

May 6, 1998


Metro Council
Jon Kvistad
600 NE Grand Ave
Portland, Oregon 97232

I would like to voice opposition to what is being referred to as the Wilsonville "alternative site" for the Women's Prison and Intake Center. The state of Oregon has invested \$5.2 million dollars to site and select the Dammasch facility as it's next prison. Why are you now spending \$500,000 to review a site that was NEVER in the original super siting process to begin with? As tax payers we constantly hear, from elected officials, how there is not enough money for schools; traffic safety, ie: state police; rivers and toxic clean up projects. At the very least the added cost of this project is "ESTIMATED" to cost \$29 million more than Dammasch. I have never seen a government project like this ever completed within the budget. This estimate has no provisions for road and safety improvements that will be necessary to accommodate the increased traffic in the surrounding areas.

Proponents of the alternative site have referred to it as "Wilsonville's industrial site". This area is not in Wilsonville, and is not industrial, and is not even within the UGB. Over half of the property is not even in the Urban Growth Reserves. Wilsonville is attempting to get Metro to "Fast Track" this site before the DOC has finished it's site evaluation. The land in question is zoned AF5, RURAL residential. Also MAE a designation for RURAL industrial business that requires lots of land for use such as nurseries, landscaping business and small farms. There are families living on this land, the DOC has attempted to obtain purchase options on proposed property at \$1,000.00 each. The families currently living on the properties have not agreed to any offers by the DOC.

We plan to vigorously oppose this site, both to the DOC and Metro. This is not the best use of Oregon land or money. The Dammasch site is still the best choice, based on the dollars required to make it an operating prison and intake center. If state government is truly concerned with fiscal responsibility, why are you still spending money to site a prison that has already been sited?

Sincerely:



Bob Mitchell

24045 SW Grahams Ferry Road
Sherwood, Oregon 97140

MAY 07 1998

RICHARD GENTES
24925 S.W. GARDEN ACRES RD.
SHERWOOD, OR. 97140
(in urban reserve #42)

LADIES AND GENTLEMEN OF THE METRO COUNCIL

Many people feel that the state has implemented a disservice to the people of Wilsonville. Now the City of Wilsonville is trying to pass on that disservice to the rural residential area of Washington County ; which is outside thier city, thier county, and thier jurisdiction.

The City of Wilsonville and the O.R.P.S. organization has had great success in voicing half-truths and innuendos regarding urban reserve area # 42 and the attitude of the residence who live in and around that area.

The Metro council has been all to quick to except these un-substanciated claims and to alter your adgenda in support of Wilsonvilles effort to alter the land use of this area.

At the public hearing held at Tualatin high school approximately one year ago ; the primary speaker, Susan McIian ; Metro councilor, stressed the 2040 plan and the great need for additional housing due to the rapid population growth. The urban reserve boundries were displayed and the need for high density housing was emphasized. At no time was there mention that additional industrial or commercial land was needed and no urban reserve area was so designated. At no time did the City of Wilsonville state that they needed additional industrial or commercial property for development. Why then does Metro find the urgent need to alter thier vision of the 2040 plan and to amend the boundry to include an additional 60 acres into urban reserve # 42; if not for the sole purpose of assisting the state and the City of Wilsonville to site the prison at that location.

Metro's rush to assit the City of Wilsonville may impose serious physical and financial burden on the residences of that area. What ever false-hoods and exaggerations are made regarding this Washington County rural residential area, the fact remains that this is still a residential area with homes on and adjacent to the alternate prison site.

Metro's inclusion of the additional 60 acres and the ultimate relocation of the urban growth boundary in this excellerated time schedule could create foreseeable problems for the area and the residence, should the state decide NOT to locate the prison at the alterative site.

These could include the assumption that the residence favor annexation into Wilsonville; The finacial burden of development of the infrastructure for the area, and the jurisdictional problems associated with the City of Wilsonville, Clackmas County and Washington County permit process.

The recent statement by Jon Kvistad that " *Metro is not responsible for the prison siting* " appears to be a false statement. The state with its supersiting authority can place the prison anywhere it likes, with no restrictions by land use provisions. Why then does Metro feel the need to change the land use for this area before the state D.O.C. has completed thier report.

Because some property owners have entertained the idea to sell thier properties does not translate to the statement that " *they want the prison located here.*" Because the southern corner of the urban reserve is zoned urban industrial, does not qualify the satement that this is an " *industrial area* ". Because many of the residences are older homes on acerage and do not have manicured landscaping; does NOT justify the statement " *this is a blited area.*"

I contend that this meeting for the addition of 60 acres to the urban reserve area # 42, and that the scheduled meeting for June 2nd for the relocation of the urban growth boundary are both premature and unwarranted. I request that the Metro council re-evaluate the land use and the 2040 plan for this area and leave the job of prison siting to the State Department Of Corrections.



Richard E. Gentes

Extras

Title 3 2

**Don Morissette
Metro Councilor**

Memo

To: Metro Councilors
From: Don
CC: Clerk of the Council
Date: 05/07/98
Re: Oregonian article dated

Attached is an article I thought you might have seen, but if by chance you have not it is very interesting. As I have stated frequently, the more land inside the UGB we protect, the more we will have to expand the boundary to comply with State requirements for a 20-year supply of land. Many of the urban reserves are in areas with slopes and sensitive lands that could require protection and decrease the amount of buildable land.

Most of our suburban communities have already installed separated sewer systems. New commercial and residential projects that I am familiar with are required to connect and pay for storm and sanitary sewers.

I agree Portland has a problem with combined sewers that need to be fixed. Perhaps more of the growth and development will have move to our suburban partners' communities and the density planned near the Willamette and Columbia rivers be reduced.

I also believe that we need to require the same standards for farms inside the Metro boundary. I am convinced that only about 5% of the sediment erosion is caused by planned and permitted projects. The remainder of the sediment comes from farming both inside and outside the urban growth boundary. If we really want to help with the erosion inside the urban growth boundary, we need to include farming in the Title 3 definition of "development".

Extra

May 7, 1998 Don Morissette

I want this statement noted in the record:

I have studied, discussed, reviewed and thought about Title 3 for a long time. I have real life experience protecting streams, corridors and wetlands. I have employed experts to evaluate, delineate and design protection plans for sensitive lands. I have also experienced the impact of a government condemning my property and taking it without my agreement. I know first hand the impact of setbacks from water and flood corridors, and from trees, sidewalks, property lines and roads.

I believe it is a personal and moral responsibility to give people a 'heads up' when changes are coming that will affect them.

My experience and personal code require me to make every effort I can to tell people in advance what I believe will happen if Title 3 passes the Metro Council with the current proscriptive language. I have been assured that lots of public input and support has been demonstrated through open houses. My own experience with many open houses is that activists always attend. Until individuals understand the impact to them personally they pay little attention. Let's tell the property owners directly what Title 3 requires and let it stand the test of light instead of keeping average citizens in the dark. Tell the people being affected.

I have two ideas that I believe would allow property owners adequate notification.

1. Modify the Title 3 language to allow flexibility to give property owners current use of their property.
2. Send out Title 3 to local communities with the requirement that they notice all affected property owners. Then set up forums to allow participation and to make modification recommendations to the Metro Council prior to an implementation period beginning.

Please think about this. If it was your property and a significant change was being made wouldn't you want a chance to participate before it became a regulation? I have heard all the arguments that citizens will get plenty of chance to participate at the local level. The problem is that Title 3 regulations are so proscriptive, including doubling and tripling existing setbacks and limiting existing uses including:

gardening, adding a new room, replacing lawns, types of plants allowed (only native vegetation), swing sets, decks and so forth

that local notification will not enable citizens to make changes to what Metro has already decided.

We are making another big mistake by not reaching out to citizens who will be affected by our decisions and votes.

Fish listing Shakes up Portland's leaders

■ Officials agree that the way rivers are treated must be changed to restore steelhead

By JONATHAN BRINCKMAN
and MICHELE PARENTE

of The Oregonian staff

The addition of Portland-area steelhead trout to the list of federally protected species reveals that a city with a national reputation for environmental initiatives has fallen short, Portland's top-political leaders agreed at an unusual meeting Tuesday.

And it has jolted the city into examining virtually every aspect of its business: from insuring development approvals to fungicides used in parks to how it gets its drinking water.

The crash of steelhead populations, by an estimated 90 percent doing 10 years, shows a failure to protect the region's waterways, commissioners said.

"We generate great press in the rest of the country about how well we protect natural resources," said Commissioner Charles Hales. "If we're so successful, why do we have an endangered species right here in our front yard?"

Commissioner Erik Sten, who convened the meeting to help the Portland City Council grasp the effects of the fish's listing under the Endangered Species Act, said Portland has treated its waterways more as open sewers than as natural resources.

The March decision to list steelhead as an endangered species gives Portland residents the impetus to change the way they treat their rivers and streams, Sten said.

But city, state and federal officials delivered a clear message to assembled commissioners: Restoring healthy populations of steelhead to Portland's rivers and streams will require enormous effort.

"This is going to be an expensive and long-term process," said Jim Martin, Gov. John Kitzhaber's salmon adviser.

No one, though, could tell the commissioners exactly what those costs will be.

City officials have compiled a list of 38 current activities that will, from now on, be viewed through the prism of how it affects the steelhead.

“
_____”

We generate great press in the rest of the country about how well we protect natural resources. If we're so successful, why do we have an endangered species right here in our front yard?

Charles Hales,
Portland city
commissioner

”

Fish: Restoration requires effort, city told

■ Continued from Page E1
The list includes:

■ A plan for a floating walkway in the Eastbank Park project along the Willamette. Because the walkway could create good habitat for fish that are eat young steelhead, that walkway could be scrapped.

■ The Lents Revitalization Plan in Southeast Portland. Portland Development Commission's long-held strategy to locate big industrial plants along the banks of Johnson Creek would be shelved. New development in the neighborhood would be encouraged only in inland areas and the banks would be protected as flood lands and natural riparian areas.

■ Parks maintenance. The use of pesticides and herbicides will be reviewed, as will how storm water is drained through the hundreds of acres of city parkland and golf courses. Parks that line waterways may be redesigned to include trees and vegetation along the banks instead of grass.

More important than calculating the exact costs of remedies, Sten said, is figuring out what steelhead need to thrive in the region's rivers and then devising ways to make sure they get it.

Steelhead are found in the Willamette and Columbia rivers, Portland's central waterways. The city will have to increase efforts already under way to prevent untreated sewage from polluting those waters.

Steelhead spawn in Johnson Creek, which winds through Southeast Portland and Gresham; and Tryon Creek, which runs through Southwest Portland to Lake Oswego. The city will have to protect the riverbanks so trees can keep the streams cool enough for young fish and ensure that housing construction does not deluge streams with sediments that bury the gravels used for spawning.

Steelhead also spawn in Bull Run, the stream in Mount Hood National Forest that feeds reservoirs providing drinking water to 800,000 area

residents. Protecting that waterway will mean cutting its contribution to the region's drinking water system. Water use will either be curtailed, or costly ways to find additional water will be required.

Tuesday's briefing offered the sharpest examples to date of how the listing will generate sweeping and profound changes in how Portland does business.

Over the coming months city officials will scrutinize nearly every policy — major and minor — and are preparing for a probable overhaul in everything from decades-old practices to plans still on the drawing board.

Little the city does is expected to remain unchanged, from how roses in city parks are treated for fungus to planned development projects in the River District and North Macadam.

"We're going to be looking at everything we put out there, from the way the city reviews building plans to planning for future development,

including projects close to streams and rivers or projects even miles away," said Dean Marriott, director of Portland's Bureau of Environmental Services.

The goal, commissioners said, should be to combine efforts to protect steelhead with efforts mandated by the Clean Water Act to clean up Portland's most polluted waterways.

The Clean Water Act, for example, is driving a \$1 billion public works project to separate sewage lines from storm-water drains and prevent raw sewage from flowing into the Willamette and Columbia rivers.

Marriott said Portland, in an effort to combine the goals of the Endangered Species Act with the Clean Water Act, should continue to address the bacteria in the rivers brought by sewage. But it also must work to lower water temperatures and toxicity levels, two potentially bigger threats to steelhead.

"It's a wonderful opportunity for Portland," Sten said. "No city in the country has ever restored an endangered species. We can do that."

5/7/98

To : Metro Council

From : Amanda Fritz, 4106 SW Vacuna Street, Portland OR 97219.

Title 3 Amendment Request

Please delete Section 3 A lines 30 (from after "this Title") thru 32, and 37 thru 40.

This would delete the option for jurisdictions to allow incorrect maps to prevail over language specifying resources to be protected.



Home Builders Association of Metropolitan Portland

503/684-1880 Fax # 503/684-0588
15555 S.W. Bangy Rd., Suite 301 • Lake Oswego, OR 97035

May 7, 1998

The Hon. Jon Kvistad
Metro Council
600 NE Grand Avenue
Portland, OR 97232

RE: Title 3 and Model Ordinance

Dear Presiding Officer Kvistad and Councilors:

The Home Builders Association of Metropolitan Portland has been closely involved in the discussion of Title 3 and the Model Ordinance that has taken place at MTAC, MPAC, and the Growth Management Committee. Although improvements have been made to the drafts as originally proposed, we continue to have serious concerns not only about how these regulations will affect thousands of existing property owners, but also how they will impact the region's ability to meet 2040 goals for housing (both density and affordability) and transportation.

Please understand that we do not argue with objectives or need of improving water quality, restoring fish habitat, and better protection from dangers associated with flooding. Rather, it is the overly rigid, scientifically questionable approach to these issues.

Our specific concerns are:

- **Conflict with Goal 5 Requirements**

Our organization, along with a wide array of other interest groups, worked for three years with LCDC and DLCD to craft the current Goal 5 administrative rules. As stated in the purpose section of the rules (OAR 660-023-0000), their intent is to establish "procedures and criteria for inventorying and evaluating Goal 5 resources and for developing land use programs to conserve and protect significant Goal 5 resources."

Goal 5 requires a very rigorous planning process, requiring local governments not only to conduct a meticulous inventory of all resource sites (including a determination of the adequacy of information available and the level of significance for each site), but also an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.

With the exception of flood plains, all of the resources that will be protected through Title 3 are also protected under Goal 5. Despite this fact, however, Metro has chosen to adopt its Title 3 requirements under the authority of Goals 6 and 7, two of the least used and most vague (there

are no specific administrative rules interpreting either) components of the Statewide Planning Goals and Guidelines.

Goal 5 is very specific (OAR 660-023-0240) about how far measures adopted under Goals 6 and 7 can affect Goal 5 resources:

“To the extent that such measures exceed the requirements of Goals 6 or 7 and affect a Goal 5 resource site, the local government shall follow all applicable steps of the Goal 5 process.”

The basic question then is what exactly are the requirements of Goals 6 and 7? While there may be valid debate on whether the water quality and flood management elements of Title 3 fall under the requirements of these two goals, Section 5 (Fish and Wildlife Habitat Conservation Area) is clearly outside the requirements of 6 and 7.

RECOMMENDATIONS: At the very least, we would suggest the following amendments to Section 5:

1. Lines 232-234 state that "Fish and Wildlife Habitat Conservation Areas generally include and/or go beyond the Water Quality and Flood Management Areas." This "general" statement of location is inappropriate and contrary to Goal 5 requirements that require detailed mapping and analysis.

SUGGESTED AMENDMENT: On page 7 of the 3/25/98 draft, delete the word "Fish" at the end of line 232, all of line 233, and the words "Quality and Flood Management Areas" on line 234.

2. Goal 5 administrative rules [OAR 660-023-0030(7)] are very strict about protection measures allowed before a full ESEE process is completed, and even these limited measures are only allowed after a site has actually been determined to be "significant." The temporary standards recommended to local governments by Title 3 are completely contrary to the provisions of Goal 5.

SUGGESTED AMENDMENT: On page 7 of the 3/25/98 draft, delete the words "Metro hereby" at the end of line 235, all of the rest of the page, and lines 262 through 278 on page 8.

• Flexibility of Local Governments

Although MPAC rejected the increased flexibility language recommended by MTAC, there was clear consensus that a certain measure of local discretion is crucial. We question whether the current definition of "substantial compliance" allows any meaningful flexibility on the part of local decision-makers.

According to the definition of "substantial compliance," the only allowed variance from Title 3's performance measures are those that are "technical or minor in nature." We understand that this

language is borrowed nearly verbatim from the statutory definition of compliance with the very general Statewide Planning Goals for purposes of acknowledgement, but question whether its use in the very specific Title 3 is appropriate or workable.

The definition is made even more significant by the fact that the only exception allowed by Title 8 for requirements of Title 3 are for requests from cities and counties for areas to be added or deleted from the maps.

RECOMMENDATIONS: The Metro Council should:

1. Seek information from the Office of General Counsel on any existing case law interpreting the "technical or minor in nature" standard and request that the OGC give an opinion on how far the standard would apply to implementation of Title 3 by local governments.
2. Amend the definition of "substantial compliance" to make clear that local governments may do a more rigorous examination of Water Quality Resource Areas to provide more or less protection, as may be appropriate. This is especially relevant for wetlands. Under Title 3, all wetlands are treated equally as "Primary Protected Water Features" even though a major study ["Wetland and Stream Buffer Size Requirements—A Review," By A.J. Castelle, A.W. Johnson, and C. Conolly, *Journal of Environmental Quality*, 23:878-882 (1994)] relied upon by Metro's Policy Analysis and Scientific Literature Review made the following conclusions:

Many agencies throughout the USA rely primarily on a combination of political acceptability and assumed aquatic resource functional value to establish buffer standards (Castelle et al., 1992a). *A search of the literature suggests, however, that a scientific approach would depend on the specific functions that a buffer needs to provide under site-specific conditions.* [Emphasis added]

Four criteria have been identified for determining adequate buffer sizes for aquatic resources: (i) resource functional value, (ii) intensity of adjacent land use, (iii) buffer characteristics, and (iv) specific buffer functions required (Castelle et al., 1992a). Generally, smaller buffers are adequate when the buffer is in good condition (e.g., dense native vegetation, undisturbed soils), the wetland or stream is of relatively low functional value (e.g., high disturbance regime, dominated by nonnative plants), and the adjacent land use has low impact potential (e.g., park land, low density residences). Larger buffers are necessary for high value wetlands and streams that are buffered from intense adjacent land uses by buffers in poor condition. [Emphasis added]

3. Amend Title 8 to make clear that other types of exceptions to Title 3 may be requested by cities and counties.
4. Adopt Morissette Amendment No. 6, which contains the flexibility language recommended by MTAC.



COLUMBIA CORRIDOR
A S S O C I A T I O N

5

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- Eric Sporre
Spieker Properties
- Anne Nickel
Executive Director

RE: Title 3

Dear Council Members :

The Columbia Corridor Association represents the interests of property owners and 2850 businesses within a 28 square mile area of prime industrial land, an area that houses 40 % of the regions vacant industrial land. Please consider these numbers when determining interest in this issue. Business and property owners can't always attend meetings but they are very concerned and must rely on people like me to bring their message forward.

CCA understands and supports the need for Metro's coordination and facilitation of regional efforts to address water quality and flood management issues. We only ask that you look closely at how you are balancing the goals in Title 3 with the goals in the other Titles, particularly those that address job creation and housing density. We are not asking that goals be changed or undermined. However, we do ask where is the balance if you choose to preserve all wetlands, even those classified as insignificant by state criteria, at the expense of other goals. By allowing for insignificant wetlands to be filled and **mitigated**, you allow maximum use of the land while encouraging development of upgraded water resource areas.

To minimize the pressure on the Urban Growth Boundary, creative use of the land will be required for job creation and housing density. Set standards, ensure they are met, but grant enough flexibility for jurisdictions and developers to creatively develop a site, meeting all the goals of the functional plan. Your staff has said that flexibility is built into Title 3. However, when it adds months to the process and thousands of dollars in legal, engineering, and environmental consulting fees, you may create flexibility but, at the same time, a huge disincentive. You force the developer to do the least possible environmentally, to maintain the economic viability of the project. There are many examples where creatively approaching the development of a site has resulted in all goals being met: enhanced and protected water quality areas, job creation, and economic viability. You will hear an example of such a project today. There are many such examples. Flexibility does not mean degradation of the resource.

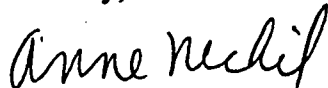
Page 2
CCA Title 3
May 7, 1998

CCA has thousands of acres protected behind dikes, where flood management is mechanically controlled. I want to point out that during the 1996 flood, the diked area was dry because the receiving water channels were drawn down in preparation. The cut and fill provision is unnecessarily restrictive in this area. By allowing for "no net loss in storage capacity", instead of narrowly limiting this area to cut and fill, you encourage creative approaches to development in an area where flood storage can be fluid and where industrially zoned property is already environmentally constrained. We request that you exempt areas from the cut and fill provision only where existing mechanically controlled flood management is used and apply "no net loss in storage capacity". This is a narrow exemption but allows needed flexibility and impacts hundreds of acres of prime industrial land.

CCA supports what you will hear from the Commercial Real Estate Economic Coalition, of which we are a member organization.

Thank you for your openness and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Anne Nickel".

Anne Nickel
Executive Director

• Potential Takings

Title 3 and the Model Ordinance both contain provisions that would allow a variance for lots or parcels that are demonstrated to be unbuildable by the vegetative corridor regulations. However, we have serious concerns about whether this apparent intent to avoid regulatory takings is actually undermined by other parts of the Title and Ordinance.

