

# A G E N D A

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**METRO**

## Agenda

MEETING: METRO COUNCIL REGULAR MEETING - (REVISED 5/28/98)  
DATE: June 4, 1998  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Council Chamber

<u>Approx. Time*</u>		<u>Presenter</u>
2:00 PM	<b>CALL TO ORDER AND ROLL CALL</b>	
(5 min.)	1. <b>INTRODUCTIONS</b>	
(5 min.)	2. <b>CITIZEN COMMUNICATIONS</b>	
(5 min.)	3. <b>EXECUTIVE OFFICER COMMUNICATIONS</b>	
(5 min.)	4. <b>AUDITOR COMMUNICATIONS</b>	
(5 min.)	5. <b>MPAC COMMUNICATIONS</b>	
	6. <b>CONSENT AGENDA</b>	
2:25 PM (5 min.)	6.1 Consideration of Minutes for the May 28, 1998 Metro Council Regular Meeting.	
	7. <b>ORDINANCES - FIRST READING</b>	
2:30 PM (5 min.)	7.1 <b>Ordinance No. 98-755</b> , Amending the Metro Code regarding the Office of Citizen Involvement Effective June 1998.	
2:35 PM (5 min.)	7.2 <b>Ordinance No. 98-759</b> , Amending the FY 1997-98 budget and appropriations schedule by transferring \$8,000 from materials and services to personal services within the Office of the Auditor to complete a cash receipts audit; and declaring an emergency.	

**8. ORDINANCES - SECOND READING**

2:40 PM  
(30 min.)

- 8.1 **Ordinance No. 98-730B**, For the Purpose of Amending Ordinance Nos. 96-647C and No. 97-715B, to amend Title 3 of the Urban Growth Management Functional Plan, and amend the Regional Framework Plan, appendix A, and adopt the Title 3 Model Ordinance and Water Quality and Flood Management Maps.  
*(PUBLIC HEARING, NO FINAL ACTION)*
- Naito

**9. EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660(1)(e). DELIBERATIONS WITH PERSONS DESIGNATED TO NEGOTIATE REAL PROPERTY TRANSACTIONS.**

3:10 PM  
(30 min.)

- 9.1 **Resolution No. 98-2655**, For the Purpose of Authorizing the Executive Officer to Acquire Rights to Construct and Maintain a Trail in the Existing Railroad Corridor Located in the OMSI to Springwater Corridor of the Willamette River Greenway Target Area.
- McFarland

3:40 PM  
(10 min.)

**10. COUNCILOR COMMUNICATION**

**ADJOURN**

**CABLE VIEWERS:** Council Meetings, the second and fourth Thursdays of the month are shown on City Net 30 (Paragon and TCI Cablevision) the first Sunday after the meeting at 8:30 p.m. The entire meeting is also shown again on the second Monday after the meeting at 2:00 p.m. on City Net 30. The meeting is also shown on Channel 11 (Community Access Network) the first Monday after the meeting at 4:00 p.m. The first and third Thursdays of the month are shown on Channel 11 the Friday after the meeting at 2:00 p.m. and the first Sunday and Wednesday after the meeting on Channels 21 & 30 at 7:00 p.m.

**PUBLIC HEARINGS:** Public Hearings are held on all Ordinances second read and on Resolutions upon request of the public. All times listed on the agenda are approximate; items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, 797-1542. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

*Agenda Item Number 6.1*

**Consideration of the May 28, 1998 Metro Council Regular meeting minutes.**

**Metro Council Meeting  
Thursday, June 4, 1998  
Council Chamber**

# MINUTES OF THE METRO COUNCIL MEETING

May 28, 1998

Council Chamber

Councilors Present: Ruth McFarland (Deputy Presiding Officer), Susan McLain, Ed Washington, Lisa Naito, Don Morissette, Patricia McCaig

Councilors Absent: Jon Kvistad (Presiding Officer) - excused

Deputy Presiding Officer McFarland convened the Regular Council Meeting at 7:03 p.m.

## 1. INTRODUCTIONS

None.

## 2. CITIZEN COMMUNICATION

**Art Lewellan** reviewed his LOTI design once again at Council. He was adamant about the east bank alignment. He felt his electric bus/trolley system made good connections with light rail allowing for a broader transit system, creating a more frequent trunk line (recording unintelligible). He reiterated his commitment to light rail and to his LOTI system.

**Councilor McFarland** asked about Mr. Lewellan's basic design, did it cross the river to the west side or stay on the east side?

**Mr. Lewellan** said he lived on the east side and wanted the light rail to stay on the east side.

**Councilor McFarland** added his plan served the rest of the west side area with buses and trolleys.

**Mr. Lewellan** reiterated that the west side portion of his transit plan was served by electric buses and trolleys.

**Councilor McFarland** thanked Mr. Lewellan.

## 3. EXECUTIVE OFFICER COMMUNICATIONS

None.

## 4. AUDITOR COMMUNICATIONS

None.

## 5. MPAC COMMUNICATION

None.

## 6. CONSENT AGENDA

### 6.1 Consideration meeting minutes of the May 21, 1998 Regular Council Meeting.

**Motion:** Councilor McCaig moved to adopt the meeting minutes of May 21, 1998 Regular Council Meeting.

**Seconded:** Councilor Morissette seconded the motion.

**Discussion:** Councilor McCaig noted that she was not on council business, she was gone for personal reasons at last week's Council meeting.

**Vote:** The vote was 5 aye/ 0 nay/ 1 abstain. The motion passed with Councilor McCaig abstaining.

## 7. ORDINANCES - SECOND READING

### 7.1 Ordinance No. 98-724A, For the Purpose of Adopting the Annual Budget for Fiscal Year 1998-99, Making Appropriations, Creating Funds, Levying Ad Valorem Taxes, Authorizing Interfund Loans and Declaring an Emergency.

Councilor McCaig reviewed that the budget was a \$410 million budget with 672 FTEs. The Budget Committee had spent six months on the budget with five public hearings to date. This public hearing was scheduled purposely at 7:00 p.m. in the evening to allow citizens to speak who would normally be unable to attend during the Council's normally scheduled meetings. She felt that the Council was well versed in the budget. She felt they were prepared to listen to the citizens.

Deputy Presiding Officer McFarland opened a public hearing on Ordinance No. 98-724A.

Aleta Woodruff, 2143 NE 95th Place Portland OR, MCCI Vice Chair, said she wished to speak to the Council about the budget. The budget adjustment she wished to speak on had transpired since the budget was originally set forth. She wished to be assured by the Council that there would be funds available to implement the new MCCI committee structure. MCCI had been totally overhauled with new committees formed with new objectives. She did not know if the additional funds would be in the executive branch or whether MCCI funds would be available specifically. She wanted it noted that the expenses for MCCI would be more than they had been before. She did not have a copy of the budget, did not know where those funds would be coming from. With MCCI's new organization and work with the subdivisions of Metro such as Transportation and Growth, the MCCI funds needed to be available for the MCCI staff person and possibly an assistant.

Councilor McCaig said that the MCCI proposal should come before the Finance Committee and they would deal with it when they received it. This budget was not being amended this evening. There would be two more hearings on the budget, one would be before the TSCC Committee on June 11th, the last public hearing would be on June 25th at 2:00 p.m. for adoption. She thought it

was unlikely that they would see any substantial changes to the budget between now and then. They would be happy to review MCCI's proposal if it was submitted before the Finance Committee and went through the process.

**Deputy Presiding Officer McFarland** said they would not be taking action on at this meeting, they were simply taking testimony.

**Councilor McLain** said that Mike Burton, Executive Officer, spent an entire meeting with MCCI about a month ago. This proposal was to coordinate more with executive staff. She thought that the Executive Officer should provide an explanation to the Finance Committee on what he was visualizing as the change in relationship between MCCI and his executive staff. This would clarify if there were more dollars needed or if it was simply a new relationship between staff and MCCI.

**Councilor McCaig** reminded the council that on June 11th at 12:30 p.m. in Rm. 270 there would be a TSCC hearing on the budget. She added that there needed to be a quorum of councilors there to make the presentation.

**Deputy Presiding Officer McFarland** closed the public hearing. She reiterated that this public hearing was scheduled in the evening to allow citizens to testify.

## 8. RESOLUTIONS

8.1 **Resolution No. 98-2638**, For the Purpose of Authorizing the Executive Officer to Enter Into Washington County "Cooperative Agreements" among Service Providers.

**Motion:** Councilor McLain moved to adopt Resolution No. 98-2638.

**Seconded:** Councilor Morissette seconded the motion.

**Discussion:** Councilor McLain said SB 122 asked for service provider coordination processes to be developed in the counties. Washington County had followed this statutory step. They were ready with their first level of agreements. Washington County was presenting this package for approval. These agreements were important because they established the parties and the mapped areas for negotiated urban service agreements. She noted Exhibit A which indicated established partnerships. She also said that this staff report indicated that Metro's responsibilities were in coordination of these cooperative agreements. Two of the questions she had asked were how the schools were involved in this and if there were any attempts to bring the park providers into the service agreements. She noted staff response, the parks were part of the service providers although they might not have the same level of detail as some of the other service provision agreements. There were some areas that may not have parks were there were agreements for actual management. Schools didn't seem to be tied into the process as some of the other service provision were. She felt these agreements were good work, Metro should be very proud of Washington County for coming along in the SB 122 process. There were other counties who had barely gotten started. She recommended passage.

**Councilor Morissette** said his one concern was that Metro had agreed to pay for certain mailings. He assumed the notification provision, that Metro would notify, was currently in our budget.

**Councilor McLain** said that Metro had to do this, it was a statutory provision. As far as she knew they had legitimate amounts of money available for these mailings. Metro did not know yet when that notification had to take place. There may be budget amendments if these all came in one year.

**Councilor Morissette** said he supported the effort that Metro was doing with the coordination plus meeting the requirements. Was it anticipated that Metro would be impacted budgetarily by taking on the responsibility of notification?

**Deputy Presiding Officer McFarland** asked Dan Cooper to clarify.

**Dan Cooper, Legal Counsel**, clarified that the notice that was required was notice to the individual districts not to the public. Metro were already sending notices to DLCD so Metro was committing to mailing approximately another 10 copies of one letter. He did not think there was a budget impact.

**Councilor Morissette** said if it were just that group of people, he was then not concerned about the notice requirement. He was just worried what level of mailing had to be done.

**Vote:** The vote was 6 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

## 9. COUNCILOR COMMUNICATION

**Councilor Washington** said that several years ago, in December 1995, the Metro Council sent a letter in support to Langdon Marsh from Tom Novak dealing with the issue of oxygenated fuel. The Council all signed it. They were now asking for a continuation of this program. He was going to have Mr. Novak send a package to each councilor just to refresh each councilor. He clarified that he believed Councilor Morissette did not support this issue.

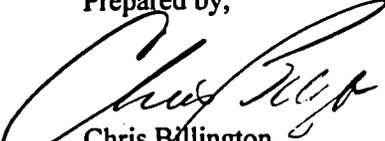
**Councilor Morissette** agreed, he was not supportive of this issue.

**Councilor Washington** said it had been enough time that each councilor might need a refresher. He would have follow up information sent to each councilor.

## 10. ADJOURN

There being no further business to come before the Metro Council, Deputy Presiding Officer McFarland adjourned the meeting at 7:25 p.m.

Prepared by,



Chris Billington  
Clerk of the Council

*Agenda Item Number 7.1*

**Ordinance No. 98-755, Amending the Metro Code regarding the Office of Citizen Involvement Effective  
June 1998..**

***First Reading***

**Metro Council Meeting  
Thursday, June 4, 1998  
Council Chamber**

BEFORE THE METRO COUNCIL

1  
2  
3 AN ORDINANCE AMENDING THE ) ORDINANCE NO. 98-755  
4 METRO CODE REGARDING THE )  
5 OFFICE OF CITIZEN INVOLVEMENT ) Introduced by the Council  
6 EFFECTIVE JUNE 1998 ) Government Affairs Committee  
7  
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9 WHEREAS, the Metro Office of Citizen Involvement has been re-organized according to Ordinance  
10 97-719A, Section 1, adopted February 12, 1998; and  
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12 WHEREAS, changes have been made to the number of Council Districts and committee practices  
13 since Ordinance 93-479A was adopted to establish the Office of Citizen Involvement and its section in the  
14 Metro Code,  
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16 THE METRO COUNCIL ORDAINS AS FOLLOWS:  
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18 Office of Citizen Involvement is amended to read as follows:  
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20 CHAPTER 2.12  
21 OFFICE OF CITIZEN INVOLVEMENT  
22

23 2.12.010 Creation and Purpose: There is hereby created an Office of Citizen Involvement consisting of such  
24 employees as the Council may provide. The purpose of the Office of Citizen Involvement is to develop and  
25 maintain programs and procedures to aid communication between citizens of Metro and the Council and  
26 Executive Officer.  
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28 2.12.020 Establishment of Metro Committee for Citizen Involvement: (a) There is hereby established the  
29 Metro Committee for Citizens Involvement (Metro CCI) within the Office of Citizen Involvement. The  
30 Metro CCI will be responsible for assisting with the development, implementation and evaluation of  
31 Metro's citizen involvement programs and advising the Council, Executive Officer, and appropriate Metro  
32 committees in ways to involve citizens in regional planning activities and other Metro programs.  
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34 (b) The Council shall, by Resolution, appoint members to the Metro CCI. The positions shall be as follows:  
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36 (1) The Metro CCI shall have 27 members. Membership shall consist of:  
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38 (A) Three representatives from each of the 7 Metro Council Districts (for a total of 21);  
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40 (B) One representative from each of the unincorporated areas outside the Metro  
41 boundaries in Clackamas, Multnomah, and Washington Counties (for a total of three);  
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43 (C) One representative from each of : Clackamas County's Committee for Citizen  
44 Involvement (CCI), Multnomah County's Citizen Involvement Committee (CIC) and  
45 Washington County's Committee for Citizen Involvement (CCI) (for a total of three).  
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47 (2) A Metro staff member shall act as a non-voting advisor for the Metro CCI.  
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49 (3) Members shall not be elected officials.

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(4) Members shall be expected to present a balanced representation of the interested of their district at all meetings of the Metro CCI.

2.12.030 Approval of Bylaws: The Council shall approve bylaws by which the Metro CCI will proceed. Bylaws shall include: the committeename; the geographical area served; the mission and purpose of the committee; membership and terms of office; officers and duties; meetings, conduct of meetings and quorum standards; and methods for amending bylaws.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

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

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

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE	)	ORDINANCE NO. 98-755
METRO CODE REGARDING THE	)	
OFFICE OF CITIZEN INVOLVEMENT	)	Introduced by the Council
EFFECTIVE JUNE 1998	)	Government Affairs Committee

WHEREAS, the Metro Office of Citizen Involvement has been re-organized according to Ordinance 97-719A, Section 1, adopted February 12, 1998; and

WHEREAS, changes have been made to the number of Council Districts and committee practices since Ordinance 93-479A was adopted to establish the Office of Citizen Involvement and its section in the Metro Code,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Office of Citizen Involvement is amended to read as follows:

CHAPTER 2.12  
OFFICE OF CITIZEN INVOLVEMENT

2.12.010 Creation and Purpose: There is hereby created an Office of Citizen Involvement consisting of such employees as the Council may provide. ~~The Office of Citizen Involvement shall report to the Metro Council and is not a department of Metro.~~ The purpose of the Office of Citizen Involvement is to develop and maintain programs and procedures to aid communication between citizens of Metro and the Council and Executive Officer.

~~(Ordinance No. 93-479A, Sec. 2)~~

2.12.020 Establishment of Metro Committee for Citizen Involvement: (a) There is hereby established the Metro Committee for Citizens Involvement (Metro CCI) within the Office of Citizen Involvement. The Metro CCI will be responsible for assisting with the development, implementation and evaluation of Metro's citizen involvement programs and advising the Council, Executive Officer, and appropriate Metro committees in ways to involve citizens in regional planning activities and other Metro programs.

(b) The Council shall, by Resolution, appoint members ~~and alternates~~ to the Metro CCI. The positions shall be as follows:

(1) The Metro CCI shall have ~~19~~ 27 members. ~~Each member position shall have an alternate.~~ Membership shall consist of:

(A) ~~One~~ Three representatives from each of the ~~13~~ 7 Metro Council Districts (for a total of ~~13~~ 21);

(B) One representative from each of the unincorporated areas outside the Metro boundaries in Clackamas, Multnomah, and Washington Counties (for a total of three);

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(C) One representative from each of : Clackamas County's Committee for Citizen Involvement (CCI), Multnomah County's Citizen Involvement Advisory Committee (CIAC) and Washington County's Committee for Citizen Involvement (CCI) (for a total of three).

(2) A Metro staff member shall act as a non-voting advisor for the Metro CCI.

(3) Members and alternates shall not be elected officials.

~~(4) Alternates for each member shall be appointed to serve in the absence of the regular members (and shall be encouraged to attend meetings on a participatory but non-voting basis).~~

~~(5)~~ (4) Members ~~(or designated alternates)~~ shall be expected to present a balanced representation of the interested of their district at all meetings of the Metro CCI.

~~(Ordinance 93-479A, Sec. 2)~~

~~2.12.030 Approval of Bylaws and Appointments:~~ The Council shall approve bylaws by which the Metro CCI will proceed. Bylaws shall include: the committee's name; the geographical area served; the mission and purpose of the committee; membership and terms of office; officers and duties; meetings, conduct of meetings and quorum standards; and methods for amending the bylaws.

~~The Council shall by Resolution make reappointments to the Metro CCI from time to time, and revise the organizational structure of the Metro CCI as made necessary by changes to the Metro Code.~~

~~(Ordinance 93-479A, Sec. 2)~~

\_\_\_\_\_  
Jon Kvistad, Metro Council Presiding Officer

\_\_\_\_\_  
Legal Counsel

\_\_\_\_\_  
Metro Council Recorder

STAFF REPORT

**CONSIDERATION OF ORDINANCE NO. 98-~~755~~ FOR THE PURPOSE OF AMENDING THE METRO CODE REGARDING THE OFFICE OF CITIZEN INVOLVEMENT**

---

MAY 8, 1998

KAREN WITHROW (x1539)

BACKGROUND

The current version of Metro Code Section 2.12 was created in January 1993 and is in need of updating. Several fundamental things have changed since that time.

First of all, there are no longer 13 Metro Councilors. Secondly, the Office of Citizen Involvement now operates out of the Executive portion of Metro and is directed by the Executive Officer. A third, though less key change, is that the practice of appointing alternate members to MCCI is no longer followed.

MCCI staff conferred with General Counsel before beginning this update and it was agreed that these amendments will bring all MCCI guiding documents into harmony as the bylaws were recently updated to accommodate some of the same changes addressed in this Ordinance.

*Agenda Item Number 7.2*

**Ordinance No. 98-759, Amending the FY 1997-98 budget and appropriations schedule by transferring \$3,000 from materials and services to personal services within the Office of the Auditor to complete a cash receipts audit; and declaring an emergency.**

*First Reading*

**Metro Council Meeting  
Thursday, June 4, 1998  
Council Chamber**

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 1997-98 )	ORDINANCE NO. 98-759
BUDGET AND APPROPRIATIONS )	
SCHEDULE BY TRANSFERRING \$8,000 )	
FROM MATERIALS AND SERVICES TO )	Introduced by Metro Auditor
PERSONAL SERVICES WITHIN THE OFFICE )	Alexis Dow, CPA
OF THE AUDITOR TO COMPLETE A CASH )	
RECEIPTS AUDIT, AND DECLARING AN )	
EMERGENCY )	

WHEREAS, Metro facilities take in considerable cash receipts each year; and

WHEREAS, The Office of the Auditor has initiated a review of Metro's management of cash receipts; and

WHEREAS, The Office of the Auditor has temporarily hired an experienced auditor to conduct the cash receipts audit; and

WHEREAS, Field work on the project is complete, and analysis, report writing and review by Metro departments is under way; and

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations with the FY 1997-98 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

**THE METRO COUNCIL ORDAINS AS FOLLOWS:**

1. That the FY 1997-98 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$8,000 from Materials & Services to Personal Services within the Office of the Auditor to complete a cash receipts audit.

2. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

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

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

**Exhibit A**  
**Ordinance No. 98-759**  
**Support Services Fund**

ACCT	DESCRIPTION	FY 1997-98 Adopted		REVISION		FY 1997-98 Revised	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>Office of the Auditor</b>							
<i>Personal Services</i>							
<i>SALWGE Salaries &amp; Wages</i>							
5000	Elected Official Salaries						
	Auditor	1.00	67,891		0	1.00	67,891
5010	Reg Employees-Full Time-Exempt						
	Senior Auditor	3.00	172,000		0	3.00	172,000
5015	Reg Empl-Full Time-Non-Exempt						
	Auditor's Administrative Assistant	1.00	32,573		0	1.00	32,573
5030	Temporary Employees		29,000		8,000		37,000
5080	Overtime		2,500		0		2,500
<i>FRINGE Fringe Benefits</i>							
5100	Fringe Benefits		90,653		0		90,653
<b>Total Personal Services</b>		<b>5.00</b>	<b>\$394,617</b>		<b>\$8,000</b>	<b>5.00</b>	<b>\$402,617</b>
<i>Materials &amp; Services</i>							
<i>GOODS Goods</i>							
5201	Office Supplies		11,884		0		11,884
5205	Operating Supplies		7,838		0		7,838
5210	Subscriptions and Dues		3,428		0		3,428
<i>SVCS Services</i>							
5240	Contracted Professional Svcs		115,000		(5,000)		110,000
5251	Utility Services		1,695		0		1,695
5260	Maintenance & Repair Services		513		0		513
5280	Other Purchased Services		4,576		(3,000)		1,576
<i>IGEXP Intergov't Expenditures</i>							
5300	Payments to Other Agencies		309		0		309
<i>OTHEXP Other Expenditures</i>							
5450	Travel		9,040		0		9,040
5455	Training and Conference Fees		5,700		0		5,700
5490	Miscellaneous Expenditures		1,030		0		1,030
<b>Total Materials &amp; Services</b>			<b>\$161,013</b>		<b>(\$8,000)</b>		<b>\$153,013</b>
<i>Capital Outlay</i>							
<i>CAPNON Capital Outlay (Non-CIP Projects)</i>							
5750	Office Furn & Equip (non-CIP)		4,006		0		4,006
<b>Total Capital Outlay</b>			<b>\$4,006</b>		<b>\$0</b>		<b>\$4,006</b>
<b>TOTAL REQUIREMENTS</b>		<b>5.00</b>	<b>\$559,636</b>		<b>\$0</b>	<b>5.00</b>	<b>\$559,636</b>

**Exhibit B**  
**Ordinance No. 98-759**  
**Schedule of Appropriations**

	<u>Current Appropriation</u>	<u>REVISION</u>	<u>Revised Appropriation</u>
<b>SUPPORT SERVICES FUND</b>			
<b>Administrative Services</b>			
Personal Services	4,367,424	0	4,367,424
Materials and Services	1,126,419	0	1,126,419
Capital Outlay	1,088,547	0	1,088,547
Debt Service	27,232	0	27,232
<b>Subtotal</b>	<b>6,609,622</b>	<b>0</b>	<b>6,609,622</b>
<b>Office of General Counsel</b>			
Personal Services	655,656	0	655,656
Materials and Services	41,856	0	41,856
Capital Outlay	21,644	0	21,644
<b>Subtotal</b>	<b>719,156</b>	<b>0</b>	<b>719,156</b>
<b>Office of Public and Government Relations</b>			
Personal Services	75,758	0	75,758
Materials and Services	60,427	0	60,427
Capital Outlay	1,750	0	1,750
<b>Subtotal</b>	<b>137,935</b>	<b>0</b>	<b>137,935</b>
<b>Council Office of Public Outreach</b>			
Personal Services	100,049	0	100,049
Materials and Services	31,185	0	31,185
Capital Outlay	8,033	0	8,033
<b>Subtotal</b>	<b>139,267</b>	<b>0</b>	<b>139,267</b>
<b>Office of Citizen Involvement</b>			
Personal Services	61,631	0	61,631
Materials and Services	22,480	0	22,480
Capital Outlay	0	0	0
<b>Subtotal</b>	<b>84,111</b>	<b>0</b>	<b>84,111</b>
<b>Auditor's Office</b>			
Personal Services	394,617	8,000	402,617
Materials and Services	161,013	(8,000)	153,013
Capital Outlay	4,006	0	4,006
<b>Subtotal</b>	<b>559,636</b>	<b>0</b>	<b>559,636</b>
<b>General Expenses</b>			
Interfund Transfers	788,762	0	788,762
Contingency	348,834	0	348,834
<b>Subtotal</b>	<b>1,137,596</b>	<b>0</b>	<b>1,137,596</b>
Unappropriated Ending Fund Balance	306,414	0	306,414
<b>Total Fund Requirements</b>	<b>\$9,693,737</b>	<b>\$0</b>	<b>\$9,693,737</b>

***All Other Appropriations Remain As Previously Adopted***

## STAFF REPORT

CONSIDERATION OF ORDINANCE 98-759 AMENDING THE FY 1997-98 BUDGET AND APPROPRIATIONS SCHEDULE BY TRANSFERRING \$8,000 FROM MATERIALS & SERVICES TO PERSONAL SERVICES WITHIN THE OFFICE OF THE AUDITOR TO COMPLETE A CASH RECEIPTS AUDIT, AND DECLARING AN EMERGENCY.

