



Bureau of Planning and Sustainability

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## MEMO A-22

**DATE:** May 1, 2020  
**TO:** Planning and Sustainability Commission  
**FROM:** Jeff Caudill and Mindy Brooks, Bureau of Planning and Sustainability  
**SUBJECT:** Proposed Expansion of the River Setback

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### ISSUE SUMMARY

Some members of the public and PSC commissioners have requested that the South Reach minimum river setback for development be increased beyond the current proposal of 50 feet to at least 100 feet from the top of bank. Generally, the aim is to discourage new development near the Willamette River, move development, to the extent possible, out of the setback over time and reduce impacts of existing development on watershed health.

This memo describes the evaluation of the 50-foot and 100-foot river setback, briefly summarizes the River Environmental overlay zone, and provides the staff recommendation determined to be the best approach to achieve the aims described above.

### STAFF RECOMMENDATIONS

**Recommendation 1: (no change to Proposed Draft)** Maintain the proposed 50-foot river setback for all properties along the Willamette River. This would limit the number of tax lots where less than 25 percent of the allowable development coverage remains outside of the river setback (identified at the right of Table 1). A small increase in the number of non-conforming structures would result and a few properties would have more constrained development options.

**Recommendation 2: (new amendment)** Apply the River Environmental overlay zone to all land within 100 feet of the top of bank. This would result in 15.8 additional acres in the River Environmental overlay zone (see Map A-22-1), adding the overlay zone to 13 new tax lots where it is not in the current proposed (the amount of area in the River e would vary by property). This would require mitigation of all new development impacts on natural resources in this important riparian area.



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**Recommendation 3: (no change to Proposed Draft)** Establish the riparian buffer area within 170 feet of ordinary high water, as proposed in the Proposed Draft, for all floodplains (both FEMA 100-year floodplain and 1996 Flood Inundation Area) and require mitigation of natural resource impacts to achieve “beneficial gain” for approval in this area that is, as described in the FEMA 2016 National Flood Insurance Program Biological Opinion, vital for Threatened and Endangered salmon and steelhead.

## **BACKGROUND**

### Nonconforming Development

Nonconforming uses and development exist where a site met all the regulations at the time it was developed but no longer meets the current regulations because of subsequent changes to the Zoning Code. Along the river, residences and businesses that were built before the Greenway setback was established and are now in the setback are nonconforming structures. The zoning code allows these structures to remain, be maintained and, in most cases, be replaced. When improvements to the development exceed an established cost threshold, the owner is required to bring their site further into compliance with current regulations.

## **ANALYSIS**

### 100-foot Setback

Staff evaluated the proposed expansion of the river setback to 100 feet to consider the benefit of doing so and to determine the number of additional nonconforming structures that would be created and the impact on the future developability of lots along the river. To measure future development limits on riverfront tax lots, the area remaining outside of the river setback was compared to the base zone maximum building coverage allowed. The percentage of the base zone maximum building coverage that would remain was calculated for the existing Greenway setback (which is 25 feet on some parcels and 50 feet on others), as well as the proposed setback distances (50 feet and 100 feet for all South Reach parcels). Table 1 presents the results of the analysis.



**Table 1.** Nonconforming structures and remaining development potential of different river setback distances.

| Setback (ft)                   | Taxlots | Nonconforming Structures <sup>1</sup> | < 50% of max building coverage outside setback <sup>2</sup> |     |                | < 25% of max building coverage outside setback <sup>2</sup> |     |                |
|--------------------------------|---------|---------------------------------------|---|-----|----------------|---|-----|----------------|
|                                |         |                                       | Total   | Dev | Undev          | Total   | Dev | Undev          |
| Existing, 25-foot              | 70      | 40                                    | 7   | 3   | 4              | 5   | 2   | 3              |
| Existing, 50-foot <sup>3</sup> | 35      | 44                                    | 15  | 12  | 3              | 8   | 7   | 1              |
| Existing, Total                | 105     | 84                                    | 22  | 15  | 7              | 13  | 9   | 4              |
| New 50-foot <sup>4</sup>       | 112     | 98                                    | 31  | 22  | 9 <sup>5</sup> | 20  | 14  | 6 <sup>5</sup> |
| New 100 feet <sup>4</sup>      | 137     | 136                                   | 53  | 44  | 9              | 38  | 31  | 7              |

<sup>1</sup> Includes all structures where at least a portion of the building is non-conforming at the identified setback distance.

