

NATURAL RESOURCES COMMITTEE MINUTES

May 9, 2001
Metro Council Chamber

Members present: Councilor Carl Hosticka, Chair, Councilor Susan McLain, Councilor Bill Atherton

Also Present: Councilor Rex Burkholder, Councilor Rod Park and Councilor Rod Monroe

Chair Hosticka called the meeting to order at 1:40 p.m.

1. CONSIDERATION OF THE MINUTES

The minutes of the April 4, 2001 meeting were moved by Councilor Atherton, and unanimously adopted without revision.

2. GOAL 5/FISH AND WILDLIFE HABITAT PROTECTION

Chair Hosticka said the Goal 5 process was lengthy and should be made in small, deliberate steps. The first step would be to make an inventory of what the fish and wildlife habitat is, where it is, and what is really there. The next step would be to determine what is significant. This would be done in two steps and would establish the criteria for significance, and after applying that criteria, which places are significant. Then an environmental, social, economic and energy consequences analysis of protecting or not protecting those identified significant resources would need to be made. The final step would be to prescribe a program for the protection of what has been identified. Right now Metro is at the end of, though not completed with, the first step – the inventory – mapping what is on the ground. We are approaching the step of significance. The two questions we want to consider today are: what type of criteria should we apply to the determination, and, when does the issue of “regional” enter into the discussion. The committee is open to hearing the views of those interested in speaking on this subject, in order to give direction to staff. No determinations will be made until different scenarios have been presented to this committee, as well as, Metro’s different advisory committees, including MPAC. This process will take us to July, 2001.

Ken Helm, Legal Counsel, referenced his April 11, 2001, memorandum which was included in the meeting packet. Additionally, he distributed Section C, Fish and Wildlife Habitat Protection, from Title 3, Section 5 of the Urban Growth Management Functional Plan, which is attached and incorporated in the permanent record of this meeting. The 5 steps are greatly integrated into the Goal 5 process. The jurisdictional maps identifying features - the core feature the resource is designed to protect. The staff is requesting identification of the type of data to allow them to finish the inventory, and go on to the significance determination. He reviewed his memo. In conclusion he stated that existing law holds part of the answer; existing policy holds another part of the answer, but it is incomplete. Scientific literature is likely to provide additional information to consider in identifying regionally significant fish and wildlife habitat. MPAC produced a significant work product – the vision statement – which the Council accepted after extensive involvement and review by our local partners and individuals. That vision statement is a good clearinghouse for many policy objectives. **Councilor McLain** referenced a letter from a group of Goal 5 attorneys, and found no disagreement with the state rule as stated in the memorandum. **Mr. Helm** said that was a correct interpretation. The last bullet restates Section 4 of Title 3, 5C, as an acknowledgement of subsequent steps in this process. **Chair Hosticka** summed up saying there is some guidance, but considerable discretion.

Andy Cotugno, Director, Planning Department suggested considering criteria that is either functionally based or jurisdictionally based. He gave a brief overview of the different applications used: jurisdictional, local, functional hierarchical, large/small and exempted/excluded. We are currently at the point of looking at the significance of the system, and not yet at the point of defining which parts should what things be done to. **Councilor McLain** mentioned that each of Mr. Cotugno's items were governed by either federal or state law. **Paul Ketcham**, Planning Department, said the staff recommendations were addressed in a memorandum dated April 19, 2001, which was included in the meeting packet. The recommendation was that a science-based approach be used to determine regional resources under State Planning Goal 5. Pages 6, 7, and 8 of the memorandum detail how the functional approach would be exercised by staff, with committee and Council approval. Staff is recommending the science-based approach because: 1. It is consistent with Metro goals; 2. The vision statement would be supported by a science-based approach. 3. A science-based approach would be consistent with State Planning Goal 5. The first step in this process is the inventory – collection and assessment of data that describes the nature of the resources attempting to be protected. 4. A science-based approach is consistent with the Federal Endangered Species Act. 5. There are limited staff resources available.

Chair Hosticka opened the meeting to public input.

