

ORDINANCE No. 184944

Repeal Smith and Bybee Lakes National Resource Management Plan, including amendments to Title 33, Planning and Zoning, and Zoning Map; add three maps to Title 33 related to Airport Futures. (Ordinance; amend Title 33; amend Zoning Map)

The City of Portland Ordains:

Section 1. The Council finds:

General Findings

1. On July 15, 1988, Portland City Council adopted Ordinance No. 160890 amending Title 33 of the City Code to include Chapter 33.635, a new zoning district entitled Environmental Concern Zone (E Zone). The E Zone regulations included the Natural Resource Management Plan process as an alternative approach to implementation of the Environmental Concern Zone. Upon adoption, such plans served as a substitute for individual environmental reviews required under section 33.635.070 to provide adequate protection for identified natural resource values. In addition, an adopted NRMP was intended to provide comprehensive management of natural resource values within a large geographic area and designed to address all inventoried resource values which might be affected by actions or development activities identified in the NRMP.
2. On May 4, 1989, City Council adopted the Columbia Corridor Industrial and Environmental Mapping Project, including the inventory and ESEE analysis for the Smith and Bybee Lakes area. Ordinance No. 161896 implemented the mapping application of environmental zoning overlays ("ec" or "en") on high value natural resources in the Columbia Corridor. The environmental zoning overlays continue to apply to resources in the Smith and Bybee Lakes area, although the zoning designation has been updated to environmental conservation ("c") or environmental protection ("p").
3. Beginning in 1986, and culminating in 1990 with the adoption of the Natural Resource Management Plan for Smith and Bybee Lakes (Ordinance 163610), a consortium of property owners, residential and industrial neighbors, and resource agencies and organizations worked together to develop scenarios for the future of Smith and Bybee Lakes. During this time period, a plan for closing the St Johns Landfill was developed and Metro accepted responsibility for management of the landfill. The St. Johns Landfill was added to the management area for Smith and Bybee Lakes.
4. The adopted Natural Resource Management Plan for Smith and Bybee Lakes identified policies and actions that enabled the establishment of a major regional environmental and recreational resource for the Portland metropolitan area. The overall goal was protection and enhancement of the natural resources at the lakes and allowance of compatible recreational uses.
5. Since 1990, the majority of the actions (projects) identified in the Natural Resource Management Plan for Smith and Bybee Lakes have been implemented.

6. Also since 1990, the environmental regulations of the Zoning Code have been updated more than 16 times, including some significant updates that created a streamlined review process for environmental projects. None of the updates were applied to the Natural Resource Management Plan for Smith and Bybee Lakes.
7. On April 13, 2011, City Council adopted the Citywide Tree Project which included a new land use review called a Comprehensive Natural Resource Plan. The Comprehensive Natural Resource Plan is similar to the Natural Resource Management Plan in that it provides a means to manage environmental projects within a large area. A key difference is that the Comprehensive Natural Resource Plan must comply with current Zoning Code regulations and is processed through a quasi-judicial procedure. Metro plans to apply for the new review to replace the out-of-date NRMP, but the NRMP must be repealed before the Comprehensive Natural Resource Plan application can be submitted.
8. On July 27, 2011 notice of the proposed action was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-18-020.
9. On August 12, 2011 notice was mailed to the project mailing list and all persons interested in legislative projects city-wide (approximately 580 addresses) announcing the availability of the *Smith & Bybee Lakes Project – Proposed Draft*, the Open House on August 30, 2011 and the Planning and Sustainability Commission hearing on September 13, 2011.
10. On September 13, 2011 the Planning and Sustainability Commission held a hearing on the proposal. Staff from the Bureau of Planning and Sustainability presented the proposal, including elements of concern from the public, and suggestions for addressing the public concern. There was no public testimony. Based on its review, the Planning and Sustainability Commission voted to recommend the proposal to the Portland City Council.
11. On September 21, 2011 notice was mailed to those who testified in writing or in person at the Planning and Sustainability Commission hearing, announcing the availability of the *Smith & Bybee Lakes Project – Recommended Draft*, and the City Council hearing on October 12, 2011.
12. On October 12, 2011 City Council held a hearing on the proposal. Staff from the Bureau of Planning and Sustainability presented the recommendation of the Planning and Sustainability Commission, and public testimony was received.
13. On October 19, 2011 City Council voted to adopt the changes in the *Smith & Bybee Lakes Project – Recommended Draft*.
14. On April 13th, 2011, the City Council adopted Airport Futures which updated the City's natural resources program for the Portland International Airport and surrounding area. Reference maps, which show where the natural resource inventories are completed, were inadvertently left out of the City Council review materials.
15. The reference maps are included with this project for Council approval.

