

September 28, 2021

**MEMORANDUM**

TO: Commissioner Bachrach  
FROM: Mindy Brooks and Daniel Soebbing  
COPY: PSC Commission, Andrea Durbin, Eric Engstrom, Sallie Edmunds  
SUBJECT: Response to your September 26, 2021 comments

Thank you for providing your comments prior to the PSC meeting. Here are three overarching responses followed by more detailed information that responds to your site-specific comments.

1. We are not conducting a Goal 5 ESEE analysis for riparian areas (rivers, streams, wetlands, flood areas and land within ~100 ft of waterbodies) because we are doing this work under Metro Title 13 for riparian areas. In 2005, while preparing a Goal 5 program for the Portland Metro area, called Title 13 Nature in Neighborhoods, Metro conducted a regional ESEE analysis. The result of the ESEE is that all jurisdictions in the Metro area must apply protections to rivers, streams, wetlands, flood area and land within 50-100 feet of waterbodies. In 2012, the city's existing protection policies were deemed in substantial compliance with Title 13; therefore we are not doing a new ESEE. This topic was discussed in a staff presentation to the PSC on June 22, 2021.
2. In 2012, the city's Natural Resources Inventory (NRI), was adopted as factual basis for the 2035 Comprehensive Plan update. The NRI describes the methodology used to map features like tree canopy and streams, Metro deemed the NRI to be in substantial compliance with Metro Title 13. We are not changing feature mapping methodologies as part of this correction project. .
3. BES is leading the Wetland Inventory Project. They hired SWCA Environmental Consultants to field verify wetlands according to state and federal wetland determination protocols. These wetlands will be added to the NRI. Removing a wetland from BES' Wetlands Inventory Project (WIP) should only occur based on additional information provided by a wetland scientist, such as an on-site wetland determination (if no on-site work has yet occurred) or a DSL-concurred wetland delineation. Free, on-site wetland determinations will resume in the spring of 2022. The PSC voted on July 27, 2021 to apply a consistent protection policy to wetlands in resources site that did not have an existing policy, and to adopt the wetland mapping methodology that is employed in the WIP. Resource site with existing wetland policies retain those; which is why there are some differences between resources sites.

## DETAILED RESPONSES TO YOUR QUESTIONS

### OHSU and Audubon Map Corrections

In your comments you referenced two specific instances in which project staff have recommended amendments to the proposed ezone mapping protocols that are applied on specific sites, and which were approved by the PSC on April 13, 2021. The following is a detailed description of the sites and why staff proposed these amendments:

**OHSU Overview** – Project staff are proposing to follow the existing policies that apply in resource site SW10 as closely as possible. Resource site SW10 contains a large portion of the OHSU Marquam Hill campus and the Portland VA Medical Center. The policy is to apply ‘p’ zones to streams and wetlands, to apply ‘c’ zone to patches of forest vegetation that are contiguous to streams and wetlands, and to apply ‘p’ zone to forest vegetation on steep hillsides that are contiguous to SW Terwilliger Blvd. In meetings with project staff, representatives from OHSU pointed out a location where ezones were being proposed that didn’t appear to meet these criteria. Upon review, staff concurred that the proposed ezones were not being applied correctly in a specific area on OHSU campus and prepared an amendment for PSC consideration.

**Detailed Explanation of the OHSU Amendment-** When the Southwest Hills Resource Protection Plan was adopted in 1992, the ‘c’ zone was applied to a multi-acre forest patch that extended into the middle of the OHSU Marquam Hill campus (Figure 1 illustrates the location where the forest and existing ‘c’ zone are located). This forest patch was contiguous to large, vegetated areas that were also protected by ‘p’ and ‘c’ zones, including a forested hillside that runs along SW Terwilliger Blvd and the Marquam Nature Area. In the years following the 1992 adoption of the existing ezones, OHSU went through a permitting process, including an Environmental Review, to build a new hospital building that cut through the middle of the forest patch. There were substantial mitigation requirements that were met by the applicant to gain approval to build the new structure. Once construction was complete, there was a multistory concrete and steel building that cut right through the middle of the forest patch. This left an isolated grove of trees that was separate from other forested areas (Figure 2 shows that the new hospital building forms a large barrier between the remnant forest patch and other forested areas in the resource site). This grove is not contiguous to any streams or wetlands and the habitat value has been significantly reduced because the new building prevents wildlife migration between the forest patch and other nearby habitat.