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Date: May 21, 1998

Presented by: Alexis Dow

### FACTUAL BACKGROUND AND ANALYSIS

The Metro Auditor initiated a review of Metro's management of cash receipts earlier this year. Metro takes in considerable funds at transfer stations, the Metro Washington Park Zoo, MERC facilities, parks and other facilities. In 1997, Metro received more than \$28 million at these locations. This audit will review procedures for ensuring that Metro properly accounts for cash receipts.

The Office of the Auditor hired an experienced auditor to conduct the cash receipts audit. Field work on the project is complete, and analysis, report writing and review by Metro departments is under way.

The personal services appropriation for the Office of the Auditor will be exhausted before the audit is complete. This budget ordinance proposes to transfer funds designated for temporary contract services in materials and services to temporary services in personal services. The total budget for the Office of the Auditor will remain unchanged.

### BUDGET ANALYSIS

This action reduces the materials and services budget by \$8,000 and increases the personal services budget by \$8,000. It shifts funds within the Office of the Auditor budget but has no effect on the total appropriation for the office.

### AUDITOR'S RECOMMENDATION

The Metro Auditor recommends approval of Ordinance No. 98-759.

*Agenda Item Number 8.1*

**Ordinance No. 98-730B, For the Purpose of Amending Ordinance Nos. 96-647C and No. 97-715B, to amend Title 3 of the Urban Growth Management Functional Plan, and amend the Regional Framework Plan, appendix A, and adopt the Title 3 Model Ordinance and Water Quality and Flood Management Maps.**

***PUBLIC HEARING, NO FINAL ACTION***

**Metro Council Meeting  
Thursday, June 4, 1998  
Council Chamber**

## **GROWTH MANAGEMENT COMMITTEE REPORT**

CONSIDERATION OF ORDINANCE NO. 98-730B, FOR THE PURPOSE OF AMENDING ORDINANCE Nos. 96-647C AND NO. 97715B, TO AMEND TITLE 3 OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN, AND AMEND THE REGIONAL FRAMEWORK PLAN, APPENDIX A, AND ADOPT THE TITLE 3 MODEL ORDINANCE AND WATER QUALITY AND FLOOD MANAGEMENT MAPS:

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Date: May 29, 1998

Presented by: Counselor Naito

**Committee Action:** At its May 28, 1998 meeting, the Growth Management Committee amended Ordinance 98-730A and then voted 2-1 to recommend council adoption of Ordinance 98-730B. The ordinance is also referred to as the Stream and Floodplain Protection Plan. Voting in favor: councilors McCaig, and Naito. Voting against: councilor Morissette.

**June 4 Council Packet:** Related to Ordinance 98-730, packets mailed out will contain the May 5 Growth Management Committee version, plus separate amendments adopted by committee on May 28. The fully revised ordinance will be available at the June 4 meeting, however.

**Current Document:** The ordinance consists of:

- The cover ordinance --References the relation of this ordinance to RUGGO's, the Urban Growth Management Functional Plan and the Regional Framework Plan; detailing review performed by advisory committees, Growth Management Committee and the Council; and specifying the impact of this Ordinance on the Framework Plan and Metro code.
- Exhibit A--Contains sections 1-4, revising Title 3 of the Urban Growth Management Functional Plan (which was adopted in the fall of 1996). Section 4 contains performance standards with which cities and counties must comply. These sections been extensively reorganized compared to the original Title 3.
- Exhibit B--Sections 5-7 references Fish and Wildlife Habitat Conservation, and requirements for Model Ordinance and Map Adjustment Process. This exhibit was not significantly revised from the original Title 3.
- Exhibit C--The Model Ordinance. Its creation was required by the original Title 3, and is one way cities and counties can demonstrate compliance. In addition, the performance standards in Exhibit A do not become effective until 18 months after

Metro Council adoption of the Model Ordinance and the Water Quality and Flood Management Areas Map.

- Exhibit D--Water Quality and Flood Management Areas Map.
- Exhibit E--Definitions applying to Title 3 of the Urban Growth Management Functional Plan, but residing in Title 10 of same.

**Council Issues/Discussion:** The following amendments to the March 25 MPAC recommended version of the ordinance were adopted by the Growth Management Committee:

#### Cover Ordinance

Accept language recommended by Office of General Counsel clarifying that no substantive changes were made to the Original Title 3, sections 5-7.

The cover ordinance was also amended to direct that sections 1 and 2 of Title 8 of the Urban Growth Management Functional Plan (Compliance) be amended. Title 8 will now contain explicit references to Title 3 and direct the timing of local hearings, information to be transmitted to Metro and Metro's role in notice to citizens and review of the results of the hearings.

#### Exhibit A

Revised Table 1, describing vegetated corridor requirements, to be consistent with a similar, but more condensed table in the model ordinance. Specifications remain the same. Table 1 was also revised to make clearer where measurements begin when delineating water features.

Agreed with MPAC recommendation concerning language for existing structures and alternatives analysis (Section 4.D.3.d).

A key amendment known as "Discussion draft 1B" clarified the relation between map and text in the identification of, and application of title 3. In summary, a local jurisdiction will have the option of adopting a field verified map, or code language in complying with performance standards. The application of field verified maps was also clarified and expanded. In addition, cities and counties will be required to hold at least one public hearing prior to adopting comprehensive plan amendments, implementing ordinances and maps, and documents related to same must be available for public review at least 45 days prior to the public hearing.

#### Exhibit B

Section 7, Map Administration, has been revised to clarify the timing and process for amending maps where errors have been identified. This process, when related to wetlands has been clarified and expanded.

### Exhibit C

Agreed to a housekeeping motion to include the table of contents and appendix to the model ordinance.

Amended model Ordinance to be consistent with change to Exhibit A, replacement and rehabilitation of existing structures and alternatives analysis (Section 3.H.7.f).

Agreed with MPAC recommendation to section 3.I.7 clarifying regulation of nonconforming uses in the vegetated corridors.

Agreed to definitions for “disturb” and “stormwater pre-treatment facility” in the definitions section (section 14) of the Model Ordinance. Also agreed to revise the definition of “development” to include application to buildings associated with farm practices and farm uses, to be consistent with similar change to Exhibit E (below).

Directed legal council to review model ordinance for consistency with all May 28 amendments.

### Exhibit E

Amended definition of “development” to include application to buildings associated with farm practices and farm uses. The language was suggested by legal counsel, at the request of MPAC.

Included a definition for “debris”.

The definition of wetland has been revised to be consistent with the Department of State Lands (DSL). A definition of “Title 3 Wetlands” is also created to refer to wetlands of metropolitan concern.

**Future Council Action:** The Council will take up Ordinance 98-730 at its June 4 meeting, with an expectation that it will be adopted at Council on June 18.

**Amendments to Ordinance 98-730A**

**The attached amendments were adopted by the Growth Management Committee on May 28, 1998. A fully revised ordinance will be available at the June 4, 1998 Council meeting.**

ORDINANCE 98-730

TITLE 3  
URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN

Councilor Naito Amendment No. 3a

May 28, 1998

Amend Exhibit A, Section 4.D.4 to read:

4. Cities and counties may choose not to apply the Water Quality and Flood Management Area performance standards of Section 4 ~~only~~ to development necessary for the placement of structures that when it does not require a grading or building permit.

REASON: This amendment is a clarification of a May 5, 1998, proposed amendment which was tabled by the Growth Management Committee for further revision by the Office of General Counsel. The optional exemption would only apply if a permit is not needed to place a structure in the water quality area. Removal of 10% or more of the vegetative cover in the Water Quality Resource Area would continue to be subject to Title 3 regulation consistent with the present definition of "development."

ORDINANCE 98-730

TITLE 3  
URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN

Councilor Naito Amendment No. 7a

May 28, 1998

Amend Exhibit C, Section 14 to add definition:

Debris — discarded man-made objects that would not occur in an undeveloped stream corridor or wetland. Debris includes, but is not limited to, tires, vehicles, litter, scrap metal, construction waste, lumber, plastic or styrofoam. Debris does not include objects necessary to a use allowed by this ordinance, or ornamental and recreational structures.

Debris does not include existing natural plant materials or natural plant materials which are left after flooding, downed or standing dead trees or trees which have fallen into protected water features.

REASON: This amendment clarifies that the Model Ordinance does not require a property owner to remove dead trees and other woody plant material.

## DISCUSSION DRAFT 1B

Discussion Draft 1B is a revised version of Discussion Draft 1A which was attached to a May 26, 1998, memo from Larry Shaw to Councilor Naito. Discussion Draft 1A recommended changes to Ordinance 98-730A which are shown here in redline and strikeout. Discussion Draft 1B is the result of discussions which occurred at working group convened by Council Naito on May 27, 1998. Discussion Draft 1B recommended changes to Discussion Draft 1A are shown in bold with deletions shown in *italic*.

Amend Ordinance 98-730A, Exhibit E to add:

### Protected Water Features

*Primary Protected Water Features* shall include:

- a) Title 3 protected wetlands; and

Title 3 Protected 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. Title 3 wetlands do not include water quality or stormwater detention facilities.

~~Wetlands -any wetland shown on the Metro Water Quality and Flood Management Area Map or wetlands that meet the Oregon Division of State Lands definition of wetland. 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.~~

Amend Ordinance 98-730A, Exhibit A, Section 3 to read:

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

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

- A1. 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:

- 1a. Adopt code language implementing this Title which prevails over the map and uses the map as reference; or

- 2b. 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) **Use 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's Water Quality and Flood Management Areas map to show the specific boundaries of those protected areas on Metro's the locally adopted Water Quality and Flood Management Areas map; and**
- (2) **Uses 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 maps errors in the local Water Quality and Flood Management Areas map as required by Section 7.**

B2. 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.

C3. Any combination of A1. and B2. 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 consider adding 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.

D. The Metro Council identified but did not include some Protected Water Features, Water Quality Resource Areas and Flood Management Areas 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 agreements for such uses, or the area was developed or committed to other uses.

Cities and counties are not required to establish Water Quality Resource Areas and Flood Management Areas through adopted code provisions or mapping for areas which were identified but not included on the Water Quality and Flood Management Areas map adopted by the Metro Council.

Amend Ordinance 98-730A, Exhibit A to add Section 4.D.6:

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

Amend Ordinance 98-730A, Exhibit B to add:

Section 7. Map Adjustments Administration

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

A. Amendments to the city and county adopted Water Quality and Flood Management Area Maps to correct map errors in the location of identified 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.

B. 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.

C. Amendments to city and county adopted Water Quality and Flood Management Area maps to add wetlands when the city or county receives information establishing the possible existence of wetlands including, but not limited to, the results of 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 within the city or county, and the wetland meets any one of the following criteria:

1. 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 generally qualifies as having "intact water quality function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or
2. 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 generally qualifies as having "intact hydrologic control function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or
3. 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.

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MORISSETTE-MCLAIN AMENDMENT TO ORDINANCE 98-730

Local Hearing and Property Owner Notice

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

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 within 18 months after the Metro Council has adopted the Model Ordinance and Water Quality and Flood Management Areas Map."

Section 2A of Title 8 at Metro Code Section 3.07.820 is hereby amended to add:

**"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."

**COUNCILOR NAITO AMENDMENT: TITLE 3 COMPLIANCE REVIEW**

The following amendment to Ordinance No. 98-730 adds the same Metro compliance review for Title 3 used for the rest of the Functional Plan.

**Section 5.** To provide a Metro compliance review for Title 3, the following effective dates and compliance review 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 within 18 months after the Metro Council has adopted the Model Ordinance and Water Quality and Flood Management Areas Map."

Section 2 of Title 8 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."**

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 wetland</li> </ul>	50 feet
Primary Protected Water Features <sup>1</sup>	$\geq$ 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 wetland</li> </ul>	200 feet
Primary Protected Water Features <sup>1</sup>	$\geq$ 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 wetland</li> </ul>	Distance from starting point of measurement to top of ravine (break in $\geq$ 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 wetland</li> </ul>	15 feet
Secondary Protected Water Features <sup>2</sup>	$\geq$ 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 wetland</li> </ul>	50 feet

<sup>1</sup>Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, 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  $\geq$  25% slope (see slope measurement – Figure #\_\_ 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.

Mr. Grillo's proposed language ("Amendment 3") reads:

*"The setback shall be 200 feet from the top of bank, unless the edge of the delineated wetland is above the top of the ravine (break in 25% or greater slope) (i.e., a perched wetland), in which case, the width of the vegetative corridor shall be 50 feet from the delineated edge of the perched wetland."*

Again, the stream and wetland features are being linked. This language would also preclude any protection greater than 50-feet to apply to the wetland feature itself. In a situation where steep slopes continue even further beyond a perched wetland, the protection must be allowed to extend to up to 200-feet beyond the wetland's edge.

**Staff Recommendations:** Confusion may have arisen because of the existing language in Table 1 which describes "Top of Bank" in Column 3, Rows 3 and 4, using the phrase "edge of bankful flow or 2-year storm level or delineated edge of wetland". This language should be changed to a bulleted format, in order to more clearly indicate that these features are independent of one another .

The language has been changed to read:

- *Edge of bankful flow or 2-year storm level;*
- *Delineated edge of wetland*

Not directly related to Mr. Grillo's comments, but in light of the discussion on perched wetlands, we are proposing to amend Title 3 and Table 1 to state that only the *uphill* slopes of a water feature be protected. For perched wetlands, this will mean that any downhill slope or ravine adjacent to the wetland would not be protected for the sake of the wetland. However, this downhill slope from a wetland may indeed be an uphill slope from a stream feature, and would be part of the protected area for the stream.

To accomplish this change, a footnote has been added (footnote #5) to steep slope categories in Column 2 of Table 1. The footnote language reads:

*"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."*



## METRO

To: Elaine Wilkerson, Director, Growth Management

From: Susan Payne, Asst. Regional Planner  
Carol Krigger, Assoc. Regional Planner  
Ken Helm, Asst. Counsel

Date: May 27, 1998

RE: Review of amendments to Title 3 proposed by Phillip Grillo

We have reviewed the comments and language recommended by Mr. Grillo, and have clarified portions of the table which address some of the ambiguity his letter brought to our attention.

The two issues for which Mr. Grillo requested clarification and our recommended changes follow.

1. Measuring the 150-foot vertical distance in slopes of 25% or greater.  
(Clarification: Determination of slopes adjacent to protected water features is required for a *horizontal* distance of 150 feet, rather than *vertical* distance as referenced in Mr. Grillo's letter.)

The usage of the 150-foot measurement is intended to determine whether the vegetated corridor will extend to the maximum 200-foot width allowed by Title 3. If the steep slopes do not continue for a length of 150-feet or more, then the vegetated corridor would be variable, depending on where the break-in-slope occurs. If the steep slopes continue for 150-feet or more, then the maximum 200-foot vegetated corridor applies.

In no case is a vegetated corridor greater than 200-feet proposed under Title 3. Mr. Grillo's proposed revision to the language in this section ("Amendment 1") reads:

*"The 150-foot distance shall be computed by establishing the two-year storm level as the starting point, and the top of the ravine (break in 25% or greater slope) as the ending point."*

Should the break in slope occur at a distance greater than 150-feet, the proposed amendment would call for vegetated corridors greater than 200-feet. For example, if the break-in-slope occurred at 300-feet from the water feature, then the "ending point" would exceed the allowable 200-foot corridor.

**Staff Recommendations** We have attempted to clear up any ambiguity regarding measurements by changing the following wording in Table 1:

The heading of Column 3 now reads:

*"Starting Point for Measurements from Water Feature"*

The heading of Column 4 now reads:

*"Width of Vegetated Corridor"*

In Row 4, the wording in Columns 3 and 4 has been changed to reflect these new column headings.

Row 4, Column 3 now echoes the same starting point for measurement as the previous rows.

Row 4, Column 4 more explicitly describes the width of the vegetated corridor in cases where it is 50-feet from the top of the ravine. The wording now reads:

*"Distance from starting point of measurement to top of ravine (break in  $\geq 25\%$  slope), plus 50-feet."*

2. Perched wetlands.

As indicated in Mr. Grillo's letter, perched wetlands have not been taken into account in Table 1, or in Title 3. There are two points of concern we would like to address.

a). Mr. Grillo's memo seems to indicate that he perceives perched wetlands as an extension of the proposed protection for protected *stream* features. For streams against steep slopes, his proposed language would extend the setback for the stream, in cases where a wetland is above the top of the ravine, to 50-feet from the edge of the perched wetland.

Under Title 3, all wetlands, including perched wetlands, are listed as Primary Protected Water Features. Wetlands will receive their own vegetated corridor, which is determined in the same method as the corridor for stream features. Therefore, each feature is regarded independently

Mr. Grillo's proposed language ("Amendment 2") reads:

*"or the edge of the delineated wetland, whichever is greater"*

This language implies that the edge of a wetland would be considered in the determination of "top-of-bank" for a stream adjacent to a steep ravine. Since the features are considered separate under Title 3, we would not want to link them by including this language.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING ) ORDINANCE NO 98-730A  
ORDINANCE NOs. 96-647C AND NO. 97- )  
715B, TO AMEND TITLE 3 OF THE ) Introduced by Councilors Naito and McLain  
URBAN GROWTH MANAGEMENT )  
FUNCTIONAL PLAN, AND AMEND )  
THE REGIONAL FRAMEWORK PLAN, )  
APPENDIX A, AND ADOPT THE TITLE )  
3 MODEL ORDINANCE AND WATER )  
QUALITY AND FLOOD MANAGEMENT )  
MAPS )

WHEREAS, the Regional Growth Goals and Objectives - Objective 12 identifies the need to manage watersheds to protect, restore and ensure to the maximum extent practicable the integrity of streams, wetlands, and floodplains.

WHEREAS, Ordinance No. 96-647C, the Urban Growth Management Functional Plan (UGMFP), adopted November 21, 1996, delayed implementation of Title 3 of the UGMFP until Metro adopted a Model Ordinance to demonstrate one method of implementing Title 3, and Water Quality and Flood Management Area maps.

WHEREAS, Ordinance No. 97-715B, the Regional Framework Plan, adopted December 18, 1997, incorporates the UGMFP at Appendix A. The Regional Framework Plan is awaiting acknowledgment before the Land Conservation and Development Commission.

WHEREAS, the Water Resources Policy Advisory Committee (WRPAC), during 1997, drafted a Model Ordinance and maps to comply with Title 3, Section 6 of the UGMFP. WRPAC released a preliminary draft of the proposed Model Ordinance and maps in August 1997, and a revised draft on September 4, 1997. The proposed Model Ordinance was then forwarded to the Metro Policy Advisory Committee (MPAC) and the Metro Technical Advisory Committee (MTAC) for review.

WHEREAS, WRPAC and MTAC formed a joint subcommittee to further refine the Model Ordinance and maps and consider amendments to the UGMFP, Title 3, Sections 1-4. The joint subcommittee met twice per month beginning September 26, 1997 and ending December 19, 1997. The joint subcommittee forwarded proposed amendments to Title 3, dated December 30, 1997, to WRPAC and MTAC. The same proposed amendments were released for public

comment prior to Metro's Stream and Floodplain Protection Plan workshops which began January 17, 1998.

WHEREAS, MTAC reviewed the joint subcommittee's proposed amendments to Title 3 at its January 8, 22, February 5, 19, and March 5, 19 and 26, 1998 meetings.

WHEREAS, WRPAC reviewed the joint subcommittee's proposed amendments to Title 3 at its January 26, February 9, March 9 and 25, 1998, meetings. At the March 25 meeting, WRPAC members reviewed and commented on MTAC's proposed changes to Title 3 and provided those comments to MPAC at chair Judie Hammerstad's request.

WHEREAS, the Metro Growth Management staff gave a presentation on Metro's "Stream and Floodplain Protection Plan" (Title 3) to MPAC at its February 11, 1998 meeting. MPAC also received a copy of the joint subcommittee's proposed Title 3 amendments.

WHEREAS, MPAC reviewed the joint subcommittee's proposed amendments to Title 3 at its February 11, 25, and March 11, and 25, 1998 meetings. At its March 25, 1998 meeting, MPAC passed forward recommended changes to Title 3 to the Metro Council after considering a package of WRPAC/MTAC recommendations.

WHEREAS, concurrently with WRPAC and MTAC's review of the joint subcommittee's proposed amendments to Title 3, Metro held Stream and Floodplain Protection Plan workshops on January 17, 20, 27 and 31, 1998. Copies of the joint subcommittee's proposed amendments to Title 3, the September 4, 1997, draft Model Ordinance and Title 3 maps were available for public review and comment.

WHEREAS, the Growth Management Committee considered proposed amendments to Title 3, the Model Ordinance and maps at a work session held on February 17, and at public hearings on March 17, and April 7, 1998.

WHEREAS, the Metro Council considered proposed amendments to Title 3, the Model Ordinance and maps at public hearings held on February 26 and \_\_\_\_\_ 1998.

WHEREAS, Title 3 of the UGMFP as adopted November 21, 1996, has a different effective date and compliance date than the UGMFP generally. The UGMFP has an effective date of February 19, 1997 with compliance required by February 19, 1999. Originally, Sections 1-4 of Title 3 were not effective until 24 months after the Metro Council adopted a Model Ordinance and maps addressing Title 3 because it was anticipated that drafting the Model Ordinance would take three to four months. That drafting process took one year. MPAC, WRPAC and

MTAC recommended that compliance be required within 18 months of Metro Council adoption of the Model Ordinance and maps.

WHEREAS, Through review at WRPAC, MTAC and MPAC, Sections 1-4 of Title 3 have been extensively reorganized. For that reason, Exhibit A will fully replace Title 3, Sections 1-4 as adopted by the Metro Council on November 21, 1996.

WHEREAS, No significant changes have been made to Sections 5-7 of Title 3. Therefore, Exhibit B only amends Title 3, Sections 5-7 as adopted by the Metro Council on November 21, 1996.

THE METRO COUNCIL ORDAINS 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. 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 5. Cities and counties are hereby required to comply with Title 3, Sections 1-4 of the Urban Growth Management Functional Plan, as amended herein, within 18 months of the adoption of this ordinance.

Section 6. Ordinances No. 96-647C and No. 97-715B, Appendix A, Section 3.07.1000 is hereby amended to add the definitions shown in Exhibit E which is attached and incorporated by reference into this ordinance.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_ 1998.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

////

////

ATTEST:

Approved as to Form:

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

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

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**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, and
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**

Cities and counties shall comply with this Title in one of the following ways:

**A. 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:**

1. Adopt code language implementing this Title which prevails over the map and uses the map as reference; or
2. 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.

**B. 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.**

- 42 C. Any combination of A and B above that substantially complies with all performance  
43 standards in Section 4.

44 **Section 4. Performance Standards**

45 A. **Flood Management Performance Standards.**

- 46
- 47 1. The purpose of these standards is to reduce the risk of flooding, prevent or reduce risk to  
48 human life and property, and maintain functions and values of floodplains such as  
49 allowing for the storage and conveyance of stream flows through existing and natural  
50 flood conveyance systems.
- 51
- 52 2. All development, excavation and fill in the Flood Management Areas shall conform to  
53 the following performance standards:
- 54
- 55 a. Development, excavation and fill shall be performed in a manner to maintain or  
56 increase flood storage and conveyance capacity and not increase design flood  
57 elevations.
- 58
- 59 b. All fill placed at or below the design flood elevation in Flood Management Areas  
60 shall be balanced with at least an equal amount of soil material removal.
- 61
- 62 c. Excavation shall not be counted as compensating for fill if such areas will be filled  
63 with water in non-storm winter conditions.
- 64
- 65 d. Minimum finished floor elevations for new habitable structures in the Flood  
66 Management Areas shall be at least one foot above the design flood elevation.
- 67
- 68 e. Temporary fills permitted during construction shall be removed.
- 69
- 70 f. Uncontained areas of hazardous materials as defined by DEQ in the Flood  
71 Management Area shall be prohibited.
- 72
- 73 3. The following uses and activities are not subject to the requirements of Subsection 2:
- 74
- 75 a. Excavation and fill necessary to plant new trees or vegetation.
- 76
- 77 b. Excavation and fill required for the construction of detention facilities or structures,  
78 and other facilities such as levees specifically designed to reduce or mitigate flood  
79 impacts. Levees shall not be used to create vacant buildable lands.
- 80
- 81 c. New culverts, stream crossings, and transportation projects may be permitted if  
82 designed as balanced cut and fill projects or designed to not significantly raise the  
83 design flood elevation. Such projects shall be designed to minimize the area of fill in  
84 Flood Management Areas and to minimize erosive velocities. Stream crossings shall  
85 be as close to perpendicular to the stream as practicable. Bridges shall be used  
86 instead of culverts wherever practicable.
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**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.

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Table 1

Protected Water Feature Type (see definitions)	Slope to Protected Water Feature	Top of Bank	Width of Vegetated Corridor from Top of Bank
Primary Protected Water Features <sup>1</sup>	< 25%	edge of bankful flow or 2-year storm level or delineated edge of wetland	50 feet
Primary Protected Water Features <sup>1</sup>	≥ 25% for 150 feet or more	edge of bankful flow or 2-year storm level or delineated edge of wetland	200 feet
Primary Protected Water Features <sup>1</sup>	≥ 25% for less than 150 feet	top of ravine (break in ≥25% slope) <sup>3</sup>	50 feet <sup>4</sup>
Secondary Protected Water Features <sup>2</sup>	< 25%	edge of bankful flow or 2-year storm level	15 feet
Secondary Protected Water Features <sup>2</sup>	≥ 25%	edge of bankful flow or 2-year storm level	50 feet

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<sup>1</sup>Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, 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 – Figure #\_\_ 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).