Richard G. Kidd, Mayor, City of Forest Grove, 3022 Watercrest, Forest Grove, OR, representing the Tualatin Basin Natural Resources Coordinating Committee, which is composed of all the mayors of Washington County, and other county officials and water district. He come to the meeting to offer assistance in moving forward step by step. **Brent Curtis**, Planning Manager, Washington County, 155 N. First, Hillsboro, OR, Chair of the Tualatin Basin Goal 5 Natural Resource Steering Committee, who have been working at a technical level on Goal 5. It is the same group that had worked on Title 3 Water Quality. They have focused on providing testimony regarding inventory. Though involved in Metro's process, to date there has been no discussion on making the significance decision. He expressed a desire to work with Metro staff, and hoped that a committee decision to take a functional approach would not be made today, but allow more work to be done on it. Metro Goal 5 decisions will profoundly affect local governments. Sharing responsibility at the local and regional levels can be worked out. **Chair Hosticka** thanked them for their offer of assistance.

Michael Jordan, Commissioner, Clackamas County, 906 Main St., Oregon City, OR 97045, provided his written testimony which is attached and incorporated in the permanent record of this meeting. He committed his resources to working with Metro on this Goal 5 issue. Metro has to make functional, biological and scientific choices regarding the significance of regional resources, as well as the regional nature of this process and outcome, and how those relate between Metro's role and the local role. Lastly, Metro has a choice of how it communicates with local authorities, who would like Metro's intended outcomes to be clear from the outset. **Councilor McLain** reviewed the type of approach. **Mr. Jordan** stated that regardless of which outcome was being reached, all parties be very clear about the type of outcome being worked toward. **Councilor Park** said he thought Metro was trying to develop a Goal 5 program that would address ESA. **Mr. Jordan** responded that he is not testifying that Metro should not do that, but rather that if we develop a Goal 5 program that would address ESA, just be explicitly clear from the onset, otherwise significantly different processes and outcomes will result. **Councilor Park** agreed, but said based upon the MPAC vote Metro was trying to design such a program. **Mr. Jordan** acknowledged that Metro has been working toward that goal, but there were apprehensions among local governments about the bar that has been set by the safe harbor, and local governments' ability to put forth their own 4(d) proposals, and having that bar significantly higher than some would want. **Councilor Park** felt additional discussion was needed. **Chair Hosticka** said this committee was charged with doing

Goal 5, as well as directing Metro regarding the 4(d) rule. If they are not being done simultaneously, the differences need to be determined.

Doug Neeley, Commissioner, City of Oregon City, 712 12th Street, Oregon City, Oregon, and professional statistician. He discussed the differences in “significance.” In looking at significant streams, determinations of the various life stages of the animals involved, determining what happens in those streams, determining what connects the streams together – will determine the significance. Different habitats may be needed for different animals during their lifespan. He said moving on a regional basis, a functional approach was extremely important. He stated he felt the sense of the MPAC subcommittee dealing with the vision statement was looking at the broad Goal 5 aspect, not only the 4(d) rule considerations. **Councilor Atherton** added that there are other streams significant to water quality that are not involved in the lives of fish.

Charlotte Lehan, Mayor, City of Wilsonville, former founder of Friends of Goal 5. Wilsonville had recently passed their Natural Resources Plan, which encompasses Goal 5, the 4(d) rule, and Title 3. To the greatest degree possible, it was scientifically and ecologically based. Wilsonville does not share its watershed with any other jurisdiction. The difference between local and regional significance is not clear to her. If something is locally significant on a scientific and ecological basis, how can it not be significant on a regional level? There are animals other than fish whose habitat must be considered, greatly expanding regional significance. The functional part should be considered first, looking at the landscape base in making those decisions.

William Kirchner, US Environmental Protection Agency, 811 SW 6th, Portland, OR 97204, provided written testimony which is attached and incorporated in the permanent record of this meeting. He said determining the significance of a stream or wildlife habitat has always been based on scientific evaluation, including a basic inventory and following a methodology to determine the functionality of that particular habitat. Only ecological and functional criteria should be used in determining which streams and wildlife habitat are regionally significant. An ecological-based approach at a watershed scale is critical to having a legal, defensible and successful Goal 5 program. In a general nature, a sound scientific basis and process are prerequisites to receiving Clean Water Act and Endangered Species Act coverage.