<sup>2</sup> Irregular, small “sliver” tax lots not included in these estimates. These tax lots are associated with an adjacent lot.

<sup>3</sup> Tax lots in the existing Greenway Water Quality overlay zone are currently subject to a minimum 50-foot setback.

<sup>4</sup> Totals shown are cumulative (existing and proposed).

<sup>5</sup> These 2 additional lots are zoned R20. Max building calc for R20 (lots between 5,000 sf and 20,000 sf): 2,250 sq. ft + 15% of lot area over 5,000 sq. ft

When compared to the existing Greenway setback, the 50-foot river setback would result in nine additional tax lots (31 total lots) would have less than 50 percent of the maximum building coverage remaining outside of the river setback; seven developed properties and two undeveloped tax lots. Twenty of those lots (65 percent) would have less than 25 percent of the maximum building coverage remaining.

Compared to the 50-foot setback, the 100-foot river setback would result in 22 additional tax lots with less than 50 percent of the maximum building coverage remaining outside of the setback, all of them developed. No additional undeveloped lots would have less than 50 percent of the maximum building coverage, but one undeveloped property would have less than 25 percent remaining. The additional 22 tax lots represents a 71 percent increase from the 50-foot setback total. Eighteen of the lots (82 percent) would have less than 25 percent of the maximum building coverage remaining.

River Environmental Overlay

The River Environmental (River e) overlay zone is a new overlay zone that will replace the existing Greenway overlay zones in the South Reach. In the Proposed Draft, the River e is proposed to be applied to the setback (within 50 feet of top of bank), all floodplains, high- and medium-ranked riparian resources and all Special Habitat Areas. The River e “protects, conserves and enhances important natural resource functions and values, while allowing environmentally sensitive development” (33.475.020.A.3.). As such, it does not preclude development but rather requires that development impacts on natural resources be avoided, minimized or mitigated.



Key components of the River e include the following:

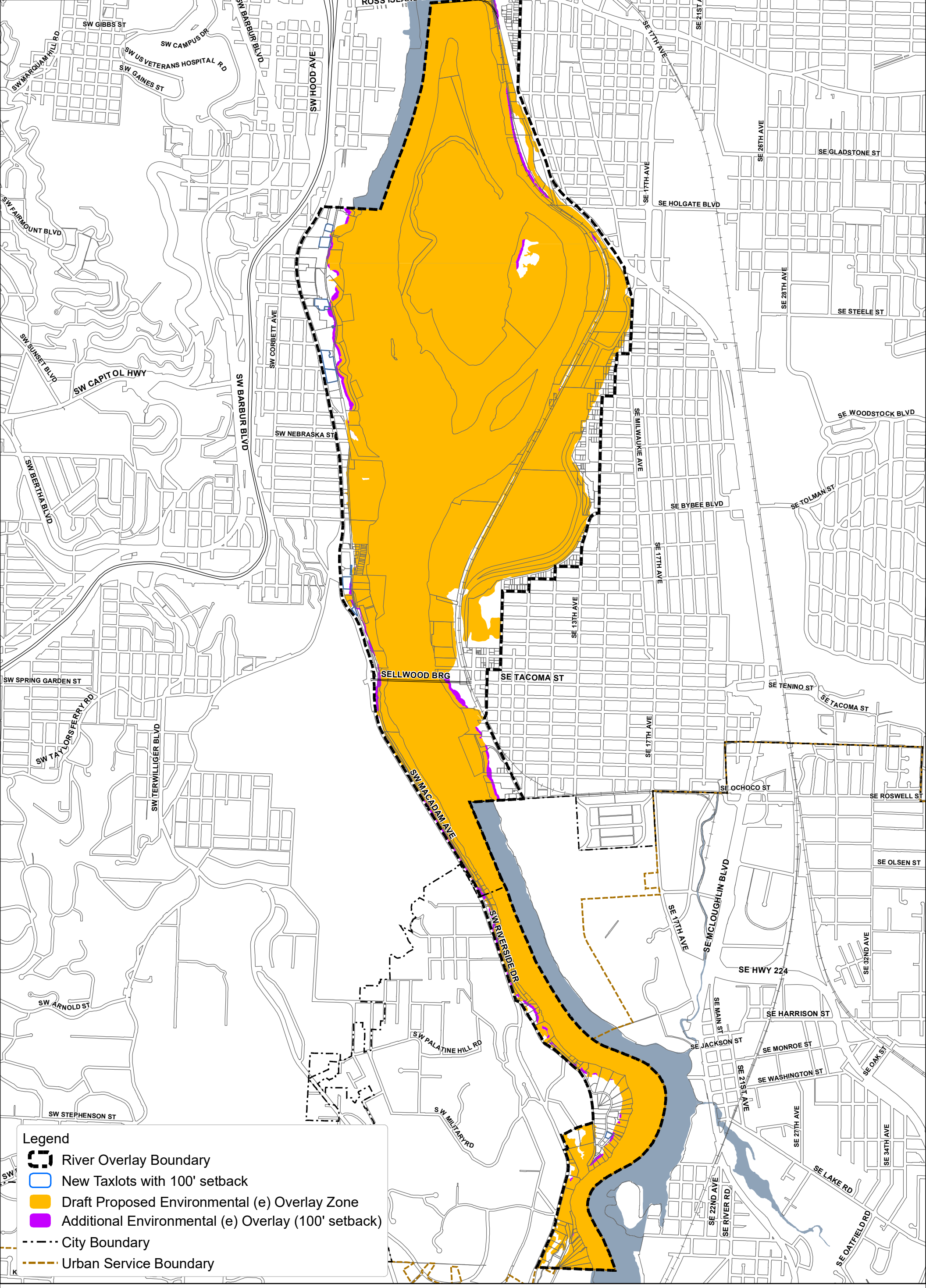
- Two-track system for demonstrating compliance: either use of development standards or review. The River e includes a range of development standards, including for trails, residential development, tree and vegetation removal and pruning, mitigation, utilities and others. If development standards can't be met, River Review is required. The existing Greenway overlay zone does not include development standards.
- Existing development can stay, be maintained and, in most cases, be replaced in current building footprint.
- River Plan/South Reach code updates (1) modify regulations to improve floodplain regulations and reduce future flood risk, (2) allow for the future use of mitigation bank credits, in addition to on-site and off-site mitigation, and (3) establish standards for land divisions, property line adjustments and planned developments.
- Includes a new process for correcting River e violations. In many cases, violations can be resolved without River Review. This is expected to speed up resolution of certain types of violations.

#### Conclusion/Recommendation

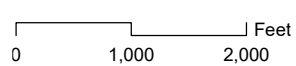
Staff determined that to best ensure ongoing habitat improvements and reduce future flood risk in the area within 100 feet of the top of bank, a combination of strategies would be most effective:

1. Maintain the proposed 50-foot setback for all properties in the South Reach.
2. Apply the River e overlay zone to all land within 100 feet of top of bank to ensure that mitigation is required in this area for any development impacts on natural resources moving forward. The River e overlay zone would continue to be applied to other important natural resources beyond 100 feet from top of bank, including all floodplains, high- and medium-ranked riparian resources and all designated Special Habitat Areas.
3. Establish a riparian buffer area, which includes all floodplains within 170 feet of ordinary high water, as proposed in the Proposed Draft. In this vital floodplain area, mitigation of development would be required to achieve "beneficial gain", defined as a significant improvement in at least one floodplain-related functional value and no net loss of all other natural resources and functional values.





# Draft River Environmental Overlay Zone - South Reach



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