

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING ) ORDINANCE NO 00-839  
METRO ORDINANCE NO. 98-730C, )  
TITLE 3 AND TITLE 8 OF THE URBAN )  
GROWTH MANAGEMENT ) Introduced by Councilor Rod Park  
FUNCTIONAL PLAN AND THE )  
REGIONAL FRAMEWORK PLAN )

WHEREAS, Ordinance No. 96-647C, the 1996 Urban Growth Management Functional Plan (“UGMFP”), was adopted to provide early implementation of Metro’s Region 2040 Growth Concept; and

WHEREAS, Title 3 of the 1996 UGMFP delayed implementation of Sections 1-4 of Title 3 (Water Quality and Fish and Wildlife Habitat Conservation) until Metro adopted a Model Ordinance, to demonstrate an approved method of implementing Title 3, and Water Quality and Flood Management Area maps. The 1996 UGMFP provided that once the Model Ordinance and maps were adopted, local governments had 24 months to amend their comprehensive plans and implementing ordinances to comply with Title 3; and

WHEREAS, the Metro Council adopted Ordinance No. 97-715B, the Regional Framework Plan (“RFP”), in December, 1997, to “address” policy topics listed in the Metro Charter. Ordinance 97-715B included the 1996 UGMFP as Appendix A of the RFP upon the recommendation of the Metro Policy Advisory Committee (“MPAC”). The RFP has been pending before the Land Conservation and Development Commission (“LCDC”) for acknowledgement since December, 1997; and

WHEREAS, the Metro Council included Appendix A in the RFP because the Council and MPAC desired consistency between the UGMFP’s early implementation of the 2040 Growth Concept and implementation of similar policies in the RFP; and

WHEREAS, LCDC interprets Goal 2 to require that as part of its acknowledgment procedure that “plans” contain implementation measures to carry out the policies in the plan. Including the UGMFP in the RFP demonstrates how RFP policies will be implemented as part of the plan; and

WHEREAS, when the Metro Charter committee developed the requirement that the RFP must “address” nine planning issues and the requirement, codified in ORS 268.390(5), that Metro “may” adopt “implementing ordinances”, it did not distinguish, as LCDC does, between ordinances that “implement” a plan by enforcing it and a plan which contains “implementation” provisions in the plan itself; and

WHEREAS, implementing “ordinances” as used in ORS 268.390(5) are ordinances that administer and enforce the RFP such as “adjudication” of consistency and determination of “patterns or practices” which includes policies and implementation directives; and

WHEREAS, at the time the RFP was adopted, the Metro Council could not foresee the time that LCDC would take to begin acknowledgment review of the RFP, or how LCDC would apply ORS 197.274 to accomplish RFP acknowledgment, creating a longer interim period when UGMFP compliance timelines and RFP acknowledgment timelines may be different; and

WHEREAS, the Metro Council adopted Ordinance No. 98-730C on June 18, 1998, to complete work required by the 1996 UGMFP by amending Title 3 of the UGMFP, adopting the Title 3 Model Ordinance, adopting Water Quality and Flood Management Area maps and amending Title 8 of the UGMFP to require local governments to comply with Title 3 of the UGMFP within 18 months; and

WHEREAS, Ordinance 98-730C also included corresponding amendments to Appendix A of the RFP; and

WHEREAS, on November 10, 1999, the Land Use Board of Appeals issued a final order remanding Ordinance No. 98-730C and sustaining one of appellants’ claims of error that the addition of the 18 month time for compliance with Title 3 of the UGMFP violated ORS 268.390(5); and

WHEREAS, LUBA held that had the 18 month compliance deadline imposed in Ordinance No. 98-730C been confined to just the UGMFP, that the compliance deadlines imposed would be consistent with Metro’s broad authority to adopt and implement functional plans under ORS 268.390(2) and (4); and

WHEREAS, LUBA held that the appellants’ claims that Ordinance 98-730C violated Goal 5 should be deferred to LCDC because the RFP, including the Title 3 component in Appendix A, is currently pending before LCDC for acknowledgment; and

WHEREAS, the Title 3 component in Appendix A of the RFP is currently scheduled for acknowledgment review by LCDC in February, 2000; and

WHEREAS, in response to LUBA’s remand of Ordinance No. 98-730C the Metro Council is readopting Ordinance 98-730C with the amendments shown herein.

WHEREAS, this ordinance responds to the LUBA remand by deleting the compliance timelines in Title 3 of the UGMFP and the corresponding section of Appendix A of the RFP, leaving Title 8 of the UGMFP as the only provision of the UGMFP which sets forth compliance timelines that apply to local government implementation of Sections 1-4 of Title 3 of the UGMFP; and

WHEREAS, this ordinance clarifies that the compliance timelines in Title 8 of the UGMFP, which apply to Title 3 of the UGMFP, apply only to Title 3 of the UGMFP, and not to the Title 3 component in Appendix A of the RFP. Compliance with the RFP requirements corresponding to Title 3 will be consistent with ORS 268.390(5) instead of the 18 month compliance timeline which applies to the Title 3 of the UGMFP; and

WHEREAS, this ordinance clarifies that Title 8, Section 3 of the UGMFP, which requires that prior to amending comprehensive plans to comply with the UGMFP, amendments to local government comprehensive plan and implementing ordinances must be consistent with the UGMFP, does not apply to the Title 3 component of Appendix A of the RFP; and

WHEREAS, this ordinance clarifies that January 27, 2000, is the date by which local governments must comply with Sections 1-4 of Title 3 of the UGMFP, unless the local government has received an extension for compliance consistent with Title 8 of the UGMFP prior to adoption of this ordinance, or requests and receives such an extension; and

WHEREAS, this ordinance amends the RFP text to recognize that initial acknowledgment of Metro's RFP will be a component by component approach; and

WHEREAS, the Metro Council has included a severability clause in this ordinance in the event that any part of this ordinance is invalidated to allow severance of any invalidated provision leaving as much of the ordinance as possible enforceable consistent with the strong public policy to do so; now therefore

THE METRO COUNCIL ORDAINS:

1. Ordinance No. 98-730C is hereby readopted with amendments as follows:

Section 1. Ordinances No. 96-647C and No. 97-715B, Appendix A, Sections 3.07.310 through 3.07.340 are hereby replaced to read as shown in Exhibit A which is attached and incorporated by reference into this ordinance.

Section 2. Ordinances No. 96-647C and No. 97-715B, Appendix A, Sections 3.07.350 through 3.07.370 are hereby amended to read as shown in Exhibit B which is attached and incorporated by reference into this ordinance.

Section 3. As required by Ordinances No. 96-647C and No. 97-715B, Appendix A, as amended, the Model Ordinance at Exhibit C, and the Water Quality and Flood Management Area maps at Exhibit D are hereby adopted.

Section 4. To provide effective notice to affected property owners of the first city or county hearing on the ordinance to implement Title 3, of the Urban Growth Management Functional Plan the following effective dates, local hearing and property owner notice requirements are added to Title 8 of the Urban Growth Management Functional Plan.

Section 1 of Title 8 of the Urban Growth Management Functional Plan at Metro Code Section 3.07.810 is hereby amended to read:

- “A. All cities and counties within the Metro boundary are hereby required to amend their comprehensive plans and implementing ordinances to comply with the provisions of this functional plan within twenty-four months of the effective date of this ordinance. Metro recommends the adoption of the policies that affect land consumption as soon as possible.
- B. Notwithstanding subsection A of this section, cities and counties are required to amend their comprehensive plans and implementing ordinances to comply with Sections 1-4 of Title 3 by January , 2000.”

Section 5. Title 8 of Appendix A of the Regional Framework Plan at Metro Code Section 3.07.810 is hereby amended to read:

- “A. All cities and counties within the Metro boundary are hereby required to amend their comprehensive plans and implementing ordinances to comply with the provisions of this functional plan, except Title 3, within twenty-four months of the effective date of this ordinance. Metro recommends the adoption of the policies that affect land consumption as soon as possible.
- B. Notwithstanding subsection A of this section, cities and counties are required to apply Sections 1-4 of Title 3 of this Regional Framework Plan within one year of acknowledgment of this plan.”

Section 6. Section 2A of Title 8 of the Urban Growth Management Functional Plan at Metro Code Section 3.07.820 is hereby replaced to read:

- “A. On or before six months prior to the 24 month deadline established in Section 1A, cities and counties shall transmit to Metro the following:
  - 1. An evaluation of their local plans, including public facility capacities and the amendments necessary to comply with this functional plan;
  - 2. Copies of all applicable comprehensive plans and implementing ordinances and public facility plans, as proposed to be amended;

3. Findings that explain how the amended city and county comprehensive plans will achieve the standards required in Titles 1 through 6 of this functional plan.