Staff’s reasoning for proposing an amendment to exclude this isolated forest grove from the ‘c’ zone was rooted in the fact that the resources had been altered through a legal permitting process that had been completed by the time that the Environmental Overlay Zone Map Correction Project was underway, and that the development process, now also complete, had resulted in changes to the resources on the ground. The proposed amendment to the mapping protocols, from staff’s perspective, was a matter of correcting the natural resource inventory to reflect conditions on the ground and was not made as a result of reassessing the ESEE analysis that applies to Resource Site SW10.

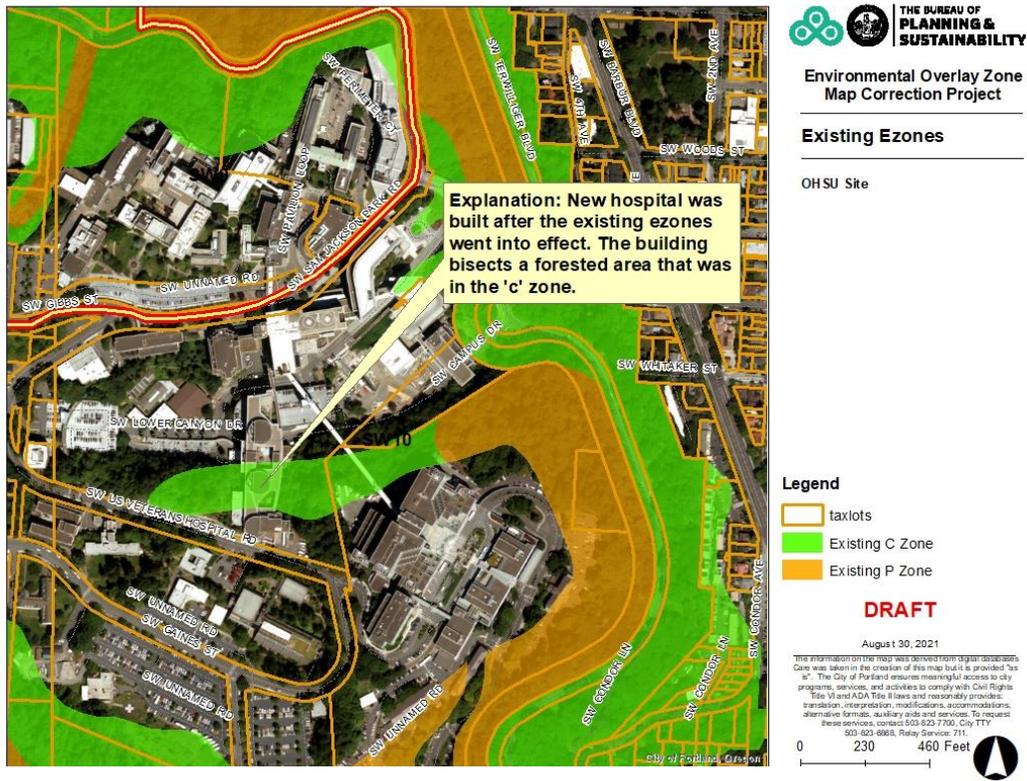


Figure 1. Existing zoning in resource site SW10, including OHSU site.