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- 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.

176 C. Erosion and Sediment Control

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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.

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

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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:

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- 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 to apply the Water Quality and Flood Management Area performance standards of Section 4 only to development that requires 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.

**EXHIBIT B**

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

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

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8 B. **Fish and Wildlife Habitat Conservation Area Recommendations**

9  
10 These areas shall be shown on the Water Quality and Flood Management Area Map. Fish  
11 and Wildlife Habitat Conservation Areas generally include and/or go beyond the Water  
12 Quality and Flood Management Areas. These areas to be shown on the map ~~are~~ will be  
13 Metro's ~~initial~~ inventory of significant fish and wildlife habitat conservation areas. Metro  
14 hereby recommends that local jurisdictions adopt the following temporary standards:

- 15  
16 1. Prohibit development in ~~the Fish and Wildlife Conservation Areas~~ that  
17 adversely impacts fish and wildlife habitat.

18  
19 Exceptions: It is recognized that urban development will, at times, necessitate  
20 development activities within or adjacent to Fish and Wildlife Habitat  
21 Conservation Areas. The following Fish and Wildlife Habitat Conservation  
22 Mitigation Policy, except for emergency situations, applies to all the following  
23 exceptions:

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

- 36  
37 a. Utility construction within a maximum construction zone width  
38 established by cities and counties.
- 39  
40 b. Overhead or underground electric power, telecommunications and cable  
41 television lines within a sewer or stormwater right-of-way or within a  
42 maximum construction zone width established by cities and counties.
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44 c. Trails, boardwalks and viewing areas construction.

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- 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.

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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. VariancesMap Adjustment**

~~City and countycounties shall amend their comprehensive plans and implementing regulations are hereby requiredordinances to include procedures to consider claims of map error and hardship variances to reduce or remove stream corridor protection for any property demonstrated to be converted to an unbuildable lot by application of stream corridor protections allow:~~

- A. Amendments to the Water Quality and Flood Management Area Map to correct map error.
- B. Modification of the Water Quality Resource Area upon demonstration and evidence that the modification will offer the same or better protection of water quality, the Water Quality and Flood Management Area and Protected Water Feature.

**EXHIBIT C**

# **Title 3 Model Ordinance**

Growth Management Committee

May 5, 1998



**METRO**

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Appendix

## EXHIBIT C

### Metro Water Quality and Flood Management Area Model Ordinance

#### Introduction

Attached is the model ordinance required by Title 3, Section 6 of Metro's *Urban Growth Management Functional Plan*.

The purpose of this model ordinance is to provide a specific example of provisions approved by the Metro Council that can be used by a city or county to comply with the performance standards for *Title 3: Water Quality, Flood Management, and Fish and Wildlife Conservation* described in the *Metro Urban Growth Management Functional Plan*. Title 3 describes specific performance standards and practices for floodplain and water quality protection. It also requires that Metro adopt a Water Quality and Flood Management Model Ordinance and map for use by local jurisdictions to comply with Title 3. This model ordinance fulfills the Title 3 requirement. It is also consistent with Metro's policies in the 1995 *Future Vision Report*, in the 1995 *Regional Urban Growth Goals and Objectives (RUGGOs)* in the 1992 *Greenspaces Master Plan*, and in the 1997 *Regional Framework Plan*.

The purpose of Title 3 is to protect water quality and floodplain areas. Floodplains protect the region's health and public safety by reducing flood and landslide hazards and pollution of the region's waterways. This Model Ordinance and Map address the purpose. Another purpose of Title 3 is to protect fish and wildlife habitat. Statewide land use Goal 5 measures, which include fish and wildlife habitat protection, will be addressed in a Metro study that will be conducted within the next 18 months. Title 3 will apply to development in Fish and Wildlife Habitat Conservation Areas when Metro's Section 5 analysis and mapping are completed. As additional issues are addressed, further regulations may be imposed on areas contained within or outside of the Water Quality Resource Area and Flood Management Area Overlay Zones addressed in this Model Ordinance.

The Metro *Future Vision, Greenspaces Master Plan, Regional Urban Growth Goals and Objectives (RUGGOs), and Regional Framework Plan* identify water quality protection, floodplain management, fish and wildlife habitat protection, development of recreational trails, acquisition of open space and maintenance of biodiversity as critical elements of maintaining healthy, livable communities.

This Model Ordinance, however, only provides specific examples of local ordinance provisions for a portion of the issues identified in Title 3: protection of the region's floodplains, water quality and reduction of flood hazards and the implementation of erosion control practices throughout the Portland metropolitan region. Other issues

44 including fish and wildlife habitat, watershed-wide stormwater management, steep slopes,  
45 landslide hazards and biodiversity are addressed in the December 1997 Metro *Regional*  
46 *Framework Plan*.

47

48 The approach in Sections 2, 3 and 4 of Title 3 is to implement Oregon Statewide Goal 6  
49 and Goal 7. *Goal 6: Air, Water and Land Resources Quality* and *Goal 7: Areas Subject*  
50 *to Natural Disasters and Hazards* are addressed by protecting streams, rivers, wetlands,  
51 and areas adjacent to streams and floodplains within the Water Quality Resource and  
52 Flood Management Areas.

53

54 Cities and counties are required to amend their plans and implementing ordinances, if  
55 necessary, to ensure that they comply with Title 3 in one of the following ways:

56

57 A. Adopt the applicable provisions of the Metro Water Quality and Flood Management  
58 Area model ordinance and map, which is entitled the Metro Water Quality and Flood  
59 Management Area Map.

60

61 Local jurisdictions have two options with regard to their adoption of code language  
62 and a map (either the Metro Water Quality and Flood Management Area Map or a  
63 city or county field verified map that substantially complies with the Metro map):

64

65 1) the code language that describes the affected area prevails and the map is a  
66 reference; or

67 2) the map prevails and the descriptive code language is used to correct map errors  
68 when they are discovered and for delineating and marking the overlay zone  
69 boundary in the field.

70

71 The advantage of the first approach above is that the final boundary is determined at  
72 the time of the development application, based on a detailed survey of the site. If a  
73 large scale, precise boundary can be mapped, the official map should prevail. This  
74 method allows for a more efficient permit process and more certainty for the property  
75 owner. In this case, the language is used to correct mapping errors when they are  
76 discovered. A map, however, should only be used if it has a level of detail and clarity  
77 equal to or better than 1" = 300 feet, and has been field-checked for accuracy.

78

79 B. Adopt plans and implementing ordinances and maps that substantially comply with  
80 the performance standards of Title 3.

81

82 C. Any combination of A and B above that substantially complies with all performance  
83 standards in Title 3, Section 4 (see Title 3, Section 3).

84

85 The purpose of the map adopted by Metro is to provide the performance standard for the  
86 location of Water Quality Resource and Flood Management Areas. Therefore the map is  
87 the basis for evaluation of substantial compliance of local maps for those jurisdictions  
88 that choose to develop their own map of Water Quality Resource and Flood Management

89 Areas. "Substantial compliance" means that the city and county comprehensive plans  
90 and implementing ordinances, on the whole, conform with the purposes of the  
91 performance standards in the functional plan and any failure to meet individual  
92 performance standard requirements is technical or minor in nature.

93 **Water Quality and Flood Management Area Model Ordinance**

94  
95 **Section 1. Intent**

96  
97 The purpose of this ordinance is to comply with Sections 1-4 of Title 3 of Metro's  
98 Urban Growth Management Functional Plan.

99  
100 A. To protect and improve water quality, to support the designated  
101 beneficial water uses and to protect the functions and values of existing  
102 and newly established Water Quality Resource Areas, which include, but  
103 are not limited to:

- 104  
105 1. Provide a vegetated corridor to separate Protected  
106 Water Features from development;  
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108 2. Maintain or reduce stream temperatures;  
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110 3. Maintain natural stream corridors;  
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112 4. Minimize erosion, nutrient and pollutant loading into  
113 water;  
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115 5. Provide filtration, infiltration and natural water  
116 purification;  
117  
118 6. Stabilize slopes to prevent landslides contributing to  
119 sedimentation of water features.

120  
121 B. To protect Flood Management Areas, which provide the following  
122 functions:

- 123  
124 1. Protect life and property from dangers associated with flooding.  
125  
126 2. Flood storage, reduction of flood velocities, reduction of flood peak  
127 flows and reduction of wind and wave impacts.  
128  
129 3. Maintain water quality by reducing and sorting sediment loads,  
130 processing chemical and organic wastes and reducing nutrients.  
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132 4. Recharge, store and discharge groundwater.  
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134 5. Provide plant and animal habitat, and support riparian ecosystems.

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136 C. To establish two overlay zones for Water Quality Resource Areas and  
137 Flood Management Areas, which operate contemporaneously with the

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base zone and implement the performance standards of Title 3 of the Urban Growth Management Functional Plan.

**Section 2. Applicability**

- A. This ordinance applies to:
1. Development in the Water Quality Resource Area and Flood Management Area Overlay Zones. The overlay zones restrict the uses that are allowed in the base zone by right, with limitations, or as conditional uses.
  2. Development that may cause visible or measurable erosion on any property within the Metro Boundary.
- B. This ordinance 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 Table 2 standards for restoring marginal existing vegetated corridor.

**Section 3. Water Quality Resource Areas**

- A. The purpose of this section is to protect and improve the beneficial water uses and functions and values of Water Quality Resource Areas.
- B. This ordinance establishes a Water Quality Resource Area Overlay Zone, which is delineated on the Water Quality and Flood Management Area map attached and incorporated by reference as part of this ordinance.
- (Note: If it has been determined during local public review that the code language is to prevail, adoption of these standards as written is appropriate. If a map is to prevail, this section should be used for map correction and interpretation, and the definition of areas should be by adopting an official map by reference.)*
- C. 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 One. 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.

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Table 1

Protected Water Feature Type (see definitions)	Slope to Protected Water Feature	Top of Bank	Width of Vegetated Corridor from Top of Bank
Primary Protected Water Features <sup>1</sup>	< 25%	edge of bankful flow or 2-year storm level or delineated edge of wetland	50 feet
Primary Protected Water Features <sup>1</sup>	≥ 25% for 150 feet or more	edge of bankful flow or 2-year storm level or delineated edge of wetland	200 feet
Primary Protected Water Features <sup>1</sup>	≥ 25% for less than 150 feet	top of ravine (break in ≥25% slope) <sup>3</sup>	50 feet <sup>4</sup>
Secondary Protected Water Features <sup>2</sup>	< 25%	edge of bankful flow or 2-year storm level	15 feet
Secondary Protected Water Features <sup>2</sup>	≥ 25%	edge of bankful flow or 2-year storm level	50 feet

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<sup>1</sup> Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, 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 – Figure #\_\_ 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).

*(Note: The following methodology is an alternative for the purposes of substantial compliance: a jurisdiction can meet the performance standards in Title 3 by applying the following method to the water quality resource area: for areas with zero slope (as measured parallel to the ground) the buffer will be 50 feet from top of waterway bank, but for every one percent (1%) slope after that point, add six (6) feet.)*

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D. Uses Permitted Outright

1. Stream, wetland, riparian and upland enhancement or restoration projects; and farming practices as defined in ORS 30.930 and farm use as defined in ORS 215.203.

2. Placement of structures that does not require a grading or building permit.

*(Note: City and Counties have the option of choosing to apply the Water Quality and Flood Management Area performance standards of Table 1.)*

3. Routine repair and maintenance of existing structures, roadways, driveways, utility facilities, accessory uses and other development.

*(Note: Local jurisdictions may choose to place this subsection – D3 – in subsection E as item 3, Uses under Prescribed Conditions, and prescribe those conditions.)*

E. Uses Under Prescribed Conditions

1. Repair, replacement or improvement of utility facilities where:

a. the disturbed portion of the Water Quality Resource Area is restored; and

b. non-native vegetation is removed from the Water Quality Resource Area and replaced with vegetation from the Metro Native Plant List.

2. Additions, alterations, rehabilitation, or replacement of existing structures that do not increase existing structural footprint in the Water Quality Resource Area where the disturbed portion of the Water Quality Resource Area is restored using native vegetative cover.

F. Conditional Uses

The following uses are allowed in the Water Quality Resource Area Overlay Zone subject to compliance with the Application Requirements and Development Standards of subsections H and I.

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1. Any use allowed in the base zone, other than those listed in subsection D and E above.
2. Measures to remove or abate nuisances; or any other violation of state statute, administrative agency rule or city or county ordinance.
3. Roads to provide access to Protected Water Features or necessary ingress and egress across Water Quality Resource Areas.
4. New public or private utility facility construction.
5. Walkways and bike paths. (Subsection H.5).
6. New stormwater pre-treatment facilities (Subsection H.6).
7. Widening an existing road adjacent to or running parallel to a Water Quality Resource Area.
8. Additions, alterations, rehabilitation or replacement of existing structures, roadways, accessory uses and development that increase the structural footprint within the Water Quality Resource Area.

G. Prohibited Uses

1. Any new structures, development, other than those listed in subsection D, and E and F, construction activities, gardens, lawns, dumping of any materials of any kind.
2. Uncontained areas of hazardous materials as defined by the Department of Environmental Quality.

H Application Requirements

Applications for Conditional Uses in the Water Quality Resource Area Overlay Zone must provide the following information in addition to the information required for the base zone:

1. A topographic map of the site at contour intervals of five feet or less showing a delineation of the Water Quality Resource Area, which includes areas shown on the City/County Water Quality and Flood Management Area map, and that meets the definition of Water Quality Resource Areas in Table 1.

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2. The location of all existing natural features including, but not limit to, all trees of a caliper greater than six (6) inches diameter at breast height (DBH), natural drainages on the site, springs, seeps and outcroppings of rocks, or boulders within the Water Quality Resource Area.
3. Location of wetlands. Where wetlands are identified, the applicant shall follow the Division of State Lands recommended wetlands assessment process. Descriptions and assessments required in this section shall be prepared by a professional wetlands specialist.
4. An inventory and location of existing debris and noxious materials.
5. An assessment of the existing condition of the Water Quality Resource Area in accordance with Table 2.
6. An inventory of vegetation, including percentage ground and canopy coverage.
7. Alternatives analysis demonstrating that:
  - a. No practicable alternatives to the requested development exist that will not disturb the Water Quality Resource Area; and
  - b. Development in the Water Quality Resource Area has been limited to the area necessary to allow for the proposed use; and
  - c. The Water Quality Resource Area can be restored to an equal or better condition in accordance with Table 2; and
  - d. It will be consistent with a Water Quality Resource Area Mitigation Plan.
  - e. An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to resource areas will be avoided and/or minimized.
  - f. For applications seeking an alteration, addition, rehabilitation or replacement of existing structures:

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- 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.
8. A Water Quality Resource Area Mitigation Plan shall contain the following information:
- a. A description of adverse impacts that will be caused as a result of development.
  - b. An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 2.
  - c. A list of all responsible parties including, but not limited to, the owner, applicant, contractor or other persons responsible for work on the development site.
  - d. A map showing where the specific mitigation activities will occur.
  - e. An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.

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I. Development Standards

Applications for Conditional Uses in the Water Quality Resource Area Overlay Zone shall satisfy the following standards:

1. The Water Quality Resource Area shall be restored and maintained in accordance with the mitigation plan and the specifications in Table 2.
2. To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Quality Resource Area. Trees in the Water Quality Resource Area shall not be used as anchors for stabilizing construction equipment.
  1. Where existing vegetation has been removed, or the original land contours disturbed, the site shall be revegetated, and the vegetation shall be established as soon as practicable. Nuisance plants, as identified in the Metro Native Plant List attached as \_\_\_\_\_, may be removed at any time. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Nuisance plants shall be replaced with non-nuisance plants by the next growing season.
  2. Prior to construction, the Water Quality Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as allowed in Subsection F. Such markings shall be maintained until construction is complete.
  3. Walkways and bike paths:
    - a. A gravel walkway or bike path shall not be constructed closer than 10 feet from the boundary of the Protected Water Feature. Walkways and bike paths shall be constructed so as to minimize disturbance to existing vegetation. Where practicable, a maximum of 10 percent of the trail may be within 30 feet of the Protected Water Feature.

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- b. A paved walkway or bike path shall not be constructed closer than 10 feet from the boundary of the Protected Water Feature. For any paved walkway or bike path, the width of the Water Quality Resource Area must be increased by a distance equal to the width of the path. Walkways and bike paths shall be constructed so as to minimize disturbance to existing vegetation. Where practicable, a maximum of 10 percent of the trail may be within 30 feet of the Protected Water Feature.
- c. A walkway or bike path shall not exceed 10 feet in width.
- 6. Stormwater pre-treatment facilities:
  - a. The stormwater pre-treatment facility may only encroach a maximum of 25 feet into the outside boundary of the Water Quality Resource Area of a primary water feature; and
  - b. The area of encroachment must be replaced by adding an equal area to the Water Quality Resource Area on the subject property.
- 7. Additions, alterations, rehabilitation and replacement to lawful structures.
  - a. For existing structures, roadways, driveways, accessory uses and development which are nonconforming, this ordinance shall apply in addition to the nonconforming use regulations of the City/County zoning ordinance.
  - b. Additions, alterations, rehabilitation or replacement of existing structures, roadways, driveways, accessory uses and development shall not encroach closer to the Protected Water Feature than the existing structures, roadways, driveways, accessory uses and development.
- 1. Off-site Mitigation:
  - a. Where the alternatives analysis demonstrates that there are no practicable alternatives for mitigation on site, off-site mitigation shall be located as follows:

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- 1) As close to the development as is practicable above the confluence of the next downstream tributary, or if this is not practicable;
- 2) Within the watershed where the development will take place or as otherwise specified by the city or county in an approved Wetland Mitigation Bank.
  - a. In order to ensure that the mitigation area will be protected in perpetuity, proof that a deed restriction has been placed on the property where the mitigation is to occur is required.

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Table 2

WATER QUALITY RESOURCE AREA REQUIREMENTS

EXISTING CONDITION OF WATER QUALITY RESOURCE AREA	REQUIREMENTS IF WATER QUALITY RESOURCE AREA REMAINS <u>UNDISTURBED</u> DURING CONSTRUCTION	REQUIREMENTS IF WATER QUALITY RESOURCE AREA IS <u>DISTURBED</u> DURING CONSTRUCTION
<p><u>Good Existing Corridor:</u> Combination of trees, shrubs and groundcover are 80% present, and there is more than 50% tree canopy coverage in the vegetated corridor.</p>	<p><i>Provide certification by registered professional engineer, landscape architect, or biologist or other person trained or certified in riparian or wetland delineation that vegetated corridor meets the standards of this ordinance.</i></p> <p><i>Inventory and remove debris and noxious materials.</i></p>	<p>Prior to construction, a biologist or landscape architect shall prepare and submit an inventory of vegetation in areas proposed to be disturbed and a plan for mitigating water quality impacts related to the development, including:</p> <ul style="list-style-type: none"> <li>• sediments, temperature and nutrients</li> <li>• sediment control</li> <li>• temperature control</li> <li>• or addressing any other condition that may have caused the Protected Water Feature to be listed on DEQ's 303 (d) list.</li> </ul> <p>Inventory and remove debris and noxious materials.</p>

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Note: The middle column, being italicized, indicates that it is an option for consideration in the development review process.

EXISTING CONDITION OF WATER QUALITY RESOURCE AREA	REQUIREMENTS IF WATER QUALITY RESOURCE AREA REMAINS <u>UNDISTURBED</u> DURING CONSTRUCTION	REQUIREMENTS IF WATER QUALITY RESOURCE AREA IS <u>DISTURBED</u> DURING CONSTRUCTION
<p><u>Marginal Existing Vegetated Corridor:</u>                      Combination of trees, shrubs and groundcover are 80% present, and 25-50 percent canopy coverage in the vegetated corridor.</p>	<p><i>Provide certification by registered professional engineer, landscape architect, or biologist or other person trained or certified in riparian or wetland delineation that vegetated corridor meets the standards of this ordinance.</i></p> <p><i>Inventory and remove debris and noxious materials.</i></p>	<p>Vegetate disturbed and bare areas with, non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p> <p>Revegetate with native species using a City/County approved plan developed to represent the vegetative composition that would naturally occur on the site. Seeding may be required prior to establishing plants for site stabilization.</p> <p>Revegetation must occur during the next planting season following site disturbance. Annual replacement of plants that do not survive is required until vegetation representative of natural conditions is established on the site.</p> <p>Restore and mitigate according to approved plan using non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p>

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**Note:** The middle column, being italicized, indicates that it is an option for consideration in the development review process.

EXISTING CONDITION OF WATER QUALITY RESOURCE AREA	REQUIREMENTS IF WATER QUALITY RESOURCE AREA REMAINS <u>UNDISTURBED</u> DURING CONSTRUCTION	REQUIREMENTS IF WATER QUALITY RESOURCE AREA IS <u>DISTURBED</u> DURING CONSTRUCTION
<p><u>Degraded Existing Vegetated Corridor:</u>                      Less vegetation and canopy coverage than Marginal Vegetated Corridors, and/or greater than 10% surface coverage of any non-native species.</p>	<p><i>Vegetate bare areas with plantings from approved Native Plant List.</i></p> <p><i>Remove non-native species and revegetate with plantings from approved Native Plants List.</i></p> <p><i>Inventory and remove debris and noxious materials.</i></p>	<p>Vegetate disturbed and bare areas with appropriate plants from Native Plants List.</p> <p>Remove non-native species and revegetate with non-nuisance plantings from Native Plants List.</p> <p>Plant and seed to provide 100 percent surface coverage.</p> <p>Restore and mitigate according to approved plan using non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p>

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**Note:** The middle column, being italicized, indicates that it is an option for consideration in the development review process.

483 **Section 4. Flood Management**

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485 A. The purpose of these standards is to reduce the risk of flooding, prevent or  
486 reduce risk to human life and property, and maintain the functions and  
487 values of floodplains, such as allowing for the storage and conveyance of  
488 stream flows through existing and natural flood conveyance systems.

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490 B. This ordinance establishes a Flood Management Area Overlay Zone,  
491 which is delineated on the Water Quality and Flood Management Area  
492 Map attached and incorporated by reference as a part of this ordinance.

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494 C. The Flood Management Areas mapped include:

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496 1. Land contained within the 100-year floodplain, flood area and  
497 floodway as shown on the Federal Emergency Management Agency  
498 Flood Insurance maps and the area of inundation for the February  
499 1996 flood; and

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501 2. Lands that have physical or documented evidence of flooding within  
502 recorded history. Jurisdictions shall use the most recent and  
503 technically accurate information available to determine the historical  
504 flood area, such as the aerial photographs of the 1996 flooding and  
505 digitized flood elevation maps.

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507 C. The standards that apply to the Flood Management Areas apply in addition  
508 to local, state or federal restrictions governing floodplains or flood hazard  
509 areas.

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511 E. Uses Permitted Outright:

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513 1. Excavation and fill required to plant any new trees or  
514 vegetation.

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516 2. Restoration or enhancement of floodplains, riparian  
517 areas, wetland, upland and streams that meet federal and state  
518 standards.

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520 F. Conditional Uses:

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522 All uses allowed in the base zone or existing flood hazard overlay zone are  
523 allowed in the Flood Management Overlay Zone subject to compliance  
524 with the Development Standards of subsection H.

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G. Prohibited Uses:

1. Any use prohibited in the base zone or existing flood hazard overlay zone.
2. Uncontained areas of hazardous materials as defined by the Department of Environmental Quality.

H. Development Standards

All development, excavation and fill in the floodplain shall conform to the following balanced cut and fill standards:

1. No net fill in any floodplain is allowed. All fill placed in a floodplain shall be balanced with at least an equal amount of soil material removal.
2. Excavation areas shall not exceed fill areas by more than 50 percent of the square footage.
3. Any excavation below bankful stage shall not count toward compensating for fill.

*(Note: These areas would be full of water in the winter and not available to hold stormwater.)*

4. Excavation to balance a fill shall be located on the same parcel as the fill unless it is not reasonable or practicable to do so. In such cases, the excavation shall be located in the same drainage basin and as close as possible to the fill site, so long as the proposed excavation and fill will not increase flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis.
5. For excavated areas identified by the city or county to remain dry in the summer, such as parks or mowed areas, the lowest elevation of the excavated area shall be at least 6 inches above the winter "low water" elevation, and sloped at a minimum of two percent towards the Protected Water Feature. One percent slopes will be allowed in areas of \_\_\_ acres or less.
6. For excavated areas identified by the city or county to remain wet in the summer, such as a constructed wetland, the grade shall be designed not to drain into the Protected Water Feature.