In developing the evaluation, plan and ordinance amendments and findings, cities and counties shall address the Metro 2040 Growth Concept, and explain how the proposed amendments implement the Growth Concept.”

Section 7. Section 2 of Title 8 of the Urban Growth Management Functional Plan at Metro Code Section 3.07.820 is hereby amended to add a new subsection as follows:

“F. On or before six months prior to the 18 month deadline established in Section 1B, cities and counties shall schedule their first hearing on the ordinance to implement Section 1-4 of Title 3, or a hearing on implementation of Title 3, if no code amendments are proposed to comply with Title 3, and transmit notice of that hearing and a copy of the proposed ordinance to Metro at least 30 days prior to the hearing.

1. Metro shall prepare and mail a notice of the city or county hearing to each affected property owner.
2. The Metro notice shall include the date, time, location and the title and number of any ordinance; an explanation of the general requirements of Title 3, and an explanation of the implementation in the local ordinance, if no code amendments are proposed to comply with Title 3.
3. Metro shall review any amendments to Title 3 proposed by cities and counties based on the testimony of property owners.”

Section 8. Section 2 of Title 8 of the Urban Growth Management Functional Plan at Metro Code Section 3.07.820 is hereby amended to add a new subsection as follows:

“G. On or before six months prior to the 18 month deadline established in Section 1B, cities and counties shall transmit to Metro the following:

1. An evaluation of their local plans, including any relevant existing regulations and the amendments necessary to comply with Title 3 of this functional plan;
2. Copies of all applicable comprehensive plans, maps and implementing ordinances as proposed to be amended;

3. Findings that explain how the amended city and county comprehensive plans, maps and implementing ordinances will achieve the standards required in Title 3 of this functional plan.

In developing the evaluation, plan and ordinance amendments and findings, cities and counties shall address the Metro 2040 Growth Concept, and explain how the proposed amendments implement the Growth Concept.”

Section 9. In accordance with Title 8, Section 3 of the Urban Growth Management Functional Plan, Ordinances No. 96-647C, any amendment of city or county comprehensive plans or implementing ordinances shall be consistent with Ordinances No. 96-647C, Sections 3.07.310 through 3.07.370 of the Metro Urban Growth Management Functional Plan as amended after the date this ordinance becomes effective.

Section 10. Each city and county is hereby required to comply with Title 3, Section 1-4 of the Urban Growth Management Functional Plan by January 27, 2000 unless the Metro has granted an extension to that city or county prior to adoption of this ordinance.

Section 11. Ordinances No. 96-647C and No. 97-715B, Appendix A, Section 3.07.1000 is hereby amended to add and replace definitions shown in Exhibit E which is attached and incorporated by reference into this ordinance.

Section 12. The provisions of this ordinance are separate and severable. The invalidity of any clause, sentence, paragraph, section, subsection, or portion of this ordinance or the invalidity of the application thereof to any city, county, person or circumstance shall not affect the validity of the remaining provisions of this ordinance or its application to other cities, counties, persons or circumstances.

2. Ordinance 98-730C is hereby amended to add a Section 13 to clarify that the Title 8, Section 3 requirement of consistency for local amendments of plans and implementing ordinances in Appendix A of the RFP does not apply until one year after acknowledgment of the RFP. The requirements of Title 8, Section 3 of the Urban Growth Management Functional Plan continues to apply to local adoption of comprehensive plans and implementing ordinances to comply with the Urban Growth Management Functional Plan. That new section reads as follows:

“Section 13. Notwithstanding the requirements of Title 8, 3.07.810(A), of Appendix A of Ordinance No. 97-715B, the provisions of Title 8, 3.07.830, of Appendix A of Ordinance No. 97-715B shall not apply until one year after acknowledgment of the Regional Framework Plan. Local governments must continue to comply with Title 8, 3.07.830, of the Urban Growth Management Functional Plan until local adoption of comprehensive plan and implementing ordinances to comply with the Urban Growth Management Functional Plan.”

3. Ordinance 97-715B is hereby amended to add the following provision to Chapter 7.3 of the Regional Framework Plan:

“Consistent with ORS 197.015(16) which defines the Regional Framework Plan in terms of components, the Regional Framework Plan shall be considered for acknowledgment in components as determined by LCDC.”

4. Ordinance No. 97-715B is hereby amended to add the following provisions to Chapter 8 (Implementation) of the Regional Framework Plan consistent with ORS 268.390(5):

“Administration:

Subsequent to acknowledgment of the Regional Framework Plan, Metro shall adopt implementing ordinances to administer this plan as follows:

Establish a procedure for each city and county to make land use decisions which apply the Regional Framework Plan beginning one year after the Regional Framework Plan is acknowledged.

Establish a process to assure that local plans and regulations comply with the Regional Framework Plan within two years of acknowledgment by LCDC.

Enforcement:

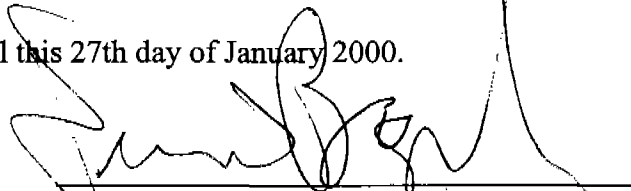
Subsequent to acknowledgment of the Regional Framework Plan, Metro shall adopt implementing ordinances to enforce this plan as follows:

Establish a process for Metro to adjudicate and determine consistency of local comprehensive plans and implementing ordinances with the Regional Framework Plan.


Establish a process for Metro to determine whether changes in local land use standards and procedures are necessary to remedy patterns and practices of decision-making inconsistent with the Regional Framework Plan.”

5. The provisions of this ordinance are separate and severable. The invalidity of any clause, sentence, paragraph, section, subsection, or portion of this ordinance or the invalidity of the application thereof to any city, county, person or circumstance shall not affect the validity of the remaining provisions of this ordinance or its application to other cities, counties, persons or circumstances.
6. The Council designates the entire record before LUBA in Case No. 98-116 and any written or oral evidence submitted at the January 18, 2000, Growth Management hearings and January 27, 2000, Metro Council hearings as the record for this ordinance.
7. This ordinance is necessary for the immediate preservation of public health, safety and welfare due to the need to protect water quality and improve flood management; an emergency is therefore declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter Section 39(1).

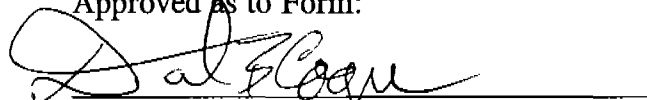
ADOPTED by the Metro Council this 27th day of January 2000.

  
\_\_\_\_\_  
David Bragdon, Presiding Officer

ATTEST:

  
\_\_\_\_\_  
Recording Secretary

Approved as to Form:

  
\_\_\_\_\_  
Daniel B. Cooper, General Counsel

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OGC/KDH/kvw (01/28/2000)



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING ) ORDINANCE NO 00-839  
METRO ORDINANCE NO. 98-730C, )  
TITLE 3 AND TITLE 8 OF THE URBAN )  
GROWTH MANAGEMENT ) Introduced by Councilor Rod Park  
FUNCTIONAL PLAN AND THE )  
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WHEREAS, Ordinance No. 96-647C, the 1996 Urban Growth Management Functional Plan (“UGMFP”), was adopted to provide early implementation of Metro’s Region 2040 Growth Concept; and

WHEREAS, Title 3 of the 1996 UGMFP delayed implementation of Sections 1-4 of Title 3 (Water Quality and Fish and Wildlife Habitat Conservation) until Metro adopted a Model Ordinance, to demonstrate an approved method of implementing Title 3, and Water Quality and Flood Management Area maps. The 1996 UGMFP provided that once the Model Ordinance and maps were adopted, local governments had 24 months to amend their comprehensive plans and implementing ordinances to comply with Title 3; and

WHEREAS, the Metro Council adopted Ordinance No. 97-715B, the Regional Framework Plan (“RFP”), in December, 1997, to “address” policy topics listed in the Metro Charter. Ordinance 97-715B included the 1996 UGMFP as Appendix A of the RFP upon the recommendation of the Metro Policy Advisory Committee (“MPAC”). The RFP has been pending before the Land Conservation and Development Commission (“LCDC”) for acknowledgement since December, 1997; and