Marc Liverman, Habitat Conservation Division, National Marine Fisheries Service, (NMFS) 500 NE Oregon St., Portland, OR 97232. As far as the administration of the Federal Endangered Species Act, it has always been the best use of available scientific and commercial information. Scientific used here, primarily means a rational criteria that is consistent with what we know about fish biology and principles of conservation. NMFS makes determinations about species based on information regarding species’ conditions across their range, within their region for the entire species. It is very difficult to make scientific and ecological defensible determinations about the fate of species on a smaller scale than that. The problems salmon face are cumulative and largely habitat-based. He urged Metro to consider ESA as one of many authorities that can help make a better future for salmon and other fish and wildlife species in the Portland area. Scientific significance criteria at the outset are necessary to protect the rest of the Goal 5 process. **Councilor Atherton** asked if an intermittent stream in an upper watershed could be regionally significant. **Mr. Liverman** said it would be if it drains into and has a significant role in the hydrology of a perennial stream that is downstream. If the focus was on the species of interest, its particular life history needs, particular elements of habitat that support its life history needs, and whether that perennial stream has a role for those essential habitat features, it would be easier to see. The cumulative effect makes a difference. **Councilor Atherton** asked if the 4(d) rule would deal with the cumulative impact issue. **Mr. Liverman** responded that the 4(d) rule is a promising tool, but a great deal

of policy development has yet to be done. The answer may lie in Section 4(f)- recovery planning – because it is in recovery planning that the most holistic view of the long-term requirements of the species are considered.

Jim Middaugh, Manager, City of Portland Endangered Species Program, submitted written testimony from himself, and from Mayor Vera Katz and Dean Marriott, which are attached and incorporated in the permanent record of this meeting. He said the City of Portland supported the scientific approach and use of a science and political approach. The federal government is going to require a level of scientific information, well beyond regional significance, getting to the heart of density, 2040 and economic development, and urged Metro to provide the information to the local jurisdictions for their individual use. Portland is taking a functional approach to identifying significant areas, and needs to work with their partners, other jurisdictions, citizens and stakeholders to make those decisions. The information developed so far will prove useful to other parties. There is a strong economic and political basis to use good science as Metro moves forward. **Councilor Atherton** asked about the moratorium statute as it relates to protection against irrevocable harm to a natural resource. Has there been any discussion at the City of Portland about invoking the moratorium statute against irrevocable harm to a natural resource – fish. **Mr. Middaugh** was not aware of any conversation in that regard, however, as the significance maps begin to circulate, some of those issues are going to arise.

Patricia Snow, Land Use and Water Use Coordinator, Habitat Department, Oregon Department of Fish & Wildlife read her written testimony which is attached and incorporated in the permanent record of this meeting. She supported use of biological and ecological criteria to determine resource significance.

Jill Fuglister, Coalition for a Livable Future, 1220 SW Morrison, Suite 535, Portland, OR 97205, urged Metro committees to use the best scientific information available. She said the Tualatin Basin's Natural Resources Steering Committee has urged Metro to include political and jurisdictional criteria in determining which streams and upland habitat are to be designated. **Chair Hosticka** clarified that we have not received any such suggestion into the record. There have been discussions, but such a point has not been urged upon Metro. She continued, political and jurisdictional criteria should not be used to determine significance of natural resources. Other policy advisory groups and the Council can consider these issues once the technical work is completed. Regional resource management decisions should be coordinated on a regional level. She urged expeditious movement on this issue.

Sheara Cohen, Policy Associate, Community Development Network, provided written testimony which is attached and incorporated in the permanent record of this meeting. She was pleased that the staff recommendations supported an ecologically-based criteria for evaluation. Jurisdictional boundaries should be addressed at the implementation phase. She urged following ecological and natural basis for determining preservation and restoration.

Jacob Brostoff, 1000 Friends of Oregon, said Metro should move forward with a functional and ecological approach to protecting natural resources. A systematic ecological framework in place to protect the health of the entire ecosystem in the region is important. He urged moving forward with best scientific evidence and knowledge available.

Mike Houck, Audubon Society, provided written testimony which is attached and incorporated in the permanent record of this meeting. He expressed his surprise at what seemed to be consensus at this meeting, when in fact, there are very significant differences from public testimony and staff recommendations. From the beginning with Title 3 and moving into Goal 5, there have been great differences in opinion with respect to whether all the streams are significant. He supported the staff's