The optional language for subdivisions and partitions that is in the Model Ordinance (Section 5), for example, recommends that local jurisdictions require property owners and developers to create what will amount to conceivably thousands of unbuildable, unusable, and unsellable parcels. Although this optional requirement does not go so far as to mandate dedication of such lands to the public, it does seem to come perilously close to a complete repeat of the Tigard requirements (i.e., a dedicated greenway along Fanno Creek to minimize flooding) that the Dolans successfully showed to be a taking at the U.S. Supreme Court.

Keep in mind that in *Dolan* the Court found that there must be a demonstration of "rough proportionality," showing through some sort of "individualized determination" that the required condition is related both in nature and extent to the proposed development's impact.

The variance procedures allowed by the Model Ordinance are also problematic in that there is a flat 5,000 square-foot maximum limit placed on disturbance to the vegetated corridor for lots located completely within the Water Quality Resource Overlay Zone and lots that are partially within the Zone to avoid loss of all economically viable use. Because the 5,000 square-foot limit includes access roads and driveways, it does not allow for lots that may be larger in size and subject to topographic constraints that might make it necessary to have longer than normal access roads.

RECOMMENDATIONS: Adopt Morissette Amendments 1 and 2 to the Model Ordinance which delete both the optional Subdivisions and Partitions language cited as well as the 5,000 square-foot maximum.

• Definition of Development

In both the Model Ordinance and Title 3, "development" is defined as "any man-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten cubic yards on any lot or excavation." The direct result of such a definition is that all the requirements and limitations of the model Water Quality Resource Area and Flood Management Area Overlay Zones will be applied to both existing subdivisions as well as subdivisions that may be applied for prior to adoption of the Model Ordinance by local governments.

Such an application is clearly prohibited by state law. According to ORS 92.040 (2),

After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, *only those*

local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise. [Emphasis added]

This restriction on local authority was contained in a Home Builders bill passed by the 1995 Legislature in response to restrictions imposed on existing subdivision lots by the City of Portland's E-Zone overlay ordinance.

In a nutshell, residential construction in subdivisions cannot be affected by any laws passed after the date that an application for the subdivision is filed. The statute does provide for a maximum time limit of ten years on this protection, and local governments may adopt shorter time limits, but we believe that any such limit must be adopted prior to the application date for subdivisions that they can be applied to.

RECOMMENDATION: Amend the definition of "development" as found in Title 3 and the Model Ordinance to add a subsection (c) reading:

"Development does not include the following: a) Stream enhancement or restoration projects approved by cities and counties; b) Farming practices as defined in ORS 30.930 and farm use as defined in ORS 215.203; c) construction on lots in subdivisions subject to the provisions of ORS 92.040(2) and (3).

• Definition of Wetlands

As explained previously in our recommendations for local flexibility, we have serious concerns about the "one size fits all" approach to wetlands. We are working with a group convened by Councilor Naito to refine the definition and hope that a better version will be available for the Council to consider by early next month.

• Vegetated Corridor Widths

We continue to have serious questions about the scientific basis for a flat 200-foot buffer width in areas where slopes are greater than 25%. This is a very casual approach that does not take into consideration such important factors as functional value of the resource, nature and intensity of adjacent land uses, buffer characteristics, and the specific buffer functions required.

It has been stated that the main objective of such a wide buffer is to ensure slope stability. If this is indeed the case, then there should be an allowed reduction in the buffer if a geotechnical report concludes that there is sufficient slope stability. The Title 3 table already allows such a reduction for areas of 25% or greater when they are less than 150 feet. Why not apply the same principle to areas that are greater than 150 feet?

• **Impacts on Buildable Land Supply and Transportation Goals**

The Growth Management Services Department has estimated that environmentally constrained lands will result in a loss of approximately 13,000 acres from the buildable lands inventory. We believe that it will in fact be much higher for several reasons.

First, as has been expressed earlier, the wetland definition is extremely broad and sets the lowest possible threshold for such areas to be regulated as a Primary Protected Water Feature. The result will be that a great number of "wetland" areas—previously assumed to be buildable—that have never been mapped will come under the jurisdiction of Title 3, thus becoming off limits for new construction.

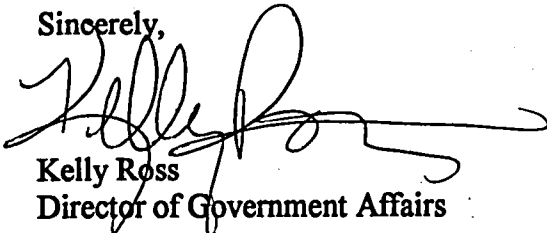
Second, we assume that the 13,000+ acre estimate applies only to the actual buffer areas and not to any ripple effects caused by the buffers on creation and configuration of new developments. This is important because there will very definitely be significant limitations imposed on the layout of new subdivisions. A random examination of only three existing developments shows a loss of at least 5% of the housing units due to constraints imposed by increased buffer areas. This amount is above and beyond the actual area subtracted for the water features and accompanying buffers.

Also found in our "what if" examination of how existing subdivisions would be different if developed under the requirements of Title 3 was the impact on access and transportation routes. Increased buffers will make it much more difficult to achieve the connectivity objectives of 2040. Though certainly not impossible to align streets through the vegetated corridors, it will be more time consuming and expensive to go through the practicable alternative analysis and mitigation requirements that will apply.

To conclude, we would again state our support for the objectives and need for improving water quality, restoring fish habitat, and better protection from the dangers associated with flooding. Our concern with Title 3 though, is that it must not override all the other important objectives and needs that exist in our region.

As always, please do not hesitate to contact me if the Home Builders Association of Metropolitan Portland can be of assistance as you continue to discuss this issue.

Sincerely,



Kelly Ross
Director of Government Affairs



CREEC

Commercial Real Estate Economic Coalition

May 7, 1998

Members of the Metro Council:

The Commercial Real Estate Economic Coalition (CREEC) represents more than 5,000 individuals and businesses represented by organizations below. Formed in June 1997, CREEC's mission: "To preserve and enhance the region's economic prosperity, quality of life and competitiveness, the Commercial Real Estate Economic Coalition (CREEC) supports an environment which is conducive to conducting business, providing affordable goods and services and creating jobs. CREEC will work with its members, government and the public to shape policies and regulations affecting commercial real estate industry in the Portland metropolitan area."

It is in this spirit that CREEC joins other members of the business and development communities to request the following modifications of Title 3 before its adoption:

- 1. Refine the definition of "wetland" to distinguish between "significant" and "insignificant" wetlands. The latter comprise about 10% of all jurisdictional wetlands and, by definition, make no contribution to water quality. Insignificant wetlands tend to be small, isolated and intermittent. Nevertheless, by prohibiting their filling and requiring a 50-foot buffer, these wetlands can wreak havoc with development potential particularly in industrial areas, rendering several acres undevelopable or at least significantly under-utilized. Given a looming shortage of industrial land in the UGB, it is critical that the land we do have be developed at its maximum potential. Moreover, it must be noted, even if Metro exempts "insignificant" wetlands from the provisions of Title 3, developers must still obtain federal fill permits. By federal law, when a jurisdictional wetland is filled, it must be offset by the creation of 1.5 times more wetland. Thus, there are adequate state and federal regulations in place to insure that such an exemption from Title 3 will not lead to further degradation of the regional watershed.**
- 2. Exempt from the requirement for a 50'-buffer lots in subdivisions which already have provided for watershed protection through set-asides or conservation easements. To impose the buffer requirement on these lots amounts to "double jeopardy". The requirement also places a significant burden on these property-owners to plant a domestic landscape, build a deck or add a bedroom, property rights accorded to all other property owners. It is believed that there are 15,000-20,000 lots throughout the metropolitan area which would be affected by this provision.**
- 3. Exempt from the provisions of Title 3 those applicants who are in the process of obtaining or have obtained fill permits. Again, this is a matter of equity. If obtaining a fill permit were a land use action, an applicant would have "vesting" rights, that is, be obligated to meet only the regulations in place at the time a formal application was submitted.**

We believe that these three modifications are necessary to eliminate several unintended consequences of Title 3 without adverse impact on the title's intent. Thank you for the opportunity to share our concerns with you on this critical matter.

Sincerely,

Mike Tharp GRB

Mike Tharp, Chair

Associated Builders & Contractors • Associated General Contractors • Certified Commercial Investment Members of Commercial Investment Real Estate Institute • Columbia Corridor Association • Commercial Association of Realtors • International Council of Shopping Centers • National Association of Industrial & Office Properties • Oregon Mortgage Bankers Association • Portland Metropolitan Association of Building Owners & Managers • Retail Task Force • Society of Industrial & Office Realtors • Sunset Corridor Association • Tualatin Valley Economic Development Corporation

**To: Mike Burton, Metro Executive
Jon Kvistad, Presiding Officer
Susan McClain, Councilor, District 4
Linda Peters, Chair, Washington County Board of Commissioners
Gary Hansen, Multnomah County Commissioner
Rob Drake, Mayor of Beaverton**

FRBWC strongly supports Title 3 of the Urban Growth Management Functional Plan, the Model Ordinance, and the maps of the Water Quality Resource Areas and Flood Management Areas. We are concerned about last minute attempts to weaken the standards by local governments and other groups. We encourage the Metro Council to reject suggestions to make stream buffers advisory or voluntary. Do not be swayed. Regional standards for floodplain and stream protection are the right thing to do. We encourage Metro's leaders to stick to their vision. Survey after survey has shown that people want clean streams and healthy green spaces near their homes and connecting to other neighborhoods. Title 3 is essential to maintaining the quality of life that attracts people to this region. Such a vision is achievable if we act quickly.

While we strongly believe that Title 3, the Model Ordinance, and maps are an important first step, FRBWC also believes that the policy and its tools could be stronger. Toward this end, FRBWC advocates for rapid implementation of Title 3, protection for headwater streams and seeps, standards for map changes, stronger mechanisms for monitoring and enforcement, and safe harbor provisions for fish and wildlife.

Time Frames

First and foremost, FRBWC advocates for rapid implementation of Title 3. The December 1997 revised draft performance standards for Title 3 provide jurisdictions 2 years to begin implementing the policy after Metro adopts the Model Ordinance and maps. The Metro Policy Advisory Committee recommends 18 months. Both time periods are too long. FRBWC recommends 6 months. At the current rate of development within Washington County, the damage to our remaining undeveloped streams and floodplains will be largely done before Title 3 becomes effective. This is especially true for Bronson and Willow creeks which largely lie within the Urban Growth Boundary and urban reserves, and which are undergoing rapid development.

Jurisdictions have had plenty of time to consider their options for implementation of Title 3 during the time it has taken to draft the rule, revise it, draft a model ordinance, and produce maps. We believe the negative reaction that Metro is seeing from local jurisdictions is largely a workload issue. It is human nature to object to change, especially when you are

already overworked and someone is telling you to refocus your priorities. FRBWC strongly advocates that local jurisdictions make implementation of Title 3 a high priority; we also advocate for increased funding to local jurisdictions to implement Title 3.

Headwaters

Second, FRBWC advocates for the protection of headwater streams and seeps. Title 3 and the Model Ordinance provide no buffers for intermittent streams draining less than 50 acres (unless the area is a wetland), and only a 15-foot buffer for intermittent streams and seeps that drain between 50 and 100 acres and have slopes less than 25 percent. Protecting the headwaters is critical to protecting everything downstream. The headwaters are the source of cool, clean water that feeds the mainstem creeks. Although the headwaters may not flow year-round, they provide valuable fish and wildlife habitat. Typically the headwaters have higher abundance and diversity of aquatic insects than the lower watershed, and provide critical spawning areas for native fish.

We are most concerned about immediate protection of the headwaters that lie within the Urban Growth Boundary and urban reserves (e.g. the headwaters of Bronson and Willow creeks). Washington County currently requires a minimum 25-foot buffer for "water quality sensitive areas" within the jurisdiction of the Unified Sewerage Agency (i.e. within the Urban Growth Boundary). These areas include perennial seeps and springs, natural and mitigated wetlands, and intermittent streams draining 100 acres or more. Many intermittent streams meet the criteria for wetlands under the Oregon Division of State Lands most recent interpretation of the 1987 Corps of Engineers Wetland Delineation Manual; however, these streams often are overlooked by developers. In recognition of the value of intermittent streams and seeps, and the need for additional protection of steep slopes, FRBWC strongly recommends that Metro adopt, at the very least, 25-foot buffers for intermittent streams and seeps draining less than 100 acres and having slopes less than 25 percent. We recommend 50-foot buffers for the same areas if slopes are 25 percent or more. These recommendations complement Statewide Planning Goal 5, which explicitly recognizes the need to protect intermittent streams.

Headwater streams that lie outside the Urban Growth Boundary do not face immediate, intense threat of development and can wait for additional planning. That is not to say that these areas lack problems. FRBWC members recently walked an 8 mile stretch of the headwaters of Rock Creek in Washington and Multnomah counties, outside the Urban Growth Boundary. We observed homes on unstable slopes, erosion caused by new development, illegal dump sites and junk yards, exotic vegetation, and other problems. Agricultural and forestry practices also offer unique challenges. To meet these challenges, we encourage Metro to begin working on meshing State Bill 1010 with floodplain and stream protection standards.

Map Changes

b. Maintain the integrity of the buffer system with a strong education and enforcement program. Most encroachment problems reflect ignorance rather than contempt for the buffer system. The goals of the program should be to make the buffer "visible" to the community, and to encourage greater buffer awareness and stewardship among adjacent residents. We recommend that Metro encourage local jurisdictions to work with stream groups to take the following simple steps to accomplish these goals:

- o Mark the buffers boundaries with permanent signs that describe the allowable uses.
- o Educate buffer owners about the benefits and uses of the buffer with pamphlets, stream walks and meetings with homeowners' associations
- o Ensure that new owners are fully informed about buffer limits/uses when property is sold or transferred.
- o Engage residents in a buffer stewardship program that includes reforestation and backyard "buffer-scaping" programs.
- o Conduct annual buffer walks to check on encroachment.

Because not all residents will respond to this effort, some kind of limited enforcement program may be necessary. We recommend a series of correction notices and site visits, with civil fines used as a last resort if compliance is not forthcoming.

Fish and Wildlife Habitat

Lastly, FRBWC encourages Metro to make rapid progress on completing standards for protection of fish and wildlife habitat. We recommend a rigorous update of Statewide Planning Goal 5 inventories region-wide, as soon as possible. While Portland has good inventories and a fairly good history of implementation, Washington County has deficient or no inventories and uneven to little implementation of Goal 5. We fear that much valuable fish and wildlife habitat will be lost in Washington County during the time that the County is deciding how to implement Title 3 and Metro is completing performance standards for fish and wildlife. Washington County last completed its Goal 5 periodic review in 1991 or 1992. The next review is scheduled for 1998/1999. While Washington County is completing its review, FRBWC strongly advocates that the County adopt Goal 5 Safe Harbor provisions for protection of fish and wildlife habitat. We encourage Metro to recommend the same for other jurisdictions in a similar situation.

Conclusion

In conclusion, FRBWC strongly supports Title 3 and its tools while advocating to make them stronger. We encourage Metro's leadership to do the right thing. Retain the

Third, FRBWC advocates for criteria for map changes that invest citizens in the process. Citizens have detailed knowledge of the streams and wetlands in their neighborhoods. Stream groups also often have members with professional expertise in these areas. Standardization of the information needed to request a map change would make the process less frustrating for all and would ensure accurate maps.

Monitoring and Enforcement

Fourth, FRBWC advocates for stronger monitoring and enforcement of Title 3 to ensure its goals are met. We believe the following measures would aid monitoring and enforcement:

1. *Establish performance measures.* We encourage Metro to establish performance measures to chart progress towards meeting the goals of Title 3, and to identify a process to revise the performance standards if goals are not being met. For example, water quality trends and buffer integrity should be monitored. The science upon which Metro based its decision for buffer widths clearly indicates the standards are at the low end of the scale for water quality benefits. FRBWC doubts that these minimum standards will be sufficient to meet minimum State water quality standards. We recommend re-looking at the performance standards and progress made toward meeting Title 3 goals every 3 years. These status updates and periodic reviews should provide opportunities for public involvement (e.g hearings and workshops).

2. *Use clear criteria to delineate the origin of the buffer.* The current definitions of bankful stage and top of bank in the Model Ordinance are confusing. The definition for bankful stage refers to uplands, a term left undefined. It is not clear if the buffer measurement begins at the top of the low flow channel (within the floodplain) or at the top of the high flow bank (where water first enters the "uplands").

3. *Buffer boundaries should be visible before, during, and after construction.*

a. Prevent buffer encroachment during construction:

- o Mark buffer limits on all plans used during construction (e.g. clearing and grading plans, erosion and sediment control plans).
- o Before construction, stake out buffers to define outer limits of disturbance.
- o Mark the limit of disturbance with silt fence barriers and signs to prevent entry of construction equipment and stockpiling.
- o Familiarize contractors with the limit of disturbance during a preconstruction walk-through.

mandatory 50 to 200 foot stream buffers; reject local government suggestions to make these buffers voluntary. Protect the headwaters. Establish standards for map changes. Strengthen the monitoring and enforcement mechanisms. Encourage safe harbor provisions for fish and wildlife. And most important of all, implement Title 3 sooner than later.

Sincerely,

Laura Hill
Chair FRBWC

220 SW Salix Terrace
Beaverton, OR 97006
ph. 629-8862



T H R E E O A K S D E V E L O P M E N T C O.

May 7, 1998

Metro Council

RE: Title 3

Dear Sirs and Madams,

I am testifying on behalf of developers under Metro's jurisdiction. Our family has been involved in responsible development in the area for over 20 years. During that time we have not only lived up to regulations in effect at the time, but have often gone "over and above" when we felt it was the correct thing to do. Balance between environmental concerns and development is very important. We must live in harmony with our world.

The proposed Title 3 language has many disturbing aspects to it which, in my opinion, are "out of balance". The most striking is the lack of definition between significant and insignificant wetlands. I believe that there will be great harm done if this distinction is not made with a procedure to mitigate insignificant wetland.

I have analyzed a recent project, Interstate Crossroads, using criteria before and after Title 3. We mitigated .63 acres of insignificant wetland by creating 1.07 (1.5 times) of significant wetland. In addition we enhanced 1.63 acres of significant wetland. The result of applying Title 3 to the project is such that 7.5 acres of prime industrial land would be lost to protect .63 acres of insignificant wetland. Over 90 million dollars has been spent to create infrastructure along Airport Way. It would be a terrible mistake to "throw away" 7.5 acres of industrial land. Where will the replacement of that 7.5 acres come from? It would force an expansion of the UBG. This loss of density would create more need for infrastructure, resulting in a loss of natural resources, all to protect an intermittent wetland that does not contribute to water quality or habitat.

I urge you to adopt language to identify insignificant wetlands and apply the same mitigation rules that the DSL currently uses.

Attached are the significant points of my case study.

Best Regards,


J. Timothy Warren, President
Three Oaks Development Co.

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Oregon Department of Fish and Wildlife Testimony
Gregory P. Robart

Metro Council Hearing
Water Quality and Flood Management Area Model Ordinance
May 7, 1998

General Comments

The Oregon Department of Fish and Wildlife (ODFW) supports Title 3 and the model ordinance as an important public policy that serves to help protect the biological integrity of Metropolitan area waterways. If the integrity of this policy remains firm without loopholes it will serve as a means to help protect water quality with resultant enhancement of the human environment for present and future generations.

Specific Comments

Map Modification

Line 37-40 Provide language that specifically allows adoption of newly discovered (inventoried) wetlands into the Water Quality Resource Area Maps. Such language should allow for alteration of maps based on agency and citizen input for inclusion of newly discovered wetlands. ODFW recommends the following language: "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 which prevails. However, language defining the protected water features, Water Quality Resource Areas and floodplains will be used to correct map errors when they are discovered during the permitting process and for delineating and marking the overlay zone boundary in the field."

Section 3. Table 1. Vegetated Corridor Dimensions

We encourage simplification of this table which defines vegetated corridor widths. Metro should work with staff to ensure the integrity and strength of the table is retained but that language is made easier for the reader to follow and understand. We are concerned about inclusion of any language which would allow for reductions of up to 100 feet of the vegetated corridor where slopes are greater than 25% or more than 150 feet if a geotechnical report demonstrates the slope is stable. Slopes fail where geotechnical reports assuring slope stability are in place. Such a change would open a loophole degrading the strength and integrity of the model ordinance to protect steep slopes from failure. Metro should not take this risk by creating this variance loophole.

ODFW Comments

Metro Hearing; Water Quality and Floodplain Management Hearing

May 7, 1998

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Removal of Stream "Debris"

ODFW favors cleanup of streams provided streams are not "sterilized" by indiscriminate removal of dead and downed wood. Natural instream and riparian debris is important for trapping sediments, arresting water velocity and energy and for protecting stream banks from erosion. Language should include provisions to protect all downed woody debris to the maximum extent practicable.