WHEREAS, the Metro Council included Appendix A in the RFP because the Council and MPAC desired consistency between the UGMFP’s early implementation of the 2040 Growth Concept and implementation of similar policies in the RFP; and

WHEREAS, LCDC interprets Goal 2 to require that as part of its acknowledgment procedure that “plans” contain implementation measures to carry out the policies in the plan. Including the UGMFP in the RFP demonstrates how RFP policies will be implemented as part of the plan; and

WHEREAS, when the Metro Charter committee developed the requirement that the RFP must “address” nine planning issues and the requirement, codified in ORS 268.390(5), that Metro “may” adopt “implementing ordinances”, it did not distinguish, as LCDC does, between ordinances that “implement” a plan by enforcing it and a plan which contains “implementation” provisions in the plan itself; and

WHEREAS, implementing “ordinances” as used in ORS 268.390(5) are ordinances that administer and enforce the RFP such as “adjudication” of consistency and determination of “patterns or practices” which includes policies and implementation directives; and

WHEREAS, at the time the RFP was adopted, the Metro Council could not foresee the time that LCDC would take to begin acknowledgment review of the RFP, or how LCDC would apply ORS 197.274 to accomplish RFP acknowledgment, creating a longer interim period when UGMFP compliance timelines and RFP acknowledgment timelines may be different; and

WHEREAS, the Metro Council adopted Ordinance No. 98-730C on June 18, 1998, to complete work required by the 1996 UGMFP by amending Title 3 of the UGMFP, adopting the Title 3 Model Ordinance, adopting Water Quality and Flood Management Area maps and amending Title 8 of the UGMFP to require local governments to comply with Title 3 of the UGMFP within 18 months; and

WHEREAS, Ordinance 98-730C also included corresponding amendments to Appendix A of the RFP; and

WHEREAS, on November 10, 1999, the Land Use Board of Appeals issued a final order remanding Ordinance No. 98-730C and sustaining one of appellants’ claims of error that the addition of the 18 month time for compliance with Title 3 of the UGMFP violated ORS 268.390(5); and

WHEREAS, LUBA held that had the 18 month compliance deadline imposed in Ordinance No. 98-730C been confined to just the UGMFP, that the compliance deadlines imposed would be consistent with Metro’s broad authority to adopt and implement functional plans under ORS 268.390(2) and (4); and

WHEREAS, LUBA held that the appellants’ claims that Ordinance 98-730C violated Goal 5 should be deferred to LCDC because the RFP, including the Title 3 component in Appendix A, is currently pending before LCDC for acknowledgment; and

WHEREAS, the Title 3 component in Appendix A of the RFP is currently scheduled for acknowledgment review by LCDC in February, 2000; and

WHEREAS, in response to LUBA’s remand of Ordinance No. 98-730C the Metro Council is readopting Ordinance 98-730C with the amendments shown herein.

WHEREAS, this ordinance responds to the LUBA remand by deleting the compliance timelines in Title 3 of the UGMFP and the corresponding section of Appendix A of the RFP, leaving Title 8 of the UGMFP as the only provision of the UGMFP which sets forth compliance timelines that apply to local government implementation of Sections 1-4 of Title 3 of the UGMFP; and

WHEREAS, this ordinance clarifies that the compliance timelines in Title 8 of the UGMFP, which apply to Title 3 of the UGMFP, apply only to Title 3 of the UGMFP, and not to the Title 3 component in Appendix A of the RFP. Compliance with the RFP requirements corresponding to Title 3 will be consistent with ORS 268.390(5) instead of the 18 month compliance timeline which applies to the Title 3 of the UGMFP; and

WHEREAS, this ordinance clarifies that Title 8, Section 3 of the UGMFP, which requires that prior to amending comprehensive plans to comply with the UGMFP, amendments to local government comprehensive plan and implementing ordinances must be consistent with the UGMFP, does not apply to the Title 3 component of Appendix A of the RFP; and

WHEREAS, this ordinance clarifies that January 27, 2000, is the date by which local governments must comply with Sections 1-4 of Title 3 of the UGMFP, unless the local government has received an extension for compliance consistent with Title 8 of the UGMFP prior to adoption of this ordinance, or requests and receives such an extension; and

WHEREAS, this ordinance amends the RFP text to recognize that initial acknowledgment of Metro's RFP will be a component by component approach; and

WHEREAS, the Metro Council has included a severability clause in this ordinance in the event that any part of this ordinance is invalidated to allow severance of any invalidated provision leaving as much of the ordinance as possible enforceable consistent with the strong public policy to do so; now therefore

THE METRO COUNCIL ORDAINS:

1. Ordinance No. 98-730C is hereby readopted with amendments as follows:

Section 1. Ordinances No. 96-647C and No. 97-715B, Appendix A, Sections 3.07.310 through 3.07.340 are hereby replaced to read as shown in Exhibit A which is attached and incorporated by reference into this ordinance.

Section 2. Ordinances No. 96-647C and No. 97-715B, Appendix A, Sections 3.07.350 through 3.07.370 are hereby amended to read as shown in Exhibit B which is attached and incorporated by reference into this ordinance.

Section 3. As required by Ordinances No. 96-647C and No. 97-715B, Appendix A, as amended, the Model Ordinance at Exhibit C, and the Water Quality and Flood Management Area maps at Exhibit D are hereby adopted to ~~implement Title 3 of the Urban Growth Management Functional Plan.~~

Section 4. To provide effective notice to affected property owners of the first city or county hearing on the ordinance to implement Title 3, of the Urban Growth Management Functional Plan the following effective dates, local hearing and property owner notice requirements are added to Title 8 of the Urban Growth Management Functional Plan.

Section 1 of Title 8 of the Urban Growth Management Functional Plan at Metro Code Section 3.07.810 is hereby amended to read:

- “A. All cities and counties within the Metro boundary are hereby required to amend their comprehensive plans and implementing ordinances to comply with the provisions of this functional plan within twenty-four months of the effective date of this ordinance. Metro recommends the adoption of the policies that affect land consumption as soon as possible.
- B. Notwithstanding subsection A of this section, cities and counties are required to amend their comprehensive plans and implementing ordinances to comply with Sections 1-4 of Title 3 by January \_\_\_\_\_, 2000. ~~within 18 months after the Metro Council has adopted the Model Ordinance and Water Quality and Flood Management Areas Map”~~

Section 5. Title 8 of Appendix A of the Regional Framework Plan at Metro Code Section 3.07.810 is hereby amended to read:

- “A. All cities and counties within the Metro boundary are hereby required to amend their comprehensive plans and implementing ordinances to comply with the provisions of this functional plan, except Title 3, within twenty-four months of the effective date of this ordinance. Metro recommends the adoption of the policies that affect land consumption as soon as possible.
- B. Notwithstanding subsection A of this section, cities and counties are required to apply Sections 1-4 of Title 3 of this Regional Framework Plan within one year of acknowledgment of this plan.”

Section 65. Section 2A of Title 8 of the Urban Growth Management Functional Plan at Metro Code Section 3.07.820 is hereby replaced to read:

- “A. On or before six months prior to the 24 month deadline established in Section 1A, cities and counties shall transmit to Metro the following:
1. An evaluation of their local plans, including public facility capacities and the amendments necessary to comply with this functional plan;

2. Copies of all applicable comprehensive plans and implementing ordinances and public facility plans, as proposed to be amended;
3. Findings that explain how the amended city and county comprehensive plans will achieve the standards required in Titles 1 through 6 of this functional plan.

In developing the evaluation, plan and ordinance amendments and findings, cities and counties shall address the Metro 2040 Growth Concept, and explain how the proposed amendments implement the Growth Concept.”

Section 76. Section 2 of Title 8 of the Urban Growth Management Functional Plan at Metro Code Section 3.07.820 is hereby amended to add a new subsection as follows:

“F. On or before six months prior to the 18 month deadline established in Section 1B, cities and counties shall schedule their first hearing on the ordinance to implement Section 1-4 of Title 3, or a hearing on implementation of Title 3, if no code amendments are proposed to comply with Title 3, and transmit notice of that hearing and a copy of the proposed ordinance to Metro at least 30 days prior to the hearing.

1. Metro shall prepare and mail a notice of the city or county hearing to each affected property owner.
2. The Metro notice shall include the date, time, location and the title and number of any ordinance; an explanation of the general requirements of Title 3, and an explanation of the implementation in the local ordinance, if no code amendments are proposed to comply with Title 3.
3. Metro shall review any amendments to Title 3 proposed by cities and counties based on the testimony of property owners.”