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7. Minimum finished floor elevations must be at least one foot above the design flood height or highest flood of record, whichever is higher, for new habitable structures in the Flood Area.
8. Short-term parking in the floodplain may be located at an elevation of no more than one foot below the ten-year floodplain so long as the parking facilities do not occur in a Water Quality Resource Area. Long-term parking in the floodplain may be located at an elevation of no more than one foot below the 100-year floodplain so long as the parking facilities do not occur in a Water Quality Resource Area.
9. Temporary fills permitted during construction shall be removed.
10. New culverts, stream crossings and transportation projects shall be designed as balanced cut and fill projects or designed not to 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 crossings shall be as close to perpendicular to the stream as practicable. Bridges shall be used instead of culverts wherever practicable.
11. Excavation and fill required for the construction of detention facilities or structures, and other facilities, such as levees, specifically shall be designed to reduce or mitigate flood impacts and improve water quality. Levees shall not be used to create vacant buildable lands.

**Section 5. Subdivisions and Partitions (optional)**

- A. The purpose of this section is to amend the City/County regulations governing land divisions to require that new subdivision and partition plats delineate and show the Water Quality Resource Area as a separate tract.
- B. The standards for land divisions in Water Quality Resource Areas shall apply in addition to the requirements of the City/County land division ordinance and zoning ordinance.
- C. Prior to preliminary plat approval, the Water Quality Resource Area shall be shown as a separate tract, which shall not be a part of any parcel used for construction of a dwelling unit.

- 615 D. Prior to final plat approval, ownership of the Water Quality  
616 Resource Area tract shall be identified to distinguish it from lots intended  
617 for sale. The tract may be identified as any one of the following:  
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619 1. Private open space held by the owner or homeowners  
620 association; or  
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622 2. Residential land divisions, private open space subject to  
623 an easement conveying storm and surface water management rights  
624 to the City/County and preventing the owner of the tract from  
625 activities and uses inconsistent with the purpose of this ordinance; or  
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627 3. At the owner's option, public open space where the  
628 tract has been dedicated to the City/County or other governmental  
629 unit; or  
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631 4. Any other ownership proposed by the owner and  
632 approved by the Director.  
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634 E. Where the Water Quality Resource Area tract is dedicated to the  
635 City/County or other governmental unit, development shall be subject to a  
636 minimum 3-foot setback from the Water Quality Resource Area.  
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638 **Section 6. Density Transfers**  
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640 A. The purpose of this section is to allow density accruing to portions of a  
641 property within the Water Quality Resource Area and Flood Management  
642 Area Overlay Zones to be transferred outside the overlay zones.  
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644 B. Development applications that request a density transfer must provide  
645 the following information:  
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- 647 1. A map showing the net buildable area to which the density will be  
648 transferred.  
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650 2. Calculations justifying the requested density increase.  
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652 C. Density transfers shall be allowed if the applicant demonstrates  
653 compliance with the following standards:  
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- 655 1. The density proposed for the lot receiving the density  
656 is not increased to more than two (2) times the permitted density of  
657 the base zone. Fractional units shall be rounded down to the next  
658 whole number.  
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(Note: This is one way of restricting density.)

2. Minimum density standards will not increase due to the density transfers.

D. The area of land contained in a Water Quality Resource Area may be excluded from the calculations for determining compliance with minimum density requirements of the zoning code.

A. All standards of the base zone other than density requirements continue to apply.

B. Density transfers shall be recorded on the title of the lot in the Water Quality Resource Area and on the title of the transfer lot.

C. Once density is transferred from a lot in the Water Quality Resource Area, the density increase allocated to the transfer lot may not be transferred to any other lot.

**Section 7. Erosion Prevention and Sediment Control**

A. The purpose of this section is to require erosion prevention measures and sediment control practices for all development inside and outside the Water Quality Resource Area and Flood Management Area Overlay Zones during construction to prevent and restrict the discharge of sediments, and to require final permanent erosion prevention measures, which may include landscaping, after development is completed. Erosion prevention techniques shall be designed to protect soil particles from the force of water and wind so that they will not be transported from the site. Sediment control measures shall be designed to capture soil particles after they have become dislodged by erosion and attempt to retain the soil particles on site.

B. Prior to, or contemporaneous with, approval of an application that may cause visible or measurable erosion, the applicant must obtain an Erosion and Sediment Control Permit.

C. An application for an Erosion and Sediment Control Permit shall include an Erosion and Sediment Control Plan, which contains methods and interim measures to be used during and following construction to prevent or control erosion. The plan shall demonstrate the following:

1. The Erosion and Sediment Control Plan meets the requirements of the *Erosion Prevention and Sediment Control Plans, Technical Guidance Handbook (Handbook)* attached and incorporated by reference as part of this ordinance;

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2. The Erosion and Sediment Control Plan will:
    - a. Prevent erosion by employing prevention practices such as non-disturbance, construction schedules, erosion blankets and mulch covers; or
    - b. Where erosion cannot be completely avoided, the sediment control measures will be adequate to prevent erosion from entering the public stormwater system, surface water system, and Water Quality Resource Areas; and
    - c. Will allow no more than a ten percent cumulative increase in natural stream turbidities, as measured relative to a control point immediately upstream of the turbidity causing activity. However, limited duration activities necessary to address an emergency or to accommodate essential dredging, construction or other legitimate activities, and that cause the standard to be exceeded may be authorized provided all practicable turbidity control techniques have been applied.
  1. The applicant will actively manage and maintain erosion control measures and utilize techniques described in the Permit to prevent or control erosion during and following development. Erosion and sediment control measures required by the Permit shall remain in place until disturbed soil areas are permanently stabilized by landscaping, grass, approved mulch or other permanent soil stabilizing measures;
  2. No mud, dirt, rock or other debris will be deposited upon a public street or any part of the public stormwater system, surfacewater system, Water Quality Resource Area, or any part of a private stormwater system or surfacewater system that drains or connects to the public stormwater or surfacewater system.
- D. The Erosion and Sediment Control Plan shall be reviewed in conjunction with the requested development approval. If the development does not require review under Sections 3 and 4 of this ordinance, the Director may approve or deny the permit with notice of the decision to the applicant.
- E. The city or county may inspect the development site to determine compliance with the Erosion and Sediment Control Plan and Permit.

748 F. Erosion that occurs on a development site that does not have an Erosion  
749 and Sediment Control Permit, or that results from a failure to comply with  
750 the terms of such a Permit, constitutes a violation of this ordinance.

751  
752 G. If the Director finds that the facilities and techniques approved in an  
753 Erosion and Sediment Control Plan and Permit are not sufficient to  
754 prevent erosion, the Director shall notify the permittee. Upon receiving  
755 notice, the permittee shall immediately install interim erosion and  
756 sediment control measures as specified in the *Handbook*. Within three  
757 days from the date of notice, the permittee shall submit a revised Erosion  
758 and Sediment Control Plan to the city or county. Upon approval of the  
759 revised plan and issuance of an amended Permit, the permittee shall  
760 immediately implement the revised plan.

761  
762 **Section 8. Variances**

763  
764 A. The purpose of this Section is to ensure that compliance with this  
765 ordinance does not cause unreasonable hardship. To avoid such instances,  
766 the requirements of this ordinance may be varied. Variances are also  
767 allowed when strict application of this ordinance would deprive an owner  
768 of all economically viable use of land.

769  
770 B. This Section applies in addition to the standards governing proposals to  
771 vary the requirements of the base zone.

772  
773 C. The Director shall provide the following notice of variance applications:

774  
775 1. Upon receiving an application to vary the requirements of this  
776 ordinance, the Director shall provide notice of the request to all  
777 property owners within (100) feet inside the urban growth boundary,  
778 (250) feet outside the urban growth boundary and Metro.

779  
780 2. Within (7) days of a decision on the variance, the Director shall  
781 provide notice of the decision to all property owners within (100)  
782 feet inside the urban growth boundary, (250) feet outside the urban  
783 growth boundary and Metro.

784  
785 D. Development may occur on lots located completely within the Water  
786 Quality Resource Overlay Zone that are recorded with the county  
787 assessor's office on or before the date this ordinance is adopted.  
788 Development shall not disturb more than 5,000 square feet of the  
789 vegetated corridor, including access roads and driveways, subject to the  
790 erosion and sediment control standards of this ordinance.

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E. Hardship Variance

Variations to avoid unreasonable hardship caused by the strict application of this ordinance are permitted subject to the criteria set forth in this section. To vary from the requirements of Section 3F, the applicant must demonstrate the following:

1. The variance is the minimum necessary to allow the proposed use or activity;
2. The variance does not increase danger to life and property due to flooding or erosion;
3. The impact of the increase in flood hazard, which will result from the variance, will not prevent the city or county from meeting the requirements of this ordinance. In support of this criteria the applicant shall have a qualified professional engineer document the expected height, velocity and duration of flood waters, and estimate the rate of increase in sediment transport of the flood waters expected both downstream and upstream as a result of the variance;
4. The variance will not increase the cost of providing and maintaining public services during and after flood conditions so as to unduly burden public agencies and taxpayers;
5. Unless the proposed variance is from Section 3.H.8 (mitigation) or Section 7(erosion control), the proposed use will comply with those standards; and
6. The proposed use complies with the standards of the base zone.

F. Buildable Lot Variance

A variance to avoid the loss of all economically viable use of a lot that is partially inside the Water Quality Resource Overlay Zone is permitted. Development on such lots shall not disturb more than 5,000 square feet of the vegetated corridor, including access roads and driveways, subject to the erosion and sediment control standards in Section 7 of this ordinance. Applicants must demonstrate the following:

1. Without the proposed variance, the applicant would be denied economically viable use of the subject property. To meet this criterion, the applicant must show that:

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- a. The proposed use cannot meet the standards in Section 8.E (hardship variance); and
  - b. No other application could result in permission for an economically viable use of the subject property. Evidence to meet this criterion shall include a list of uses allowed on the subject property.
- 2. The proposed variance is the minimum necessary to allow for the requested use;
  - 3. The proposed variance will comply with Section 3.H.8 (mitigation) and Section 7 (erosion control); and
  - 4. The proposed use complies with the standards of the base zone.

G. Variance Conditions

The Director may impose such conditions as are deemed necessary to limit any adverse impacts that may result from granting relief. If a variance is granted pursuant to subsections E. 1-6, the variance shall be subject to the following conditions:

- 1. The minimum width of the vegetated corridor shall be 15 feet on each side of a Primary Protected Water Feature, except as allowed in Section 3F and 3H;
- 2. No more than 25 percent of the length of the Water Quality Resource Area for a Primary Protected Water Feature within a development site can be less than 30 feet in width on each side of the water feature; and
- 3. In either case, the average width of the Water Quality Resource Area shall be a minimum of 15 feet on each side for Secondary Protected Water Features, a minimum of 50 feet on each side for Primary Protected Water Features; or up to 200 feet on each side in areas with slopes greater than 25 percent. The stream shall be allowed to meander within this area, but in no case shall the stream be less than 10 feet from the outer boundary of the Water Quality Resource Area.

876 **Section 9. Map Errors**

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878 **(PLACEHOLDER)**

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888 **Section 10. Consistency**

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896 **Section 11. Warning and Disclaimer of Liability**

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908 **Section 12. Severability**

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915 **Section 13. Enforcement**

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*(Note: It is recognized that there will be mapping errors in the Title 3 map. Whether these are errors of omission or errors where the map shows a resource where a resource does not exist, the jurisdiction shall develop and implement a public process whereby property owners, local stream groups, watershed councils and the affected public may submit suggested mapping corrections through a full and open public process. Process for correction of map errors should be included unless the general map error provision of the zoning code is sufficient)*

Where the provisions of this ordinance are less restrictive or conflict with comparable provisions of the zoning ordinance, regional, state or federal law, the provisions that are more restrictive shall govern. Where this ordinance imposes restrictions that are more stringent than regional, state and federal law, the provisions of this ordinance shall govern.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create liability on the part of the City or County, any officer or employee thereof, or the Federal Insurance Administration, for any damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

The provisions of this ordinance are severable. If any section, clause or phrase of this ordinance is adjudged to be invalid by a court of competent jurisdiction, the decision of that court shall not affect the validity of the remaining portions of this ordinance.

A. No person shall engage in or cause to occur any development, use or activity that fails to meet the standards and requirements of this ordinance. Development, uses or activities that are not specifically allowed within the Water Quality Resource Area are prohibited. All activities that may cause

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visible or measurable erosion are prohibited prior to the applicant obtaining an Erosion and Sediment Control Permit.

B. In addition to other powers the city or county may exercise to enforce this ordinance, the city or county may:

1. Establish a cooperative agreement between the (enforcement authority) and the applicant (or responsible party) to remedy the violation.
2. Issue a stop work order.
3. Impose a civil penalty of not more than \$\_\_\_ for each violation upon the permittee, contractor or person responsible for carrying out the development work. Each day of violation shall constitute a separate offense.
4. Cause an action to be instituted in a court of competent jurisdiction.
5. Authorize summary abatement and subsequent recovery of costs incurred by the city or county.

C. Upon notification by the city or county of any violation of this ordinance the applicant, permittee, contractor or person responsible for carrying out development work may be required to immediately install emergency erosion and sediment control measures that comply with Section 6.

947 **Section 14. Definitions**

948

949 **Definitions.** Unless specifically defined below, words or phrases used in this section shall  
950 be interpreted to give them the same meaning as they have in common usage and to give  
951 this classification its most reasonable application.

952

953 **Architect** - An architect licensed by the State of Oregon.

954

955 **Bankful Stage** - Defined in OAR 141-85-010 (definitions for Removal/Fill Permits) as  
956 the stage or elevation at which water overflows the natural banks of a stream or other  
957 waters of the state and begin to inundate upland areas. In the absence of physical  
958 evidence, the two-year recurrent flood elevation may be used to approximate the bankful  
959 stage.

960

961 **Created Wetlands** - Those wetlands developed in an area previously identified as a non-  
962 wetland to replace, or mitigate wetland destruction or displacement. A created wetland  
963 shall be regulated and managed the same as an existing wetland.

964

965 **Constructed Wetlands** - Those wetlands developed as a water quality or quantity  
966 facility, subject to change and maintenance as such. These areas must be clearly defined  
967 and/or separated from naturally occurring or created wetlands.

968

969 **Debris**

970

971 **Department of Environmental Quality (DEQ) Water Quality Standards** - The  
972 numerical criteria or narrative condition needed in order to protect an identified beneficial  
973 use.

974

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

978

979 **Development** - any man-made change defined as buildings or other structures, mining,  
980 dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any  
981 lot or excavation. In addition, any other activity that results in the removal of more than  
982 10 percent of the vegetation in the Water Quality Resource Area on the lot is defined as  
983 development, for the purpose of Title 3 except that more than 10 percent removal of  
984 vegetation on a lot must comply with Section 4C - Erosion and Sediment Control.  
985 Development does not include the following: a) Stream enhancement or restoration  
986 projects approved by cities and counties; b) Farming practices as defined in ORS 30.930  
987 and farm use as defined in ORS 215.203, except that buildings associated with farm  
988 practices and farm uses are subject to the requirements of Title 3.

989

990 **Disturb** - man-made changes to the existing physical status of the land, which are made  
991 in connection with development. The following uses (activities) are excluded from the  
992 definition.

993

994 a. enhancement or restoration of the Water Quality Resource Area;

995

996 b. planting native cover identified in the Metro Native Plant List.

997

998 **Division of State Lands Wetland Determinations** - As defined in OAR 141-86-200  
999 (definitions for Local Wetland Inventory Standards and Guidelines), "wetland  
1000 determination" means identifying an area as wetland or non-wetland.

1001

1002 **Emergency** - any man-made or natural event or circumstance causing or threatening loss  
1003 of life, injury to person or property, and includes, but is not limited to, fire, explosion,  
1004 flood, severe weather, drought earthquake, volcanic activity, spills or releases of oil or  
1005 hazardous material, contamination, utility or transportation disruptions, and disease.

1006

1007 **Engineer** - A registered professional engineer licensed by the State of Oregon.

1008

1009 **Enhancement** - the process of improving upon the natural functions and/or values of an  
1010 area or feature which has been degraded by human activity. Enhancement activities may  
1011 or may not return the site to a pre-disturbance condition, but create/recreate processes and  
1012 features that occur naturally.

1013

1014 **Engineering Geologist** - A registered professional engineering geologist licensed by the  
1015 State of Oregon.

1016

1017 **Erosion** - Erosion is the movement of soil particles resulting from actions of water or  
1018 wind.

1019

1020 **Fill** - any material such as, but not limited to, sand, gravel, soil, rock or gravel that is  
1021 placed in a wetland or floodplain for the purposes of development or redevelopment.

1022

1023 **Floodway Fringe** - The area of the floodplain, lying outside the floodway, which does  
1024 not contribute appreciably to the passage of flood water, but serves as a retention area.

1025

1026 **Floodplain** - The land area identified and designated by the United States Army Corps of  
1027 Engineers, the Oregon Division of State Lands, FEMA, or (identify name) county/city  
1028 that has been or may be covered temporarily by water as a result of a storm event of  
1029 identified frequency. It is usually the flat area of land adjacent to a stream or river  
1030 formed by floods.

1031

1032 **Floodway** - The portion of a watercourse required for the passage or conveyance of a  
1033 given storm event as identified and designated by the (identify name) City/County  
1034 pursuant to this Ordinance. The floodway shall include the channel of the watercourse

1035 and the adjacent floodplain that must be reserved in an unobstructed condition in order to  
1036 discharge the base flood without flood levels by more than one foot.

1037  
1038 **Flood Management Areas** - all lands contained within the 100-year floodplain, flood  
1039 area and floodway as shown on the Federal Emergency Management Agency Flood  
1040 Insurance Maps and the area of inundation for the February 1996 flood. In addition, all  
1041 lands which have documented evidence of flooding.

1042  
1043 **Invasive Non-native or Noxious Vegetation** - plant species that have been introduced  
1044 and due to aggressive growth patterns and lack of natural enemies in the area where  
1045 introduced, spread rapidly into native plant communities, or which are listed on the Metro  
1046 Prohibited Plant List.

1047  
1048 **Lot** - Lot means a single unit of land that is created by a subdivision of land. (ORS  
1049 92.010(3)).

1050  
1051 **Mitigation** - the reduction of adverse effects of a proposed project by considering, in the  
1052 order: a) avoiding the impact all together by not taking a certain action or parts of an  
1053 action; b) minimizing impacts by limiting the degree or magnitude of the action and its  
1054 implementation; c) rectifying the impact by repairing, rehabilitating or restoring the  
1055 effected environment; d) reducing or eliminating the impact over time by preservation  
1056 and maintenance operations during the life of the action by monitoring and taking  
1057 appropriate measures; and e) compensating for the impact by replacing or providing  
1058 comparable substitute water quality resource areas.

1059  
1060 **Native Vegetation** - any vegetation native to the Portland metropolitan area or listed on  
1061 the Metro Native Plant list.

1062  
1063 **ODFW Construction Standards** - Oregon Department of Fish and Wildlife construction  
1064 guidelines for building roads, bridges and culverts or any transportation structure within a  
1065 waterway.

1066  
1067 **Open Space** - Land that is undeveloped and that is planned to remain so indefinitely.  
1068 The term encompasses parks, forests and farm land. It may also refer only to land zoned  
1069 as being available to the public, including playgrounds, watershed preserves and parks.

1070  
1071 **Ordinary Mean High Water Line** - As defined in OAR 141-82-005 as the line on the  
1072 bank or shore to which water ordinarily rises in season; synonymous with Mean High  
1073 Water (OAR 274.005).

1074  
1075 **Ordinary Mean Low Water Line** - As defined in OAR 141-82-005 as the line on the on  
1076 the bank or shore to which water ordinarily recedes in season; synonymous with Mean  
1077 Low Water (OAR 274.005).

1078

1079 **Owner or Property Owner** - The person who is the legal record owner of the land, or  
1080 where there is a recorded land sale contract, the purchaser thereunder.

1081  
1082 **Parcel** - Parcel means a single unit of land that is created by a partitioning of land. (ORS  
1083 92.010(7)).

1084  
1085  
1086 **Plans** - The drawings and designs that specify construction details as prepared by the  
1087 Engineer.

1088  
1089 **Post-Construction Erosion Control** - Consists of re-establishing groundcover or  
1090 landscaping prior to the removal of temporary erosion control measures.

1091  
1092 **Protected Water Features**

1093  
1094 Primary Protected Water Features shall include:

- 1095  
1096 a. wetlands; and  
1097  
1098 b. rivers, streams, and drainages downstream from the point at which 100 acres or  
1099 more are drained to that water feature (regardless of whether it carries year-round  
1100 flow); and  
1101  
1102 c. streams carrying year-round flow; and  
1103  
1104 d. springs which feed streams and wetlands and have year-round flow and  
1105  
1106 e. natural lakes.

1107  
1108 *Secondary Protected Water Features* shall include intermittent streams and seeps  
1109 downstream of the point at which 50 acres are drained and upstream of the point  
1110 at which 100 acres are drained to that water feature.

1111  
1112 **Restoration** - the process of returning a disturbed or altered area or feature to a  
1113 previously existing natural condition. Restoration activities reestablish the structure,  
1114 function, and/or diversity to that which occurred prior to impacts caused by human  
1115 activity.

1116  
1117 **“Resource” versus “Facility”** - The distinction being made is between a “resource,” a  
1118 functioning natural system such as a wetland or stream; and a “facility” which refers to a  
1119 created or constructed structure or drainage way that is designed, constructed and  
1120 maintained to collect and filter, retain, or detain surface water run-off during and after a  
1121 storm event for the purpose of water quality improvement.

1122

1123 **Riparian** - Those areas associated with streams, lakes and wetlands where vegetation  
1124 communities are predominately influenced by their association with water.  
1125  
1126 **Routine Repair and Maintenance** - activities directed at preserving an existing allowed  
1127 use or facility, without expanding the development footprint or site use.  
1128  
1129 **Set-back Adjustment** - The placement of a building a specified distance away from a  
1130 road, property line or protected resource.  
1131  
1132 **Significant Negative Impact** - an impact that affect the natural environment, considered  
1133 individually or cumulatively with other impacts on the Water Quality Resource Area, to  
1134 the point where existing water quality functions and values are degraded.  
1135  
1136 **Statewide Planning Goal 5** - Oregon's statewide planning goal that addresses open  
1137 space, scenic and historic areas, and natural resources. The purpose of the goal is to  
1138 conserve open space and protect natural and scenic resources.  
1139  
1140 **Statewide Planning Goal 6** - Oregon's statewide planning goal that addresses air, water  
1141 and land resources quality to "maintain and improve the quality of the air, water and land  
1142 resources of the state" as implemented by the Land Conservation and Development  
1143 Commission (LCDC).  
1144  
1145 **Statewide Planning Goal 7** - Oregon's statewide planning goal that addresses areas  
1146 subject to natural disasters and hazards to "protect life and property from natural disasters  
1147 and hazards" as implemented by the Land Conservation and Development Commission  
1148 (LCDC).  
1149  
1150 **Steep slopes** - Steep slopes are those slopes that are equal to or greater than 25%. Steep  
1151 slopes have been removed from the "buildable lands" inventory and have not been used  
1152 in calculations to determine the number of acres within the urban growth boundary which  
1153 are available for development.  
1154  
1155 **Stormwater Pre-treatment Facility** - any structure or drainage way that is designed,  
1156 constructed, and maintained to collect and filter, retain, or detain surface water run-off  
1157 during and after a storm event for the purpose of water quality improvement.  
1158  
1159 **Stream** - a body of running water moving over the earth's surface in a channel or bed,  
1160 such as a creek, rivulet or river. It flows at least part of the year, including perennial and  
1161 intermittent streams. Streams are dynamic in nature and their structure is maintained  
1162 through build-up and loss of sediment.  
1163  
1164 **Structure** - A building or other major improvement that is built, constructed or installed,  
1165 not including minor improvements, such as fences, utility poles, flagpoles or irrigation  
1166 system components, that are not customarily regulated through zoning codes.  
1167

1168 **Substantial Compliance** - city and county comprehensive plans and implementing  
1169 ordinances, on the whole, conform with the purposes of the performance standards in the  
1170 functional plan and any failure to meet individual performance standard requirements is  
1171 technical or minor in nature.

1172

1173 **Top of Bank** - The same as "bankful stage" defined in OAR 141-85-010(2).

1174

1175 **Utility Facilities** - buildings, structures or any constructed portion of a system which  
1176 provides for the production, transmission, conveyance, delivery or furnishing of services  
1177 including, but not limited to, heat, light, water, power, natural gas, sanitary sewer,  
1178 stormwater, telephone and cable television. Utility facilities do not include stormwater  
1179 pre-treatment facilities.

1180

1181 **Vegetated Corridor** - the area of setback between the top of bank of a Protected Water  
1182 Feature and the delineated edge of the Water Quality Resource Area as defined in Table  
1183 1.

1184

1185 **Visible or Measurable Erosion** - Visible or measurable erosion includes, but is not  
1186 limited to:

1187

1188 a. Deposits of mud, dirt sediment or similar material exceeding one-half cubic foot in  
1189 volume on public or private streets, adjacent property, or onto the storm and surface  
1190 water system, either by direct deposit, dropping discharge, or as a result of the action  
1191 of erosion.

1192

1193 b. Evidence of concentrated flows of water over bare soils; turbid or sediment laden  
1194 flows; or evidence of on-site erosion such as rivulets on bare soil slopes, where the  
1195 flow of water is not filtered or captured on the site.

1196

1197 c. Earth slides, mudflows, earth sloughing, or other earth movement that leaves the  
1198 property.

1199

1200 **Water Quality Resource Areas** - vegetated corridors and the adjacent water feature as  
1201 established in Title 3.