recommendations because it is important to begin with the science, the ecological functions, and work through the politics later. **Chair Hosticka** clarified that we deal with what goes on the record, and these discussions lead to the type of cooperative results over the years, even though we begin with different approaches, after working it through, come close to the same place at the end of the process. **Mr. Houck** stated he hoped we are moving toward a package where we were not continually dividing up the resource. We needed to look at ecosystem function, not case by case situations. His concern is that there be no delay on this particular step of the process. He noted that at this meeting there was a range of representation from affordable housing and transit, discussing ecological issues. We are densifying the region, and policy decisions have been made through the future vision document, the RUGGOs, and the Regional Framework Plan, that the quality of life within the urban growth boundary will be protected. He hoped that the bar would be raised high. **Chair Hosticka** said by the end of the meeting a timetable would be discussed. He said this work must be completed by Fall 2002 because it directly related to the periodic review decisions regarding the size of the urban growth boundary. The resource protection questions need to be addressed first, and in a timely fashion. We need to move with all deliberate speed, but making sure we don't go too fast and fail. **Councilor Burkholder** said the Goal 5 rule actually talks about systems in relationship to riparian corridors. He noticed the repeated use of the word "sites." **Mr. Helm** responded that the term "sites" is a defined term in the Goal 5 rule. A site is a parcel or group of contiguous parcels of land where existing resources are identified. The term does not preclude looking at the Goal 5 resources as a system. The term has no bounds. You can have as many as you need to cover an entire watershed. It is a flexible term and the definition of the various resources, in particular, riparian corridors, fit nicely with the idea of a system approach and certainly do not preclude it.

Bob Van Dyk, Ph. D., 2114 C. Street, Forest Grove, OR, strongly endorsed the use of the most ecologically and scientifically based criteria in determining the significance of streams and habitats. Jurisdictional boundaries are a nuisance. Begin with the streams and habitat and deal with the jurisdictions later. Dove-tailing with the 4(d) rule is not synonymous.

Sue Marshall, Executive Director, Tualatin Riverkeepers, 16507 SW Roy Rogers Rd, Sherwood, OR 97140 provided written testimony which is attached and incorporated in the permanent record of this meeting. All public waters are regionally significant and should be treated as such in the Goal 5 planning process; adhere to a timeline for adoption and set a firm deadline for compliance by local jurisdictions. **Councilor Atherton** asked if the moratorium issue had ever been considered by the watershed council. **Ms. Marshall** responded that if water quality issues were to be immediately addressed, a moratorium could be placed on stormwater outfalls, being the significant source of pollutants in the Tualatin Watershed. Agriculture follows behind that.

Tom Wolf, Council Chair, Trout Unlimited, 22875 NW Chestnut St., Hillsboro, OR, urged consideration of all scientific and functional data available rather than political and jurisdictional data.

Alan Hipolito, Coalition for a Livable Future, 4433 NE 35th Place, Portland, OR, said Metro has processes in which it can be the most effective regional convener (the Council, MPAC) - equipped to deal with political considerations. He advocates environmental justice, and believes environmental processes and practices have social impact. He said he, and others seeking environmental justice, would be standing by in the post-phase of this project to ensure that environmental goals are protected. He urged giving the technical committee the ability to make the scientific determination. He asked that political considerations be removed.

Kendra Smith, Unified Sewerage Agency/Clean Water Services, 155 N. 1st Avenue, Hillsboro, OR 97124, was invited by Councilor McLain to speak at this meeting. The agency has taken on a wide scale watershed inventory to address issues of endangered species and the Clean Water Act. The inventory is not a Goal 5 inventory, but will benefit the cities in their jurisdiction. The location of the streams have all been identified, with a center line of streams in floodplains. The floodplain lines, with FIMA's assistance, will be updated. Their latest information will be available on their website and to Metro.

Councilor Atherton asked about elimination of stormwater to streams. She responded that they looked at culverts and outfalls, and strategies to retrofit them in areas where the stormwater was not pretreated. They plan to integrate the work in larger scale restoration projects. **Councilor McLain** thanked the effort of this group.

Chair Hosticka said there were no further testifiers present. **Councilor McLain** said that we need to identify what we mean by a functional response, or a scientific detail, for regionally significant. We need to do this in cooperation with our partners, and also how our partners want to deal with that. We have governmental rules imposed upon us to which we need to adhere. We need to send staff a clear directive after we have identified and totally reviewed that functional approach. We cannot do this job without the science or functional approach. Title 3 was begun with a scientific foundation. **Councilor Atherton** referred to timeline and said the staff should be asked to develop one. **Chair Hosticka** said we have a draft timeline, developed from our first committee workplan. Determinations of regional significance were targeted in July, 2001. There is an MPAC meeting on June 27, 2001, if MPAC review was needed. The staff should draft criteria and show its application in a few model watersheds, or geographical pieces, for this committee by the first week in June. The Goal 5 Technical Advisory Committee, MTAC and MPAC should look at them, and this committee can decide by the end of June or early July. Where the criteria reveals things of significance, then the question of what is regional, what is jurisdictional, how do different jurisdictions approach dealing with those resources should be discussed. In the short run, we should look at what the functional approach would produce. **Councilor McLain** said having attended a prior Washington County meeting, that Washington County wanted to organize their response to what are locally and regionally significant issues. Through Metro's advisory groups, the discussion could continue. **Chair Hosticka** summed up with a request of staff to produce a set of functional criteria, showing how it would be applied to a couple of geographic areas disbursed throughout the region, given the diversity of the region, by early June, to be reviewed by our regional partners before any further determinations are made by this committee. A letter will be sent to those attendees indicating the timeline and future steps.