Section 87. Section 2 of Title 8 of the Urban Growth Management Functional Plan at Metro Code Section 3.07.820 is hereby amended to add a new subsection as follows:

“G. On or before six months prior to the 18 month deadline established in Section 1B, cities and counties shall transmit to Metro the following:

1. An evaluation of their local plans, including any relevant existing regulations and the amendments necessary to comply with Title 3 of this functional plan;

2. Copies of all applicable comprehensive plans, maps and implementing ordinances as proposed to be amended;
3. Findings that explain how the amended city and county comprehensive plans, maps and implementing ordinances will achieve the standards required in Title 3 of this functional plan.

In developing the evaluation, plan and ordinance amendments and findings, cities and counties shall address the Metro 2040 Growth Concept, and explain how the proposed amendments implement the Growth Concept.”

Section 98. In accordance with Title 8, Section 3 of the Urban Growth Management Functional Plan, Ordinances No. 96-647C, ~~and No. 97-715B, Appendix A~~, any amendment of city or county comprehensive plans or implementing ordinances shall be consistent with Ordinances No. 96-647C ~~and No. 97-715B, Appendix A~~, Sections 3.07.310 through 3.07.370 of the Metro Urban Growth Management Functional Plan as amended after the date this ordinance becomes effective.

Section 109. ~~Each Ccityies and countyies isare~~ hereby required to comply with Title 3, Section 1-4 of the Urban Growth Management Functional Plan, ~~as amended herein, within 18 months of the adoption of this ordinance by January 27, 2000 unless the Metro has granted an extension to that city or county prior to adoption of this ordinance.~~

Section 1140. Ordinances No. 96-647C and No. 97-715B, Appendix A, Section 3.07.1000 is hereby amended to add and replace definitions shown in Exhibit E which is attached and incorporated by reference into this ordinance.

Section 1211. The provisions of this ordinance are separate and severable. The invalidity of any clause, sentence, paragraph, section, subsection, or portion of this ordinance or the invalidity of the application thereof to any city, county, person or circumstance shall not affect the validity of the remaining provisions of this ordinance or its application to other cities, counties, persons or circumstances.

2. Ordinance 98-730C is hereby amended to add a Section 13 to clarify that the Title 8, Section 3 requirement of consistency for local amendments of plans and implementing ordinances in Appendix A of the RFP does not apply until one year after acknowledgment of the RFP. The requirements of Title 8, Section 3 of the Urban Growth Management Functional Plan continues to apply to local adoption of comprehensive plans and implementing ordinances to comply with the Urban Growth Management Functional Plan. That new section reads as follows:

Section 13. Notwithstanding the requirements of Title 8, 3.07.810(A), of Appendix A of Ordinance No. 97-715B, the provisions of Title 8, 3.07.830, of Appendix A of Ordinance No. 97-715B shall not apply until one year after acknowledgment of the Regional Framework Plan. Local governments must continue to comply with Title 8, 3.07.830, of the Urban Growth Management Functional Plan until local adoption of comprehensive plan and implementing ordinances to comply with the Urban Growth Management Functional Plan.”

3. Ordinance 97-715B is hereby amended to add the following provision to Chapter 7.3 of the Regional Framework Plan:

“Consistent with ORS 197.015(16) which defines the Regional Framework Plan in terms of components, the Regional Framework Plan shall be considered for acknowledgment in components as determined by LCDC.”

4. Ordinance No. 97-715B is hereby amended to add the following provisions to Chapter 8 (Implementation) of the Regional Framework Plan consistent with ORS 268.390(5):

“Administration:

Subsequent to acknowledgment of the Regional Framework Plan, Metro shall adopt implementing ordinances to administer this plan as follows:

Establish a procedure for each city and county to make land use decisions which apply the Regional Framework Plan beginning one year after the Regional Framework Plan is acknowledged.

Establish a process to assure that local plans and regulations comply with the Regional Framework Plan within two years of acknowledgment by LCDC.

Enforcement:

Subsequent to acknowledgment of the Regional Framework Plan, Metro shall adopt implementing ordinances to enforce this plan as follows:

Establish a process for Metro to adjudicate and determine consistency of local comprehensive plans and implementing ordinances with the Regional Framework Plan.

Establish a process for Metro to determine whether changes in local land use standards and procedures are necessary to remedy patterns and practices of decision-making inconsistent with the Regional Framework Plan.”

5. The provisions of this ordinance are separate and severable. The invalidity of any clause, sentence, paragraph, section, subsection, or portion of this ordinance or the invalidity of the application thereof to any city, county, person or circumstance shall not affect the validity of the remaining provisions of this ordinance or its application to other cities, counties, persons or circumstances.
6. The Council designates the entire record before LUBA in Case No. 98-116 and any written or oral evidence submitted at the January 18, 2000, Growth Management hearings and January 27, 2000, Metro Council hearings as the record for this ordinance.
7. This ordinance is necessary for the immediate preservation of public health, safety and welfare due to the need to protect water quality and improve flood management; an emergency is therefore declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter Section 39(1).

ADOPTED by the Metro Council this 27th day of January 2000.

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David Bragdon, Presiding Officer

ATTEST:

Approved as to Form:

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Recording Secretary

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Daniel B. Cooper, General Counsel

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OGC/KDH/kvw (01/28/2000)



**EXHIBIT A**

## **TITLE 3: WATER QUALITY, FLOOD MANAGEMENT AND FISH AND WILDLIFE CONSERVATION**

### **Section 1. Intent**

To protect the beneficial water uses and functions and values of resources within the Water Quality and Flood Management Areas by limiting or mitigating the impact on these areas from development activities, protecting life and property from dangers associated with flooding and working toward a regional coordination program of protection for Fish and Wildlife Habitat Areas.

### **Section 2. Applicability**

#### **A. This Title applies to:**

1. Development in Water Quality Resource and Flood Management Areas.
2. Development which may cause temporary or permanent erosion on any property within the Metro Boundary.
3. Development in Fish and Wildlife Habitat Conservation Areas when Metro's Section 5 analysis and mapping are completed.

#### **B. This title does not apply to work necessary to protect, repair, maintain, or replace existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements in response to emergencies provided that after the emergency has passed, adverse impacts are mitigated in accordance with the performance standards in Section 4.**

### **Section 3. Implementation Alternatives for Cities and Counties**

#### **A. Cities and counties shall comply with this Title in one of the following ways:**

1. Amend their comprehensive plans and implementing ordinances to adopt all or part of the Title 3 Model Ordinance or code language that substantially complies with the performance standards in Section 4 and the intent of this Title, and adopt either the Metro Water Quality and Flood Management Area Map or a map which substantially complies with the Metro map. Cities and counties may choose one of the following options for applying this section:
  - a. Adopt code language implementing this Title which prevails over the map and uses the map as reference; or

- b. **Adopt a city or county field verified map of Water Quality and Flood Management Areas based on the Metro Water Quality and Flood Management map, updated according to Section 7, implementing this Title which prevails over adopted code language.**

**Field verification is a process of identifying or delineating Protected Water Features, Water Quality Resource Areas and Flood Management Areas shown on the Metro Water Quality and Flood Management Areas map. This process includes examination of information such as site visit reports, wetlands inventory maps, aerial photographs, and public input and review. The field verification process shall result in a locally adopted Water Quality and Flood Management Areas map which:**

1. **Applies the Title 10 definitions of Protected Water Feature, Water Quality Resource Areas and Flood Management Areas to all those protected areas on the Metro Water Quality and Flood Management Areas map to show the specific boundaries of those protected areas on the locally adopted Water Quality and Flood Management Areas map; and**
  2. **Is subject to amendment by applying adopted code language to add Protected Water Features, Water Quality Resource Areas and Flood Management Areas and to correct errors in the local Water Quality and Flood Management Areas map as required by Section 7 and consistent with Section 3.D.**
2. **Demonstrate that existing city and county comprehensive plans and implementing ordinances substantially comply with the performance standards in Section 4 and the intent of this Title.**
  3. **Any combination of 1. and 2. above that substantially complies with all performance standards in Section 4.**

- B. **Cities and counties shall hold at least one public hearing prior to adopting comprehensive plan amendments, ordinances and maps implementing the performance standards in Section 4 of this Title or demonstrating that existing city or county comprehensive plans and implementing ordinances substantially comply with Section 4, to add Protected Water Features, and wetlands which meet the criteria in Section 7.C., to their Water Quality and Flood Management Area.**

map. The proposed comprehensive plan amendments, implementing ordinances and maps shall be available for public review at least 45 days prior to the public hearing.