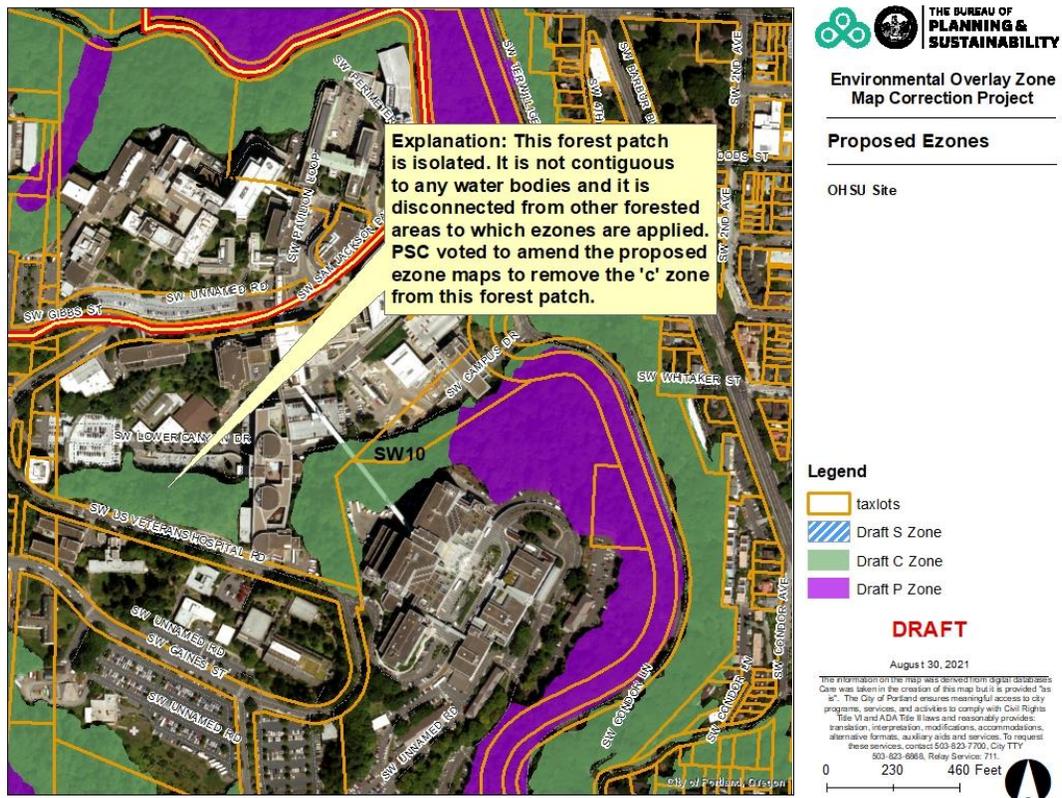


Figure 2. Proposed zoning in SW10 prior to PSC amendment.

**Audubon Overview** – Project staff are proposing to follow the existing policies that apply in resource site FP29 as closely as possible. Resource site FP29 contains the Audubon site. Under the *existing* ezones that currently apply to this resource site, almost the entire site is covered by ‘p’ zone except for a small portion of the lot where the buildings are located near NW Cornell Rd.

The computer program that produces the draft ezones applied ‘p’ zone to all waterbodies and vegetation on the site because the site is in the Open Space (OS) base zone. After reviewing the proposed ezones on the site, members of the Audubon Society of Portland pointed out to project staff that the model was applying ‘p’ zone to the entire site, including in areas that had been in the ‘c’ zone under *existing* zoning.

The amendment that staff proposed, and that the PSC approved was to convert some of the proposed ‘p’ zone to ‘c’ zone. The goal of the amendment was to bring the proposed ezones into alignment with the *existing* policy that applies to the site.

**Detailed Explanation of the Audubon Amendment** – The Audubon site on NW Cornell Rd is located in resource site FP29, which was denoted as resource site 75 in the Balch Creek Watershed Protection Plan, which was adopted in 1991. Under *existing* zoning, the majority of the site is in the ‘p’ zone (refer to Figure 3). The site is also located in the Open Space (OS) base zone. The OS zone is typically only applied to publicly owned natural areas or other public parks; it is unusual for it to be applied to private lots. Within the OS zone, new building construction is only allowed as a conditional use, and a land use review is always required for new development. When the 2035 Comprehensive Plan was adopted, the majority of privately owned lots that had OS zoning were changed to another zone. This was one of the few lots where this change was not applied.

Because Resource Site FP29 is all OS zoned, the mapping protocol that was applied there was consistent with protocols that were applied to parks and the OS zone throughout northwest Portland, which was to apply the ‘p’ zone to all vegetation that is contiguous to streams.