3. **Willamette Restoration Initiative** – to be carried over to next meeting
4. **Bull Run Study** – to be carried over to next meeting
5. **Resolution No. 01-3070, For the Purpose of Amending the Jackson Bottom - Dairy/McKay Creeks Target Area Refinement Plan to Include Council Creek and Camp Ireland.**

The Chair, at 3:50 p.m., convened executive session pursuant to ORS 192.660(1)(e), deliberations with persons designated to negotiate real property transactions. Those present were the committee members, and Jim Desmond, Open Spaces Department. Executive session was closed at 4:00 p.m.

At 4:00 p.m., the Chair reconvened the Natural Resources Committee, and **Councilor McLain** moved the resolution with a do-pass recommendation.

Vote: The committee unanimously approved Resolution No. 01-3070, and Councilor McLain will carry it to Council.

6. Councilor Communication

There being no further business, the meeting was adjourned at 4:02 p.m.

Respectfully submitted,

Patricia Mannhalter
Council Assistant

:pm

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF
May 9, 2001

Document Number	Date	Document Description	RES/ORD
050901.01		<u>Fish and Wildlife Habitat Protection</u> from Title 3, Section 5 of Urban Growth Management Functional Plan.	
050901.02	May 9, 2001	Written testimony submitted by Commissioner Michael Jordan	
050901.03	May 9, 2001	Written testimony submitted by William Kirchner	
050901.04	May 2, 2001	Written testimony submitted by Mayor Vera Katz	
050901.05	May 4, 2001	Written testimony submitted by Dean Marriott, Director City of Portland Environmental Services	
050901.06	May 9, 2001	Written testimony submitted by Jim Middaugh, Manager, City of Portland Endangered Species Act Program	
050901.07	May 9, 2001	Written testimony submitted by Patricia Snow, Land and Water Use Coordinator, Habitat Division, State of Oregon	

050901.08	May 8, 2001	Written testimony submitted by Sheara Cohen, Policy Associate, Community Development Network	
050901.09	May 9, 2001	Written testimony submitted by Mike Houck, Audubon Society of Portland	
050901.10	May 9, 2001	Written testimony submitted by Sue Marshall, Executive Director, Tualatin Riverkeepers	
050901.11	May 1, 2001	Email from Mark R. Vossler, Co-Chair, Citizen Action Committee, Tualatin Riverkeepers to Chair Hosticka re: direction to consider scientific functional and ecological data only.	
050901.12	May 7, 2001	Memo from Goal 5 Attorneys Group to Chair Hosticka, re: Legal Issues Related to Metro Identification of Regional Resources (w/ attachments)	
050901.13	May 8, 2001	Letter from Keith Hirokawa to Chair Hosticka re: use of best available science in making important natural resource decisions.	
050901.14	May 8, 2001	Letter from Kemper McMaster to Chair Hosticka re: support of Planning Department's staff recommendation regarding regional significance determination for Goal 5 program.	
050901.15	May 7, 2001	Letter from Lisa Naito, Multnomah County Oregon, to Chair Hosticka re: use of science-based approach.	

050901.16	May 4, 2001	Memo from Dean Marriott, City of Portland Environmental Services, to Natural Resource Committee Members re: use of scientific criteria for assessments of regional significance of streams and wildlife habitats.	
050901.17	May 7, 2001	Letter from Ross Williams, Citizens for Sensible Transportation to Chair Hosticka re: science based use.	
050901.18	May 8, 2001	Email from Tim Skrotzki to Mike Burton re" usage of best scientific information	
050901.19	May 6, 2001	Letter from Laura Hill, President, Rock Creek Watershed Partners to Natural Resource Committee Members re: analyzing in a scientifically credible manner	
050901.20		Submission by Andy Cotugno entitled: Examples of Regional Significance Determination	
050901.21	May 9, 2001	Letter from Meeky Blizzard urging use of best ecological and scientific criteria in determination.	
050901.22	May 9, 2001	Letter from Mary Kyle McCurdy, Staff Attorney, Urban Program, urging use of best scientific information available.	