Flexibility

ODFW is concerned about adding too much flexibility in the model ordinance. We believe as Metro Executive Mike Burton points out in his memo of May 4, 1998 there is already ample flexibility in Title 3 to allow for variations in local implementation strategies. We oppose injection of flexibility suggested by Councilor Morrisette and Washington County because we believe such language, as suggested, would greatly weaken the purpose of the ordinance to protect floodplains and water quality. For example, we have noted serious impacts on Tualatin Valley streams including streambank erosion, sedimentation and turbidity. The language needs to allow local flexibility to a certain extent but the extent to which Washington County and Councilor Morrisette suggest would, in our opinion, introduce too much leeway.

Definition of Wetlands

ODFW recommends adherence to Division of State Lands (DSL) definition of wetlands. This adherence is important biologically and administratively. Much thought and discussion went into this DSL definition by wetlands experts who understand the biological importance of wetlands integrity. We believe this biological importance and integrity is captured in DSL's articulation of wetland definition. For the sake of administrative consistency it is also important to adhere to accepted terminology and characterization of what constitutes a wetland. The only departure from DSL's definition that we suggest for the model ordinance is to include wetlands basinwide *outside* the 1/4 limit from stream corridors where the stream is designated as Water Quality Limited under section 303(d) of the Clean Water Act.

Exemptions from Title 3

ODFW opposes language that would exempt sites from meeting the vegetated corridor width standards established under Section 4.B.2 as Councilman Morrisette suggests. The purpose of Title 3 is to identify "gaps" in local jurisdiction policy and

ODFW Comments

Metro Hearing; Water Quality and Floodplain Management Hearing

May 7, 1998

Page 3

where local policy is weaker, provide model language for strengthening local ordinances to protect streams and floodplains. Language in the model ordinance should suggest acceptance of local jurisdictional language only where such language is more protective.

Thank you for the opportunity to comment.



AUDUBON SOCIETY OF PORTLAND

Inspiring people to love and protect nature.

May 7, 1998

Jon Kvistad, Presiding Officer
Metro Council
Metro
600 NE Grand
Portland, OR 97232

Dear Presiding Officer Kvistad and Metro Councilors,

I have attached a copy of our full testimony to Metro's Growth Management Committee which conducted a hearing on May 5th. I will not repeat that testimony today. I would ask that you read over my full testimony to Growth Management Committee which discusses each of the amendments you will be considering. Today, I will focus on three critical issues that are of paramount concern to us. I am here representing the Audubon Society of Portland and the Natural Resources Working Group of the Coalition For A Livable Future.

The three issues I'd like to address today here are:

WETLANDS:

Metro Growth Management Committee decided to defer discussion of this issue until their May 28th meeting. I would, however, like to enter into today's hearing the following comments in opposition to legal counsel's recommendations and to Councilor Morissette's amendment number 4.

We are opposed to efforts to limit the wetlands that Title 3 would protect. Metro legal counsel has developed a rationale for the identification of wetlands which would be deemed of "Metropolitan Concern", using Oregon Division of State Lands methodology and Councilor Morissette has introduced an amendment as well. There are substantive policy and technical issues associated with these proposals which I would like to address in the following order:

1. Was Title 3 ever intended to address locally vs regionally significant (of Metropolitan Concern) wetlands? No, Title 3 from its inception recognized that all wetlands are significant from a water quality perspective. That is why the Title 3 map as it now stands has identified all wetlands, regardless of size, proximity to a 303 d listed stream, hydrologic connection. With

respect to water quality function, all wetlands are presumed to serve important water quality functions. This is not a trivial, philosophical matter. It is the heart of the origins and evolution of Title 3. The Metro legal counsel's recommendations are based on the obvious, and correct, observation that there will be "undiscovered" wetlands that are not on the current Title 3 map. Metro legal counsel has developed a logical and, I must say, creative method for determining whether these "undiscovered" wetlands are of Metropolitan Concern and, thus, eligible for inclusion on the Title 3 map through future map amendments. In our opinion, all of these wetlands are of Metropolitan Concern vis a vis the development and intent of Title 3 which recognizes the cumulative water quality benefits as well as the cumulative impacts of the loss of numerous "small, insignificant" wetlands.

2. It is our opinion that Metro legal counsel's memo of April 28 is predicated on the wrong assumption, that the Homebuilders and others will launch a successful legal challenge to Title 3 based on the fact that the so-called "undiscovered" wetlands are not of Metropolitan Concern and, thus, not eligible for protection under Title 3. We disagree with that legal opinion and we base our disagreement on the fact that the wetlands that are currently on the Title 3 map were not subjected to such a Metropolitan Concern screen. They were placed on the map as a function of there having been identified on the U. S. Fish and Wildlife Service's National Wetland Inventory, their having been included in a local Goal 5 inventory or someone having notified Metro staff of their existence. All of these wetlands, taken in aggregate, regardless of any DSL wetland criteria are to be protected under the provisions of Title 3. To subject all remaining wetlands, simply because Metro missed them during the mapping process, in our opinion is contrary to the intent of Title 3.

Therefore, we oppose the direction Metro legal counsel has gone with respect to dealing with mapping errors or omissions. It is our opinion that all wetlands, as they are discovered through local planning processes or submission of additional information by citizens, other agencies or property owners, should be added to the Title 3 map. We also oppose Councilor Morissette's amendment number 4 which reads:

Wetlands: Wetlands are shown on the Metro Water Quality and Flood Management Area Map or are areas that meet the Oregon Division of State Lands definition of wetlands: "Wetlands are those areas inundated or saturated by surface 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

Corps of Engineers Wetland Delineation Manual. Technical Report 4-87-1 by Environmental Laboratories 1987 for purposes of this policy, wetlands shall also be identified as a "significant wetland" pursuant to OAR Chapter 141, Division-86, and shall provide water quality functions as set forth by the 1996 Oregon Freshwater Wetland Assessment Methodology or Hydro. Geomorphic Methodology (HGM). For the purposes of this policy, wetland areas, which are not subject to regulatory jurisdiction of the Corps of Engineers or Division of State Lands, are not included as wetlands.

We oppose Councilor Morissette's amendment for the reasons we have outlined above and because we feel Councilor Morissette's amendment adds to the confusion over what a wetland is (definition) and how one might ascertain its local or regional significance. Mr. Morissette has mixed a number of definition-oriented and significance determination language in the wetland definition. We feel strongly that Metro should use the same wetland "definition" that virtually every jurisdiction in Oregon uses, that of the Oregon Division of State Lands and the U. S. Army Corps of Engineers. This is a regulatory definition that is used in all wetland delineation determinations. From a biological perspective we would prefer the U. S. Fish and Wildlife definition which is more liberal than the regulatory definition. However, that would only inject more confusion for the those who are unfamiliar with wetland issues. The discussion regarding whether a particular wetland, which is defined by presence of water, soil type and specific vegetation, is of Metropolitan Concern is another matter which we will discuss below.

Should you adopt Metro legal counsel's argument that the Homebuilders or others would be successful in challenging Title 3 based on the Metropolitan Concern argument, we would recommend the following changes to their methodology for determining which "undiscovered" wetlands would be covered by Title 3 and placed on the Title 3 map through what we hope will be an ongoing map amendment process which has full public scrutiny and access:

We agree that, if one accepts legal counsel's arguments, they have proposed a logical approach to determination of Metropolitan Concern. We agree that you should select the "significance" criteria from the DSL wetland methodology that are related to water quality in order to be consistent with the intent of Title 3. However, we feel these criteria should be modified for the purposes of determining which wetlands are of Metropolitan Concern. We feel the ¼ mile of a 303 d listed stream criterion is too restrictive. We would recommend that any wetland that is in a 303 d listed watershed should be placed on the Title 3 map.

And by watershed we mean any watershed or sub-watershed that contains an identifiable perennial or intermittent stream. These waterways are on the 303 d list because, among many things, their wetlands have been lost or degraded. One of the intents of Title 3 was to get them off the 303 d list. It makes no sense, either from a policy perspective or water quality management perspective, to write these wetlands off as "insignificant" because they happen to be more than one-quarter mile from a 303 d listed stream.

Secondly, there should be an "or" after each of the three criteria that legal counsel has pulled from the DSL language which also has an "or" after each criterion. Therefore, if Metro Council adopts legal counsel's recommendation, you should adopt criteria which reads:

A wetland shall be determined to be of Metropolitan Concern if any one or a combination of the following criteria are met:

- a. intact water quality function
- b. intact hydrologic control function
- c. is within a 303 d listed watershed or sub-watershed with a perennial or intermittent stream (DLS's language reads: "The wetland or a portion of the wetland occurs within a horizontal distance of less than one-quarter mile from a water body listed by DEQ as a water quality limited water body (303 d list), and the wetland's water quality function is described as intact or impacted or degraded using the OFWAM).

We are mindful of Metro legal counsel's concerns about potential legal challenges and we also want Title 3 adoption to move forward as rapidly as possible. However, we make our recommendations regarding wetlands because we feel strongly that this is essential to the integrity of the Title 3 process. This is a substantive, not philosophical position.

MAP VS LANGUAGE:

We proposed the following amendment at the Growth Management Committee. Our amendment was not discussed and we would ask that Metro Council do so today and that the Growth Management Committee take this proposed amendment up at their May 28th hearing. We proposed the following language: lines 37-40: Section 3, A. 2. Should read as follows: "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. Language defining the protected water features (Water Quality Resource Areas and Floodplains) will be used to correct map errors when they are discovered."

We would support alternative language that staff might recommend or language which was submitted by U. S. Fish and Wildlife Service which reads:

"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 which prevails. However, language defining the protected water features, Water Quality Resource Areas and floodplains will be used to correct map errors when they are discovered during the permitting process and for delineating and marking the overlay zone boundary in the field."

This language, in our opinion, may not be adequate to meet our objectives but it would be a good starting point for staff revisions which we would request Metro Council direct them to undertake. We would suggest taking out the following: "which prevails" at the end of the first sentence. The second sentence might be rewritten as follows: "When discrepancies between the Metro Title 3 map or the city or county version of the Title 3 map and where water features are on the ground the Title 3 code language will prevail."

We have advocated from the initial Title 3 discussions that the code language should prevail. It is ironic that the Metro legal counsel makes what we feel the same argument we have made for more than a year with respect to whether the map or the code language would prevail. There will be mapping errors. I have asked Metro staff to give me an idea of how many wetlands might have been missed. Of course, the fact that they have not been mapped makes that a difficult task. However, Washington County alone represents a perfect example of our concern. Washington County planning staff acknowledge that their wetland (Goal 5) inventory is deficient. I agree with that assessment because I performed their Goal 5 inventory in 1984. Because the data was "suspect" Metro staff did not use Washington County wetland inventory data when compiling the Title 3 map. They only used the US Fish and Wildlife Service's Wetland Inventory (NWI) which is well known within wetland circles for its inaccuracies. That is not because they have not done an excellent job mapping wetlands, at a national scale. It is because the scale was so large that many wetlands were missed. The NWI staff acknowledge this problem and advise those who use the NWI that it is a "starting point" for local wetland inventories.

Regarding map corrections, we feel strongly that any mapping errors should be made as they are discovered and with a full public review. The public should be encouraged to bring mapping errors to the attention of Metro and the local jurisdiction within which the errors occurs.

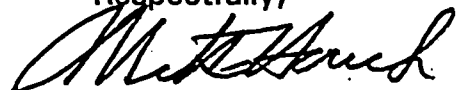
FLEXIBILITY:

First, we adamantly oppose any effort to inject additional "flexibility" into Title 3. As Metro Executive Mike Burton points out in his memo of May 4 which was addressed to Chair Naito, there is already ample flexibility in Title 3 to allow for variations in local implementation strategies. We oppose Councilor Morissette's amendment number 6 which reads: Cities and Counties in the region may adopt alternative standards regulating development within the water quality resource areas, provided that such local jurisdictions demonstrate that the alternative regulations comply with purposes stated in Section 4,B.I. We also oppose Washington County's effort to insert this flexibility language, thereby reversing what MPAC, including Washington County, voted 11-4 to turned down.

It is ironic to us that the County which had to be sued by citizens to force the clean up of the Tualatin River is the same county and set of jurisdictions which are most adamantly opposing Title 3 and which have submitted language that would essentially gut Title 3. Clearly, Washington County has not changed its attitudes toward the fact that their land use policies have had serious negative impacts on water quality and fish and wildlife habitat throughout the Tualatin River watershed. Their recommendation is irresponsible, especially in light of the recent steelhead listing, and we urge Metro Growth Management Committee and the full Metro Council to reject this attempt to gut Title 3. In our opinion all of the good work that USA has done over the past decade would be undermined by adoption of this amendment.

As we have explained in previous WRPAC, MTAC and MPAC meetings, it is our strongly held opinion that there is already more than enough flexibility in Title 3 to allow for "creative", alternative means of implementing Title 3. The most frequently discussed desire of Washington County is to allow them to all work cooperatively with USA in developing an alternative Title 3 program. Nothing in the existing Title 3 document or Model Ordinance precludes that type of cooperative approach. We would support a basin-wide program as has been discussed, but with full public involvement and within the legal and policy intent of Title 3 as it is currently written.

Respectfully,



Mike Houck



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Oregon State Office

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(503) 231-6179 FAX: (503) 231-6195

May 1, 1998

Jon Kvistad, Presiding Officer
Metro Councilors
Metro Regional Center
600 NE Grand Avenue
Portland, Oregon 97232

Dear Presiding Officer Kvistad and Councilors:

The U.S. Fish and Wildlife Service (Service) is submitting this letter as testimony for the March 7, 1998 hearing on Title 3 of the Urban Growth Management Functional Plan (Functional Plan). The Service is the principal agency through which the Federal government carries out its responsibilities to conserve, protect, and enhance the nation's fish and wildlife and their habitats for the continuing benefit of people. Partnerships with the public and local, regional, state, Tribal and other Federal agencies are vital for us to effectively carry out our mission. The Service has appreciated the opportunity to participate in the development of Title 3 through the Water Resources Policy Advisory Committee (WRPAC), and we commend the efforts of Metro and local jurisdictions to develop long-term plans and sound policies which allow for the inevitable growth in the region while protecting the region's natural resources.

GENERAL COMMENTS

As expressed in previous letters, the Service is generally supportive of Title 3 and we encourage Metro Council adoption. The environmental integrity of our stream systems and the species that depend on them hinge upon sound growth management policies that include natural resource conservation. Although available science would support much more stringent regulations for the protection of the region's streams, wetlands, and floodplains, Title 3 is a step in the right direction, and will serve as a valuable tool to reduce the degradation of the region's aquatic resources.

SPECIFIC COMMENTS

It is difficult to provide specific comments on Title 3 because there have been numerous drafts recently, and various Metro committees are still reviewing proposed amendments which they may recommend to the Metro Council. However, our comments are based on the most current draft provided to WRPAC members, which is the version recommended by the Metro Policy Advisory Committee dated March 25, 1998. The Service generally supports this draft, and we believe the performance standards are much clearer than they were in previous drafts. However, we feel strongly that the two amendments below should be adopted, as they will be critical to the effectiveness of Title 3.

Line 37-40 This language states that one of the options cities and counties may choose for applying

the section is to adopt a map implementing Title 3 which will prevail over the code language. There is an inherent policy conflict in allowing this option as it is written. Although it is stated that the maps can be updated according to Section 7 (Map Adjustments), the map correction process is separate from that of issuing a development permit, and local procedures may not allow these processes to occur concurrently. In addition, the explicit statement that the map will prevail over the code language is a *direct contradiction with* the map correction process. The Service recommends replacing the language for option number "2" with the following:

"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 which prevails. However, language defining the protected water features, Water Quality Resource Areas and floodplains will be used to correct map errors when they are discovered during the permitting process and for delineating and marking the overlay zone boundary in the field."

Lines 146-156 The flexibility provided in Section B. 2. f. is an open door to allowing development in WQRAs. Although an alternatives analysis would be completed, there is no requirement for the applicant to show a public need or benefit, and basically, there are no limits on the types of development which could be permitted. This level of flexibility was not passed by the Metro Council in November 1996, and it would likely result in the loss of a significant number of areas designated as WQRAs throughout the region.

Earlier language recommended by WRPAC allowed specific types of development activities, if it could be shown by an alternatives analysis that the development proposal was selected through a hierarchical approach which considered avoidance, minimization, and mitigation of adverse impacts to the WQRA. This alternatives analysis language was intended to accommodate specific development activities which serve the public and may not be able to be located elsewhere, such as road crossings and utilities. This language was not intended to allow any type of development permitted in the base zone. For this reason, the issue of takings was discussed extensively, and language has been developed to allow reasonable use of property, variances, and compensation through options such as density transfers.

Therefore, the Service does not support the revised language in this Section, and submits the following alternative language to replace lines 146-147:

f. Cities and counties may allow development in Water Quality Resource Areas which serve a public benefit or which allow for the replacement, expansion, or alteration of existing structures which are demonstrated to be reasonable to allow the continued existing use of a property, provided that the governing body, or its designate, implement procedures which:

Note: Keep existing language from lines 150-156, as follows:

- 1) Demonstrate that no practicable alternatives to the requested development exist which will not disturb the WQRA; and
- 2) If there is no practicable alternative, limit the development to reduce the impact associated with the proposed use; and

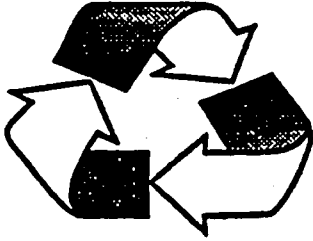
- 3) Where the development occurs, require mitigation to ensure that the functions and values of the WQRA are restored.

As the Service is writing this letter, we are not able to respond to specific proposed amendments which are currently being developed, and those which are under consideration by various Metro committees for recommendation to the Council. However, we would like to state that we are opposed to any amendments which would serve to weaken Title 3 and/or the Model Ordinance. If we are going to begin to reduce the trend of aquatic resource degradation, Federal, state, regional, and local agencies and the public are going to have to work together and take action to improve upon the status quo. These tough decisions must be made now, because the region's irretrievable resources cannot wait any longer.

Thank you for your consideration of these comments. Please contact Jennifer Thompson at (503) 231-6179 if you would like to discuss these issues.

Sincerely,

Russell D. Peterson
State Supervisor



Fuel Processors Inc.

Petroleum Recycling Since 1979

4150 N. Suttle Rd. Portland, OR 97217 EPA# ORD 980975692.
(503) 286-8352, 1-800-367-8894, Fax (503) 286-5027

April 6, 1998

A true story of lost value of the heavy zoned industrial property and damage to a needed environmental recycling operation.

In late 1979, our company purchased a 4.0 plus acre area of heavy zoned property with an option for development of a special recycling operation to care for others environmentally difficult to recycle material. The purchase price was over \$285,000.00 for the land.

The only restriction on the property was a 10-foot set back from the adjacent owner's property line and a height restriction for the airport overlay.

In 1989, our company added to the original 4 acres, an 1.8 acre site which contained a man-made wet land for \$65,000.00 with approximately 10,000 sq ft of high land and a place to develop a storm water and NPDES area for long term development of this valuable property. This would mean that in 1989 there was over 250,000 sq ft of useable property for building, parking, net of set-backs and other restrictions. The reasonable return on the original investment would mean that this property must earn at least \$38,000.00 each year.

Since 1989, EPA has determined approximate 1.5 acres is a wet land even though the county would not reduce the tax base until 1994. Another 50,000 sq. feet which was filled and the proof supports the fact that it was filled prior to 1976, before the wet land regulations were in effect, were made part of the problem. It has remained undeveloped because EPA has not answered our letters from 1991.

Then, on May 8, 1990, the Smith and Bybee Lake Natural Area Plan came into effect, Declaring an overlay on our wet land and set-backs on the high land areas which are in error. We have attempted to get them corrected but the city has thus far not agreed or acted to help.

Next came the new landscaping requirement for new development, then Metro's proposed Title 3, Water Quality and Flood Management Conservation Plan with its set-back of up to 200 feet (Property affected is less than 200 ft. wide) and Portland's new Storm Water Plan is under development which will also affect this property. All have reduced the property's use and worth without compensation for the restrictions.

The net result is that a minimum of 10,000 sq. feet, or 20,000 or 60,000 sq. feet can not be developed, making lot #47 useless for needed building and operating space. This makes the complete site too small to develop the original full recycling center which was the reason we worked so hard to purchase this site and worked there for over 18 years.

If there is the possibility of a variance which does not appear likely, then we must spend hours and many dollars of expense which was not the case when we purchased the property.

For business to serve the needs of our citizens and provide for needed recycling to protect human health and environment, they must be encouraged and fairly paid for their effort. In this case that has not been done.

To correct this to an equitable level, we are requesting the following:

As a no cost method, simply allow any property owner who was the owner prior to each new regulation or restriction to retain the prior right. Should they sell the property, then the new owner must accept the changes as are current. This would allow the old owner to make any necessary or profitable uses of the property prior to the sale. If the old owner has not made these improvements before the sale, then it is his choice to receive the benefit or not.

Next, simply pay the owner for the reduced value on the property. Since the governmental bodies have bonding authority, or funds from storm water fees, etc. so that all parties that benefit from the increased open space, water retention area and greenways, etc. pay their share. They all should pay for that enhancement. If the public is not willing to pay then it should not happen!

Your review and response to this problem and it's resolution would be greatly appreciated.