- C. Cities and counties shall conduct a review of their Water Quality and Flood Management Areas map concurrent with local periodic review required by ORS 197.633 (1997).
- D. Some areas which would otherwise be mapped as Protected Water Features, Water Quality Resource Areas and Flood Management Areas do not appear on the Metro Water Quality and Flood Management Areas map because streams had been culverted, wetlands had been filled or a fill permit had been approved, or the area was demonstrated to have existing conflicting water dependent uses, or existing plans or agreements for such uses, or the area was developed or committed to other uses.

Notwithstanding any other provision of this Title, cities and counties are not required to establish Protected Water Features, Water Quality Resource Areas and Flood Management Areas through adopted code provisions or mapping for areas which were examined but not included on the Water Quality and Flood Management Areas map adopted by the Metro Council.

#### Section 4. Performance Standards

##### A. Flood Management Performance Standards.

1. The purpose of these standards is to reduce the risk of flooding, prevent or reduce risk to human life and property, and maintain functions and values of floodplains such as allowing for the storage and conveyance of stream flows through existing and natural flood conveyance systems.
2. All development, excavation and fill in the Flood Management Areas shall conform to the following performance standards:
  - a. Development, excavation and fill shall be performed in a manner to maintain or increase flood storage and conveyance capacity and not increase design flood elevations.
  - b. All fill placed at or below the design flood elevation in Flood Management Areas shall be balanced with at least an equal amount of soil material removal.
  - c. Excavation shall not be counted as compensating for fill if such areas will be filled with water in non-storm winter conditions.

- d. Minimum finished floor elevations for new habitable structures in the Flood Management Areas shall be at least one foot above the design flood elevation.
  - e. Temporary fills permitted during construction shall be removed.
  - f. Uncontained areas of hazardous materials as defined by DEQ in the Flood Management Area shall be prohibited.
3. The following uses and activities are not subject to the requirements of Subsection 2:
- a. Excavation and fill necessary to plant new trees or vegetation.
  - b. Excavation and fill required for the construction of detention facilities or structures, and other facilities such as levees specifically designed to reduce or mitigate flood impacts. Levees shall not be used to create vacant buildable lands.
  - c. New culverts, stream crossings, and transportation projects may be permitted if designed as balanced cut and fill projects or designed to not significantly raise the design flood elevation. Such projects shall be designed to minimize the area of fill in Flood Management Areas and to minimize erosive velocities. Stream crossing shall be as close to perpendicular to the stream as practicable. Bridges shall be used instead of culverts wherever practicable.

**B. Water Quality Performance Standards**

1. The purpose of these standards is to: 1) protect and improve water quality to support the designated beneficial water uses as defined in Title 10, and 2) protect the functions and values of the Water Quality Resource Area which include, but are not limited to:
- a. providing a vegetated corridor to separate Protected Water Features from development;
  - b. maintaining or reducing stream temperatures;
  - c. maintaining natural stream corridors;
  - d. minimizing erosion, nutrient and pollutant loading into water;
  - e. filtering, infiltration and natural water purification;

- f. stabilizing slopes to prevent landslides contributing to sedimentation of water features.
2. Local codes shall require all development in Water Quality Resource Areas to conform to the following performance standards:
- a. The Water Quality Resource Area is the vegetated corridor and the Protected Water Feature. The width of the vegetated corridor is specified in the table below. At least three slope measurements along the water feature, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending on the width of the property, the width of the vegetated corridor will vary.

Table 1.

Protected Water Feature Type (see definitions)	Slope Adjacent to Protected Water Feature	Starting Point for Measurements from Water Feature	Width of Vegetated Corridor
Primary Protected Water Features <sup>1</sup>	< 25%	<ul style="list-style-type: none"> <li>• Edge of bankful flow or 2-year storm level;</li> <li>• Delineated edge of Title 3 wetland</li> </ul>	50 feet
Primary Protected Water Features <sup>1</sup>	≥ 25% for 150 feet or more <sup>5</sup>	<ul style="list-style-type: none"> <li>• Edge of bankful flow or 2-year storm level;</li> <li>• Delineated edge of Title 3 wetland</li> </ul>	200 feet
Primary Protected Water Features <sup>1</sup>	≥ 25% for less than 150 feet <sup>5</sup>	<ul style="list-style-type: none"> <li>• Edge of bankful flow or 2-year storm level;</li> <li>• Delineated edge of Title 3 wetland</li> </ul>	Distance from starting point of measurement to top of ravine (break in ≥25% slope) <sup>3</sup> , plus 50 feet. <sup>4</sup>
Secondary Protected Water Features <sup>2</sup>	< 25%	<ul style="list-style-type: none"> <li>• Edge of bankful flow or 2-year storm level;</li> <li>• Delineated edge of Title 3 wetland</li> </ul>	15 feet
Secondary Protected Water Features <sup>2</sup>	≥ 25% <sup>5</sup>	<ul style="list-style-type: none"> <li>• Edge of bankful flow or 2-year storm level;</li> <li>• Delineated edge of Title 3 wetland</li> </ul>	50 feet

<sup>1</sup> Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, Title 3 wetlands, natural lakes and springs

<sup>2</sup> Secondary Protected Water Features include intermittent streams draining 50-100 acres.

<sup>3</sup> Where the Protected Water Feature is confined by a ravine or gully, the top of ravine is the break in the ≥ 25% slope (see slope measurement in Appendix).

<sup>4</sup> A maximum reduction of 25 feet may be permitted in the width of vegetated corridor beyond the slope break if a geotechnical report demonstrates that slope is stable. To establish the width of the vegetated corridor, slope should be measured in 25-foot increments away from the water feature until slope is less than 25% (top of ravine).

<sup>5</sup> Vegetated corridors in excess of 50-feet for primary protected features, or in excess of 15-feet for secondary protected features, apply on steep slopes only in the uphill direction from the protected water feature.

- b. Water Quality Resource Areas shall be protected, maintained, enhanced or restored as specified in Section 4.B.2.
- c. Prohibit development that will have a significant negative impact on the functions and values of the Water Quality Resource Area, which cannot be mitigated in accordance with 2.f.
- d. Vegetative cover native to the Portland metropolitan region shall be maintained, enhanced or restored, if disturbed, in the Water Quality Resource Area. Invasive non-native vegetation may be removed from the Water Quality Resource Area and replaced with native cover. Only native vegetation shall be used to enhance or restore the Water Quality Resource Area. This shall not preclude construction of energy dissipaters at outfalls consistent with watershed enhancement, and as approved by local surface water management agencies.
- e. Uncontained areas of hazardous materials as defined by DEQ in the Water Quality Resource Area shall be prohibited.
- f. Cities and counties may allow development in Water Quality Resource Areas provided that the governing body, or its designate, implement procedures which:
  - 1. Demonstrate that no practicable alternatives to the requested development exist which will not disturb the Water Quality Resource Area; and
  - 2. If there is no practicable alternative, limit the development to reduce the impact associated with the proposed use; and
  - 3. Where the development occurs, require mitigation to ensure that the functions and values of the Water Quality Resource Area are restored.
- g. Cities and counties may allow development for repair, replacement or improvement of utility facilities so long as the Water Quality Resource Area is restored consistent with Section 4.B.2(d).
- h. The performance standards of Section 4.B.2 do not apply to routine repair and maintenance of existing structures, roadways, driveways, utilities, accessory uses and other development.



3. For lots or parcels which are fully or predominantly within the Water Quality Resource Area and are demonstrated to be unbuildable by the vegetative corridor regulations, cities and counties shall reduce or remove vegetative corridor regulations to assure the lot or parcel will be buildable while still providing the maximum vegetated corridor practicable. Cities and counties shall encourage landowners to voluntarily protect these areas through various means, such as conservation easements and incentive programs.

**C. Erosion and Sediment Control**

1. The purpose of this section is to require erosion prevention measures and sediment control practices during and after construction to prevent the discharge of sediments.
2. Erosion prevention techniques shall be designed to prevent visible and measurable erosion as defined in Title 10.
3. To the extent erosion cannot be completely prevented, sediment control measures shall be designed to capture, and retain on-site, soil particles that have become dislodged by erosion.