1202

1203 **Water Quality and Floodplain Management Area** - The area that identifies where the  
1204 Water Quality Resource Area and Floodplain Management Area Overlay Zone is applied.

1205

1206 **Water Quality Facility** - Any structure or drainage way that is designed, constructed and  
1207 maintained to collect and filter, retain, or detain surface water run-off during and after a  
1208 storm event for the purpose of water quality improvement. It may also include, but is not  
1209 limited to, existing features such as constructed wetlands, water quality swales, and ponds  
1210 that are maintained as stormwater quality control facilities.

1211

1212 **Watershed** - A watershed is a geographic unit defined by the flows of rainwater or  
1213 snowmelt. All land in a watershed drains to a common outlet, such as a stream, lake or  
1214 wetland.

1215

1216 **Wetlands** - Wetlands are shown on the Metro Water Quality and Flood Management  
1217 Area Map or are areas that meet the Oregon Division of State Lands definition of  
1218 wetlands. These areas are inundated or saturated by surface or ground water at a  
1219 frequency and duration sufficient to support and under normal circumstances do support a  
1220 prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands  
1221 generally include swamps, marshes, bogs and similar areas. Wetlands are those areas  
1222 identified and delineated by a qualified wetland specialist as set forth in the Federal  
1223 Manual for Identifying and Delineating Jurisdictional Wetlands, January 1987

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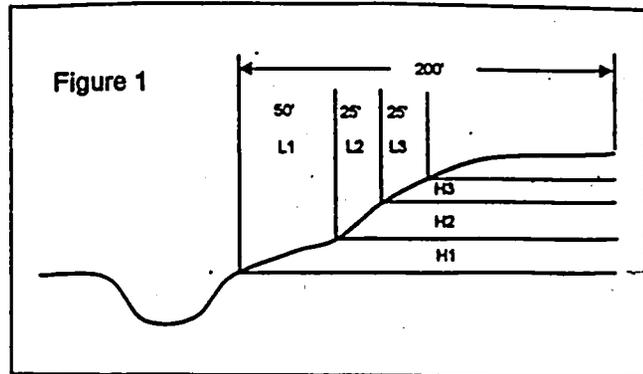
I:\DOCS#07.P&D\04-20401.MPL\03UGMFNC.PLN\02STREAM.NAT\T3EXHC.DOC.pm

# Appendix

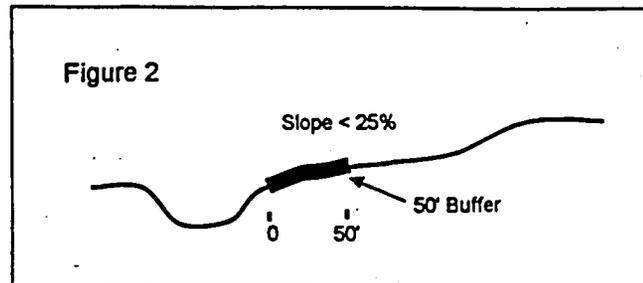
## Proposed Method for Determining Vegetated Corridors Next to Primary Protected Water Features

### How measure slope (*Figure 1*)

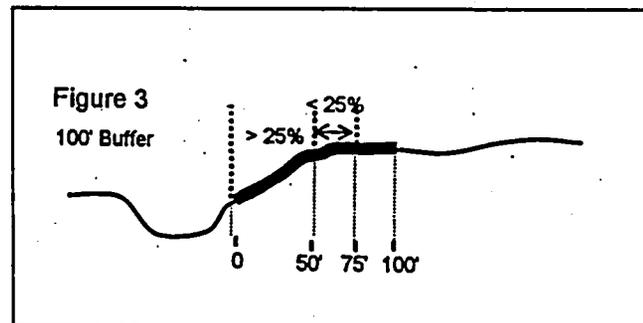
Measure 50 feet horizontally (L1) from the stream (top of bank) and determine the slope (H1/L1 - the difference in elevation divided by the difference in horizontal distance multiplied by 100).



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*).



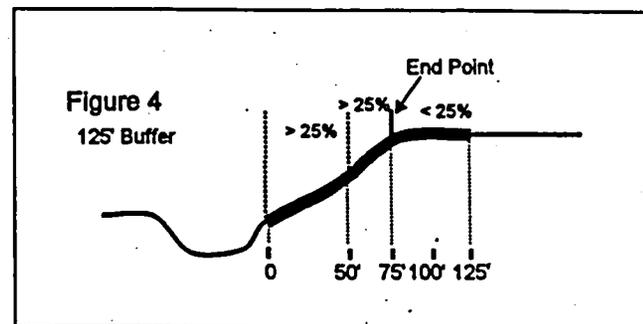
If the slope in the 50-foot area is 25% or greater, measure another 25 feet horizontally. If the slope in this incremental 25-foot area is now *less than 25%* ( $H2/L2 < 25\%$ ), the vegetated corridor width would be 100 feet (50 feet for the horizontal distance from the top of bank with slope greater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



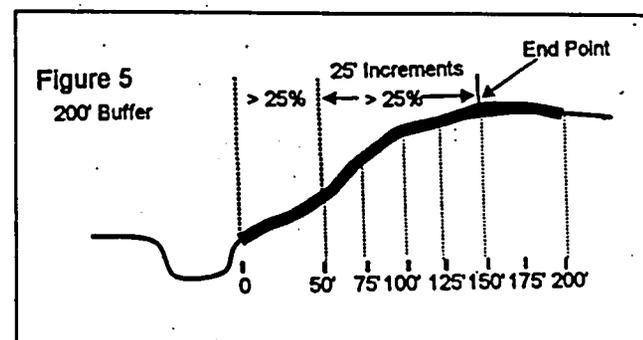
If the slope is greater than 25% in this incremental 25-foot area, continue measuring the slope every 25 feet (H/L) until you either:

- (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 D**

**Exhibit D**

**Water Quality and Flood Management Maps**

The Water Quality and Flood Management Maps are in quadrangle map form and are posted in the Council Chamber. A copy is on file in the Council permanent record.

**EXHIBIT E**

1 **DEFINITIONS (Title 10)**

2  
3 **Design Flood Elevation** -the elevation of the 100-year storm as defined in FEMA Flood  
4 Insurance Studies or, in areas without FEMA floodplains, the elevation of the 25-year  
5 storm, or the edge of mapped flood prone soils or similar methodologies.

6  
7 **Development** - any man-made change defined as buildings or other structures, mining,  
8 dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot  
9 or excavation. In addition, any other activity that results in the removal of more than 10  
10 percent of the vegetation in the Water Quality Resource Area on the lot is defined as  
11 development, for the purpose of Title 3 except that more than 10 percent removal of  
12 vegetation on a lot must comply with Section 4C - Erosion and Sediment Control.  
13 Development does not include the following: a) Stream enhancement or restoration  
14 projects approved by cities and counties; b) Farming practices as defined in ORS 30.930  
15 and farm use as defined in ORS 215.203, except that buildings associated with farm  
16 practices and farm uses are subject to the requirements of Title 3.

17  
18 **Emergency** - any man-made or natural event or circumstance causing or threatening loss  
19 of life, injury to person or property, and includes, but is not limited to, fire, explosion,  
20 flood, severe weather, drought earthquake, volcanic activity, spills or releases of oil or  
21 hazardous material, contamination, utility or transportation disruptions, and disease.

22  
23 **Enhancement** - the process of improving upon the natural functions and/or values of an  
24 area or feature which has been degraded by human activity. Enhancement activities may or  
25 may not return the site to a pre-disturbance condition, but create/recreate processes and  
26 features that occur naturally.

27  
28 **Fill** - any material such as, but not limited to, sand, gravel, soil, rock or gravel that is  
29 placed in a wetland or floodplain for the purposes of development or redevelopment.

30  
31 **Flood Management Areas** - all lands contained within the 100-year floodplain, flood area  
32 and floodway as shown on the Federal Emergency Management Agency Flood Insurance  
33 Maps and the area of inundation for the February 1996 flood. In addition, all lands which  
34 have documented evidence of flooding.

35  
36 **Invasive Non-native or Noxious Vegetation** - plant species that have been introduced  
37 and due to aggressive growth patterns and lack of natural enemies in the area where  
38 introduced, spread rapidly into native plant communities, or which are listed on the Metro  
39 Prohibited Plant List.

40  
41 **Mitigation** -the reduction of adverse effects of a proposed project by considering, in the  
42 order: a) avoiding the impact all together by not taking a certain action or parts of an  
43 action; b) minimizing impacts by limiting the degree or magnitude of the action and its  
44 implementation; c) rectifying the impact by repairing, rehabilitating or restoring the  
45 effected environment; d) reducing or eliminating the impact over time by preservation and

46 maintenance operations during the life of the action by monitoring and taking appropriate  
47 measures; and e) compensating for the impact by replacing or providing comparable  
48 substitute water quality resource areas.

49  
50 **Native Vegetation** - any vegetation native to the Portland metropolitan area or listed on  
51 the Metro Native Plant list.

52

53 **Protected Water Features**

54

55 Primary Protected Water Features shall include:

56

57 a. wetlands; and

58

59 b. rivers, streams, and drainages downstream from the point at which 100 acres or  
60 more are drained to that water feature (regardless of whether it carries year-round  
61 flow); and

62

63 c. streams carrying year-round flow; and

64

65 d. springs which feed streams and wetlands and have year-round flow and

66

67 e. natural lakes.

68

69 *Secondary Protected Water Features* shall include intermittent streams and seeps  
70 downstream of the point at which 50 acres are drained and upstream of the point at which  
71 100 acres are drained to that water feature.

72

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

76

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

79

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

83

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

88

89 **Substantial Compliance** - city and county comprehensive plans and implementing  
90 ordinances, on the whole, conform with the purposes of the performance standards in the

91 functional plan and any failure to meet individual performance standard requirements is  
92 technical or minor in nature.

93

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

96

97 a. Deposits of mud, dirt sediment or similar material exceeding one-half cubic foot in ..  
98 volume on public or private streets, adjacent property, or onto the storm and surface  
99 water system, either by direct deposit, dropping discharge, or as a result of the  
100 action of erosion.

101

102 b. Evidence of concentrated flows of water over bare soils; turbid or sediment laden  
103 flows; or evidence of on-site erosion such as rivulets on bare soil slopes, where the  
104 flow of water is not filtered or captured on the site.

105

106 c. Earth slides, mudflows, earth sloughing, or other earth movement that leaves the  
107 property.

108

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

113

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

116

117 **Wetlands** - any wetland shown on the Metro Water Quality and Flood Management Area  
118 Map or wetlands that meet the Oregon Division of State Lands definition of wetland.

119

120 I:\DOCS#07.P&D\04-20401.MPL\03UGMFNC.PLN\02STREAM.NAT\T3EXHE.DOC

*Agenda Item Number 9.1*

**Resolution No. 98-2655, For the Purpose of Authorizing the Executive Officer to Acquire Rights to Construct and Maintain a Trail in the Existing Railroad Corridor Located in the OMSI to Springwater Corridor of the Willamette River Greenway Target Area.**

***Executive Session***

**Metro Council Meeting  
Thursday, June 4, 1998  
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE )  
EXECUTIVE OFFICER TO ACQUIRE RIGHTS TO )  
CONSTRUCT AND MAINTAIN A TRAIL IN THE )  
EXISTING RAILROAD CORRIDOR LOCATED IN )  
THE OMSI TO SPRINGWATER CORRIDOR )  
SECTION OF THE WILLAMETTE RIVER GREEN- )  
WAY TARGET AREA )

RESOLUTION NO. 98-2655

Introduced by Mike Burton  
Executive Officer

WHEREAS, in July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Measure 26-26) which authorizes Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, the OMSI to Springwater Corridor section of the Willamette River Greenway Target Area was designated as a regional trail and greenway in the Greenspaces Master Plan and identified as a regional target area in the Open Spaces, Parks and Streams Bond Measure; and

WHEREAS, On July 2, 1996, the Metro Council adopted a refinement plan for the OMSI to Springwater Corridor section of the Willamette River Greenway Target Area; and

WHEREAS, Metro desires to acquire real property rights to construct and maintain a trail in an existing railroad right of way; and

WHEREAS, the amended Open Space Implementation Work Plan adopted in January 1997, provide that Metro Council approval is required for purchases involving "unusual circumstances;" and

WHEREAS, the contemplated acquisition of real property rights in an existing railroad right of way involves "unusual circumstances;" now therefore

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to acquire certain real property rights in an existing railroad right of way pursuant to the terms and conditions set forth in that certain Agreement for the Relinquishment, Release and Conveyance of Easement, Right of Way and Property between Metro and the Railroad Operator dated \_\_\_\_\_, 1998, and also hereby authorizes the Executive Officer to execute that certain Consent Agreement with Union Pacific dated \_\_\_\_\_, 1998.

Adopted by Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

---

Jon Kvistad, Presiding Officer

Approved as to Form:

---

Daniel B. Cooper, General Counsel

## **Staff Report**

### **CONSIDERATION OF RESOLUTION NO. 98-2655 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ACQUIRE RIGHTS TO CONSTRUCT AND MAINTAIN A TRAIL IN THE EXISTING RAILROAD CORRIDOR LOCATED IN THE OMSI TO SPRINGWATER CORRIDOR SECTION OF THE WILLAMETTE RIVER GREENWAY TARGET AREA**

---

**Date:** May 27, 1998

**Presented by:** Charles Ciecko  
Jim Desmond

#### **PROPOSED ACTION**

Resolution No. 98-2655 requests authorization for the Executive Officer to acquire perpetual real property rights from the existing owner of the railroad right of way and other interested parties necessary to construct and maintain a pedestrian and bicycle trail in the OMSI to Springwater Corridor Target Area.

#### **BACKGROUND AND ANALYSIS**

The OMSI to Springwater Corridor section of the Willamette River Greenway target area was identified as a regional target area in the Open Spaces, Parks and Streams Bond Measure. A Tier IA objective of the adopted refinement plan for this target area is to "acquire land and easements along the Willamette River between OMSI and the Sellwood Bridge." Metro is the owner of the fee simple interest underlying the existing railroad right of way. However, design and construction of the trail cannot begin until Metro acquires additional real property rights from the holder of the railroad right of way. The resolution before Council seeks authority to acquire the real property rights necessary to complete the vision of connecting the Springwater Corridor Trail to the inner southeast Portland neighborhoods and downtown Portland.

The amended Open Spaces Implementation Work Plan states that all "unusual circumstances" require specific approval by the Metro Council prior to acquisition. Staff has determined that the contemplated transaction is an "unusual circumstance" because it falls outside of the standard open space land acquisition scenario where Metro purchases fee simple title to properties at or below fair market value as determined by our independent appraisal.

Metro and the owner/operator of the existing railroad right of way ("the Railroad Operator") have negotiated an Agreement for Relinquishment, Release and Conveyance of Easement, Right of Way and Property ("the Agreement") whereby the Railroad Operator has agreed to release to Metro all of its rights in and to a certain portion of the existing right of way so that a trail can be constructed and maintained, while the Railroad Operator will maintain its existing freight and excursion train operations. The Agreement by its terms, including as partial consideration a cash payment to the Railroad Operator, is subject to the Metro Council's approval. Basically, the Railroad Operator will retain 17 feet and relinquish the balance of the right of way to Metro. The right of way varies in width from 35 to 100 feet, but is approximately 60 feet in width through most of the 3.09-mile corridor.

Prior to construction of the trail, the railroad tracks on the right of way must be relocated so the trail does not interfere with the railroad operations. As additional consideration for the Agreement, Metro will pay the Railroad Operator to relocate its existing tracks onto the easternmost portion of the existing berm to accommodate the trail. The Railroad Operator has agreed to relocate the tracks pursuant to a track moving agreement which is a part of the negotiated transaction, provided that Metro pay the cost of relocation. Staff has determined that the fee quoted by the Railroad Operator is at or below what the services of relocating the track would be expected to cost if they had been independently contracted.

One of the acquisition parameters set forth in the amended Open Spaces Implementation Work Plan states "an appraisal shall be prepared by an independent certified appraiser which shall state a conclusion of the fair market value of the property." The value of the rights Metro is acquiring is extremely difficult to appraise. The issues faced by an appraiser include:

- I. This transaction is not simply a real estate deal. The Railroad Operator is relinquishing all of his rights in the right of way, except for the right to run one track. The effect this relinquishment will have on his freight operations is difficult to quantify, but the Railroad Operator is certainly giving up rights and values that go beyond simply real property values.
- II. Standard appraisal practice includes using past sales to which the current transaction can be compared. In this instance, similar transactions do not exist. No other party has negotiated an arms length transaction, whereby a railroad operator is relinquishing all but a 17-foot wide corridor in a railroad easement extending for a 3.09-mile length for the purpose of constructing a trail, and will still be operating freight and excursion lines.

The value of opening up this trail is, likewise, immeasurable. It is estimated that over 600,000 citizens of the region will annually use the trail. The trail will provide an extremely important link in the 40-mile loop and be an important recreational and transportation corridor linking downtown to the inner southeast neighborhoods and the existing 16 miles of improved Springwater Corridor Trail.

Union Pacific ("UP"), parent company to Portland Traction Company, which originally conveyed to the Railroad Operator all of the Railroad Operator's interests in the corridor, retained certain consent rights in the corridor regarding easements and crossings. UP also retained commuter rail rights in the corridor. UP has agreed to grant its consent to the Metro-Railroad Operator transaction, and to the easement and crossing rights associated with the trail, for consideration as set forth in an agreement entitled Consent to Relinquishment, Release, Conveyance of Easement, Right of Way and Property. UP will retain its other rights in the corridor.

The Real Estate Acquisition Committee met on May 21, 1998 and unanimously recommended to the Executive Officer that Metro complete the transaction as outlined above.

## **FINDINGS**

Acquisition of the real property rights from the Railroad Operator is recommended based on the following:

- The target area description in the Bond Measure Fact Sheet is as follows:

"OMSI to Springwater Corridor. Acquire 7-mile trail corridor, trail heads and trail improvements on east bank of Willamette River."

- A Tier IA objective in the OMSI to Springwater Corridor section of the Willamette River Greenway target area adopted refinement plan is to "acquire land and easements along the Willamette River between OMSI and the Sellwood Bridge."
- Although Metro owns the fee simple title underlying the railroad right of way, Metro is not able to design and construct the trail unless Metro enters into the Agreement or otherwise obtains the consent of the Railroad Operator to the installation of the trail.
- The Springwater Corridor Trail is a significant transportation and recreation amenity for the region, currently extending from Boring through Gresham to southeast Portland, stopping near McLoughlin Boulevard, and serving 600,000 users per year. Obtaining this easement from the Railroad Operator would allow the extension of the Springwater Corridor Trail to inner southeast Portland neighborhoods and downtown Portland, and provide the citizens access to nature along this segment of the trail at Oaks Bottom Wildlife Refuge and the Willamette River.
- It is not possible to appraise the value of this right of way, since no comparable sales exist for relinquishment of a portion of a railroad corridor for trail construction.

### **BUDGET IMPACT**

Funds to acquire the right of way and move the tracks are available in the fiscal year 1997-98 Open Spaces Acquisition Division budget and can be carried forward to the fiscal year 1998-99 budget as necessary.

### **Executive Officer's Recommendation**

The Executive Officer recommends adoption of Resolution 98-2655.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING ) ORDINANCE NO 98-730B  
ORDINANCE NOs. 96-647C AND NO. 97- )  
715B, TO AMEND TITLE 3 OF THE ) Introduced by Councilors Naito and McLain  
URBAN GROWTH MANAGEMENT )  
FUNCTIONAL PLAN, AND AMEND )  
THE REGIONAL FRAMEWORK PLAN, )  
APPENDIX A, AND ADOPT THE TITLE )  
3 MODEL ORDINANCE AND WATER )  
QUALITY AND FLOOD MANAGEMENT )  
MAPS )

WHEREAS, the Regional Growth Goals and Objectives - Objective 12 identifies the need to manage watersheds to protect, restore and ensure to the maximum extent practicable the integrity of streams, wetlands, and floodplains.

WHEREAS, Ordinance No. 96-647C, the Urban Growth Management Functional Plan (UGMFP), adopted November 21, 1996, delayed implementation of Title 3 of the UGMFP until Metro adopted a Model Ordinance to demonstrate one method of implementing Title 3, and Water Quality and Flood Management Area maps.

WHEREAS, Ordinance No. 97-715B, the Regional Framework Plan, adopted December 18, 1997, incorporates the UGMFP at Appendix A. The Regional Framework Plan is awaiting acknowledgment before the Land Conservation and Development Commission.

WHEREAS, the Water Resources Policy Advisory Committee (WRPAC), during 1997, drafted a Model Ordinance and maps to comply with Title 3, Section 6 of the UGMFP. WRPAC released a preliminary draft of the proposed Model Ordinance and maps in August 1997, and a revised draft on September 4, 1997. The proposed Model Ordinance was then forwarded to the Metro Policy Advisory Committee (MPAC) and the Metro Technical Advisory Committee (MTAC) for review.

WHEREAS, WRPAC and MTAC formed a joint subcommittee to further refine the Model Ordinance and maps and consider amendments to the UGMFP, Title 3, Sections 1-4, and Sections 6 and 7. The joint subcommittee met twice per month beginning September 26, 1997 and ending December 19, 1997. The joint subcommittee forwarded proposed amendments to Title 3, dated December 30, 1997, to WRPAC and MTAC. The same proposed amendments were released for

public comment prior to Metro's Stream and Floodplain Protection Plan workshops which began January 17, 1998.

WHEREAS, MTAC reviewed the joint subcommittee's proposed amendments to Title 3 at its January 8, 22, February 5, 19, March 5, 19, 26, April 2, 16, and May 21, 1998 meetings.

WHEREAS, WRPAC reviewed the joint subcommittee's proposed amendments to Title 3 at its January 26, February 9, March 9, 25, April 13 and May 11, 1998, meetings. At the March 25 meeting, WRPAC members reviewed and commented on MTAC's proposed changes to Title 3 and provided those comments to MPAC at chair Judie Hammerstad's request.

WHEREAS, the Metro Growth Management staff gave a presentation on Metro's "Stream and Floodplain Protection Plan" (Title 3) to MPAC at its February 11, 1998 meeting. MPAC also received a copy of the joint subcommittee's proposed Title 3 amendments.

WHEREAS, MPAC reviewed the joint subcommittee's proposed amendments to Title 3 at its February 11, 25, and March 11, and 25, 1998 meetings. At its March 25, 1998 meeting, MPAC passed forward recommended changes to Title 3 to the Metro Council after considering a package of WRPAC/MTAC recommendations.

WHEREAS, concurrently with WRPAC and MTAC's review of the joint subcommittee's proposed amendments to Title 3, Metro held Stream and Floodplain Protection Plan workshops on January 17, 20, 27 and 31, 1998. Copies of the joint subcommittee's proposed amendments to Title 3, the September 4, 1997, draft Model Ordinance and Title 3 maps were available for public review and comment.

WHEREAS, the Growth Management Committee considered proposed amendments to Title 3, the Model Ordinance and maps at a work session held on February 17, and at public hearings on March 17, April 7, May 5 and 28, 1998.

WHEREAS, the Metro Council considered proposed amendments to Title 3, the Model Ordinance and maps at public hearings held on February 26, May 7 and June 4, 1998.

WHEREAS, Title 3 of the UGMFP as adopted November 21, 1996, has a different effective date and compliance date than the UGMFP generally. The UGMFP has an effective date of February 19, 1997 with compliance required by February 19, 1999. Originally, Sections 1-4 of Title 3 were not effective until 24 months after the Metro Council adopted a Model Ordinance and maps addressing Title 3 because it was anticipated that drafting the Model Ordinance would take three to four months. That drafting process took one year. MPAC, WRPAC and

MTAC recommended that compliance be required within 18 months of Metro Council adoption of the Model Ordinance and maps.

WHEREAS, Through review at WRPAC, MTAC and MPAC, Sections 1-4 of Title 3 have been extensively reorganized. For that reason, Exhibit A will fully replace Title 3, Sections 1-4 as adopted by the Metro Council on November 21, 1996.

WHEREAS, No significant changes have been made to Section 5 of Title 3. Sections 6 and 7 have been amended and clarified. Therefore, Exhibit B only amends Title 3, Sections 5-7 as adopted by the Metro Council on November 21, 1996.

**THE METRO COUNCIL ORDAINS 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, the following effective dates, local hearing and property owner notice requirements are added to Title 8.

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 within 18 months after the Metro Council has adopted the Model Ordinance and Water Quality and Flood Management Areas Map.”

**Section 5.** Section 2A of Title 8 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 6. Section 2 of Title 8 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 Sections 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 local 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 7. Section 2 of Title 8 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 8. 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 9. Cities and counties are hereby required to comply with Title 3, Sections 1-4 of the Urban Growth Management Functional Plan, as amended herein, within 18 months of the adoption of this ordinance.