Yours Truly,

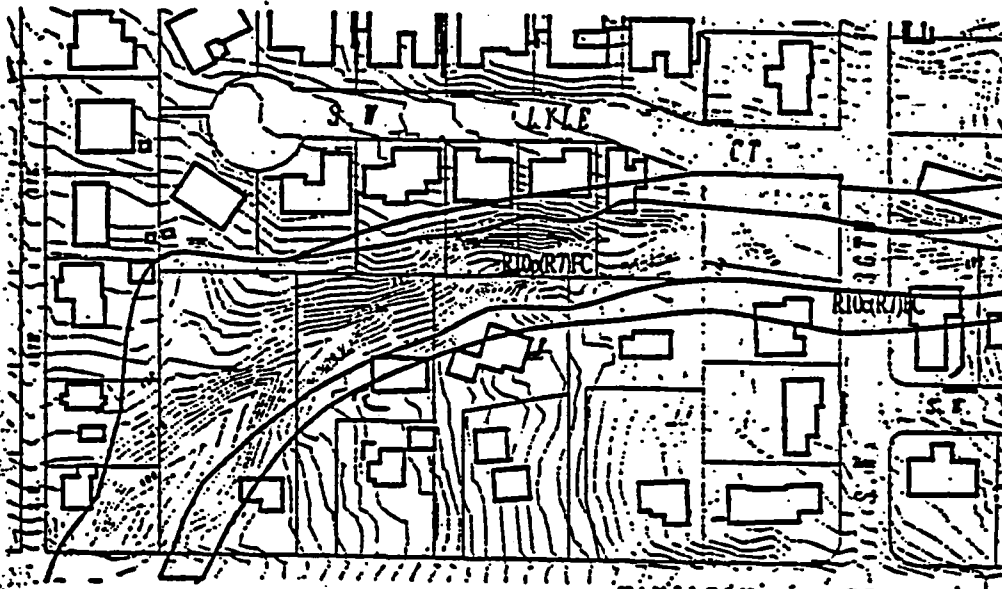


W. L. Briggs
President

WLB:gw

Photo

CITYWIDE ENVIRONMENTAL OVERLAY ZONE MAP REFINEMENT PROJECT

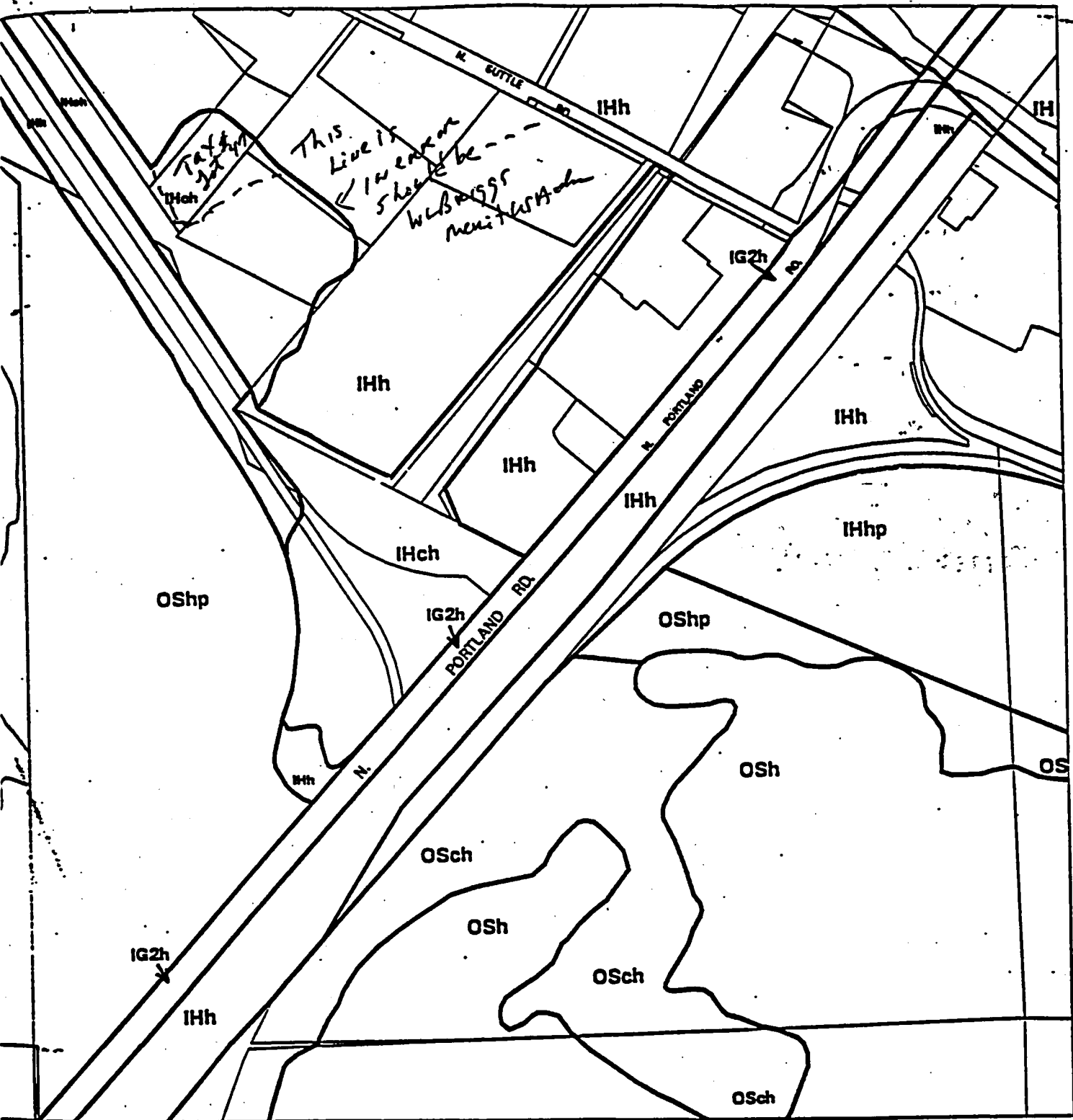


PUBLIC REVIEW DRAFT

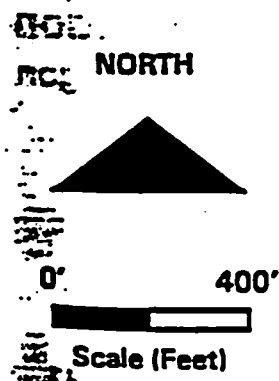
**Bureau of Planning
Portland, Oregon**

April 10, 1998





Proposed Environmental Map Correction
 Bureau of Planning - City of Portland, Oregon



- c** = Environmental Conservation Overlay
- p** = Environmental Protection Overlay
- - - -** City Boundary

Public Review Draft: April 13, 1998

Map 1/4 Section 1826

PARKING)

FORMER
COLUMBIA
WRECKING
YARD

ROAD

AGE LINE

TAX LOT '37'

FUEL PROCESSORS,
INC.

Purchased
1979

TAX LOT
'48'

TAX
LOT
'28'

PACIFIC COAST
HARDWOODS
(LOT #1)

(TRUCK)

TAX LOTS 28, 37 & 48
PURCHASED IN 1980

PACIFIC COAST
HARDWOODS
(LOT #2)

INVERTED CULVERTS
TO SMITH LAKE

TAX
LOT
'47'

PURCHASED
IN 1981

LOT OWNED BY FUEL
PROCESSORS (WETLANDS
PROTECTION BUFFER)

TAX LOT *Purchased*
'57' 1979

PURC
IN

WESTERN CONTAI
(TRUCK/TRAIL

Wetland

ADWD

Note

T/Lot 47

not part of wetland

RES

VARIAN
DOGWOOD & MAPLE

PROPERTY LINE

NEW GRASSY SWALE

SUTTLE ROAD

T/L 44
NOTE THIS LINE IS NOT A WETLAND LINE BUT TO SHOW THE POINT OF HEARROW

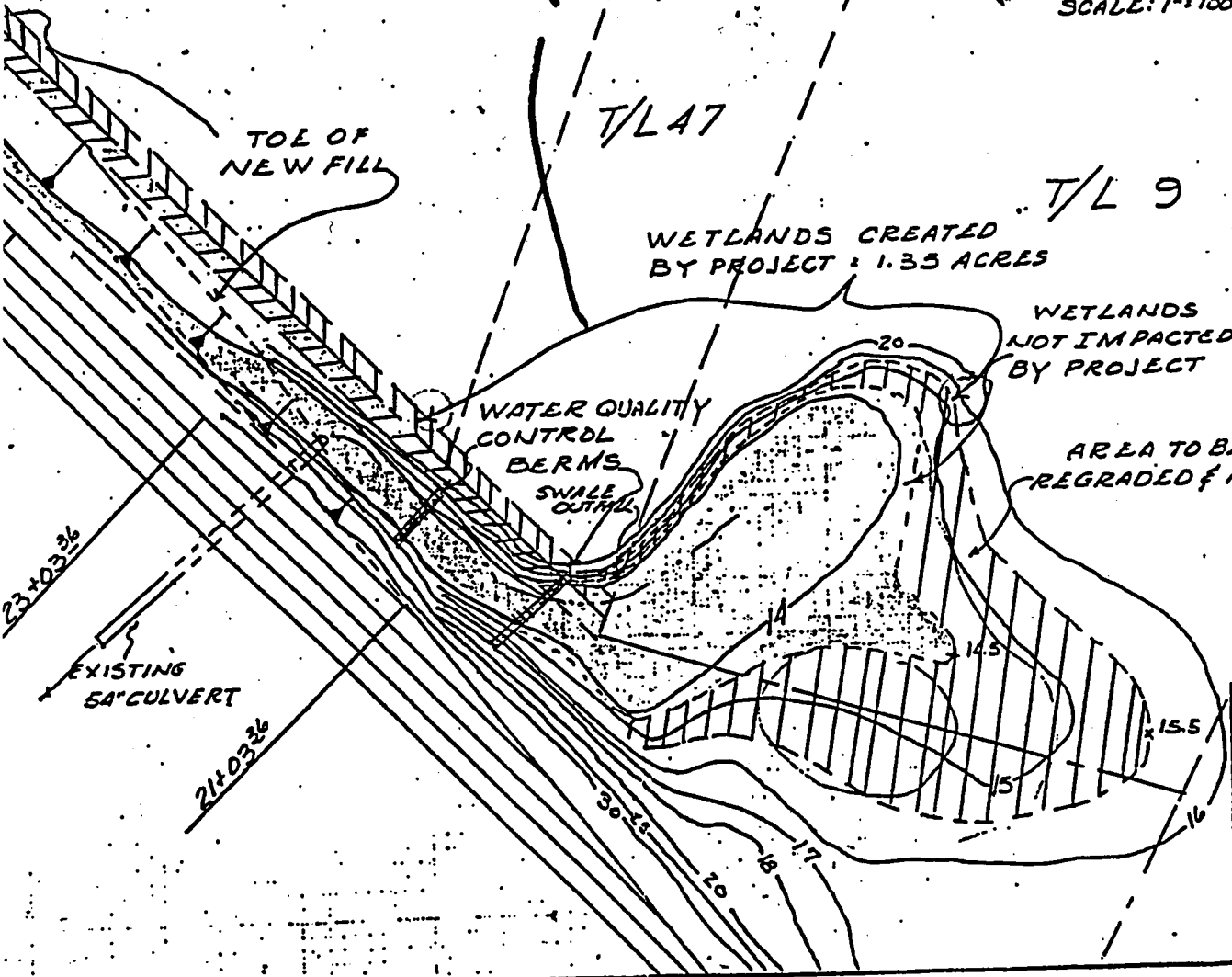
SCALE: 1" = 100'

NO CHANGE WAS MADE

D-15 Lot # 47

Bullington
North Shore

T/L 17










PROPOSED RUNAROUND TRACK
 RIVERGATE INDUSTRIAL DISTRICT
 PORTLAND, MULTNOMAH CO, OREGON
 WATER BODY: SMITH LAKE
 APPLICANT: BURLINGTON NORTHERN
 RAILROAD
 CONSULTANT: LEONARD JONES
 DUFFY LAWYER & KUMPF, INC.
 3, DEC., 1987 SHEET 2 OF 4
 PLAN # 9409

Title 3 DRAFT Section 2n1e32

Proposed Protection Areas Growth Management Functional Plan

NOTE:
This map, which represents proposed protection areas, is not an independent legal document. It is intended to be used as a guide for delineating sensitive areas, in conjunction with the Title 3 ordinance language, adopted by the Metro Council.

Water Quality and Flood Management Areas Oregon Statewide Planning Goals 6 & 7

-  Flood Hazard Area
- Water Quality Resource Areas:**
-  Riparian Corridors
-  Wetland Areas
-  Primary Protected Water Features
-  Secondary Protected Water Features
-  Tax Lot Lines
-  Metro Boundary

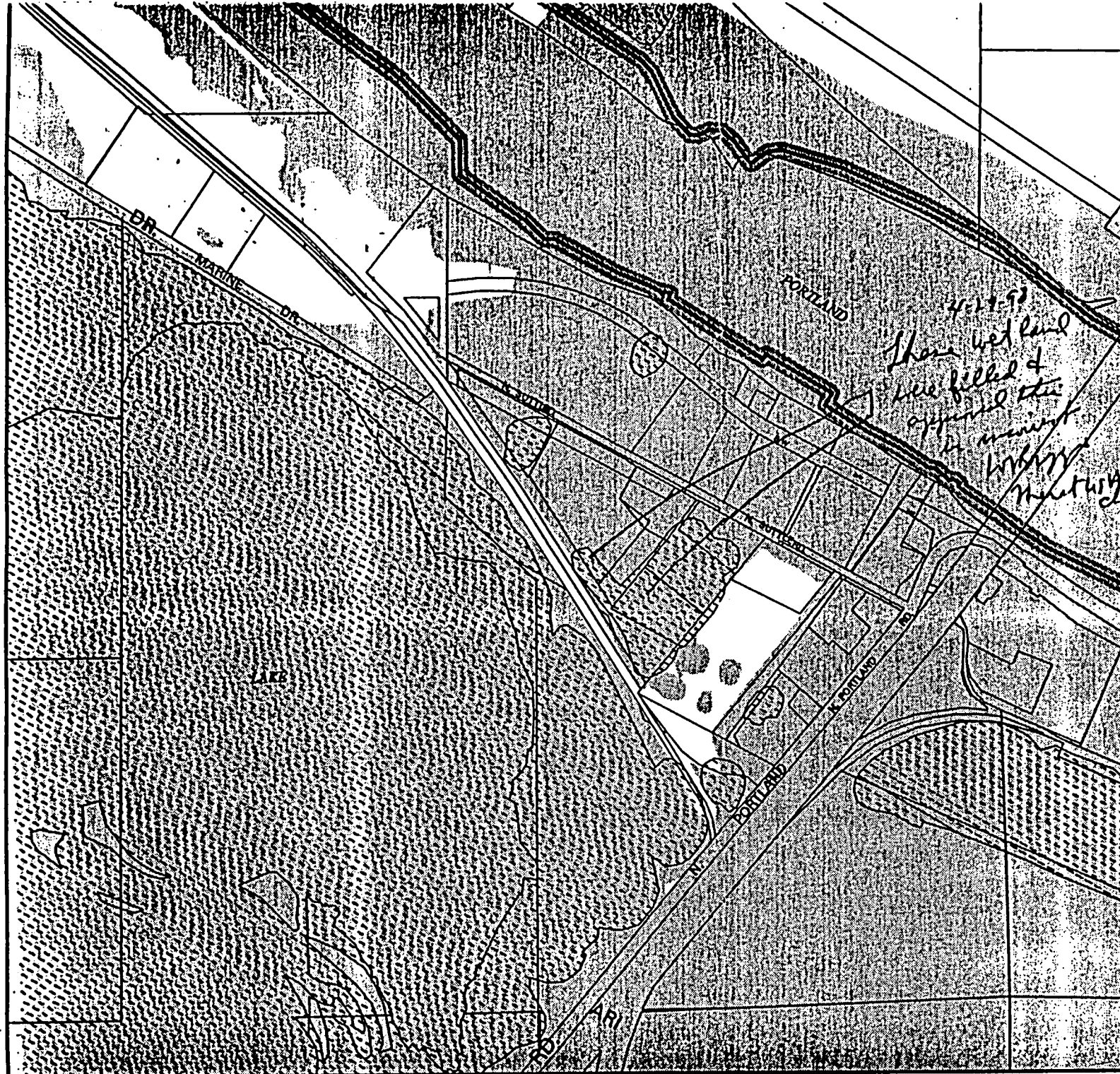
NOTE: Due to positional error inherent in mapped data, a field survey is required to determine the precise location of natural boundaries (i.e. wetlands) in relation to tax lot boundaries.

FLOOD HAZARD AREAS
Source: Corps of Engineers, FEMA maps, 1991.
1st, 1995 Flood Insurance Rate (from aerial photos on 24" x 31")
Local jurisdictional report.

WETLANDS
U.S. Department of Fish and Wildlife, 1985-1991.
Local jurisdictional wetland information.

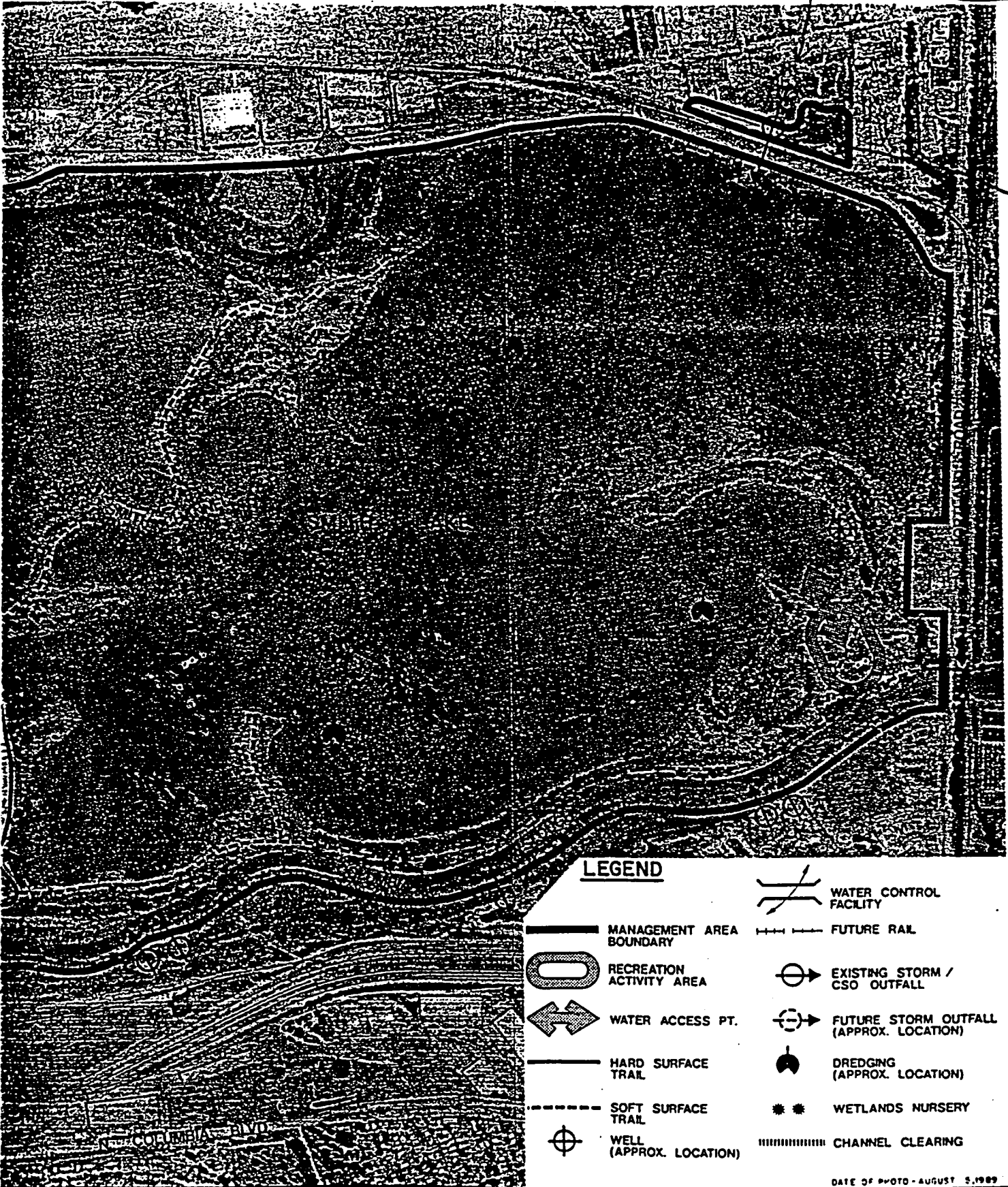
TAX LOT MAP
Cities of Beaverton, Milwaukie, Oregon City and Tigard;
Beaverton City, 1991. Map accuracy: standard precision surveying to plus or minus five feet or better. Date of creation: 11-88.
Milwaukie County, 1991. Map accuracy: standard precision surveying to plus or minus five feet or better. Date of creation: 11-88.
Oregon City, 1991. Map accuracy: based on existing cadastral data. Line work returned using standard precision surveying to plus or minus five feet or better. Date of creation: 11-88, 11-89 or 11-90.

The information on this map was derived from digital data on Metro's GIS. Care was taken to ensure the accuracy of this map. Metro cannot accept any responsibility for errors, omissions, or outdated information. There are no warranties, expressed or implied, including the accuracy of information or its use for a particular purpose, accompanying this product. However, Metro's liability shall be limited to the maximum extent permitted by law.
