Findings on Statewide Planning Goals

16. State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with state land use goals. Only the state goals addressed below apply.
17. **Goal 1, Citizen Involvement**, requires provision of opportunities for citizens to be involved in all phases of the planning process. The preparation of these amendments has provided numerous opportunities for public involvement, including:
 - a. On July 25, 2011, project staff attended the Columbia Slough Watershed Council meeting to discuss the project and answer questions;
 - b. On July 26, 2011, City and Metro project staff attended the Smith and Bybee Wetlands Advisory Committee meeting to discuss the project and answer questions;
 - c. On July 28, 2011, project staff attended the North Portland Land Use Group meeting to discuss the project and answer questions;
 - d. On August 8, 2011, City and Metro project staff attended the St. John's Neighborhood Association meeting to discuss the project and answer questions;
 - e. On August 30, 2011, City and Metro project staff held a joint open house to provide project information and listen to comments.
18. **Goal 2, Land Use Planning**, requires the development of a process and policy framework that acts as a basis for all land use decisions and assures that decisions and actions are based on an understanding of the facts relevant to the decision. This goal is met through implementation of the provisions of PCC Chapter 33.740, Legislative Procedure, which establishes a process for adopting and amending City policies and has been followed in development of this project. See also findings for Portland Comprehensive Plan Goal 1, Metropolitan Coordination, and its related policies and objectives.
19. **Goal 5, Open Space, Scenic and Historic Areas, and Natural Resources**, requires the conservation of open space and the protection of natural and scenic resources. The amendments support this goal because there are no proposed zoning changes to the Environmental overlay zones (c, p) or Open Space (OS) zone of the Smith and Bybee Wetlands area, and the natural and scenic resources of Smith and Bybee Wetlands will continue to be conserved and protected by the environmental overlay zones. The environmental zones are the city's primary compliance tool to meet Goal 5 requirements.

The Natural Resource Management Plan (NRMP) is a tool to allow pre-approval of multiple natural resource-related projects, and the NRMP for Smith and Bybee Wetlands is proposed to be replaced by a Comprehensive Natural Resource Plan for Smith and Bybee Wetlands, a similar tool but approved through the quasi-judicial process.

Findings on Metro Urban Growth Management Functional Plan

20. **Title 3, Water Quality, Flood Management and Fish and Wildlife Conservation**, protects the public's health and safety by reducing flood and landslide hazards, controlling soil erosion and reducing water pollution by avoiding, limiting, or mitigating the impact of development on streams, rivers, wetlands, and floodplains. Title 3 specifically implements the Statewide Land Use Goals 6 and 7. The findings for those statewide goals are incorporated here to show that the amendments are consistent with this Title. See also findings for Comprehensive Plan Goal 8, Environment.
21. **Title 13, Nature In Neighborhoods**, calls for conservation, protection, and restoration of a continuous ecologically viable streamside corridor system that is integrated with upland wildlife habitat and the surrounding urban landscape. The amendments are consistent with T13 for several reasons: replacement of the Natural Resource Management Plan for Smith and Bybee Lakes with a Comprehensive Natural Resource Plan (CNRP) is part of the City's ongoing effort to fully comply with Title 13; the CNRP is a zoning tool that is more consistent with the City's environmental resource protection plan than the older NRMP; and repealing the NRMP will not have any effect on the environmental zoning at the site.

Findings on Portland's Comprehensive Plan Goals

22. **Goal 8, Environment**, calls for the maintenance and improvement of the quality of Portland's air, water, and land resources, as well as the protection of neighborhoods and business centers from noise pollution. The amendments are consistent with this goal and several of the objectives because the status quo of the zoning, the identified natural resources, the protected wetlands/riparian/waterbodies, the uplands, and the wildlife habitat are all maintained with no changes proposed. The only objective of Goal 8 to change is the Natural Resource Management Plan, which is proposed for retirement because it is out of date and will be replaced with a new process that also meets Goal 8 and the objectives of the goal.
23. **Goal 9, Citizen Involvement**, calls for improved methods and ongoing opportunities for citizen involvement in the land use decision-making process, and the implementation, review, and amendment of the Comprehensive Plan. This project followed the process and requirements specified in Chapter 33.740, Legislative Procedure. The amendments support this goal for the reasons found in the findings for Statewide Planning Goal 1, Citizen Involvement.

