” Provide flexibility to encourage avoidance of development in HCAs including setbacks, landscaping, clustering or transfer of development rights. Allow, encourage, or require habitat friendly development practices. Standards must require mitigation.	33.430.140 General Development Standards The development standards in this chapter encourage avoidance of the resource and habitat friendly development. The standards address: disturbance area limits, water body setbacks (greater in low density residential zones, and in Columbia Corridor), setbacks from p-zone, site enhancement provisions, replanting standards for temporary disturbance areas, nuisance plant removal requirements, setback reduction options, limits on fences, buffers, and exterior lighting. Note: Stricter standards that apply in low density residential zone and p-zone generally address high and moderate HCAs. 33.430.150 – 190 – provide specific standards for utility lines, land divisions and planned developments, property line adjustments, resource enhancement projects, right-of-way improvements, stormwater outfalls, and public recreation facilities. All intended to limit disturbance and native vegetation removal, ensure replanting. Note: The Environmental Overlay Zone Standards are intended to minimize impact and allow some impacts without mitigation. Tree replacement is required and all development is subject to erosion control and stormwater requirements.	33.465.150 General Development Standards The development standards in this chapter encourage avoidance of the resource and habitat friendly development. They address: disturbance area limits, setbacks from water bodies, native tree removal, tree replacement, nuisance plant removal, vegetation planting, erosion control, setback reduction options, limits on fences, exterior lighting. 33.465.155 – 180 establish specific standards for utility lines, rights-of-way, land divisions and planned developments, resource enhancement projects, trails, and mitigation. Note: The standards for land divisions and planned developments generally prohibit establishment of new lots in the overlay zone. Note: The v-zone applies primarily to High and Moderate HCAs.	33.440.200 Application of Development Standards – apply to all development in the greenway zones. 33.440.210 – Establishes greenway setback from Willamette River and wetlands in the q-zone. 33.440.220 – 270 – Establishes standards for floor area ratios, landscaping, public recreational trails, public viewpoints, view corridors, and non-conforming uses and developments. Mix of clear/objective and performance standards w/references to Willamette Greenway Plan and guidelines. Intended meet goals for resource protection and also recreation and access to the river.	

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18	<p>3.07.1340.B.2.a & b Discretionary development approval standards require HCAs to be avoided where practicable or limited to minimize adverse impacts. Development may be allowed only if no practicable alternatives exist that will not disturb the HCA. Where no practicable alternative exists, limit the development to minimize detrimental impacts on HCAs and water quality to the extent practicable Cities and counties must consider HCA type affected in evaluating practicable alternatives. Provide flexibility to encourage avoidance of development in HCAs including setbacks, landscaping, clustering or transfer of development rights.</p>	<p>33.430.100; 33.430.210 – 250 Environmental Review 33.430.250 Approval Criteria – Provide flexibility to encourage avoidance or adverse impacts on of resource areas. Criteria apply to public safety facilities, rights of way, driveways, walkways, outfalls, utilities, land divisions, property line adjustments, planned developments and planned unit developments and public recreational facilities.</p> <p>For each development type the City must find that the development proposal has the least significant detrimental impact on identified resources and functional values of the practicable alternatives, including alternatives to locate development outside the resource area.</p> <p>Additional criteria are intended to limit detrimental impacts on natural resources and waterbodies, including criteria for location, design and construction of utilities, building sties, vehicular access. Standards for resource enhancement projects require improvement of at least one functional value and do not allow significant detrimental impact.</p> <p>Note: Additional criteria prohibiting significant detrimental impacts on water bodes for the migration, rearing, feeding or spawning of fish, and to strictly limit land divisions in the p-zone place additional focus on high value resource areas and High and Moderate HCAs. In addition, approval criteria are discretionary and provide/encourage flexible options to avoid resource areas where practicable.</p>	<p>33.465.250. Pleasant Valley Resource Review Approval Criteria. Provide flexibility to encourage avoidance or adverse impacts on of resource areas. Criteria apply to resource enhancement projects, modification of zone boundaries, and other development. The City must find that the proposed development has the least significant impact to identified resources and functional values of practicable and different alternatives including alternatives that would locate development outside the overlay. Additional criteria precluding significant adverse impact on resources and values to be left undisturbed or resources related to the mitigation, rearing, feeding or spawning of fish apply stricter requirements for the High and Medium HCAs.</p> <p>No new lots can be created which minimizes future impacts on resource areas.</p>	<p>33.440.350 Approval Criteria The approval criteria for a greenway review are divided by location and situation. They are designed to limit or avoid significant detrimental impacts on natural resources. Through a greenway review the City must find: C. Development or fill within the Greenway Natural overlay zone will not have significant detrimental environmental impacts on the wildlife, wildlife habitat, and scenic qualities of lands within that zone. D. Within 50 feet of the Greenway Natural overlay zone the applicant must show that the proposal development or fill will not have a significant detrimental impact. E. and F. Development within and riverward of the greenway setback must show that the proposed development will not have a significant detrimental environmental impact on Rank I or Rank II wildlife habitat areas on the riverbank and that the proposal will not result in the significant loss of biological diversity in the river. G. Development within the River Water Quality overlay zone setback is required to have the least significant detrimental impacts to the functional values of the water quality resource area than other practicable and significantly different alternatives. The criteria also restrict water body crossings.</p>	