Lot 47 is outside of the markings

note
-
wib



LEGEND

-  MANAGEMENT AREA BOUNDARY
-  RECREATION ACTIVITY AREA
-  WATER ACCESS PT.
-  HARD SURFACE TRAIL
-  SOFT SURFACE TRAIL
-  WELL (APPROX. LOCATION)
-  WATER CONTROL FACILITY
-  FUTURE RAIL
-  EXISTING STORM / CSO OUTFALL
-  FUTURE STORM OUTFALL (APPROX. LOCATION)
-  DREDGING (APPROX. LOCATION)
-  WETLANDS NURSERY
-  CHANNEL CLEARING

DATE OF PHOTO - AUGUST 5, 1989

Portland

**SMITH & BYBEE LAKES MANAGEMENT PLAN
PROJECTS**

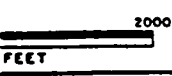


FIGURE 5

RG 90-10 3/4 (C-3)

1460



4150 N. Suttle Rd. • Portland, Oregon 97217 • 1 (503) 286-8352

April 29, 1998

Ms. Susan Payne
Assistant Regional Planner
METRO
600 N.E. Grand Ave.
Portland, Oregon 97232-2736

Dear Ms Payne:

In our letter of 4-6-98, we asked for your help to correct the effects of errors and the damage caused to the value of our industrial property.

You will find photos showing part of the problem and a copy of our original request.

One can see from Exhibit #1 that the line drawn with arrow was to show the points where the wetlands were, not a line by itself. From that, an error was made which increased the boundary to include what someone thought was the wetland boundary. Exhibit #2 shows the correct wetland and lot 47 should never been part of the wetland boundary. Someone needs to check the original survey.

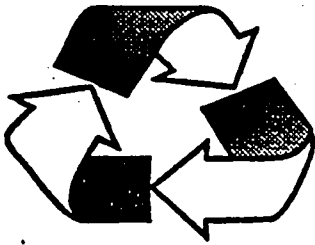
Our next step must be to seek legal help since the error was made by some governmental party, not us.

Why can't you help first, instead of causing us to spend time and funds we need for other methods of protecting our environment?

Yours Truly,

W. L. Briggs
President

WLB:gw



Oil Re-Refining Company, Inc.

Petroleum Recycling Since 1979

P.O. Box 1407, 701 Bozarth Woodland, WA 98674 EPA# WAD 980986012
(503) 286-8352, 1-800-367-8894, Fax (503) 286-5027

April 29, 1998

Hon. Vera Katz, Mayor
City of Portland
1220 SW 5th Avenue
Portland, Oregon 97210

Dear Mayor Katz:

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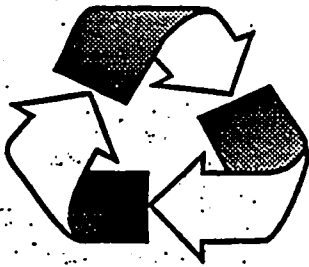
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WLB:gw



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April 6, 1998

Hon. Vera Katz, Mayor
City of Portland
1220 SW 5th Avenue
Portland, Oregon 97210

Dear Mayor Katz:

The enclosed letter is forwarded for your action. Cumulative overlapping restrictions on useable land grossly inhibits the growth and development of business in this city. In this particular instance, conservation of valuable resources through recycling is being restrained. Programmed growth has been delayed, which means new jobs and tax revenue is held back.

Your review, comments and intervention would be greatly appreciated.

Sincerely,

Gerald H. Wright

GHW:wp

Enclosure



4150 N. Suttle Rd. • Portland, Oregon 97217 • 1 (503) 286-8352

April 6, 1998

Ms. Susan Payne
Assistant Regional Planner
METRO
600 N.E. Grand Ave.
Portland, OR 97232-2736

Dear Ms. Payne:

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Your review, comments and intervention would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald H. Wright". The signature is written in a cursive, flowing style.

Gerald H. Wright

GHW:wp

Enclosure

INTERVIEW



AMERICA'S CONGRESSMAN CHENOWETH

Since being elected to the U.S. House of Representatives by the first district in the State of Idaho, Congressman Helen Chenoweth has been adopted nationally by grassroots leaders and small property owners across America because of her powerful conviction to the fundamental principles of freedom and unwavering protection of property rights and individual liberty.

This graceful mother of two was quite a surprise to her fellow colleagues when she first joined them in the Republican Revolution of 1994. Her tall beauty, soft voice and innocent smile can easily give the false impression that she could be swayed by the political whims of the day. But, as many have learned, Helen is anything but easily swayed when politics conflict with the constitutional principles she holds deep in her heart.

Congressman Chenoweth has taken on fights which many avoid, aggressively attacking the regulatory agencies, even making them testify under oath before her committee, which they are not accustomed to doing, and battling the radical environmental agenda.

She has also earned the reputation of being one of the most studious Congressmen in Washington D.C., meticulously reading the bills and issue backgrounds. At the start of her second term she was voted by her colleagues to Chair the Forests and Forest Health subcommittee of the House Resources Committee, a distinct honor for her and a clear warning to the land management agencies.

Many states have tried to adopt Helen as their own — Texas made her an honorary citizen early in her first term — but what she is most proud of is her western heritage and the hard working citizens she represents. Liberty Matters recently sat down with America's Congressman Chenoweth for this personal interview.

LM: You were first elected to Congress during the Republican Revolution of '94. Tell us about your background and what inspired you to run?

HC: What inspired me to run was that for the last 30 years we have been developing land management policies which have done two things; they have separated humans and the human element away from our beloved land, and have created a dramatic deterioration of the land. I thought it was a joke when people started asking me to run for Congress because I never had any ambitions to run for elective office. But after a number of businessmen and community leaders approached me, I decided to throw my hat in the ring. I feel this is a battle for freedom today. The battle for our freedom really does start with our land and being able to nurture the land and leave it a better place than we found it.

Before I came to Congress, I had been the State Chairman of the Idaho Republican Party, then I was Chief of Staff for Congressman Steve Symms, who then went on to the Senate. After that, I started

my own consulting firm and worked primarily on natural resource issues in the state of Idaho, the West coast and in Washington D.C..

LM: One of the cases you worked on was the John Pozsgai case.

HC: Yes, the Pozsgai case was another reason that I was motivated to run for Congress. It shocked my senses as it did most Americans', to see a man who risked his life fighting for freedom in Hungary, fight his way to America because he believed that here he was able to reach the American dream, and then have his whole life disrupted because he put some fill dirt on his own private property. For that he was sentenced to a prison term. Because of the federal governments' actions that strong spirit to fight for freedom had been dimmed. I felt that should never happen again and if there was even one event I could prevent such as the Pozsgai incident by being in Congress, it was worth the battle.

LM: You are one of the few in Congress who fights for constitutional principles in spite of the politics. Why is this so important to you?

HC: Without the Constitution we wouldn't have freedom. The Constitution purely states that there are certain terms that we hold to be self evident, that all men are created equal with certain inalienable rights -- among those the right to life, liberty and the pursuit of happiness. It goes on to say that we will form a government to protect these rights, and then the Constitution lays out the limited nature of how the federal government should operate. It is a document that limits the federal government. Americans loaned certain power to the government as defined in the Constitution, but no more than is defined.

LM: Do you find that Congress respects and weighs constitutional principles when creating bills?

HC: I would say a growing number of very strong minded articulate Congressman,

such as my friend John Shadegg from Arizona, will debate constitutional issues and there are a number of us here working to bring the Constitution back to the level that it should be. One of the issues I introduced is the Bricker Amendment stating that the Constitution is the supreme law of the land rising above Treaties and Executive Agreements. That alone is the only thing we can do to restore the rights that have been ceded by the Administration. Through Executive Agreements and Treaties we have seen our constitutional rights fully abused. The Biodiversity issue, the American Heritage



Chenoweth talking with reporters.

Rivers Initiative, the Kyoto Climate Control issue have all been done, not under the rule of Congress, as our nation was set up, but through assertion by the President. And whether President Clinton is in office or President Reagan or any other President, our rights would be better protected if we passed the Bricker Amendment.

LM: You have said you will work to pass the Bricker Amendment no matter how many years it takes.

HC: Even though I won't be in the Congress that long, I will give the Bricker Amendment everything I have and if we can pass it that's great, if we can't, I want everyone to know that it's going to be a

burning issue for me for as long as I live, or for as long as it takes to get it through.

LM: Early in your first term you challenged the Line Item Veto and are a litigant in the lawsuit filed against that authority. Why do you oppose the Line Item Veto?

HC: When we evaluate the Line Item Veto, we are giving away the power the Constitution gave to the House to promulgate all bills and particularly all bills involving appropriations and the spending of money. When we give the President the authority to change the formulation of the bill and sign it into law lining out certain items, we have given to him our strongest hold card in the balance of power. We give the Administration the power to rule and regulate without the checks and balance provided for in the Constitution. This is our fault. It is not the fault of the people. It is the fault of the Congress who was willing to give away their power. I was one of four Republicans who voted "no." I think that issue is coming back to haunt us.

There's some interesting history here. Between Presidents Washington and Nixon, those Presidents had the authority to line an item out on a bill, but then they were required to send it back to Congress to either redraft it with the Senate or to take the item off. During the Nixon administration they took the presidential decision away and made it an up or down vote. But, during the Reagan administration they wanted this ability back to help cut down on spending. By the Clinton Administration, instead of re-instituting presidential authority, they instituted Line Item Veto which is entirely different.

LM: Are Democratic leaders continuing to target your upcoming race?

HC: I'm not receiving the same kind of pressure that I did in 1996 when they dumped 5 million dollars in "independent" campaign money to try and unseat me. In 1996 my campaign was the most heavily targeted campaign in the nation by the labor unions and the environmental community. I am hoping they realize that



Chenoweth meeting with Secretary of the Interior, Bruce Babbitt, in his Washington D.C. office.

I'm not a good investment. But a letter recently sent out by House Minority Leader Richard Gephardt (D-MO) indicated that there are four leaders of the new revolution that they have to unseat. These are Speaker of the House Newt Gingrich (R-GA), House Majority Leader Dick Armey (R-TX), House Majority Whip Tom DeLay (R-TX) and Helen Chenoweth. At least I'm in good company.

LM: Americans have a great distrust for Washington politics. What can people do to change that?

HC: Well, they have reason to distrust Washington politics. Washington has become a place run by people who never worked in the real world. They are working without the experience and wisdom that sometimes a certain number of years working in the real world can produce. When I see these young law school graduates, or college graduates joining the ranks back in D.C., I'm alarmed because they are writing laws as well as rules and regulations that have dramatic consequences. That is why many in Washington want to give the power back to the states, back to the local units of government, but most importantly, as far

as I am concerned, back to individuals with real world experience.

The people must remember not to trust the politicians to always represent their best interest. Without strong input through telephones and the employees of the citizens can sometimes get off on the wrong track. When constituents believe that politics are dirty and there is nothing they can do about it, it only gets worse.

Since America took its country back in 1994 we can see things are getting better. We can see a restoration of the American vision — the American dream. We are restoring American values: individual freedom and self respect and dignity and mutual respect for people and people's property are once again cherished. That takes time but step by step we are making it better. Ultimately, this is a citizen's government and the citizens must be watchful of their government. We will get the kind of government we deserve if we abandon that institution.

LM: You have fought President Clinton's American Heritage Rivers Initiative. Why is this program so dangerous to American liberty?

HC: Well, thanks to Liberty Matters who first alerted me to this notification in the Federal Register, I think we all recognized how dangerous it was. We already have a number of programs where communities can get federal help to clean up their water front areas. This is one of the most dangerous programs to come down the pike in a long time, because while the White House is trying to say all we're doing is helping people, they bring the kind of help that means 12 different agencies ranging from the Department of Defense to the National Endowment of the Arts. What they propose is strict federal land use controls on private property, state property and our water. This is a massive takings issue. They propose to include entire river stretches and entire watershed areas and when we realize that the Mississippi River's watershed constitutes about 40% of America's land base, you can see this is massive federal land control.

It never fails to shock me that the Clintons are attorneys and yet this whole program was instituted in a manner that did not comply with the Administrative Procedures Act. An Initiative is an entirely new animal. As such, the White House said they didn't need to give the proper notice and the ability for people to respond to it. It makes us realize that today we are in a situation where the rule of law is being totally disregarded at the highest levels of government and it must stop. That's why, on the Rivers Initiative, I have put forth a bill, H.R. 1842, that clearly instructs that the administration may not use any taxpayer money whatsoever in any of their agency activities under the American Heritage Rivers Initiative.

It's also important for your readers to know that based upon the promise of Ms. McGinty (President Clinton's top environmental adviser, and chairman of the President's Council on Environmental Quality), we were able to pull our whole Idaho delegation together and exempt our state from the ramifications of that program. Your readers should encourage their Congressmen to do the same.

The River's program is an abuse of the trust given to this administration and on its face it is a misappropriation of federal funds.

LM: The Endangered Species Act is up for reauthorization. Do you think this Act has worked at saving species, and should we be trying to save the Act?

HC: I have more faith in the American people than I do in Acts like Endangered Species. When we look at the spotted owl and the method used to inventory the spotted owls (where they left out second growth forests) they only evaluated about 10% of what was actually there. This is one reason why I, and American citizens in general, don't trust the government. We have not seen, by the actions of government, a restoration of the spotted owl. What we have seen is a deterioration of habitat in the forest because we've been prevented from entering into the forest, and taking care of our federal lands as we would our own personal gardens.

In spite of everything that has happened with the salmon, and the wolves, we are seeing that, through government force and fiat, major programs have failed to take into consideration strong scientific data and good strong scientific protocol. Decisions have been made that are truly political and not scientific. These species have not gained and the American people have suffered greatly in trying to fund this program and in the massive takings of private property and jobs and the loss of American civil rights because of the Endangered Species Act.

The best way to preserve species is to preserve the human species and then encourage an engagement between management agencies and the American people to work together. We can't enhance a species by taking away peoples' ability to make a living and taking away their property. That only builds hostility.

When the public realizes the ramifications of the program, such as loss of land in the Northwest, the loss of economical electricity, the loss of water transportation and low cost shipping of agricultural goods on our working rivers, I think the American people will back away and say that's too high a cost. There must be a better way.

LM: Many property rights bills have been proposed to protect property owners, however, the bills have a percentage threshold of property the government can take before they owe compensation. Do you believe there should be a threshold?



Chenoweth leading the Congressional tour through Idaho's forests. Pictured left to right are Congressmen Newt Gingrich (R-GA), Billy Tauzin (R-LA), Sue Kelly (R-NY) and John Peterson (R-PA).

HC: No. I don't agree with the threshold. There was one bill, Mr. Pombo's bill, that I voted for in my Freshman term because I felt it was a step forward. But the Constitution is very clear, it does say that the federal government may take property, but it doesn't give a percentage of property government can take without due process and just compensation. I think that history bears out the fact that if you give the government an inch, it's going to take a mile. Those of us in a position of guiding future public policy have to maintain a healthy mistrust of the government and the nature of government to try to promulgate its own self interest, which is to grow bigger. To answer your question very directly, no, I don't believe in the threshold.

LM: What do you think have been your most important accomplishments in Congress?

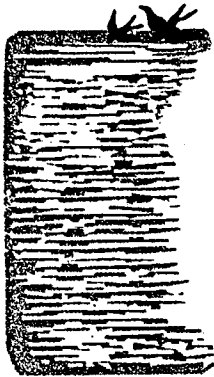
HC: I think that as we will look back on my term in Congress, it will be measured not by what I was able to get through the Congress — although in my first term alone, I wrote and passed 8 bills into law which is not too bad for a Freshmen from a small state — but my work will be better measured by what I've been able to stop by questioning if it's constitutional, and if it's the proper function of the federal government.

I realize that a Congressman not only has an obligation to their legislative duties, but an obligation to use the voice that the constituents have provided for them. I intend to use that voice to continue to alert the American people to become more involved in government and fight for their rights. Their rights to life, to make responsible decisions for themselves and their rights to private property and private ownership. Their rights to raise their children using their own best judgement to raise strong vigorous future citizens. That's what built this country and that's what will restore the American dream and renew the pillars of this great society.

LM: Which of all the founding fathers would be your favorite?

HC: Thomas Jefferson. He had such a deep understanding of the concept of the citizen's government and he knew that the citizens must be not only vigilant, but work with a passion to maintain their freedoms. He encouraged that. As a man who worked in government even against his will for most of his life, his heart was always with the people and with a free society. As I study his life, he was sometimes bogged down, but never gave up, never.

ETC



FRIENDS OF ROCK, BRONSON & WILLOW CREEKS

220 SW Salix Terrace

Beaverton, Oregon 97006

Protecting/restoring watersheds

Meets 4th Thursdays 7 P.M.

May 7, 1998 -

To: Metro Council
Mike Burton, Metro Executive

Friends of Rock, Bronson, and Willow Creeks (FRBWC) is an all volunteer citizen's group working to protect and restore a rapidly developing water basin that drains more than 35 square miles of residential, commercial, and agricultural land in northeast Washington and west Multnomah counties. We promote watershed stewardship through education, advocacy, and stream restoration. In fact, we will be demonstrating all of these things at our First Rock Creek Watershed Fair this Saturday, May 9 from 10 AM to 2 PM at Bethany Lake, 185th at West Union Road. Please join us there.

FRBWC strongly urges you to:

1. Reject the flexibility language that Washington County, Beaverton, Hillsboro, Tualatin and Lake Oswego are requesting. Reject Councilor Morissette's language too.
2. Adopt U. S. Fish and Wildlife Service's and Coalition For A Livable Future's recommendation that Title 3 require local jurisdictions use code language, not maps, to describe which streams, wetlands and water quality management areas are to be covered.
3. Reject Metro legal counsel's suggestion for "Regionally Significant Wetlands"

I will cover each request to reject more thoroughly below:

1. FLEXIBILITY:

First, we adamantly oppose any effort to inject additional "flexibility" into Title 3. There is already more than enough flexibility in Title 3 to allow for "creative", alternative means of implementing Title 3.

While we applaud the good work that USA has done over the past decade, we too find it ironic that the County which had to be sued by citizens to force the clean up of the Tualatin River is the same county that gave the impetus to this flexibility language.

A trip out Highway 26 West to 185th—say to our Watershed Fair on Saturday—might give you an example of what Washington County would do with this flexibility. You will see on this trip several brand new commercial developments going up that appear to be only 25 feet from a stream or wetland. While this is cur-

rently legal, it just shows the need to pass Title 3—without these amendments—with all due speed. Clearly, Washington County has not changed its attitudes toward the fact that their land use policies have had serious negative impacts on water quality and fish and wildlife habitat throughout the Tualatin River watershed. We urge Metro Council to reject this attempt to gut Title 3.

2. CODE VS. MAPS

Like the CLF, we have advocated from the initial Title 3 discussions that the code language, not the map, should prevail. There will be mapping errors. Washington County planning staff acknowledge that their wetland (Goal 5) inventory is deficient. We can assure you that their Title 3 map is too.

3. REGIONALLY SIGNIFICANT WETLANDS

Our watersheds have a number of perched wetlands. These are wetlands that are not near a stream, but perhaps occupy the top of a knoll or hill. It makes no sense, either from a policy perspective or water quality management perspective, to write off these wetlands as "insignificant" because they happen to be more than one-quarter mile from a 303 d listed stream.

If you do feel the need to adopt "significant" language, there should be an "or" after each of the three criteria that legal counsel has pulled from the DSL language, since that language also has an "or" after each criterion. We agree with CLF that if Metro Council adopts legal counsel's recommendation, you should adopt criteria which reads:

A wetland shall be determined to be of Metropolitan Concern if any one or a combination of the following criteria are met:

- a. intact water quality function
- b. intact hydrologic control function
- c. is within a 303 d listed watershed or sub-watershed with a perennial or intermittent stream (DLS's language reads: "The wetland or a portion of the wetland occurs within a horizontal distance of less than one-quarter mile from a water body listed by DEQ as a water quality limited water body (303 d list), and the wetland's water quality function is described as intact or impacted or degraded).

I am attaching below the bulk of FRBWC's testimony from the last hearing we attended. It was written by our chair, Laura Hill, who is also a USFWS biologist. We still stand by this testimony and our certainty that Title 3 needs to be strengthened, not weakened. In any case, it needs to be passed AND IMPLEMENTED with all due speed if it is to make any difference in the Washington County portion of our watersheds.

Mary Vogel
Advocacy Chair



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PRESTON GATES & ELLIS LLP
ATTORNEYS DANIEL H. KEARNS
DIRECT LINE
(503) 226-5707

May 6, 1998

Metro Council
600 NE Grand Avenue
Portland, OR 97232-1797.

**SENT VIA FAX
AND HAND DELIVERY**

**Re: May 7, 1998 Public Hearing on Title 3 Amendments
Comments on the Proposed Model Ordinance
Application Requirements vs. Approval Standards**

Dear Metro Council:

I provided testimony at the May 5, 1998 Growth Management Committee meeting on behalf of Douglas Bollam in support of the recommended Title 3 Amendments and one amendment to the proposed Model Ordinance sponsored by Councilor Nato. Following the hearing, I discovered a significant conceptual problem with the Model Ordinance, and I provide this letter as an explanation of the problem and a possible solution. These observations are based on approximately 8 years as a city attorney for several metro-area cities and a substantial amount of experience drafting similar zoning ordinance language.