NOW, THEREFORE, the Council directs:

- a. Adopt Exhibit A, the Planning and Sustainability Commission's memo titled *Retirement of the Natural Resources Plan for Smith and Bybee Lakes– Recommended Draft*, dated September 23, 2011;
- b. Amend Title 33, Planning and Zoning, as shown in Exhibit A, *Retirement of the Natural Resources Plan for Smith and Bybee Lakes– Recommended Draft*, dated September 23, 2011;
- c. Amend the Official Portland Zoning Map as shown in Exhibit A, *Retirement of the Natural Resources Plan for Smith and Bybee Lakes– Recommended Draft*, dated September 23, 2011;
- d. Repeal the Smith and Bybee Lakes Natural Resources Management Plan; and
- e. Adopt the commentary and discussion in Exhibit A, *Retirement of the Natural Resources Plan for Smith and Bybee Lakes– Recommended Draft*, dated September 23, 2011; as further findings and legislative intent;

Section 2. If any section, subsection, sentence, clause, phrase, diagram, designation, or drawing contained in this Ordinance, or the plan, map or code it adopts or amends, is held to be deficient, invalid or unconstitutional, that shall not affect the validity of the remaining portions. The Council declares that it would have adopted the plan, map, or code and each section, subsection, sentence, clause, phrase, diagram, designation, and drawing thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, phrases, diagrams, designations, or drawings contained in this Ordinance, may be found to be deficient, invalid or unconstitutional.

Section 3. To ensure that the Smith and Bybee Lakes Natural Resources Management Plan remains in place until a Comprehensive Natural Resources Plan is approved for the area, the following will be effective nine months after adoption:

- a. Amendments to Zoning Code Chapter 33.430 to delete references to the Smith and Bybee Lakes Natural Resources Management Plan;
- b. Amendments to the Official Zoning Code Maps to delete map number 430-10; and
- c. Repeal of the Smith and Bybee Lakes Natural Resources Management Plan.

Section 4. In the event that a Comprehensive Natural Resources Plan is not approved for the area within eight months of adoption of this ordinance, the Bureau of Planning and Sustainability is directed to return to City Council with an ordinance to extend the effective date of the provisions listed in a. through c. of Section 3.

Section 5. The amendments to Zoning Code Chapter 33.809 and the addition of the maps related to the Airport Futures Project to Zoning Code Chapter 33.430 will be effective 30 days after adoption.

Passed by the Council: OCT 19 2011

Mayor Sam Adams

Prepared by: Christina Scarzello

Date Prepared: September 23, 2011

LaVonne Griffin-Valade

Auditor of the City of Portland

By



Deputy

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Agenda No.
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Title

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INTRODUCED BY Commissioner/Auditor: Mayor Sam Adams	CLERK USE: DATE FILED <u>OCT 07 2011</u>
COMMISSIONER APPROVAL	LaVonne Griffin-Valade Auditor of the City of Portland
Mayor—Finance and Administration - Adams	
Position 1/Utilities - Fritz	
Position 2/Works - Fish	
Position 3/Affairs - Saltzman	
Position 4/Safety - Leonard	
BUREAU APPROVAL	
Bureau: Planning and Sustainability Bureau Head: Susan Anderson	
Prepared by: Christina Scarzello Date Prepared: 9/26/2011	
Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Council Meeting Date October 12, 2011	
City Attorney Approval: <i>CS Beaumont</i> required for contract, code, easement, franchise, comp plan, charter	
	ACTION TAKEN: OCT 12 2011 PASSED TO SECOND READING OCT 19 2011 9:30 A.M.

AGENDA
TIME CERTAIN <input checked="" type="checkbox"/> Start time: 2:00 pm
Total amount of time needed: 10 minutes (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	<input checked="" type="checkbox"/>	
2. Fish	2. Fish	<input checked="" type="checkbox"/>	
3. Saltzman	3. Saltzman	<input checked="" type="checkbox"/>	
4. Leonard	4. Leonard	<input checked="" type="checkbox"/>	
Adams	Adams	<input checked="" type="checkbox"/>	