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19	<p>3.07.1340.B.2.c Mitigate Impacts on Habitat Conservation Areas and Water Quality – Require mitigation to restore the ecological functions lost or damaged as a result of development, after taking into consideration property owner efforts to minimize detrimental impacts.</p> <p>3.07.1340.B.3 This title does not require mitigation for development in delineated wetlands beyond what is required by state and federal law.</p>	<p>33.430.140 General Development Standards The Environmental Development Standards include standards for replacing trees removed with native trees or a combination of trees and other types of native vegetation.</p> <p>33.430.210 - 250 Environmental Review A stated purpose of Environmental Review is to “prevent harm to identified resources and ensure the success of mitigation and enhancement activities. Applications must include mitigation or remediation plans. Approval criteria spell out the mitigation requirements for specific development types. Most types of development must demonstrate that all significant detrimental impacts on resources and functional values will be compensated for, and that mitigation must occur in the same watershed. Other types of development (public recreational facilities) must restore areas disturbed during construction by planting native vegetation.</p> <p>33.430.400 Mitigation also takes place through requirements for Corrections to Violations of this Chapter. The purpose is to ensure the timely restoration and remediation of natural resources and functional values that have been degraded due to a violation of Chapter 33.430. Correction options include removing items and materials placed in violation and remediation plantings, retaining the development and remediation planting, or environmental review.</p>	<p>33.465.150 General Development Standards and 33.465.155 Standards for Utility Line These Development Standards include standards for replacing trees removed with native trees or a combination of trees and other types of native vegetation. 33.465.160 Standards for Rights-of-Way establishes mitigation requirements.</p> <p>33.465.210 - 250 Pleasant Valley Resource Review - A stated purpose of Pleasant Valley Resource Review is to “prevent harm to identified resources and ensure the success of mitigation and enhancement activities. Applications must include mitigation or remediation plans. Approval criteria require establish restrictions on significant detrimental impacts and require mitigation to compensate for all significant detrimental impacts on resources and functional values.</p> <p>33.465.180 and 250.E Mitigation requirements include a 2:1 mitigation ratio, location provisions, and planting requirements. Alternative mitigation approaches also require improvement of at least one functional value.</p>	<p>33.440.350 Approval Criteria As noted above (line 18) the greenway approval criteria generally focus on limiting or avoiding detrimental impacts on natural resources. Mitigation is explicitly addressed as follows.</p> <p>G. Development within the River Water Quality overlay zone setback requires mitigation of impacts and functional values that cannot be avoided. Mitigation and remediation plans must spell out the location of mitigation, legal instruments to ensure applicant accountability, a timeline and monitoring and plan for maintenance plan, performance benchmarks, and a contingency plan.</p>	
20	<p>3.07.1340.C Provide procedures to consider claims of hardship and to grant hardship variances for properties demonstrated to be converted to an unbuildable lot by application of provisions implemented to comply with this title.</p>				<p>When applying overlay zones to protect natural resources the City explicitly provides sufficient space for development so that sites do not become unbuildable.</p> <p>Transfers of development rights are also allowed by the Johnson Creek, Northwest Hills, and Pleasant Valley Plan District regulations which is intended to alleviate hardship resulting from environmental restrictions in these areas.</p>

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21	3.07.1340.D Administering the HCA Map and Site-Level Verification of Habitat Location Cities and counties are responsible for administering the Title 13 map or map deemed by Metro to be in substantial compliance with the HCA map and the provisions of this section. Comprehensive Plan and implementing ordinances to comply with this title shall comply with 03.07.1330(G). In addition, cities and counties shall establish a verification process similar to the process outlined in subsections (D)(4) – (D)(6) which includes determination of habitat area boundaries, the urban development value of the property, and determining whether the property contains High, Moderate, or Low Habitat Conservation Areas, or no HCA, as specified.				<p>The City addresses this requirement through administration of resource overlay zone maps and regulations that apply to the vast majority of the Habitat Conservation Areas in Portland.</p> <p>Procedures for updating the overlay zones on individual sites include map corrections, minor map modifications, and zone map amendments (see item 5 above). While the overlay zone boundaries can be modified through each of these procedures, re-evaluating and updating the ESEE Analysis and level of natural resource protection for that site (e.g., changing from p-zone to c-zone) can be accomplished only through the zone map amendment process.</p>
22	<u>3.07.1350 Claims pursuant to ORS 197.352 (Ballot Measure 37)</u> <i>Not applicable given repeal of this statute</i>				
23	3.07.1360 Program Objectives, Monitoring, and Reporting 3.07.1360.A Establishes performance and implementation objectives 3.07.1360.B & D Establishes Metro responsibilities to monitor the region’s progress and for regional data coordination and maintenance. 3.07.1360.C Establishes cities’ and counties’ responsibility to report to Metro every-other year on progress using voluntary and incentive-based education, acquisition, and habitat restoration efforts, and must notify metro of proposed ordinances relating to protection or mitigation of damage to habitat, trees, and vegetation before the final public hearing.				<p>The City has met this requirement by submitting to Metro three comprehensive reports and maps addressing non-regulatory activities since Title 13 become effective (i.e., for FY 2005-06 and FY 2006-2007; for FY 2007-08 and FY 2008-09, and for FY 2009-10 and FY 2010-11).</p>
24	<u>3.07.1370 Future Metro Urban Growth Boundary Expansion Areas</u> <i>Not applicable to City of Portland</i>				