Section 10. Ordinances No. 96-647C and No. 97-715B, Appendix A, Section 3.07.1000 is hereby amended to add the definitions shown in Exhibit E which is attached and incorporated by reference into this ordinance.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_ 1998.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

////

////

ATTEST:

Approved as to Form:

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

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

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**EXHIBIT A**

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

1 Section 1. Intent  
2

3 To protect the beneficial water uses and functions and values of resources within the Water  
4 Quality and Flood Management Areas by limiting or mitigating the impact on these areas from  
5 development activities, protecting life and property from dangers associated with flooding and  
6 working toward a regional coordination program of protection for Fish and Wildlife Habitat  
7 Areas.  
8

9 Section 2. Applicability  
10

11 A. This Title applies to:  
12

- 13 1. Development in Water Quality Resource and Flood Management Areas, and  
14
- 15 2. Development which may cause temporary or permanent erosion on any property  
16 within the Metro Boundary.  
17
- 18 3. Development in Fish and Wildlife Habitat Conservation Areas when Metro's  
19 Section 5 analysis and mapping are completed.  
20

21 B. This title does not apply to work necessary to protect, repair, maintain, or replace existing  
22 structures, utility facilities, roadways, driveways, accessory uses and exterior  
23 improvements in response to emergencies provided that after the emergency has passed,  
24 adverse impacts are mitigated in accordance with the performance standards in Section 4.  
25

26 Section 3. Implementation Alternatives for Cities and Counties  
27

28 A. Cities and counties shall comply with this Title in one of the following ways:  
29

- 30 1. Amend their comprehensive plans and implementing ordinances to adopt all or part of  
31 the Title 3 Model Ordinance or code language that substantially complies with the  
32 performance standards in Section 4 and the intent of this Title, and adopt either the  
33 Metro Water Quality and Flood Management Area Map or a map which substantially  
34 complies with the Metro map. Cities and counties may choose one of the following  
35 options for applying this section:  
36
- 37 a. Adopt code language implementing this Title which prevails over the map and  
38 uses the map as reference; or  
39
- 40 b. Adopt a city or county field verified map of Water Quality and Flood  
41 Management Areas based on the Metro Water Quality and Flood Management  
42 map, updated according to Section 7, implementing this Title which prevails  
43 over adopted code language.

44  
45 Field verification is a process of identifying or delineating Protected Water  
46 Features, Water Quality Resource Areas and Flood Management Areas shown  
47 on the Metro Water Quality and Flood Management Areas map. This process  
48 includes examination of information such as site visit reports, wetlands inventory  
49 maps, aerial photographs, and public input and review. The field verification  
50 process shall result in a locally adopted Water Quality and Flood Management  
51 Areas map which:

- 52  
53 (1) Applies the Title 10 definitions of Protected Water Feature, Water  
54 Quality Resource Areas and Flood Management Areas to all those  
55 protected areas on the Metro's Water Quality and Flood Management  
56 Areas map to show the specific boundaries of those protected areas on  
57 the locally adopted Water Quality and Flood Management Areas map;  
58 and  
59  
60 (2) Is subject to amendment by applying adopted code language to add  
61 Protected Water Features, Water Quality Resource Areas and Flood  
62 Management Areas and correct maps errors on the local Water Quality  
63 and Flood Management Areas map as required by Section 7.  
64  
65

66 2. Demonstrate that existing city and county comprehensive plans and implementing  
67 ordinances substantially comply with the performance standards in Section 4 and the  
68 intent of this Title.

69 3. Any combination of 1. and 2. above that substantially complies with all performance  
70 standards in Section 4.

71 B. Cities and counties shall hold at least one public hearing prior to adopting comprehensive plan  
72 amendments, ordinances and maps implementing the performance standards in Section 4 of  
73 this Title or demonstrating that existing city or county comprehensive plans and implementing  
74 ordinances substantially comply with Section 4, to add Protected Water Features, and wetlands  
75 which meet the criteria in Section 7.C., to their Water Quality and Flood Management Area  
76 map. The proposed comprehensive plan amendments, implementing ordinances and maps  
77 shall be available for public review at least 45 days prior to the public hearing.

78 C. Cities and counties shall conduct a review of their Water Quality and Flood Management Areas  
79 map concurrent with local periodic review required by ORS 197.633.

80 D. The Metro Council identified but did not include some Protected Water Features, Water  
81 Quality Resource Areas and Flood Management Areas on the Metro Water Quality and Flood  
82 Management Areas map because streams had been culverted, wetlands had been filled or a fill  
83 permit had been approved, or the area was demonstrated to have existing conflicting water  
84 dependent uses or agreements for such uses, or the area was developed or committed to other  
85 uses.

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Cities and counties are not required to establish Water Quality Resource Areas and Flood Management Areas through adopted code provisions or mapping for areas which were identified 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

131 or mitigate flood impacts. Levees shall not be used to create vacant  
132 buildable lands.

- 133
- 134 c. New culverts, stream crossings, and transportation projects may be  
135 permitted if designed as balanced cut and fill projects or designed to not  
136 significantly raise the design flood elevation. Such projects shall be  
137 designed to minimize the area of fill in Flood Management Areas and to  
138 minimize erosive velocities. Stream crossing shall be as close to  
139 perpendicular to the stream as practicable. Bridges shall be used instead of  
140 culverts wherever practicable.

141

142 **B. Water Quality Performance Standards**

- 143
- 144 1. The purpose of these standards is to: 1) protect and improve water quality to  
145 support the designated beneficial water uses as defined in Title 10, and 2) protect  
146 the functions and values of the Water Quality Resource Area which include, but  
147 are not limited to:

- 148
- 149 a. providing a vegetated corridor to separate Protected Water Features from  
150 development;
- 151
- 152 b. maintaining or reducing stream temperatures;
- 153
- 154 c. maintaining natural stream corridors;
- 155
- 156 d. minimizing erosion, nutrient and pollutant loading into water;
- 157
- 158 e. filtering, infiltration and natural water purification;
- 159
- 160 f. stabilizing slopes to prevent landslides contributing to sedimentation of  
161 water features.

- 162
- 163 2. Local codes shall require all development in Water Quality Resource Areas to  
164 conform to the following performance standards:

- 165
- 166 a. The Water Quality Resource Area is the vegetated corridor and the  
167 Protected Water Feature. The width of the vegetated corridor is specified  
168 in the table below. At least three slope measurements along the water  
169 feature, at no more than 100-foot increments, shall be made for each  
170 property for which development is proposed. Depending on the width of  
171 the property, the width of the vegetated corridor will vary.

172  
173

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

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<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.

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- 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

233 regulations, cities and counties shall reduce or remove vegetative corridor  
234 regulations to assure the lot or parcel will be buildable while still providing the  
235 maximum vegetated corridor practicable. Cities and counties shall encourage  
236 landowners to voluntarily protect these areas through various means, such as  
237 conservation easements and incentive programs.  
238

239 C. Erosion and Sediment Control  
240

- 241 1. The purpose of this section is to require erosion prevention measures and sediment  
242 control practices during and after construction to prevent the discharge of  
243 sediments.  
244
- 245 2. Erosion prevention techniques shall be designed to prevent visible and measurable  
246 erosion as defined in Title 10.  
247
- 248 3. To the extent erosion cannot be completely prevented, sediment control measures  
249 shall be designed to capture, and retain on-site, soil particles that have become  
250 dislodged by erosion.  
251

252 D. Implementation Tools to protect Water Quality and Flood Management Areas  
253

- 254 1. Cities and counties shall either adopt land use regulations, which authorize transfer  
255 of permitted units and floor area to mitigate the effects of development restrictions  
256 in Water Quality and Flood Management Areas, or adopt other measures that  
257 mitigate the effects of development restrictions.  
258
- 259 2. Metro encourages local governments to require that approvals of applications for  
260 partitions, subdivisions and design review actions be conditioned upon one of the  
261 following:  
262
  - 263 a. protection of Water Quality and Flood Management Areas with a  
264 conservation easement;
  - 265 b. platting Water Quality and Food Management Areas as common open  
266 space; or
  - 267 c. offer of sale or donation of property to public agencies or private non-  
268 profits for preservation where feasible.
- 269 3. Additions, alterations, rehabilitation or replacement of existing structures,  
270 roadways, driveways, accessory uses and development in the Water Quality and  
271 Flood Management Area may be allowed provided that:  
272
  - 273 a. The addition, alteration, rehabilitation or replacement is not inconsistent  
274 with applicable city and county regulations, and  
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- 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 encourage 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.

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**EXHIBIT B**

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

2  
3 A. The purpose of these standards is to conserve, protect, and enhance fish and wildlife  
4 habitat within the fish and wildlife habitat conservation areas to be identified on the water  
5 quality and flood management area map by establishing performance standards and  
6 promoting coordination by Metro of regional urban water sheds.

7  
8 B. Fish and Wildlife Habitat Conservation Area Recommendations

9  
10 These areas shall be shown on the Water Quality and Flood Management Area Map. Fish  
11 and Wildlife Habitat Conservation Areas generally include and/or go beyond the Water  
12 Quality and Flood Management Areas. These areas to be shown on the map are~~will be~~  
13 Metro's ~~initial~~ inventory of significant fish and wildlife habitat conservation areas. Metro  
14 hereby recommends that local jurisdictions adopt the following temporary standards:

- 15  
16 1. Prohibit development in the ~~F~~fish and ~~W~~wildlife ~~C~~onservation ~~A~~reas that  
17 adversely impacts fish and wildlife habitat.

18  
19 Exceptions: It is recognized that urban development will, at times, necessitate  
20 development activities within or adjacent to Fish and Wildlife Habitat Conservation  
21 Areas. The following Fish and Wildlife Habitat Conservation Mitigation Policy,  
22 except for emergency situations, applies to all the following exceptions:

23  
24 A project alternatives analysis, where public need for the project has been  
25 established, will be required for any of the exceptions listed below. The  
26 alternatives analysis must seek to avoid adverse environmental impacts by  
27 demonstrating there are no practicable, less environmentally damaging alternatives  
28 available. In those cases where there are no practicable, less environmentally  
29 damaging alternatives, the project proponent will seek alternatives which reduce or  
30 minimize adverse environmental impacts. Where impacts are unavoidable,  
31 compensation, by complete replacement of the impacted site's ecological attributes  
32 or, where appropriate, substitute resources of equal or greater value will be  
33 provided in accordance with the Metro Water Quality and Flood Management  
34 model ordinance.

- 35  
36 a. Utility construction within a maximum construction zone width established  
37 by cities and counties.  
38  
39 b. Overhead or underground electric power, telecommunications and cable  
40 television lines within a sewer or stormwater right-of-way or within a  
41 maximum construction zone width established by cities and counties.  
42  
43 c. Trails, boardwalks and viewing areas construction.  
44  
45 d. Transportation crossings and widenings. Transportation crossings and

46 widenings shall be designed to minimize disturbance, allow for fish and  
47 wildlife passage and crossings should be preferably at right angles to the  
48 stream channel.  
49

- 50 2. Limit the clearing or removal of native vegetation from the Fish and Wildlife  
51 Habitat Conservation Area to ensure its long term survival and health. Allow and  
52 encourage enhancement and restoration projects for the benefit of fish and wildlife.  
53
- 54 3. Require the revegetation of disturbed areas with native plants to 90 percent cover  
55 within three years. Disturbed areas should be replanted with native plants on the  
56 Metro Plant List or an approved locally adopted plant list. Planting or propagation  
57 of plants listed on the Metro Prohibited Plant List within the Conservation Area  
58 shall be prohibited.  
59
- 60 4. Require compliance with Oregon Department of Fish and Wildlife (ODFW)  
61 seasonal restrictions for in-stream work. Limit development activities that would  
62 impair fish and wildlife during key life-cycle events according to the guidelines  
63 contained in ODFW's "Oregon Guidelines for Timing of In-water Work to Protect  
64 Fish and Wildlife Resources."  
65

66 C. Fish and Wildlife Habitat Protection  
67

68 Within eighteen (18) months from the effective date of this functional plan, Metro shall  
69 complete the following regional coordination program by adoption of functional plan  
70 provisions.  
71

- 72 1. Metro shall establish criteria to define and identify regionally significant fish and  
73 wildlife habitat areas.  
74
- 75 2. Metro shall adopt a map of regionally significant fish and wildlife areas after (1a)  
76 examining existing Goal 5 data, reports and regulation from cities and counties,  
77 and (2b) holding public hearings.  
78
- 79 3. Metro shall identify inadequate or inconsistent data and protection in existing Goal  
80 5 data, reports and regulations on fish and wildlife habitat. City and county  
81 comprehensive plan provisions where inventories of significant resources were  
82 completed and accepted by a LCDC Periodic Review Order after January 1, 1993,  
83 shall not be required to comply until their next periodic review.  
84
- 85 4. Metro shall complete Goal 5 economic, social, environmental and energy (ESEE)  
86 analyses for mapped regionally significant fish and wildlife habitat areas only for  
87 those areas where inadequate or inconsistent data or protection has been identified.  
88
- 89 5. Metro shall establish performance standards for protection of regionally significant  
90 fish and wildlife habitat that must be met by the plans implementing ordinances of

91 cities and counties.

92  
93 **Section 6. Metro Model Ordinance Required**  
94

95 Metro shall adopt a Water Quality and Flood Management Areas Model Ordinance and map for  
96 use by local jurisdictions to comply with this section. The Model Ordinance shall represent one  
97 method of complying with this Title. The Model Ordinance shall be advisory, and cities and  
98 counties are not required to adopt the Model Ordinance, or any part thereof, to substantially  
99 comply with this Title. However, cities and counties which adopt the Model Ordinance in its  
100 entirety and a Water Quality and Flood Management Areas Map shall be deemed to have  
101 substantially complied with the requirements of this Title.  
102

103 Sections 1-4 of this Title shall not become effective until 2418 months after the Metro Council has  
104 adopted a Model Code the Model Ordinance and map Water Quality and Flood Management Areas  
105 Map that addresses all of the provisions of this title. Section 5 of this Title shall be implemented  
106 by adoption of new functional plan provisions. The Metro Council may adopt a Model Code and  
107 Fish and Wildlife Habitat Conservation Areas Model Ordinance and mMap for protection of  
108 regionally significant fish and wildlife habitat. Section 5 of this title shall be implemented by  
109 adoption of new functional plan provisions.  
110

111 **Section 7. Variances Administration**  
112

113 Cities and county counties shall amend their comprehensive plans and implementing ordinances  
114 regulations are hereby required to provide a process for each of the following: include procedures  
115 to consider claims of map error and hardship variances to reduce or remove stream corridor  
116 protection for any property demonstrated to be converted to an unbuildable lot by application of  
117 stream corridor protections.  
118

119 A. Amendments to city and county adopted Water Quality and Flood Management Area maps to  
120 correct the location of Protected Water Features, Water Quality Resource Areas and Flood  
121 Management Areas. Amendments shall be initiated within 90 days of the date the city or  
122 county receives information establishing a possible map error.  
123

124 B. Modification of the Water Quality Resource Area upon demonstration that the  
125 modification will offer the same or better protection of water quality, the Water Quality  
126 and Flood Management Area and Protected Water Feature.

127 C. Amendments to city and county adopted Water Quality and Flood Management Area maps to  
128 add wetlands when the city or county receives information establishing the possible existence  
129 of wetlands including, but not limited to, the results of a wetland assessment conducted using  
130 the 1996 Oregon Freshwater Wetland Assessment Methodology, or correspondence from the  
131 Division of State Lands that a wetland determination or delineation has been submitted or  
132 completed for property within the city or county, and the wetland meets any one of the  
133 following criteria:

134 1. The wetland is fed by surface flows, sheet flows or precipitation, and has evidence of  
135 flooding during the growing season, and has 60 percent or greater vegetated cover, and  
136 is over one-half acre in size,

137 or the wetland qualifies as having "intact water quality function" under the 1996  
138 Oregon Freshwater Wetland Assessment Methodology; or

139 2. The wetland is in the Flood Management Area, and has evidence of flooding during the  
140 growing season, and is five acres or more in size, and has a restricted outlet or no  
141 outlet,

142 or the wetland qualifies as having "intact hydrologic control function" under the 1996  
143 Oregon Freshwater Wetland Assessment Methodology; or

144  
145 3. The wetland or a portion of the wetland is within a horizontal distance of less than one-  
146 fourth mile from a water body which meets the Department of Environmental Quality  
147 definition of "water quality limited water body" in OAR Chapter 340, Division 41.

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# **Title 3 Model Ordinance**

Growth Management Committee  
May 28, 1998



**METRO**

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**EXHIBIT C**

**Metro Water Quality and Flood Management Area Model Ordinance**

**Introduction**

Attached is the model ordinance required by Title 3, Section 6 of Metro's *Urban Growth Management Functional Plan*.

The purpose of this model ordinance is to provide a specific example of provisions approved by the Metro Council that can be used by a city or county to comply with the performance standards for *Title 3: Water Quality, Flood Management, and Fish and Wildlife Conservation* described in the *Metro Urban Growth Management Functional Plan*. Title 3 describes specific performance standards and practices for floodplain and water quality protection. It also requires that Metro adopt a Water Quality and Flood Management Model Ordinance and map for use by local jurisdictions to comply with Title 3. This model ordinance fulfills the Title 3 requirement. It is also consistent with Metro's policies in the 1995 *Future Vision Report*, in the 1995 *Regional Urban Growth Goals and Objectives* (RUGGOs) in the 1992 *Greenspaces Master Plan*, and in the 1997 *Regional Framework Plan*.

The purpose of Title 3 is to protect water quality and floodplain areas. Floodplains protect the region's health and public safety by reducing flood and landslide hazards and pollution of the region's waterways. This Model Ordinance and Map address the purpose. Another purpose of Title 3 is to protect fish and wildlife habitat. Statewide land use Goal 5 measures, which include fish and wildlife habitat protection, will be addressed in a Metro study that will be conducted within the next 18 months. Title 3 will apply to development in Fish and Wildlife Habitat Conservation Areas when Metro's Section 5 analysis and mapping are completed. As additional issues are addressed, further regulations may be imposed on areas contained within or outside of the Water Quality Resource Area and Flood Management Area Overlay Zones addressed in this Model Ordinance.

The Metro *Future Vision, Greenspaces Master Plan, Regional Urban Growth Goals and Objectives* (RUGGOs), and *Regional Framework Plan* identify water quality protection, floodplain management, fish and wildlife habitat protection, development of recreational trails, acquisition of open space and maintenance of biodiversity as critical elements of maintaining healthy, livable communities.

This Model Ordinance, however, only provides specific examples of local ordinance provisions for a portion of the issues identified in Title 3: protection of the region's floodplains, water quality and reduction of flood hazards and the implementation of erosion control practices throughout the Portland metropolitan region. Other issues

43 including fish and wildlife habitat, watershed-wide stormwater management, steep slopes,  
44 landslide hazards and biodiversity are addressed in the December 1997 Metro *Regional*  
45 *Framework Plan*.

46  
47 The approach in Sections 2, 3 and 4 of Title 3 is to implement Oregon Statewide Goal 6  
48 and Goal 7. *Goal 6: Air, Water and Land Resources Quality* and *Goal 7: Areas Subject*  
49 *to Natural Disasters and Hazards* are addressed by protecting streams, rivers, wetlands,  
50 and areas adjacent to streams and floodplains within the Water Quality Resource and  
51 Flood Management Areas.

52  
53 Cities and counties are required to amend their plans and implementing ordinances, if  
54 necessary, to ensure that they comply with Title 3 in one of the following ways:

55  
56 A. Adopt the applicable provisions of the Metro Water Quality and Flood Management  
57 Area model ordinance and map, which is entitled the Metro Water Quality and Flood  
58 Management Area Map.

59  
60 Local jurisdictions have two options with regard to their adoption of code language  
61 and a map (either the Metro Water Quality and Flood Management Area Map or a city  
62 or county field verified map that substantially complies with the Metro map):

- 63  
64 1) the code language that describes the affected area prevails and the map is a  
65 reference; or  
66 2) the field verified map prevails and the descriptive code language is used to correct  
67 map errors when they are discovered and for delineating and marking the overlay  
68 zone boundary in the field. This map must be reviewed concurrently with local  
69 periodic review.

70  
71 The advantage of the first approach above is that the final boundary is determined at  
72 the time of the development application, based on a detailed survey of the site. If a  
73 large scale, precise boundary can be mapped, the official map should prevail. This  
74 method allows for a more efficient permit process and more certainty for the property  
75 owner. In this case, the language is used to correct mapping errors when they are  
76 discovered. A map, however, should only be used if it has a level of detail and clarity  
77 equal to or better than 1" = 300 feet, and has been field-checked for accuracy.

78  
79 B. Adopt plans and implementing ordinances and maps that substantially comply with the  
80 performance standards of Title 3.

81  
82 C. Any combination of A and B above that substantially complies with all performance  
83 standards in Title 3, Section 4 (see Title 3, Section 3).

84  
85 The purpose of the map adopted by Metro is to provide the performance standard for the  
86 location of Water Quality Resource and Flood Management Areas. Therefore the map is  
87 the basis for evaluation of substantial compliance of local maps for those jurisdictions that

88 choose to develop their own field verified map of Water Quality Resource and Flood  
89 Management Areas. "Substantial compliance" means that the city and county  
90 comprehensive plans and implementing ordinances, on the whole, conform with the  
91 purposes of the performance standards in the functional plan and any failure to meet  
92 individual performance standard requirements is technical or minor in nature.

93 **Water Quality and Flood Management Area Model Ordinance**

94  
95 **Section 1. Intent**

96  
97 The purpose of this ordinance is to comply with Sections 1-4 of Title 3 of Metro's  
98 Urban Growth Management Functional Plan.

99  
100 A. To protect and improve water quality, to support the designated  
101 beneficial water uses and to protect the functions and values of existing and  
102 newly established Water Quality Resource Areas, which include, but are  
103 not limited to:

- 104  
105 1. Provide a vegetated corridor to separate Protected  
106 Water Features from development;
- 107  
108 2. Maintain or reduce stream temperatures;
- 109  
110 3. Maintain natural stream corridors;
- 111  
112 4. Minimize erosion, nutrient and pollutant loading into  
113 water;
- 114  
115 5. Provide filtration, infiltration and natural water  
116 purification;
- 117  
118 6. Stabilize slopes to prevent landslides contributing to  
119 sedimentation of water features.

120  
121 B. To protect Flood Management Areas, which provide the following  
122 functions:

- 123  
124 1. Protect life and property from dangers associated with flooding.
- 125  
126 2. Flood storage, reduction of flood velocities, reduction of flood peak  
127 flows and reduction of wind and wave impacts.
- 128  
129 3. Maintain water quality by reducing and sorting sediment loads,  
130 processing chemical and organic wastes and reducing nutrients.
- 131  
132 4. Recharge, store and discharge groundwater.
- 133  
134 5. Provide plant and animal habitat, and support riparian ecosystems.

135  
136 C. To establish two overlay zones for Water Quality Resource Areas and  
137 Flood Management Areas, which operate contemporaneously with the base

138 zone and implement the performance standards of Title 3 of the Urban  
139 Growth Management Functional Plan.

140  
141 **Section 2. Applicability**

142  
143 A. This ordinance applies to:

144  
145 1. Development in the Water Quality Resource Area and  
146 Flood Management Area Overlay Zones. The overlay  
147 zones restrict the uses that are allowed in the base zone  
148 by right, with limitations, or as conditional uses.

149  
150 2. Development that may cause visible or measurable  
151 erosion on any property within the Metro Boundary.

152  
153 B. This ordinance does not apply to work necessary to protect, repair,  
154 maintain, or replace existing structures, utility facilities, roadways,  
155 driveways, accessory uses and exterior improvements in response to  
156 emergencies provided that after the emergency has passed, adverse impacts  
157 are mitigated in accordance with Table 2 standards for restoring marginal  
158 existing vegetated corridor.

159  
160 **Section 3. Water Quality Resource Areas**

161  
162 A. The purpose of this section is to protect and improve the beneficial water  
163 uses and functions and values of Water Quality Resource Areas.

164  
165 B. This ordinance establishes a Water Quality Resource Area Overlay Zone,  
166 which is delineated on the Water Quality and Flood Management Area map  
167 attached and incorporated by reference as part of this ordinance.

168  
169 *(Note: If it has been determined during local public review that the code  
170 language is to prevail, adoption of these standards as written is  
171 appropriate. If a map is to prevail, this section should be used for map  
172 correction and interpretation, and the definition of areas should be by  
173 adopting an official map by reference.)*

174  
175 C. The Water Quality Resource Area is the vegetated corridor and the  
176 Protected Water Feature. The width of the vegetated corridor is specified  
177 in the Table One. At least three slope measurements along the water  
178 feature, at no more than 100-foot increments, shall be made for each  
179 property for which development is proposed. Depending on the width of  
180 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

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<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.

198 (Note: The following methodology is an alternative for the purposes of  
199 substantial compliance: a jurisdiction can meet the performance  
200 standards in Title 3 by applying the following method to the water quality  
201 resource area: for areas with zero slope (as measured parallel to the  
202 ground) the buffer will be 50 feet from top of waterway bank, but for every  
203 one percent (1%) slope after that point, add six (6) feet.)  
204

205 D. Uses Permitted Outright

206  
207 1. Stream, wetland, riparian and upland enhancement or  
208 restoration projects; and farming practices as defined in ORS 30.930  
209 and farm use, excluding buildings and structures, as defined in ORS  
210 215.203.

211  
212 2. Placement of structures that does not require a grading  
213 or building permit.

214  
215 (Note: City and Counties have the option of choosing to apply the  
216 Water Quality and Flood Management Area performance standards  
217 of Table 1 to all structures.)  
218

219 3. Routine repair and maintenance of existing structures,  
220 roadways, driveways, utility facilities, accessory uses and other  
221 development.