Existing development, including structures, paved areas and utilities, are exempt from code that applies to the ezones. This is true in both the ‘p’ zone and the ‘c’ zone. But new development or expansion of development footprints would either have to meet standards or be subject to Environmental Review. Generally, new development in the ‘p’ zone can only be approved if it can meet approval criteria that demonstrate that the development would serve a public good. It is difficult for private development to meet these criteria. For this reason, project staff have applied ‘p’ zone to ‘c’ zone conversions throughout the project area on a number of residential sites with 70% or greater ‘p’ zone coverage. The proposed conversion of the lot area from ‘p’ zone to ‘c’ zone on the Audubon site is consistent with the methodology that has been used for residential lots.

Under *existing* zoning, there is a small area of ‘c’ zone near the buildings that are located on the site, but portions of the buildings and developed areas extend into the ‘p’ zone. The staff-proposed amendment made changes to the computer generated ezone maps, expanding the area on the site where the ‘c’ zone is applied to encompass more of the developed area of the site. When determining where to apply the changes, staff made sure to retain the ‘p’ zone on stream riparian areas extending out to at least 50 feet from the stream top-of-bank (Figure 4 shows the zoning that was applied to the site with the PSC amendment).



**Environmental Overlay Zone  
Map Correction Project**

**Existing Ezones**

Audubon Site

**Legend**

- taxlots
- Existing Scenic Overlay
- Existing C Zone
- Existing P Zone

**DRAFT**

August 30, 2021

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Figure 3. Existing zoning in resource site FP29.



**Environmental Overlay Zone  
Map Correction Project**

**Proposed Ezones**

Audubon Site

**Legend**

- taxlots
- Draft S Zone
- Draft C Zone
- Draft P Zone

**DRAFT**

August 30, 2021

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Figure 4. Proposed zoning in resource site FP29, including PSC amendments.

## Basis for applying c and p zone widths

In section three of your comments, you question the basis for applying different sized 'p' and 'c' zones around wetlands. You mentioned the varying widths of 'p' zones that were applied to wetlands in three of the sites that were addressed in attachment G, which was part of a memorandum that was sent by project staff to the PSC on September 17, 2021. The sites that you asked about were **G.10**, **G.24**, and **G.9**. The short answer is that they are based on policies adopted as part of Metro Title 13 and also policies adopted by City Council for natural resource protection plans over the last several decades. More information is included below.

The reasoning for applying differing widths of 'p' zone to wetlands and streams in different resource sites is based on existing policy. To determine what existing policy is, staff reviewed the 13 adopted area-specific natural resource protection plans. They went through each document, resource site by resource site, to identify the adopted policy. As you will recall, the Ezone Map Correction Project covers portions of the city in which ezones were applied through the adoption of natural resource protection plans between 1991 and 2002.

In some plans, the policy was very clearly and unambiguously spelled out in the words that described the resource protection decisions. One instance where this was the case was in resource site JC14 which is where **G.10** is located, (JC14 was denoted as resource site 16 in the East Buttes, Terraces and Wetlands Natural Resource Protection Plan, adopted in 1993). The adopted document clearly stated that a 'p' zone should be applied to wetlands and that a 'c' zone should be applied to the "vegetation, banks and buffer areas bordering the wetlands and varies between 50 and 75 feet in width." Because the mapping rules in this resource site were so clearly and unambiguously articulated in the adopted plan, staff simply followed the mapping rules that were described therein. 'P' zone is applied to wetland in this resource site, and 'c' zone extends 75 feet from the wetlands. On the west edge of the lot that is addressed 5838 SE 111th Ave, staff proposed to reduce the width of the 'c' zone to approximately 50 feet to be more consistent with the way the existing adopted policy is applied.

However, it is rare for the resource protection decisions to be as clearly spelled out as the decision that applies in JC14. Typically, the resource descriptions in the documents refer to streams, forest, and wetlands. But the final protection descriptions that state where the 'p' zone and 'c' zone should be applied often say something like "apply 'p' zone to the highest value resources and apply the 'c' zone to other resources." These directions are ambiguous and very difficult to translate into clear and directive policy. In almost all resource sites, 'p' zones are applied to areas around streams, and in many resource sites, they are applied to wetlands. But the width of the 'p' zone varies widely from stream to stream and resource site to resource site, and the documents rarely give any kind of written clue as to why the 'p' zones should expand and contract in different locations.