Section 3(H), entitled "Application Requirements," lists the documents and information required to be submitted by anyone applying for a conditional use permit to develop within a Water Quality Resource Area, *e.g.*, anyone seeking to replace, expand or alter an existing home. The next section, Section 3(I), is entitled "Development Standards" and provides the approval standards applicable to any conditional use permit application submitted under Section 3(H). This dichotomy is a common one found in virtually every zoning ordinance, but the objective should be to keep the list of application requirements separate from the approval standards, *i.e.*, to make it clear what documents one must submit, and then what criteria those materials must address and comply with.

Section 3(H) contains an extremely problematic provision, however, listed as item 3(H)(7), which requires an applicant to submit an alternatives analysis. The subsection is problematic because it establishes a new approval standard and not just an application requirement. The subsection requires the applicant to submit an:

"7. Alternatives analysis demonstrating that:

- "a. No practicable alternatives to the requested development exist that will not disturb the area necessary to allow 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."

As you can see, Subsection 3(H)(7) establishes a new performance standard or approval criterion, even though Section 3(H) is supposed to contain only the list of application materials. Moreover, the approval standard established in Subsection 3(H)(7) presents an impossible obstacle because, under criterion (a), there will always be a "no-build" alternative that cannot be ignored and which will impose no disturbance on the resource area. Likewise, for any application to replace a structure, criterion (a) also would require consideration of reconstruction outside of the resource area, even conceivably another jurisdiction. Because these inadvertent approval standards are written in absolute terms, they must be complied with, yet their requirements can never be met.

To remedy this problem, I suggest rephrasing the opening sentence for Subsection 3(H)(7) to require only a submission that addresses the listed issues and does not require a demonstration of compliance. Along these lines, I recommend the following substitute language:

"7. An alternatives analysis addressing the following:

- "a. Practicable alternatives to the requested development that will not disturb the area necessary to allow the Water Quality Resource Area; and
- "b. Development in the Water Quality Resource Area that is limited to the area necessary to allow for the proposed use; and

- "c. Measures by which the Water Quality Resource Area can be restored to an equal or better condition in accordance with Table 2; and
- "d. Development location, design and construction methods that are 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."

The objective of the language I suggest still requires the applicant to provide information addressing each of the points in the original Model Ordinance, but does not establish a new set of approval criteria and avoids establishing an absolute standard that cannot be met. This language also keeps separate the list of application submission requirements and the approval standards that will then be applied to the application submittal. This separation and the clarity it brings to a zoning ordinance is an important component of good land use laws.

Thank you for your consideration.

Sincerely,



Daniel H. Kearns, Esq.

cc: Ken Helm, Esq.
Edward J. Sullivan, Esq.
Doug Bollam

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Michael J. Lilly
Attorney at Law
1 S.W. Columbia Street, Suite 680
Portland, OR 97258

Telephone: (503)294-0062
Facsimile: (503) 721-2300
Email: MikeLilly@imagina.com

May 4, 1998

Jon Kvistad
Patricia McCaig
Ruth McFarland
Susan McLain
Don Morrisette
Lisa Naito
Ed Washington
Metro
600 NE Grand
Portland, OR 97232

Re: Title 3

Dear Metro Councilors:

I am writing on behalf of the Housing and Land Use Committee of the Tualatin Valley Economic Development Corporation (TVEDC). TVEDC is a coalition of local governments and private businesses in the Southwest Metro area.

The Committee has several concerns about the March 25, 1998 draft of Title 3. Our concerns are set forth below.

1. The March 25 draft of Title 3 would require vegetated set backs and protection for all wetlands, regardless of whether or not those wetlands are significant. This will place a very serious restriction on development without producing corresponding gain in water quality, flood management, or fish and wildlife habitat. The Division of State Lands has established criteria and procedures for the identification of significant wetlands (OAR 141-086-0300 et. seq.) which are expressly designed to achieve your goal of wetland protection for water quality, flood management, and fish and wildlife habitat. Metro should not disregard DSL's technical expertise and decide to protect every wetland whether or not the wetland provides any environmental

significant benefit. We are not asking for you to accept wetland fills which will degrade the environment. Instead we are simply asking that you allow local governments to recognize and rely upon the technical expertise of the Division of State Lands in classifying which wetlands are significant for environmental protection and which are not.

If you retain the language of the present draft and impose restrictions on all wetlands, then you will be restricting development at isolated and artificially created wetlands used for such things as a) storm water retention ponds; b) log storage ponds; c) settling ponds for surface mining sediments; and d) industrial cooling ponds. Restrictions on development at these types of artificial wetlands would serve no ecological purpose, but would further restrict the supply of developable land within the Urban Growth Boundary. These and other non-environmentally significant wetlands could be excluded from restrictions if you allow local governments to use the DSL's criteria and procedures to determine which wetlands are significant, and if you allow local governments to exclude the non-significant wetlands from the restrictions of Title 3.

2. The March 25 draft of Title 3 gives local planners and the development community only one tool to protect water quality - - vegetated setbacks. Set backs are one method of achieving water quality, but they should not be the only method recognized by Metro. We believe that it is important for you to allow local governments to fashion alternative solutions to insure water quality, flood management, and fish and wildlife conservation. M-TAC recommended a paragraph for Section 4 that provided:

"Cities and Counties in the region may adopt alternative standards regulating development within the water quality resource areas, provided that such local jurisdictions demonstrate that the alternative regulations comply with purposes stated in Section 4.B.1. "

Though that paragraph was rejected by M-PAC, we believe that it is worthy of your consideration. Note that it does not authorize local governments to disregard environmental considerations, or to compromise them based upon economic considerations.

Again we wish to emphasize that we are not proposing that you allow local governments to adopt measures which would degrade the environment. We are proposing instead that you allow local governments to develop alternative (and perhaps better) methods, to protect the environment. The attached "Policy Analysis and Scientific Literature Review Comments" prepared by Laurence Magura, PE and Azad Mohammadi, Ph.D., PE, refers to some possible alternative methods of protecting water quality. Local governments may or may

not decide to accept those alternatives or others, but there is no reason for Metro to preclude their use, and halt all further possible innovation in techniques for the protection of water quality. Alternatives to vegetated setbacks should not be equated with degradation of the environment.

3. There are several provisions in the March 25, 1998 draft which use the phrase "practicable alternative" or the word "practicable". It is our understanding that the word "practicable" was used with the intent of providing some flexibility in the regulations. However, the word "practicable" is not a synonym for the word "practical". We believe that it would be appropriate to change the word "practicable" to "practical" to clarify the intent to provide some flexibility in the Title 3 regulations.

Thank you for your attention. We hope that you will consider our recommendations.

Very Truly Yours,



Michael J. Lilly
Chair -
TVEDC Housing and
Land Use Committee

Policy Analysis and Scientific Literature Review Comments

by Lawrence M. Magura, PE and Azad Mohammadi, PhD, PE

Introduction

At the request of Ms. Ann Nickel, Executive Director, Columbia Corridor Association, Otak, Inc. conducted a technical evaluation of the "Policy Analysis and Scientific Literature Review for Title 3 of Metro's Urban Growth Management Functional Plan: Water Quality and Floodplain Management Conservation." While Title 3 includes proposed performance standards for dealing with flood hazard reduction by recommending a region-wide policy of balancing cuts and fills in flood areas (already in force in Washington County), and application of flood standards to a more comprehensive area than just the FEMA 100-year floodplain, it is the proposed new riparian buffer requirements that have become controversial. At Ms. Nickel's request, we have focused our evaluation on the proposed new buffering requirements.

In the model Title 3 ordinance, vegetated riparian corridors (buffers) are referred to as "water quality resource areas" (WQRA's) and are defined as 50 feet from top of bank on both sides of streams with adjacent areas of less than 25% slope; and 200 feet from top of bank on *either side* (but not both sides) of the stream for areas greater than 25% slope for streams draining areas greater than 100 acres.

Analysis

While the literature review contains an extensive bibliography of references purporting to support the buffer width recommendations, we note that the referenced articles appear to be a mixed bag of reports on the results of vegetated buffer research studies, reflecting research into the subject matter from a wide array of locations. Most of the cited studies report results from rural areas, but a few are for urban areas. The references would have provided a stronger justification for Metro's proposed buffering requirements if most of the cited references have been for urban or suburban areas that were analogous to the hydrometeorologic and hydraulic regimes of the Portland Metropolitan area. Buffering requirements for agricultural or timber harvesting operations represent substantially different types of land use impacts that must be buffered against in order to prevent adverse impacts to riparian areas and stream channels. Inclusion of data from these other types of impact-producing land uses only serves to cloud the real issue, which is how to best protect the quality of water in the metro area's urban and urbanizing stream corridors.

It should also be noted that Metro's proposed buffers are, according to the report, primarily intended to serve as a natural buffer area to filter out and reduce the

Policy Analysis and Scientific Literature Review Comments

by Lawrence M. Magura, PE and Azad Mohammadi, Ph.D., PE

amount of sediment which reaches the stream channel, resulting in water quality degradation. The report cites creation and preservation of wildlife habitat and aesthetic concerns as other desirable aspects of vegetated buffers, but the primary justification for buffering riparian areas, according to the report, is for sediment and erosion control. While erosion and sediment transport can unquestionably impact stream water quality in urban areas, Metro's attempt to address this problem with a *buffers only* approach would seem to preclude the use of other sediment control strategies that have been proven to be highly effective in reducing the amount of sediment reaching urban stream channels. We can only conclude from the total absence of any discussion of recommendations for structural sediment control measures in the Title 3 report, that Metro has concluded that structural sediment control measures are not appropriate in the Portland metropolitan area. It is worth noting that both the City of Portland Bureau of Environmental Services (BES) and the Unified Sewerage Agency of Washington County (USA) have reached substantially different conclusions. These agencies require developers to incorporate both structural and non-structural water quality treatment measures into their site plans. The range of structural measures can include either vegetated swales or water quality ponds, or any of a growing list of mechanical sediment removal devices such as sand filters, Stormceptors®, or Downstream Defenders® to name but a few. Metro's Title 3 recommendations would be more viable if they recognized the validity of both types of water pollution control measures.

Other Comments

1. None of the references cited in the report offer any data or results from studies that measured sediment removal efficiencies as a function of vegetated buffer width. No information is included in the report to explain what level of long term sediment removal performance is achievable by vegetative buffers. The range of recommended vegetated buffer width cited in the report varies from 10 to 400 feet, depending on the function the buffer areas are intended to serve. It is not at all clear how the 50 and 200 foot buffer width recommendations were determined, or what sediment removal efficiencies are associated with them.
2. Is there a linear or non-linear function which expresses buffer width in terms of sediment trap and removal efficiency? If so, what is the slope and shape of the curve that expresses this relationship? What trap efficiency is associated with a 200 foot wide buffer on a greater than 25% slope? Can 80-90% of the 200-foot buffer removal efficiency be achieved in a 100-foot wide buffer? Without this sort of empirical information, the recommended buffer widths are completely

Policy Analysis and Scientific Literature Review Comments

by *Lawrence M. Magura, PE and Azad Mohammadi, PhD, PE*

arbitrary, and therefore, may be without any technical merit or justification. Wider buffers may not necessarily improve erosion/sediment control efficiency.

3. None of the references cited in the report present any technical data from urban areas in the Pacific Northwest. Buffer requirements that may be technically justifiable for sediment/erosion control in other parts of the country that have different rainfall patterns and intensities than the Portland area simply may not be applicable here. The report should have included, as a minimum, some discussion regarding the applicability and correlation of the results of buffer sediment management studies from other parts of the country to the Portland area.
4. If a vegetated buffer is intended to serve as a sort of natural sediment trap, as the report states, how will the buffer be maintained as sediment accumulates and what is its expected trap efficiency? Mechanical sediment traps such as Stormceptors®, Downstream Defenders® or water quality manholes are designed to be maintained. Accumulated sediment is removed periodically so that their trap efficiency is not lost when the units are full. Laboratory tests of units such as the Stormceptor® have demonstrated that properly maintained units have sediment removal efficiencies as high as 80%. As we have already commented, no verifiable trapping efficiencies for natural buffers are included in the report and we are not aware of any studies that rate natural vegetative buffers with anything approaching the efficiency of the latest generation of mechanical devices. If sediment control and removal is the primary water quality objective of Title 3 (as is stated in the report), then mechanical devices or structures such as constructed ponds and swales are clearly the way to best achieve it.
5. It can be argued that, like mechanical sediment removal devices, vegetated buffers will also require some sort of periodic maintenance, because if sediment accumulations are not removed, then they are really only being "stored" in the buffer and will be available for re-transport during future flood events when the buffers are inundated by streams flowing at flood stage. The absence of any discussion about maintenance recommendations for vegetated buffers implies that no maintenance in these areas is required, which does not seem logical.
6. The report does not address the consequences and impacts of sediment deposits that accumulate in the vegetated buffer area on the ecology and biodiversity of the buffer, or how stream channel morphology is effected by preventing sediment from reaching the stream. Most streams reach an equilibrium

Policy Analysis and Scientific Literature Review Comments

by *Lawrence M. Magura, PE and Azad Mohammadi, PhD; PE*

condition regarding sediment transport capacity, particularly during non-flood periods. If significant sediment control measures are implemented through widespread establishment of vegetated buffers, the natural consequence of this action may be to increase the rate and severity of channel bank erosion, as the sediment-starved stream seeks to re-establish the sediment transport regime that it formerly had.

Conclusion

It is not possible, based on the data presented in the Metro Title 3 report, to conclude that the proposed buffer recommendations represent the best way to address sediment management in an urban setting such as the Portland metropolitan area. By not addressing an evaluation of structural alternatives to vegetated buffers, the report seems to be one-sided and falls short of presenting a holistic examination of the urban storm water quality issue.



May 7, 1998

**Comment for Metro Council Hearing concerning Ordinance No. 98-730,
Title 3 Model Ordinance and Water Quality and Flood Management Maps**

I support and am in agreement with the intent of the Title 3 Model Ordinance amendment. I endorse the Metro efforts to minimize the effects of growth.

I have a concern about the apparent Metro-LCDC overlapping roles as they affect local government efficiency.

Some background is offered:

Following an LCDC periodic review of the Happy Valley Comprehensive Plan, the City of Happy Valley adopted the LCDC Model Ordinance. The City is now completely in compliance with Goal 5 policies by adoption of Ordinance 5.11 in July of 1997.

The Happy Valley ordinance essentially accomplishes the objectives of the Title 3 Model Ordinance, as I understand it. The Happy Valley ordinance has the 50 foot from each bank protection. It does not contain an excessive slope additional protection. The Metro ordinance provides 200 foot protection for slopes greater than 25%. As I read the Title 3 ordinance, Happy Valley streams are less than 25% slope as defined in the Title 3 Model Ordinance.

I speak for myself – not as a spokesman for the Council necessarily. Thank you.



James M. Olsen
Happy Valley City Councilor

Attachment

INTERSTATE CROSSROADS BUSINESS CENTER

METRO TITLE 3 CASE:

SAVE "INSIGIFICANT" WETLANDS	0.63
CREATE BUFFER AROUND "INSIGNIFICANT" WETLAND	-2.40
TOTAL "INSIGNIFICANT"	3.03

NET GAIN: @3.0 AC "INSIGNIFICANT WETLAND"

EXACTIONS:

REGIONAL POLLUTION REDUCTION RACILITY
100' SLOUGH BUFFER (50'/50') → SIGNIFICANT LOSS
OF TREES ON SOUTH SIDE OF SLOUGH

DEVELOPABLE PROPERTY

100 AC GROSS
74.5 AC NET

COST:

LOSS OF 7.5 AC DEVELOPABLE
LAND @\$190,000/AC \$1,425,000

INTERSTATE CROSSROADS BUSINESS CENTER

ACTUAL CASE (FLEXIBLE ALTERNATIVE)

METRO TITLE 3 CASE

WETLAND

+2.5 AC "SIGNIFICANT"
CONSERVE WOODLAND
BUFFER ON SOUTH SIDE

+3.0 AC "INSIGNIFICANT"
LOSE PORTION OF WOODLAND
BUFFER ON SOUTH SIDE

DEVELOPABLE
INDUSTRIAL LAND

82 AC (OF 100 AC)
82%

74.5 AC (OF 100 AC)
74.5%

DEVELOPER'S
COST FOR
WETLAND
ENHANCEMENT

\$119,000

\$1,425,000

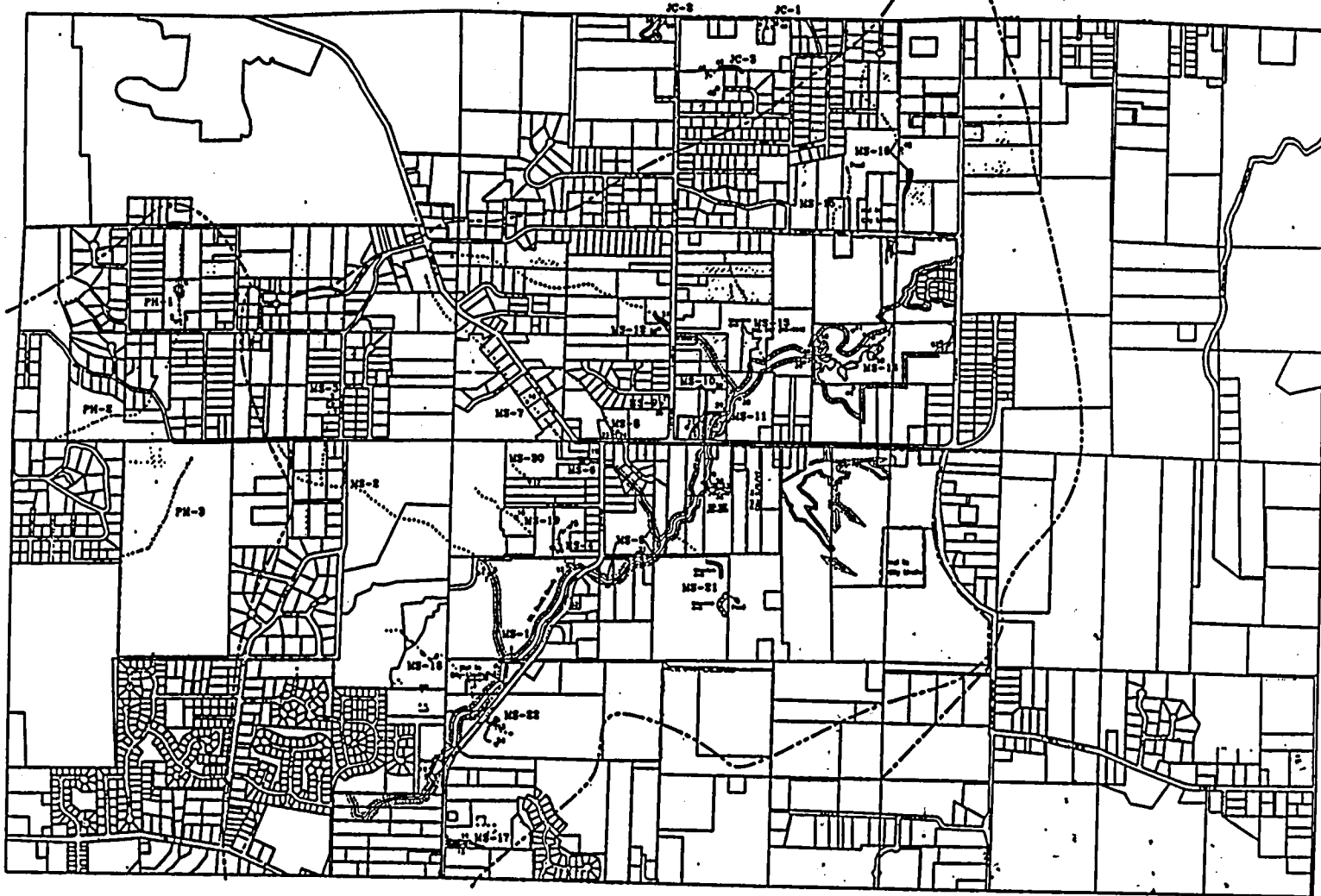


EXHIBIT 22

DATE: May 1997
 BASE MAP INFO: Provided by GIS/INFORMATION INC
 and City of Happy Valley
 (Happy Valley Land Use/Planning Department)
 4-1179

OTHER AGENCIES TO CONTACT:
 THE STATE OF CALIFORNIA, DEPARTMENT OF FISH AND GAME
 THE STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES
 THE STATE OF CALIFORNIA, DEPARTMENT OF PESTICIDE CONTROL
 THE STATE OF CALIFORNIA, DEPARTMENT OF INDUSTRIAL RELATIONS
 THE STATE OF CALIFORNIA, DEPARTMENT OF INDUSTRIAL TRAINING AND EMPLOYMENT
 THE STATE OF CALIFORNIA, DEPARTMENT OF REVENUE AND TAX SERVICES
 THE STATE OF CALIFORNIA, DEPARTMENT OF SOCIAL SERVICES
 THE STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION
 THE STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS AND REHABILITATION
 THE STATE OF CALIFORNIA, DEPARTMENT OF EDUCATION
 THE STATE OF CALIFORNIA, DEPARTMENT OF HEALTH SERVICES
 THE STATE OF CALIFORNIA, DEPARTMENT OF INDUSTRIAL RELATIONS
 THE STATE OF CALIFORNIA, DEPARTMENT OF INDUSTRIAL TRAINING AND EMPLOYMENT
 THE STATE OF CALIFORNIA, DEPARTMENT OF REVENUE AND TAX SERVICES
 THE STATE OF CALIFORNIA, DEPARTMENT OF SOCIAL SERVICES
 THE STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION
 THE STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS AND REHABILITATION
 THE STATE OF CALIFORNIA, DEPARTMENT OF EDUCATION
 THE STATE OF CALIFORNIA, DEPARTMENT OF HEALTH SERVICES

City of Happy Valley

Significant Wetlands and Riparian Corridors

- Shaded area: Wetland
- Dotted line: Wetland boundary
- Shaded area: Riparian Corridor
- Dotted line: Riparian Corridor boundary
- Shaded area: Wetland/Riparian Corridor
- Dotted line: Wetland/Riparian Corridor boundary
- Shaded area: Wetland/Riparian Corridor
- Dotted line: Wetland/Riparian Corridor boundary



INTERSTATE CROSSROADS BUSINESS CENTER

ACTUAL CASE: (FLEXIBLE ALTERNATIVE)

LOST WETLAND

"INSIGNIFICANT"	0.63 AC
"SIGNIFICANT"	<u>0.07 AC</u>
TOTAL	0.70 AC

NEW ENHANCED WETLAND

"SIGNIFICANT"	1.09 AC
ENHANCED EXIST. WETLAND	1.31 AC
NET CONSERVATION EASEMENT	<u>0.10 AC</u>
	2.50 AC

NET GAIN: 1.8 AC "SIGNIFICANT" WETLAND

EXACTIONS

REGIONAL POLLUTION REDUCTION FACILITY
100' SLOUGH BUFFER (25'/75')

DEVELOPABLE PROPERTY

100 AC GROSS
82 AC NET

COST:

WETLAND CREATION/ENHANCEMENT	\$100,000
0.10 AC CONSERVATION EASEMENT (@\$190,000/AC)	<u>\$ 19,000</u>
TOTAL	\$119,000

INTERSTATE CROSSROADS BUSINESS CENTER

	ACTUAL CASE (FLEXIBLE ALTERNATIVE)	METRO TITLE 3 CASE
WETLAND	+2.5 AC "SIGNIFICANT" CONSERVE WOODLAND BUFFER ON SOUTH SIDE	+3.0 AC "INSIGNIFICANT" LOSE PORTION OF WOODLAND BUFFER ON SOUTH SIDE
DEVELOPABLE INDUSTRIAL LAND	82 AC (OF 100 AC) 82%	74.5 AC (OF 100 AC) 74.5%
DEVELOPER'S COST FOR WETLAND ENHANCEMENT	\$119,000	\$1,425,000

Happy Valley Ordinance

5.11 Significant Natural Resource Lands

5.111 Purpose

The Significant Natural Resources Ordinance is intended to provide protection for identified Significant Natural Resources under Statewide Planning Goal 5. It is intended to prohibit development in Significant Natural Resources and surrounding buffer areas or to allow development to occur where adverse impacts to the resources can be suitably mitigated.