**D. Implementation Tools to protect Water Quality and Flood Management Areas**

1. Cities and counties shall either adopt land use regulations, which authorize transfer of permitted units and floor area to mitigate the effects of development restrictions in Water Quality and Flood Management Areas, or adopt other measures that mitigate the effects of development restrictions.
2. Metro encourages local governments to require that approvals of applications for partitions, subdivisions and design review actions be conditioned upon one of the following:
  - a. Protection of Water Quality and Flood Management Areas with a conservation easement;
  - b. Platting Water Quality and Flood Management Areas as common open space; or
  - c. Offer of sale or donation of property to public agencies or private non-profits for preservation where feasible.

3. Additions, alterations, rehabilitation or replacement of existing structures, roadways, driveways, accessory uses and development in the Water Quality and Flood Management Area may be allowed provided that:
  - a. The addition, alteration, rehabilitation or replacement is not inconsistent with applicable city and county regulations, and
  - b. The addition, alteration, rehabilitation or replacement does not encroach closer to the Protected Water Feature than the existing structures, roadways, driveways or accessory uses and development, and
  - c. The addition, alteration, rehabilitation or replacement satisfies section 4.C. of this Title.
  - d. In determining appropriate conditions of approval, the affected city or county shall require the applicant to:
    1. Demonstrate that no reasonably practicable alternative design or method of development exists that would have a lesser impact on the Water Quality Resource Area than the one proposed; and
    2. If no such reasonably practicable alternative design or method of development exists, the project should be conditioned to limit its disturbance and impact on the Water Quality Resource to the minimum extent necessary to achieve the proposed addition, alteration, restoration, replacement or rehabilitation; and
    3. Provide mitigation to ensure that impacts to the functions and values of the Water Quality Resource Area will be mitigated or restored to the extent practicable.
4. Cities and counties may choose not to apply the Water Quality and Flood Management Area performance standards of Section 4 to development necessary for the placement of structures when it does not require a grading or building permit.
5. Metro encourages cities and counties to provide for restoration and enhancement of degraded Water Quality Resource Areas through conditions of approval when development is proposed, or through incentives or other means.

6. Cities and counties shall apply the performance standards of this Title to Title 3 Wetlands as shown on the Metro Water Quality and Flood Management Areas map and locally adopted Water Quality and Flood Management Areas maps. Cities and counties may also apply the performance standards of this Title to other wetlands.

**E. Map Administration**

Cities and counties shall amend their comprehensive plans and implementing ordinances to provide a process for each of the following:

1. Amendments to city and county adopted Water Quality and Flood Management Area maps to correct the location of Protected Water Features, Water Quality Resource Areas and Flood Management Areas. Amendments shall be initiated within 90 days of the date the city or county receives information establishing a possible map error.
2. Modification of the Water Quality Resource Area upon demonstration that the modification will offer the same or better protection of water quality, the Water Quality and Flood Management Area and Protected Water Feature.
3. Amendments to city and county adopted Water Quality and Flood Management Area maps to add Title 3 wetlands when the city or county receives significant evidence that a wetland meets any one of the following criteria:
  - a. The wetland is fed by surface flows, sheet flows or precipitation, and has evidence of flooding during the growing season, and has 60 percent or greater vegetated cover, and is over one-half acre in size;  
  
or the wetland qualifies as having "intact water quality function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or
  - b. The wetland is in the Flood Management Area, and has evidence of flooding during the growing season, and is five acres or more in size, and has a restricted outlet or no outlet;  
  
or the wetland qualifies as having "intact hydrologic control function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or

- c. The wetland or a portion of the wetland is within a horizontal distance of less than one-fourth mile from a water body which meets the Department of Environmental Quality definition of "water quality limited water body" in OAR Chapter 340, Division 41 (1996).

Examples of significant evidence that a wetland exists that may meet the criteria above are a wetland assessment conducted using the 1996 Oregon Freshwater Wetland Assessment Methodology, or correspondence from the Division of State Lands that a wetland determination or delineation has been submitted or completed for property in the city or county.

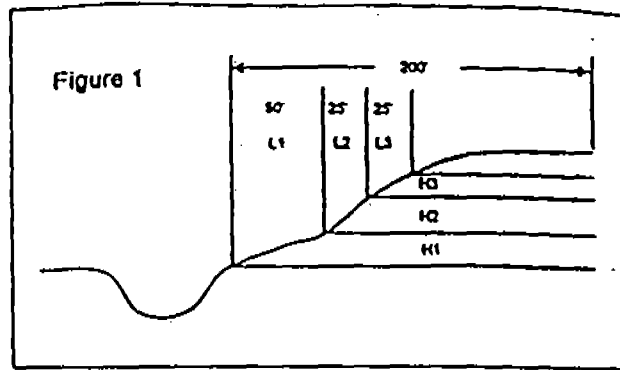
4. Cities and counties are not required to apply the criteria in Section 4.E.3. to water quality or stormwater detention facilities.

## APPENDIX

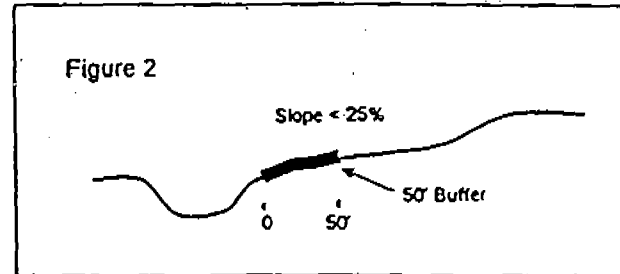
# Proposed Method for Determining Vegetated Corridors Next to Primary Protected Water Features

## How measure slope (Figure 1)

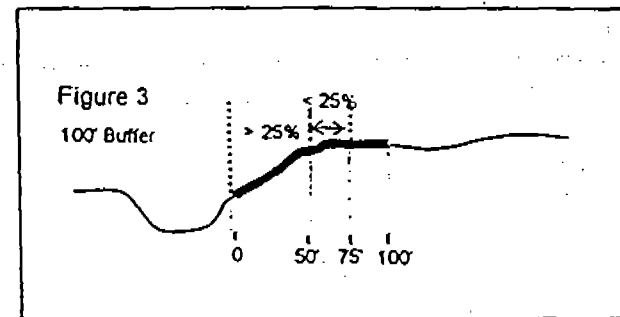
Measure 50 feet horizontally (L1) from the stream (top of bank) and determine the slope (H1/L1 - the difference in elevation divided by the difference in horizontal distance multiplied by 100).



If the slope in this 50-foot area is less than 25%, the corridor width is 50 feet from the top of bank (see Figure 2).



If the slope in the 50-foot area is 25% or greater, measure another 25 feet horizontally. If the slope in this incremental 25-foot area is now less than 25% ( $H2/L2 < 25\%$ ), the vegetated corridor width would be 100 feet (50 feet for the horizontal distance from the top of bank with slope greater than 25% PLUS an additional 50 feet). (See Figure 3.)

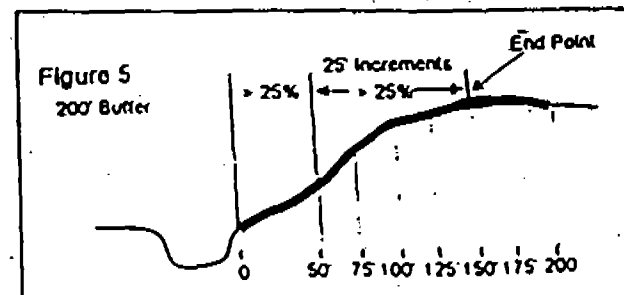
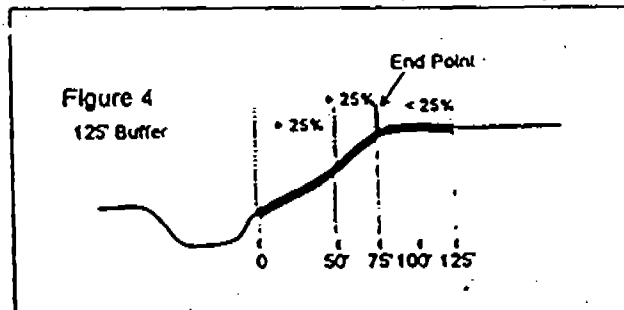


If the slope is greater than 25% in this incremental 25-foot area, continue measuring the slope every 25 feet (H/L) until you either:

- (a) find a slope less than 25% (see Figure 4), or

(When you find a slope less than 25%, the vegetated corridor equals the distance from the stream's top of bank to the end point of the last surveyed 25-foot increment with a slope greater than 25% PLUS an additional 50 feet).