When the descriptions don't provide clear direction, staff have relied on the adopted ezone maps, themselves. Staff have used GIS computer programs to measure the width of the 'p' zones in each resource site, and they have averaged these widths out within the resource sites to generate specific rules for each resource site. Staff have then run a computer program that applies the mapping protocols to the features. Staff reviewed the program outputs to make sure that the rules appear to produce maps that are consistent with the adopted ezone maps (allowing for some variance due to updated resource mapping including changes to forest canopy and recently identified streams and wetlands). If the

computer program outputs don't appear to match the existing maps, staff have made adjustments to the 'p' zone mapping rules, and then they have rerun the computer program and reviewed the results. This process has been conducted iteratively to try to emulate the existing policy as closely as possible.

In the case of **G.24**, which is 4504 SE Tenino St, and is located in resource site JC7 (denoted as resource site 7 in the Johnson Creek Basin Protection Plan, adopted in 1991), the resource description mentioned wetlands, streams, vegetation, parks, and fish and wildlife habitat. Clearly these were the features that were intended to be protected, but the plan gave no clear direction for how wide the 'p' zone should be. Staff used the iterative mapping process that is described above to determine the width of the protection zone that should be applied to streams and wetlands to be consistent with existing policy.

In the case of **G.9**, which is 11411 S Elysium Ave, located in resource site SW23 (denoted as resource site 117c, which was included in the 2002 plan that applies to Multnomah County Unincorporated Urban Areas), the adopted plan makes no specific mention of applying protections to wetlands in this resource site. Therefore, staff recommended the application of 25 feet of 'p' zone and 'c' zone between 25 and 50 feet to be consistent with the wetland protection policy that was adopted PSC on July 27, 2021. This is the baseline policy that is proposed for all resource sites in which previously adopted plans did not specifically call for the application of 'p' zone to wetlands.

### **Commissioner Bachrach's Proposed Changes**

In section four of your comments, you propose changes to ezone mapping or feature mapping on three sites on which wetlands have been mapped. The following staff analysis describes each of the sites and why we do not support these changes.

The Ezone Map Correction Project is relying on the Bureau of Environmental Services' Wetland Inventory Project (BES WIP) to provide updated wetland mapping data. BES is following a standard process to conduct the wetland inventory, including conducting wetland determinations to field verify wetland mapping. The staff recommendation is to follow the wetland mapping protocol that is employed by BES WIP. Staff also recommend that ezones be applied to mapped wetlands uniformly according to the mapping protocols that apply in each of the natural resource sites in the project area.

#### **G5 – The wetland that is mapped on 4919 SW Texas**

You questioned the evidence that staff have to map a wetland on the subject property. Project staff have consulted with BES Wetland Inventory Project (BES WIP) staff regarding the wetland that is mapped on 4919 SW Texas Ave. There are strong indicators of the presence of a wetland on this site, and these indicators are in no way invalidated by any field work that has been done at 6917 SW 49<sup>th</sup> Ave, or other portions of the wetland complex. BES WIP staff recommend retaining this wetland in the inventory pending the outcome of a wetland determination (refer to Figures 5 and 6 to see where wetlands have been mapped on the site and where wetland determinations have been conducted).

Wetland determinations will be offered free of charge to all property owners between March and June of 2022. Deleting the wetland outside of the normal wetland determination process would be inconsistent with the methodology that is employed by BES WIP.