For the purpose of this ordinance, Significant Natural Resources are designated as Significant Wetlands and Riparian Corridors. These resources have been inventoried within the City of Happy Valley according to procedures, standards and definitions established under Goal 5 and are identified on the Significant Wetlands and Riparian Corridors Map (Official Map # 22) in the Comprehensive Plan.

The regulations of this Section are an important factor in the City's compliance with Statewide Planning Goal 5 and also serve to encourage coordination between the City, State, and Federal agencies concerned with natural resource regulatory programs.

5.112 Definitions

Bankfull Stage:

The elevation at which water overflows the natural banks of the stream.

Buffer:

An area established adjacent to a Significant Wetland which protects the resource from impacts. The buffer is measured 30-feet horizontally from the outer boundary of the Significant Wetland.

Delineation:

An analysis of a resource by a qualified professional that determines its boundary according to an approved methodology.

Excavation:

Removal of organic or inorganic material by human action.

Fill:

Deposition of organic or inorganic material by human action.

Mitigation:

A means of compensating for impacts to a Significant Natural Resource or its buffer including: restoration, creation, or enhancement. Some examples of mitigation actions are construction of new wetlands to replace an existing wetland that has been filled, replanting trees, removal of nuisance plants, and restoring streamside vegetation where it is disturbed.

Native Vegetation:	Plants identified as naturally occurring and historically found within the City of Happy Valley, as listed on the Native Plant List Section 5.126).
Natural Resource Enhancement:	A modification of a natural resource to improve its quality.
Natural Resource Overlay: (NR Overlay)	Designation given to all Significant Wetlands and Riparian Corridors delineated on the Significant Wetlands and Riparian Corridors Map (Official Map # 22).
Nuisance Plants:	Invasive non-native plants listed on the Nuisance Plant List (Section 5.126).
Qualified professional:	An individual who has proven expertise and vocational experience in a given natural resource field.
Riparian Corridor:	An area including the main stem of Mount Scott Creek, any adjacent wetlands, and a riparian area measured 50-foot horizontally from the top of both banks. As defined by Goal 5, this area, including the 50 feet measured from top of bank constitutes the resource. No buffer is associated with the Riparian Corridor. The Riparian Corridor is mapped on the Significant Wetlands and Riparian Corridors Map (Official Map # 22).
Significant Natural Resources:	Significant Wetlands and Riparian Corridors within the City of Happy Valley city limits and designated on the Significant Wetlands and Riparian Corridors Map (Official Map #22).
Significant Wetland:	A wetland mapped on the City of Happy Valley <i>Local Wetlands Inventory</i> which meets the primary criteria of the Oregon Division of State Lands Administrative Rules for Identifying Significant Wetlands (July, 1996).
Top of Bank:	A distinct break in slope between the stream bottom and the surrounding terrain which corresponds with the bankfull stage of the stream.
Wetland:	Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

5.113 Applicability

A. Affected Property

The ordinance procedures as outlined within 5.11 Significant Natural Resource Lands shall apply to parcels with the following characteristics:

1. Parcels designated on the Comprehensive Plan with the Significant Natural Resource overlay (NR) on any portion of the tax lot.
2. Properties delineated as "On-Site Access Denied" on the Significant Riparian Areas and Wetlands Map (Official Map # 22).
3. Properties annexed to the City after the effective date of this ordinance, and not yet reviewed for Significant Natural Resources. Those properties annexed into the City that have already been reviewed for Significant Natural Resources as a part of a Local Wetland Inventory (LWI) process shall be treated in the same manner as if they were reviewed as a part of the city's Local Wetlands Inventory (LWI). For example, all resource areas deemed significant on the Clackamas County LWI shall be designated on the Comprehensive Plan with the Significant Natural Resource overlay (NR) upon annexation.

B. Activities Subject to Review

Activities subject to the review process shall include all development on properties outlined in 5.113.A. and not specifically exempted from review as outlined in Section 5.113.C., including:

1. Partitioning and subdividing of land.
2. New structural development.
3. Fills, excavations and modifications of drainage patterns.
4. Exterior expansion of any building or structure, or increases in impervious surfaces or storage areas.
5. Site modifications including excavation or fill, installation of new above or below ground utilities.
6. Removal of trees or the cutting or clearing of any native vegetation.
7. Resource enhancement activities.

C. Exemptions

Activities exempt from this ordinance include:

1. The sale of property.
2. Temporary emergency procedures necessary for the safety or protection of property.

3. Activities in compliance with an approved natural resource mitigation plan (refer to Section 5.119).

5.114 Maintenance and Management Procedures

A. The following activities are prohibited in the regular maintenance of significant natural resource areas and their buffers:

1. The removal of native vegetation shall not be permitted from a Significant Natural Resource or its buffer unless:
 - a. A permit has been issued by the City in accordance with the Land Development Ordinance or;
 - b. Species to be removed are on the City's Nuisance Plant List (refer to Section 5.126).
2. No herbicides or pesticides shall be used in a Significant Natural Resource or its buffer except for control of nuisance plants as identified in the Nuisance Plant List (Section 5.126). Glyphosate-based herbicides are the only type of herbicide that can be used in a significant natural resource area or its buffer. No pre-emergent herbicides or auxin herbicides that pose a risk of contaminating water should be used.
3. No stockpiling of fill materials, parking, or storage of equipment shall be allowed within a Significant Natural Resource or its buffer.
4. The types, sizes, and intensities of lights must be placed so that they do not shine directly into the Significant Natural Resource or its buffer.

B. To aid in the protection and preservation of significant natural resource areas, the following standards are suggested to property owners:

1. Only plants listed in the Nuisance Plants List (Section 5.126) shall be controlled or removed from significant natural resource areas or their buffers.
2. The control or removal of nuisance plants should primarily be by mechanical means (e.g. hand-pulling).
3. If mechanical means fail to adequately control nuisance plant populations, a glyphosate-based herbicide is the only herbicide that can be used in a significant natural resource area or its buffer.
4. Herbicide applications should be made early in the morning or during windless periods at least 4 hours before probable rainfall.

5.115 Development Procedures

The following procedures shall be followed in the consideration and decision of a proposed development on properties meeting the criteria outlined in Section 5.113 Applicability. These requirements shall be in addition to any other development review procedures required through this ordinance.

A. Process Determination

Two processes shall be utilized for the review of development proposals affected by the Significant Natural Resources Standards. Type I review shall involve staff analysis with final approval by the Community Development Director or his designee. Type II approval requires review by the Planning Commission and a public hearing process. Determination of the process required will be based on the type of development application requested. If Planning Commission review is required for the development application, (for example, variances, partitions, subdivisions and planned unit developments) it shall also be required for the Significant Natural Resources criteria. If Planning Commission review is not required for the development action requested (for example, building and grading permits) then it shall not be required for Significant Natural Resources Review.

B. Review Process

Type I Applications

The following process shall be followed for a Type I Significant Natural Resources application:

- a. **Pre-Application Conference and Review:**
When a review of development affected by the Significant Natural Resource overlay is required, a Pre-Application review shall be held before submittal of the application.
- b. **Completeness Check**
Staff will review the application to verify that all necessary materials have been submitted.
- c. **Agency Notice**
Staff must send a *Wetland Land Use Notification Form* to the Division of State Lands declaring acceptance of a complete application for activities that are wholly or partially within area identified as wetlands on the State-wide Wetlands Inventory as required by ORS 227.350.
- d. **Applicant Notification**
City Staff will notify the applicant that the site may have jurisdictional wetlands and that a permit may be required by state and/or federal agencies.
- e. **Application Review**
The appropriate or designated body shall review the Significant Natural Resources Review application materials as submitted for compliance with the criteria listed in Section 5.117 of this ordinance.

- f. **Decision**
A written decision shall be rendered after completion of the public hearing process. The decision shall become final fifteen (15) days after the filing of a written decision with the City Recorder unless an appeal from the decision is taken.
- g. **Appeal**
Appeals shall be subject to the provisions set forth in Section 13.04 of the Land Development Ordinance.

2. Type II Applications

Type II Significant Natural Resources applications shall meet the following requirements in addition to those listed for Type I applications, above:

- a. **Public Notice**
Prior to the public hearing, notice shall be provided as required by State Law.
- b. **Public Hearing**
A public hearing shall be held by the Planning Commission or appropriate and designated body or agent for the purpose of considering the development proposal.

5.116 Application

The following materials shall be required for the consideration of a proposed development on any properties meetings the applicability standards as outlined in Section 5.113. These requirements shall be in addition to any other development review criteria required through this ordinance.

- A. The applicant shall submit a completed application on a form prescribed by the City, with the appropriate fee;
- B. A scaled drawing showing all existing and proposed locations of all property lines, structures, streets, driveways, pedestrian walkways, off-street parking and loading facilities, landscaped areas, utilities and easements shall be required. The location of the significant wetland, top of bank (if applicable) and boundaries of the Significant Natural Resources Overlay designation shall also be required. A cross-sectional view of the proposed use may be required to show slopes and other pertinent information.
- C. Other information found necessary by the applicant to show that the criteria as listed in 5.117 will be met.
- D. A detailed Environmental Report shall be prepared and submitted by the applicant when it appears that any portion of a proposed development activity will occur within or immediately adjacent to property designated NR in the Significant Wetlands and Riparian Corridors Map (Official Map # 22). The Environmental Report shall be prepared by one or more qualified professionals. All properties with an "On-Site Access Denied" designation on the Significant Natural Resources and Riparian Corridors Map (Official Map # 22) shall require the submittal of an Environmental Report for any development activity list in Section

5.113.B.

1. All development proposals that include any type of development other than buffer or open space within 100 feet of a Significant Natural Resource shall require the preparation of a full environmental report. If the Community Development Director or his/her designee finds, based on the location of the boundary of the NR site, that none of the proposed development activity will take place within 100 feet of the NR site or its buffer area, as required in Section 5.117.A.2., the remainder of the Environmental Report need not be prepared and these provisions shall not apply to the proposal.
2. If required, the environmental report shall:
 - a. Include the results of a delineation of the resource and the specific location of the Significant Natural Resource and its buffer, and conditions of topography, soils and vegetation found on the site.
 - b. Address the impacts of the proposed development on the NR site and its transition area. This assessment shall take into account features and characteristics of the site as identified in the LWI and delineation.
 - c. Make recommendations concerning the nature and extent of site alterations and improvements to take place on the site in connection with the proposed development in order to reduce negative impacts to the maximum feasible extent.
 - d. Demonstrate how the proposed development can be carried out on the site in conformance with applicable standards for development in NR sites and transition areas as specified in Section 5.117.
 - e. Be reviewed and approved by all applicable State and Federal agencies.
3. The Community Development Director shall determine the adequacy of the Environmental Report and may reject such reports as found to be deficient in addressing the requirements as stated above. Such rejection shall be grounds for denial of a development permit application for development involving an NR site or its buffer area.

5.117 Criteria

A. General Development Standards

The review body may grant approval of any of the development actions listed in Section 5.113 B., only if it makes findings that all of the following requirements have been satisfied:

1. The development will be designed to avoid impact to the Significant Natural Resource and its buffer. This shall include the resource and a 30 foot buffer for Significant Wetlands. For Riparian Corridors, this shall include the main stem of Mount Scott Creek, any adjacent wetlands, and a riparian area measured 50-feet

horizontally from the top of both banks. No buffer area is associated with Riparian Corridors.

2. Significant Natural Resource boundaries and buffer boundaries shall be located and staked by a qualified professional prior to any construction, demolition, grading, or site clearing. The buffer should be fenced prior to construction.
3. Protective measures and erosion control measures shall comply with the City's Erosion Control Ordinance Number 141. These measures shall remain in place throughout the development of the site.
4. No stockpiling of fill materials, parking, or storage of construction equipment shall be allowed within a Significant Natural Resources or its buffer.
5. The types, sizes, and intensities of lights must be placed so that they do not shine directly into the Significant Natural Resource or its buffer.
6. The removal of native vegetation shall not be permitted from a Significant Natural Resource or its buffer unless:
 - a. A permit has been issued by the City in accordance with the Land Development Ordinance or;
 - b. Species to be removed are on the City's Nuisance Plant List (Section 5.126).
7. Plantings within the Significant Natural Resources or its buffer shall only be with species on the City's Native Plant List (Section 5.126).
8. No herbicides or pesticides shall be used in a Significant Natural Resource or its buffer except for control of nuisance plants as identified in the Nuisance Plant List (Section 5.126) and as described in Section 5.114.
9. The standards above are in addition to all construction requirements imposed as conditions of approval by the City of Happy Valley.

B. Development within Buffer Areas

If it is determined that a proposed development action would encroach into the buffer area of a Significant Wetland as required through Section 5.117.A.2., the review authority shall permit a buffer width reduction or modification if the following circumstances are shown to apply. An average minimum buffer width of 30-feet shall be maintained on the subject parcel, however, in no case shall the buffer width be less than 15 feet. No buffer areas are associated with Riparian Corridors, and therefore these standards do not apply to those resources.

1. The size or configuration of the subject parcel is insufficient to provide the minimum buffer width required.

2. The buffer would preclude any economically viable use of the subject property.
3. A qualified professional demonstrates that a modification to the minimum buffer width required will not significantly alter or affect the resource.
4. A qualified professional demonstrates to the satisfaction of the review authority that the Significant Natural Resource boundary has been mapped incorrectly on the Significant Wetlands and Riparian Corridors Map.
5. The review authority shall not permit a reduction in buffer width solely for the purpose of maximizing development of the site.

C. Development within Natural Resource Sites

1. Individual Parcels

When a delineated Significant Natural Resource or its required buffer, as specified in Section 5.117.A.2., occupies most or all of an individual property and thereby prevents reasonable development opportunity on such a parcel, the property owner shall be permitted development of a single family home. All other applicable City codes and standards shall be complied with, and the mitigation criteria of Section 5.119 shall also be applicable.

2. Utilities, Streets and Stormwater Management

a. When it is shown to the satisfaction of the review body that there is no other practicable alternative location, public and private utilities may be placed within a Significant Natural Resource or its buffer. If a utility is allowed within the Significant Natural Resource or its buffer, mitigation shall be required pursuant to Section 5.119.

b. Public or private streets or driveways may be placed through a Significant Natural Resource or its buffer to access buildable areas of the property if it is shown to the satisfaction of the review authority that there is no other practicable method of access. If allowed, the applicant shall comply with the following requirements:

i. Demonstrate to the reviewing authority that there is no other practicable location within the project boundaries or off-site through the use of easements:

ii. Design rights of way, roadways, driveways, and pathways to be the minimum width necessary within the Significant Natural Resource and its buffer while also allowing for safe passage of vehicles and/or pedestrians.

iii. Use bridges, arched culverts, or box culverts with a natural bottom for crossing of a Significant Natural Resource if the crossing is found unavoidable. The number of crossings shall be minimized through use of shared access for abutting lots and access through

easements for adjacent lots.

- iv. Plan for future extensions of shared access, access easements, or private streets to access potential new building sites in order to avoid subsequent encroachments into the Significant Natural Resource or its buffer.
- v. Mitigate for loss of any portion of the Significant Natural Resource or its buffer pursuant to Section 5.119.

3. Development other than the methods specified above within a NR Resource Area may only be allowed when the applicant can demonstrate that:

- a. There is a public need for the proposed development and the public benefit to be derived from the development outweighs adverse impacts on the NR site resulting from the proposal.
- b. There are no alternative sites or methods of development available within the city which would have fewer and less severe impacts on natural resources.

5.118 Density Bonuses

In order to provide incentive for re-siting units to avoid the Significant Natural Resource Areas, a bonus of .5 units per acre shall be permitted on the portion of the parcels covered by the Significant Natural Resource overlay. Application for this bonus shall be subject to the provisions set out in Section 5.084 of *the Land Development Ordinance*.

5.119 Mitigation Standards

When impacts to any identified Significant Natural Resource or its buffer area occurs, mitigation will be required. For impacts to Significant Wetlands, the standards and criteria of Section 5.119.A. shall apply. For impacts to the upland portion of the Riparian Corridor or to the buffer area of a Significant Wetland, the standards and criteria of Section 5.119.B. shall apply.

- A. When mitigation for impacts to a Significant Wetland is proposed, the mitigation plan shall comply with all Oregon Division of State Lands and U.S. Army Corps of Engineers wetland regulations. The City may approve a development but shall not issue a building permit until all applicable State and Federal wetland permit approvals have been granted, and copies of those approvals have been submitted to the City.
- B. When mitigation for impacts to a non-wetland portion of the Riparian Corridor or to the buffer area of a Significant Wetland is proposed, a mitigation plan prepared by a qualified professional shall be submitted to the review authority.

The mitigation plan shall document the location of the impact to the resource or buffer, the existing conditions of the resource or buffer prior to impact, the location of the proposed mitigation area, a detailed planting plan of the proposed mitigation area with species and density, and a narrative describing how the resource will be replaced.

1. Mitigation for impacts to a non-wetland portion of the Riparian Corridor, or to the buffer area of a Significant Wetland shall require a minimum mitigation ratio of 1:1 and meet the following criteria.
 - a. Mitigation shall occur on-site and as close to the impact area as possible. If this is not feasible, mitigation shall occur within the Urban Growth Boundary of Happy Valley.
 - b. All vegetation planted within the mitigation area shall be from the City of Happy Valley Native Plant List (Section 5.126). Species to be planted in the mitigation area shall replace those impacted by the development activity.
 - c. No plants on the Nuisance Plant list (Section 5.126) are to be planted within the mitigation area.
 - d. Trees shall be planted at a density of not less than 5 per 1000 square feet. Shrubs shall be planted at a density of not less than 10 per 1000 square feet.

5.120 Natural Resource Enhancement

Resource enhancement projects such as bank stabilization, riparian enhancement, in-channel habitat improvements, and similar projects which propose to improve or maintain the quality of a Significant Natural Resource or its buffer shall be approved if the applicant demonstrates that all of the following are met:

- A. There will be improvement in the quality of at least one function or value of the resource; and
- B. Only species listed in the Native Plants List (Section 5.126) shall be planted.

For the purpose of this section, "resource enhancement project" does not include required mitigation pursuant to Section 5.119.