- (b) reach 200 feet (the maximum corridor width). (See Figure 5.)



**Advantages:**

- Provides protection for most steep slopes, yet corridor widths can be varied to fit a number of different situations (corridor widths include 50 feet to 100 feet, 125 feet, 150 feet, 175 feet, and 200 feet)
- Provides flexibility.

**Disadvantages:**

- Does not protect slopes that rise steeply after a gradual "floodplain" area.

**EXHIBIT B**



**Section 5. Fish and Wildlife Habitat Conservation Area**

A. The purpose of these standards is to conserve, protect, and enhance fish and wildlife habitat within the fish and wildlife habitat conservation areas to be identified on the water quality and flood management area map by establishing performance standards and promoting coordination by Metro of regional urban water sheds.

B. Fish and Wildlife Habitat Conservation Area Recommendations

These areas shall be shown on the Water Quality and Flood Management Area Map. Fish and Wildlife Habitat Conservation Areas generally include and/or go beyond the Water Quality and Flood Management Areas. These areas to be shown on the map are will be Metro's initial inventory of significant fish and wildlife habitat conservation areas. Metro hereby recommends that local jurisdictions adopt the following temporary standards:

1. Prohibit development in the ~~F~~fish and ~~W~~wildlife ~~C~~conservation Areas that adversely impacts fish and wildlife habitat.

Exceptions: It is recognized that urban development will, at times, necessitate development activities within or adjacent to Fish and Wildlife Habitat Conservation Areas. The following Fish and Wildlife Habitat Conservation Mitigation Policy, except for emergency situations, applies to all the following exceptions:

A project alternatives analysis, where public need for the project has been established, will be required for any of the exceptions listed below. The alternatives analysis must seek to avoid adverse environmental impacts by demonstrating there are no practicable, less environmentally damaging alternatives available. In those cases where there are no practicable, less environmentally damaging alternatives, the project proponent will seek alternatives which reduce or minimize adverse environmental impacts. Where impacts are unavoidable, compensation, by complete replacement of the impacted site's ecological attributes or, where appropriate, substitute resources of equal or greater value will be provided in accordance with the Metro Water Quality and Flood Management model ordinance.

- a. Utility construction within a maximum construction zone width established by cities and counties.
- b. Overhead or underground electric power, telecommunications and cable television lines within a sewer or stormwater right-of-way or within a maximum construction zone width established by cities and counties.

- c. Trails, boardwalks and viewing areas construction.
  - d. Transportation crossings and widenings. Transportation crossings and widenings shall be designed to minimize disturbance, allow for fish and wildlife passage and crossings should be preferably at right angles to the stream channel.
2. Limit the clearing or removal of native vegetation from the Fish and Wildlife Habitat Conservation Area to ensure its long term survival and health. Allow and encourage enhancement and restoration projects for the benefit of fish and wildlife.
  3. Require the revegetation of disturbed areas with native plants to 90 percent cover within three years. Disturbed areas should be replanted with native plants on the Metro Plant List or an approved locally adopted plant list. Planting or propagation of plants listed on the Metro Prohibited Plant List within the Conservation Area shall be prohibited.
  4. Require compliance with Oregon Department of Fish and Wildlife (ODFW) seasonal restrictions for in-stream work. Limit development activities that would impair fish and wildlife during key life-cycle events according to the guidelines contained in ODFW's "Oregon Guidelines for Timing of In-water Work to Protect Fish and Wildlife Resources."

**C. Fish and Wildlife Habitat Protection**

Within eighteen (18) months from the effective date of this functional plan, Metro shall complete the following regional coordination program by adoption of functional plan provisions.

1. Metro shall establish criteria to define and identify regionally significant fish and wildlife habitat areas.
2. Metro shall adopt a map of regionally significant fish and wildlife areas after ~~(1a)~~ examining existing Goal 5 data, reports and regulation from cities and counties, and ~~(2b)~~ holding public hearings.
3. Metro shall identify inadequate or inconsistent data and protection in existing Goal 5 data, reports and regulations on fish and wildlife habitat. City and county comprehensive plan provisions where inventories of significant resources were completed and accepted by a LCDC Periodic Review Order after January 1, 1993, shall not be required to comply until their next periodic review.

4. Metro shall complete Goal 5 economic, social, environmental and energy (ESEE) analyses for mapped regionally significant fish and wildlife habitat areas only for those areas where inadequate or inconsistent data or protection has been identified.
5. Metro shall establish performance standards for protection of regionally significant fish and wildlife habitat that must be met by the plans implementing ordinances of cities and counties.

#### Section 6. Metro Model Ordinance Required

Metro shall adopt a Water Quality and Flood Management Areas Model Ordinance and map ~~for use by local jurisdictions to comply with this section.~~ The Model Ordinance shall represent one method of complying with this Title. The Model Ordinance shall be advisory, and cities and counties are not required to adopt the Model Ordinance, or any part thereof, to substantially comply with this Title. However, cities and counties which adopt the Model Ordinance in its entirety and a Water Quality and Flood Management Areas Map shall be deemed to have substantially complied with the requirements of this Title.

~~Sections 1-4 of this Title shall not become effective until 2418 months after the Metro Council has adopted a Model Code the Model Ordinance and map Water Quality and Flood Management Areas Map that addresses all of the provisions of this title. Section 5 of this Title shall be implemented by adoption of new functional plan provisions. The Metro Council may adopt a Model Code and Fish and Wildlife Habitat Conservation Areas Model Ordinance and a Map for protection of regionally significant fish and wildlife habitat. Section 5 of this title shall be implemented by adoption of new functional plan provisions.~~

#### Section 7. Variances

City and county comprehensive plans and implementing regulations are hereby required to include procedures to consider claims of map error and hardship variances to reduce or remove ~~stream corridor~~ Fish and Wildlife Habitat protection for any property demonstrated to be converted to an unbuildable lot by application of Fish and Wildlife Habitat protection regulations.

**EXHIBIT C**

# Title 3 Model Ordinance

Growth Management Committee  
May 28, 1998



METRO

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# M E M O R A N D U M

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
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**METRO**

DATE: January 6, 2000  
TO: Metro Council  
FROM: Ken Helm  
Office of General Counsel  
SUBJECT: Staff Report - Ordinance No. 00-839

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In June 1998, the Metro Council adopted Ordinance No. 98-730C amending Title 3 of the Urban Growth Management Functional Plan ("UGMFP") and amending the restatement of Title 3 in Appendix A of the Regional Framework Plan (RFP).<sup>1</sup> This action partially completed work that the Metro Council identified when it initially adopted the UGMFP in November, 1996. Ordinance 98-730C was appealed by the Commercial Real Estate Economic Coalition, Home Builders of Metropolitan Portland, Columbia Corridor Association and the City of Tigard. On November 10, 1999, the Land Use Board of Appeals ("LUBA") issued an order remanding Ordinance No. 98-730C sustaining one of the petitioners' claims of error. The petitioners in the case then appealed the decision to the Court of Appeals. Metro and the petitioners subsequently agreed to dismiss the appeal.

Proposed Ordinance No. 00-839 responds to the LUBA remand of Ordinance 98-730C. LUBA reasoned that the 18 month deadline for local governments to comply with Title 3 was inconsistent with ORS 268.390(5) which is the statute governing the time for compliance with the RFP. ORS 268.390(5) states that pursuant to the RFP, Metro may adopt "implementing ordinances" requiring changes in local comprehensive plans and implementing regulations. Local governments have one year after the Land Conservation and Development Commission acknowledges the RFP before land use decisions must be made consistent with the RFP, and two years before their comprehensive plans and implementing regulations must comply with the RFP. At the same time, LUBA reaffirmed that Metro has broad authority to require compliance with any of its functional plans and impose compliance timelines that the Council deems necessary. LUBA held that had Metro only amended Title 3 of the UGMFP, the Board would have found no

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<sup>1</sup> The UGMFP was added as Appendix A of the RFP when the RFP was adopted in 1997. In Appendix A, all of the UGMFP, including Title 3, is restated as part of the plan.



error. However, LUBA believes that by making identical amendments to both the UGMFP and Appendix A of the RFP imposing an 18 month compliance deadline, Metro accelerated the required compliance for the RFP which it ruled was a substantive violation of ORS 268.390(5).