222  
223 (Note: Local jurisdictions may choose to place this subsection – D3  
224 – in subsection E as item 3, Uses under Prescribed Conditions, and  
225 prescribe those conditions.)  
226

227 E. Uses Under Prescribed Conditions

228  
229 1. Repair, replacement or improvement of utility facilities where:

230  
231 a. the disturbed portion of the Water Quality  
232 Resource Area is restored; and

233  
234 b. non-native vegetation is removed from the  
235 Water Quality Resource Area and replaced with vegetation from  
236 the Metro Native Plant List.

237  
238 2. Additions, alterations, rehabilitation, or replacement of existing  
239 structures that do not increase existing structural footprint in the  
240 Water Quality Resource Area where the disturbed portion of the  
241 Water Quality Resource Area is restored using native vegetative  
242 cover.

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**F. Conditional Uses**

The following uses are allowed in the Water Quality Resource Area Overlay Zone subject to compliance with the Application Requirements and Development Standards of subsections H and I.

1. Any use allowed in the base zone, other than those listed in subsection D and E above.
2. Measures to remove or abate nuisances, or any other violation of State statute, administrative agency rule or city or county ordinance.
3. Roads to provide access to Protected Water Features or necessary ingress and egress across Water Quality Resource Areas.
4. New public or private utility facility construction.
5. Walkways and bike paths. (Subsection I.5).
6. New stormwater pre-treatment facilities (Subsection I.6).
7. Widening an existing road adjacent to or running parallel to a Water Quality Resource Area.
8. Additions, alterations, rehabilitation or replacement of existing structures, roadways, accessory uses and development that increase the structural footprint within the Water Quality Resource Area consistent with Subsection I.7.

**G. Prohibited Uses**

1. Any new structures, development, other than those listed in subsection D, and E and F, construction activities, gardens, lawns, dumping of any materials of any kind.
2. Uncontained areas of hazardous materials as defined by the Department of Environmental Quality.

**H Application Requirements**

Applications for Conditional Uses in the Water Quality Resource Area Overlay Zone must provide the following information in addition to the information required for the base zone:

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1. A topographic map of the site at contour intervals of five feet or less showing a delineation of the Water Quality Resource Area, which includes areas shown on the City/County Water Quality and Flood Management Area map, and that meets the definition of Water Quality Resource Areas in Table 1.
2. The location of all existing natural features including, but not limit to, all trees of a caliper greater than six (6) inches diameter at breast height (DBH), natural drainages on the site, springs, seeps and outcroppings of rocks, or boulders within the Water Quality Resource Area.
3. Location of Title 3 wetlands. Where Title 3 wetlands are identified, the applicant shall follow the Division of State Lands recommended wetlands delineation process. The delineation shall be prepared by a professional wetlands specialist.
4. An inventory and location of existing debris and noxious materials.
5. An assessment of the existing condition of the Water Quality Resource Area in accordance with Table 2.
6. An inventory of vegetation, including percentage ground and canopy coverage.
7. Alternatives analysis demonstrating that:
  - a. No practicable alternatives to the requested development exist that will not disturb the Water Quality Resource Area; and
  - b. Development in the Water Quality Resource Area has been limited to the area necessary to allow for the proposed use; and
  - c. The Water Quality Resource Area can be restored to an equal or better condition in accordance with Table 2; and
  - d. It will be consistent with a Water Quality Resource Area Mitigation Plan.

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- e. An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to resource areas will be avoided and/or minimized.
  
- f. For applications seeking an alteration, addition, rehabilitation or replacement of existing structures:
  - 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.
  
- 8. A Water Quality Resource Area Mitigation Plan shall contain the following information:
  - a. A description of adverse impacts that will be caused as a result of development.
  
  - b. An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 2.
  
  - c. A list of all responsible parties including, but not limited to, the owner, applicant, contractor or other persons responsible for work on the development site.
  
  - d. A map showing where the specific mitigation activities will occur.
  
  - e. An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. All in-stream work in fish-

bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.

I. Development Standards

Applications for Conditional Uses in the Water Quality Resource Area Overlay Zone shall satisfy the following standards:

1. The Water Quality Resource Area shall be restored and maintained in accordance with the mitigation plan and the specifications in Table 2.
2. To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Quality Resource Area. Trees in the Water Quality Resource Area shall not be used as anchors for stabilizing construction equipment.
3. Where existing vegetation has been removed, or the original land contours disturbed, the site shall be revegetated, and the vegetation shall be established as soon as practicable. Nuisance plants, as identified in the Metro Native Plant List attached as \_\_\_\_\_, may be removed at any time. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Nuisance plants shall be replaced with non-nuisance plants by the next growing season.
4. Prior to construction, the Water Quality Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as allowed in Subsection F. Such markings shall be maintained until construction is complete.
5. Walkways and bike paths:
  - a. A gravel walkway or bike path shall not be constructed closer than 10 feet from the boundary of the Protected Water Feature. Walkways and bike paths shall be constructed so as to minimize disturbance to existing vegetation. Where practicable, a maximum of 10 percent of the trail may be within 30 feet of the Protected Water Feature.
  - b. A paved walkway or bike path shall not be constructed closer than 10 feet from the boundary of the Protected Water Feature. For any paved walkway or bike path, the width of the Water Quality Resource Area must be increased by a distance equal

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to the width of the path. Walkways and bike paths shall be constructed so as to minimize disturbance to existing vegetation. Where practicable, a maximum of 10 percent of the trail may be within 30 feet of the Protected Water Feature.

c. A walkway or bike path shall not exceed 10 feet in width.

6. Stormwater pre-treatment facilities:

a. The stormwater pre-treatment facility may only encroach a maximum of 25 feet into the outside boundary of the Water Quality Resource Area of a primary water feature; and

b. The area of encroachment must be replaced by adding an equal area to the Water Quality Resource Area on the subject property.

7. Additions, alterations, rehabilitation and replacement to lawful structures.

a. For existing structures, roadways, driveways, accessory uses and development which are nonconforming, this ordinance shall apply in addition to the nonconforming use regulations of the City/County zoning ordinance.

b. Additions, alterations, rehabilitation or replacement of existing structures, roadways, driveways, accessory uses and development shall not encroach closer to the Protected Water Feature than the existing structures, roadways, driveways, accessory uses and development

8. Off-site Mitigation:

a. Where the alternatives analysis demonstrates that there are no practicable alternatives for mitigation on site, off-site mitigation shall be located as follows:

- 1) As close to the development as is practicable above the confluence of the next downstream tributary, or if this is not practicable;
- 2) Within the watershed where the development will take place or as otherwise specified by the city or county in an approved Wetland Mitigation Bank.

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b. In order to ensure that the mitigation area will be protected in perpetuity, proof that a deed restriction has been placed on the property where the mitigation is to occur is required.

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Table 2

WATER QUALITY RESOURCE AREA REQUIREMENTS

EXISTING CONDITION OF WATER QUALITY RESOURCE AREA	REQUIREMENTS IF WATER QUALITY RESOURCE AREA REMAINS UNDISTURBED DURING CONSTRUCTION	REQUIREMENTS IF WATER QUALITY RESOURCE AREA IS DISTURBED DURING CONSTRUCTION
<p><u>Good Existing Corridor:</u> Combination of trees, shrubs and groundcover are 80% present, and there is more than 50% tree canopy coverage in the vegetated corridor.</p>	<p><i>Provide certification by registered professional engineer, landscape architect, or biologist or other person trained or certified in riparian or wetland delineation that vegetated corridor meets the standards of this ordinance.</i></p> <p><i>Inventory and remove debris and noxious materials.</i></p>	<p>Prior to construction, a biologist or landscape architect shall prepare and submit an inventory of vegetation in areas proposed to be disturbed and a plan for mitigating water quality impacts related to the development, including:</p> <ul style="list-style-type: none"> <li>• sediments, temperature and nutrients</li> <li>• sediment control</li> <li>• temperature control</li> <li>• or addressing any other condition that may have caused the Protected Water Feature to be listed on DEQ's 303 (d) list.</li> </ul> <p>Inventory and remove debris and noxious materials.</p>

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**Note:** The middle column, being italicized, indicates that it is an option for consideration in the development review process.

EXISTING CONDITION OF WATER QUALITY RESOURCE AREA	REQUIREMENTS IF WATER QUALITY RESOURCE AREA REMAINS <u>UNDISTURBED</u> DURING CONSTRUCTION	REQUIREMENTS IF WATER QUALITY RESOURCE AREA IS <u>DISTURBED</u> DURING CONSTRUCTION
<p><u>Marginal Existing Vegetated Corridor:</u>                      Combination of trees, shrubs and groundcover are 80% present, and 25-50 percent canopy coverage in the vegetated corridor.</p>	<p><i>Provide certification by registered professional engineer, landscape architect, or biologist or other person trained or certified in riparian or wetland delineation that vegetated corridor meets the standards of this ordinance.</i></p> <p><i>Inventory and remove debris and noxious materials.</i></p>	<p>Vegetate disturbed and bare areas with, non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p> <p>Revegetate with native species using a City/County approved plan developed to represent the vegetative composition that would naturally occur on the site. Seeding may be required prior to establishing plants for site stabilization.</p> <p>Revegetation must occur during the next planting season following site disturbance. Annual replacement of plants that do not survive is required until vegetation representative of natural conditions is established on the site.</p> <p>Restore and mitigate according to approved plan using non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p>

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Note: The middle column, being italicized, indicates that it is an option for consideration in the development review process.

EXISTING CONDITION OF WATER QUALITY RESOURCE AREA	REQUIREMENTS IF WATER QUALITY RESOURCE AREA REMAINS <u>UNDISTURBED</u> DURING CONSTRUCTION	REQUIREMENTS IF WATER QUALITY RESOURCE AREA IS <u>DISTURBED</u> DURING CONSTRUCTION
<p><u>Degraded Existing Vegetated Corridor:</u>                      Less vegetation and canopy coverage than Marginal Vegetated Corridors, and/or greater than 10% surface coverage of any non-native species.</p>	<p><i>Vegetate bare areas with plantings from approved Native Plant List.</i></p> <p><i>Remove non-native species and revegetate with plantings from approved Native Plants List.</i></p> <p><i>Inventory and remove debris and noxious materials.</i></p>	<p>Vegetate disturbed and bare areas with appropriate plants from Native Plants List.</p> <p>Remove non-native species and revegetate with non-nuisance plantings from Native Plants List.</p> <p>Plant and seed to provide 100 percent surface coverage.</p> <p>Restore and mitigate according to approved plan using non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p>

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Note: The middle column, being italicized, indicates that it is an option for consideration in the development review process.

487 **Section 4. Flood Management**

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A. The purpose of these standards is to reduce the risk of flooding, prevent or reduce risk to human life and property, and maintain the functions and values of floodplains, such as allowing for the storage and conveyance of stream flows through existing and natural flood conveyance systems.

B. This ordinance establishes a Flood Management Area Overlay Zone, which is delineated on the Water Quality and Flood Management Area Map attached and incorporated by reference as a part of this ordinance.

C. The Flood Management Areas mapped include:

1. Land 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; and
2. Lands that have physical or documented evidence of flooding within recorded history. Jurisdictions shall use the most recent and technically accurate information available to determine the historical flood area, such as the aerial photographs of the 1996 flooding and digitized flood elevation maps.

D. The standards that apply to the Flood Management Areas apply in addition to local, state or federal restrictions governing floodplains or flood hazard areas.

E. Uses Permitted Outright:

1. Excavation and fill required to plant any new trees or vegetation.
2. Restoration or enhancement of floodplains, riparian areas, wetland, upland and streams that meet federal and state standards.

F. Conditional Uses:

All uses allowed in the base zone or existing flood hazard overlay zone are allowed in the Flood Management Overlay Zone subject to compliance with the Development Standards of subsection H.

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G. Prohibited Uses:

1. Any use prohibited in the base zone or existing flood hazard overlay zone.
2. Uncontained areas of hazardous materials as defined by the Department of Environmental Quality.

H. Development Standards

All development, excavation and fill in the floodplain shall conform to the following balanced cut and fill standards:

1. No net fill in any floodplain is allowed. All fill placed in a floodplain shall be balanced with at least an equal amount of soil material removal.
2. Excavation areas shall not exceed fill areas by more than 50 percent of the square footage.
3. Any excavation below bankful stage shall not count toward compensating for fill.

*(Note: These areas would be full of water in the winter and not available to hold stormwater.)*

4. Excavation to balance a fill shall be located on the same parcel as the fill unless it is not reasonable or practicable to do so. In such cases, the excavation shall be located in the same drainage basin and as close as possible to the fill site, so long as the proposed excavation and fill will not increase flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis.
5. For excavated areas identified by the city or county to remain dry in the summer, such as parks or mowed areas, the lowest elevation of the excavated area shall be at least 6 inches above the winter "low water" elevation, and sloped at a minimum of two percent towards the Protected Water Feature. One percent slopes will be allowed in smaller areas.
6. For excavated areas identified by the city or county to remain wet in the summer, such as a constructed wetland, the grade shall be designed not to drain into the Protected Water Feature.

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7. Minimum finished floor elevations must be at least one foot above the design flood height or highest flood of record, whichever is higher, for new habitable structures in the Flood Area.
8. Short-term parking in the floodplain may be located at an elevation of no more than one foot below the ten-year floodplain so long as the parking facilities do not occur in a Water Quality Resource Area. Long-term parking in the floodplain may be located at an elevation of no more than one foot below the 100-year floodplain so long as the parking facilities do not occur in a Water Quality Resource Area.
9. Temporary fills permitted during construction shall be removed.
10. New culverts, stream crossings and transportation projects shall be designed as balanced cut and fill projects or designed not to 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 crossings shall be as close to perpendicular to the stream as practicable. Bridges shall be used instead of culverts wherever practicable.
11. Excavation and fill required for the construction of detention facilities or structures, and other facilities, such as levees, specifically shall be designed to reduce or mitigate flood impacts and improve water quality. Levees shall not be used to create vacant buildable lands.

**Section 5. Subdivisions and Partitions (optional)**

- A. The purpose of this section is to amend the City/County regulations governing land divisions to require that new subdivision and partition plats delineate and show the Water Quality Resource Area as a separate tract.
- B. The standards for land divisions in Water Quality Resource Areas shall apply in addition to the requirements of the City/County land division ordinance and zoning ordinance.
- C. Prior to preliminary plat approval, the Water Quality Resource Area shall be shown as a separate tract, which shall not be a part of any parcel used for construction of a dwelling unit.

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D. Prior to final plat approval, ownership of the Water Quality Resource Area tract shall be identified to distinguish it from lots intended for sale. The tract may be identified as any one of the following:

1. Private open space held by the owner or homeowners association; or
2. Residential land divisions, private open space subject to an easement conveying storm and surface water management rights to the City/County and preventing the owner of the tract from activities and uses inconsistent with the purpose of this ordinance; or
3. At the owner's option, public open space where the tract has been dedicated to the City/County or other governmental unit; or
4. Any other ownership proposed by the owner and approved by the Director.

E. Where the Water Quality Resource Area tract is dedicated to the City/County or other governmental unit, development shall be subject to a minimum 3-foot setback from the Water Quality Resource Area.

**Section 6. Density Transfers**

A. The purpose of this section is to allow density accruing to portions of a property within the Water Quality Resource Area and Flood Management Area Overlay Zones to be transferred outside the overlay zones.

B. Development applications that request a density transfer must provide the following information:

1. A map showing the net buildable area to which the density will be transferred.
2. Calculations justifying the requested density increase.

C. Density transfers shall be allowed if the applicant demonstrates compliance with the following standards:

1. The density proposed for the lot receiving the density is not increased to more than two (2) times the permitted density of the base zone. Fractional units shall be rounded down to the next whole number.

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(Note: This is one way of restricting density.)

2. Minimum density standards will not increase due to the density transfers.
- D. The area of land contained in a Water Quality Resource Area may be excluded from the calculations for determining compliance with minimum density requirements of the zoning code.
- E. All standards of the base zone other than density requirements continue to apply.
- F. Density transfers shall be recorded on the title of the lot in the Water Quality Resource Area and on the title of the transfer lot.
- G. Once density is transferred from a lot in the Water Quality Resource Area, the density increase allocated to the transfer lot may not be transferred to any other lot.

**Section 7. Erosion Prevention and Sediment Control**

- A. The purpose of this section is to require erosion prevention measures and sediment control practices for all development inside and outside the Water Quality Resource Area and Flood Management Area Overlay Zones during construction to prevent and restrict the discharge of sediments, and to require final permanent erosion prevention measures, which may include landscaping, after development is completed. Erosion prevention techniques shall be designed to protect soil particles from the force of water and wind so that they will not be transported from the site. Sediment control measures shall be designed to capture soil particles after they have become dislodged by erosion and attempt to retain the soil particles on site.
- B. Prior to, or contemporaneous with, approval of an application that may cause visible or measurable erosion, the applicant must obtain an Erosion and Sediment Control Permit.
- C. An application for an Erosion and Sediment Control Permit shall include an Erosion and Sediment Control Plan, which contains methods and interim measures to be used during and following construction to prevent or control erosion. The plan shall demonstrate the following:
  1. The Erosion and Sediment Control Plan meets the requirements of the *Erosion Prevention and Sediment Control Plans, Technical*

706 *Guidance Handbook (Handbook)* attached and incorporated by  
707 reference as part of this ordinance;

708  
709 2. The Erosion and Sediment Control Plan will:

710  
711 a. Prevent erosion by employing prevention  
712 practices such as non-disturbance, construction schedules, erosion  
713 blankets and mulch covers; or

714  
715 b. Ensure that where erosion cannot be  
716 completely avoided, the sediment control measures will be  
717 adequate to prevent erosion from entering the public stormwater  
718 system, surface water system, and Water Quality Resource Areas;  
719 and

720  
721 c. Allow no more than a ten percent cumulative  
722 increase in natural stream turbidities, as measured relative to a  
723 control point immediately upstream of the turbidity causing  
724 activity. However, limited duration activities necessary to  
725 address an emergency or to accommodate essential dredging,  
726 construction or other legitimate activities, and that cause the  
727 standard to be exceeded may be authorized provided all  
728 practicable turbidity control techniques have been applied.

729  
730 3. The applicant will actively manage and maintain erosion control  
731 measures and utilize techniques described in the Permit to prevent  
732 or control erosion during and following development. Erosion and  
733 sediment control measures required by the Permit shall remain in  
734 place until disturbed soil areas are permanently stabilized by  
735 landscaping, grass, approved mulch or other permanent soil  
736 stabilizing measures;

737  
738 4. No mud, dirt, rock or other debris will be deposited upon a public  
739 street or any part of the public stormwater system, surface water  
740 system, Water Quality Resource Area, or any part of a private  
741 stormwater system or surface water system that drains or connects  
742 to the public stormwater or surface water system.

743  
744 D. The Erosion and Sediment Control Plan shall be reviewed in conjunction  
745 with the requested development approval. If the development does not  
746 require review under Sections 3 and 4 of this ordinance, the Director may  
747 approve or deny the permit with notice of the decision to the applicant.

748  
749 E. The city or county may inspect the development site to determine  
750 compliance with the Erosion and Sediment Control Plan and Permit.

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F. Erosion that occurs on a development site that does not have an Erosion and Sediment Control Permit, or that results from a failure to comply with the terms of such a Permit, constitutes a violation of this ordinance.

G. If the Director finds that the facilities and techniques approved in an Erosion and Sediment Control Plan and Permit are not sufficient to prevent erosion, the Director shall notify the permittee. Upon receiving notice, the permittee shall immediately install interim erosion and sediment control measures as specified in the *Handbook*. Within three days from the date of notice, the permittee shall submit a revised Erosion and Sediment Control Plan to the city or county. Upon approval of the revised plan and issuance of an amended Permit, the permittee shall immediately implement the revised plan.

**Section 8. Variances**

A. The purpose of this Section is to ensure that compliance with this ordinance does not cause unreasonable hardship. To avoid such instances, the requirements of this ordinance may be varied. Variances are also allowed when strict application of this ordinance would deprive an owner of all economically viable use of land.

B. This Section applies in addition to the standards governing proposals to vary the requirements of the base zone.

C. The Director shall provide the following notice of variance applications:

1. Upon receiving an application to vary the requirements of this ordinance, the Director shall provide notice of the request to all property owners within (100) feet inside the urban growth boundary, (250) feet outside the urban growth boundary and Metro.
2. Within (7) days of a decision on the variance, the Director shall provide notice of the decision to all property owners within (100) feet inside the urban growth boundary, (250) feet outside the urban growth boundary and Metro.

D. Development may occur on lots located completely within the Water Quality Resource Overlay Zone that are recorded with the county assessor's office on or before the date this ordinance is adopted. Development shall not disturb more than 5,000 square feet of the vegetated corridor, including access roads and driveways, subject to the erosion and sediment control standards of this ordinance.

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a. The proposed use cannot meet the standards in Section 8.E (hardship variance); and

b. No other application could result in permission for an economically viable use of the subject property. Evidence to meet this criterion shall include a list of uses allowed on the subject property.

2. The proposed variance is the minimum necessary to allow for the requested use;

3. The proposed variance will comply with Section 3.H.8 (mitigation) and Section 7 (erosion control); and

4. The proposed use complies with the standards of the base zone.

G. Variance Conditions

The Director may impose such conditions as are deemed necessary to limit any adverse impacts that may result from granting relief. If a variance is granted pursuant to subsections E. 1-6, the variance shall be subject to the following conditions:

1. The minimum width of the vegetated corridor shall be 15 feet on each side of a Primary Protected Water Feature, except as allowed in Section 3F and 3H;

2. No more than 25 percent of the length of the Water Quality Resource Area for a Primary Protected Water Feature within a development site can be less than 30 feet in width on each side of the water feature; and

3. In either case, the average width of the Water Quality Resource Area shall be a minimum of 15 feet on each side for Secondary Protected Water Features, a minimum of 50 feet on each side for Primary Protected Water Features; or up to 200 feet on each side in areas with slopes greater than 25 percent. The stream shall be allowed to meander within this area, but in no case shall the stream be less than 10 feet from the outer boundary of the Water Quality Resource Area.

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**E. Hardship Variance**

Variations to avoid unreasonable hardship caused by the strict application of this ordinance are permitted subject to the criteria set forth in this section. To vary from the requirements of Section 3F, the applicant must demonstrate the following:

1. The variance is the minimum necessary to allow the proposed use or activity;
2. The variance does not increase danger to life and property due to flooding or erosion;
3. The impact of the increase in flood hazard, which will result from the variance, will not prevent the city or county from meeting the requirements of this ordinance. In support of this criteria the applicant shall have a qualified professional engineer document the expected height, velocity and duration of flood waters, and estimate the rate of increase in sediment transport of the flood waters expected both downstream and upstream as a result of the variance;
4. The variance will not increase the cost of providing and maintaining public services during and after flood conditions so as to unduly burden public agencies and taxpayers;
5. Unless the proposed variance is from Section 3.H.8 (mitigation) or Section 7(erosion control), the proposed use will comply with those standards; and
6. The proposed use complies with the standards of the base zone.

**F. Buildable Lot Variance**

A variance to avoid the loss of all economically viable use of a lot that is partially inside the Water Quality Resource Overlay Zone is permitted. Development on such lots shall not disturb more than 5,000 square feet of the vegetated corridor, including access roads and driveways, subject to the erosion and sediment control standards in Section 7 of this ordinance. Applicants must demonstrate the following:

1. Without the proposed variance, the applicant would be denied economically viable use of the subject property. To meet this criterion, the applicant must show that:

880 **Section 9. Map Errors**

881  
882 **(PLACEHOLDER)**

883  
884 *(Note: It is recognized that there will be mapping errors in the Title 3 map.*  
885 *Whether these are errors of omission or errors where the map shows a resource*  
886 *where a resource does not exist, the jurisdiction shall develop and implement a*  
887 *public process whereby property owners, local stream groups, watershed councils*  
888 *and the affected public may submit suggested mapping corrections through a full*  
889 *and open public process. Process for correction of map errors should be*  
890 *included unless the general map error provision of the zoning code is sufficient)*

891  
892 **Section 10. Consistency**

893  
894 Where the provisions of this ordinance are less restrictive or conflict with  
895 comparable provisions of the zoning ordinance, regional, state or federal law, the  
896 provisions that are more restrictive shall govern. Where this ordinance imposes  
897 restrictions that are more stringent than regional, state and federal law, the  
898 provisions of this ordinance shall govern.

899  
900 **Section 11. Warning and Disclaimer of Liability**

901  
902 The degree of flood protection required by this ordinance is considered reasonable  
903 for regulatory purposes and is based on scientific and engineering considerations.  
904 Larger floods can and will occur on rare occasions. Flood heights may be  
905 increased by man-made or natural causes. This ordinance does not imply that land  
906 outside the areas of special flood hazards or uses permitted within such areas will  
907 be free from flooding or flood damage. This ordinance shall not create liability on  
908 the part of the City or County, any officer or employee thereof, or the Federal  
909 Insurance Administration, for any damages that result from reliance on this  
910 ordinance or any administrative decision lawfully made hereunder.

911  
912 **Section 12. Severability**

913  
914 The provisions of this ordinance are severable. If any section, clause or phrase of  
915 this ordinance is adjudged to be invalid by a court of competent jurisdiction, the  
916 decision of that court shall not affect the validity of the remaining portions of this  
917 ordinance.