5.121 Modification of Significant Natural Resources boundaries

The boundaries of any identified Significant Natural Resource may be modified as part of the development review process identified in Section 5.116 to reflect new boundary information obtained as part of the site studies. The burden of providing any new boundary information, and

proving its validity, shall rest with the applicant. The new boundary must be reviewed and approved by all applicable State and Federal agencies before adoption by the City can occur.

5.122 Modification of "On-site Access Denied" Designation

The "On-Site Access Denied" designation may be removed from a property with the submittal of an Environmental Report as outlined in Section 5.116.D.2.a. or in the course of a development proposal, through the process outlined in Section 5.116. A fee, as adopted by resolution by the City of Happy Valley City Council, will be associated with the removal of the designation with no related development proposal. The Community Development Director shall determine the adequacy of the Environmental Report and may reject such reports as found to be deficient in addressing the requirements as stated Section 5.116.D.2.a. Upon acceptance of the report and its findings, the "On-Site Access Denied" designation shall be removed from the Significant Wetlands and Riparian Corridors Map (Official Map # 22), and a written decision rendered. Map updates will be made at the next regularly scheduled Comprehensive Plan Map review.

5.123 Coordination among regulatory agencies

The regulation of other agencies may apply to development proposals for natural resource areas. These agencies include the U.S. Army Corps of Engineers, the Oregon Division of State Lands, the U.S. Fish and Wildlife Service, the Environmental Protection Agency, the Department of Environmental Quality, and the Oregon Department of Fish and Wildlife.

The City will notify applicable agencies for referral responses to specific development proposals prior to the issuance of City permits. The City shall also encourage the applicant to contact applicable agencies before development plans are completed so as to consider the requirements and restrictions that may be imposed by the agencies.

5.124 Enforcement

All enforcement procedures related to Significant Natural Resources shall be in accordance with Article XIII of the Land Development Ordinance.

5.125 Native Plant List

<i>TREES</i>	
<i>Abies grandis</i>	Grand fir
<i>Acer macrophyllum</i>	Bigleaf maple
<i>Alnus rubra</i>	Red Alder
<i>Arbutus menziesii</i>	Madrone
<i>Cornus nuttallii</i>	Pacific dogwood
<i>Corylus cornuta</i>	Hazelnut
<i>Crataegus douglasii</i>	Douglas Hawthorn
<i>Fraxinus latifolia</i>	Oregon ash
<i>Pinus ponderosa</i>	Ponderosa pine
<i>Populus trichocarpa</i>	Black cottonwood
<i>Pseudotsuga menziesii</i>	Douglas fir
<i>Pyrus fusca</i>	Western crabapple
<i>Quercus garryana</i>	Oregon white oak
<i>Rhamnus purshiana</i>	Cascara
<i>Salix lasiandra</i>	Pacific willow
<i>Salix scouleriana</i>	Scouler's willow
<i>Salix sitchensis</i>	Sitka willow
<i>Taxus brevifolius</i>	Western yew
<i>Thuja plicata</i>	Western red cedar
<i>Tsuga heterophylla</i>	Western hemlock
<i>SHRUBS</i>	
<i>Acer circinatum</i>	Vine maple
<i>Amelanchier alnifolia</i>	Western serviceberry
<i>Berberis (Mahonia) aquifolium</i>	Tall Oregon grape
<i>Berberis (Mahonia) nervosa</i>	Low Oregon grape
<i>Cornus stolonifera</i>	Redosier dogwood
<i>Euonymus occidentalis</i>	Western wahoo
<i>Gaultheria shallon</i>	Salal
<i>Holodiscus discolor</i>	Oceanspray
<i>Lonicera involucrata</i>	Twinberry
<i>Oemleria cerasiformis</i>	Indian plum
<i>Philadelphus lewisii</i>	Mockorange
<i>Physocarpus capitatus</i>	Pacific ninebark
<i>Prunus virginiana</i>	Common chokecherry
<i>Rhamnus purshiana</i>	Cascara
<i>Ribes sanguineum</i>	Red-flowering currant
<i>Rosa gymnocarpa</i>	Wood rose
<i>Rosa nutkana</i>	Nootka rose
<i>Rosa pisocarpa</i>	Clustered wild rose

<i>Rubus parviflorus</i>	Thimbleberry
<i>Rubus spectabilis</i>	Salmonberry
<i>Sambucus cerulea</i>	Blue elderberry
<i>Sambucus racemosa</i>	Red elderberry
<i>Spiraea douglasii</i>	Douglas spiraea
<i>Symphoricarpos albus</i>	Snowberry
<i>Vaccinium ovatum</i>	Evergreen huckleberry
<i>Vaccinium parvifolium</i>	Red Huckleberry
HERBACEOUS	
<i>Achillea millefolium</i>	Western yarrow
<i>Achlys triphylla</i>	Vanillaleaf
<i>Alisma plantago-aquatica</i>	American water plantain
<i>Anemone deltoidea</i>	Western white anemone
<i>Anemone oregana</i>	Oregon anemone
<i>Aquilegia formosa</i>	Red columbine
<i>Arctostaphylos uva-ursi</i>	kinnikinnik
<i>Asarum caudatum</i>	Wild ginger
<i>Aster chilensis</i>	Hall's aster
<i>Athyrium filix-femina</i>	Lady fern
<i>Brodiaea congesta</i>	Northern Saitas
<i>Brodiaea coronaria</i>	Harvest brodiaea
<i>Brodiaea howellii</i>	Howell's brodiaea
<i>Brodiaea hyacintha</i>	Hyacinth brodiaea
<i>Camassia leichtlinii</i>	Leichtlin's camas
<i>Camassia quamash</i>	Common camas
<i>Carex deweyana</i>	Short scale sedge
<i>Carex hendersonii</i>	Henderson's sedge
<i>Carex obnupta</i>	Slough sedge
<i>Cornus canadensis</i>	Bunchberry
<i>Disporum hookeri</i>	Hooker's fairy bells
<i>Disporum smithii</i>	Fairy lantern
<i>Dryopteris sp.</i>	Woodfern
<i>Erythronium oregonum</i>	Giant fawn lily
<i>Fragaria vesca</i>	Wild strawberry
<i>Fragaria virginiana</i>	Virginia strawberry
<i>Geum macrophyllum</i>	Oregon avens
<i>Heracleum lanatum</i>	Cow-parsnip
<i>Hydrophyllum tenuipes</i>	Pacific water-leaf
<i>Iris tenax</i>	Oregon iris
<i>Lilium columbianum</i>	Tiger lily
<i>Lonicera ciliosa</i>	Trumpet vine

<i>Lupinus bicolor</i>	Two color lupine
<i>Lupinus polyphyllus</i>	Bigleaf lupine
<i>Luzula parviflora</i>	Small-flowered woodrush
<i>Lysichitum americanum</i>	Skunk cabbage
<i>Mimulus guttatus</i>	Yellow monkeyflower
<i>Montia parvifolia</i>	Little-leaf montia
<i>Montia perfoliata</i>	Miner's lettuce
<i>Montia sibirica</i>	Western Springbeauty
<i>Oenanthe sarmentosa</i>	Water parsley
<i>Oxalis oregana</i>	Oregon oxalis, Wood sorrel
<i>Ozmorhiza chilensis</i>	Mountain sweet-cicely
<i>Polypodium glycyrrhiza</i>	Licorice fern
<i>Polystichum munitum</i>	Sword-fern
<i>Ranunculus occidentalis</i>	Western buttercup
<i>Sagittaria latifolia</i>	Wapato
<i>Sidalcea campestris</i>	Meadow sidalcea
<i>Smilacina racemosa</i>	False Solomon's seal
<i>Smilacina stellata</i>	Star-flowered false Solomon's seal
<i>Sparganium emersum</i>	Simplestem bur-reed
<i>Streptopus amplexifolius</i>	Clasping-leaved twisted stalk
<i>Tellima grandiflora</i>	Fringecup
<i>Tolmiea menziesii</i>	Piggyback plant
<i>Trientalis latifolia</i>	Western starflower
<i>Trillium chloropetalum</i>	Giant trillium
<i>Trillium ovatum</i>	Western trillium
<i>Vancouveria hexandra</i>	Inside-out flower
<i>Veratrum californicum</i>	California false hellebore
<i>Viola adunca</i>	Early blue violet
<i>Viola glabella</i>	Stream violet
<i>Viola sempervirens</i>	Evergreen violet

5.126 Nuisance Plant List

Scientific Name	Common Name
<i>Chelidonium majus</i> <i>Cirsium arvense</i>	Lesser celandine Canada thistle
<i>Cirsium vulgare</i>	Common thistle
<i>Clematis ligusticifolia</i>	Western clematis
<i>Clematis vitalba</i>	Traveler's joy
<i>Conium maculatum</i>	Poison-hemlock
<i>Convolvulus arvensis</i>	Field Morning-glory
<i>Convolvulus nyctagineus</i>	Night-blooming morning-glory
<i>Convolvulus sepium</i>	Lady's-nightcap
<i>Cortaderia selloana</i>	Pampas grass
<i>Crataegus sp. Except C. douglasii</i>	Hawthorn, except native species
<i>Cytisus scoparius</i>	Scotch broom
<i>Daucus carota</i>	Queen Anne's lace
<i>Elodea densa</i>	South American waterweed
<i>Erodium cicutarium</i>	Crane's bill
<i>Geranium robertianum</i>	Robert geranium
<i>Hedera helix</i>	English ivy
<i>Hypericum perforatum</i>	St. John's wort
<i>Ilex aquafolium</i>	English holly
<i>Laburnum watereri</i>	Golden chain tree
<i>Leontodon autumnalis</i>	Fall dandelion
<i>Lythrum salicaria</i>	Purple loosestrife
<i>Myriophyllum spicatum</i>	Eurasian watermilfoil
<i>Phalaris arundinacea</i>	Reed canarygrass
<i>Polygonum convolvulus</i>	Climbing bindweed
<i>Polygonum sachalinense</i>	Giant knotweed
<i>Prunus laurocerasus</i>	English, Portugese laurel
<i>Rubus discolor</i>	Himalayan blackberry
<i>Rubus laciniatus</i>	Evergreen blackberry
<i>Rhus diversiloba</i>	Poison oak
<i>Senecio jacobaea</i>	Tansy ragwort
<i>Solanum dulcamara</i>	Blue bindweed
<i>Solanum nigrum</i>	Garden nightshade
<i>Solanum sarrachoides</i>	Hairy nightshade
<i>Taraxacum officinale</i>	Common dandelion
<i>Urtica dioica</i>	Stinging nettle
<i>Utricularia vulgaris</i>	Common bladderwort
<i>Vinca major</i>	Periwinkle (large leaf)
<i>Vinca minor</i>	Periwinkle (small leaf)
<i>Xanthium spinosum</i>	Spiny cocklebur

various genera

Bamboo sp.



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Press Release

PO Box 1235
Hillsboro, OR 97123

April 18, 1998
FOR IMMEDIATE RELEASE

Contact: Jack McGowan, Executive Director, 844-9571 or 816-2822(cell)
Bonnie Shoffner, Program Coordinator, 844-9571 or 307-5745 (cell)

VOLUNTEERS CLAIM SOLV IT SUCCESSES

From St. Helens to Oregon City, from the Tillamook State Forest to the Mt. Hood National Forest, more than 2,300 volunteers participated in the 9th annual SOLV IT event today. With support from major sponsors Metro, Weyerhaeuser Company, Sleep Country USA, Amica Mutual Insurance Company and KINK fm 102, they completed an impressive array of projects including the following.

- Sent an estimated 1.15 million lbs. of household waste to be properly disposed of in area landfills.
- Collected 124,000 lbs. of woody debris, including illegally dumped yard debris and invasive plants that were removed from sensitive wetlands and streams.
- Removed nearly 2,400 illegally dumped tires.
- Removed dozens of appliances, numerous truck and car bodies and other scrap metal for an estimated 108,000 lbs.
- Collected an estimated total of 709 tons.
- Planted hundreds of trees, shrubs and native plants in parks and natural areas.
- Extended and provided spring maintenance on trails in several natural areas.
- Site sponsors Gresham Town Fair, Sunset Mall, Wilsonville Town Center and Sunset Esplanade received volunteers who then took bags out into the communities to do general litter cleanups.

Other site sponsors are Portland General Electric, Columbia Sportswear, AirTouch Cellular and Odwalla.

(MORE)

SOLV IT – Page Two

Fewer volunteers turned out for this year's SOLV IT, compared to 3,000 – 3,500 in recent years. Organizers feel this is due to the broadening awareness of Earth Day with its myriad of other activities. SOLV IT is proud to be the largest Earth Day event of this type in the region.

Thanks to the sponsors and hard-working volunteers for a job well done!

Here are additional highlights from today's SOLV IT!

75 Weyerhaeuser Company employees cleared a large field on Sauvie Island to be planted with food for migrating birds.

At Rosemont Bluff in NE Portland, Amica volunteers pulled invasive species of vegetation from a natural area and replaced them with native species.

More than 100 Portland General Electric employees and residents of Columbia County cleaned up the severely degraded Salmonberry watershed reservoir of hundreds of tires and 30 cubic yards of illegally dumped household waste. Other PGE employees worked at Cathedral Park in North Portland.

Metro employees adopted 3 sites including historic Canemah Bluff and Newell Creek Canyon in Oregon City and Cooper Mountain Natural Area in Beaverton. About 100 Metro employees and their families participated.

At Rock Creek Road in NW Portland, Kink fm 102, Sleep Country and CH2M Hill employees were part of an effort that included the removal of an estimated 60,000 lbs. of scrap metal plus 20,000 lbs. of illegally dumped debris.

Odwalla joined 150 Nike volunteers in Forest Park to provide extensive work on trails.

AirTouch Cellular employees participated in trail work at Jackson Bottom wetlands.

At Kelly Point Park in North Portland, 46 Columbia Sportswear employees cleaned up litter and marine debris.

Employees of Ashforth Pacific joined volunteers cleaning up litter in inner N.E. Portland.

Browning Ferris Industries recruited 85 employees to pull ivy in Forest Park.

The Tualatin Riverkeepers floated 16 boats and more than 150 shore-bound volunteers to remove thousands of pounds of debris from the water and riverbanks.

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Stop Oregon Litter and Vandalism Working to Preserve this Treasure Called Oregon
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SOLV Fact Sheet

Stop Oregon Litter & Vandalism, Inc. (SOLV) is one of Oregon's oldest conservation organizations, founded in 1969 by Governor Tom McCall and other community leaders. SOLV is a non-profit 501(c)(3) organization governed by a volunteer Board of Directors. Among the many programs that SOLV offers are the following. (Please call to confirm dates)

GREAT OREGON SPRING AND FALL BEACH CLEANUPS. Coordinated with Oregon State Parks & Recreation Dept. and Oregon Dept. of Fish & Wildlife. The entire Oregon coast, from the Washington to California borders, is cleaned of litter and marine debris. (1998 dates: **April 4 and September 26**)

SOLV IT. Cleanup of illegal dumpsites and neighborhood enhancement projects in the Portland Metropolitan area. Since 1990 this event has removed over 4.8 million pounds of debris. (1998 date: **April 18**)

DOWN BY THE RIVERSIDE. Cleanup and enhancement projects on public spaces along waterways. Parks, marinas and natural areas benefit from a one-day volunteer effort. (1998 date: **May 16**)

PAINT THE TOWN CLEAN. Graffiti removal project in the Portland area. Some of the area's worst graffiti has been removed to combat the influence of gangs in Oregon's largest city. The event precedes Rose Festival, Oregon's largest event. (1998 date: **May 30 - rain dates: June 6 or 13**)

COUNTIES CLEAN AND GREEN. Cleanup and enhancement of neighborhoods, parks and rights-of-way. Involves over 1,100 volunteers. (1998 date: **Sept. 19, Washington County**)

SOLV CUP. Year-round cleanup program. Provides technical assistance, funding, materials and recognition to towns and communities throughout Oregon each year. This program is supported by the Oregon Dept. of Transportation.

WHO CARES? I CARE! Curriculum packets for elementary age children. Provide educational outreach with interesting cross-discipline activities. The materials meet Certificate of Initial Mastery (CIM) guidelines. Coordinated with funding from the Oregon Dept. of Transportation.

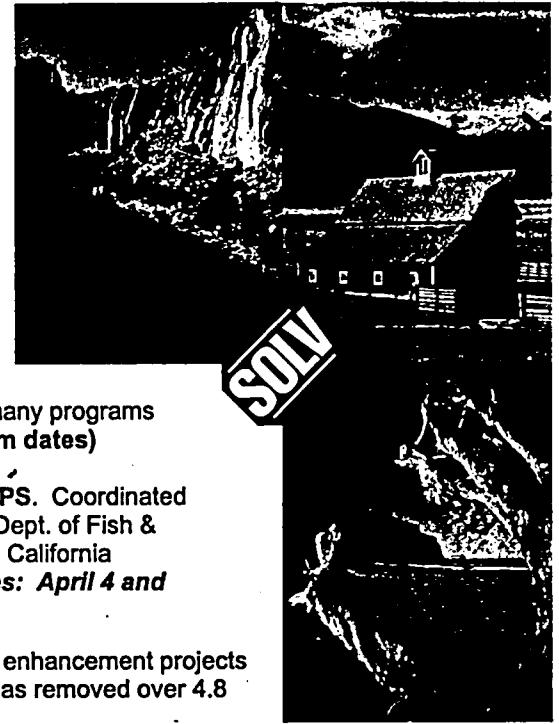
OREGON ADOPT-A-RIVER. Waterway maintenance program. A partnership with the Oregon State Marine Board supported by other state and federal agencies. Volunteers clean up and maintain Oregon's waterways, with more than 1200 miles currently adopted.

MAKE IT RIGHT. A middle, junior and high school program. Students identify local needs and organize their own cleanup and enhancement activities. Coordinated on behalf of the Oregon Dept. of Transportation, it was created by students and provides materials and grant money.

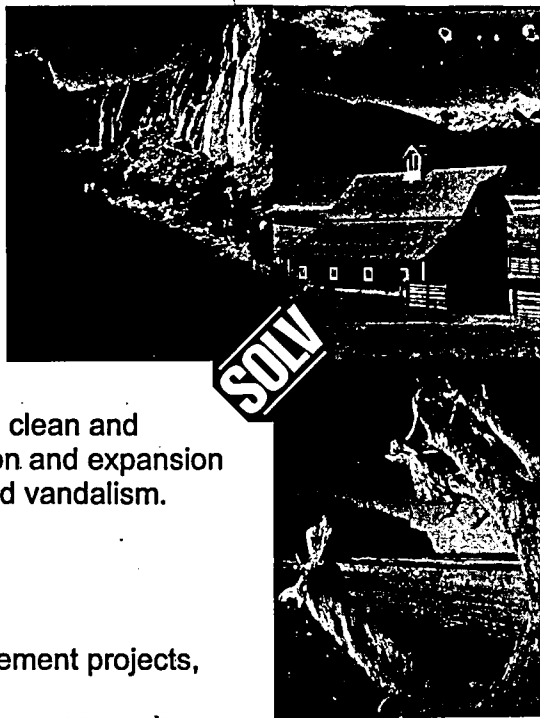
SOLV CITIZENSHIP AWARDS. Sponsored by Bank of America, the awards recognize volunteer action that promotes a clean and livable Oregon. Awards are presented at SOLV's annual banquet.

VOLUNTEER ACTION TRAINING. Each session precipitates new cleanup and community development projects for the areas in which it is presented. Developed and presented through grants from the Meyer Memorial Trust and the Oregon Community Foundation.

Working with government and corporate sponsors, nearly 50,000 SOLV volunteers annually contribute over \$4.2 million worth of resources to help maintain the livability of Oregon. For more information about becoming a Friend of SOLV and joining this volunteer effort, please contact SOLV.



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Join Friends of SOLV Today

Friends of SOLV support the efforts of SOLV to keep Oregon clean and livable. Your contribution is needed to ensure the continuation and expansion of vital programs that combat litter, graffiti, illegal dumping and vandalism. Benefits of joining include:

- Quarterly newsletter
- SOLV window sticker
- Timely information on cleanup, beautification and enhancement projects, community service and volunteer opportunities
- Involvement with an estimated 50,000 volunteers this year working to keep Oregon livable

In addition:

- Activists receive a supply of SOLV litter bags and a pair of heavy duty gloves
- Patrons receive the handsome *Oregon III* (\$30 value) book featuring the beauty of Oregon
- Benefactors receive a signed copy of the beautiful book *Magnificent Places: Oregon Coast* (\$20 value) with essays by SOLV Directors Jack and Jan McGowan
- Business Friends receive *Oregon III* (\$30 value) and are entitled to benefits for five employees. Please list recipient names and addresses (if different than below) on back.

Your tax-deduction is limited to your contribution less the value, as listed above, of any gift you receive.

SOLV offers several categories for membership. So get your family, youth group, club, church group or scout troop together and become Friends of SOLV today!

Friends of SOLV sign-up form		_____ Student/Senior - \$10
Name _____		_____ Individual - \$25
Address _____		_____ Family or Group - \$35
City _____ State _____		_____ Champion - \$50
County _____ Zip _____		_____ Patron - \$100
Phone (day) _____ (eve) _____		_____ Benefactor - \$250
Please return this form with your payment to:		_____ Business - \$500
SOLV, PO Box 1235, Hillsboro, OR 97123	Please charge my _____ Visa _____ MasterCard	
Federal non-profit i.d. # 93-0579286	Card No. _____	
THANK YOU!	Signature _____	

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Date	