The Office of General Counsel disagrees with LUBA's reasoning. There was significant confusion by LUBA as to what constitutes "implementing ordinances" as that term is used in ORS 268.390(5). LUBA assumed that since Ordinance 98-730C amended both the UGMFP and the RFP that it must be an RFP "implementing ordinance" instead of part of the RFP itself. Although OGC believes this is an incorrect interpretation, language in the Metro Charter, the RUGGO and RFP may have contributed to LUBA's confusion. In any case, LUBA's remand can be remedied by eliminating references to the 18 month compliance timeline from Appendix A of the RFP and clarifying the meaning of "implementing ordinances" for the purposes of the RFP.

Proposed Ordinance No. 00-839 accomplishes a surgical fix like the operation of a severability clause by readopting Ordinance No. 98-730C and its exhibits with amendments to address LUBA's remand. The proposed ordinance also amends the RFP to explain Metro's approach to adopting "implementing ordinances" pursuant to the RFP in the future. The proposed changes are as follows:

Ordained 1 readopts Ordinance No. 98-730C and its exhibits. This section also amends Ordinance No. 98-730C as follows:

- Section 2, Exhibit B is amended to remove the reference to the 18 month compliance timeline in Title 3 of both the UGMFP and Appendix A of the RFP. None of the other exhibits to Ordinance No. 98-730C are amended.
- Sections 3-8 are generally amended and a new section 5 is added to explicitly state and clarify that compliance timelines for Title 3 of the UGMFP do not apply to the Title 3 component of Appendix A of the RFP.
- Section 9 (renumbered to section 10) is amended to state that local governments must comply with Title 3 of the UGMFP by January, 2000.

Ordained 2 adds a new "Section 13" to Ordinance No. 98-730C to establish when local land use decisions must be made consistent with the Title 3 component of the RFP.

Ordained 3 amends the RFP to reflect LCDC's approach to acknowledging the RFP in components which is consistent with the approach described in state statute.

Ordained 4 amends the RFP to explain the type of "implementing ordinances" that are anticipated to be adopted "pursuant to" the RFP under ORS 268.390(5) subsequent to acknowledgement by LCDC.

**EXHIBIT D**

The Metro Water Quality and Flood Management Areas map consists of quadrangle maps which were adopted by the Metro Council on June 18, 1998, as part of Ordinance 98-730C. The maps are available for review and may be copied at the Metro Regional Headquarters.

**EXHIBIT E**

## **DEFINITIONS (Title 10)**

**Design Flood Elevation** -the elevation of the 100-year storm as defined in FEMA Flood Insurance Studies or, in areas without FEMA floodplains, the elevation of the 25-year storm, or the edge of mapped flood prone soils or similar methodologies.

**Development** - any man-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. In addition, any other activity that results in the removal of more than 10 percent of the vegetation in the Water Quality Resource Area on the lot is defined as development, for the purpose of Title 3 except that more than 10 percent removal of vegetation on a lot must comply with Section 4C - Erosion and Sediment Control. Development does not include the following: a) Stream enhancement or restoration projects approved by cities and counties; b) Farming practices as defined in ORS 30.930 and farm use as defined in ORS 215.203, except that buildings associated with farm practices and farm uses are subject to the requirements of Title 3; and c) Construction on lots in subdivisions meeting the criteria of ORS 92.040(2) (1995).

**Emergency** - any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to, fire, explosion, flood, severe weather, drought earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

**Enhancement** - the process of improving upon the natural functions and/or values of an area or feature which has been degraded by human activity. Enhancement activities may or may not return the site to a pre-disturbance condition, but create/recreate processes and features that occur naturally.

**Fill** - any material such as, but not limited to, sand, gravel, soil, rock or gravel that is placed in a wetland or floodplain for the purposes of development or redevelopment.

**Flood Management Areas** - all lands contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and the area of inundation for the February 1996 flood. In addition, all lands which have documented evidence of flooding.

**Invasive Non-native or Noxious Vegetation** - plant species that have been introduced and due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread rapidly into native plant communities, or which are not listed on the Metro Native Plant List as adopted by Metro Council resolution.

**Mitigation** - the reduction of adverse effects of a proposed project by considering, in the following order: a) avoiding the impact all together by not taking a certain action or parts of an action; b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; c) rectifying the impact by repairing, rehabilitating or restoring the

effected environment; d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and e) compensating for the impact by replacing or providing comparable substitute water quality resource areas.

**Native Vegetation** - any vegetation native to the Portland metropolitan area or listed on the Metro Native Plant list as adopted by Metro Council resolution.

### **Protected Water Features**

*Primary Protected Water Features* shall include:

- a. Title 3 wetlands; and
- b. rivers, streams, and drainages downstream from the point at which 100 acres or more are drained to that water feature (regardless of whether it carries year-round flow); and
- c. streams carrying year-round flow; and
- d. springs which feed streams and wetlands and have year-round flow and
- e. natural lakes.

*Secondary Protected Water Features* shall include intermittent streams and seeps downstream of the point at which 50 acres are drained and upstream of the point at which 100 acres are drained to that water feature.

**Restoration** - the process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure, function, and/or diversity to that which occurred prior to impacts caused by human activity.

**Routine Repair and Maintenance** - activities directed at preserving an existing allowed use or facility, without expanding the development footprint or site use.

**Significant Negative Impact** - an impact that affects the natural environment, considered individually or cumulatively with other impacts on the Water Quality Resource Area, to the point where existing water quality functions and values are degraded.

**Stream** - a body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet or river. It flows at least part of the year, including perennial and intermittent streams. Streams are dynamic in nature and their structure is maintained through build-up and loss of sediment.

**Substantial Compliance** - city and county comprehensive plans and implementing ordinances, on the whole, conform with the purposes of the performance standards in the functional plan and any failure to meet individual performance standard requirements is technical or minor in nature.

**Title 3 Wetlands** - wetlands of metropolitan concern as shown on the Metro Water Quality and Flood Management Area Map and other wetlands added to city or county adopted Water Quality and Flood Management Area maps consistent with the criteria in Title 3, Section 7.C. Title 3 wetlands do not include artificially constructed and managed stormwater and water quality treatment facilities.

**Visible or Measurable Erosion** - visible or measurable erosion includes, but is not limited to:

- a. Deposits of mud, dirt sediment or similar material exceeding one-half cubic foot in volume on public or private streets, adjacent property, or onto the storm and surface water system, either by direct deposit, dropping discharge, or as a result of the action of erosion.
- b. Evidence of concentrated flows of water over bare soils; turbid or sediment laden flows; or evidence of on-site erosion such as rivulets on bare soil slopes, where the flow of water is not filtered or captured on the site.
- c. Earth slides, mudflows, earth sloughing, or other earth movement that leaves the property.

**Utility Facilities** - buildings, structures or any constructed portion of a system which provides for the production, transmission, conveyance, delivery or furnishing of services including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone and cable television.

**Water Quality Resource Areas** - vegetated corridors and the adjacent water feature as established in Title 3.

**Wetlands** - Wetlands are those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual.

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March 17, 2000

Ladies and Gentlemen:

On January 28, 2000, the Metro Council adopted Ordinance No. 00-839 which responded to the Land Use Board of Appeals remand of Metro's Stream Protection Plan (Title 3).

Ballot Measure 56 and ORS Chapter 268 require Metro to provide the following notice regarding the adoption of Ordinance 00-839:

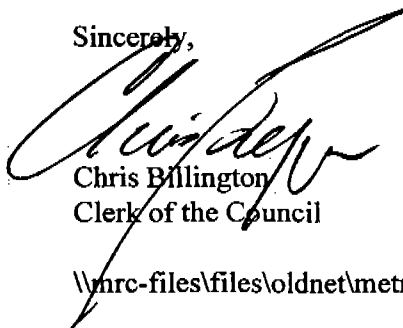
“On January 28, 2000, Metro adopted Ordinance 00-839. Metro has determined that this ordinance will affect the permissible uses of the property in your jurisdiction and may reduce the value of subject property.

Ordinance 00-839 is available for inspection at the Metro offices located at 600 NE Grand Avenue, Portland, OR 97232-2736. A copy of Ordinance 00-839 is also available at a cost of \$9.80.”

Notwithstanding the statements made in the required notice above, Ordinance 00-839 only affects the deadline for cities and counties to comply with the Title 3 component of the Regional Framework Plan and Metro's Urban Growth Management Functional Plan. Under Ballot Measure 56, cities and counties have no further obligations with regard to this notice.

For additional information, contact Metro at 797-1700.

Sincerely,



Chris Billington  
Clerk of the Council

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