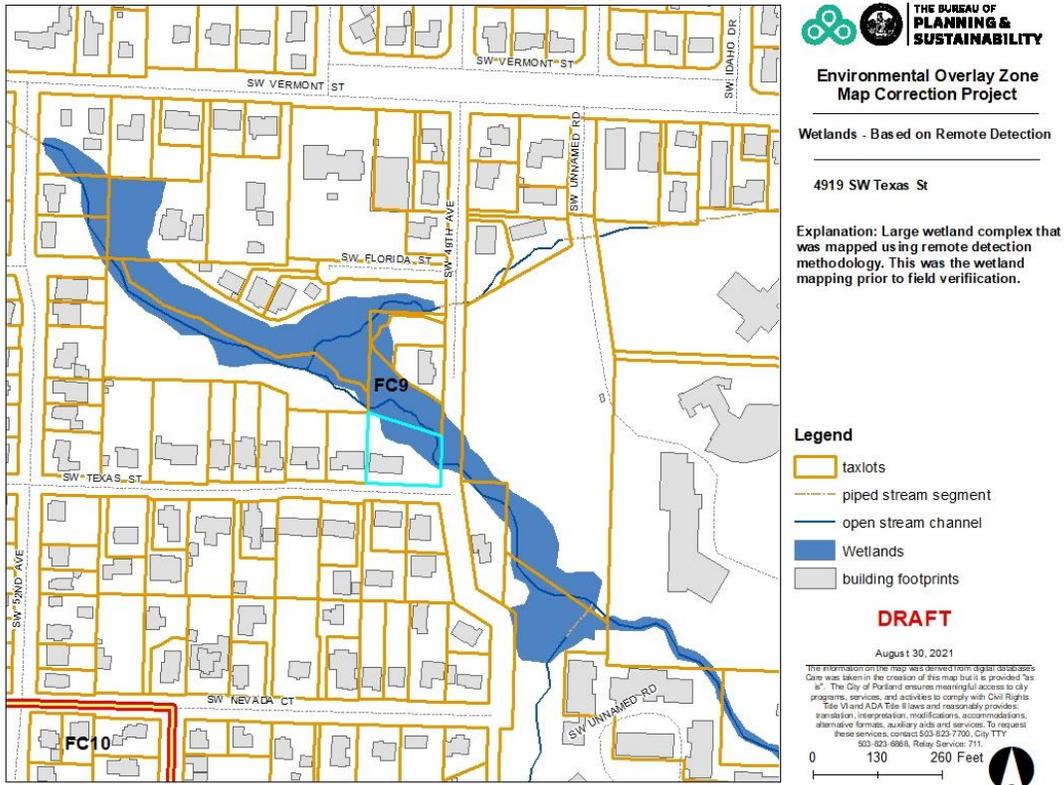


Figure 5. Wetland mapping on site prior to 2021 wetland determinations

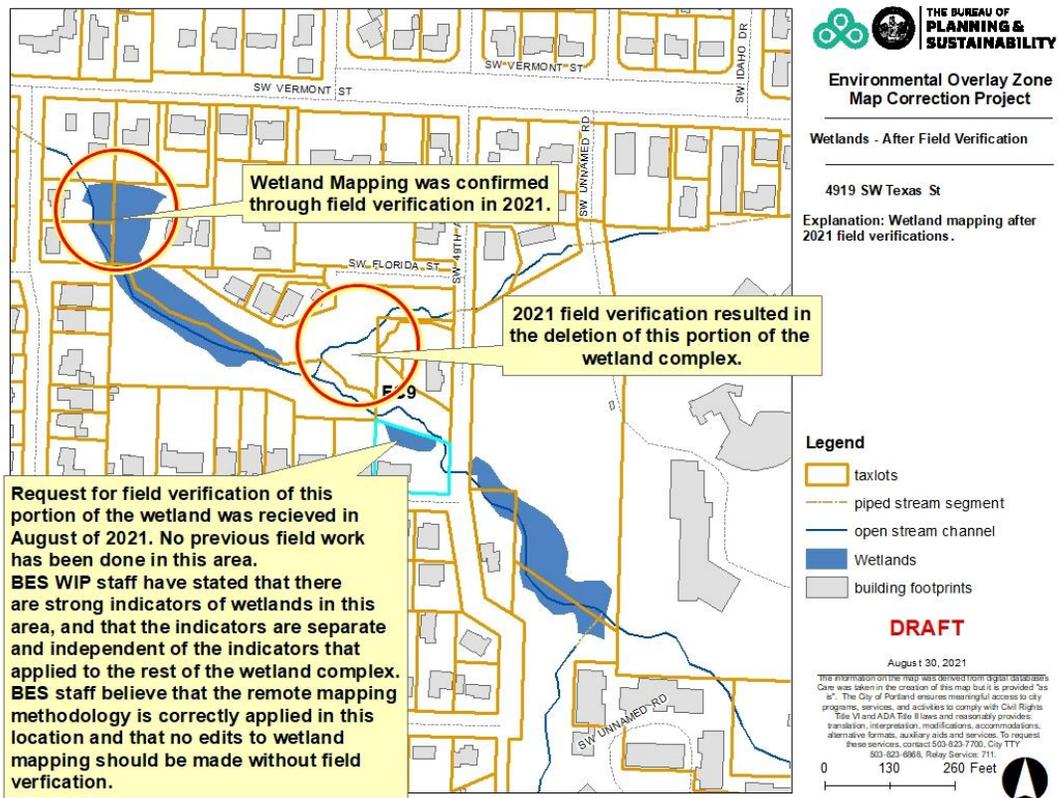


Figure 6. Wetland mapping on site after the 2021 wetland determinations

### **G13 – Relationship of 11346 S Northgate Ave to 11411 S Elysium**

You asked why staff removed the wetland from a property at 11411 S Elysium but not on the downhill/across the street neighbor's property at 11346 S Northgate Ave. The short answer is that BES WIP staff visited this property and two adjacent properties. While on site, they field verified the presence of wetlands and a jurisdictional waterway on 11346 S Northgate Ave property, but they could not find any evidence of a wetland on 11411 S Elysium.

#### **Background:**

BES WIP staff visited this site on August 9, 2021 to field verify the extent of the wetland drainage. Though they had not received a request to do a wetland determination on this site, they were able to stand on a portion of the public right of way north and south of the 11346 S Northgate property from which they could observe the areas that had been mapped as wetlands on 11411 S Elysium, 11346 S Northgate, 11618 S Northgate, and 11619 S Northgate.

BES WIP staff field verified the findings of a recent onsite determination conducted by environmental consultant Pacific Habitat Services (PHS) that indicates a lack of jurisdictional wetlands and waters on 11411 S Elysium. In other words, BES staff observed a lack of visual indicators of wetland or waters on the southern boundary of 11411 S Elysium. BES WIP staff determined that the wetland should be deleted from the inventory on the basis of staff's field verification of PHS's onsite wetland and waters determination indicating a lack of wetland and waters.