918  
919 **Section 13. Enforcement**

920  
921 A. No person shall engage in or cause to occur any development, use or  
922 activity that fails to meet the standards and requirements of this ordinance.  
923 Development, uses or activities that are not specifically allowed within the  
924 Water Quality Resource Area are prohibited. All activities that may cause

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visible or measurable erosion are prohibited prior to the applicant obtaining an Erosion and Sediment Control Permit.

- B. In addition to other powers the city or county may exercise to enforce this ordinance, the city or county may:
1. Establish a cooperative agreement between the (enforcement authority) and the applicant (or responsible party) to remedy the violation.
  2. Issue a stop work order.
  3. Impose a civil penalty of not more than \$\_\_\_ for each violation upon the permittee, contractor or person responsible for carrying out the development work. Each day of violation shall constitute a separate offense.
  4. Cause an action to be instituted in a court of competent jurisdiction.
  5. Authorize summary abatement and subsequent recovery of costs incurred by the city or county.
- C. Upon notification by the city or county of any violation of this ordinance the applicant, permittee, contractor or person responsible for carrying out development work may be required to immediately install emergency erosion and sediment control measures that comply with Section 6.

951 **Section 14. Definitions**

952

953 **Definitions.** Unless specifically defined below, words or phrases used in this section shall  
954 be interpreted to give them the same meaning as they have in common usage and to give  
955 this classification its most reasonable application.

956

957 **Architect** - An architect licensed by the State of Oregon.

958

959 **Bankful Stage** - Defined in OAR 141-85-010 (definitions for Removal/Fill Permits) as the  
960 stage or elevation at which water overflows the natural banks of a stream or other waters  
961 of the state and begin to inundate upland areas. In the absence of physical evidence, the  
962 two-year recurrent flood elevation may be used to approximate the bankful stage.

963

964 **Created Wetlands** - Those wetlands developed in an area previously identified as a non-  
965 wetland to replace, or mitigate wetland destruction or displacement. A created wetland  
966 shall be regulated and managed the same as an existing wetland.

967

968 **Constructed Wetlands** - Those wetlands developed as a water quality or quantity facility,  
969 subject to change and maintenance as such. These areas must be clearly defined and/or  
970 separated from naturally occurring or created wetlands.

971

972 **Debris** - discarded man-made objects that would not occur in an undeveloped stream  
973 corridor or wetland. Debris includes, but is not limited to, tires, vehicles, litter, scrap  
974 metal, construction waste, lumber, plastic or styrofoam. Debris does not include objects  
975 necessary to a use allowed by this ordinance, or ornamental and recreational structures.

976

977 Debris does not include existing natural plant materials or natural plant materials which are  
978 left after flooding, downed or standing dead trees or trees which have fallen into protected  
979 water features.

980

981 **Department of Environmental Quality (DEQ) Water Quality Standards** - The  
982 numerical criteria or narrative condition needed in order to protect an identified beneficial  
983 use.

984

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

988

989 **Development** - any man-made change defined as buildings or other structures, mining,  
990 dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any  
991 lot or excavation. In addition, any other activity that results in the removal of more than  
992 10 percent of the vegetation in the Water Quality Resource Area on the lot is defined as  
993 development, for the purpose of Title 3 except that more than 10 percent removal of  
994 vegetation on a lot must comply with Section 4C - Erosion and Sediment Control.

Development does not include the following: a) Stream enhancement or restoration

995 projects approved by cities and counties; b) Farming practices as defined in ORS 30.930  
996 and farm use as defined in ORS 215.203, except that buildings associated with farm  
997 practices and farm uses are subject to the requirements of Title 3; and c) Construction on  
998 lots in subdivisions meeting the criteria of ORS 92.040(2) (1995).  
999

1000 **Disturb** - man-made changes to the existing physical status of the land, which are made in  
1001 connection with development. The following uses (activities) are excluded from the  
1002 definition.

1003

1004 a. enhancement or restoration of the Water Quality Resource Area;

1005

1006 b. planting native cover identified in the Metro Native Plant List.

1007

1008 **Division of State Lands Wetland Determinations** - As defined in OAR 141-86-200  
1009 (definitions for Local Wetland Inventory Standards and Guidelines), "wetland  
1010 determination" means identifying an area as wetland or non-wetland.

1011

1012 **Emergency** - any man-made or natural event or circumstance causing or threatening loss  
1013 of life, injury to person or property, and includes, but is not limited to, fire, explosion,  
1014 flood, severe weather, drought earthquake, volcanic activity, spills or releases of oil or  
1015 hazardous material, contamination, utility or transportation disruptions, and disease.

1016

1017 **Engineer** - A registered professional engineer licensed by the State of Oregon.

1018

1019 **Enhancement** - the process of improving upon the natural functions and/or values of an  
1020 area or feature which has been degraded by human activity. Enhancement activities may  
1021 or may not return the site to a pre-disturbance condition, but create/recreate processes and  
1022 features that occur naturally.

1023

1024 **Engineering Geologist** - A registered professional engineering geologist licensed by the  
1025 State of Oregon.

1026

1027 **Erosion** - Erosion is the movement of soil particles resulting from actions of water or  
1028 wind.

1029

1030 **Fill** - any material such as, but not limited to, sand, gravel, soil, rock or gravel that is  
1031 placed in a Title 3 wetland or floodplain for the purposes of development or  
1032 redevelopment.

1033

1034 **Floodway Fringe** - The area of the floodplain, lying outside the floodway, which does  
1035 not contribute appreciably to the passage of flood water, but serves as a retention area.

1036

1037 **Floodplain** - The land area identified and designated by the United States Army Corps of  
1038 Engineers, the Oregon Division of State Lands, FEMA, or (identify name) county/city that

1039 has been or may be covered temporarily by water as a result of a storm event of identified  
1040 frequency. It is usually the flat area of land adjacent to a stream or river formed by floods.

1041  
1042 **Floodway** - The portion of a watercourse required for the passage or conveyance of a  
1043 given storm event as identified and designated by the (identify name) City/County  
1044 pursuant to this Ordinance. The floodway shall include the channel of the watercourse  
1045 and the adjacent floodplain that must be reserved in an unobstructed condition in order to  
1046 discharge the base flood without flood levels by more than one foot.

1047  
1048 **Flood Management Areas** - all lands contained within the 100-year floodplain, flood area  
1049 and floodway as shown on the Federal Emergency Management Agency Flood Insurance  
1050 Maps and the area of inundation for the February 1996 flood. In addition, all lands which  
1051 have documented evidence of flooding.

1052  
1053 **Invasive Non-native or Noxious Vegetation** - plant species that have been introduced  
1054 and due to aggressive growth patterns and lack of natural enemies in the area where  
1055 introduced, spread rapidly into native plant communities, or which are listed on the Metro  
1056 Prohibited Plant List.

1057  
1058 **Lot** - Lot means a single unit of land that is created by a subdivision of land. (ORS  
1059 92.010(3)).

1060  
1061 **Mitigation** - the reduction of adverse effects of a proposed project by considering, in the  
1062 order: a) avoiding the impact all together by not taking a certain action or parts of an  
1063 action; b) minimizing impacts by limiting the degree or magnitude of the action and its  
1064 implementation; c) rectifying the impact by repairing, rehabilitating or restoring the  
1065 effected environment; d) reducing or eliminating the impact over time by preservation and  
1066 maintenance operations during the life of the action by monitoring and taking appropriate  
1067 measures; and e) compensating for the impact by replacing or providing comparable  
1068 substitute water quality resource areas.

1069  
1070 **Native Vegetation** - any vegetation native to the Portland metropolitan area or listed on  
1071 the Metro Native Plant list.

1072  
1073 **ODFW Construction Standards** - Oregon Department of Fish and Wildlife construction  
1074 guidelines for building roads, bridges and culverts or any transportation structure within a  
1075 waterway.

1076  
1077 **Open Space** - Land that is undeveloped and that is planned to remain so indefinitely. The  
1078 term encompasses parks, forests and farm land. It may also refer only to land zoned as  
1079 being available to the public, including playgrounds, watershed preserves and parks.

1080  
1081 **Ordinary Mean High Water Line** - As defined in OAR 141-82-005 as the line on the  
1082 bank or shore to which water ordinarily rises in season; synonymous with Mean High  
1083 Water (OAR 274.005).

1084

1085 **Ordinary Mean Low Water Line** - As defined in OAR 141-82-005 as the line on the on  
1086 the bank or shore to which water ordinarily recedes in season; synonymous with Mean  
1087 Low Water (OAR 274.005).

1088

1089 **Owner or Property Owner** - The person who is the legal record owner of the land, or  
1090 where there is a recorded land sale contract, the purchaser thereunder.

1091

1092 **Parcel** - Parcel means a single unit of land that is created by a partitioning of land. (ORS  
1093 92.010(7)).

1094

1095 **Perennial Streams** - means all primary and secondary perennial water ways mapped by  
1096 the U.S. Geological Survey.

1097

1098 **Plans** - The drawings and designs that specify construction details as prepared by the  
1099 Engineer.

1100

1101 **Post-Construction Erosion Control** - Consists of re-establishing groundcover or  
1102 landscaping prior to the removal of temporary erosion control measures.

1103

1104 **Practicable** - means available and capable of being done after taking into consideration  
1105 cost, existing technology, and logistics in light of overall project purpose.

1106

1107 **Protected Water Features**

1108

1109 *Primary Protected Water Features* shall include:

1110

1111 a. Title 3 wetlands; and

1112

1113 b. rivers, streams, and drainages downstream from the point at which 100 acres or  
1114 more are drained to that water feature (regardless of whether it carries year-round  
1115 flow); and

1116

1117 c. streams carrying year-round flow; and

1118

1119 d. springs which feed streams and wetlands and have year-round flow and

1120

1121 e. natural lakes.

1122

1123 *Secondary Protected Water Features* shall include intermittent streams and seeps  
1124 downstream of the point at which 50 acres are drained and upstream of the point  
1125 at which 100 acres are drained to that water feature.

1126

1127 **Restoration** - the process of returning a disturbed or altered area or feature to a  
1128 previously existing natural condition. Restoration activities reestablish the structure,

1129 function, and/or diversity to that which occurred prior to impacts caused by human  
1130 activity.

1131

1132 **“Resource” versus “Facility”** - The distinction being made is between a “resource,” a  
1133 functioning natural system such as a wetland or stream; and a “facility” which refers to a  
1134 created or constructed structure or drainage way that is designed, constructed and  
1135 maintained to collect and filter, retain, or detain surface water run-off during and after a  
1136 storm event for the purpose of water quality improvement.

1137

1138 **Riparian** - Those areas associated with streams, lakes and wetlands where vegetation  
1139 communities are predominately influenced by their association with water.

1140

1141 **Routine Repair and Maintenance** - activities directed at preserving an existing allowed  
1142 use or facility, without expanding the development footprint or site use.

1143

1144 **Set-back Adjustment** - The placement of a building a specified distance away from a  
1145 road, property line or protected resource.

1146

1147 **Significant Negative Impact** - an impact that affect the natural environment, considered  
1148 individually or cumulatively with other impacts on the Water Quality Resource Area, to  
1149 the point where existing water quality functions and values are degraded.

1150

1151 **Statewide Planning Goal 5** - Oregon’s statewide planning goal that addresses open  
1152 space, scenic and historic areas, and natural resources. The purpose of the goal is to  
1153 conserve open space and protect natural and scenic resources.

1154

1155 **Statewide Planning Goal 6** - Oregon’s statewide planning goal that addresses air, water  
1156 and land resources quality to “maintain and improve the quality of the air, water and land  
1157 resources of the state” as implemented by the Land Conservation and Development  
1158 Commission (LCDC).

1159

1160 **Statewide Planning Goal 7** - Oregon’s statewide planning goal that addresses areas  
1161 subject to natural disasters and hazards to “protect life and property from natural disasters  
1162 and hazards” as implemented by the Land Conservation and Development Commission  
1163 (LCDC).

1164

1165 **Steep slopes** - Steep slopes are those slopes that are equal to or greater than 25%. Steep  
1166 slopes have been removed from the “buildable lands” inventory and have not been used in  
1167 calculations to determine the number of acres within the urban growth boundary which are  
1168 available for development.

1169

1170 **Stormwater Pre-treatment Facility** – any structure or drainage way that is designed,  
1171 constructed, and maintained to collect and filter, retain, or detain surface water run-off  
1172 during and after a storm event for the purpose of water quality improvement.

1173

1174 **Stream** - a body of running water moving over the earth's surface in a channel or bed,  
1175 such as a creek, rivulet or river. It flows at least part of the year, including perennial and  
1176 intermittent streams. Streams are dynamic in nature and their structure is maintained  
1177 through build-up and loss of sediment.  
1178

1179 **Structure** - A building or other major improvement that is built, constructed or installed,  
1180 not including minor improvements, such as fences, utility poles, flagpoles or irrigation  
1181 system components, that are not customarily regulated through zoning codes.  
1182

1183 **Substantial Compliance** - city and county comprehensive plans and implementing  
1184 ordinances, on the whole, conform with the purposes of the performance standards in the  
1185 functional plan and any failure to meet individual performance standard requirements is  
1186 technical or minor in nature.  
1187

1188 **Title 3 Wetlands** - wetlands of metropolitan concern as shown on the Metro Water Quality  
1189 and Flood Management Area Map and other wetlands added to city or county adopted Water  
1190 Quality and Flood Management Area maps consistent with the criteria set forth in Section 9.  
1191 Title 3 wetlands do not include water quality or stormwater detention facilities.  
1192

1193 **Top of Bank** - The same as "bankful stage" defined in OAR 141-85-010(2).  
1194

1195 **Utility Facilities** - buildings, structures or any constructed portion of a system which  
1196 provides for the production, transmission, conveyance, delivery or furnishing of services  
1197 including, but not limited to, heat, light, water, power, natural gas, sanitary sewer,  
1198 stormwater, telephone and cable television. Utility facilities do not include stormwater  
1199 pre-treatment facilities.  
1200

1201 **Variance** - means a discretionary decision to permit modification of the terms of an  
1202 implementing ordinance based on a demonstration of unusual hardship or exceptional  
1203 circumstances unique to a specific property.  
1204

1205 **Vegetated Corridor** - the area of setback between the top of bank of a Protected Water  
1206 Feature and the delineated edge of the Water Quality Resource Area as defined in Table 1.  
1207

1208 **Visible or Measurable Erosion** - Visible or measurable erosion includes, but is not  
1209 limited to:  
1210

1211 a. Deposits of mud, dirt sediment or similar material exceeding one-half cubic foot in  
1212 volume on public or private streets, adjacent property, or onto the storm and surface  
1213 water system, either by direct deposit, dropping discharge, or as a result of the action  
1214 of erosion.  
1215

1216 b. Evidence of concentrated flows of water over bare soils; turbid or sediment laden  
1217 flows; or evidence of on-site erosion such as rivulets on bare soil slopes, where the  
1218 flow of water is not filtered or captured on the site.

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c. Earth slides, mudflows, earth sloughing, or other earth movement that leaves the property.

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

**Water Quality and Floodplain Management Area** - The area that identifies where the Water Quality Resource Area and Floodplain Management Area Overlay Zone is applied.

**Water Quality Facility** - Any structure or drainage way that is designed, constructed and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement. It may also include, but is not limited to, existing features such as constructed wetlands, water quality swales, and ponds that are maintained as stormwater quality control facilities.

**Watershed** - A watershed is a geographic unit defined by the flows of rainwater or snowmelt. All land in a watershed drains to a common outlet, such as a stream, lake or wetland.

**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.

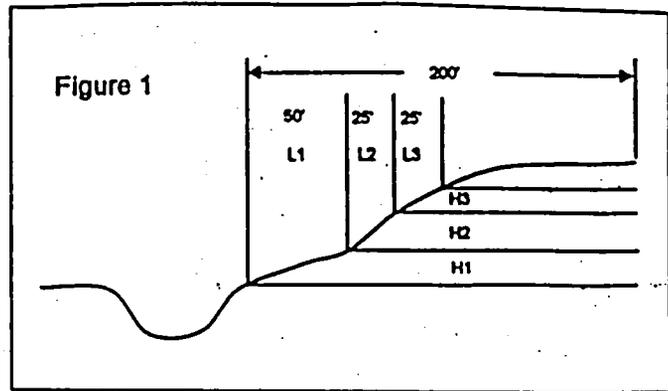
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# Appendix

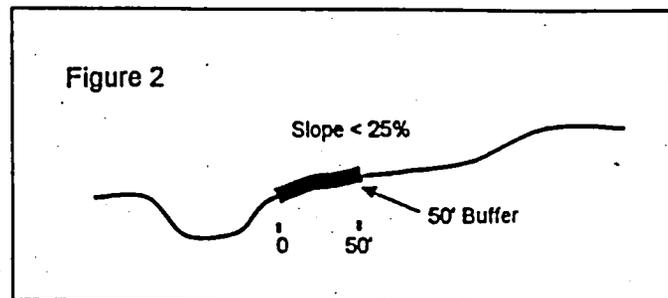
## Proposed Method for Determining Vegetated Corridors Next to Primary Protected Water Features

### How measure slope (*Figure 1*)

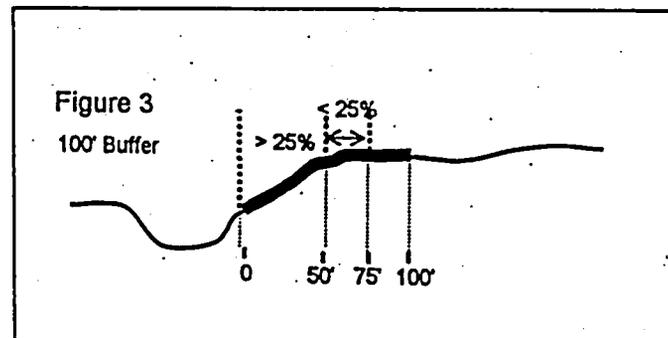
Measure 50 feet horizontally (L1) from the stream (top of bank) and determine the slope ( $H1/L1$  - the difference in elevation divided by the difference in horizontal distance multiplied by 100).



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*).



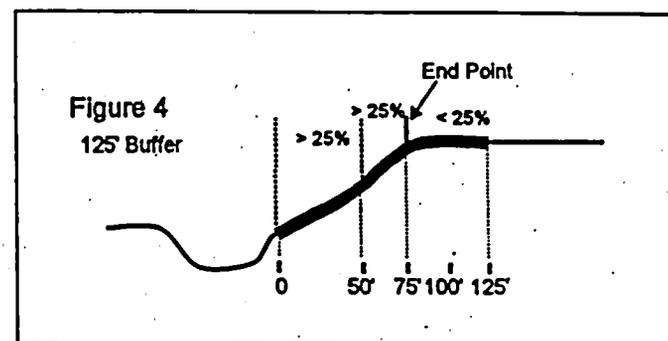
If the slope in the 50-foot area is 25% or greater, measure another 25 feet horizontally. If the slope in this incremental 25-foot area is now *less than 25%* ( $H2/L2 < 25\%$ ), the vegetated corridor width would be 100 feet (50 feet for the horizontal distance from the top of bank with slope greater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



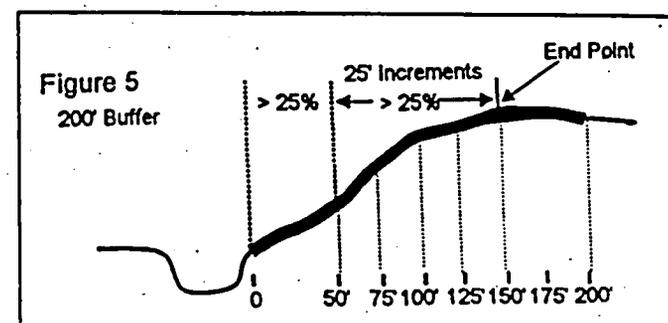
If the slope is greater than 25% in this incremental 25-foot area, continue measuring the slope every 25 feet (H/L) until you either:

(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 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 98-730 \_\_. The maps are available for review and may be copied at the Metro Regional Headquarters.**

**EXHIBIT E**

1 **DEFINITIONS (Title 10)**

2  
3 **Design Flood Elevation** -the elevation of the 100-year storm as defined in FEMA Flood  
4 Insurance Studies or, in areas without FEMA floodplains, the elevation of the 25-year  
5 storm, or the edge of mapped flood prone soils or similar methodologies.

6  
7 **Development** - any man-made change defined as buildings or other structures, mining,  
8 dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot  
9 or excavation. In addition, any other activity that results in the removal of more than 10  
10 percent of the vegetation in the Water Quality Resource Area on the lot is defined as  
11 development, for the purpose of Title 3 except that more than 10 percent removal of  
12 vegetation on a lot must comply with Section 4C - Erosion and Sediment Control.

13 Development does not include the following: a) Stream enhancement or restoration projects  
14 approved by cities and counties; b) Farming practices as defined in ORS 30.930 and farm  
15 use as defined in ORS 215.203, except that buildings associated with farm practices and  
16 farm uses are subject to the requirements of Title 3; and c) Construction on lots in  
17 subdivisions meeting the criteria of ORS 92.040(2) (1995).

18  
19 **Emergency** - any man-made or natural event or circumstance causing or threatening loss of  
20 life, injury to person or property, and includes, but is not limited to, fire, explosion, flood,  
21 severe weather, drought earthquake, volcanic activity, spills or releases of oil or hazardous  
22 material, contamination, utility or transportation disruptions, and disease.

23  
24 **Enhancement** - the process of improving upon the natural functions and/or values of an  
25 area or feature which has been degraded by human activity. Enhancement activities may or  
26 may not return the site to a pre-disturbance condition, but create/recreate processes and  
27 features that occur naturally.

28  
29 **Fill** - any material such as, but not limited to, sand, gravel, soil, rock or gravel that is placed  
30 in a wetland or floodplain for the purposes of development or redevelopment.

31  
32 **Flood Management Areas** - all lands contained within the 100-year floodplain, flood area  
33 and floodway as shown on the Federal Emergency Management Agency Flood Insurance  
34 Maps and the area of inundation for the February 1996 flood. In addition, all lands which  
35 have documented evidence of flooding.

36  
37 **Invasive Non-native or Noxious Vegetation** - plant species that have been introduced  
38 and due to aggressive growth patterns and lack of natural enemies in the area where  
39 introduced, spread rapidly into native plant communities, or which are listed on the Metro  
40 Prohibited Plant List.

41  
42 **Mitigation** - the reduction of adverse effects of a proposed project by considering, in the  
43 order: a) avoiding the impact all together by not taking a certain action or parts of an  
44 action; b) minimizing impacts by limiting the degree or magnitude of the action and its  
45 implementation; c) rectifying the impact by repairing, rehabilitating or restoring the effected

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

50

51 **Native Vegetation** - any vegetation native to the Portland metropolitan area or listed on the  
52 Metro Native Plant list.

53

54 **Protected Water Features**

55

56 *Primary Protected Water Features* shall include:

57

58 a. Title 3 wetlands; and

59

60 b. rivers, streams, and drainages downstream from the point at which 100 acres or  
61 more are drained to that water feature (regardless of whether it carries year-round  
62 flow); and

63

64 c. streams carrying year-round flow; and

65

66 d. springs which feed streams and wetlands and have year-round flow and

67

68 e. natural lakes.

69

70 *Secondary Protected Water Features* shall include intermittent streams and seeps  
71 downstream of the point at which 50 acres are drained and upstream of the point at which  
72 100 acres are drained to that water feature.

73

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

77

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

80

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

84

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

89

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

94  
95 **Title 3 Wetlands** - wetlands of metropolitan concern as shown on the Metro Water Quality and  
96 Flood Management Area Map and other wetlands added to city or county adopted Water Quality  
97 and Flood Management Area maps consistent with the criteria in Title 3, Section 7.C. Title 3  
98 wetlands do not include water quality or stormwater detention facilities.

99  
100 **Visible or Measurable Erosion** - visible or measurable erosion includes, but is not limited  
101 to:

- 102  
103 a. Deposits of mud, dirt sediment or similar material exceeding one-half cubic foot in  
104 volume on public or private streets, adjacent property, or onto the storm and surface  
105 water system, either by direct deposit, dropping discharge, or as a result of the  
106 action of erosion.  
107  
108 b. Evidence of concentrated flows of water over bare soils; turbid or sediment laden  
109 flows; or evidence of on-site erosion such as rivulets on bare soil slopes, where the  
110 flow of water is not filtered or captured on the site.  
111  
112 c. Earth slides, mudflows, earth sloughing, or other earth movement that leaves the  
113 property.

114  
115 **Utility Facilities** - buildings, structures or any constructed portion of a system which  
116 provides for the production, transmission, conveyance, delivery or furnishing of services  
117 including, but not limited to, heat, light, water, power, natural gas, sanitary sewer,  
118 stormwater, telephone and cable television.

119  
120 **Water Quality Resource Areas** - vegetated corridors and the adjacent water feature as  
121 established in Title 3.

122  
123 **Wetlands** - Wetlands are those areas inundated or saturated by surface or ground water at a  
124 frequency and duration sufficient to support and under normal circumstances do support a  
125 prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands  
126 generally include swamps, marshes, bogs and similar areas. Wetlands are those areas identified  
127 and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers  
128 Wetland Delineation Manual.

129  
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