During the site visit, BES WIP staff did observe indications of a continuously saturated wetland seep abutting a delineated drainage on 11346 S Northgate Ave in the area where wetlands are mapped on the site. The delineation of the drainage by blue flagging indicates that a wetland and waters determination by an environmental consultant has likely been conducted for this property recently, though the results have not been provided to BPS or BES staff. These observations strongly indicate that there are wetlands and other jurisdictional waters in this area.

If the property owners request a wetland determination on the site in the 2022 field season, an onsite field verification can be conducted in this location. But based on BES WIP staff observations, it is highly likely that a wetland and waterway would be found on this site if an onsite wetland determination is conducted. Staff do not support any changes to wetland mapping on 11346 S Northgate Ave unless they are made as the result of an onsite wetland determination or a wetland delineation.

As noted above, staff are aware that the owners of 11411 S Elysium have a wetland determination conducted by PHS that they claim proves that there is no wetland on their lot, but the City of Portland has not yet received any documentation of a concurrence of the wetland determination by the Oregon Department of State Lands (DSL). Because there is no DSL concurrence, the decision to remove the wetland was based on BES WIP staff's field verification only. BES WIP staff provide periodic updates of wetland data to the Ezone Map Correction Project. The updates to the wetland data are made on the basis of wetland determinations that are conducted by BES' consultants, SWCA Environmental, and by BES WIP staff. Updates can also be made as a result of DSL approved wetland delineations.

**G15 – 4210 SW 58<sup>th</sup> Ave wetland buffer**

You asked if a wetland buffer can extend across a street. The mapping protocol used in this and other cases call for buffers to extend across streets and through existing development. Therefore, staff recommend retention of 'c' zone between 25 and 50 feet of wetlands on this site in order to apply consistent mapping criteria.